

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Corrections and Institutions to which was referred
3 House Bill No. 777 entitled “An act relating to Clean Water State Revolving
4 Loan Fund” respectfully reports that it has considered the same and
5 recommends that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

7 Sec. 1. 24 V.S.A. § 4751 is amended to read:

8 § 4751. DECLARATION OF POLICY

9 It is hereby declared to be in the public interest to foster and promote timely
10 expenditures by municipalities for water systems, ~~water pollution abatement~~
11 ~~and control facilities~~ clean water projects, and solid waste management, each
12 of which is declared to be an essential governmental function when undertaken
13 and implemented by a municipality. It is also declared to be in the public
14 interest to promote expenditures for certain existing privately owned public
15 water systems and certain privately owned ~~wastewater and public and~~ potable
16 water supply systems to bring those systems into compliance with federal and
17 State standards and to protect public health and the environment. Additionally,
18 it is declared to be in the public interest to promote public-private partnerships
19 and expenditures by private entities for clean water projects to protect and
20 improve the quality of waters of the State.

1 Sec. 2. 24 V.S.A. § 4752 is amended to read:

2 § 4752. DEFINITIONS

3 As used in this chapter:

4 * * *

5 ~~(10) “Privately owned wastewater system” means a privately owned~~
6 ~~wastewater system, that receives primarily domestic type wastes. [Repealed.]~~

7 (11) ~~“Water pollution abatement and control facilities”~~ “Clean water
8 project” means “water pollution abatement and control facilities,” as defined in
9 10 V.S.A. § 1571, and such equipment, conveyances, and structural or
10 nonstructural facilities owned or operated by a municipality, and natural
11 resources projects that are needed for and appurtenant to the prevention,
12 management, treatment, storage, or disposal of stormwater, sewage, or waste,
13 or that provide water quality benefits, including a wastewater treatment
14 facility, combined sewer separation facilities, an indirect discharge system, a
15 wastewater system, flood resiliency work related to a structural facility, or a
16 groundwater protection project.

17 * * *

18 (17) “Natural resources project” means a project to protect, conserve, or
19 restore natural resources, including the acquisition of easements and land, for
20 the purpose of providing water quality benefits.

1 (18) “Sponsorship program” means an arrangement in which natural
2 resources projects are paired with water pollution abatement and control
3 facilities projects, as defined in 10 V.S.A. § 1571, for the purposes of water
4 quality improvement. Under the sponsorship program, a municipality may
5 obtain a loan for both a natural resources project and a water pollution
6 abatement and control facilities project. The loan rate and terms shall be
7 adjusted to forgive all or a portion of the natural resources project over the life
8 of the loan. Only municipalities and non-profit organizations may receive
9 funds under a sponsorship program.

10 § 4753. REVOLVING LOAN FUNDS; AUTHORITY TO SPEND; REPORT

11 (a) There is hereby established a series of special funds to be known as:

12 (1) The Vermont Environmental Protection Agency (EPA) Pollution
13 Control Revolving Fund, which shall be used, consistent with federal law, to
14 provide loans to ~~municipalities and State agencies~~ for planning and
15 construction of ~~water pollution abatement and control facilities~~ clean water
16 projects, including acquisitions of project-related easements, land, options to
17 purchase land, and temporary or permanent rights-of-way, and for
18 implementing related management programs.

19 (2) The Vermont Pollution Control Revolving Fund, which shall be used
20 to provide loans to municipalities and State agencies for planning and
21 construction of ~~water pollution abatement and control facilities~~ clean water

1 projects, including acquisitions of project-related easements, land, options to
2 purchase land, and temporary or permanent rights-of-way.

3 * * *

4 Sec. 4. 24 V.S.A. § 4754 is amended to read:

5 § 4754. LOAN APPLICATION

6 A municipality may apply for a loan, the proceeds of which shall be used to
7 acquire, design, plan, construct, enlarge, repair, or improve a ~~publicly owned~~
8 ~~water pollution abatement and pollution control facility~~ a clean water project,
9 public water supply systems as defined in subdivision 4752(9) of this title, or a
10 solid waste handling and disposal facility, or certain privately owned
11 ~~wastewater systems~~ clean water projects as described in section 4763 of this
12 title, or to implement a related management program. In addition, the loan
13 proceeds shall be used to pay the outstanding balance of any engineering
14 planning advances made to the municipal applicant under this chapter and
15 determined by the Secretary to be due and payable following construction of
16 the improvements to be financed by the proceeds of the loan. The Bond Bank
17 may prescribe any form of application or procedure required of a municipality
18 for a loan hereunder. ~~Such~~ The application shall include such information as
19 the Bond Bank shall deem necessary for the purpose of implementing this
20 chapter.

