

1 S.232

2 Introduced by Senator Westman

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; energy; regulation of stream flow;  
6 municipally owned hydroelectric plants

7 Statement of purpose of bill as introduced: This bill proposes to amend the  
8 stream flow requirements of the Vermont Water Quality Standards to establish  
9 new stream flow requirements for municipally owned hydroelectric plants in  
10 existence on or before January 1, 2016.

11 An act relating to municipally owned hydroelectric plants

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

13 Sec. 1. 10 V.S.A. § 1006 is amended to read:

14 § 1006. CERTIFICATION OF HYDROELECTRIC ~~PROJECTS~~ PLANTS;

15 APPLICATION PROCESS

16 (a) As used in this section:

17 (1) "Bypass reach" means that area in a waterway between the initial  
18 point where water has been diverted through turbines or other mechanical  
19 means for the purpose of water-powered generation of electricity and the point

1 at which water is released into the waterway below the turbines or other  
2 mechanical means of electricity generation.

3 (2) “Conduit” means any tunnel, canal, pipeline, aqueduct, flume, ditch,  
4 or similar constructed water conveyance that is operated for the distribution of  
5 water for agricultural, municipal, or industrial consumption and not primarily  
6 for the generation of electricity.

7 (3) “Hydroelectric ~~project~~ plant” means a ~~facility, site,~~ plant or conduit  
8 planned or operated for the generation of water-powered electricity that has a  
9 generation capacity of no more than ~~1~~ one megawatt and does not create a new  
10 impoundment.

11 (4) “Impoundment” means “riverine impoundment” as defined in the  
12 Vermont ~~water quality standards~~ Water Quality Standards adopted pursuant to  
13 chapter 47 and subdivision 6025(d)(3) of this title.

14 (5) “Existing municipally owned hydroelectric plant” means a  
15 hydroelectric plant operating or licensed on or before January 1, 2016.

16 (6) “Plant” shall have the same meaning as in 30 V.S.A. § 8002.

17 (7) “Renewable energy” shall have the same meaning as in 30 V.S.A.  
18 § 8002.

19 (b) On or before December 15, 2009, the ~~agency of natural resources~~  
20 Agency of Natural Resources, after opportunity for public review and  
21 comment, shall adopt by procedure an application process for the certification

1 of hydroelectric ~~projects~~ plants in Vermont under Section 401 of the federal  
2 Clean Water Act.

3 \* \* \*

4 (e) The Vermont Water Quality Standards (VWQS) shall be amended to  
5 recognize and protect the uses of waters for renewable energy generation,  
6 greenhouse gas reduction, and flood protection as follows:

7 (1) “Existing renewable energy production” and “flood protection” shall  
8 be added to the list of existing uses within the Antidegradation Policy, and to  
9 the list of designated uses within the Class B Waters Management Objectives;  
10 and these uses shall be given equal priority with aesthetics, recreation, and  
11 aquatic habitat. The Hydrology Criteria Section shall be amended to require  
12 consideration of all existing uses and designated uses of waters, including  
13 existing renewable energy production and flood protection, and shall require  
14 the various existing uses and designated uses to be balanced when flow  
15 requirements are established or revised.

16 (2) The General Policy section shall acknowledge Vermont’s renewable  
17 energy goals, statewide energy plans, and renewable energy standards, the  
18 economic impact to the public of utility rates, the water quality and hydrology  
19 damages caused by climate change and greenhouse gas emissions, and the  
20 water quality benefits of renewable energy production.

1       (f)(1) For an existing municipally owned hydroelectric plant that is  
2       operated in true run-of-river mode and that has a bypass reach that is no longer  
3       than 1,600 feet, the bypass flow requirement for the municipally owned  
4       hydroelectric plant shall not exceed the 7Q10 flow rate, as that rate is defined  
5       in the Vermont Water Quality Standards.

