

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Natural Resources, Fish, and Wildlife to which was
3 referred House Bill No. 108 entitled “An act relating to Vermont standards for
4 issuing a Clean Water Act section 401 certification” respectfully reports that it
5 has considered the same and recommends that the bill be amended by striking
6 out all after the enacting clause and inserting in lieu thereof the following:

7 Sec. 1. 10 V.S.A. § 1253(h) is added to read:

8 (h)(1) The Secretary shall administer a program to review activities that
9 require a federal license or permit that may result in a discharge to a water or
10 adversely impact a wetland function or value to ensure that the activities
11 comply with the Vermont Water Quality Standards, as well as with any other
12 appropriate requirement of State law, including:

13 (A) 10 V.S.A. chapter 37 (wetlands protection and water quality
14 management);

15 (B) 10 V.S.A. chapter 41 (regulation of streamflow);

16 (C) 10 V.S.A. chapter 49A (lakeshore protection standards);

17 (D) 10 V.S.A. § 1264 (stormwater management);

18 (E) 29 V.S.A. chapter 11 (management of lakes and ponds); and

19 (F) The Agency of Natural Resources Rules for Water Withdrawals
20 for Snowmaking.

1 (2) The Secretary of Natural Resources shall deny any application for
2 certification under Section 401 of the Clean Water Act, unless the proposed
3 project is subject to an exemption adopted by the Secretary by rule, unless the
4 applicant demonstrates:

5 (A) There is no practicable alternative to the proposed project that
6 would have less adverse impact on waters and wetlands of the State, provided
7 that the alternative does not have other significant adverse human health,
8 safety, or environmental consequences. An alternative is considered
9 practicable if it is available and capable of being done after taking into
10 consideration cost, existing technology, and logistics in light of overall project
11 purposes. When a proposed project would result in an impact to a wetland, in
12 order for the Secretary to make a determination that there is no practicable
13 alternative, the applicant shall demonstrate that they have avoided and
14 minimized impacts to the wetland to the greatest extent practicable.

15 (B) The proposed project will not result in the violation of any water
16 quality criteria established in the Vermont Water Quality Standards.

17 (C) The proposed project will not cause or contribute to the
18 degradation of any water or wetland in a manner that would violate the State's
19 antidegradation policy.

1 Sec. 2. AGENCY OF NATURAL RESOURCES; VERMONT WATER
2 QUALITY STANDARDS; RULEMAKING

3 The Secretary of Natural Resources shall amend the Vermont Water Quality
4 Standards (VWQS) to include the following:

5 (1) An amendment to the Classification of State Waters to clarify that
6 with regard to all Class I and II wetlands, as defined in 10 V.S.A. § 902, the
7 uses to be protected include the functions and values of the wetland as
8 described in Section 5 of the Vermont Wetland Rules.

9 (2) An amendment to the antidegradation policy to clarify that wetlands
10 and their functions and values shall be protected as described by the Vermont
11 Wetland Rules.

12 (3) Any additional provisions that the Secretary of Natural Resources
13 determines are necessary to implement the requirements of 10 V.S.A.
14 § 1253(h), including any exemptions to the requirements of 10 V.S.A.
15 § 1253(h)(2) for projects that are not likely to have significant impacts on
16 water quality or wetland functions or values. Road or highway projects shall
17 be exempt from the requirements of 10 V.S.A. § 1253(h)(2).

18 Sec. 3. RULEMAKING IMPLEMENTATION; TIMING

19 (a) The Secretary of Natural Resources shall file with the Secretary of State
20 under 3 V.S.A. § 838 a copy of the proposed rules required by Sec. 2 of this act
21 within 90 days from the effective date of this act.

1 (b) On or before January 15, 2022, the Secretary of Natural Resources shall
2 submit to the House Committee on Natural Resources, Fish, and Wildlife and
3 the Senate Committee on Natural Resources and Energy a report regarding the
4 status of the rulemaking required by Sec. 2 of this act. The report shall include
5 a draft of the rules.

6 (c) On or before March 1, 2022, the Secretary of Natural Resources shall
7 file with the Secretary of State under 3 V.S.A. § 841 a final proposal of the
8 rules required by Sec. 2 of this act.

9 Sec. 4. EFFECTIVE DATE

10 This act shall take effect on passage.

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16 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE