

1 S.266

2 Introduced by Senators Chittenden and Brennan

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; water resources; wetlands; permitting

6 Statement of purpose of bill as introduced: This bill proposes to amend  
7 requirements for the development of residential housing projects in wetlands in  
8 the State. The bill would authorize the Department of Environmental  
9 Conservation to adopt allowed uses for the construction of residential housing  
10 projects and necessary linear utilities related to the housing projects. No  
11 permit would be required for allowed uses adopted by the Department by rule.  
12 In addition, the bill would require the Secretary of Natural Resources to issue  
13 comprehensive guidance, with the input of wetland consultants and other  
14 stakeholders, regarding avoidance and minimization, mitigation sequencing,  
15 and alternatives analysis. The bill would also provide that avoidance and  
16 minimization or alternatives analysis required for a wetlands permit shall not  
17 require a permit applicant to consider properties that are not owned or  
18 controlled by the applicant.

19 An act relating to the regulation of wetlands

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

2 Sec. 1. 10 V.S.A. § 902 is amended to read:

3 § 902. DEFINITIONS

4 ~~Wherever used or referred to in this chapter, unless a different meaning~~  
5 ~~clearly appears from the context~~ As used in this chapter:

6 \* \* \*

7 (5) “Wetlands” means those areas of the State that are inundated by  
8 surface or groundwater with a frequency sufficient to support significant  
9 vegetation or aquatic life that depend on saturated or seasonally saturated soil  
10 conditions for growth and reproduction. Such areas include marshes, swamps,  
11 sloughs, potholes, fens, river and lake overflows, mud flats, bogs, and ponds,  
12 but excluding such areas as grow food or crops in connection with farming  
13 activities.

14 (6) “Class I wetland” means:

15 (A) a wetland identified on the Vermont significant wetlands  
16 inventory maps as a Class I wetland;

17 (B) a wetland that the former Water Resources Board identified in  
18 rules of the Board as a Class I wetland; or

19 (C) a wetland that the Secretary, based upon an evaluation of the  
20 extent to which the wetland serves the functions and values set forth in  
21 subdivision 905b(18)(A) of this title, determines is exceptional or irreplaceable

1 in its contribution to Vermont's natural heritage and, therefore, merits the  
2 highest level of protection.

3 (7) "Class II wetland" means a wetland other than a Class I or Class III  
4 wetland that:

5 (A) is a wetland identified on the Vermont significant wetlands  
6 inventory maps; or

7 (B) the Secretary determines to merit protection, pursuant to section  
8 914 of this title, based upon an evaluation of the extent to which it serves the  
9 functions and values set forth in subdivision 905b(18)(A) of this title and the  
10 rules of the Department.

11 (8) "Class III wetland" means a wetland that is neither a Class I wetland  
12 nor a Class II wetland.

13 (9) "Buffer zone" means an area contiguous to a significant wetland that  
14 protects the wetland's functions and values. The buffer zone for a Class I  
15 wetland shall extend at least 100 feet from the border of the wetland, unless the  
16 Department determines otherwise under section ~~915~~ 914 of this title. The  
17 buffer zone for a Class II wetland shall extend at least 50 feet from the border  
18 of the wetland unless the Secretary determines otherwise ~~under section 914 of~~  
19 ~~this title.~~

1           (10) “Necessary linear utilities” means the electricity, gas, water, sewer  
2           lateral, access road, driveway, or septic force main that are necessary for the  
3           construction or use of the primary residential function of a housing project.

4           (11) “Panel” means the Water Resources Panel of the Agency of Natural  
5           Resources.

6           (12) “Residential housing project” means a single-family, multiunit, or  
7           multifamily housing project, a shelter project, or a mixed-use project that  
8           includes a residential housing component that is at least 75 percent of the total  
9           square footage of the project, not including hotels or vacation rentals. This  
10          term does not include ancillary improvements to existing housing that are not  
11          necessary to the primary residential function, including patios, decks, lawns,  
12          picnic pavilions, recreational facilities, and gardens.

