

1 S.224

2 Introduced by Senators Watson and Bongartz

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; water quality; lakes; use of waters;

6 wakeboats; aquatic nuisance species; fish and wildlife access areas

7 Statement of purpose of bill as introduced: This bill proposes to require
8 delegation to a municipality the authority to regulate the use of a public water
9 used as a public water source by the municipality's public water system if the
10 municipality owns or controls all of the private land surrounding the public
11 water. This bill also would require a person who owns or controls a wakeboat
12 to identify a home lake in which the wakeboat shall operate for the calendar
13 year. A wakeboat would be limited to operating in the home lake, unless the
14 wakeboat is decontaminated prior to transfer to another lake or waterbody. In
15 addition, the bill would clarify that aquatic nuisance inspection stations may
16 use State fishing access areas in a manner consistent with federal regulations.

17 An act relating to the management of the State's lakes

1 It is hereby enacted by the General Assembly of the State of Vermont:

2 * * * Municipal Regulation of Public Water Sources * * *

3 Sec. 1. 10 V.S.A. § 1424 is amended to read:

4 § 1424. USE OF PUBLIC WATERS

5 (a) The Secretary may establish rules to implement the provisions of this
6 chapter, including:

7 (1) Rules to regulate the use of public waters of the State by:

8 (A) defining areas on public waters wherein certain uses may be
9 conducted;

10 (B) defining the uses which may be conducted in the defined areas;

11 (C) regulating the conduct in these areas, including the size of motors
12 allowed, size of boats allowed, allowable speeds for boats, and prohibiting the
13 use of motors or houseboats; or

14 (D) regulating the time various uses may be conducted.

15 (2) Rules to govern the surface levels of lakes, ponds, and reservoirs that
16 are public waters of the State.

17 * * *

18 (f) By rule, the Secretary may delegate authority under this section for the
19 regulation of public waters where:

20 (1) The delegation is to a municipality that is adjacent to or which
21 contains the water; and

1 (2) The municipality accepts the delegation by creating or amending a
2 bylaw or ordinance for regulation of the water. Appeals from a final act of the
3 municipality under the bylaw or ordinance shall be taken to the Environmental
4 Division. The Secretary may terminate a delegation for cause or without cause
5 upon six months' notice to the municipality.

6 (g)(1) On petition of a municipal selectboard or the commissioners of a
7 public water system, the Secretary, by rule or written agreement outlining the
8 requirements of municipal regulation by bylaw or ordinance, shall delegate
9 authority to regulate the use of a public water under this section when:

10 (A) the public water serves as the source of drinking water for a
11 municipally operated public water system permitted under chapter 56 of this
12 title;

13 (B) the municipality that operates the public water system owns or
14 controls all of the public or private land surrounding the public water; and

15 (C) the municipality accepts the delegation by adopting a bylaw or
16 ordinance approved by the Secretary for the regulation of the use of the public
17 water.

18 (2) A municipality delegated authority to regulate the use of a public
19 water shall comply with and be at least as stringent as the State public water
20 supply requirements of chapter 56 of this title and rules adopted under that
21 chapter.

1 (3) Appeals from a final act of a municipality under a bylaw or
2 ordinance approved under this subsection shall be to the Environmental
3 Division.

4 (4) The Secretary may terminate a delegation under this subsection for
5 cause or without cause upon six months' notice to the municipality.

6 * * * Wakeboats; Home Lake * * *

7 Sec. 2. 10 V.S.A. § 1422 is amended to read:

8 § 1422. DEFINITIONS

9 In this chapter, unless the context clearly requires otherwise:

10 (1) “Agency” means the Agency of Natural Resources.

11 * * *

12 (3) “Department” means Department of Environmental Conservation.

13 (4) “Navigable water” or “navigable waters” means Lake Champlain,
14 Lake Memphremagog, the Connecticut River, all natural inland lakes within
15 Vermont, and all streams, ponds, flowages, and other waters within the
16 territorial limits of Vermont, including the Vermont portion of boundary
17 waters, that are boatable under the laws of this State.

