

Senate proposal of amendment

H. 495

An act relating to miscellaneous agriculture subjects

The Senate proposes to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Administrative Penalty Process * * *

Sec. 1. 6 V.S.A. § 13 is amended to read:

§ 13. ASSURANCES OF DISCONTINUANCE

(a) As an alternative to administrative or judicial proceedings, the ~~secretary~~ Secretary may accept an assurance of discontinuance of any violation. An assurance of discontinuance may include, ~~but need not be limited to:~~

- (1) specific actions to be taken;
- (2) abatement or mitigation schedules;
- (3) payment of a civil or administrative penalty and the costs of investigation; or
- (4) payment of an amount to be held in escrow pending the outcome of an action, or as restitution to aggrieved persons.

(b) An assurance of discontinuance shall be in writing, and may by its terms be filed with the ~~superior court~~ Superior Court having jurisdiction over the subject matter and become an order of the court. Evidence of a violation of an assurance of discontinuance shall be prima facie proof of the violation.

(c) Any violation of an assurance of discontinuance shall constitute a separate and distinct offense of the underlying regulatory program and shall be subject to the applicable general penalties for violations of the law under that program, in addition to any other applicable penalties.

(d) Costs of investigations collected under subsection (a) of this section shall be credited to a special fund and shall be available to the ~~agency~~ Agency to offset these costs.

Sec. 2. 6 V.S.A. § 16 is amended to read:

§ 16. NOTICE AND FAIR HEARING REQUIREMENTS

(a) The ~~secretary~~ Secretary shall use the following procedures in assessing the penalty under section 15 of this title: the alleged violator shall be given an opportunity for hearing after reasonable notice and the notice shall be served by personal service or by certified mail, ~~return receipt requested~~ sent to the last address of record on file with the Agency. If the alleged violator is not an applicant for or holder of a license, permit, registration, or certification issued

by the Agency, the notice shall be served by personal service or by certified mail, return receipt requested. The notice shall include:

(1) a A statement of the legal authority and jurisdiction under which the hearing is to be held;

(2) a A statement of the matter at issue, including reference to the particular statute or administrative rule allegedly violated and a factual description of the alleged violation;

(3) the The amount of the proposed administrative penalty; and required corrective action, abatement, or mitigation.

(4) a A warning that the decision shall become final and the penalty shall be imposed if no hearing is requested within 15 days of receipt service of the notice. The notice shall specify the requirements which that must be met in order to avoid being deemed to have waived the right to a hearing, or the manner of payment if the person elects to pay the penalty and waive a hearing.

(b) Any person who receives notification pursuant to this section shall be deemed to have waived the right to a hearing unless, within 15 days of the receipt of the notice, the person requests a hearing in writing. If the person waives the right to a hearing, the ~~secretary~~ Secretary shall issue a final order finding the person in default and imposing the penalty and any required corrective action, abatement, or mitigation. A copy of the final default order shall be ~~sent to~~ served upon the violator by certified mail, return receipt requested, or by personal service.

(c) When an alleged violator requests a hearing in a timely fashion, the ~~secretary~~ Secretary shall hold the hearing pursuant to 3 V.S.A. chapter 25.

Sec. 3. 6 V.S.A. § 17 is amended to read:

§ 17. COLLECTIONS

(a) The ~~secretary~~ Secretary may collect an unpaid administrative or civil penalty by filing a civil collection action in any ~~district or superior court,~~ Superior Court or through any other means available to ~~state~~ State agencies.

(b) The ~~secretary~~ Secretary may, subject to 3 V.S.A. chapter 25, suspend any license, certificate, registration, or permit issued pursuant to his or her authority for failure to pay a penalty under this chapter more than ~~60~~ 45 days after the penalty was issued imposed by order and served.

* * * Acceptance of Gifts of Real Property * * *

Sec. 4. 6 V.S.A. § 14 is amended to read:

§ 14. ACCEPTANCE OF GIFTS OF REAL PROPERTY

The ~~secretary~~ Secretary, with the approval of the ~~governor~~ Governor, may

accept gifts of the rights and interests in real property in the manner provided by 10 V.S.A. chapter 155. Rights or interests in real property acquired by the Secretary through transactions funded in whole or in part by the Vermont Housing and Conservation Board are deemed as accepted by the Governor.

