

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2014

Bill Number: S.224 Name of Bill: Act Relating to Shorelands of Lakes of the State

Agency/Dept.: ANR/DEC Author of Bill Review: Trey Martin

Date of Bill Review: 12/22/13 Status of Bill (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.*

S.224 would require an Act 250 permit prior to development within the shorelands of lakes. For projects triggering jurisdiction solely because of development in the jurisdictional area within 250' of mean water level, only the Act 250 criteria for water pollution, soil erosion, and aesthetics would need to be addressed by a permit applicant. The bill would take effect on passage, but structures in permitting or substantially constructed by 2015 would be exempt from permitting requirements.

* Jurisdictional Triggers - Permitting through Act 250 would be triggered by construction within 250' of a lake (applies to all lakes, not lakes larger than 10 acres); expansion of existing structures by 30 percent or more (cumulative, during lifetime of structure); and clearing more than 25 percent of area within 250' of a lake or more than 15 percent of the area within 75 feet of the lake.

* Few Exemptions - The bill would apply to farming, logging or timber harvesting, electrical generation / transmission / telecommunications facilities, and solid waste facilities. Exemptions are provided for structures substantially completed by 1/1/2015, projects with permit applications submitted by 1/1/2015, accessory structures of less than 400 square feet, and clearing activities completed before 1/1/2015. No permit would be required for routine maintenance, repair or expansion of less than 30 percent of an existing building, or reconstruction of a damaged structure.

* Standards - Any development must comply with the following standards: a buffered strip of vegetation is required within 75 feet of mean water level, with allowance for paths, to be maintained under a grid/point system as in Me and NH; structures must be set back 75 feet; new structures must be designed to minimize stormwater runoff; erosion control practices must be used during and after construction; and new wastewater systems can't be constructed within 75 feet of mean water level.

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

Passing an effective shoreland protection bill is a high priority for ANR. However, the Agency believes that a better approach, both politically and practically, would be to revise H.526 to create a streamlined and flexible approach to permitting and to give local governments the option of playing a lead role.

The ANR proposal would protect a jurisdictional area 250' from the mean water level of lakes larger than 10 acres in surface area, with heightened protection of vegetation in the 100' zone adjacent to the lake based on

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the grid/point system used in Maine and New Hampshire. This approach would provide for clear definition of de minimis or exempt landowner activities that do not require ANR approval, and it would allow owner certification that low risk activities comply with statutory standards for slope, clearing and creation of impervious surface. Where self-certification is impossible, the ANR proposal would allow owners to seek a permit or variance conditioned on mitigation measures for activities that exceed statutory standards.

The ANR proposal would allow delegation to municipalities with standards at least as stringent as those set forth in statute. To support lake association priorities, it would provide for increased enforcement of aquatic invasive species transport bans, and it would be a vehicle for discussing additional AIS funding options.

Finally, the ANR proposal supports exemptions in H.526 for activities that require other DEC permits or approval by the NRB, including projects permitted under Act 250; historic and urban development; agricultural and silvicultural activities; transportation infrastructure; wastewater / potable water supply; stormwater treatment; electric utility projects and utility lines; and dredge and fill activities permitted by the Army Corps of Engineers.

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

In order to support citizen commissions within Act 250, increased staffing within DEC and ANR's central office (OPLA) would be necessary, however the extent of staffing needs is not known at this time.

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?

Likewise, while the NRB and district commissions would require substantial increase in staff to handle the volume and type of permits this bill calls for, the extent of staffing needs is not known at this time.

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.)

The cost of a permit under S.224 is likely to be roughly similar or less than the cost of a permit from DEC, but it is likely that permitting through Act 250 would lead to additional costs of representation, litigation, and process that could be avoided under a streamlined ANR permitting process.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why? One premise of the Snelling bill is that shoreland owners are likely to prefer permitting through the district commissions, rather than through ANR. Although this seems implausible, if true, broad support from lake and pond shoreland owners would create significant support for this proposal. It is unknown whether local and regional planners would prefer this approach.

6.2 Who else is likely to oppose the proposal and why? Preliminary negative reaction from business and environmental groups is likely to be joined by criticism from the Vermont League of Cities and Towns, which advocated for a greater municipal role during deliberations in the House. The NRB and district commissions have expressed significant process concerns. House members including Chairman Deen are likely to oppose a Senate-numbered bill that requires starting over on the bill.

7. Rationale for recommendation: Justify recommendation stated above. At this time, there is little support for this bill likely to emerge from environmental groups, businesses and other stakeholders (especially VLCT). Whether shoreland owners would support this approach is an open question. Resource needs are likely to be greater under this model than the ANR model, and the process will likely be more expensive for

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shoreland owners than permitting through ANR. Finally, the prospect of moving a new bill through both bodies of the statehouse seems likely to doom S.224, even if other support were to emerge. For all of these reasons, we recommend that the Administration oppose this bill.

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.*

Commissioner has reviewed this document: _____

Date:

12/26/13

Secretary has reviewed this document: _____

Date:

1-7-14