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Grey highlighting = Language still at issue
Green highlighting = Proposal of Mr. Brabant
Blue highlighting = Proposal of ANR and advocates

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 Clean Water Act section 401
9 certification program to review activities that require a federal license or
10 permit to ensure that a proposed activity complies with the Vermont Water
11 Quality Standards, as well as with any other appropriate requirement of State
12 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.

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1 (2) The Secretary of Natural Resources shall deny any application for
2 certification under Section 401 of the Clean Water Act, unless the applicant
3 demonstrates:

4 (A) There is no practicable alternative to the proposed activity that
5 would have a less adverse impact on waters and wetlands of the State, and
6 provided that any proposed alternative shall not have other significant adverse
7 human health, safety, or environmental consequences; or

8 (B) The proposed activity will not result in the violation of any
9 applicable water quality criteria established in the Vermont Water Quality
10 Standards.

11 (C) The proposed activity will not result in a violation of the State's
12 antidegradation policy. [Mr. Brabant proposal: where an alternatives analysis
13 of the activity is required under Section 404 of the Clean Water Act.]

14 (3)(A) An alternative is considered practicable under subdivision (2)(A)
15 of this subsection if it is available and capable of being completed after taking
16 into consideration cost, existing technology, and logistics in light of overall
17 purposes of the proposed activity.

18 (B) Failure to comply with the requirements of subdivision (2)(A) of
19 this subsection shall not be the basis for denial of an application for a

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1 certification under Section 401 of the Clean Water Act if the proposed activity
2 is exempt from those requirements under a rule adopted by the Secretary.

3 (4) The Secretary may issue a general permit or may develop an
4 application for an applicant demonstrate compliance with the requirements of
5 subdivision (h)(2)(A) of this section.

6 [Alternative proposal for subdivision (4) from ANR and advocates:

7 (4) The Secretary may issue a certification required by this subsection to
8 any general permit or authorization issued by a federal agency. An applicant's
9 compliance with that federal permit or authorization shall be presumed to be in
10 compliance with the certification, unless the Secretary determines that an
11 individual review of the applicant's activity is necessary to assure compliance
12 with the Vermont Water Quality Standards and other applicable State laws.]

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

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

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

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

4 (3) Any additional provisions that the Secretary of Natural Resources
5 determines are necessary to implement the requirements of 10 V.S.A.
6 § 1253(h), including any exemptions to the requirements of 10 V.S.A.
7 § 1253(h)(2)(A) for projects that are not likely to have significant impacts on
8 water quality or wetland functions or values. State or municipal road or
9 highway projects shall be exempt from the requirements of 10 V.S.A. §
10 1253(h)(2)(A).

11 Sec. 3. RULEMAKING IMPLEMENTATION; TIMING

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

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

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

4 Sec. 4. EFFECTIVE DATES

5 (a) This section and Sec. 2, VWQS rulemaking, shall take effect on
6 passage.

7 (b) Sec. 1, certification program, shall take effect on the effective date of
8 the rules required to be adopted under Sec. 2.

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13 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE