

1 H.563

2 Introduced by Representative Buxton of Tunbridge

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; land use; natural resources; flood
6 hazard areas; flood insurance

7 Statement of purpose: This bill proposes to apply state flood hazard area
8 review and regulation to any development exempted from municipal regulation
9 and located in a municipality that has adopted a flood hazard area bylaw. It
10 would allow municipalities to pass flood hazard area bylaws for nonexempted
11 development that are more stringent than the requirements set forth by the
12 agency of natural resources for exempted development. It would amend state
13 definitions related to flood regulation to incorporate the applicable definitions
14 under federal law. Further, it proposes to eliminate the existing requirement
15 that the agency of natural resources have 30 days to review municipal permits
16 and instead allows the municipality to request technical assistance from the
17 agency as needed.

18 An act relating to regulation of flood hazard areas

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

1 Sec. 1. 10 V.S.A. § 751 is amended to read:

2 § 751. PURPOSE

3 The purpose of this chapter is:

4 (1) to minimize and prevent the loss of life and property, the disruption
5 of commerce, the impairment of the tax base, and the extraordinary public
6 expenditures and demands on public service that result from flooding;

7 (2) to ensure that the development of the flood hazard areas of the state
8 is accomplished in a manner consistent with the health, safety and welfare of
9 the public;

10 (3) to authorize and require the development, adoption, and enforcement
11 of minimum state floodplain management rules for development that is exempt
12 from municipal land use regulation under 24 V.S.A. chapter 117 and that is
13 located within a designated flood hazard area regulated by a municipality
14 under that chapter;

15 (4) to encourage municipalities to manage flood-prone lands;

16 (5) to provide state assistance to ~~local government units~~ municipalities
17 in the management and regulation of designated flood hazard areas;

18 (6) to coordinate federal, state, and local management activities for
19 designated flood hazard areas; ~~to encourage local government units to manage~~
20 ~~flood-prone lands;~~

1 (7) to maintain the ~~wise~~ agricultural use of ~~flood-prone lands~~;
2 designated flood hazard areas if such use complies with the requirements set
3 out in this chapter and the National Flood Insurance Program; and

4 (8) to carry out a comprehensive statewide flood hazard area
5 management program for the state in order to make the state and ~~units of local~~
6 ~~government~~ municipalities eligible for flood insurance under the requirements
7 of ~~the federal department of housing and urban development in administering~~
8 ~~Title XIII of the Housing and Urban Development Act of 1968~~ the National
9 Flood Insurance Program.

10 Sec. 2. 10 V.S.A. § 752 is amended to read:

11 § 752. DEFINITIONS

12 For the purpose of this chapter:

13 (1) “Agency” means the agency of natural resources.

14 (2) “Development” shall have the same meaning as “development”
15 under 44 C.F.R. § 59.1.

16 (3) “Flood hazard area” means an area which would be inundated in a
17 flood of such severity that the flood would be statistically likely to occur once
18 in every hundred years. In appropriate circumstances this might be the 1927 or
19 the 1973 flood. In delineating any flood hazard area for the one hundred year
20 flood based upon prior floods, flood control devices such as, but not limited to
21 dams, canals, and channel work should be considered in the delineation shall

1 have the same meaning as “area of special flood hazard” under 44 C.F.R.
2 § 59.1.

3 ~~(3)(4) “Floodway” means the channel of a watercourse and adjacent~~
4 ~~land areas which are required to carry and discharge the one hundred year~~
5 ~~flood within a regulated flood hazard area without substantially increasing the~~
6 ~~flood heights shall have the same meaning as “regulatory floodway” under 44~~
7 ~~C.F.R. § 59.1.~~

8 ~~(4)(5) “Flood proofing” means any combination of structural and~~
9 ~~nonstructural additions, changes, or adjustments to properties and structures,~~
10 ~~primarily for the reduction or elimination of flood damage to lands, water and~~
11 ~~sanitary facilities, structures and contents of buildings shall have the same~~
12 ~~meaning as “flood proofing” under 44 C.F.R. § 59.1.~~

13 ~~(5)(6) “Legislative body” means the board of selectmen selectboard,~~
14 ~~trustees, mayor, city council, and board of aldermen alderboard of a~~
15 ~~municipality.~~

16 ~~(6)(7) “Municipality” means any town, city, or incorporated village.~~

17 ~~(7)(8) “Obstruction” means any natural or artificial condition including~~
18 ~~but not limited to, real estate which may impede, retard, or change the~~
19 ~~direction of the flow of water, either in itself or by catching or collecting debris~~
20 ~~carried by the water, or so situated that the flow of the water might carry it~~
21 ~~downstream to the damage of life or property “National Flood Insurance~~

1 Program” means the National Flood Insurance Program under 42 U.S.C.
2 chapter 50 and implementing regulations.

3 ~~(8)~~(9) “Regional planning commission” means the regional planning
4 commission of which a municipality is a member or would be a member based
5 upon its location.

