

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 [Repealed.]~~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 § 4753. REVOLVING LOAN FUNDS; AUTHORITY TO SPEND; REPORT

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

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

10 (2) The Vermont Pollution Control Revolving Fund, which shall be used
11 to provide loans to municipalities and State agencies for planning and
12 construction of ~~water pollution abatement and control facilities~~ clean water
13 projects, including acquisitions of project-related easements, land, options to
14 purchase land, and temporary or permanent rights-of-way.

15 * * *

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

17 § 4754. LOAN APPLICATION

18 A municipality may apply for a loan, the proceeds of which shall be used to
19 acquire, design, plan, construct, enlarge, repair, or improve a ~~publicly owned~~
20 ~~water pollution abatement and pollution control facility~~ a clean water project,
21 public water supply systems as defined in subdivision 4752(9) of this title, or a

1 solid waste handling and disposal facility, or certain privately owned
2 ~~wastewater systems~~ clean water projects as described in section 4763 of this
3 title, or to implement a related management program. In addition, the loan
4 proceeds shall be used to pay the outstanding balance of any engineering
5 planning advances made to the municipal applicant under this chapter and
6 determined by the Secretary to be due and payable following construction of
7 the improvements to be financed by the proceeds of the loan. The Bond Bank
8 may prescribe any form of application or procedure required of a municipality
9 for a loan hereunder. ~~Such~~ The application shall include such information as
10 the Bond Bank shall deem necessary for the purpose of implementing this
11 chapter.

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

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

17 * * *

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

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

1 (B) by increasing previously approved bond authorizations by up to
2 \$75,000.00 to cover unanticipated project costs or the cost of directly and
3 functionally related enhancements; or

4 (C) without voter approval, in an amount which does not exceed an
5 amount to be forgiven or cancelled upon the completion of a project for which
6 the debt is incurred.

7 * * *

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

9 (a) Periodically, and at least annually, the Secretary shall prepare and
10 certify to the Bond Bank a project priority list of those municipalities whose
11 publicly ~~owned projects~~, or privately owned ~~wastewater systems~~, clean water
12 projects are eligible for financing or assistance under this chapter. In
13 determining financing availability for ~~water pollution abatement and control~~
14 ~~facilities~~ clean water projects under this ~~chapter~~ subchapter, the Secretary shall
15 apply the criteria adopted pursuant to 10 V.S.A. § 1628.

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

17 § 4763. ~~LOANS FOR PRIVATELY OWNED WASTEWATER SYSTEMS~~
18 TO MUNICIPALITIES FOR PRIVATELY OWNED CLEAN
19 WATER PROJECTS

20 (a) Where the ~~secretary~~ Secretary has determined that ~~the construction,~~
21 ~~repair, or replacement of a privately owned wastewater system~~ a privately

1 owned clean water project is the preferred alternative to abate or control a
2 pollution problem or to provide water quality benefits, a loan may be made to a
3 municipality from the Vermont ~~environmental protection agency (EPA)~~
4 ~~pollution control revolving fund~~ Environmental Protection Agency Pollution
5 Control Revolving Fund established in section 4753 of this title. In such cases,
6 the following conditions shall apply:

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

10 (2) In all cases, there shall be a binding agreement between the owner
11 and the municipality that provides for the proper operation and maintenance of
12 the ~~privately owned wastewater system~~ privately owned clean water project for
13 at least the term of the loan.

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

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

19 (A) The ~~secretary~~ Secretary certifies to the ~~bond bank~~ Bond Bank
20 that all land use, subdivision, public building, and water supply and wastewater
21 permits necessary to construct and operate ~~the~~ any improvements to be

1 financed by the loan have been issued to the owner of the ~~privately owned~~
2 ~~wastewater system~~ privately owned clean water project.

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

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

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

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

20 (b) The ~~bond bank~~ Bond Bank may make loans to a municipality for the
21 preparation of final engineering plans and specifications for the construction of

1 a ~~privately owned wastewater system~~ privately owned clean water project or
2 element of such a project in the same manner as set forth in subsection 4756(b)
3 of this title.

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

5 § 4763a. LOANS TO MUNICIPALITIES FOR PRIVATELY OWNED
6 POTABLE WATER SUPPLIES

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

8 § 4763c. LOANS TO MUNICIPALITIES FOR MUNICIPAL PUBLIC
9 WATER SUPPLY SYSTEMS

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

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

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

13 Subchapter 4. Private Loans for Clean Water Projects

14 § 4780. LOAN SERVICER

15 The Secretary is authorized to issue a request for proposals for a third party
16 loan servicer and to contract with the winning bidder to administer the loans
17 under this subchapter on behalf of the State. For purposes of this subchapter,
18 “loan servicer” means the third-party loan servicer with which the Secretary
19 contracts to administer the loans under this subchapter on behalf of the State.

