

1 H.517

2 Introduced by Representative Deen of Westminster

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; water resources; water classifications

6 Statement of purpose of bill as introduced: This bill proposes to amend the
7 classes of waters in the State. The bill also provides that the Secretary may, by
8 rule, reclassify one or more uses of all or any portion of an affected water. In
9 addition, the bill would require that when the Secretary of Natural Resources
10 develops a basin plan, the Secretary shall identify waters that should have one
11 or more uses reclassified as Class A(1) or Class B(1).

12 An act relating to the classification of State waters

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

14 ~~Sec. 1. 10 V.S.A. § 1252 is amended to read:~~

15 § 1252. CLASSIFICATION OF WATERS; MIXING ZONES

16 (a) The State adopts, for the purposes of individually classifying the uses of
17 its waters, the following classes and definitions thereof:

18 Class A. (1) ~~Suitable for public water supply with disinfection when~~
19 ~~necessary; character uniformly excellent; or~~

1 ~~(2) High quality waters Waters which have significant ecological or~~
2 ~~excellent value; or~~

3 ~~(2) Suitable for public water supply with disinfection when necessary;~~
4 ~~character uniformly excellent.~~

5 Class B. ~~Suitable (1) Very high quality waters in which one or more uses~~
6 ~~are of higher quality than Class B(2) waters;~~

7 ~~(2) High quality waters that are suitable~~ for bathing and recreation,
8 irrigation and agricultural uses; good ~~aquatic biota and~~ fish habitat; good
9 aesthetic value; acceptable for public water supply with filtration and
10 disinfection.

11 * * *

12 Sec. 2. 10 V.S.A. § 1253 is amended to read:

13 § 1253. CLASSIFICATION OF WATERS DESIGNATED,

14 RECLASSIFICATION

15 (a) The waters of all lakes, ponds, and reservoirs, natural or artificial, used
16 exclusively for public water supply prior to July 1, 1971, and all waters
17 flowing into such lakes, ponds, and reservoirs, and all waters located above
18 2,500 feet altitude, National Geodetic Vertical Datum, are designated Class A
19 waters and shall be maintained as such unless reclassified.

20 (b) The remaining waters, except as otherwise classified by the Board prior
21 to July 1, 1971, are designated Class B waters and shall be maintained as such

1 ~~unless reclassified. All waters designated as Class C waters prior to July 1,~~
2 1992, are designated Class B waters and shall be maintained as such unless
3 reclassified.

4 (c) On its own motion, or on receipt of a written request that the Secretary
5 adopt, amend, or repeal a reclassification rule, the Secretary shall comply with
6 3 V.S.A. § 806 and may initiate a rulemaking proceeding to reclassify one or
7 more uses of all or any portion of the affected waters in the public interest. In
8 the course of this proceeding, the Secretary shall comply with the provisions of
9 3 V.S.A. chapter 25, and may hold a public hearing convenient to the waters in
10 question. If the Secretary finds that the established classification is contrary to
11 the public interest and that reclassification is in the public interest, he or she
12 shall file a final proposal of reclassification in accordance with 3 V.S.A. § 841.
13 If the Secretary finds that it is in the public interest to change the classification
14 of any pond, lake, or reservoir designated as Class A waters by subsection (a)
15 ~~of this section~~ for public water supply, the Secretary shall so advise and
16 consult with the Department of Health and shall provide in its reclassification
17 rule a reasonable period of time before the rule becomes effective. During that
18 time, any municipalities or persons whose water supply is affected shall
19 construct filtration and disinfection facilities or convert to a new source of
20 water supply.

1 ~~(d)(1) Through the process of basin planning, the Secretary shall determine~~
2 what degree of water quality and classification should be obtained and
3 maintained for those waters not classified by the Board before 1981 following
4 the procedures in sections 1254 and 1258 of this title. Those waters shall be
5 classified in the public interest. The Secretary shall prepare and maintain an
6 overall surface water management plan to assure that the State water quality
7 standards are met in all State waters. The surface water management plan shall
8 include a schedule for updating the basin plans. The Secretary, in consultation
9 with regional planning commissions and natural resource conservation
10 districts, shall revise all 15 basin plans and update the basin plans on a
11 five-year rotating basis. On or before January 15 of each year, the Secretary
12 shall report to the House Committees on Agriculture and Forest Products, on
13 Natural Resources and Energy, and on Fish, Wildlife and Water Resources,
14 and to the Senate Committees on Agriculture and on Natural Resources and
15 Energy regarding the progress made and difficulties encountered in revising
16 basin plans. The report shall include a summary of basin planning activities in
17 the previous calendar year, a schedule for the production of basin plans in the
18 subsequent calendar year, and a summary of actions to be taken over the
19 subsequent three years. The provisions of 2 V.S.A. § 20(d) (expiration of
20 required reports) shall not apply to the report to be made under this subsection.
21 (2) In developing a basin plan under this subsection, the Secretary shall:

1 ~~(A) identify waters that should be reclassified as Class A waters or~~
2 outstanding resource waters or that should have one or more uses reclassified
3 as Class A(1) or Class B(1);

4 (B) identify wetlands that should be reclassified as Class I wetlands;

5 (C) identify projects or activities within a basin that will result in the
6 protection and enhancement of water quality;

7 (D) assure that municipal officials, citizens, watershed groups, and
8 other interested groups and individuals are involved in the basin planning
9 process;

10 (E) assure regional and local input in State water quality policy
11 development and planning processes;

12 (F) provide education to municipal officials and citizens regarding
13 the basin planning process;

14 (G) develop, in consultation with the applicable regional planning
15 commission, an analysis and formal recommendation on conformance with the
16 goals and objectives of applicable regional plans;

17 (H) provide for public notice of a draft basin plan; and

18 (I) provide for the opportunity of public comment on a draft
19 basin plan.

20 (3) The Secretary shall, contingent upon the availability of funding,
21 contract with a regional planning commission to assist in or to produce a basin

1 ~~plan under the schedule set forth in subdivision (1) of this subsection. When~~

2 contracting with a regional planning commission to assist in or produce a basin
3 plan, the Secretary may require the regional planning commission to:

4 (A) conduct any of the activities required under subdivision (2) of
5 this subsection;

6 (B) provide technical assistance and data collection activities to
7 inform municipal officials and the State in making water quality investment
8 decisions;

9 (C) coordinate municipal planning and adoption or implementation of
10 municipal development regulations to better meet State water quality policies
11 and investment priorities; or

12 (D) assist the Secretary in implementing a project evaluation process
13 to prioritize water quality improvement projects within the region to assure
14 cost effective use of State and federal funds.

15 (e) In determining the question of public interest, the Secretary shall give
16 due consideration to, and explain his or her decision with respect to, the
17 following:

18 (1) existing and obtainable water qualities;

19 (2) existing and potential use of waters for public water supply,
20 recreational, agricultural, industrial, and other legitimate purposes;

21 (3) natural sources of pollution;

1 ~~(4) public and private pollution sources and the alternative means of~~

2 abating the same;

3 (5) consistency with the State water quality policy established in

4 ~~10 V.S.A. § section 1250 of this title;~~

5 (6) suitability of waters as habitat for fish, aquatic life, and wildlife;

6 (7) need for and use of minimum streamflow requirements;

7 (8) federal requirements for classification and management of waters;

8 (9) consistency with applicable municipal, regional, and State plans; and

9 (10) any other factors relevant to determine the maximum beneficial use

10 and enjoyment of waters.

11 (f) Notwithstanding the provisions of subsection (c) of this section, when

12 reclassifying waters to Class A, the Secretary need find only that the

13 reclassification is in the public interest.

14 (g) The Secretary under the reclassification rule may grant permits for only

15 a portion of the assimilative capacity of the receiving waters, or may permit

16 only indirect discharges from on-site disposal systems, or both.

17 Sec. 3. EFFECTIVE DATE

18 ~~This act shall take effect on passage.~~

Sec. 1. 10 V.S.A. § 1252 is amended to read:

§ 1252. CLASSIFICATION OF HIGH QUALITY WATERS; MIXING

ZONES

(a) *The State adopts, for the purposes of individually classifying the uses of its high quality waters, the following classes and definitions thereof:*

~~*Class A. (1) Suitable for public water supply with disinfection when necessary; character uniformly excellent; or*~~

~~*(2) High quality waters which Class A(1): Waters in a natural condition that have significant ecological value; or*~~

~~*Class A(2): Waters that are suitable for a public water source with filtration and disinfection or other required treatment; character uniformly excellent.*~~

~~*Class B. Suitable Class B(1): Waters in which one or more uses are of higher quality than Class B(2) waters;*~~

~~*Class B(2): Waters that are suitable for bathing swimming and other primary contact recreation; irrigation and agricultural uses; ~~good fish~~ aquatic biota and aquatic habitat; good aesthetic value; ~~acceptable boating, fishing, and other recreational uses and suitable for public water supply~~ source with filtration and disinfection or other required treatment.*~~

* * *

Sec. 2. 10 V.S.A. § 1253 is amended to read:

*§ 1253. CLASSIFICATION OF WATERS DESIGNATED,
RECLASSIFICATION*

(a) The waters of all lakes, ponds, and reservoirs, natural or artificial, used exclusively ~~for~~ as a public water supply source prior to July 1, 1971, and all waters flowing into such lakes, ponds, and reservoirs, and all waters located above 2,500 feet altitude, National Geodetic Vertical Datum, are designated Class A waters and shall be maintained as such unless reclassified.

(b) The remaining waters, ~~except as otherwise classified by the Board prior to July 1, 1971,~~ are designated Class B(2) waters and shall be maintained as such unless reclassified. ~~All waters designated as Class C waters prior to July 1, 1992, are designated Class B waters and shall be maintained as such unless reclassified.~~

(c) On its own motion, or on receipt of a written request that the Secretary adopt, amend, or repeal a reclassification rule, the Secretary shall comply with 3 V.S.A. § 806 and may initiate a rulemaking proceeding to reclassify one or more uses of all or any portion of the affected waters in the public interest. In the course of this proceeding, the Secretary shall comply with the provisions of 3 V.S.A. chapter 25, and may hold a public hearing convenient to the waters in question. If the Secretary finds that the established classification is contrary to the public interest and that reclassification is in the public interest, he or she shall file a final proposal of reclassification in accordance with 3 V.S.A. § 841. If the Secretary finds that it is in the public interest to change the classification of any pond, lake, or reservoir designated as Class A ~~waters by subsection (a)~~

~~of this section~~ for a public water source, the Secretary shall so advise and consult with the Department of Health and shall provide in its reclassification rule a reasonable period of time before the rule becomes effective. During that time, any municipalities or persons whose water ~~supply~~ source is affected shall construct filtration and disinfection facilities or convert to a new water source ~~of water supply~~.

(d)(1) Through the process of basin planning, the Secretary shall determine what degree of water quality and classification should be obtained and maintained for those waters not classified by the Board before 1981 following the procedures in sections 1254 and 1258 of this title. Those waters shall be classified in the public interest. The Secretary shall prepare and maintain an overall surface water management plan to assure that the State water quality standards are met in all State waters. The surface water management plan shall include a schedule for updating the basin plans. The Secretary, in consultation with regional planning commissions and natural resource conservation districts, shall revise all 15 basin plans and update the basin plans on a five-year rotating basis. On or before January 15 of each year, the Secretary shall report to the House Committees on Agriculture and Forest Products, on Natural Resources and Energy, and on Fish, Wildlife and Water Resources, and to the Senate Committees on Agriculture and on Natural Resources and Energy regarding the progress made and difficulties

encountered in revising basin plans. The report shall include a summary of basin planning activities in the previous calendar year, a schedule for the production of basin plans in the subsequent calendar year, and a summary of actions to be taken over the subsequent three years. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.

(2) In developing a basin plan under this subsection, the Secretary shall:

(A) identify waters that should be reclassified ~~as Class A waters or~~ outstanding resource waters or that should have one or more uses reclassified under section 1252 of this title;

(B) identify wetlands that should be reclassified as Class I wetlands;

(C) identify projects or activities within a basin that will result in the protection and enhancement of water quality;

(D) assure that municipal officials, citizens, watershed groups, and other interested groups and individuals are involved in the basin planning process;

(E) assure regional and local input in State water quality policy development and planning processes;

(F) provide education to municipal officials and citizens regarding the basin planning process;

(G) develop, in consultation with the applicable regional planning commission, an analysis and formal recommendation on conformance with the goals and objectives of applicable regional plans;

(H) provide for public notice of a draft basin plan; and

(I) provide for the opportunity of public comment on a draft basin plan.

(3) The Secretary shall, contingent upon the availability of funding, contract with a regional planning commission to assist in or to produce a basin plan under the schedule set forth in subdivision (1) of this subsection. When contracting with a regional planning commission to assist in or produce a basin plan, the Secretary may require the regional planning commission to:

(A) conduct any of the activities required under subdivision (2) of this subsection;

(B) provide technical assistance and data collection activities to inform municipal officials and the State in making water quality investment decisions;

(C) coordinate municipal planning and adoption or implementation of municipal development regulations to better meet State water quality policies and investment priorities; or

(D) assist the Secretary in implementing a project evaluation process to prioritize water quality improvement projects within the region to assure cost effective use of State and federal funds.

(e) In determining the question of public interest, the Secretary shall give due consideration to, and explain his or her decision with respect to, the following:

(1) existing and obtainable water qualities;

(2) existing and potential use of waters ~~for~~ as a public water ~~supply~~ source, recreational, agricultural, industrial, and other legitimate purposes;

(3) natural sources of pollution;

(4) public and private pollution sources and the alternative means of abating the same;

(5) consistency with the State water quality policy established in ~~10 V.S.A. §~~ section 1250 of this title;

(6) suitability of waters as habitat for fish, aquatic life, and wildlife;

(7) need for and use of minimum streamflow requirements;

(8) federal requirements for classification and management of waters;

(9) consistency with applicable municipal, regional, and State plans;

and

(10) any other factors relevant to determine the maximum beneficial use and enjoyment of waters.

(f) Notwithstanding the provisions of subsection (c) of this section, when reclassifying waters to Class A, the Secretary need find only that the reclassification is in the public interest.

(g) The Secretary under the reclassification rule may grant permits for only a portion of the assimilative capacity of the receiving waters, or may permit only indirect discharges from on-site disposal systems, or both.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.