21 Sec. 5. 24 V.S.A. § 4755(a) is amended to read:

1 (a) Except as provided by subsection (c) of this section, the Bond Bank
2 may make loans to a municipality on behalf of the State for one or more of the
3 purposes set forth in section 4754 of this chapter. Each of ~~such~~ the loans shall
4 be made subject to the following conditions and limitations:

5 * * *

6 (4) Notwithstanding any other provisions of law, municipal legislative
7 bodies may execute notes and incur debt on behalf of municipalities:

8 (A) with voter approval at a duly warned meeting, for amounts less
9 than \$75,000.00; ~~or~~

10 (B) by increasing previously approved bond authorizations by up to
11 \$75,000.00 to cover unanticipated project costs or the cost of directly and
12 functionally related enhancements; or

13 (C) without voter approval, in an amount which does not exceed an
14 amount to be forgiven or cancelled upon the completion of a natural resources
15 project under the sponsorship program.

16 * * *

17 Sec. 6. 24 V.S.A. § 4758(a) is amended to read:

18 (a) Periodically, and at least annually, the Secretary shall prepare and
19 certify to the Bond Bank a project priority list of those municipalities whose
20 publicly ~~owned projects~~, or privately owned ~~wastewater systems~~, clean water
21 projects are eligible for financing or assistance under this chapter. In

1 determining financing availability for ~~water pollution abatement and control~~
2 ~~facilities~~ clean water projects under this ~~chapter~~ subchapter, the Secretary shall
3 apply the criteria adopted pursuant to 10 V.S.A. § 1628.

4 Sec. 7. 24 V.S.A. § 4763 is amended to read:

5 § 4763. ~~LOANS FOR PRIVATELY OWNED WASTEWATER SYSTEMS~~
6 TO MUNICIPALITIES FOR PRIVATELY OWNED CLEAN
7 WATER PROJECTS

8 (a) Where the ~~secretary~~ Secretary has determined that ~~the construction,~~
9 ~~repair, or replacement of a privately owned wastewater system~~ a privately
10 owned clean water project is the preferred alternative to abate or control a
11 pollution problem or to provide water quality benefits, a loan may be made to a
12 municipality from the Vermont ~~environmental protection agency (EPA)~~
13 ~~pollution control revolving fund~~ Environmental Protection Agency Pollution
14 Control Revolving Fund established in section 4753 of this title. In such cases,
15 the following conditions shall apply:

16 (1) Guaranteed repayment of the loan will be based on a municipal
17 bond, but actual repayment may be made with funds from the owner, as set
18 forth in an agreement between the owner and the municipality.

19 (2) In all cases, there shall be a binding agreement between the owner
20 and the municipality that provides for the proper operation and maintenance of

1 the ~~privately owned wastewater system~~ privately owned clean water project for
2 at least the term of the loan.

3 (3) All conditions and limitations of section 4755 of this title apply to
4 loans made under this section.

5 (4) No construction loan shall be made to a municipality under this
6 subsection, nor shall any part of any revolving loan made under this subsection
7 be expended until all of the following take place:

8 (A) The ~~secretary~~ Secretary certifies to the ~~bond bank~~ Bond Bank
9 that all land use, subdivision, public building, and water supply and wastewater
10 permits necessary to construct and operate ~~the~~ any improvements to be
11 financed by the loan have been issued to the owner of the ~~privately owned~~
12 ~~wastewater system~~ privately owned clean water project.

13 (B) The applicant municipality certifies to the ~~bond bank~~ Bond Bank
14 that the ~~private system~~ owner has secured all ~~state~~ State and federal permits,
15 licenses, and approvals necessary to construct and operate the ~~improvements~~
16 clean water project to be financed by the loan.

17 (C) The ~~secretary~~ Secretary certifies to the ~~bond bank~~ Bond Bank
18 that the loan eligibility priority established under section 4758 of this title
19 entitles the applicant municipality to immediate financing or assistance under
20 this chapter.

1 (D) The applicant municipality, in the case of applications by towns,
2 cities, and incorporated villages, and with respect to all loans awarded after
3 July 1, 1992, certifies to the ~~bond bank~~ Bond Bank that the project conforms to
4 a duly adopted capital budget and program, consistent with chapter 117 of this
5 title, for meeting the pollution control needs of the municipality.

6 (E) The applicant municipality, in the case of an application by a
7 district, certifies to the ~~bond bank~~ Bond Bank that the project conforms to a
8 capital budget and program duly adopted by the district in accordance with the
9 provisions of its charter.

10 (b) The ~~bond bank~~ Bond Bank may make loans to a municipality for the
11 preparation of final engineering plans and specifications for the construction of
12 a ~~privately owned wastewater system~~ privately owned clean water project or
13 element of such a project in the same manner as set forth in subsection 4756(b)
14 of this title.

15 Sec. 8. 24 V.S.A. § 4763a is redesignated to read:

16 § 4763a. LOANS TO MUNICIPALITIES FOR PRIVATELY OWNED
17 POTABLE WATER SUPPLIES

18 Sec. 9. 24 V.S.A. § 4763c is redesignated to read:

19 § 4763c. LOANS TO MUNICIPALITIES FOR MUNICIPAL PUBLIC
20 WATER SUPPLY SYSTEMS

21 Sec. 10. 24 V.S.A. chapter 120, subchapter 3 is redesignated to read:

1 Subchapter 3. Private Loans for Privately Owned Public Water Systems

2 Sec. 11. 24 V.S.A. chapter 120, subchapter 4 is added to read:

3 Subchapter 4. Private Loans for Clean Water Projects

4 § 4780. ELIGIBILITY AND LOAN APPLICATION

5 (a) The Vermont Economic Development Authority (VEDA) is authorized
6 to make loans on behalf of the State to private entities for a clean water project;
7 provided, however, that no State funds are used. Such loans shall be issued
8 and administered by VEDA pursuant to this subchapter.

9 (b) A private entity may apply to VEDA for a loan from the Vermont
10 Environmental Protection Agency Pollution Control Revolving Fund,
11 established in section 4753 of this title, for a clean water project. The loan
12 proceeds shall be used to acquire, design, plan, construct, enlarge, repair,
13 improve, or implement a clean water project. Loan proceeds shall not be used
14 for operation and maintenance expenses or laboratory fees for monitoring.

15 (c) The Secretary and VEDA may prescribe any form of application or
16 procedure for a loan hereunder, request from an applicant any information
17 deemed necessary to implement this subchapter, and impose an application fee
18 and an administrative fee determined reasonable and necessary to cover
19 administrative costs. Fee proceeds shall be deposited in the administrative fee
20 account established in subsection 4755(a) of this chapter.

21 § 4782. CONDITIONS OF LOAN AGREEMENT

1 (a) VEDA may make loans to applicants on behalf of the State for one or
2 more of the purposes set forth in subsection 4781(b) of this title. Each loan
3 shall be made subject to the following conditions:

4 (1) The loan shall be evidenced by a note payable over a term not to
5 exceed 30 years. Repayment shall commence not later than one year after
6 completion of the project for which loan funds have been issued.

7 (2) The loan shall be secured with assets as determined by VEDA.
8 VEDA may also require that the applicant assign all or a portion of any
9 revenues from the clean water project as security for the loan or may require
10 the establishment of a reserve fund.

11 (3) The rate of interest charged for loans shall be set by the State
12 Treasurer, taking into consideration prevailing borrowing rates available to
13 similarly situated applicants from private lenders and the administrative fees to
14 be charged to applicants. VEDA, in cooperation with the Secretary, shall
15 periodically recommend interest rates to be set by the State Treasurer that are
16 the lowest practicable rates consistent with maintaining the long-term integrity
17 of the Fund. The interest rate set by the State Treasurer may be less than the
18 prevailing borrowing rates available to similarly situated applicants from
19 private lenders, but not less than zero percent.

1 (b) The loan agreement shall specify the terms and conditions of the loan
2 and its repayment by the applicant, as well as other terms and conditions
3 determined necessary by the Secretary and VEDA.

4 (c) Disbursement of loan proceeds shall be based on certification to the
5 Secretary and VEDA by the loan recipient demonstrating that the costs for
6 which reimbursement is requested have been incurred and paid by the
7 recipient. The recipient shall provide supporting evidence of payment upon
8 the request of VEDA. Partial disbursements of loan proceeds shall be made
9 not more frequently than monthly.

10 (d) Interim financing charges or short-term interest costs may constitute an
11 allowable cost of a project for which a loan is extended, provided VEDA
12 approved in advance the terms, conditions, interest rate, and other related
13 matters concerning the financing or interest cost. In the event short-term
14 financing is unavailable to the applicant, VEDA may make interim loan
15 disbursements not more frequently than monthly to the applicant and its
16 general contractor as co-payees upon submission of a certified request for
17 payment supported by actual invoices or other evidence satisfactory to VEDA
18 of costs incurred.

19 (e) VEDA shall have the right prior to making any disbursement of the loan
20 proceeds to require confirmation from an independent registered professional

1 engineer that any work has been performed according to project plans and
2 specifications approved by the Secretary.

3 (f) VEDA may require as part of the loan agreement that the applicant
4 cause an audit of the project costs to be prepared and approved by VEDA prior
5 to VEDA's making final payment of the loan amount.

6 (g) In the event of default, any amounts owed upon the loan shall be
7 considered a debt for the purposes of 32 V.S.A. § 5932(4). VEDA may
8 recover such debt pursuant to the setoff debt collection remedy established
9 under 32 V.S.A. §§ 5933 and 5934.

10 § 4783. QUALIFICATIONS FOR ELIGIBILITY; CERTIFICATION

11 No loan to an applicant shall be made under this subchapter until:

12 (1) The applicant has certified all of the following to VEDA:

13 (A) all State and federal permits and licenses necessary to undertake
14 the project for which financing has been sought will be obtained prior to the
15 expenditure of construction funds under the loan;

16 (B) the applicant has sufficient means to pay the principal and
17 interest on the loans and to pay any anticipated costs of operating and
18 maintaining the financed project;

19 (C) if the applicant is subject to the jurisdiction of the Public Utility
20 Commission under 30 V.S.A §§ 102 and 203(6), the applicant has obtained the

1 following approvals, if such approvals are necessary for the project, and has
2 provided VEDA with copies of those approvals:

3 (i) the certificate of public good issued by the Public Utility
4 Commission pursuant to 30 V.S.A. § 231 (public good) and 30 V.S.A. § 108
5 (approving the loan); and

6 (ii) the decision and order of the Public Utility Commission
7 approving rates that are to be charged by the applicant.

8 (D) the municipality or municipalities in which the clean water
9 project is located have provided a letter of support for the project.

10 (2) The Secretary has certified to VEDA that the applicant and the
11 project qualify for financing or assistance under section 4784 of this title and
12 that the project has priority for receipt of financial assistance.

13 § 4784. LOAN PRIORITIES

14 (a) The Secretary shall at least annually prepare and certify to VEDA a list
15 of privately owned clean water projects, ranked in priority order, that are
16 eligible for financial assistance under this subchapter.

17 (b) In determining financing ability for clean water projects under this
18 subchapter, the Secretary shall apply the criteria adopted pursuant to 10 V.S.A.
19 § 1628; provided, however:

20 (1) No privately owned clean water project authorized under this
21 subchapter shall be prioritized above a municipal clean water project.

1 (2) No more than 20 percent of the funds identified in the annual State
2 intended use plan (IUP) and allocated for clean water projects may be used for
3 loans to privately owned clean water projects, unless there occurs a surplus of
4 funds, in which case those funds may be used to fund additional privately
5 owned clean water projects.

6 § 4785. LIABILITY AGAINST DEFAULT

7 Under no circumstance shall the State become responsible for owning or
8 operating a clean water project when the loan recipient defaults on a loan
9 obligation or abandons the project.

10 § 4786. ACTION FOR RECEIVERSHIP

11 Upon default of a loan, VEDA shall have the right to petition the Superior
12 Court in the county in which the clean water project is located, or the Public
13 Utility Commission for projects subject to the jurisdiction of the Commission,
14 to appoint a receiver.

15 § 4787. LOAN CONSOLIDATION

16 Loans, or the outstanding balance of loans, made for the purpose of
17 preparing engineering plans for a project may be consolidated with any
18 subsequent loans for construction.

1 or improvements, or for ~~water pollution abatement and control facilities~~ clean
2 water projects or improvements, may apply to the Department for an advance
3 under this chapter. As used in this subsection, “engineering planning” may
4 include source exploration, surveys, reports, designs, plans, specifications, or
5 other engineering services necessary in preparation for construction of the
6 types of systems or facilities referred to in this section.

7 * * *

8 Sec. 14. 24 V.S.A. § 4766 is amended to read:

9 § 4766. AWARD OF ADVANCE

10 (a) The Department may award an engineering planning advance, as
11 defined in section 4764 of this title, in an amount determined by standards
12 established by the Department, and pursuant to the following:

13 (1) for public water supply systems, as defined in subdivision 4752(9) of
14 this title, when it finds the same to be necessary in order to preserve or enhance
15 the quality of water provided to the inhabitants of the municipality, or to
16 alleviate an adverse public health condition, or to allow for orderly
17 development and growth of the municipality, except that no funds may be
18 awarded until the Department determines that the applicant has complied with
19 the provisions of 10 V.S.A. § 1676a, unless such funds are solely for the
20 purpose of determining the effect of the proposed project on agriculture; or

1 (a) Findings. The General Assembly finds that the State shall protect
2 Vermont’s lakes, rivers, and streams from pollution by implementing programs
3 to prevent sewage spills to Vermont waters and by requiring emergency
4 planning to limit the damage from spills which do occur. In addition, the
5 General Assembly finds it to be cost-effective and generally beneficial to the
6 environment to continue State efforts to ensure energy efficiency in the
7 operation of treatment facilities.

8 (b) Planning requirement. Effective July 1, 2007, the Secretary of Natural
9 Resources shall as part of a permit issued under section 1263 of this title,
10 require a pollution abatement facility, as that term is defined in ~~section 1251 of~~
11 ~~this title~~ section, to prepare and implement an operation, management, and
12 emergency response plan for those portions of each pollution abatement
13 facility that include the treatment facility, the sewage pumping stations, and the
14 sewer line stream crossing. As used in this section, “pollution abatement
15 facility” means municipal sewage treatment plants, pumping stations,
16 interceptor and outfall sewers, and attendant facilities as prescribed by the
17 Department to abate pollution of the waters of the State.

18 (c) Collection system planning. As of July 1, 2010, the Secretary of
19 Natural Resources, as part of a permit issued under section 1263 of this title,
20 shall require a pollution abatement facility, as that term is defined in ~~section~~
21 ~~1251 of this title~~ subsection (b) of this section, to prepare and implement an

1 operation, management, and emergency response plan for that portion of each
2 pollution abatement facility that includes the sewage collection systems. The
3 requirement to develop a plan under this subsection shall be included in a
4 permit issued under section 1263 of this title, and a plan developed under this
5 subsection shall be subject to public review and inspection.

6 * * *

7 Sec. 18. 10 V.S.A. § 1622 is amended to read:

8 § 1622. ELIGIBLE PROJECTS

9 As used in this subchapter, eligible project costs for water pollution
10 abatement and control facilities projects shall include equipment, conveyances,
11 and structural or nonstructural facilities needed for and appurtenant to the
12 prevention, management, treatment, storage, or disposal of sewage, waste, or
13 stormwater, and the associated costs, including planning and design costs,
14 necessary to construct the improvements, including costs to acquire land for
15 the project.

16 Sec. 19. 24 V.S.A. § 4771(a) is amended to read:

17 (a) VEDA may make loans to applicants on behalf of the State for one or
18 more of the purposes set forth in subsection 4770(b) of this title. Each such
19 loan shall be made subject to the following conditions:

20 * * *

1 (4) The rate of interest charged for loans shall be set by the State
2 Treasurer, taking into consideration prevailing borrowing rates available to
3 similarly situated applicants from private lenders and administrative fees to be
4 charged to applicants. VEDA, in cooperation with the Secretary, shall
5 periodically recommend interest rates to be set by the State Treasurer which
6 are the lowest practicable rates consistent with maintaining the long-term
7 integrity of the Fund. The interest rate set by the State Treasurer may be less
8 than the prevailing borrowing rates available to similarly situated applicants
9 from private lenders, but not less than zero percent.

10 (5)(A) Notwithstanding subdivision (4) of this subsection, a privately
11 owned nonprofit community type system may qualify for a 30-year loan term
12 at an interest rate, plus administrative fee, to be established by the Secretary of
13 Natural Resources ~~which that~~ shall be no more than three percent or less than
14 minus three percent, provided that the applicant system meets the income level
15 and annual household user cost requirements of a disadvantaged municipality
16 as defined in subdivision 10 V.S.A. § 1571(9)(A), and at least 80 percent of the
17 residential units served by the water system is continuously occupied by local
18 residents and at least 80 percent of the water produced is for residential use.

19 (B) [Repealed.]

20 (C) If the Secretary determines that a privately owned nonprofit
21 community type system qualifies for a loan under this subdivision, the

1 Secretary shall certify the loan term and interest rate to VEDA. In no instance
2 shall the annual interest rate, plus an administrative fee, be less than is
3 necessary to achieve an annual household user cost equal to one percent of the
4 median household income of the applicant water system computed in the same
5 manner as prescribed in subdivision ~~10 V.S.A. § 1624(b)(2)(B)~~ 4763c(b)(2) of
6 this title.

7 Sec. 20. EFFECTIVE DATE

8 This act shall take effect on passage.

9

10

11 (Committee vote: _____)

12

13

Representative _____

14

FOR THE COMMITTEE