

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.

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 all of the following:

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;

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; and

11 (C) the proposed activity will not result in a violation of the State’s
12 antidegradation policy.

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

17 (B) Failure to comply with the requirements of subdivision (2)(A) of
18 this subsection (h) shall not be the basis for denial of an application for a
19 certification under Section 401 of the Clean Water Act if the proposed activity
20 is exempt from those requirements under a rule adopted by the Secretary.

1 (4) The Secretary may issue a certification required by this subsection to
2 any general permit or authorization issued by a federal agency. An applicant’s
3 compliance with that federal permit or authorization shall be presumed to be in
4 compliance with the certification, unless the Secretary determines that an
5 individual review of the applicant’s activity is necessary to assure compliance
6 with the Vermont Water Quality Standards and other applicable State laws.

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

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

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

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

18 (3) Any additional provisions that the Secretary of Natural Resources
19 determines are necessary to implement the requirements of 10 V.S.A.
20 § 1253(h), including any exemptions to the requirements of 10 V.S.A.
21 § 1253(h)(2)(A) for projects that are not likely to have significant impacts on

1 water quality or wetland functions or values. State or municipal road or
2 highway projects that require a certification under Section 401 of the Clean
3 Water Act shall be exempt from the requirements of 10 V.S.A.
4 § 1253(h)(2)(A) when a separate alternatives analysis is otherwise required
5 under State or federal law.

6 Sec. 3. RULEMAKING IMPLEMENTATION; TIMING

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

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

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

18 Sec. 4. EFFECTIVE DATES

19 (a) This section and Secs. 2 and 3, VWQS rulemaking, shall take effect on
20 passage.

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

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7 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE