

H.495: An Act Relating to Miscellaneous Agricultural Subjects: Section by Section Summary

Secs. 1 through 3.

- The Agency of Agriculture issues administrative penalties for violations of statutes and rules it administers.
- The amendments in Sections 1 through 3 of the bill amend how the Agency issues these administrative penalties.
- The amendments are intended to clarify the administrative penalty process and conform the penalty process with Agency enforcement authority.

Sec. 1. 6 V.S.A. § 13. Assurances of Discontinuance

- Clarifies that an assurance of discontinuance (a settlement) between the Agency and a person can be used as an alternative to an administrative penalty.
- Currently, the section only allows the use of an assurance of discontinuance when the Agency is pursuing enforcement by a court.

Sec. 2. 6 V.S.A. § 16. Notice and Fair Hearing Requirements

- Amends how the Agency provides notice of an administrative penalty to an alleged violator.
 - Notice is currently served by personal service or certified mail with return receipt requested.
- Sec. 2 provides that notice shall be served by personal service or certified mail to the last address of record on file with the Agency.
- Sec. 2 also provides that if the alleged violator is not the holder of a license, permit, registration, or certification, the Agency shall send the notice return receipt requested.
 - This is because the Agency may not have an address for these persons.
- Sec. 2 also adds information that the notice to the alleged violator shall include. If the violation is of a rule, the Agency shall identify the administrative rule.
 - The notice also shall identify any required corrective action, abatement, or mitigation.

Sec. 3. 6 V.S.A. § 17. Collections

- Sec. 3 provides that the Agency can use its authority to collect unpaid administrative penalties in order to also collect unpaid civil penalties.
 - Civil penalties are issued by a court. Administrative penalties are issued by an agency.
- Sec. 3 also changes the time frame for when the Agency may suspend a license, certificate, registration, or permit for failure to pay a penalty.
 - Currently, the Agency waits 60 days before suspension. Sec. 3 changes the time to 45 days.

Sec. 4. 6 V.S.A. § 14. Acceptance of Gifts of Real Property

- Currently, the Secretary of Agriculture only can accept gifts of land if the Governor approves.
- Sec. 4 provides that if the Secretary of Agriculture acquires rights in property through a transaction funded by VHCB, the gift of property is deemed accepted by the Governor.

Sec. 5. 6 V.S.A. § 3306(i). Meat Inspection; Good Commercial Practices Plan for Poultry

- Requires all applicants for a commercial slaughter license to submit a humane handling livestock plan or a good commercial practices plan for poultry.
 - Current law does not require a poultry producer to submit a good commercial practices plan.
 - A good commercial practices plan provides measures for the humane slaughter of poultry.

Sec. 6. 9 V.S.A. § 2730(c). Weights and Measures; Late Fee

- The Agency of Agriculture administers and enforces weights and measures in the State and requires persons owning scales, scanners, and other mechanisms to obtain a license.
- Under current law, the late fee for a weights and measures license is 10% of the license fee.
 - Since the license fees can be as low as \$10, the 10% late fee is not much of a deterrent.
- Sec. 6 allows the Agency to charge a late fee under its general enforcement authority.
 - A late fee under this authority is \$27.00, but the late fee cannot be greater than the fee due.

Sec. 7. 6 V.S.A. § 4607(b). Working Lands Enterprise Board [Amended House Proposal]

- Sec. 7 clarifies how the Working Lands Enterprise Board prioritizes awards to farmers.
 - The Working Lands Enterprise Board had difficulty determining when a nonprofit organization was “competing” with a person engaged in farming or forestry. Consequently, the Board did not provide awards to some potentially deserving non-profits.
 - The amendment provides that in awarding grants to farmers and persons engaged in forestry, the Board shall give first priority to “natural persons engaged in forestry or farming. Second priority shall be provided to nonprofit organizations that compete with natural persons.

Sec. 8. Working Lands Report on Criteria for Prioritizing Awards [New language; not in House]

- The Secretary of Agriculture shall submit to the Legislature guidelines the Working Enterprise Board will use to prioritize awards to persons engaged in forestry and farming over nonprofits.

Sec. 9. 6 V.S.A. § 1. Multi-Year Licensing [New language; not in House]

- Under current law, the Agency of Agriculture is authorized by statute to set permit or license fees on a multi-year schedule—for example, for a three year term instead of a one year term.
- Under statute, the Agency can only set multi-year terms when the permit fee is \$125 or less.
- Sec. 9 would allow the Agency to set a multi-year term when the permit fee is \$175 or less.