18 * * *

19 (6) “Public waters” means navigable waters excepting those waters in
20 private ponds and private preserves as set forth in sections 5204, 5205, 5206,
21 and 5210 of this title.

* * *

* * *

1 (b)(1) In order to operate a wakeboat in Vermont, the person who owns or
2 controls the wakeboat shall identify a home lake for the wakeboat for the given
3 calendar year. A wakeboat's home lake is the only lake on which that
4 wakeboat shall be used in Vermont for the calendar year, unless the wakeboat
5 is decontaminated according to the requirements of subsection (c) of this
6 section.

7 (2) A person who owns or controls the wakeboat shall display on the
8 wakeboat's port side bow a current Agency-issued decal identifying the
9 wakeboat's home lake for the calendar year.

10 (c)(1) Prior to entering a Vermont lake other than the wakeboat's home
11 lake, and prior to reentering a home lake after use of the wakeboat at any other
12 lake or waterbody, the person who owns or controls the wakeboat shall
13 decontaminate the wakeboat at an Agency-approved decontamination service
14 provider.

15 (2) Prior to entering a lake, a law enforcement officer, an employee of
16 the Agency, or a person staffing an authorized aquatic nuisance species
17 inspection station may request that the person who owns, controls, or is using
18 the wakeboat provide proof of decontamination of the wakeboat by an Agency-
19 approved decontamination service provider.

20 (d) All provisions of section 1454 of this title regarding aquatic nuisance
21 species inspection apply to wakeboats, and wakeboat users shall drain the

1 ballast tanks of their boats to the fullest extent practicable immediately after
2 leaving waters of the State.

3 (e) Pursuant to 4 V.S.A. § 1102, a violation of this section may be brought
4 in the Judicial Bureau by any law enforcement officer, as that term is defined
5 in 23 V.S.A. § 3302(2), or, pursuant to section 8007 or 8008 of this title, a
6 violation of this section may be brought in the Environmental Division of the
7 Superior Court. If a violation of this section is adjudicated in the Judicial
8 Bureau or the Environmental Division, the violation shall not be addressed or
9 adjudicated a second time in the other court.

10 Sec. 4. 4 V.S.A. § 1102(b) is amended to read:

11 (b) The Judicial Bureau shall have jurisdiction of the following matters:

12 * * *

13 (19) Violations of 10 V.S.A. § 1424b or rules adopted under 10 V.S.A.
14 § 1424, relating to the use of public waters.

15 * * *

16 Sec. 5. 10 V.S.A. § 1454(d) is amended to read:

17 (d) Draining of vessel; transport.

18 (1)(A) ~~When~~ Immediately after leaving a water of the State and prior to
19 transport away from the area where the vessel left the water, a person operating
20 a vessel shall drain the vessel, trailer, and other equipment of water, including

1 water in live wells, ballast tanks, and bilge areas. A person is not required to
2 drain:

3 (i) baitboxes when authorized under 10 App. V.S.A. § 122(5) to
4 transport bait in a baitbox away from a water; or

5 (ii) vehicles and trailers specifically designed and used for water
6 hauling.

7 (B) A person operating a vessel shall drain the vessel, trailer, and
8 other equipment of water in a manner to avoid a discharge to the water of the
9 State. This subdivision (d)(1) does not authorize a person to discharge waste,
10 as defined in section 1251 of this title, to waters of the State. A person shall
11 dispose of waste in the manner required by law.

12 (2) When a person transports a vessel, the person shall remove or open
13 the drain plugs, bailers, valves, and other devices that are used to control the
14 draining of water from ballast tanks, bilge areas, and live wells of the vessel,
15 trailer, and other equipment, except for vehicles and trailers specifically
16 designed and used for water hauling and emergency response vehicles and
17 equipment.

18 * * * Fish and Wildlife Access Areas * * *

19 Sec. 6. 10 V.S.A. § 4145 is amended to read:

20 § 4145. ACCESS, LANDING AREA RULES

1 (a) The ~~Board~~ Commissioner may adopt rules, under 3 V.S.A. chapter 25,
2 to regulate the use by the public of access areas, landing areas, parking areas,
3 or of other lands or waters acquired or maintained pursuant to section 4144 of
4 this title. ~~Such~~ The rules shall be posted in the areas affected and shall permit
5 the launching of all vessels that have a Vermont registration certificate
6 required by 23 V.S.A. chapter 29 and the parking of vehicles and boat trailers
7 used by these vessels. The rules shall not preclude the authorization to launch
8 vessels not registered in Vermont. ~~These~~ The rules also shall permit the
9 launching of all nonmotorized vessels not used for commercial purposes and
10 the parking of vehicles and boat trailers used by these vessels.

11 (b) The Commissioner may enter into agreements with owners of land,
12 which shall not involve payment to the landowner, in order to allow public
13 access for launching of nonmotorized vessels in public waters. The
14 Commissioner may agree to upgrade the land area in a minor way; for
15 example, the Commissioner may agree to build a footpath to the water, build
16 and maintain a small parking area, or perform minor grading to improve boat
17 access. The Commissioner may not agree to major upgrading, such as building
18 a launching ramp or paving a parking area. A landowner who enters into an
19 agreement under this subsection shall be afforded the landowner liability
20 protections of 12 V.S.A. § 5793. The Commissioner shall post signs in these
21 areas, inviting private contributions to the Fish and Wildlife Fund for the

1 purpose of building and maintaining nonmotorized vessel access areas; and
2 shall issue to any person contributing; a sticker that may be placed on a vessel
3 and that identifies the person as a contributor to the nonmotorized vessel
4 access area program.

5 (c) The Commissioner shall keep account of funds, including private
6 donations and State appropriations, that are deposited into the Fish and
7 Wildlife Fund for the purpose of building and maintaining access areas and
8 shall annually, on or before January 15, report to the House Committee on
9 Environment, the Senate Committee on Natural Resources and Energy, and the
10 Senate and House Committees on Appropriations; concerning the use of those
11 funds in the past year and plans for use of the funds for the coming year. The
12 provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply
13 to the report to be made under this subsection.

14 (d) The ~~Board shall allow the~~ Commissioner of Environmental
15 Conservation ~~to~~ shall post aquatic nuisance signs in access areas pursuant to
16 subdivision 1453(b)(6) of this title.

17 (e)(1) Fishing access areas may be used by approved aquatic nuisance
18 inspection stations in order to allow for decontamination of wakeboats under
19 section 1424b of this title or inspection of vessels entering lakes as required
20 under section 1454 of this title.

1 (2) Any use of an access area by an aquatic nuisance inspection station
2 shall comply with the requirements of 50 C.F.R. Part 80. Consistent with the
3 federal regulation, if the aquatic nuisance inspection station conflicts with a
4 use of higher priority, the aquatic nuisance inspection station shall modify its
5 activities until the conflict is remediated.

6 (3) This section and any rules adopted under it shall not be construed to
7 mean that a conflict exists between an aquatic nuisance inspection station and a
8 higher priority use when an operator of an aquatic inspection station informs
9 the user of a vessel of the requirement to:

10 (A) decontaminate a wakeboat under section 1424b of this section; or

11 (B) inspect a vessel for aquatic nuisance species and drain a vessel
12 under section 1454 of this section.

13 Sec. 7. 10 V.S.A. App. § 115 is amended to read:

14 § 115. USE OF STATE CONTROLLED FISHING ACCESS AREAS

15 1.0 Authority 1.1 This rule is adopted pursuant to 10 V.S.A. § 4145(a)
16 which authorizes the board to make rules to “regulate the use by the public of
17 access areas, landing areas, parking areas or of other lands or waters acquired
18 or maintained pursuant to 10 V.S.A. § 4144.”

19 1.2 This rule applies to use of ~~state~~ State controlled fishing access areas
20 and to persons, businesses, or entities that use the fishing access areas.

21 2.0 Purpose

1 The purpose of this rule is to:

2 2.1 Ensure current and future uses are orderly, sustainable, and in
3 accordance with ~~state~~ State and federal statutes and guidelines.

4 2.2 Manage conflict between users by clarifying authorized and
5 prohibited activities and ensuring users share in the burdens and benefits of
6 use.

7 2.3 Protect the fishing access areas for statutorily approved uses.

8 3.0 Definitions 3.1 Commercial Activity is any activity or service that
9 produces income to any entity or individual.

10 3.2 Nonprofit Charitable Organization means an entity organized and
11 operated exclusively for exempt purposes set forth in Section 501(c)(3) of the
12 Internal Revenue Code.

13 3.3 Picnicking includes but is not limited to any activity that involves,
14 cooking, grilling, food preparation, and, set-up associated with eating
15 (including setting blankets or table cloths laid on the ground).

16 3.4 Camping includes any activity using a tent, camper, or motor home,
17 any activity involving preparation of an area for sleeping or, any overnight
18 sleeping.

19 3.5 Group use is use actually or potentially involving 10 or more people
20 or two or more vehicles at a time.

1 3.6 Parking is the leaving of motor vehicles or trailers unattended in an
2 access area.

3 3.7 Motor vehicles are all vehicles propelled or drawn by power other
4 than muscle power.

5 3.8 Vessel means motor boats, boats, kayaks, canoes and sail boats.

6 4.0 Authorized Activities

7 The following are authorized activities in order of priority:

8 4.1 Angling, ice fishing and the launching of any vessel to be used for
9 fishing and parking of vehicles and trailers necessary for and contemporaneous
10 with these purposes.

11 4.2 The launching of inboard and outboard motorboats engaging in any
12 activity and parking of vehicles and trailers necessary for and
13 contemporaneous with that purpose.

14 4.3 Trapping, hunting and parking of vehicles and boat trailers
15 necessary for and contemporaneous with that purpose.

16 4.4 Launching of all non-motorized vessels not used for commercial
17 purposes and parking of vehicles and boat trailers necessary for and
18 contemporaneous with that purpose. Users shall launch from the designated
19 non-motorized launch site, when such a site is identified.

20 4.5 ~~ATV's~~ ATVs and snowmobiles when being used solely for the
21 purposes of ice fishing.

1 4.6 Approved aquatic nuisance inspection stations to decontaminate
2 wakeboats pursuant to 10 V.S.A. § 1424b or inspection of vessels entering
3 lakes pursuant to 10 V.S.A. § 1454.

4 4.7 Permitted special uses.

5 5.0 Prohibited Activities 5.1 Discarding of bottles, glass, cans, paper,
6 junk, litter, food, or any other garbage or trash.

7 5.2 Discarding of dead fish, wildlife or portions thereof.

8 5.3 Washing or cleaning of vehicles and equipment other than for the
9 purpose of removing aquatic plants and organisms.

10 5.4 Washing or cleaning of fish or wildlife.

11 5.5 Camping.

12 5.6 Picnicking.

13 5.7 Making or maintaining fire of any kind.

14 5.8 Water skiing.

15 5.9 Swimming.

16 5.10 Use of snowmobiles and ATVs, except for those being utilized
17 solely for the purpose of ice fishing.

18 5.11 Parking of vehicles and or trailers while the vehicle owner or user
19 is not present at the access area or on the adjacent public waters except as
20 otherwise permitted by the Commissioner.

1 5.12 Storage of vehicles and or trailers or placing of vehicles or trailers
2 for sale.

3 5.13 Withdrawal of water except as authorized under paragraph 6.0.

4 5.14 Parking in excess of 72 consecutive hours except that the
5 Commissioner may issue permits for longer parking when the Commissioner
6 determines that there will be no adverse impact on authorized uses found in 4.0
7 above.

8 5.15 Commercial activity except as authorized by paragraph 7.0 below.

9 5.16 Activity that interferes with a priority use, such as, but not limited
10 to the mooring or beaching of boats, using the ramp to rig a boat or boats thus
11 obstructing use of the ramp, and the storing of boats or trailers at an access
12 area.

13 5.17 Group use not specifically authorized by the Commissioner.

14 5.18 Launching and recovery of sailboards, rafts, snow kites, and the
15 parking of vehicles and trailers supporting these activities.

16 5.19 All other activity that is not specifically permitted by this rule
17 unless specifically authorized by the Commissioner.

18 6.0 Authorized Users.

19 6.1 Any person who is engaged in any authorized activity.

20 6.2 Any group that has received approval for group use in accordance
21 with this rule.

1 6.3 Fire departments that have executed a Memorandum Of Agreement
2 (MOA) with the Commissioner for the installation and use of a dry hydrant.
3 And then, only in accordance with their MOA. Fire departments may also use
4 Access Areas without dry hydrants as emergency water sources to fight fires
5 and will notify the local warden as soon as practicably possible.

6 6.4 Individuals participating in a fishing tournament permitted under 10
7 V.S.A. § 4613.

8 7.0 Limited Commercial Activity7.1 Commercial activity at fishing access
9 areas is limited to entities and persons taking part in activities authorized by
10 4.1, 4.2 and 4.3 above.

11 8.0 Special Permits 8.1 The Commissioner may authorize special permits
12 for entities or persons to use an access area for group use when the
13 Commissioner determines that there will be no adverse impact on authorized
14 priority uses.

15 8.2 The Commissioner may authorize the use of access areas by an
16 educational institution or a nonprofit charitable organization conducting a
17 fundraising event of limited duration, provided that the event will not conflict
18 with a priority use of the access area.

19 8.3 Special permits shall not be issued and may be revoked immediately
20 for activities that substantially interfere with authorized uses.

1 8.4 Permit fees shall be in accordance with the schedule of fees
2 established under 10 V.S.A. § 4132(e).

3 9.0 Speed Limit

4 The maximum speed on access areas shall be 15 miles per hour.

5 * * * Fishing Tournaments * * *

6 Sec. 8. 10 V.S.A. § 4613 is amended to read:

7 § 4613. FISHING TOURNAMENTS

8 (a) No person or organization shall hold a fishing tournament on the waters
9 of the State without first obtaining a permit from the Department of Fish and
10 Wildlife. Tournaments held on the Connecticut River, excluding Moore and
11 Comerford Reservoirs, that do not utilize an access area in Vermont are not
12 required to obtain a permit from the Department of Fish and Wildlife.

13 (b) A fishing tournament means a contest in which anglers pay a fee to
14 enter and in which the entrants compete for a prize based on the quality or size
15 of the fish they catch. A contest may run multiple days, but the days must be
16 consecutive for that contest to be considered a single event. A tournament that
17 limits the entrants to people below 15 years of age or a tournament held as part
18 of a Special Olympics program shall be exempt from paying the fee required
19 under subsection (d) of this section.

20 (c) The Commissioner shall adopt rules that establish the procedure for
21 implementation of this section. The rules shall include a provision that an

1 angler may not enter a fish that was caught and confined to an enclosed area
2 prior to the beginning of the tournament.

3 (d) The Commissioner shall charge a fee based on the number of
4 participants for each permit issued under this section and shall deposit the fee
5 collected into the Fish and Wildlife Fund. Tournaments with up to 25
6 participants shall pay a fee of \$10.00; tournaments with 26 to 50 participants
7 shall pay a fee of \$30.00; and tournaments with more than 50 participants shall
8 pay a fee of \$100.00.

9 (e) Applications to hold a fishing tournament on the waters of the State
10 shall be submitted on a form issued by the Commissioner. The form shall
11 require the applicant to identify an access point to waters for participants in the
12 tournament and, if the access point is on a private right-of-way, whether the
13 applicant has secured permission to use the right-of-way for the proposed
14 tournament.

15 * * * Effective Date * * *

16 Sec. 9. EFFECTIVE DATE

17 This act shall take effect on passage.