

1 H.800

2 Introduced by Representatives Sharpe of Bristol, Clarkson of Woodstock, and

3 Zagar of Barnard

4 Referred to Committee on

5 Date:

6 Subject: Conservation and development; taxation; groundwater

7 Statement of purpose of bill as introduced: This bill proposes to amend the
8 requirements for a large volume groundwater withdrawal in order to require a
9 permit for commercial or industrial groundwater withdrawals of 15,000 gallons
10 or more per day. The bill would also prohibit the bottling of groundwater in
11 the State, and would prohibit public water systems from being permitted as
12 bottle water supplies. In addition, the bill would assess a \$0.01 per gallon
13 royalty for each gallon of groundwater withdrawn in the State in excess of
14 15,000 gallons per day. The royalty would be deposited into a special fund
15 administered by the Agency of Natural Resources for the purpose of
16 identifying and mapping the groundwater resources of the State.

17 An act relating to the regulation of groundwater withdrawal

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

2 Sec. 1. 10 V.S.A. § 1417 is amended to read:

3 § 1417. EXISTING GROUNDWATER WITHDRAWAL; REPORTING

4 (a) Beginning on September 1, ~~2009~~ 2014, any person that withdraws more
5 than ~~20,000~~ 10,000 gallons per day, averaged over a calendar month at a single
6 tract of land or place of business shall file a groundwater report with the
7 ~~secretary of natural resources~~ Secretary of Natural Resources on or before
8 September 1 for the preceding calendar year. The report shall be made on a
9 form prescribed by the ~~secretary~~ Secretary and shall include:

- 10 (1) the location, capacity, frequency, and rate of the withdrawal;
- 11 (2) a description of the use of the water withdrawn; and
- 12 (3) where feasible, the distance of each withdrawal from the nearest
13 surface water source and wetland.

14 (b) The following are exempt from the reporting requirements of this
15 section:

- 16 (1) a A groundwater withdrawal for fire suppression or other public
17 emergency purposes;
- 18 (2) a A withdrawal reported to the ~~agency of natural resources~~ Agency
19 of Natural Resources under any program that requires the reporting of
20 substantially similar data. The ~~agency of natural resources~~ Agency of Natural

1 Resources shall record such withdrawals with the information from
2 withdrawals reported under this section;

3 (3) ~~domestic~~ Domestic, residential use;

4 (4) ~~groundwater~~ Groundwater withdrawal for farming;

5 (5) ~~dairy~~ Dairy processors and milk handlers licensed in accordance
6 with 6 V.S.A. § 2721;

7 (6) ~~public~~ Public water systems, as that term is defined in section 1671
8 of this title; and

9 (7) ~~closed~~ Closed loop, standing column, or similar non-extractive
10 geothermal heat pumps.

11 (c) The ~~secretary of natural resources~~ Secretary of Natural Resources may
12 adopt rules to implement this section, including methods for calculating or
13 estimating the amount of groundwater withdrawn from a well or spring.

14 Sec. 2. 10 V.S.A. § 1418 is amended to read:

15 § 1418. GROUNDWATER WITHDRAWAL PERMIT

16 (a) On and after ~~July 1, 2010~~ September 1, 2014, no person, for
17 commercial or industrial uses, shall make a new or increased groundwater
18 withdrawal of more than ~~57,600~~ 15,000 gallons a day from any well or spring
19 on a single tract of land or at a place of business without first receiving from
20 the ~~secretary of natural resources~~ Secretary of Natural Resources a

1 groundwater withdrawal permit. The following shall constitute a “new or
2 increased withdrawal”:

3 (1) The expansion of any existing withdrawal through:

4 (A) additional withdrawal from one or more new wells or springs; or

5 (B) an increase in the rate of withdrawal from a well or spring above
6 the maximum rate set forth in any existing permit issued by the ~~secretary of~~
7 ~~natural resources~~ Secretary of Natural Resources under this section; ~~or~~.

8 (2) For previously unpermitted withdrawals, an increase in the rate of
9 withdrawal after ~~July 1, 2010~~ September 1, 2014 from a well or spring on a
10 single tract of land or at a place of business of 25 percent of the baseline
11 withdrawal or an increase of ~~57,600~~ 15,000 gallons of groundwater withdrawn,
12 whichever is smaller.

13 (3) For the purposes of this subsection, the baseline withdrawal shall be
14 the highest amount withdrawn by a person between 2005 and ~~2010~~
15 September 1, 2014.

