

1 TO THE HONORABLE SENATE:

2 The Committee on Agriculture to which was referred House Bill No. 466
3 entitled “An act relating to surface water withdrawals and interbasin transfers”
4 respectfully reports that it has considered the same and recommends that the
5 Senate propose to the House that the bill as recommended for amendment by
6 the Committee on Natural Resources and Energy be amended by striking out
7 all after the enacting clause and inserting in lieu thereof the following:

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

9 CHAPTER 41. REGULATION OF STREAM FLOW

10 * * *

11 § 1002. DEFINITIONS

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

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

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

19 (3) “Basin” means the third-level, six-digit unit of the hydrologic unit
20 hierarchy as defined by the U.S. Geological Survey (USGS), Federal Standards
21 and Procedures for the National Watershed Boundary Dataset, Chapter 3 of

1 Section A, Book 11. “Basin” is also referred to as “Hydrologic Unit Code 6”
2 or “HUC-6”.

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

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

9 ~~(4)~~(6) “Board” means the Natural Resources Board.

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11 withdrawn by the water withdrawal system.

12 ~~(5)~~(8) “Cross section” means the entire channel to the top of the banks.

13 ~~(6)~~(9) “Dam” applies to any artificial structure on a stream, or at the
14 outlet of a pond or lake, that is utilized for holding back water by ponding or
15 storage together with any penstock, flume, piping, or other facility for
16 transmitting water downstream to a point of discharge, or for diverting water
17 from the natural watercourse to another point for utilization or storage.

18 ~~(7)~~(10) “Department” means the Department of Environmental
19 Conservation.

20 (11) “Existing surface withdrawal” means a surface water withdrawal
21 that exists prior to January 1, 2023.

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

3 ~~(8)~~(13) “Instream material” means:

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

5 (B) ledge rock; or

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

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

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

13 ~~(9)~~(16) “Person” means any individual; partnership; company;
14 corporation; association; unincorporated association; joint venture; trust;
15 municipality; the State of Vermont or any agency, department, or subdivision
16 of the State; any federal agency; or any other legal or commercial entity.

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

19 (18) “Reasonable and feasible” means available and capable of being
20 implemented after consideration of cost, existing technology, logistics in light

1 of the overall project purpose, environmental impact, and ability to obtain all
2 necessary approvals for implementation.

3 (19) “Secretary” means the Secretary of Natural Resources or the
4 Secretary’s duly authorized representative.

5 (20) “Surface water” means all rivers, streams, creeks, brooks,
6 reservoirs, ponds, lakes, and all bodies of surface waters that are contained
7 within, flow through, or border upon the State or any portion of it. “Surface
8 water” does not include the following:

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

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

12 (C) treatment ponds, lagoons, or wetlands created solely to meet the
13 requirements of a permit issued for a discharge; and

14 (D) constructed off-stream farm ponds or other off-stream
15 impoundments that are used for irrigation for farming or watering of livestock.

16 (21) “Vermont Water Quality Standards” means the standards adopted
17 pursuant to chapter 47 and subdivision 6025(b) of this title.

18 ~~(19)~~(22) “Watercourse” means any perennial stream. “Watercourse”
19 shall does not include ditches or other constructed channels primarily
20 associated with land drainage or water conveyance through or around private
21 or public infrastructure.

1 Subchapter 4. Surface Water Withdrawals and Interbasin Transfers

2 § 1041. POLICY ON SURFACE WATER WITHDRAWALS FOR

3 OFF-STREAM USES OTHER THAN SNOWMAKING

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

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

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

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

14 (3) permit surface water withdrawals and the construction of
15 appurtenant facilities and related systems for uses other than snowmaking,
16 based on an analysis of the need for water and the consideration of alternatives
17 and consistent with this and related policies and other applicable laws and
18 rules; and

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

1 § 1042. REGISTRATION AND REPORTING; EXCEPTIONS

2 (a) Registration. Beginning on January 1, 2023, any person withdrawing
3 10,000 gallons or more of surface water within a 24-hour period or 150,000
4 gallons or more of surface water over any 30-day period shall register with the
5 Secretary:

6 (1) the location of each withdrawal, including each impacted surface
7 water;

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

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

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

11 (5) a schedule for the withdrawal.