6 ~~(9)~~(10) “Secretary” means the secretary of the agency of natural
7 resources or the secretary’s duly authorized representative.

8 Sec. 3. 10 V.S.A. § 754 is added to read:

9 § 754. DUTIES AND OBLIGATIONS

10 (a) The secretary shall adopt rules pursuant to 3 V.S.A. chapter 25 that
11 shall establish requirements for any development that is exempt from
12 municipal land use regulation under 24 V.S.A. chapter 117 and that is located
13 within a flood hazard area subject to flood hazard regulation by a municipality
14 under that chapter. The rules shall set forth the requirements necessary to
15 ensure that all such development is regulated by the state in order to comply
16 with the regulatory obligations set forth under the National Flood Insurance
17 Program.

18 (1) The requirements adopted by rule by the secretary shall be the
19 minimum necessary to ensure that the state and municipalities meet eligibility
20 requirements for the National Flood Insurance Program.

21 (2) The rules shall establish requirements, as necessary to achieve
22 eligibility for the National Flood Insurance Program, for the issuance and

1 enforcement of permits applicable to development that is exempt from
2 municipal land use regulation and located within a flood hazard area that is
3 subject to a municipal flood hazard bylaw adopted under 24 V.S.A. chapter
4 117.

5 (b) Prior to issuing the first set of proposed rules under this section, the
6 secretary shall solicit the recommendations of and consult with affected and
7 interested persons and entities such as the secretary of agriculture, food and
8 markets; the regional planning commissions; and the Vermont League of Cities
9 and Towns.

10 (c) On completing the rulemaking process under 3 V.S.A. chapter 25, the
11 secretary shall promptly request the National Flood Insurance Program's
12 approval of the rules adopted pursuant to this section.

13 (d) Notwithstanding 3 V.S.A. § 845(d), rules adopted under this section
14 shall take effect 120 days after they are approved by the National Flood
15 Insurance Program.

16 (e) Once rules adopted under this section become effective, no person may,
17 in a flood hazard area in a municipality that has adopted a flood hazard area
18 bylaw under 24 V.S.A. chapter 117, engage in any development requiring a
19 permit under the rules without obtaining such a permit from the secretary.

20 (f) The secretary shall:

21 (1) Cooperate and consult with other state agencies, regional planning
22 commissions, and municipalities in effectuating the purpose of this chapter;

1 (2) Provide education and assistance to municipalities regarding
2 obligations under 24 V.S.A. necessary to comply with the National Flood
3 Insurance Program;

4 (3) Review all permit applications for development that is exempt from
5 municipal land use regulation under 24 V.S.A. chapter 117 and is located
6 within a flood hazard area;

7 (4) Provide to the municipality in which the development will occur
8 notice of applications received and permits issued.

9 (g) The secretary may amend rules adopted under this section in
10 accordance with 3 V.S.A. chapter 25. When substantial modifications to rules
11 adopted under this section are to be proposed, the secretary shall engage in the
12 consultation process described in subsection (b) of this section prior to issuing
13 proposed rule amendments.

14 (h) Nothing in this subchapter shall prevent a municipality from adopting
15 substantive requirements in a flood hazard area bylaw under 24 V.S.A. chapter
16 117 that are more stringent than the minimum requirements set forth by the
17 secretary for the activities exempted from municipal regulation under
18 24 V.S.A. chapter 117, provided that the bylaw only applies to nonexempt
19 activities.

1 Sec. 4. 10 V.S.A. § 8003 is amended to read:

2 § 8003. APPLICABILITY

3 (a) The secretary may take action under this chapter to enforce the
4 following statutes and rules, permits, assurances, or orders implementing the
5 following statutes:

6 (1) ~~Deleted.~~ 10 V.S.A. chapter 23, relating to air quality.

7 (2) 10 V.S.A. chapter ~~23, relating to air quality~~ 32, relating to flood
8 hazard areas;

9 * * *

10 Sec. 5. 10 V.S.A. § 8503(a) is amended to read:

11 (a) This chapter shall govern all appeals of an act or decision of the
12 secretary, excluding enforcement actions under chapters 201 and 211 of this
13 title and rulemaking, under the following authorities and under the rules
14 adopted under those authorities:

15 (1) The following provisions of this title:

16 * * *

17 (R) chapter 32 (flood hazard areas).

18 * * *

19 Sec. 6. 24 V.S.A. § 4303(8) is amended to read:

20 (8) “Flood hazard area” for purposes of ~~section 4424 of this title means~~
21 ~~the land subject to flooding from the base flood. “Base flood” means the flood~~
22 ~~having a one percent chance of being equaled or exceeded in any given year~~

1 this chapter shall have the same meaning as “area of special flood hazard”
2 under 44 C.F.R. § 59.1. Further, with respect to flood and other hazard area
3 regulation pursuant to this chapter, the following terms shall have the
4 following meanings:

5 (A) “Floodproofing” ~~means any combination of structural and~~
6 ~~nonstructural additions, changes, or adjustments to properties and structures~~
7 ~~that substantially reduce or eliminate flood damage to any combination of real~~
8 ~~estate, improved real property, water or sanitary facilities, structures, and the~~
9 ~~contents of structures~~ shall have the same meaning as “flood proofing” under
10 44 C.F.R. § 59.1.

11 (B) “Floodway” ~~means the channel of a river or other watercourse~~
12 ~~and the adjacent land area that must be reserved in order to discharge the base~~
13 ~~flood without accumulatively increasing the water surface elevation more than~~
14 ~~one foot~~ shall have the same meaning as “regulatory floodway” under
15 44 C.F.R. § 59.1.

16 (C) “Hazard area” means land subject to landslides, soil erosion,
17 earthquakes, water supply contamination, or other natural or human-made
18 hazards as identified within a “local mitigation plan” in conformance with and
19 approved pursuant to the provisions of 44 C.F.R. ~~section~~ § 201.6.

20 (D) ~~“New construction” means construction of structures or filling~~
21 ~~commenced on or after the effective date of the adoption of a community’s~~
22 ~~flood hazard bylaws.~~

1 ~~(E) “Substantial improvement” means any repair, reconstruction, or~~
2 ~~improvement of a structure, the cost of which equals or exceeds 50 percent of~~
3 ~~the market value of the structure either before the improvement or repair is~~
4 ~~started or, if the structure has been damaged and is being restored, before the~~
5 ~~damage occurred. However, the term does not include either of the following:~~

6 ~~(i) Any project or improvement of a structure to comply with~~
7 ~~existing state or local health, sanitary, or safety code specifications that are~~
8 ~~solely necessary to assure safe living conditions.~~

9 ~~(ii) Any alteration of a structure listed on the National Register of~~
10 ~~Historic Places or a state inventory of historic places. “National Flood~~
11 ~~Insurance Program” means the National Flood Insurance Program under~~
12 ~~42 U.S.C. chapter 50 and implementing federal regulations.~~

13 Sec. 7. 24 V.S.A. § 4424 is amended to read:

14 § 4424. SHORELANDS; FLOOD OR HAZARD AREA; SPECIAL OR
15 FREESTANDING BYLAWS

16 Any municipality may adopt freestanding bylaws under this chapter to
17 address particular areas in conformance with the plan, including the following,
18 which may also be part of zoning or unified development bylaws:

19 (1) Bylaws to regulate development and use along shorelands.

20 (2) Bylaws to regulate development and use in flood or other hazard
21 areas. The following shall apply if flood or other hazard area bylaws are
22 enacted:

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(D) ~~Mandatory provisions~~ Permit records; request to secretary. ~~All flood and other hazard area bylaws shall provide that no permit for new construction or substantial improvement shall be granted for a flood or other hazard area until after both the following:~~

(i) ~~A copy of the application is mailed or delivered by the administrative officer or by the appropriate municipal panel to the agency of natural resources~~ Municipal flood and other hazard area bylaws shall require that all applications, supporting documentation, and municipal permits and decisions issued under the bylaws shall be separately filed and maintained in the permit records of the municipality and mailed to the secretary.

(ii) ~~Either 30 days have elapsed following the mailing or the agency delivers comments on the application~~ Municipalities may request technical assistance from the secretary for permitting decisions made under this subchapter. The secretary shall provide assistance within 30 days of receiving such a request.

* * *

(F) Application to exemptions. Any land development or land use that is located within a flood hazard area for which a flood hazard area bylaw has been adopted and that is exempt from municipal regulation under this chapter shall be subject to the requirements found under 10 V.S.A. chapter 32

1 (flood hazard area) and any rules adopted by the secretary of natural resources
2 under that chapter.

3 Sec. 8. IMPLEMENTATION; TRANSITION

4 By July 1, 2013, the secretary shall conduct and complete the process for
5 adopting rules under Sec. 3 of this act, 10 V.S.A. § 754 (duties and
6 obligations).

7 Sec. 9. EFFECTIVE DATES

8 (a) This section and Secs. 3 (duties and obligations) and 8 (implementation;
9 transition) of this act shall take effect on passage.

10 (b) Sec. 1 (purpose), Sec. 2 (definitions), and Secs. 4–7 of this act
11 (enforcement applicability; appeals; definitions; and shorelands, flood or
12 hazard area bylaws) shall take effect on October 1, 2013.