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S.75

Introduced by Senators Rodgers, Ayer, Balint, Branagan, Bray, Campion, and
Degree

Referred to Committee on

Date:

Subject: Conservation and development; aquatic nuisance control; bottom
barriers; boat wash

Statement of purpose of bill as introduced: This bill would prohibit the
transport of additional aquatic plants and aquatic nuisance species to or from
waters of the State. The bill also would require visual inspection of vehicles,
vessels, personal watercraft, seaplanes, trailers, and other equipment for
aquatic plants and aquatic nuisance species when leaving a water of the State.
The bill also would require a boat or personal watercraft to be cleaned in a boat
wash prior to launching in a lake or pond if a public boat wash facility is
located at the lake or pond and the boat or personal watercraft is being
transported from another water. The bill would allow for enforcement of the
prohibition on transport of aquatic plants and aquatic nuisance species in both
the Judicial Bureau and the Environmental Division of the Superior Court.

An act relating to aquatic nuisance species control

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

2 Sec. 1. 10 V.S.A. § 1452 is amended to read:

3 § 1452. DEFINITIONS

4 As used in this chapter:

5 (1) “Agency” means the ~~agency of natural resources~~ Agency of Natural
6 Resources.

7 (2) “Aquatic nuisance” means undesirable or excessive substances or
8 populations that interfere with the recreational potential or aquatic habitat of a
9 body of water. Aquatic nuisances include rooted aquatic plants and animal and
10 algal populations.

11 (3) “Aquatic plant” means a plant that naturally grows in water,
12 saturated soils, or seasonally saturated soils, including algae and submerged,
13 floating-leafed, floating, or emergent plants.

14 (4) “Biological controls” ~~mean~~ means multi-cellular organisms.

15 (5) “Board” ~~means the water resources panel of the natural resources~~
16 ~~board.~~ [Repealed.]

17 * * *

18 (9) “Secretary” means the ~~secretary of natural resources~~ Secretary of
19 Natural Resources.

20 (10) “Water resources” means the waters and the values inherent or
21 potential in waters and their uses.

1 (11) “Waters” means all rivers, streams, creeks, brooks, reservoirs,
2 ponds, lakes, and springs and all bodies of surface waters, artificial or natural,
3 ~~which~~ that are contained within, flow through, or border upon the ~~state~~ State or
4 any portion of it.

5 (12) “Baitbox” means a receptacle, not exceeding 25 cubic feet in
6 volume, used for holding or keeping baitfish alive for personal use.

7 (13) “Live well” means a well for keeping fish alive in a vessel by
8 allowing water to circulate through the well.

9 (14) “Personal watercraft” shall have the same meaning as set forth in
10 23 V.S.A. § 3302.

11 (15) “Transport” means moving motor vehicles, vessels, personal
12 watercraft, seaplanes, trailers, and other equipment over land, but does not
13 include movement within the immediate area required for loading and
14 preparing vehicles, vessels, personal watercraft, seaplanes, trailers, and other
15 equipment prior to movement into or away from a body of water.

16 (16) “Vessel” means every description of watercraft used or capable of
17 being used as a means of transportation on water.

18 Sec. 2. 10 V.S.A. § 1454 is amended to read:

19 § 1454. TRANSPORT OF AQUATIC PLANTS AND AQUATIC
20 NUISANCE SPECIES

1 (a)(1) No person shall transport an aquatic plant or aquatic plant part, zebra
2 mussels (*Dreissena polymorpha*), quagga mussels (*Dreissena bugensis*), Asian
3 clam (*Corbicula fluminea*), fishhook waterflea (*Cercopagis pengoi*), rusty
4 crayfish (*Orconectes rusticus*), spiny waterflea (*Bythotrephes longimanus*), or
5 other aquatic nuisance species identified by the Secretary by rule to or from
6 any Vermont waters ~~on the outside of a vehicle, boat, personal watercraft,~~
7 ~~trailer, or other equipment.~~ This section shall not restrict proper harvesting or
8 other control activities undertaken for the purpose of eliminating or controlling
9 the growth or propagation of aquatic plants, zebra mussels, quagga mussels,
10 Asian clam, fishhook waterflea, rusty crayfish, spiny waterflea, or other
11 aquatic nuisance species.