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

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

18 (2) the location of each withdrawal, including each impacted surface
19 water;

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

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

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

2 (c) Methods of reporting withdrawals. The following methods shall be
3 used to report the amounts of withdrawn surface water required to be reported
4 under subsection (b) of this section:

5 (1) For withdrawals of between 10,000 and 50,000 gallons of surface
6 water within a 24-hour period or 150,000 gallons or more of surface water over
7 any 30-day period, the person shall either provide an estimate of total volume
8 withdrawn or provide meter data. The report shall describe how any estimate
9 was calculated.

10 (2) For withdrawals of 50,000 gallons or more of surface water within a
11 24-hour period or 1,500,000 gallons or more of surface water over any 30-day
12 period, the person shall provide meter data or measured data by a technically
13 appropriate method approved by the Secretary.

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

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

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

1 (3) surface water withdrawals approved pursuant to chapter 56 of this
2 title on public water supply and the rules adopted thereunder for use as a public
3 drinking water supply;

4 (4) surface water withdrawals for irrigation for farming, livestock
5 watering, or other uses for farming, as the term “farming” is defined in 6
6 V.S.A. § 4802; and

7 (5) a surface water withdrawal reported to the Secretary under any
8 project that requires the reporting of substantially similar data.

9 § 1043. PERMIT REQUIREMENT; PROGRAM DEVELOPMENT

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

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

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

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

1 (4) ensure that withdrawals comply with the Vermont water quality
2 standards;

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

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

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

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

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

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

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

16 (5) an estimated schedule for the withdrawal;

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

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

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

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

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

4 (c) Permits.

5 (1) The Secretary may issue a general permit to authorize certain
6 withdrawal activities.

7 (2) The Secretary shall issue a general permit under this chapter for the
8 withdrawal of surface water for State or municipal infrastructure projects. The
9 general permit shall establish a rate and withdrawal volume that only requires
10 notification of the Secretary and does not require Secretary approval prior to
11 withdrawal.

12 (3) A permit issued under this subchapter shall be for a period of not
13 longer than 10 years from the date of issuance.

14 (d) Exceptions. A permit required under this subchapter shall not be
15 required for:

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

18 (2) surface water withdrawals for irrigation for farming, livestock
19 watering, or other uses for farming, as the term “farming” is defined in 6
20 V.S.A. § 4802.

21 (e) Existing surface water withdrawals.

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

4 (2) Nonsnowmaking withdrawals.

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

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

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

13 (B) For purposes of this subdivision (2), an expansion includes an
14 increase in reported surface water withdrawal rate or volume or increase in
15 reported capacity of the system.

16 (f) Surface water withdrawals for snowmaking.

17 (1) Existing withdrawals. Existing surface water withdrawals for
18 snowmaking purposes that have been reviewed and approved pursuant to
19 subchapter 3 of this chapter shall not require additional technical review by the
20 Secretary under this subchapter, provided that the approved snowmaking
21 activity is operated in compliance with the terms and conditions of the

1 Secretary's approval. For such activities, the Secretary may issue a permit
2 under the rules adopted pursuant to this subchapter.

3 (2) New withdrawals. Proposed surface water withdrawals for new
4 snowmaking activities that require review pursuant to subchapter 3 of this
5 chapter shall be reviewed by the Secretary in accordance with the rules
6 adopted pursuant to section 1032 of this title. If the Secretary determines that
7 the proposed activity is consistent with those rules, the Secretary shall issue a
8 permit required by section 1043 of this section for that activity.

9 (g) Enforcement.

