

1 TO THE HONORABLE SENATE:

2 The Committee on Agriculture to which was referred House Bill No. 495
3 entitled “An act relating to miscellaneous agriculture subjects” respectfully
4 reports that it has considered the same and recommends that the Senate
5 propose to the House that the bill be amended by striking out all after the
6 enacting clause and inserting in lieu thereof the following:

7 * * * Administrative Penalty Process * * *

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

9 § 13. ASSURANCES OF DISCONTINUANCE

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

13 (1) specific actions to be taken;

14 (2) abatement or mitigation schedules;

15 (3) payment of a civil or administrative penalty and the costs of

16 investigation; or

17 (4) payment of an amount to be held in escrow pending the outcome of
18 an action, or as restitution to aggrieved persons.

19 (b) An assurance of discontinuance shall be in writing, and may by its
20 terms be filed with the ~~superior court~~ Superior Court having jurisdiction over

1 the subject matter and become an order of the court. Evidence of a violation of
2 an assurance of discontinuance shall be prima facie proof of the violation.

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

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

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

11 § 16. NOTICE AND FAIR HEARING REQUIREMENTS

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

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

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

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

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

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

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

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

2 § 17. COLLECTIONS

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

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

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

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

12 § 14. ACCEPTANCE OF GIFTS OF REAL PROPERTY

13 The ~~secretary~~ Secretary, with the approval of the ~~governor~~ Governor, may
14 accept gifts of the rights and interests in real property in the manner provided
15 by 10 V.S.A. chapter 155. Rights or interests in real property acquired by the
16 Secretary through transactions funded in whole or in part by the Vermont
17 Housing and Conservation Board are deemed as accepted by the Governor.

18 * * * Meat Inspection * * *

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

20 (i) All applicants for licensure or relicensure as a commercial slaughter
21 facility shall submit a written humane livestock handling plan or a good

1 commercial practices plan for poultry for review and approval by the Secretary
2 of Agriculture, Food and Markets or designee. The Secretary may suspend,
3 revoke, or condition any commercial slaughter facility license, after notice and
4 opportunity for hearing, for a licensee's failure to adhere to the written plan.

5 * * * Weights and Measures * * *

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

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

14 * * * Working Lands * * *

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

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

18 * * *

19 (6) to establish an application process ~~and~~ eligibility criteria, and
20 criteria for prioritizing assistance for awarding grants, loans, incentives, and
21 other investments in agricultural and forestry enterprises and in food and forest

1 systems, ~~provided that the Board shall prioritize assistance under this chapter~~
2 ~~to a person engaged in farming or forestry before providing assistance to a~~
3 ~~nonprofit organization or nonprofit corporation for a project that competes~~
4 ~~with a person engaged in farming or forestry;.~~ The Board shall give first
5 priority for awards under this subdivision to persons engaged in farming or
6 forestry. Second priority shall be given to nonprofit organizations or nonprofit
7 corporations that compete with persons engaged in farming or forestry.

8 * * *

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

11 On or before January 15, 2018, the Secretary of Agriculture, Food and
12 Markets shall submit to the Senate Committee on Agriculture and the House
13 Committee on Agriculture and Forestry the guidelines that the Working Lands
14 Enterprise Board shall use in prioritizing awards of assistance under 10 V.S.A.
15 § 4607(b)(6).

16 * * * Multi-year Licensing * * *

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

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

20 (a) The Agency of Agriculture, Food and Markets shall be administered by
21 a Secretary of Agriculture, Food and Markets. The Secretary shall supervise

1 and be responsible for the execution and enforcement of all laws relating to
2 agriculture and standards of weight and measure. The Secretary may:

3 * * *

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

1 renewal that is received more than 30 days past expiration, unless a higher late
2 renewal fee is otherwise prescribed by statute.

3 * * *

4 * * * Subsurface Tile Drainage * * *

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

6 (b) On or before December 1, 2021, and prior to prefiling of a rule under
7 3 V.S.A. § 837, the Secretary of Agriculture, Food and Markets shall submit to
8 the Senate Committee on Agriculture and the House Committee on Agriculture
9 and Forestry draft rules amending the required agricultural practices, in order
10 to include requirements for reducing nutrient contribution to waters of the State
11 from subsurface tile drainage. On or before ~~January 15, 2018~~ July 1, 2022, the
12 Secretary of Agriculture, Food and Markets shall ~~amend by rule~~ initiate
13 rulemaking to amend the required agricultural practices, in order to include
14 requirements for reducing nutrient contribution to waters of the State from
15 subsurface tile drainage. Upon adoption of requirements for subsurface tile
16 drainage, the Secretary may require an existing subsurface tile drain to comply
17 with the requirements of the RAPs for subsurface tile drainage, upon a
18 determination that compliance is necessary to reduce adverse impacts to water
19 quality from the subsurface tile drain.

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

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

3 § 3752. DEFINITIONS

4 As used in this subchapter:

5 (1) “Agricultural land” means any land, exclusive of any housesite, in
6 active use to grow hay or cultivated crops, pasture livestock ~~or to~~ cultivate
7 trees bearing edible fruit, or produce an annual maple product, and ~~which~~ that
8 is 25 acres or more in size, except as provided in this subdivision (1).

9 Agricultural land shall include buffer zones as defined and required in the
10 Agency of Agriculture, Food and Markets’ Required Agricultural Practices
11 rule adopted under 6 V.S.A. chapter 215. There shall be a presumption that the
12 land is used for agricultural purposes if:

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

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

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

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

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

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

7 * * *

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

21 * * *

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

2 § 3755. ELIGIBILITY FOR USE VALUE APPRAISALS

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

7 * * *

8 (d) After ~~a parcel of~~ managed forestland has been removed from use value
9 appraisal due to an adverse inspection report under subdivision 3756(i)(1) of
10 this title, a new application for use value appraisal ~~will~~ shall not be considered
11 for a period of five years, and then shall be approved by the Department of
12 Forests, Parks and Recreation only if a compliance report has been filed with
13 the new application, certifying that appropriate measures have been taken to
14 bring the parcel into compliance with minimum acceptable standards for forest
15 or conservation management.

16 * * *

17 (f) On or before ~~September~~ November 1 of each year, the owner of
18 agricultural land or buildings enrolled in the use value program as agricultural
19 land or buildings shall certify in writing under oath to the Commissioner that
20 the agricultural land or buildings enrolled by that owner continue to meet the
21 requirements for enrollment in the use value program at the time of the

1 certification. The form of the certification shall be made on a form specified
2 by the Director of Property Valuation and Review.

3 * * * Raw Milk * * *

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

5 § 2776. DEFINITIONS

6 In this chapter:

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

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

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

16 ~~(3)~~(4) “Unpasteurized milk” or “unpasteurized (raw) milk” means milk
17 that is unprocessed.

18 ~~(4)~~(5) “Unprocessed” means milk that has not been modified from the
19 natural state it was in as it left the animal, other than filtering, packaging, and
20 cooling.

1 * * * Department of Forests, Parks and Recreation;

2 Water Quality Assistance * * *

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

4 § 2622a. WATER QUALITY ASSISTANCE PROGRAM

5 (a) Creation of program. There is established the Water Quality Assistance
6 Program under which the Commissioner of Forests, Parks and Recreation shall
7 provide technical and financial assistance to timber harvesters and others for
8 compliance with water quality requirements in the State. The Commissioner
9 of Forests, Parks and Recreation shall coordinate with natural resources
10 conservation districts in the implementation of the Program.

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

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

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

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

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

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

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

17 Sec. 15. APPROPRIATIONS

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

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

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

3 Subchapter 1: General Gasoline Tax

4 § 3101. DEFINITIONS

5 As used in this chapter:

6 * * *

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

13 * * *

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

15 § 9741. SALES NOT COVERED

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

19 * * *

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

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

2 (ii) dyed diesel used to power machinery described in

3 subdivision (51) of this section; and

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

5 State.

6 (B) provided, however, that aviation Aviation jet fuel and natural gas

7 used to propel a motor vehicle shall be taxed under this chapter with the

8 proceeds to be allocated to the transportation fund Transportation Fund in

9 accordance with 19 V.S.A. § 11.

10 * * *

11 (51) The following machinery, including repair parts, used for timber

12 cutting, timber removal, and processing of timber or other solid wood forest

13 products intended to be sold ultimately at retail: skidders with grapple and

14 cable, feller bunchers, cut-to-length processors, forwarders, delimiters, loader

15 slashers, log loaders, whole-tree chippers, stationary screening systems, and

16 firewood processors, elevators, and screens. The Department of Taxes shall

17 publish guidance relating to the application of this exemption.

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

19 (d) The statutory purpose of the exemption for fuels for railroads and boats,

20 to propel vehicles, and to power machinery used in the timber industry, in

21 subdivision 9741(7) of this title is to avoid the taxation of fuels;

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

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

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

* * * Effective Dates * * *

9 Sec. 19. EFFECTIVE DATES

10 (a) This section and Secs. 13 (raw milk) and 14 (Forestry Water Quality
11 Assistance Program) shall take effect on passage.

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

13
14

15 (Committee vote: _____)

16
17

Senator _____

18

FOR THE COMMITTEE