

S. 213. An Act relating to the Regulation of Wetlands, River Corridor Development, and Dam Safety

Section by Section Summary

Sec. 1. Short Title; Flood Safety Act

- Sec. 1 directs that the bill may be cited as the Flood Safety Act.

Sec. 2. Findings; River Corridor Development

- Sec. 2 provides findings for the sections of the bill related to river corridor development, including the increased flooding experienced by Vermont, the increase in annual precipitation, the cost of flooding, and the fact that the majority of flood related damage in Vermont occurs in the State's river corridors.

Sec. 3. Department of Environmental Conservation (DEC) River Corridor Base Map; Infill Mapping

- Sec. 3 directs DEC to amend the state River Corridor Base Maps by Jan. 1, 2026 to identify areas suitable for development located in existing settlements that will not contribute to fluvial erosion hazards.
- Sec. 3 also requires DEC to conduct an education and outreach program between Jan. 1, 2025 and Jan. 1, 2027 regarding how State permitting of development on mapped river corridors will be implemented.
 - Beginning Jan. 15, 2027, DEC shall report to the Legislature regarding: public input it collected; recommended program changes; how river corridor permitting will affect EJ populations; and how DEC is progressing in adopting rules for regulation of development in river corridors.
- Sec. 3 appropriates \$900,000 GF to DEC for 6 new positions to conduct mapping, education and outreach, rulemaking, and permitting for river corridors. \$225,000 GF would be appropriated for contracting.

Sec. 4. River Corridor Regulation; Definitions

- Sec. 4 amends the existing definitions section for river corridor regulation.
- Currently, the State regulates and permits development in river corridors when the development is exempt from municipal regulation—farming, silviculture, state buildings, telecommunications, and electric generation.
 - The State regulates these activities to maintain compliance with the FEMA NFIP program which requires regulation of all “development” in a flood hazard area. FEMA defines development as follows:
 - ❖ Development means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. 44 C.F.R. § 59.1.
- Sec. 4 adds definitions of “existing settlement” and “mapped river corridor.”

Sec. 5. Mapped River Corridor Rules; Permitting. 10 V.S.A. § 754

- § 754(a) requires DEC to adopt rules for the regulation of development in river corridors on or before July 1, 2027. Development would be defined under the FEMA definition.
 - The rules will continue to regulate development exempt from municipal regulation in flood hazard areas to maintain NFIP compliance.
- Under § 754(b), the rules shall:
 - establish requirements for permitting development in river corridors;
 - provide exemptions from permitting;
 - provide the process for municipal delegation of the permitting program; and
 - set a process for amending the statewide River Corridor Base Map.
- Under § 754(e), beginning Jan. 1, 2028, a DEC permit is required to conduct development in a river corridor.

Sec. 6. State Flood Hazard Area Standards; 10 V.S.A. § 755

- Under § 755(a), ANR shall adopt rules to establish a set of flood hazard area standards for enrollment in NFIP.
 - The rules shall meet or exceed FEMA's required NFIP rules.
 - A municipality with a flood hazard area bylaw shall update the bylaw to conform to the State standards.
 - On or after Jan. 1, 2028, the State Flood Hazard Area Standards shall be the State's minimum flood hazard area standards. FEMA requires NFIP participating towns to meet state minimum standards.

Secs. 7-9. Conforming Amendments to Municipal Zoning and Development Authority

- Currently, municipalities have discretion under municipal zoning authority to regulate development in river corridors and flood hazard areas, to adopt flood resilience plans, and to adopt river shoreland bylaws.
- Because DEC will be permitting development in river corridors, municipal authority to regulate in river corridors must be removed. Municipal authority to regulate in flood hazard areas remains, but municipalities will be required to meet or exceed the State Flood Hazard Area Standards adopted by ANR.

Sec. 10. Study Committee on State Administration of National Flood Insurance Program (NFIP)

- Sec. 10 creates the Study Committee on State Administration of the National Flood Insurance Program to recommend how to reduce vulnerability to inundation flooding, including how and to what scale to shift administration and enforcement of NFIP from towns to DEC. Report due to the Legislature on Aug. 15, 2025.

Sec. 11. Transition; Implementation; Appropriation

- Sec. 11 provides provisions related to the transition, implementation, and staffing of river corridor permitting and State Flood Hazard Area Standards.
- DEC is required to initiate rulemaking on permitting of development in river corridors by July 1, 2025.
- Prior to the effective date of rules for river corridor permitting, ANR shall continue to regulate development in flood hazard areas and relevant river corridors that is exempt from municipal regulation.
- Sec. 11 includes a vested rights provision for a person who obtains all necessary permits for development in a river corridor prior to January 1, 2028.
- Sec. 11 appropriates \$300,000 GF to ANR for 2 new positions to adopt the State Flood Hazard Area Standards. An additional \$225,000 GF is appropriated for contracting.