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

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

19 (h) Reservation. Nothing in this subchapter shall be interpreted to
20 supersede, limit, or otherwise effect the Secretary's authority to take action

1 pursuant to section 1272 of this title or other applicable provision of law or
2 rule.

3 § 1044. INTERBASIN TRANSFERS OF SURFACE WATERS

4 (a) Review of HUC 6 interbasin transfers. The Secretary shall review any
5 interbasin transfer pursuant to the Vermont Water Quality Standards and other
6 requirements of State law listed in subdivision 1253(h)(1) of this title. This
7 review shall be in addition to any applicable standards and permitting
8 requirements adopted pursuant to subsection 1043(a) of this title.

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

17 § 1045. REPORT TO GENERAL ASSEMBLY

18 Beginning February 15, 2023 and annually thereafter, the Secretary of
19 Natural Resources, after consultation with the Secretary of Agriculture, Food
20 and Markets, shall submit to the Senate Committees on Agriculture and on
21 Natural Resources and Energy and the House Committees on Agriculture and

1 Forestry and on Natural Resources, Fish, and Wildlife the data submitted to the
2 Secretary pursuant to subsections 1042(a) and (b) of this title, data submitted
3 as part of a permit required under section 1043 of this title, and the data
4 submitted to the Secretary of Agriculture, Food and Markets under 6 V.S.A.
5 § 4927.

6 § 1046. RULEMAKING

7 The Secretary shall adopt rules to implement the requirements of this
8 subchapter.

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

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

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

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

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

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

1 (E) the Agency of Natural Resources Rules for Water Withdrawals
2 for Snowmaking.

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

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

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

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

9 Sec. 5. 6 V.S.A. chapter 215, subchapter 6A is added to read:

10 Subchapter 6A. Surface Water Withdrawals for Farming

11 § 4926. DEFINITIONS

12 As used in this subchapter:

13 (1) “Surface water” means all rivers, streams, creeks, brooks, reservoirs,
14 ponds, lakes, and all bodies of surface waters that are contained within, flow
15 through, or border upon the State or any portion of it. “Surface water” does
16 not include the following:

17 (A) groundwater as defined in 10 V.S.A. § 1391;

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

20 (C) treatment ponds, lagoons, or wetlands created solely to meet the
21 requirements of a permit issued for a discharge; and

1 (D) constructed off-stream farm ponds or other off-stream
2 impoundments that are used for irrigation for farming or watering of livestock.

3 (2) “Withdrawal” means the intentional diversion from a surface water
4 by pumping, gravity, or other method for the purpose of being used for
5 irrigation for farming, livestock watering, or other uses for farming.

6 “Withdrawal” does not include direct consumption of surface water by
7 livestock.

8 § 4927. REPORT OF SURFACE WATER WITHDRAWALS FOR
9 IRRIGATION, LIVESTOCK WATERING, OR OTHER FARMING
10 USE

11 (a) Report of withdrawal. Beginning on January 15, 2023 and annually
12 thereafter, any person who withdrew 10,000 gallons or more of surface water
13 within a 24-hour period in the preceding calendar year or 150,000 gallons or
14 more of surface water over any 30-day period in the preceding calendar year
15 shall file a report with the Secretary of Agriculture, Food and Markets. The
16 report shall be made on a form provided by the Secretary and shall include all
17 of the following information:

18 (1) an estimate of the total amount of water withdrawn in the preceding
19 calendar year;

20 (2) the location of the withdrawals;

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

1 (4) the date of each daily maximum withdrawal; and

2 (5) any other information related to surface water withdrawal required

3 by the Secretary of Agriculture, Food and Markets.

4 (c) Sharing of data. Beginning February 1, 2023 and annually thereafter,
5 the Secretary of Agriculture, Food and Markets shall submit to the Secretary of
6 Natural Resources the data collected under this section for the purposes of the
7 report to the General Assembly required by 10 V.S.A. § 1045.

8 Sec. 6. EFFECTIVE DATE

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

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(Committee vote: _____)

Senator _____

FOR THE COMMITTEE