

1 TO THE HONORABLE SENATE:

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

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

9 (h)(1) The Secretary shall administer a Clean Water Act Section 401  
10 certification program to review activities that require a federal license or  
11 permit to ensure that a proposed activity complies with the Vermont Water  
12 Quality Standards, as well as with any other appropriate requirement of State  
13 law, including:

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

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

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

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

19 (E) the Agency of Natural Resources Rules for Water Withdrawals  
20 for Snowmaking.

1           (2) The Secretary of Natural Resources shall not grant an 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 appropriate 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 or railroad projects shall be exempt from the requirements of  
3 10 V.S.A. § 1253(h)(2)(A).

4 Sec. 3. RULEMAKING IMPLEMENTATION; TIMING

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

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

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

16 Sec. 4. EFFECTIVE DATES

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

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

21

1  
2  
3  
4  
5  
6  
7  
8  
9

(Committee vote: \_\_\_\_\_)

\_\_\_\_\_

Senator \_\_\_\_\_

FOR THE COMMITTEE