

1 H.319

2 Senator Brennan moves that the Senate propose to the House that the
3 proposal of the Committee on Natural Resources and Energy be amended by
4 striking out Sec. 34, effective date, and its reader assistance heading in their
5 entirety and inserting in lieu thereof six new sections to be Secs. 34–39 and
6 their related reader assistance headings to read:

7 * * * Wetlands * * *

8 Sec. 34. 10 V.S.A. § 902 is amended to read:

9 § 902. DEFINITIONS

10 Wherever used or referred to in this chapter, unless a different meaning
11 clearly appears from the context:

12 * * *

13 (7) “Class II wetland” means a wetland other than a Class I or Class III
14 wetland that:

15 (A) is a mapped wetland identified on the Vermont significant
16 wetlands inventory maps; or

17 (B) is an unmapped wetland that the Secretary determines to merit
18 protection, pursuant to section 914 of this title, based upon an evaluation of the
19 extent to which it serves the functions and values set forth in subdivision
20 905b(18)(A) of this title and the rules of the Department.

1 (8) “Class III wetland” means a wetland that is neither a Class I wetland
2 nor a Class II wetland.

3 (9) “Buffer zone” means an area contiguous to a significant wetland that
4 protects the wetland’s functions and values.

5 (A) The Except as provided in subdivision (B) of this subdivision (9):

6 (i) the buffer zone for a Class I wetland shall extend at least 100
7 feet from the border of the wetland; unless the Department determines
8 otherwise under section 915 of this title. ~~The; and~~

9 (ii) the buffer zone for a Class II wetland shall extend at least 50
10 feet from the border of the wetland unless the Secretary determines otherwise
11 under section 914 of this title.

12 (B) The buffer zone of a Class II wetland shall be 25 feet when the
13 wetland is located in:

14 (i) an industrial park, as that term is defined in subdivision 212(7)
15 of this title, that is permitted under chapter 151 of this title;

16 (ii) designated centers designated under 24 V.S.A. chapter 76A;

17 (iii) Tier 1A and Tier 1B areas approved by the Land Use Review
18 Board; or

19 (iv) locations meeting the requirements established in subsection
20 6081(z) of this title as eligible for an interim exemption from the permit or
21 permit amendment requirements of chapter 151 of this title.

1 (10) ~~“Panel” means the Water Resources Panel of the Agency of Natural~~
2 ~~Resources.~~

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

4 ~~(12)~~(11) “Secretary” means the Secretary of Natural Resources or the
5 Secretary’s authorized representative.

6 ~~(13)~~(12) “Dam removal” has the same meaning as in section 1080 of
7 this title.

8 Sec. 35. 10 V.S.A. § 913 is amended to read:

9 § 913. PROHIBITION

10 (a) Except for allowed uses adopted by the Department by rule, no person
11 shall conduct or allow to be conducted an activity in a significant wetland or
12 buffer zone of a significant wetland except in compliance with a permit,
13 conditional use determination, or order issued by the Secretary.

14 (b) A permit shall not be required under this section for:

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

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

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

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

3 (2) any construction within a wetland that is identified on the Vermont
4 significant wetlands inventory maps or within the buffer zone of such a
5 wetland, provided that the construction was completed prior to February 23,
6 1992, and no action for which a permit is required under the rules of the
7 Department was taken or caused to be taken on or after February 23, 1992; or

8 (3) any construction or activity in an unmapped Class II wetland located
9 in:

10 (A) an industrial park, as that term is defined in subdivision
11 212(7) of this title, that is permitted under chapter 151 of this title;

12 (B) designated centers designated under 24 V.S.A. chapter 76A;

13 (C) Tier 1A and Tier 1B areas approved by the Land Use Review
14 Board; or

15 (D) locations meeting the requirements established in subsection
16 6081(z) of this title as eligible for an interim exemption from the permit or
17 permit amendment requirements of chapter 151 of this title.

18 Sec. 36. 10 V.S.A. § 914 is amended to read:

19 § 914. WETLANDS DETERMINATIONS

20 (a) The Secretary may, upon a petition or on ~~his or her~~ the Secretary's own
21 motion, determine whether any wetland is a Class II or Class III wetland. ~~Such~~

1 The Secretary's determinations shall be based on an evaluation of the functions
2 and values set forth in subdivision 905b(18)(A) of this title and the rules of the
3 Department.

4 (b) The Secretary may establish the necessary width of the buffer zone of
5 any Class II wetland as part of any wetland determination pursuant to the rules
6 of the Department, except that the buffer zone of a Class II wetland shall be 25
7 feet when the wetland is located in:

8 (1) an industrial park, as that term is defined in subdivision 212(7) of
9 this title, that is permitted under chapter 151 of this title;

10 (2) designated centers designated under 24 V.S.A. chapter 76A;

11 (3) Tier 1A and Tier 1B areas approved by the Land Use Review Board;

12 or

13 (4) locations meeting the requirements established in subsection 6081(z)
14 of this title as eligible for an interim exemption from the permit or permit
15 amendment requirements of chapter 151 of this title.

16 * * *

17 Sec. 37. 10 V.S.A. § 918 is amended to read:

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

19 (a) On or before July 1, ~~2025~~ 2026, the Secretary of Natural Resources
20 shall amend the Vermont Wetlands Rules pursuant to 3 V.S.A. chapter 25 to
21 clarify that the goal of wetlands regulation and management in the State is the

1 net gain of wetlands to be achieved through protection of existing wetlands and
2 restoration of wetlands that were previously adversely affected. ~~This condition~~
3 ~~shall not apply to wetland, river, and flood plain restoration projects, including~~
4 ~~dam removals.~~

5 (b)(1) The Vermont Wetlands Rules shall prioritize the protection of
6 existing intact wetlands from adverse effects.

7 (2) Where a permitted activity in a wetland will cause more than 5,000
8 square feet of adverse effects that cannot be avoided, the Secretary shall
9 mandate that the permit applicant restore, enhance, or create wetlands or
10 buffers to compensate for the adverse effects on a wetland. The amount of
11 wetlands to be restored, enhanced, or created shall be calculated, at a
12 minimum, by determining the acreage or square footage of wetlands
13 permanently drained or filled as a result of the permitted activity and
14 multiplying that acreage or square footage by two, to result in a ratio of 2:1
15 restoration to wetland loss, except that a ratio of 1:1 restoration to wetland loss
16 shall apply in:

17 (A) an industrial park, as that term is defined in subdivision 212(7) of
18 this title, that is permitted under chapter 151 of this title;

19 (B) designated centers designated under 24 V.S.A. chapter 76A;

20 (C) Tier 1A and Tier 1B areas approved by the Land Use Review
21 Board; or

(3) Establishment of a buffer zone contiguous to a wetland shall not substitute for the restoration, enhancement, or creation of wetlands. Adverse impacts to wetland buffers shall be compensated for based on the effects of the impact on wetland function.

Sec. 38. 10 V.S.A. § 919 is amended to read:

(a) On or before April 30, 2025, and annually thereafter, the Secretary of Natural Resources shall submit to the House Committee on Environment ~~and Energy~~ and to the Senate Committee on Natural Resources and Energy a report on annual losses and gains of significant wetlands in the State. The report shall include:

(2) the acreage of Class II wetlands and buffers gained through permit-related enhancement and restoration, and an estimate of wetlands gained

1 through wetlands, river, and floodplain restoration projects, including dam
2 removals;

3 (3) the number of site visits and technical assistance calls conducted by
4 the Agency of Natural Resources, the number of permits processed by the
5 Agency, and any enforcement actions that were taken by the Agency or the
6 Office of the Attorney General in the previous year for violations of this
7 chapter; and

8 (4) an updated mitigation summary of the extent of wetlands restored
9 on-site compared with compensation performed off-site, in-lieu fees paid, or
10 conservation.

11 * * *

12 (c) On or before December 15, 2025, the Agency of Natural Resources
13 shall publish on its website and submit to the House Committee on
14 Environment and to the Senate Committee on Natural Resources and Energy
15 wetland guidance on the mitigation and compensation sequence contemplated
16 in the Vermont Wetland Rules subsections 9.5(b) and (c). The guidance shall
17 clearly identify the process applicants should follow and the information and
18 proof necessary to demonstrate a project has practicably avoided and
19 minimized wetland impacts and is eligible for mitigation during the State
20 wetland permit application process.

3 This act shall take effect on passage.