

1 TO THE HONORABLE SENATE:

2 The Committee on Natural Resources and Energy to which was referred
3 House Bill No. 595 entitled “An act relating to potable water supplies from
4 surface waters” respectfully reports that it has considered the same and
5 recommends that the Senate propose to the House that the bill be amended by
6 striking out Sec. 4 in its entirety and inserting in lieu thereof the following:

7 Sec. 4. 10 V.S.A. § 1982 is added to read:

8 § 1982. TESTING OF NEW GROUNDWATER SOURCES

9 (a) As used in this section, “groundwater source” means that portion of a
10 potable water supply that draws water from the ground, including a drilled
11 well, shallow well, driven well point, or spring.

12 (b) Prior to use of a new groundwater source as a potable water supply,
13 where testing is not otherwise required, the person who owns or controls the
14 groundwater source shall test the groundwater source for the parameters set
15 forth in subsection (c) of this section.

16 (c) A water sample collected under this section shall be analyzed for, at a
17 minimum: arsenic; lead; uranium; gross alpha radiation; total coliform
18 bacteria, total nitrate and nitrite, fluoride, manganese, and any other parameters
19 required by the Agency by rule.

20 (d) The Secretary, after consultation with the Department of Health, the
21 Wastewater and Potable Water Supply Technical Advisory Committee, the

1 Vermont association of realtors, the Vermont home inspectors' association,
2 private laboratories, and other interested parties, shall adopt by rule
3 requirements regarding:

4 (1) when, prior to use of a new groundwater source, the test required
5 under subsection (b) of this section shall be conducted;

6 (2) who shall be authorized to sample the source for the test required
7 under subsection (b) of this section, provided that the rule shall include the
8 person who owns or controls the groundwater source and licensed well drillers
9 among those authorized to conduct the test;

10 (3) how a water sample shall be collected in order to comply with the
11 requirements of the analyses to be performed; and

12 (4) any other requirements necessary to implement this section.

13 Sec. 5. 18 V.S.A. § 501b is amended to read:

14 § 501b. CERTIFICATION OF LABORATORIES

15 (a) The ~~commissioner~~ Commissioner may certify a laboratory that meets
16 the standards currently in effect of the National Environmental Laboratory
17 Accreditation Conference and is accredited by an approved National
18 Environmental Laboratory Accreditation Program accrediting authority or its
19 equivalent to perform the testing and monitoring:

20 (1) required under 10 V.S.A. chapter 56 and the federal Safe Drinking
21 Water Act; and

1 (2) of water from a potable water supply, as that term is defined in 10
2 V.S.A. § 1972(6).

3 (b)(1) ~~the commissioner~~ Commissioner may by order suspend or revoke a
4 certificate granted under this section, after notice and opportunity to be heard,
5 if the ~~commissioner~~ Commissioner finds that the certificate holder has:

- 6 (A) submitted materially false or materially inaccurate information;
- 7 or
- 8 (B) violated any material requirement, restriction, or condition of the
9 certificate; or
- 10 (C) violated any statute, rule, or order relating to this title.

11 (2) The order shall set forth what steps, if any, may be taken by the
12 certificate holder to relieve the holder of the suspension or enable the
13 certificate holder to reapply for certification if a previous certificate has been
14 revoked.

15 (c) A person may appeal the suspension or revocation of the certificate to
16 the board under section 128 of this title.

17 * * *

18 (f) In accrediting a laboratory to conduct testing of potable water supplies
19 under 10 V.S.A. § 1982, the Commissioner shall require a laboratory
20 accredited under this section to submit in an electronic format the results of

1 groundwater analyses conducted pursuant to 10 V.S.A. § 1982 to the
2 Department of Health and the Agency of Natural Resources.

3 Sec. 6. 10 V.S.A. § 1983 is added to read:

4 § 1983. GROUNDWATER PROTECTION; CITIZEN SUIT

5 (a) Citizen suit authorized. Any person who has an interest that is or may
6 be adversely affected may commence a civil action on his or her own behalf
7 against:

8 (1) any person, including the State of Vermont, who is alleged to be in
9 violation of a requirement of this chapter;

10 (2) any person, including the State of Vermont, who is alleged to be in
11 violation of a requirement of chapter 47 or chapter 159 of this title, and the
12 alleged violation threatens groundwater quality or poses a threat to public
13 health or the environment;

14 (3) the Secretary of Natural Resources when there is alleged a failure of
15 the Secretary to perform any non-discretionary act or duty to protect the
16 quantity or quality of groundwater under this chapter or chapter 47 or 159 of
17 this chapter.

18 (b) Prior notice required. No person may commence an action under
19 subsection (a) of this section:

1 (1) prior to 60 days after the plaintiff has given notice of the alleged
2 violation to the Secretary and to any alleged violator of the requirements of this
3 chapter or chapters 47 and 159 of this title; or

4 (2) if the Secretary or the Attorney General has commenced and is
5 diligently prosecuting a civil or criminal action in a court of the State or a court
6 of the United States to require compliance with the requirements of this
7 chapter or chapters 47 and 159 of this title.

8 (c) Venue; intervention; litigation costs

9 (1) A cause of action under this section shall be brought in the
10 environmental division of the superior court. The environmental division may
11 order the Secretary to act to enforce requirements of this chapter or chapters 47
12 and 159 of this title. The environmental division may award any penalties or
13 require any other additional action as is authorized under chapters 201 or 211
14 of this title.

15 (2) In a cause of action under this section, the Secretary, if not a party,
16 may intervene as a matter of right.

17 (3) The environmental division, in issuing a final order in a cause of
18 action brought under this section, shall award costs of litigation, including
19 reasonable attorney fees, to any prevailing or substantially prevailing party.

20 (d) Statutory or common law rights not restricted. Nothing in this section
21 shall restrict any right that a person or class of persons may have under any

1 State or federal statute or regulation or under common law to seek enforcement
2 of a requirement of this chapter or chapters 47 and 159 of this title or to seek
3 any other relief, including relief against the State.

4 Sec. 7. AGENCY OF NATURAL RESOURCES REPORT ON TOXIC

5 CHEMICAL USE IN THE STATE

6 (a) On or before December 15, 2016, the Secretary of Natural Resources
7 shall submit to the Senate Committee on Natural Resources and Energy, the
8 House Committee on Natural Resources and Energy, and the House
9 Committee on Fish, Wildlife and Water a report regarding the use or
10 management of toxic chemicals, hazardous materials, and hazardous waste in
11 the State. The report shall include:

12 (1) All information that ANR has collected on the location of sites
13 where toxic substances, hazardous materials, or hazardous waste is used,
14 stored, or managed in the State;

15 (2) All information ANR has on the proximity of sites where toxic
16 substances, hazardous materials, or hazardous waste is used, stored, or
17 managed to public water supplies, and whether and how this information is
18 made available to the public;

19 (3) All information ANR has on the proximity of sites where toxic
20 substances, hazardous materials, or hazardous waste is used, stored, or

1 managed to private wells and whether and how this information is made
2 available to the public;

3 (4) Any risk assessments that ANR has conducted regarding the threat
4 of contamination of public water supplies, private wells, or groundwater from
5 sites where toxic substances, hazardous materials, or hazardous waste is used,
6 stored, or managed;

7 (5) Any action that ANR has taken or plans to take in response to risk
8 assessments that ANR has conducted regarding the threat of contamination of
9 public water supplies, private wells, or groundwater from sites where toxic
10 substances, hazardous materials, or hazardous waste is used, stored, or
11 managed, including monitoring groundwater quality, testing private wells and
12 testing public water supplies;

13 (6) Draft legislation that:

14 (A) recommends methods of improving the collection of information
15 regarding the location of sites where toxic substances, hazardous materials, or
16 hazardous waste is used, stored, or managed and linking the location of such
17 sites to the threat of contamination of public water supplies, private wells, or
18 groundwater; and

19 (B) proposes toxic substances, hazardous materials, or hazardous
20 waste that should be added to the list of substances currently reported to ANR;
21 and

1 (C) proposes a method for funding private well testing or premium
2 groundwater mapping in areas where a risk assessment indicates there is a high
3 risk of contamination.

4 (b) The Secretary shall consult with or collaborate with interested parties
5 regarding the development of the report required by this section. Parties that
6 the Secretary shall collaborate or consult with shall include the Vermont
7 League of Cities and Towns, the regional planning commissions, the
8 Wastewater and Potable Water Supply Technical Advisory Committee,
9 Vermonters for a Clean Environment, the Vermont Natural Resources Council,
10 Vermont Public Interest Research Group, and the Associated Industries of
11 Vermont.

12 Sec. 8. EFFECTIVE DATES

13 (a) This section and Secs. 1-3 (surface water source; potable water supply),
14 5 (certification of laboratories), 6 (groundwater citizen suit), and 7 (ANR toxic
15 chemical report) shall take effect upon passage.

16 (b) Sec. 4 (testing of new groundwater sources) shall take effect upon
17 passage, except that 10 V.S.A. § 1982(b) (the requirement to test new
18 groundwater sources) shall take effect on January 1, 2017.

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3 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE