

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2014

Bill Number: H.676 Name of Bill: An act relating to regulation of land uses within flood hazard areas

Who introduced this bill? Representative David Deen, Chair FWWR

Author of Bill Review: Rob Evans and Elizabeth McDonald

Agency/Dept. Reviewing Bill: ANR/DEC Date of Bill Review: 01.23.2014

Status (check one): ☒ Upon Introduction ☐ As passed by 1st body ☐ As passed by both bodies ☐ Fiscal

Recommended Position:

☒ Support ☐ Oppose ☐ Remain Neutral ☐ Support with modifications identified in #8 below

Analysis of Bill

1. Summary of bill and issue it addresses. *Describe what the bill is intended to accomplish and why.*

This bill proposes to clarify state and municipal jurisdiction over state and community owned buildings and facilities for the purposes of the National Flood Insurance Program (NFIP); ensure full state compliance with NFIP; give ANR explicit authority to regulate activities exempt from municipal regulation within river corridors; and extend the Floodplain Rule adoption and implementation deadlines.

2. Is there a need for this bill? *Please explain why or why not.*

Jurisdiction Clarification: Act 138 did not define what development municipalities are prohibited from regulating for the purposes of NFIP. It is clear in state statute that municipalities are absolutely prohibited from regulating Section 248 and 248a facilities and agricultural and silvicultural practices. However, other sections of law are less clear and limit but do not absolutely restrict a municipality's ability to regulate certain types of development. Section 4413(a) of Title 24 lists development that municipalities may regulate for limited purposes, but it is unclear whether municipalities may regulate such development for the purposes of NFIP. The proposed change in language explicitly states that municipalities may regulate the development listed in 4413(a) for the purposes of compliance with NFIP, except for state-owned and operated institutions and facilities, which will be regulated under the Rule.

State NFIP Compliance: Act 138 limited the jurisdiction of the Rule, so that it only applies in municipalities that have flood hazard area ordinances or bylaws. This means that the Rule would not apply to state-owned and operated institutions and facilities in municipalities without flood hazard area ordinances or bylaws. However, federal regulations provide that states must regulate state-owned property in municipalities that do not participate in NFIP. Therefore, Act 138 did not fully fill the regulatory gap. The proposed change puts all state-owned and operated institutions and facilities under the jurisdiction of the Floodplain Rule.

Authority to regulate River Corridors: For over a decade Vermont has recognized the deficiencies of the NFIP mapping and has used the State-delineated river corridor in tandem with the FEMA mapped Special Flood Hazard Areas to define the zones necessary to mitigate flood and fluvial erosion hazards. River corridors are essential zones with respect to floodplain function in Vermont. Act 138 gave the Secretary the authority to establish a rule that exceeds the minimum requirements of NFIP so long as they are designed to prevent or limit risk to public safety, property and infrastructure. The proposed rule will regulate municipally-exempt developments in both the flood hazard area and the river corridor. In this

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way, the state will be serving as a model for the way in which we would like to see municipal governments address development in flood hazard areas and river corridors. Regulation of river corridors is within DEC's discretionary authority to adopt higher standards. However explicit authority would be beneficial since this zone is distinct from the Flood Hazard Area as mapped by FEMA.

Date changes: We have proposed two date changes to acknowledge that the Rule will not be adopted by March 15, 2014

3. What are likely to be the fiscal and programmatic implications of this bill for this Department?

Clarifying the jurisdiction will make it easier for communities to understand what activities they regulate under in 24 V.S.A. § 4413a. The bill narrows the scope and permitting activity required by DEC and will reduce the staff resources that will be needed to administer the permitting program. From a programmatic standpoint, this bill will eliminate the administrative inefficiency inherent in the lack of clear jurisdiction and provide explicit authority to protect river corridors in keeping with Act 110 and Act 138 objectives. It is important for the State to be fully compliant with the NFIP so all communities are eligible for federal flood insurance.

4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?

Expanding jurisdiction to regulate state-owned buildings in 33 communities not enrolled in then NFIP may increase the administrative and project costs for the Department of Buildings and General Services, depending on how many state-owned properties are within those communities. We have spoken with BGS about this legislation and our proposed rule and are committed to working with them to ensure that we exercise our authority in a manner that takes their concerns into account.

The other departments affected would be the Agency of Agriculture in the exercise of its regulatory authority over agricultural lands covered by this proposal. We have spoken to AAFM and they have indicated that the approach of this legislation and DEC's proposed rule are consistent with the Accepted Agricultural Practices (AAPs) that they implement. We will continue to work with AAFM to ensure this is true.

Finally, VTrans has an interest in this legislation given that they may have increased costs or face limitations in work they can do in river corridors. We have spoken with VTrans and they are comfortable that this approach is consistent with their policy goals regarding limiting the risk of flood damage in river corridors. We will continue to work with VTrans in the development and implementation of DEC's proposed rule.

5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it? (for example: public, municipalities, organizations, business, regulated entities, etc.)

Removal of the jurisdictional ambiguity may result in some additional regulatory obligation by municipalities. This should be a relatively minor increase relative to overall local regulatory obligations. Towns, regional planning commissions, Vermont League of Cities and Towns, consultants, and property owners will likely support the clarification of municipal jurisdiction. There may be some disagreement over whether the State should regulate more than state-owned buildings and facilities.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why? Natural resources advocacy groups, such as VNRC, VRC, CLF, and others will likely support the explicit authority to regulate river corridors, since this furthers a state regulatory program that, in addition to protecting floodplain function and thereby reducing

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flood risk, it will protect and help restore water quality and riparian habitat. Regional planning commissions, municipalities and emergency responders may also support this legislation because it will reduce the amount of unplanned and unregulated development in floodplains and river corridors. Municipalities are likely to support the clarification of their authority.

6.2 Who else is likely to oppose the proposal and why? Developers and municipalities may have a concern that this bill will discourage development within river corridors through developed areas and town centers. However, ANR fully intends to accommodate infill and redevelopment in these areas as articulated in the draft rule. This practice, of encouraging infill and redevelopment, while protecting the river corridor in undeveloped areas is codified in the ANR Act 250 Floodway Procedures, which has been consistently applied in ANR floodway determinations since 2003.

There is a possibility that real estate and energy project developers may have concern with this legislation since the municipally exempt projects covered by this legislation include energy projects regulated under Section 248 and large land developments covered by Act 250. This bill, however, is fully consonant with the current requirements under Section 248 and Act 250 and would not result in new or different obligations for those projects.

7. Rationale for recommendation: *Justify recommendation stated above.* As stated above, this bill will clarify jurisdiction, ensure state compliance with the NFIP, and ensure that the Floodplain Rule meets the statutory intent of 10 V.S.A. Chapter 32 to reduce the tremendous risk and cost associated with flooding.

8. Specific modifications that would be needed to recommend support of this bill: *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*

None

Commissioner has reviewed this document:

Date: 1/28/14

Secretary has reviewed this document:

Date: 1/24/2014