1 § 4781. ELIGIBILITY AND LOAN APPLICATION

2 (a) A private entity may apply to the loan servicer for a loan from the
3 Vermont Environmental Protection Agency Pollution Control Revolving Fund,
4 established in section 4753 of this title, for a clean water project. The loan
5 proceeds shall be used to acquire, design, plan, construct, enlarge, repair,
6 improve, or implement a clean water project. Loan proceeds shall not be used
7 for operation and maintenance expenses or laboratory fees for monitoring.

8 (b) The Secretary and loan servicer may prescribe any form of application
9 or procedure for a loan hereunder, request from an applicant any such
10 information deemed necessary to implement this subchapter, and impose an
11 application and an administrative fee determined reasonable and necessary to
12 cover administrative costs. Fee proceeds shall be deposited in the
13 administrative fee account established in subsection 4755(a) of this chapter.

14 § 4782. CONDITIONS OF LOAN AGREEMENT

15 (a) The loan servicer may make loans to applicants on behalf of the State
16 for one or more of the purposes set forth in subsection 4781(a) of this title.
17 Each loan shall be made subject to the following conditions:

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

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

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

14 (b) The loan agreement shall specify the terms and conditions of the loan
15 and its repayment by the applicant, as well as other terms and conditions
16 determined necessary by the Secretary and the loan servicer.

17 (c) Disbursement of loan proceeds shall be based on certification to the
18 Secretary and the loan servicer by the loan recipient demonstrating that costs
19 for which reimbursement is requested have been incurred and paid by the
20 recipient. The recipient shall provide supporting evidence of payment upon

1 the request of the loan servicer. Partial disbursements of loan proceeds shall
2 be made not more frequently than monthly.

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

12 (e) The loan servicer shall have the right prior to making any disbursement
13 of the loan proceeds to require confirmation from an independent registered
14 professional engineer that any work has been performed according to project
15 plans and specifications approved by the Secretary.

16 (f) The loan servicer may require as part of the loan agreement that the
17 applicant cause an audit of the project costs to be prepared and approved by the
18 loan servicer prior to making final payment of the loan amount.

19 (g) In the event of default, any amounts owed upon the loan shall be
20 considered a debt for the purposes of 32 V.S.A. § 5932(4). The loan servicer

1 may recover such debt pursuant to the set-off debt collection remedy
2 established under 32 V.S.A. §§ 5933 and 5934.

3 § 4783. QUALIFICATIONS FOR ELIGIBILITY; CERTIFICATION

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

5 (1) The applicant has certified to the loan servicer that:

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

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

12 (C) if the applicant is subject to the jurisdiction of the Public Utility
13 Commission under 30 V.S.A §§ 102 and 203(6), the applicant has obtained the
14 following approvals, if such approvals are necessary for the project, and has
15 provided the loan servicer with copies of those approvals:

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

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

1 (2) The Secretary has certified to the loan servicer that the applicant and
2 the project qualify for financing or assistance under section 4784 of this title
3 and that the project has priority for receipt of financial assistance.

4 § 4784. LOAN PRIORITIES

5 The Secretary shall at least annually prepare and certify to the loan servicer
6 a list of privately owned clean water projects, ranked in priority order, that are
7 eligible for financial assistance under this subchapter. In determining
8 financing ability for clean water projects under this subchapter, the Secretary
9 shall apply the criteria adopted pursuant to 10 V.S.A. § 1628; however, no
10 privately owned clean water project authorized under this subchapter shall be
11 prioritized above a municipal clean water project. Additionally, no more than
12 20 percent of the funds identified in the annual State intended use plan (IUP)
13 and allocated for clean water projects may be used for loans to privately owned
14 clean water projects, unless there occurs a surplus of funds, in which case those
15 funds may be used to fund additional privately owned clean water projects.

16 § 4785. LIABILITY AGAINST DEFAULT

17 Under no circumstance shall the State or the loan servicer become
18 responsible for owning or operating a clean water project when the loan
19 recipient defaults on a loan obligation or abandons the project.

1 § 4786. ACTION FOR RECEIVERSHIP

2 Upon default of a loan, the loan servicer shall have the right to petition the
3 Superior Court in the county in which the clean water project is located, or the
4 Public Utility Commission for projects subject to the jurisdiction of the
5 Commission, to appoint a receiver.

6 § 4787. LOAN CONSOLIDATION

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

10 * * * Technical Corrections * * *

11 Sec. 12. 24 V.S.A. § 4764 is amended to read:

12 § 4764. PLANNING

13 (a) Engineering planning advance. A municipality or a combination of two
14 or more municipalities desiring an advance of funds for engineering planning
15 for public water supply systems, as defined in subdivision 4752(9) of this title,
16 or improvements, or for ~~water pollution abatement and control facilities~~ clean
17 water projects or improvements, may apply to the Department for an advance
18 under this chapter. As used in this subsection, “engineering planning” may
19 include source exploration, surveys, reports, designs, plans, specifications, or
20 other engineering services necessary in preparation for construction of the
21 types of systems or facilities referred to in this section.

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Sec. 13. 24 V.S.A. § 4766 is amended to read:

§ 4766. AWARD OF ADVANCE

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

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

(2) for planning of ~~water pollution abatement and control facilities~~ clean water projects, in order to enable a municipality to comply with water quality standards established under 10 V.S.A. chapter 47.

* * *

1 Sec. 14. 10 V.S.A. § 1251(18) is amended to read:

2 § 1251. DEFINITIONS

3 Whenever used or referred to in this chapter, unless a different meaning
4 clearly appears from the context:

5 * * *

6 (18) ~~“Pollution abatement facilities” means municipal sewage treatment~~
7 ~~plants, pumping stations, interceptor and outfall sewers, and attendant facilities~~
8 ~~as prescribed by the Department to abate pollution of the waters of the State.~~

9 [Repealed.]

10 * * *

11 Sec. 15. 10 V.S.A. § 1259(j) is amended to read:

12 (j) No person shall discharge waste from hydraulic fracturing, as that term
13 is defined in 29 V.S.A. § 503, into or from a pollution abatement facility, as
14 that term is defined in section ~~1251~~ 1278 of this title.

15 Sec. 16. 10 V.S.A. § 1278 is amended to read:

16 § 1278. OPERATION, MANAGEMENT, AND EMERGENCY RESPONSE
17 PLANS FOR POLLUTION ABATEMENT FACILITIES

18 (a) Findings. The General Assembly finds that the State shall protect
19 Vermont’s lakes, rivers, and streams from pollution by implementing programs
20 to prevent sewage spills to Vermont waters and by requiring emergency
21 planning to limit the damage from spills which do occur. In addition, the

1 General Assembly finds it to be cost-effective and generally beneficial to the
2 environment to continue State efforts to ensure energy efficiency in the
3 operation of treatment facilities.

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

14 (c) Collection system planning. As of July 1, 2010, the Secretary of
15 Natural Resources, as part of a permit issued under section 1263 of this title,
16 shall require a pollution abatement facility, as that term is defined in ~~section~~
17 ~~1251 of this title~~ subsection (b) of this section, to prepare and implement an
18 operation, management, and emergency response plan for that portion of each
19 pollution abatement facility that includes the sewage collection systems. The
20 requirement to develop a plan under this subsection shall be included in a

1 permit issued under section 1263 of this title, and a plan developed under this
2 subsection shall be subject to public review and inspection.

3 * * *

4 Sec. 17. 10 V.S.A. § 1622 is amended to read:

5 § 1622. ELIGIBLE PROJECTS

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

13 Sec. 18. 24 V.S.A. § 4771(a) is amended to read:

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

17 * * *

18 (4) The rate of interest charged for loans shall be set by the State
19 Treasurer, taking into consideration prevailing borrowing rates available to
20 similarly situated applicants from private lenders and administrative fees to be
21 charged to applicants. VEDA, in cooperation with the Secretary, shall

1 periodically recommend interest rates to be set by the State Treasurer which
2 are the lowest practicable rates consistent with maintaining the long-term
3 integrity of the Fund. The interest rate set by the State Treasurer may be less
4 than the prevailing borrowing rates available to similarly situated applicants
5 from private lenders, but not less than zero percent.

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

15 (B) [Repealed.]

16 (C) If the Secretary determines that a privately owned nonprofit
17 community type system qualifies for a loan under this subdivision, the
18 Secretary shall certify the loan term and interest rate to VEDA. In no instance
19 shall the annual interest rate, plus an administrative fee, be less than is
20 necessary to achieve an annual household user cost equal to one percent of the
21 median household income of the applicant water system computed in the same

1 manner as prescribed in subdivision ~~10 V.S.A. § 1624(b)(2)(B)~~ 4763c(b)(2) of
2 this title.

3 Sec. 19. EFFECTIVE DATE

4 This act shall take effect on passage.

5

6

7 (Committee vote: _____)

8

9

Representative _____

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FOR THE COMMITTEE