6       (2) For an existing municipally owned hydroelectric plant that is not  
7       operated in true run-of-river mode:

8           (A) the required minimum flow downstream of the tailrace shall not  
9       exceed the median seasonal (fall/winter, spring, or summer) flow rate as  
10       specified in the Vermont Water Quality Standards and Agency of Natural  
11       Resources Procedure for Determining Acceptable Minimum Stream  
12       Flows; and

13           (B) water levels in a reservoir may be drawn down so long as the  
14       drawdown occurs during winter or when necessary to provide flood protection,  
15       the depth of drawdown does not exceed the smaller of 12 feet or one-half of  
16       the littoral zone depth, and the reservoir is maintained within one foot of full  
17       level from May 1 to November 1.

18       (3) For an existing municipally owned hydroelectric plant, no change in  
19       flow or water level management shall be required unless a study of fish  
20       populations, aquatic biota, dissolved oxygen, and temperature is first  
21       conducted in accordance with Agency of Natural Resources procedures and

1 unless the results of the study show that the Agency of Natural Resources'  
2 biocriteria or water quality criteria of the Vermont Water Quality Standards are  
3 not met for the applicable water classification at the plant site.

4 Sec. 2. 10 V.S.A. § 1250 is amended to read:

5 § 1250. STATE WATER QUALITY POLICY

6 (a) It is the policy of the ~~state~~ State of Vermont to:

7 (1) protect and enhance the quality, character, and usefulness of its  
8 surface waters and to assure the public health;

9 (2) maintain the purity of drinking water;

10 (3) control the discharge of wastes to the waters of the ~~state~~ State,  
11 prevent degradation of high quality waters, and prevent, abate, or control all  
12 activities harmful to water quality;

13 (4) assure the maintenance of water quality necessary to sustain existing  
14 aquatic communities;

15 (5) provide clear, consistent, and enforceable standards for the  
16 permitting and management of discharges;

17 (6) protect from risk and preserve in their natural state certain high  
18 quality waters, including fragile high-altitude waters, and the ecosystems they  
19 sustain;

20 (7) manage the waters of the ~~state~~ State to promote a healthy and  
21 prosperous agricultural community, to increase the opportunities for use of the

1 ~~state's~~ State's forest, park and recreational facilities, and to allow beneficial  
2 and environmentally sound development; and

3 (8) support Vermont's renewable energy goals, statewide energy plans,  
4 and renewable energy standards; reduce the water quality and hydrology  
5 damages caused by climate change and greenhouse gas emissions and enhance  
6 the water quality benefits of renewable energy production by maintaining  
7 existing renewable energy sources and decreasing Vermont's dependence on  
8 nonrenewable energy sources; and manage the economic impact of utility rates  
9 to the public.

10 (b) It is further the policy of the ~~state~~ State to seek over the long term to  
11 upgrade the quality of waters and to reduce existing risks to water quality.

12 Sec. 3. 10 V.S.A. § 8506(a) is amended to read:

13 (a) Within 30 days of the date of the act or decision, any person aggrieved  
14 by an act or decision of the Secretary, under the provisions of law listed in  
15 section 8503 of this title, or any party by right may appeal to the Public Service  
16 Board if the act or decision concerns a renewable energy plant for which a  
17 certificate of public good is required under 30 V.S.A. § 248 or a  
18 telecommunications facility for which the applicant has applied or has served  
19 notice under 30 V.S.A. § 248a(e) that it will apply for approval under  
20 30 V.S.A. § 248a. This section shall not apply to a facility that is subject to  
21 section 1004 (dams before the Federal Energy Regulatory Commission) or

1 1006 (certification of hydroelectric ~~projects~~ plants) or chapter 43 (dams) of this  
2 title, unless the hydroelectric plant is municipally owned. This section shall  
3 not apply to an appeal of an act or decision of the Secretary regarding a  
4 telecommunications facility made on or after July 1, 2017.

5 Sec. 4. EFFECTIVE DATE

6 This act shall take effect on passage and shall apply to applications to the  
7 Agency of Natural Resources that are pending on January 1, 2016 and that  
8 seek a federal Clean Water Act § 401 certification, 33 U.S.C. § 1341.