13          ~~(14)~~(13) “Significant wetland” means any Class I or Class II wetland.

14          ~~(12)~~(14) “Secretary” means the Secretary of Natural Resources or the  
15          Secretary’s authorized representative.

16          ~~(13)~~(15) “Dam removal” has the same meaning as in section 1080 of  
17          this title.

18          Sec. 2. 10 V.S.A. § 913 is amended to read:

19          § 913. PROHIBITION

20          (a) ~~Except for allowed uses adopted by the Department by rule as set forth~~  
21          in this section, no person shall conduct or allow to be conducted an activity in

1 a significant wetland or buffer zone of a significant wetland except in  
2 compliance with a permit, conditional use determination, or order issued by the  
3 Secretary.

4 (b) No permit shall be required for allowed uses adopted by the Department  
5 by rule. The Department may adopt allowed uses for the construction of  
6 residential housing projects and necessary linear utilities related to the housing  
7 projects.

8 (c) No permit shall be required for the construction of residential housing  
9 projects and necessary linear utilities related to a housing project in an  
10 unmapped Class II wetland or an unmapped Class II wetland buffer.

11 (d) Except in flood hazard areas and river corridors mapped by the  
12 Department, a wetland permit shall allow construction of residential housing  
13 projects and necessary linear utilities that impact the functions and values set  
14 forth in subdivisions 905b(A)(i), (ii), and (iii) of this title within a Class II  
15 wetland and its buffer, provided that required stormwater permits are obtained  
16 to address the water storage and water quality–related functions.

17 (e) An applicant for a wetland permit shall not be required to submit a new  
18 wetland delineation if there is an existing delineation accepted by the Secretary  
19 that was completed not more than 10 years before the date of the application.

1       (f) A permit shall not be required under this section for:

2           (1) any activity that occurred before the effective date of this section  
3 unless the activity occurred within:

4           (A) an area identified as a wetland on the Vermont significant  
5 wetlands inventory maps;

6           (B) a wetland that was contiguous to an area identified as a wetland  
7 on the Vermont significant wetlands inventory maps; or

8           (C) the buffer zone of a wetland referred to in subdivision (A) or (B)  
9 of this subdivision (1); and

10          (2) any construction within a wetland that is identified on the Vermont  
11 significant wetlands inventory maps or within the buffer zone of such a  
12 wetland, provided that the construction was completed prior to February 23,  
13 1992, and no action for which a permit is required under the rules of the  
14 Department was taken or caused to be taken on or after February 23, 1992.

15       Sec. 3. 10 V.S.A. § 914 is amended to read:

16       § 914. WETLANDS DETERMINATIONS

17          (a) The Secretary may, upon a petition or on ~~his or her~~ the Secretary's own  
18 motion, determine whether any wetland is a Class II or Class III wetland. Such  
19 determinations shall be based on an evaluation of the functions and values set  
20 forth in subdivision 905b(18)(A) of this title and the rules of the Department.

1 (b) The Secretary, at the Secretary's discretion, may establish the necessary  
2 width of the buffer zone of any Class II wetland as part of any wetland  
3 determination ~~pursuant to the rules of the Department~~.

4 (c) The provisions of chapter 170 of this title shall apply to issuance of  
5 determinations under this section.

6 (d) [Repealed.]

7 (e) ~~The Secretary may recommend to the panel that a wetland be classified~~  
8 ~~as a Class I wetland under section 915 of this title.~~ [Repealed.]

9 Sec. 4. 10 V.S.A. § 918 is amended to read:

10 § 918. NET GAIN OF WETLANDS; STATE GOAL; RULEMAKING

11 (a) On or before July 1, 2025, the Secretary of Natural Resources shall  
12 amend the Vermont Wetlands Rules pursuant to 3 V.S.A. chapter 25 to clarify  
13 that the goal of wetlands regulation and management in the State is the net gain  
14 of wetlands to be achieved through protection of existing wetlands and  
15 restoration of wetlands that were previously adversely affected. This condition  
16 shall not apply to wetland, river, and flood plain restoration projects, including  
17 dam removals.

18 (b) The Vermont Wetlands Rules shall prioritize the protection of existing  
19 intact wetlands from adverse effects. Where a permitted activity in a wetland  
20 will cause more than 5,000 square feet of adverse effects that cannot be  
21 avoided, the Secretary shall mandate that the permit applicant restore, enhance,

1 or create wetlands or buffers to compensate for the adverse effects on a  
2 wetland. The amount of wetlands to be restored, enhanced, or created shall be  
3 calculated, at a minimum, by determining the acreage or square footage of  
4 wetlands permanently drained or filled as a result of the permitted activity and  
5 multiplying that acreage or square footage by two, to result in a ratio of 2:1  
6 restoration to wetland loss. Establishment of a buffer zone contiguous to a  
7 wetland shall not substitute for the restoration, enhancement, or creation of  
8 wetlands. Adverse impacts to wetland buffers shall be compensated for based  
9 on the effects of the impact on wetland function.

10 (c) At a minimum, the Wetlands Rules shall be revised to:

11 (1) Require an applicant for a wetland permit that authorizes adverse  
12 impacts to more than 5,000 square feet of wetlands to compensate for those  
13 impacts through restoration, enhancement, or creation of wetland resources.

14 (2) Incorporate the net gain rule into requirements for permits issued  
15 after September 1, 2025.

16 (3) Establish a set of parameters and restoration ratios applicable to  
17 permittee-designed restored wetland restoration projects, including a minimum  
18 2:1 ratio of restoration to loss to compensate for permanently filled or drained  
19 wetlands. These parameters shall include consideration of the following  
20 factors:



1           (A) the existing level of wetland function at the site prior to  
2 mitigation or restoration of wetlands;

3           (B) the amount of wetland acreage and wetland function lost as a  
4 result of the project;

5           (C) how the wetland acreage and functions will be restored at the  
6 proposed compensation site;

7           (D) the length of time before the compensation site will be fully  
8 functional;

9           (E) the risk that the compensation project may not succeed;

10          (F) the differences in the location of the adversely affected wetland  
11 and the wetland subject to compensation that affect the services and values  
12 offered; and

13          (G) the requirement that permittees conduct five years of post-  
14 restoration monitoring for the restored wetlands, at which time the Agency can  
15 decide if further action is needed.

16          (d) When amending the Vermont Wetlands Rules under this section, the  
17 Secretary shall establish a Vermont in-lieu fee (ILF) compensation program for  
18 wetlands impacts that may be authorized as compensation for an adverse effect  
19 on a wetland when the permittee cannot achieve restoration. The Secretary  
20 may implement a Vermont ILF compensation program through agreements  
21 with third-party entities such as the U.S. Army Corps of Engineers or

1 environmental organizations, provided that any ILF monetary compensation  
2 authorized under the rules shall be expended on restoration, reestablishment,  
3 enhancement, or conservation projects within the State at the HUC 8 level of  
4 the adversely affected wetland when practicable.

5 (e) The Secretary shall issue comprehensive guidance, with the input of  
6 wetland consultants and other stakeholders, regarding avoidance and  
7 minimization, mitigation sequencing, and alternatives analysis on or before  
8 October 15, 2026. Avoidance and minimization or alternatives analysis shall  
9 not require an applicant to consider properties that are not owned or controlled  
10 by the applicant.

11 Sec. 5. PENDING PERMIT APPLICATIONS

12 Pending wetland permit applications for the construction of residential  
13 housing projects and necessary linear utilities related to the housing projects  
14 that were filed prior to the effective date of this act and for which the  
15 Department of Environmental Conservation has not posted a draft permit  
16 decision for public notice and comment shall be processed in accordance with  
17 10 V.S.A. chapter 37 as amended by this act.

18 Sec. 6. EFFECTIVE DATE

19 This act shall take effect on July 1, 2026.