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H.466

Introduced by Representatives Dolan of Waitsfield and Sheldon of Middlebury

Referred to Committee on

Date:

Subject: Conservation and development; regulation of stream flow; surface
water withdrawal; interbasin transfer

Statement of purpose of bill as introduced: This bill proposes to regulate
surface water withdrawals and interbasin transfers of surface water occurring
in the State.

An act relating to surface water withdrawals and interbasin transfers

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 10 V.S.A. chapter 41 is amended to read:

CHAPTER 41. REGULATION OF STREAM FLOW

* * *

§ 1002. DEFINITIONS

Wherever used or referred to in this chapter, unless a different meaning
clearly appears from the context:

(1) “Artificial regulation of stream flow” means the intermittent or
periodic manipulation of water levels and the intermittent or periodic
regulation of discharge of water into the stream below the dam.

1 (2) “Banks” means that land area immediately adjacent to the bed of the
2 stream, which is essential in maintaining the integrity thereof.

3 (3) “Basin” means the third-level, 6-digit unit of the hydrologic unit
4 hierarchy as defined by the U.S. Geological Survey (USGS), Federal Standards
5 and Procedures for the National Watershed Boundary Dataset, Chapter 3 of
6 Section A, Book 11. “Basin” is also referred to as “Hydrologic Unit Code 6”
7 or “HUC-6”.

8 (4) “Bed” means the maximum area covered by waters of the stream for
9 not less than 15 consecutive days in one year.

10 (5) “Berm” means a linear fill of earthen material on or adjacent to the
11 bank of a watercourse that constrains waters from entering a flood hazard area
12 or river corridor, as those terms are defined in subdivisions 752(3) and (11) of
13 this title.

14 ~~(4)~~(6) “Board” means the Natural Resources Board.

15 (7) “Capacity” means the maximum volume of water capable of being
16 withdrawn by the water withdrawal system.

17 ~~(5)~~(8) “Cross section” means the entire channel to the top of the banks.

18 ~~(6)~~(9) “Dam” applies to any artificial structure on a stream, or at the
19 outlet of a pond or lake, that is utilized for holding back water by ponding or
20 storage together with any penstock, flume, piping, or other facility for

1 transmitting water downstream to a point of discharge, or for diverting water
2 from the natural watercourse to another point for utilization or storage.

3 ~~(7)~~(10) “Department” means the Department of Environmental
4 Conservation.

5 ~~(8)~~(11) “Existing surface withdrawal” means a surface water withdrawal
6 that exists prior to January 1, 2023.

7 (12) “Frequency” means how often water will be withdrawn from a
8 surface water over a period of time.

9 (13) “Instream material” means:

10 (A) all gradations of sediment from silt to boulders;

11 (B) ledge rock; or

12 (C) large woody debris in the bed of a watercourse or within the
13 banks of a watercourse.

14 (14) “Interbasin transfer” means the conveyance of surface water
15 withdrawn from a basin for use in another basin.

16 (15) “Large woody debris” means any piece of wood within a
17 watercourse with a diameter of 10 or more inches and a length of 10 or more
18 feet that is detached from the soil where it grew.

19 ~~(9)~~(16) “Person” means any individual; partnership; company;
20 corporation; association; unincorporated association; joint venture; trust;

1 municipality; the State of Vermont or any agency, department, or subdivision
2 of the State; any federal agency; or any other legal or commercial entity.

3 (17) “Rate of withdrawal” means the volume of surface water that is
4 withdrawn over a period of time, as reported in gallons per minute.

5 (18) “Reasonable and feasible” means available and capable of being
6 implemented after consideration of cost, existing technology, logistics in light
7 of the overall project purpose, environmental impact, and ability to obtain all
8 necessary approvals for implementation.

9 (19) “Secretary” means the Secretary of Natural Resources, or the
10 Secretary’s duly authorized representative.

11 (20) “Surface water” means all rivers, streams, creeks, brooks,
12 reservoirs, ponds, lakes, springs, and all bodies of surface waters that are
13 contained within, flow through, or border upon the State or any portion of it.