12 (2) When leaving a water of the State and prior to transport, vehicles,
13 vessels, personal watercraft, seaplanes, trailers, and other equipment shall be
14 visually inspected for aquatic plants, aquatic plant parts, zebra mussels, quagga
15 mussels, Asian clam, fishhook waterflea, rusty crayfish, spiny waterflea, and
16 other aquatic nuisance species identified by the Secretary by rule, and if any
17 aquatic nuisance species is identified, it shall be removed.

18 (b) Prior to launching a boat or personal watercraft in a lake or pond, a
19 person shall wash the boat or personal watercraft in a boat wash facility if:

20 (1) a boat wash facility is located at the lake or pond;

1 (2) the boat or personal watercraft is being transported from another
2 water; and

3 (3) the boat wash facility is available for public use.

4 (c) The Secretary may ~~grant exceptions to persons to~~ allow the transport of
5 aquatic plants, zebra mussels, quagga mussels, Asian clam, fishhook waterflea,
6 rusty crayfish, spiny waterflea, or other aquatic nuisance species for scientific
7 ~~or purposes,~~ educational purposes, or other purposes specifically authorized by
8 the Secretary. When ~~granting exceptions allowing the transport of aquatic~~
9 ~~plants, zebra mussels, quagga mussels, or other aquatic nuisance species under~~
10 this subsection, the Secretary shall take into consideration both the value of the
11 scientific or educational purpose and the risk to Vermont surface waters posed
12 by the transport and ultimate use of the specimens. A letter from the Secretary
13 authorizing the transport must accompany the specimens during transport.

14 ~~(e)(d)~~ A Pursuant to 4 V.S.A. § 1102, a violation of this section may be
15 brought in the Judicial Bureau by any law enforcement officer, as that term is
16 defined in 23 V.S.A. § 3302(2), or, pursuant to chapter 201 of this title, a
17 violation of this section may be brought in the Environmental Division of the
18 Superior Court. ~~When a violation is brought by an enforcement officer other~~
19 ~~than an environmental enforcement officer employed by the Agency of Natural~~
20 ~~Resources, the enforcement officer shall submit to the Secretary a copy of the~~
21 ~~citation for purposes of compliance with the public participation requirements~~

1 ~~of section 8020 of this title.~~ If a violation is brought before one body, the same
2 violation shall not be brought before the other body.

3 Sec. 3. 10 V.S.A. § 1455 is amended to read:

4 § 1455. AQUATIC NUISANCE CONTROL PERMIT

5 (a) No person ~~may~~ shall use pesticides, chemicals other than pesticides,
6 biological controls, bottom barriers, structural barriers, structural controls, or
7 powered mechanical devices in waters of the State to control nuisance aquatic
8 plants, insects, or other aquatic nuisances, including lamprey, unless that
9 person has been issued a permit by the ~~secretary~~ Secretary.

10 (b) Notwithstanding other requirements set forth in chapter 47 of this title
11 to the contrary, the Secretary may issue permits under this section.

12 (c) Persons desiring a permit under this section shall make application to
13 the Secretary on a form prescribed by the Secretary.

14 (d) The Secretary shall issue a permit for the use of pesticides in waters of
15 the State for the control of nuisance aquatic plants, insects, or other aquatic
16 life, including lamprey, when the applicant demonstrates and the Secretary
17 finds:

18 (1) there is no reasonable nonchemical alternative available;

19 (2) there is acceptable risk to the nontarget environment;

20 (3) there is negligible risk to public health;

1 (4) a long-range management plan has been developed ~~which~~ that
2 incorporates a schedule of pesticide minimization; and

3 (5) there is a public benefit to be achieved from the application of a
4 pesticide or, in the case of a pond located entirely on a landowner's property,
5 there is no undue adverse effect upon the public good.

6 (e) A landowner applying to use a pesticide on a pond located entirely on
7 the landowner's property is exempt from the requirement of subdivision (d)(4)
8 of this section.

9 (f) The Secretary shall issue a permit for the control of aquatic nuisances
10 by biological controls, bottom barriers, structural barriers, structural controls,
11 powered mechanical devices, or chemicals other than pesticides when the
12 Secretary finds:

13 (1) there is acceptable risk to the nontarget environment;

14 (2) there is negligible risk to public health; and

15 (3) there is either benefit to or no undue adverse effect upon the
16 public good.

17 (g) The use of bottom barriers, structural barriers, structural controls,
18 powered mechanical devices, and copper compounds as an algaecide in waters
19 with a surface area of one acre or less located entirely on a person's property
20 and with an outlet where the flow can be controlled for at least three days is
21 exempt from the permit requirements of this section.

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(i) An aquatic nuisance control permit issued under this section shall:

(1) ~~specify~~ Specify in writing the Secretary's findings under subsection (d) or (f) of this section;

(2) ~~specify~~ Specify the location, manner, nature, and frequency of the permitted activity;

(3) ~~contain~~ Contain additional conditions, requirements, and restrictions as the Secretary deems necessary to preserve and protect the quality of the receiving waters, to protect the public health, and to minimize the impact on the nontarget environment. ~~Such conditions~~ Conditions may include requirements concerning recording, reporting, and monitoring;

(4) ~~be~~ Be valid for the period of time specified in the permit, not to exceed five years for chemical control, and not to exceed ten years for nonchemical control.

(j) An aquatic nuisance control permit issued under this chapter may be renewed from time to time upon application to the Secretary. The process of permit renewal will be consistent with the requirements of this section.

* * *

(l) No permit shall be required under this section for mosquito control activities that are regulated by the Agency of Agriculture, Food and Markets, provided that:

1 (1) Prior to authorizing the use of larvicides or pupacides in waters of
2 the State, the Secretary of Agriculture, Food and Markets shall designate
3 acceptable control products and methods for their use and issue permits
4 pursuant to 6 V.S.A. § 1083(a)(5); and

5 (2) [Repealed.]

6 (m) The Secretary may issue general permits for the use of nonchemical
7 aquatic nuisance control activities, provided that the Secretary makes the
8 findings required in subsection (f) of this section. A general permit issued
9 under this subsection is not required to specify the exact location or the
10 frequency of the permitted activity.

11 (n) The Secretary shall not require a permit under this section for the use of
12 up to 15 bottom barriers on a lake, provided that:

13 (1) the bottom barriers are managed and controlled by a lake
14 association; and

15 (2) each bottom barrier shall be of no greater size than 14 feet
16 by 14 feet.

17 Sec. 4. 4 V.S.A. § 1102(b) is amended to read:

18 (b) The Judicial Bureau shall have jurisdiction of the following matters:

19 * * *

20 (27) Violations of 10 V.S.A. § 1454(a) relating to the transport of
21 aquatic plants and aquatic nuisance species.

1 Sec. 5. 4 V.S.A. § 1107 is amended to read:

2 § 1107. APPEALS

3 (a) A decision of the hearing officer may be appealed to the Criminal
4 Division of the Superior Court, except for a decision in a proceeding under
5 subdivision 1102(b)(27) of this title. The proceeding before the Criminal
6 Division of the Superior Court shall be on the record, or at the option of the
7 defendant, de novo. The defendant shall have the right to trial by jury. An
8 appeal shall stay payment of a penalty and the imposition of points.

9 * * *

10 (e) A decision of the hearing officer in a proceeding under subdivision
11 1102(b)(27) of this title may be appealed to the Environmental Division of the
12 Superior Court created under chapter 27 of this title. The proceedings before
13 the Environmental Division shall be on the record. The defendant shall not
14 have a right to a jury trial. An attorney from the Agency of Natural Resources
15 shall represent the State in the appeal. An appeal shall stay the payment of a
16 penalty. No appeal as of right exists to the Supreme Court. On motion made
17 to the Supreme Court by a party, the Supreme Court may allow an appeal to be
18 taken to it from the Environmental Division of the Superior Court.

19 Sec. 6. 23 V.S.A. § 3317(b) is amended to read:

20 (b) A person who violates a requirement under 10 V.S.A. § 1454 shall be
21 subject to enforcement under 10 V.S.A. chapter 201 or a fine under this

1 chapter, provided that the person shall be assessed a penalty or fine of not more
2 than \$1,000.00 for each violation. A person who violates a rule adopted under
3 10 V.S.A. § 1424 shall be subject to enforcement under 10 V.S.A. chapter 201,
4 provided that the person shall be assessed a penalty of not more than \$300.00
5 for each violation. A person who violates any of the following sections of this
6 title shall be subject to a penalty of not more than \$300.00 for each violation:

7 § 3306(e) marine toilet

8 § 3312a operation of personal watercraft

9 Sec. 7. EFFECTIVE DATE

10 This act shall take effect on July 1, 2017.