

Act 154 (H.595): An Act Relating to Potable Water Supplies from Surface Waters
Section by Section Summary

A. HOUSE PASSED BILL

Sec. 1. 10 V.S.A. § 1978(a): ANR Potable Water Supply Required Rulemaking Authority

- Directs ANR to adopt rules authorizing surface water as a potable water supply for residences.

Sec. 2. 10 V.S.A. § 1981: Surface Water Source; Potable Water Supply

- Directs ANR to approve the use of a surface water as a source of a potable water supply if the following conditions are met:
 - The building can only be used as a single family residential dwelling by the owner of record.
 - Only one single family residence at a time can be served by the potable water supply.
 - The residence shall not be used as a home occupation (i.e. home office) except for home offices that only employ family members and are not visited by the public in a manner or duration that would presume the need for use of a potable water supply.
 - A professional engineer shall design the potable water supply.
 - Only surface waters that meet the criteria adopted by ANR by rule are eligible.
 - The applicant or permit holder complies with all other criteria and requirements adopted by the Secretary by rule.

Sec. 3. Surface Water Source; Rulemaking

- Directs ANR to adopt by July 1, 2017 rules for use of surface water as a potable water supply.

Sec. 4. Technical Advisory Committee Recommendations for Groundwater Testing

- Requires the Secretary of Natural Resources to seek the recommendations of the Technical Advisory Committee on Wastewater Systems and Potable Water Supplies regarding whether and how to test for contamination in groundwater sources used by a potable water supply.
- The TAC's recommendation shall address:
 - Whether testing of groundwater sources should be required;
 - In what situations testing should be required;
 - From what part of a potable water supplies should samples be taken;
 - Who should take the samples; and
 - What contaminants should be tested for.
- ANR shall submit the TAC's recommendations to the General Assembly by January 15, 2017.

Sec. 5. 10 V.S.A. § 1283(b). Environmental Contingency Fund (ECF)

- Authorizes ANR to disburse funds from the ECF for investigation and cleanup of hazardous materials by voluntary responsible parties without the requirement that the responsible parties contributed to the fund.
- Also authorizes disbursements from the fund to pay for the costs of oversight or conducting assessment of a natural resource damaged by the release of a hazardous material and being assessed for damages.
- Also authorizes disbursements from the fund to pay the costs of oversight of conducting restoration or rehabilitation to a natural resource damaged by the release of a hazardous material and being restored.

Sec. 6. 10 V.S.A. § 6615c. Information Requests

- Authorizes ANR, prior to initiation of litigation, to require a person who may be liable for a hazardous material release to furnish certain information.
 - Requested information includes: the type of chemical at a facility; the nature of a release; and, if a person refuses to perform or respond, financial information about ability to pay for cleanup.
- A person who receives a request shall allow ANR to access a facility and copy responsive records.
- A person receiving a request may assert privileges available under statute, rule, or common law.
- Information that is a trade secret or financial information shall not be public records.
- This information request authority is similar to U.S. EPA's authority under CERCLA.

Sec. 7. 10 V.S.A. § 8005(b). ANR Enforcement Authority

- Amends ANR enforcement authority to authorize enforcement of information requests.

Sec. 8. 10 V.S.A. § 6615d. Natural Resource Damages (NRD)

- Authorizes ANR to assess against a person who is liable for a hazardous material release damages for injury, destruction, or loss of natural resources.
 - The measure of NRD shall include the costs of restoring or rehabilitating the injured, damaged, or destroyed natural resources to its baseline condition.
- ANR shall adopt rules to implement the NRD authority.
- The rules shall include a methodology for assessment and value of natural resources, including requirements for preassessment, damage assessment, and post-damages assessment.
- A person who identified the nature and degree of NRD in a permit application and who is operating under the terms of a permit would not be subject to natural resources damages.
- The statutory authority to seek NRD does not limit ANR from seeking similar damages under other state, federal, or common law.
- ANR or other trustee cannot double recover for NRD—i.e. they cannot recover costs recovered under other authority.

Sec. 9. ANR Natural Resource Damages Rules; Commencement

- ANR shall consult with interested parties and parties with expertise in natural resource damage assessments and valuation in adoption of the natural resource damage rules. ANR shall convene a working group for this consultation on or before July 1, 2016.
- On or before February 1, 2017, ANR shall submit a draft NRD rules to the General Assembly.
- ANR shall commence the NRD rules by July 1, 2017 and shall conclude rulemaking by March 1, 2018.
- ANR shall not seek natural resource damages under 10 VSA 6615d until the rules are adopted.

Sec. 10. ANR Working Group on Toxic Chemicals in the State

- Requires ANR to establish a working group of interested parties and parties with expertise in the field of toxic chemicals to develop recommendations for how to improve the ability of the State to:
 - prevent exposure of citizens and communities to toxic chemicals, hazardous materials, or haz. waste;
 - identify and regulate use of currently unregulated toxic chemicals or hazardous materials; and
 - inform communities and citizens of potential exposure to toxic chemicals, including contaminated groundwater, public drinking water systems, and private potable water supplies.

Sec. 11. 18 V.S.A. § 1775. Chemicals of High Concern to Children

- Extends until January 1, 2017, the initial deadline by which a manufacturer of a children's product containing a chemical of high concern must report to the Department of Health.
- The section also sets the next reporting date for manufacturers as August 31, 2018, to be consistent with Washington State. Biennially thereafter, the reports will be required by August 31.

Sec. 12. Basin Planning; Natural Resources Conservation Council

- Amends a provision of Act 64, the State Clean Water Act, from last year.
- ANR is required to conduct basin planning of the watersheds of the State.
- Act 64 required ANR, contingent on available funds, to contract with regional planning commissions in conducting some or all of the components of developing a basin plan.
- This section provides that ANR shall contract with regional planning commissions and natural resource conservation districts (council) in the development of the basin plan.

Sec. 13. Water Quality Standards Certification as Condition of State Funded Grants

- Requires the Secretary of Administration to amend the Standard State Provisions for Contracts and Grants, referred to as Attachment C, to require any applicant for a State-funded grant to certify that the applicant is in good standing with ANR and the Agency of Agriculture, Food and Markets.
- "Good standing" means the applicant is in compliance with federal and State water quality laws and the applicant is not a named party to any administrative order, consent decree, or judicial order related to water quality standards.
- "Applicant" includes businesses in which the applicant has a greater than 10 percent interest or land owned or controlled by the applicant.

Sec. 14. Effective Dates

- Much of the bill takes effect on passage, except that:
 - Sec. 13 water quality certification as a condition of State grants takes effect July 1, 2016; and
 - Sec. 2 permitting surface water as a potable water supply takes effect July 1, 2017