14 “Surface water” shall not include the following:

15 (A) groundwater as defined in section 1391 of this title;

16 (B) artificial waterbodies as defined under section 29A-101(d) of the
17 Vermont Water Quality Standards;

18 (C) waste treatment systems, including waste management systems
19 constructed as part of a best management practice approved under 6 V.S.A.
20 chapter 215;

1 (D) treatment ponds, lagoons, or wetlands created solely to meet the
2 requirements of a permit issued for a discharge; and

3 (E) constructed ponds or other impoundments that are used for
4 irrigation or watering of livestock and that are not subject to the Vermont
5 Water Quality Standards.

6 (21) “Vermont Water Quality Standards” means the standards adopted
7 pursuant to chapter 47 and subdivision 6025(d)(3) of this title.

8 ~~(10)~~(22) “Watercourse” means any perennial stream. “Watercourse”
9 ~~shall~~ does not include ditches or other constructed channels primarily
10 associated with land drainage or water conveyance through or around private
11 or public infrastructure.

12 ~~(11) “Secretary” means the Secretary of Natural Resources, or the~~
13 ~~Secretary’s duly authorized representative.”~~

14 (23) “Watershed” means a region containing waters that drain into a
15 particular brook, stream, river, or other body of water.

16 (24) “Withdrawal” means the intentional diversion from a surface water
17 by pumping, gravity, or other method for the purpose of being used for
18 irrigation, industrial uses, snowmaking, livestock watering, water supply,
19 aquaculture, or other off-stream uses. “Withdrawal” does not include
20 hydroelectric projects that are regulated by the Federal Energy Regulatory

1 Commission or the Public Utility Commission. “Withdrawal” does not include
2 direct consumption of surface water by livestock.

3 ~~(12) “Berm” means a linear fill of earthen material on or adjacent to the~~
4 ~~bank of a watercourse that constrains waters from entering a flood hazard area~~
5 ~~or river corridor, as those terms are defined in subdivisions 752(3) and (11) of~~
6 ~~this title.~~

7 ~~(13) “Large woody debris” means any piece of wood within a~~
8 ~~watercourse with a diameter of 10 or more inches and a length of 10 or more~~
9 ~~feet that is detached from the soil where it grew.~~

10 * * *

11 Subchapter 4. Surface Water Withdrawals and Interbasin Transfers

12 § 1041. POLICY ON SURFACE WATER WITHDRAWALS FOR
13 OFF-STREAM USES OTHER THAN SNOWMAKING

14 (a) This subchapter is intended to establish policy and standards for surface
15 water withdrawals that are consistent with section 1001 and chapter 47 of this
16 title, including the Vermont Water Quality Standards.

17 (b) The policy established under this subchapter is to:

18 (1) assure the protection, maintenance, and restoration of the chemical,
19 physical, and biological water quality, including water quantity, necessary to
20 sustain aquatic communities and stream function;

1 (2) help to provide for and enhance the viability of those sectors and
2 industries that rely on the use of surface waters and are important to Vermont's
3 economy;

4 (3) permit surface water withdrawals and the construction of
5 appurtenant facilities and related systems for uses other than snowmaking,
6 based on an analysis of the need for water and the consideration of alternatives,
7 and consistent with this and related policies and other applicable laws and
8 rules; and

9 (4) recognize that existing users of the State's waters for off-stream uses
10 that may have an adverse effect on water quality should have time and
11 opportunity to improve water quality.

12 § 1042. REGISTRATION AND REPORTING; EXCEPTIONS

13 (a) Registration. Beginning on January 1, 2023, any person withdrawing
14 5,000 gallons or more of surface water within a 24-hour period shall register
15 with the Secretary. Registration shall be made on a form provided by the
16 Secretary, and shall include the following information:

17 (1) the location of each withdrawal, including each impacted surface
18 water;

19 (2) the frequency and rate of each withdrawal;

20 (3) a description of the use or uses of the water to be withdrawn;

21 (4) the capacity of the system to be used for the withdrawal; and

1 (5) a schedule for the withdrawal.

2 (b) Report. Beginning on January 1, 2023, a person that is required to
3 register a surface water withdrawal pursuant to subsection (a) of this section
4 shall file an annual report with the Secretary. Reports shall be filed annually
5 by January 15 of the following year. The report shall be made on a form
6 provided by the Secretary and shall include all of the following information:

7 (1) the total amount of water withdrawn each month;

8 (2) the location of each withdrawal, including each impacted surface
9 water;

10 (3) the daily maximum withdrawal for each month;

11 (4) the date of daily maximum withdrawal; and

12 (5) any other information required by the Secretary.