* * * Meat Inspection * * *

Sec. 5. 6 V.S.A. § 3306(i) is amended to read:

(i) All applicants for licensure or relicensure as a commercial slaughter facility shall submit a written humane livestock handling plan or a good commercial practices plan for poultry for review and approval by the Secretary of Agriculture, Food and Markets or designee. The Secretary may suspend, revoke, or condition any commercial slaughter facility license, after notice and opportunity for hearing, for a licensee's failure to adhere to the written plan.

* * * Weights and Measures * * *

Sec. 6. 9 V.S.A. § 2730(c) is amended to read:

(c) Any person wishing to obtain a license to operate a weighing or measuring device shall annually apply to the Secretary, on forms provided by the Secretary, on or before January 1. Each application shall be accompanied by a fee as specified in this section. Except for new applicants, any applicant who applies for a license after January 1 shall pay ~~an additional late fee equal to 10 percent of the specified fee~~ a late fee as provided for under 6 V.S.A. § 1(a)(13).

* * * Working Lands * * *

Sec. 7. 6 V.S.A. § 4607(b) is amended to read:

(b) Powers. The Vermont Working Lands Enterprise Board shall have the authority:

* * *

(6) to establish an application process and, eligibility criteria, and criteria for prioritizing assistance for awarding grants, loans, incentives, and other investments in agricultural and forestry enterprises and in food and forest systems, ~~provided that the Board shall prioritize assistance under this chapter to a person engaged in farming or forestry before providing assistance to a nonprofit organization or nonprofit corporation for a project that competes with a person engaged in farming or forestry;~~

* * *

Sec. 8. WORKING LANDS ENTERPRISE BOARD; CRITERIA FOR
PRIORITIZING AWARDS

On or before January 15, 2018, the Secretary of Agriculture, Food and

Markets shall submit to the Senate Committee on Agriculture and the House Committee on Agriculture and Forestry the guidelines that the Working Lands Enterprise Board shall use in prioritizing awards of assistance under 10 V.S.A. § 4607(b)(6).

* * * Multi-year Licensing * * *

Sec. 9. 6 V.S.A. § 1 is amended to read:

§ 1. GENERAL POWERS OF AGENCY; SECRETARY OF AGRICULTURE, FOOD AND MARKETS

(a) The Agency of Agriculture, Food and Markets shall be administered by a Secretary of Agriculture, Food and Markets. The Secretary shall supervise and be responsible for the execution and enforcement of all laws relating to agriculture and standards of weight and measure. The Secretary may:

* * *

(13) Notwithstanding any law to the contrary in this title or Title 9 or 20, issue all licenses, permits, registrations, or certificates under a program administered by the Secretary for a term of up to three years; renew and issue such licenses, permits, registrations, and certificates on any calendar cycle; collect any annual fee set by law for ~~such~~ the multiyear licensure, permit, registration, or certificate on a pro-rated basis, which shall not exceed 150 percent of the annual fee for an 18-month cycle, 200 percent of the annual fee for a two-year cycle, or 300 percent of the annual fee for a three-year cycle; and conduct inspections at regulated premises at least once every three years when inspection is required by law. The authority to mandate licenses, permits, registrations, or certificates for more than one year shall not extend to any program administered by the Secretary ~~where~~ for which the annual fee is more than ~~\$125.00~~ \$175.00. The Secretary shall only provide refunds for overpayments of \$25.00 or more on a license, permit, registration, or certificate issued by the Secretary. The Secretary may assess a late fee of \$27.00, provided that the late fee is no greater than the fee due, in which case the late fee shall equal the fee due, for any license, registration, permit, or certification renewal that is received more than 30 days past expiration, unless a higher late renewal fee is otherwise prescribed by statute.