Sec. 12. Water Resources Management. 10 V.S.A. § 901

- Sec. 12 provides that it is the policy of the State to protect, regulate, and restore the wetlands so that the State achieves a net gain of wetlands acreage.
- Sec. 12 also provides that regulation of Vermont's water resources, including wetlands, should be guided by science and authorized activities in waters or wetlands should have a net environmental benefit to the State.

Sec. 13. Definition of Dam Removal. 10 V.S.A. § 902(13)

- Sec. 13 amends the statutory definitions for the wetlands program to add a cross reference to a definition of dam removal under the dam safety section. The bill provides that dam removals are an allowed use in wetlands.

Sec. 14. Update of Vermont Significant Wetlands Inventory (VSWI) Maps. 10 V.S.A. § 916

- Sec. 14, §916(a), requires ANR on or before Jan. 1, 2026 and not less than annually thereafter to update the VSWI.
- Sec. 14, §916(b), also requires ANR on or before Jan. 1, 2030 to complete High Quality Wetlands Inventory Plus mapping for all tactical basins in the State.

Sec. 15. Net Gain of Wetlands; State Goal; Rulemaking. 10 V.S.A. §918 and 919.

- §918(a) requires ANR on or before July 1, 2025 to amend the Vermont Wetlands Rules to provide that the goal of wetlands regulation in the State is the net gain of wetlands to be achieved through protection of existing wetlands and restoration of previously affected wetlands.
- §918(b) provides that where a permitted activity in a wetland will cause more than 5,000 square feet of adverse effects that cannot be avoided, ANR shall mandate that the permit applicant restore, enhance, or create wetlands or buffers to compensate for the adverse effects on a wetland.
 - The amount of wetlands to be restored, enhanced, or created shall be calculated by determining the acreage or square footage of wetlands permanently drained or filled as a result of the permitted activity and multiplying that acreage or square footage by two, to result in ratio of 2:1 restoration to wetland loss.
- §918(c) requires ANR to amend the Vermont Wetlands Rules to incorporate the net gain rule into permits issued after Sept. 1, 2025 and to establish a set of parameters and restoration ratios for wetland restoration projects.
- §918(d) requires the Vermont Wetlands Rules to establish a Vermont in-lieu fee compensation program that would allow adverse impacts to wetlands to be compensated through compensation payments.
- §919(a) requires ANR on or after April 30, 2025 and annually thereafter to report to the Legislature on the annual losses and gains of significant wetlands in the State.
- §919(b) requires ANR on or after April 30, 2027 and every 5 years thereafter to report to the Legislature on the status of wetlands in the State.

Sec. 16. Water Quality Enforcement. 10 V.S.A. §1274(a)

- Sec. 16 clarifies that ANR enforcement authority over discharges of waste to surface waters also applies to discharges of waste to wetlands. This is already State policy but is not currently recognized under §1274.
 - Sec. 16 would allow enforcement under §1274 to order the restoration of damaged wetlands.

Sec. 17. Appropriations; Wetlands

- Sec. 17 appropriates \$300,000 GF to ANR for two new positions to implement the wetlands rulemaking and mapping requirements of Sec. 12-15 of the bill.

Sec. 18. Dam Safety; Transfer of Authority. 10 V.S.A. chapter 43.

- Generally, the Federal Energy Regulatory Commission (FERC) regulates any electric generation dam in the State. However, there are 21 electric generating dams in the State that preceded FERC jurisdiction and that are currently regulated by the Public Utility Commission (PUC).
- The PUC attempts to approximate DEC's standards and requirements for dam safety, but ultimately PUC standards and expertise are not the same as DEC's.
- Sec. 18 transfers jurisdiction over the safety of the 21 PUC dams to DEC. The PUC will retain authority over any activities at a dam that require authorization under 30 V.S.A. §248 (i.e. relating to electric generation).
- Almost all of the changes in Sec. 18, 10 V.S.A. chapter 43, relate to the transfer of dam safety authority from the PUC to DEC, including how DEC shall inspect dams or hire engineers for inspection (see §§ 1087 and 1089).
- Sec. 18 also amends the existing Unsafe Dam Revolving Loan Fund to be the Dam Safety Revolving Loan Fund.
- The current fund only provides financial assistance to dams that have been determined to be unsafe.
- The revised fund will provide financial assistance for emergency and nonemergency projects. Sec. 18 provides eligibility criteria for each category of assistance, and directs ANR to adopt rules for financing from the Fund.
- DEC shall report annually to the Legislature regarding administration of the Dam Safety Program, including financial assistance from the Dam Safety Revolving Fund.

Sec. 19. Dam Registration Report; Postponed Due Date

- Sec. 19 postpones from Jan. 1, 2025 to Jan. 1, 2026, the DEC report on the registration of dams in the State.

Sec. 20. Dam Design Standard Rules; Postponed Due Date

- Sec. 20 postpones from July 1, 2024 until July 1, 2025, the due date for the DEC dam design standard rules.

Sec. 21. Appropriations; Dam Safety Division

- Sec. 21 appropriates \$900,000 GF to ANR for 6 new positions in the Dam Safety Division.
- Sec. 21 also appropriates \$2 million GF to the Dam Safety Revolving Loan Fund.

Sec. 22. Study Committee on Dam Emergency Operations Planning

- Sec. 22 establishes the Study Committee on Dam Emergency Operations Planning to review and recommend how to improve regional emergency action planning for hazards caused by dam failure, including how to shift responsibility for emergency planning from individual municipalities to regional authorities, how to improve regional implementation of dam emergency response plans, and how to fund dam emergency action planning at the regional level. Report due to the Legislature on December 15, 2024.

Sec. 23. Determination of FERC Jurisdiction

- Requires DEC, by July 31, 2025, in coordination with the PUC, to file petitions for a declaratory order from FERC to determine whether dams currently under PUC's jurisdiction fall under FERC hydroelectric jurisdiction.

Sec. 24. Transition; Dams

- Directs DEC to assume jurisdiction over all PUC dams on or before July 1, 2028.
- Requires DEC to report to the Legislature annually on the status of the transfer of dam safety jurisdiction of the PUC dams to DEC.
- Requires the DEC rulemaking required under Sec. 18 for dams to be completed by July 1, 2027.
- Provides that funds from the Dam Safety Revolving Loan Fund will not be available for nonemergency uses until DEC adopts the rules required under Sec. 18.

Sec. 25. Basin Planning; 10 V.S.A. §1253(d)

- Sec. 25 requires each basin plan that ANR develops for the 15 river basins in the State to identify opportunities in each basin to mitigate impacts of severe precipitation events on communities through implementation of nature-based restoration projects or practices that increase natural flood water attenuation and storage.

Sec. 26. Expanded Polystyrene Foam; 10 V.S.A. chapter 47, subchapter 2B

- Sec. 26, §1322(a), adds a new subchapter to the water quality chapter in Title 10. The new subchapter requires expanded polystyrene foam used for flotation on buoys, docs, or other structures to be encapsulated by a protective covering or to be designed to prevent expanded polystyrene foam from disintegrating into water.
- Sec. 26, §1322(b), prohibits use of unencapsulated polystyrene or open-cell (beaded) polystyrene for the installation of a new buoy, dock, or floating structure on the waters of the State.
 - Unencapsulated polystyrene materials and open-cell beaded polystyrene shall not be used for the repair of buoys, docks, or floating structures on waters of the State.
- Sec. 26, §1322(e), prohibits a person from selling, offering for sale, or otherwise distributing for compensation within the State dock floats, mooring buoys, or anchor or navigation markers made, in whole or in part, from expanded polystyrene foam that is: (1) not wholly encapsulated or encased within a more durable material; or (2) open-cell (beaded) polystyrene, including materials that are encapsulated and unencapsulated

Sec. 27. Appropriations

- Sec. 27 appropriations \$50,000 GF to DEC to support education and outreach regarding the requirements for use of expanded polystyrene foam.

Sec. 28. Study Committee on Enrollment of Floodplain Management Land in Use Value Appraisal

- Sec. 28 establishes a Study Committee on Enrolling Floodplain Management Land in the Use Value Appraisal Program to determine whether or how to authorize the enrollment of land designated for floodplain management in the Use Value Appraisal (UVA) Program. Report due to the Legislature on Jan. 15, 2025.

Sec. 29. Effective Dates

- The delay of the Dam Registration Report (sec. 19), the delay in dam design standard rules (sec. 20), and the requirement that DEC petition FERC (sec. 23) take effect on passage.
- All other sections take effect July 1, 2024, except that:
 - The rulemaking for the Dam Safety Revolving Lona Fund takes effect on passage;
 - The requirement to update the tactical basin plans shall be effective for basin plans issued on or after Jan. 1, 2025; and
 - The rulemaking for expanded polystyrene foam goes into effect on passage.