13 (c) Methods of estimating withdrawals. The following methods shall be
14 used to report the amounts of withdrawn surface water required to be reported
15 under subsection (b) of this section:

16 (1) Withdrawals of between 5,000 and 50,000 gallons of surface water
17 in a 24-hour period shall either provide an estimate of total volume or provide
18 meter data. The report shall describe how any estimate was calculated.

19 (2) Withdrawals of more than 50,000 gallons of surface water in a 24-
20 hour period shall provide meter data.

1 (d) Exceptions. The following withdrawals shall not be subject to the
2 requirements of subsection (a) or (b) of this section:

3 (1) surface water withdrawals for fire suppression or other public
4 emergency response purposes;

5 (2) surface water withdrawals required to report under subchapter 3 of
6 this chapter for snowmaking uses;

7 (3) surface water withdrawals approved pursuant to 10 V.S.A. chapter
8 56 on public water supply and the rules adopted thereunder for use as a public
9 drinking water supply; and

10 (4) a surface water withdrawal reported to the Secretary under any
11 project that requires the reporting of substantially similar data.

12 § 1043. PERMIT REQUIREMENT; PROGRAM DEVELOPMENT

13 (a) Program development. On or before July 1, 2026, the Secretary shall
14 implement a surface water withdrawal permitting program that is consistent
15 with section 1041 of this subchapter. The program shall be developed to:

16 (1) require a permit or other authorization for surface water withdrawals
17 based on potential impacts to surface waters or other factors, and establish
18 conditions of operation necessary to protect surface waters and the Vermont
19 Water Quality Standards;

1 (2) consider surface water withdrawal registration and reporting
2 information submitted pursuant to section 1042 of this chapter in the
3 establishment of permitting thresholds and other permitting requirements;

4 (3) require efficient use and conservation of surface water;

5 (4) ensure that withdrawals comply with the Vermont water quality
6 standards;

7 (5) establish limitations on withdrawals based on low flow or drought
8 conditions and the development of potential alternatives to meet surface water
9 withdrawal needs in such cases; and

10 (6) require assessment of any reasonable and feasible alternatives to
11 proposed withdrawals that may have less of an impact on surface water quality.

12 (b) Application. Application for a permit to withdraw surface water under
13 the program established under subsection (a) of this section shall be made on a
14 form provided by the Secretary, and shall include the following information:

15 (1) the location of each withdrawal, including the identification and type
16 of each impacted surface water;

17 (2) a description of the use or uses of the water to be withdrawn;

18 (3) a description of the proposed method of water withdrawal;

19 (4) the frequency and rate of the withdrawal;

20 (5) an estimated schedule for the withdrawal;

21 (6) the capacity of the system to be used for the withdrawal;

1 (7) the location of the proposed return flow of the withdrawn water, and
2 whether the withdrawal is an interbasin transfer;

3 (8) an estimate of the volume of water needed for the proposed use or
4 uses;

5 (9) a description of the alternative means considered for the proposed
6 uses of water that will have less of an impact on surface water quality; and

7 (10) any other information required by the Secretary.

8 (c) Permits. The Secretary may issue a general permit to authorize certain
9 withdrawal activities. A permit issued under this subchapter shall be for a
10 period of not longer than 10 years from the date of issuance.

11 (d) Exceptions. A permit required under this subchapter shall not be
12 required for surface water withdrawals for fire suppression or other public
13 emergency response purposes.

14 (e) Existing surface water withdrawals.

15 (1) Snowmaking withdrawals. Existing withdrawals approved pursuant
16 to subchapter 3 of this chapter for snowmaking shall be reviewed pursuant to
17 subdivision (f)(1) of this section.

18 (2) Nonsnowmaking withdrawals.

19 (A) A permit required under this subchapter shall not be required
20 until July 1, 2030 for an existing surface water withdrawal for nonsnowmaking
21 purposes, provided that:

1 (i) the existing surface water withdrawal is both registered and
2 reported to the Secretary pursuant to section 1042 of this title on an annual
3 basis; and

4 (ii) no expansion of the existing surface water withdrawal occurs
5 on or after January 1, 2023.

6 (B) For purposes of this subdivision, an expansion includes an
7 increase in reported surface water withdrawal rate or volume or increase in
8 reported capacity of the system.

9 (f) Surface water withdrawals for snowmaking.

10 (1) Existing withdrawals. Existing surface water withdrawals for
11 snowmaking purposes that have been reviewed and approved pursuant to
12 subchapter 3 of this chapter shall not require additional technical review by the
13 Secretary under this subchapter, provided that the approved snowmaking
14 activity is operated in compliance with the terms and conditions of the
15 Secretary's approval. For such activities, the Secretary may issue a permit
16 under the rules adopted pursuant to this subchapter.

17 (2) New withdrawals. Proposed surface water withdrawals for new
18 snowmaking activities that require review pursuant to subchapter 3 of this
19 chapter shall be reviewed by the Secretary in accordance with the rules
20 adopted pursuant to section 1032 of this title. If the Secretary determines that

1 the proposed activity is consistent with those rules, the Secretary shall issue a
2 permit required by section 1045 of this section for that activity.

3 (g) Enforcement.

4 (1) The Secretary may require a person to obtain a permit under this
5 subchapter when the Secretary, in the Secretary's discretion, determines that a
6 withdrawal or other action circumvents the requirements of this subchapter.

7 (2) If the Secretary finds that a withdrawal subject to this subchapter
8 results in the construction, installation, operation, or maintenance of any
9 facility or condition that results in or can reasonably be expected to result in a
10 violation of the Vermont Water Quality Standards, the Secretary may issue an
11 order establishing reasonable and proper methods and procedures for the
12 control of that activity in order to reduce or eliminate the violation.

13 (h) Reservation. Nothing in this subchapter shall be interpreted to
14 supersede, limit, or otherwise effect the Secretary's authority to take action
15 pursuant to section 1272 of this title or other applicable provision of law or
16 rule.

17 § 1044. INTERBASIN TRANSFERS OF SURFACE WATERS

18 (a) Review of HUC 6 interbasin transfers. The Secretary shall review any
19 interbasin transfer pursuant to the Vermont Water Quality Standards and other
20 requirements of State law listed in subdivision 1253(h)(1) of this title. This

1 review shall be in addition to any applicable standards and permitting
2 requirements adopted pursuant to subsection 1043(a) of this title.

3 (b) Review of other transfers likely to violate Vermont Water Quality
4 Standards. The Secretary may review any other surface water withdrawal that
5 includes the transfer of surface water from one watershed to another watershed
6 under the requirements of subsection (a) of this section if the Secretary
7 determines that the activity is likely to result in a violation of the Vermont
8 Water Quality Standards. The Secretary shall make a determination under this
9 subsection based on a review of information set forth under subsection 1043(b)
10 of this title that is readily available to the Secretary.

11 § 1045. RULEMAKING.

12 The Secretary shall adopt rules to implement the requirements of this
13 Subchapter.

14 Sec. 2. 10 V.S.A. § 1253(h)(1) is amended to read:

15 (h)(1) The Secretary shall administer a Clean Water Act Section 401
16 certification program to review activities that require a federal license or
17 permit or activities subject to regulation under chapter 47, subchapter 4 of this
18 title to ensure that a proposed activity complies with the Vermont Water
19 Quality Standards, as well as with any other appropriate requirement of State
20 law, including:

1 (A) 10 V.S.A. chapter 37 (wetlands protection and water resources
2 management);

3 (B) 10 V.S.A. chapter 41 (regulation of stream flow);

4 (C) 10 V.S.A. § 1264 (stormwater management);

5 (D) 29 V.S.A. chapter 11 (management of lakes and ponds); and

6 (E) the Agency of Natural Resources Rules for Water Withdrawals
7 for Snowmaking.

8 Sec. 3. 10 V.S.A. § 8003(a)(4) is amended to read:

9 (4) 10 V.S.A. chapters 41 and 43, relating to dams, surface water
10 withdrawals, interbasin transfers, and stream alterations;

11 Sec. 4. 10 V.S.A. § 8503(a)(1)(C) is amended to read:

12 (C) chapter 41 (relating to dams, surface water withdrawals,
13 interbasin transfers, and stream alterations, and regulation of stream flow);

14 Sec. 5. EFFECTIVE DATE

15 This act shall take effect on July 1, 2022.