* * *

* * * Subsurface Tile Drainage * * *

Sec. 10. 6 V.S.A. § 4810a(b) is amended to read:

(b)(1) On or before December 1, 2019, and prior to prefiling a rule under 3 V.S.A. § 837, the Secretary of Agriculture, Food and Markets shall submit to the Senate Committee on Agriculture and the House Committee on Agriculture and Forestry draft rules amending the required agricultural practices, in order

to include requirements for reducing nutrient contribution to waters of the State from subsurface tile drainage. On or before ~~January 15, 2018~~ July 1, 2020, the Secretary of Agriculture, Food and Markets shall ~~amend by rule initiate rulemaking to amend~~ the required agricultural practices, in order to include requirements for reducing nutrient contribution to waters of the State from subsurface tile drainage. Upon adoption of requirements for subsurface tile drainage, the Secretary may require an existing subsurface tile drain to comply with the requirements of the RAPs for subsurface tile drainage, upon a determination that compliance is necessary to reduce adverse impacts to water quality from the subsurface tile drain.

(2)(A) Beginning on July 1, 2017, the Secretary of Natural Resources, in consultation with the Secretary of Agriculture, Food and Markets, shall establish a program to map the location of subsurface tile drainage on farms in the State and to monitor, to the extent possible, the water quality effects of subsurface tile drainage on State waters. Beginning on January 1, 2018, and annually thereafter, the Secretary of Natural Resources shall submit to the Senate Committees on Natural Resources and Energy and on Agriculture and the House Committees on Natural Resources, Fish and Wildlife and on Agriculture and Forestry a report that includes:

(i) a map of identified subsurface tile drainage in the State; and

(ii) a list of the specific response or enforcement actions taken by the Agency of Natural Resources or the Agency of Agriculture, Food and Markets to address the effects of subsurface tile drainage on the waters of the State.

(B) The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report required by this section.

* * * Use Value Appraisal; Agricultural Lands * * *

Sec. 11. 32 V.S.A. § 3752 is amended to read:

§ 3752. DEFINITIONS

As used in this subchapter:

(1) “Agricultural land” means any land, exclusive of any housesite, in active use to grow hay or cultivated crops, pasture livestock ~~or to~~, cultivate trees bearing edible fruit, or produce an annual maple product, and ~~which~~ that is 25 acres or more in size, except as provided in this subdivision (1). Agricultural land shall include buffer zones as defined and required in the Agency of Agriculture, Food and Markets’ Required Agricultural Practices rule adopted under 6 V.S.A. chapter 215. There shall be a presumption that the land is used for agricultural purposes if:

(A) it is owned by a farmer and is part of the overall farm unit; or

(B) it is used by a farmer as part of his or her farming operation under written lease for at least three years; or

(C) it has produced an annual gross income from the sale of farm crops in one of two, or three of the five, calendar years preceding of at least:

(i) \$2,000.00 for parcels of up to 25 acres; and

(ii) \$75.00 per acre for each acre over 25, with the total income required not to exceed \$5,000.00.

(iii) Exceptions to these income requirements may be made in cases of orchard lands planted to ~~fruit-producing~~ fruit-producing trees, bushes, or vines ~~which that~~ are not yet of bearing age. As used in this section, the term “farm crops” also includes animal fiber, cider, wine, and cheese, produced on the enrolled land or on a housesite adjoining the enrolled land, from agricultural products grown on the enrolled land.

* * *

(14) “Farm buildings” means all farm buildings and other farm improvements ~~which that~~ are actively used by a farmer as part of a farming operation, are owned by a farmer or leased to a farmer under a written lease for a term of three years or more, and are situated on land that is enrolled in a use value appraisal program or on a housesite adjoining enrolled land. “Farm buildings” shall include up to \$100,000.00 of the value of a farm facility processing farm crops, a minimum of 75 percent of which are produced on the farm and shall not include any dwelling, other than a dwelling in use during the ~~preceding tax year~~ prior 12 months exclusively to house one or more farm employees, as defined in 9 V.S.A. § 4469a, and their families, as a nonmonetary benefit of the farm employment. This subdivision shall not affect the application of the definition of “farming” in 10 V.S.A. § 6001(22) or the definition of “farm structure” in 24 V.S.A. § 4413(d)(1).

* * *

Sec. 12. 32 V.S.A. § 3755 is amended to read:

§ 3755. ELIGIBILITY FOR USE VALUE APPRAISALS

(a) Except as modified by subsection (b) of this section, any agricultural land, managed forestland, and farm buildings ~~which that~~ meet the criteria contained in this subchapter and in the ~~regulations~~ rules adopted by the Board shall be eligible for use value appraisal.

* * *

(d) After a ~~parcel~~ of managed forestland has been removed from use value appraisal due to an adverse inspection report under subdivision 3756(i)(1) of this title, a new application for use value appraisal ~~will~~ shall not be considered

for a period of five years, and then shall be approved by the Department of Forests, Parks and Recreation only if a compliance report has been filed with the new application, certifying that appropriate measures have been taken to bring the parcel into compliance with minimum acceptable standards for forest or conservation management.

* * *

(f) On or before ~~September~~ November 1 of each year, the owner of agricultural land or buildings enrolled in the use value program as agricultural land or buildings shall certify in writing under oath to the Commissioner that the agricultural land or buildings enrolled by that owner continue to meet the requirements for enrollment in the use value program at the time of the certification. The form of the certification shall be made on a form specified by the Director of Property Valuation and Review.

* * * Raw Milk * * *

Sec. 13. 6 V.S.A. § 2776 is amended to read:

§ 2776. DEFINITIONS

In this chapter:

(1) “Consumer” means a customer who purchases, barter for, receives delivery of, or otherwise acquires unpasteurized milk according to the requirements of this chapter.

(2) “Milk” shall have the same meaning as set forth in section 2672 of this title.

(3) “Personal consumption” means the use by a consumer of unpasteurized milk for food or to create a food product made with or from unpasteurized milk that is intended to be ingested by the consumer, members of his or her household, or any nonpaying guests.

~~(3)~~(4) “Unpasteurized milk” or “unpasteurized (raw) milk” means milk that is unprocessed.

~~(4)~~(5) “Unprocessed” means milk that has not been modified from the natural state it was in as it left the animal, other than filtering, packaging, and cooling.

* * * Department of Forests, Parks and Recreation;

Water Quality Assistance * * *

Sec. 14. 10 V.S.A. § 2622a is added to read:

§ 2622a. WATER QUALITY ASSISTANCE PROGRAM

(a) Creation of program. There is established the Water Quality Assistance Program under which the Commissioner of Forests, Parks and Recreation shall

provide technical and financial assistance to timber harvesters and others for compliance with water quality requirements in the State. The Commissioner of Forests, Parks and Recreation shall coordinate with natural resources conservation districts in the implementation of the Program.

(b) Eligible assistance. Under the Program, the Commissioner of Forests, Parks and Recreation is authorized to expend monies for the following activities in order to facilitate compliance with water quality requirements:

(1) Award financial assistance in the form of grants to timber harvesters and others to purchase or construct skidder bridges and other equipment.

(2) Purchase premade skidder bridges and other equipment to loan or lease to timber harvesters and others.

(3) Purchase available, premade skidder bridges and other equipment and provide those bridges or equipment to cooperating processing plants for sale to timber harvesters and others at cost, subject to storage and handling fees.

(4) If premade skidder bridges are not available on the commercial market, issue in a calendar year two requests for proposal for the construction of skidder bridges for delivery to cooperating processing plants for sale to timber harvesters and others at cost, subject to storage and handling fees. The Commissioner shall issue one request for proposal for the northern part of the State and one request for proposal for the southern part of the State.

(c) Financial assistance. An applicant for a grant under this section shall pay at least 10 percent of the total cost of the equipment. The dollar amount of a State grant shall be equal to the total cost of the equipment, less 10 percent of the total as paid by the applicant. A grant awarded under this section shall be awarded in accordance with terms and conditions established by the Commissioner.

(d) Spill kit. The Commissioner shall provide a person who purchases, constructs, or loans out a skidder bridge under subsection (b) of this section with a spill kit for containing or absorbing fluids released during timber harvesting activities.

Sec. 15. APPROPRIATIONS

Of the capital funds appropriated to the Agency of Natural Resources in FY 2018 for ecosystem restoration and protection, up to \$50,000.00 shall be used by the Department of Forests, Parks and Recreation for implementation of the Water Quality Assistance Program under 10 V.S.A. § 2622a.

* * * Forestry Equipment; Sales Tax; Gasoline Tax; Diesel Tax * * *

Sec. 16. 23 V.S.A. chapter 28, subchapter 1 is amended to read:

Subchapter 1: General Gasoline Tax

§ 3101. DEFINITIONS

As used in this chapter:

* * *

(3) As used in this subchapter, “gasoline or other motor fuel” or “motor fuel” shall not include the following: kerosene, diesel oil clear or undyed diesel “fuel” as defined in section 3002 of this title, “railroad fuel” as defined in section 3002 of this title, aircraft jet fuel, or natural gas in any form. Except for “railroad fuel” taxed under section 3003 of this title, the taxation or exemption from taxation of dyed diesel fuel is not addressed under this title.

* * *

Sec. 17. 32 V.S.A. § 9741 is amended to read:

§ 9741. SALES NOT COVERED

Retail sales and use of the following shall be exempt from the tax on retail sales imposed under section 9771 of this title and the use tax imposed under section 9773 of this title.

* * *

(7)(A) Sales Except as provided in subdivision (B) of this subdivision (7), sales of:

(i) motor fuels taxed or exempted under 23 V.S.A. chapter 28;

(ii) dyed diesel used to power machinery described in subdivision (51) of this section; and

(iii) dyed diesel used to propel a vehicle off the highways of the State.

(B) provided, however, that aviation Aviation jet fuel and natural gas used to propel a motor vehicle shall be taxed under this chapter with the proceeds to be allocated to the ~~transportation fund~~ Transportation Fund in accordance with 19 V.S.A. § 11.

* * *

(51) The following machinery, including repair parts, used for timber cutting, timber removal, and processing of timber or other solid wood forest products intended to be sold ultimately at retail: skidders with grapple and cable, feller bunchers, cut-to-length processors, forwarders, delimiters, loader slashers, log loaders, whole-tree chippers, stationary screening systems, and firewood processors, elevators, and screens. The Department of Taxes shall publish guidance relating to the application of this exemption.

Sec. 18. 32 V.S.A. § 9706 is amended to read:

§ 9706. STATUTORY PURPOSES

* * *

(d) The statutory purpose of the exemption for fuels for railroads and boats, to propel vehicles, and to power machinery used in the timber industry, in subdivision 9741(7) of this title is to avoid the taxation of fuels:

(1) for the types of transportation for which public expenditure on infrastructure is unnecessary;

(2) that are already subject to taxation under 23 V.S.A. chapter 27 or 28 in support of public expenditure on infrastructure or are specifically exempt from taxation under either of those chapters; and

(3) in order to promote Vermont's commercial timber and forest products economy.

* * *

(kk) The statutory purpose of the exemption for timber cutting, removal, and processing machinery in subdivision 9741(51) of this title is to promote Vermont's commercial timber and forest products economy.

* * *Nutrient Management Plans* * *

Sec. 18a. 6 V.S.A. § 61 is amended to read:

§ 61. INFORMATION COLLECTION AND CONFIDENTIALITY

(a) ~~The secretary~~ Secretary may collect information on subjects within the jurisdiction of the ~~agency~~ Agency, including data obtained from questionnaires, surveys, physical samples, and laboratory analyses conducted by the ~~agency~~ Agency. Such information shall be available upon request to the public, provided that it is presented in a form ~~which~~ that does not disclose the identity of individual persons, households, or businesses from whom the information was obtained, or whose characteristics, activities, or products the information is about.

(b) Nutrient management plans or nutrient management plan data produced or acquired by the Agency under chapter 215 of this title are exempt from public inspection and copying under the Public Records Act. The Agency may release to the public nutrient management data compiled in aggregate form, provided that the Agency does not disclose the identity of individual persons, households, or businesses from whom the information was obtained.

* * * Effective Dates * * *

Sec. 19. EFFECTIVE DATES

(a) This section and Secs. 13 (raw milk) and 14 (Forestry Water Quality

Assistance Program) shall take effect on passage.

(b) The remaining sections shall take effect on July 1, 2017.