

1 H.442

2 Introduced by Representative Cheney of Norwich

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; soil and water conservation;

6 microhydroelectric projects; general permit

7 Statement of purpose of bill as introduced: This bill proposes to require the
8 Agency of Natural Resources to establish a general permit program for
9 microhydroelectric projects in Vermont that is consistent with the State's water
10 quality standards. The bill would require the Secretary, upon request by a
11 developer of a microhydroelectric project, to issue a federal Clean Water Act
12 § 401 certification prior to the developer filing an application with the Federal
13 Energy Regulatory Commission.

14 An act relating to the development of microhydroelectric projects in
15 Vermont

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

17 Sec. 1. 10 V.S.A. § 1007 is added to read:

18 § 1007. GENERAL PERMITTING; MICROHYDROELECTRIC PROJECTS

19 (a) Findings. The General Assembly finds and declares that:

1 (1) The generation of hydroelectric power is a legitimate use of the
2 waters of the State, and it is the policy of Vermont to allow beneficial and
3 environmentally sound hydroelectric generation development that is consistent
4 with applicable state and federal law.

5 (2) Microhydroelectric (microhydro) power is a proven renewable
6 energy technology employed worldwide that could contribute to attainment of
7 Vermont's renewable energy goals. Microhydro systems are generally defined
8 as those generating 100 kW of power or less.

9 (3) Microhydro systems that use current technologies are low cost, can
10 be rapidly installed without stream alterations, dams, or other impoundments,
11 and have minimal environmental and aesthetic impacts.

12 (4) Current Agency of Natural Resources hydroelectric plant regulation
13 has mid-20th century origins and was intended for conventional, large-scale
14 hydroelectric plants employing impoundments and creating significant
15 environmental impacts. This regulatory framework is not appropriate to the
16 scale, technology, and minimal impacts of microhydro systems because it
17 imposes unreasonable cost and time burdens, effectively preventing adoption
18 of microhydro systems.

19 (5) The smallest microhydro systems, those with power ratings of
20 10 kW or less, have negligible environmental impacts and can benefit citizens
21 by empowering them to achieve energy independence.

1 (6) Section 401 of the federal Clean Water Act (CWA), 33 U.S.C.
2 § 1341, requires any applicant for a federal permit for an activity that may
3 involve a discharge to navigable waters to obtain certification from the State
4 that the permitted activity does not violate the State's water quality standards.

5 (7) As set forth in § 1004 of this title, the Secretary of Natural Resources
6 (Secretary) is the agent that the U.S. Environmental Protection Agency
7 delegated to conduct CWA § 401 certifications in the State of Vermont.

8 (8) As set forth in § 1258 of this title, the Secretary may issue general
9 permits for the implementation of permit programs in order to establish
10 permitting efficiencies while maintaining protection of public health and the
11 environment. It is the intent of the General Assembly that this general permit
12 authority be used for classes or categories of discharges and other activities
13 that present low risk to the environment and public health.

14 (b) General permit requirement. On or before January 1, 2014, the
15 Secretary shall adopt by procedure a general permit for the operation of
16 microhydro projects that generate 50 kW of power or less and that are
17 run-of-the-river design that do not require stream alteration, a dam, or other
18 impoundment.

19 (c) The general permit required by subsection (b) shall:

20 (1) apply to projects capable of generating 50 kW of power or less;

1 (2) apply to projects that are run-of-the-river design with no
2 impoundment;

3 (3) satisfy the requirements for a stream alteration permit under section
4 1021 of this title, including the terms and conditions for the issuance of a
5 stream alteration permit;

6 (4) require that projects operate at a minimum low flow of 0.5 cubic feet
7 per second per square mile in the summer months;

8 (5) include reasonable time frames for agency review of and response to
9 an application for coverage under a general permit; and

10 (6) include provisions consistent with the requirements of subsection
11 7503(b) of this title that require public notice of the fact that a hydroelectric
12 project has sought coverage under a general permit issued under this section.

13 (d) Projects that satisfy the general permit conditions as set forth in
14 subsection (c) of this section shall be deemed to meet the CWA § 401 analysis
15 and the Vermont water quality standards.

16 (e) The Secretary shall issue a CWA § 401 certification for a general permit
17 adopted under this section. The Secretary shall coordinate issuance of the
18 CWA § 401 certification for a general permit adopted under this section in
19 order to ensure implementation of the general permit upon adoption.

20 (f) Duration of general permit. The general permit adopted pursuant to this
21 section shall have a term of no more than 10 years. Prior to the expiration of

1 the general permit, the Secretary shall review the terms and conditions of the
2 general permit and may issue subsequent general permits with the same or
3 different conditions as necessary to carry out the purposes of this subchapter.

4 (g) Development of draft general permit. The Secretary shall convene a
5 public stakeholder process of interested parties to develop the draft procedure
6 of the general permit required under subsection (b) of this section.

7 Sec. 2. 10 V.S.A. § 1008 is added to read:

8 § 1008. CERTIFICATION OF MICROHYDROELECTRIC PROJECTS

9 Upon request of a developer of a microhydroelectric project qualifying for
10 coverage under the general permit as specified in § 1007(b) of this title, the
11 Secretary shall issue a certification required by CWA, 33 U.S.C. § 1341, to the
12 developer prior to the developer's submission to the Federal Energy
13 Regulatory Commission of an application for a license or exemption for a
14 hydroelectric project under the Federal Power Act.

15 Sec. 3. EFFECTIVE DATE

16 This act shall take effect on passage.