16 (b) The following are exempt from the permitting requirements of this
17 section:

18 (1) a groundwater withdrawal for fire suppression or other public
19 emergency purpose;

20 (2) domestic, residential use;

21 (3) groundwater withdrawal for farming;

1 (4) dairy processors and milk handlers licensed in accordance with
2 6 V.S.A. § 2721;

3 (5) public water systems, as that term is defined in section 1671 of this
4 title; and

5 (6) closed loop, standing column, or similar non-extractive geothermal
6 heat pumps.

7 * * *

8 (d) Application for a permit shall be on a form prepared by the ~~secretary~~
9 Secretary. An application shall, at a minimum, contain the information
10 necessary to make the determinations contained in subsection (e) of this
11 section, and the following:

12 (1) the purpose for the withdrawal;

13 (2) the location and source of the withdrawal;

14 (3) the amount of the proposed withdrawal, including estimates of the
15 projected mean and peak daily, monthly, and annual withdrawals;

16 (4) the place of the proposed return flow of withdrawn water;

17 (5) the estimated amount of water that will not be returned to the
18 watershed where the proposed withdrawal is located;

19 (6) the location, demand on, and yield of existing sources of
20 groundwater and surface water utilized by the applicant; and

1 (7) a brief description of the alternative means considered for satisfying
2 the applicant's stated use for water.

3 (e) The ~~secretary~~ Secretary shall not issue a permit for a new or increased
4 groundwater withdrawal unless the ~~secretary~~ Secretary determines:

5 (1) that the proposed withdrawal is planned in a fashion that provides
6 for efficient use of the water;

7 (2) that the proposed withdrawal, in combination with other existing
8 withdrawals, will meet the standards set by the ~~secretary of natural resources~~
9 Secretary of Natural Resources in rule for establishing a safe yield in the area
10 of the withdrawal;

11 (3) that the proposed withdrawal is consistent with the town or regional
12 plan in which the proposed withdrawal is located, and with any duly adopted
13 ~~state~~ State policy to manage groundwater as a shared resource for the benefit of
14 all citizens of the ~~state~~ State, including any policies and programs of the ~~state~~
15 State of Vermont regarding long-range planning, management, allocation, and
16 use of groundwater and surface water in effect at the time the application for
17 the withdrawal is filed;

18 (4) that the proposed withdrawal will not have an undue adverse effect
19 on existing uses of water dependent on the same water source;

1 (5) that the proposed withdrawal will not have an undue adverse effect
2 on a public water system permitted by the ~~agency of natural resources~~ Agency
3 of Natural Resources;

4 (6) that the proposed withdrawal will not have an undue adverse effect
5 on significant wetlands under the Vermont wetland rules or on other water
6 resources hydrologically interconnected with the well or spring from which the
7 proposed withdrawal would be made;

8 (7) that the proposed withdrawal will not violate the Vermont water
9 quality standards; and

10 (8) any other consideration that the ~~secretary~~ Secretary determines
11 necessary for the conservation of water or protection of groundwater quality.

12 (f) A permit issued under this section shall be valid for the period of time
13 specified in the permit but not for more than ~~10~~ five years. A permit issued
14 under this section shall include the following:

15 (1) that groundwater withdrawals from a well or spring for drinking
16 water supplies, farming, or dairy processing shall be given priority over other
17 uses during times of shortage; and

18 (2) any other condition that the ~~secretary~~ Secretary determines necessary
19 for the conservation of water or protection of groundwater quality.

20 (g) The ~~secretary~~ Secretary may require any person withdrawing
21 groundwater in the ~~state~~ State to obtain a permit under this section if the

1 withdrawal is not exempt under subsection (b) of this section and the ~~secretary~~
2 Secretary determines that the withdrawal violates the Vermont water quality
3 standards or has an undue adverse effect on an existing use of groundwater, a
4 public water system permitted by the ~~agency of natural resources~~ Agency of
5 Natural Resources, wetlands, or water resources hydrologically interconnected
6 with the well or spring from which the withdrawal occurs. The ~~secretary~~
7 Secretary shall make a determination under this section based on review of the
8 information set forth under subsection (d) of this section that is readily
9 available to the ~~secretary~~ Secretary.

10 (h) A withdrawal permit issued under this section may be transferred upon
11 a change of ownership of the facility or project for which the permit was
12 issued, provided that the new owner applies for an administrative amendment
13 to the permit certifying its agreement to comply with all terms and conditions
14 of the transferred permit and assume all other associated obligations.

15 (i) The following groundwater withdrawals shall be deemed to comply with
16 the public trust requirements of the ~~state~~ State for groundwater management
17 and shall be entitled to a presumption that the withdrawal complies with the
18 public trust requirements of the ~~state~~ State:

19 (1) ~~A~~ a groundwater withdrawal permitted under this section;

20 (2) ~~A~~ a groundwater withdrawal for domestic, residential use;

1 (3) ~~A~~ a groundwater withdrawal for public water systems, except for a
2 bottled water facility operating under a source permit issued prior to ~~the~~
3 ~~effective date of this act~~ June 9, 2008, permitted under chapter 56 of this title;

4 (4) ~~A~~ a groundwater withdrawal for a potable water supply permitted
5 under chapter 64 of this title;

6 (5) ~~A~~ a groundwater withdrawal for farming conducted in compliance
7 with the requirements of 6 V.S.A. chapter 215 ~~of Title 6~~; and

8 (6) ~~A~~ a groundwater withdrawal by a dairy processor or milk handler
9 licensed in accordance with 6 V.S.A. § 2721.

10 (j) On or before July 1, 2010, the ~~secretary~~ Secretary shall adopt rules to
11 implement this section. When rules are adopted by the ~~secretary~~ Secretary
12 under this section, section 1415 of this title shall be repealed. The rules
13 adopted under this section shall include:

14 (1) requirements for the mitigation of an undue adverse effect on
15 drinking water supplies, farming, public water systems, or any other affected
16 use when the ~~secretary~~ Secretary determines such an undue adverse effect is
17 likely to occur due to a proposed withdrawal;

18 (2) requirements for the renewal of permits issued under this section.

19 (k) Nothing contained in this subchapter shall be construed to alter or
20 modify a right under a deed or contract to access groundwater in this ~~state~~
21 State.

1 Sec. 3. 10 V.S.A. § 1419a is added to read:

2 § 1419a. PROHIBITION ON GROUNDWATER WITHDRAWAL FOR

3 BOTTLING

4 Beginning on July 1, 2014, no person shall be issued a permit under this
5 chapter or chapter 56 of this title to withdraw groundwater in the State for the
6 purpose of bottling drinking water for public distribution or sale.

7 Sec. 4. 10 V.S.A. § 1671 is amended to read:

8 § 1671. DEFINITIONS

9 As used in this chapter:

10 (1) "Drinking water" means noncarbonated water that is intended for
11 human consumption or other consumer uses whether provided by a public
12 water system or in a container, bottle or package or in bulk, including water
13 used for production of ice, foodstuffs or other products designed for human
14 consumption.

15 (2) "Department" means the ~~department of environmental conservation~~
16 Department of Environmental Conservation.

17 (3) "Person" means any individual, partnership, company, corporation,
18 cooperative, association, unincorporated association, joint venture, trust, the
19 ~~state~~ State of Vermont or any department, agency, subdivision, or
20 municipality, the United States government or any department, agency or
21 subdivision, or any other legal or commercial entity.

1 (4) “Public water source” means any surface water or groundwater
2 supply used as a source of drinking water for a public water system.

3 (5)(A) “Public water system means any system, or combination of
4 systems owned or controlled by a person, which provides drinking water
5 through pipes or other constructed conveyances to the public and which:

6 (i) has at least 15 service connections; or

7 (ii) serves an average of at least 25 individuals for at least 60 days
8 a year.

9 (B) Public water system shall also mean any part of a piped system
10 which does not provide drinking water, if use of such a part could affect the
11 quality or quantity of the drinking water supplied by the system. ~~Public water~~
12 ~~system shall also mean a system which bottles drinking water for public~~
13 ~~distribution and sale.~~

14 (6) “Secretary” means the ~~secretary of the agency of natural resources~~
15 Secretary of Natural Resources or the ~~secretary’s~~ Secretary’s designee.

16 (7) “Public water source protection area” means a surface and
17 subsurface area from or through which contaminants are reasonably likely to
18 reach a public water source.

19 (8) “Accepted agricultural practices” shall be as defined by the ~~secretary~~
20 ~~of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets
21 under subsection 1021(f) of this title.

1 (9) “Agricultural land” means any land, exclusive of any housesite, in
2 active use to grow hay or cultivated crops, Christmas trees, horticultural crops,
3 greenhouse and nursery crops, pasture livestock or to cultivate trees bearing
4 edible fruit or produce an annual maple product, and which is 25 acres or more
5 in size except as provided below. There shall be a presumption that the land is
6 used for agricultural purposes if it has produced an annual gross income from
7 the sale of agricultural commodities in one of two, or three of the five,
8 preceding calendar years of at least:

9 (A) \$2,000.00 for parcels of up to 25 acres;

10 (B) \$75.00 per acre for each acre over 25, with the total income
11 required not to exceed \$5,000.00;

12 (C) exceptions to these income requirements shall be made in cases
13 of horticultural or nursery production Christmas tree production, or orchard
14 lands planted to fruit producing trees which are not yet of saleable size or
15 bearing age.

16 (10) “Community water system” means a public water system which
17 serves at least 15 service connections used by year-round residents or regularly
18 serves at least 25 year-round residents. The construction of a water system
19 which upon completion of construction could be reasonably expected to serve
20 at least 15 service connections or at least 25 year-round residents shall require
21 a community water system construction permit.

1 ~~(1) the permit application contains the information required by~~
2 ~~subdivisions 1418(d)(4) (7) of this title;~~

3 ~~(2) the Secretary finds that considerations in subdivisions 1418(e)(1) (3)~~
4 ~~and (6) (8) of this title have been satisfied;~~

5 ~~(3) the permit contains the permit conditions required by subsection (f)~~
6 ~~of this section; and~~

7 ~~(4) the permit applicant complies with the notice requirements of~~
8 ~~subsection 1418(e) of this title or reissue or renew an existing permit for a~~
9 ~~public drinking water supply that authorizes the bottling of drinking water.~~

10 ~~(h) A public water system permitted after the effective date of this act that~~
11 ~~bottles drinking water for public distribution and sale shall obtain from the~~
12 ~~Secretary a source water permit under subsection 1672(g) of this title upon~~
13 ~~renewal of its operating permit under this section and every 10 years thereafter~~
14 ~~after July 1, 2014 shall not be issued a source water permit that authorizes the~~
15 ~~bottling of drinking water.~~

16 Sec. 6. 32 V.S.A. chapter 215 is added to read:

17 CHAPTER 215. SEVERANCE ROYALTIES

18 § 8701. DEFINITIONS

19 As used in this chapter:

20 (1) “Groundwater” shall have the meaning set forth in 10 V.S.A. § 1416.

21 (2) “Spring” shall have the meaning set forth in 10 V.S.A. § 1416.

1 (3) “Well” shall have the meaning set forth in 10 V.S.A. § 1416.

2 (4) “Withdraw” or “withdrawal” shall have the meaning set forth in
3 10 V.S.A. § 1416.

4 § 8702. IMPOSITION OF GROUNDWATER WITHDRAWAL ROYALTY

5 There is hereby imposed on each person permitted under 10 V.S.A. § 1418
6 to withdraw large volumes of groundwater a royalty of \$0.01 on each gallon of
7 groundwater withdrawn from a well or spring in the State in excess of 15,000
8 gallons per day.

9 § 8703. PAYMENT

10 Each person subject to the requirements of this subchapter shall prepare and
11 submit to the Department of Taxes a monthly report according to procedures
12 established by the Commissioner of Taxes showing the total gallons of
13 groundwater withdrawn during the preceding month and other information the
14 Commissioner may require. The groundwater withdrawal royalty shall be paid
15 each month to the Department at the same time the report is submitted.

16 § 8704. RECORDS

17 Each person subject to the requirements of this subchapter shall keep a
18 record of all groundwater withdrawn in this State, and that record must be open
19 at all times to inspection by the Commissioner of Taxes.

1 § 8705. ENFORCEMENT

2 The groundwater withdrawal royalty imposed under this chapter shall be
3 enforced using the enforcement and collection provisions set forth in chapter
4 103 of this title.

5 § 8706. GROUNDWATER CONSERVATION AND MAPPING FUND

6 (a) There is hereby established in the State Treasury a special fund to be
7 known as the Groundwater Conservation and Mapping Fund, to be
8 administered and expended by the Secretary of Natural Resources to fund the
9 Water Resources Preservation Program. The Secretary may authorize
10 disbursement or expenditures from the Fund for the purpose of identifying and
11 mapping the location of the groundwater resources of the State of Vermont.

12 (b) There shall be deposited into the Fund:

13 (1) the groundwater withdrawal royalty assessed under this chapter;

14 (2) private gifts, bequests, grants, or donations made to the State from
15 any public or private source for the purposes for which the Fund was
16 established; and

17 (3) such sums as may be appropriated by the General Assembly.

18 (c) Interest earned by the Fund shall be credited and deposited to the Fund.
19 All balances in the Fund at the end of the fiscal year shall be carried forward
20 and remain a part of the Fund.

- 1 Sec. 7. EFFECTIVE DATE
- 2 This act shall take effect on passage.