Sec. 10. 6 V.S.A. § 4810a(b). Subsurface Tile Drainage [New language; not in House]

- Act 64 of 2015 requires the Agency of Agriculture to amend the RAPs by January 2018 to include requirements for reducing nutrient contribution to waters from subsurface tile drains.
- Since 2015, the Agency has studied if and how to regulate subsurface tile drains—the science is not clear on the need to regulate tile drains or how to control nutrients from tile drains.
 - The Agency asked for more time to review the issue, and the Committee on Agriculture wants to provide input on proposed changes to the RAPs that regulate subsurface tile drains.
- Sec. 10 provides that on or before Dec. 1, 2021, the Agency shall submit draft rules amending the RAPs to include requirements for subsurface tile drains.
- Sec. 10 also states the Agency shall not initiate rulemaking to amend the RAPs until July 1, 2022.
 - So, the Agency gets more time to review the issue and develop rules, and the General Assembly gets 6 months to review the draft rules and take legislative action if necessary.

Secs. 11-12. 32 V.S.A. §§ 3752, 3756, and 3755. Use Value Appraisal [New language; not in House]

- Sec. 11, 32 V.S.A. § 3752, amends the definition of “agricultural land” under use value to clarify that riparian buffers required under the RAPs are agricultural land.
- Sec. 12, 32 V.S.A. § 3755, amends the section to conform to changes made under Sec. 12. Sec. 13 also moves from September 1 to November 1, the date by which the owner of agricultural land enrolled in use value must certify continued compliance with the eligibility criteria.
 - The Department of Taxes asked to move the date so that the dates for initial application to the program and the date for certification of continued compliance are not on the same day.

Sec. 13, 6 V.S.A. § 2776. Raw Milk [New language; not in House]

- Adds definition of “milk” to the raw milk chapter requirements to clarify that milk from cows, goats, sheep, and water buffalo may be sold as raw milk.

Sec. 14-15. 10 V.S.A. § 2622a. Water Quality Assistance Program [New language; not in House]

- Sec. 14 creates a Water Quality Assistance Program in the Department of Forests, Parks and Recreation to provide assistance to timber harvesters to comply with water quality requirements.
- Under this section, the Department shall assist harvesters with purchasing, loaning, or leasing skidder bridges and other equipment to cross waters and avoid pollution
- Sec. 15 provides that of the \$6 million appropriated to ANR for water quality programs under the capital bill, \$50,000 shall be used for the Water Quality Assistance Program.

Secs. 16-18. Diesel Tax; Sales Tax; Forestry Equipment [New language; not in House]

These sections resolve conflicting interpretations and confusion about the taxation of dyed diesel fuel, and amend the list of sales tax exemptions to clarify an existing exemption for dyed diesel and to create a sales tax exemption for forestry equipment and for dyed diesel used to power such equipment.

- Sec. 16 amends 23 V.S.A. § 3101 to provide that, with the exception of railroad fuel, the taxation of dyed diesel is not addressed under the motor vehicle laws.
- Sec. 17 amends 32 V.S.A. § 9741, the list of sales tax exemptions.
 - Sec. 9741(7) clarifies that dyed diesel used to propel a vehicle off-road is exempt from the sales tax, which reflects an existing interpretation of the Tax Department. (Subdiv. (7)(A)(iii)).
 - Sec. 9741(7) also creates an exemption from the sales tax for dyed diesel used to power machinery used for commercial forestry. (Subdiv. (7)(A)(ii)).
 - § 9741(51): exempts from the sales tax machinery or equipment used for commercial forestry if the machinery or equipment is used 75% or more of the time for commercial forestry.
 - This would make forestry equipment consistent with agricultural equipment.
 - This language was passed by the Senate in S.34.
- Sec. 18 provides the statutory purposes for the sales tax exemptions under Sec. 17.
 - The statutory purpose for the sales tax exemption for motor fuels is amended to reflect the changes made in Sec. 17 of the bill and to more accurately reflect the scope of the existing motor fuel exemption.

The statutory purpose for the exemption from the sales tax for commercial forestry equipment is to promote the State's commercial timber and forest products economy.

Sec. 19. Effective Dates

- The raw milk and water quality assistance program for timber harvesters goes into effect on passage.
- All other sections take effect July 1, 2017.