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S.80

Introduced by Senators Bray, McCormack and White

Referred to Committee on

Date:

Subject: Conservation and development; dams; water quality financing;
reports; public notice

Statement of purpose of bill as introduced: This bill proposes to make multiple technical amendments to environmental conservation laws. The bill would postpone from 2023 until 2025 the date of the Department of Environmental Conservation Dam Registration Program report, and it would postpone the deadline date for the dam design standards rule from 2022 until 2024. The bill proposes to allow a salvage yard that lacks a certificate of registration to operate a mobile vehicle crusher in order to close the salvage yard. The bill would make several amendments to requirements for eligibility and award of assistance under the Special Environmental Revolving Loan Fund programs. In addition, the bill amends the dates of certain clean water reports. The act proposes to amend the default notice requirements for certain stormwater permits issued for emergency construction activities. The bill also would amend the requirements for posting notice of certain failed potable water supplies.

1 An act relating to miscellaneous environmental conservation subjects

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

3 * * * Dam Registration and Design Standards * * *

4 Sec. 1. 2018 Acts and Resolves No. 161, Sec. 2 is amended to read:

5 Sec. 2. DAM REGISTRATION PROGRAM REPORT

6 On or before January 1, ~~2023~~ 2025, the Department of Environmental
7 Conservation shall submit a report to the House Committees on ~~Natural~~
8 ~~Resources, Fish, and Wildlife~~ Environment and Energy and on Ways and
9 Means and the Senate Committees on Natural Resources and Energy and on
10 Finance. The report shall contain:

11 (1) an evaluation of the dam registration program under 10 V.S.A.
12 chapter 43;

13 (2) a recommendation on whether to modify the fee structure of the dam
14 registration program;

15 (3) a summary of the dams registered under the program, organized by
16 amount of water impounded and hazard potential classification; and

17 (4) an evaluation of any other dam safety concerns related to dam
18 registration.

1 Sec. 2. 2018 Acts and Resolves No. 161, Sec. 3 is amended to read:

2 Sec. 3. ADOPTION OF RULES

3 The Secretary of Natural Resources shall adopt the rules required under
4 10 V.S.A. § 1110 as follows:

5 (1) the rules required under 10 V.S.A. § 1110(1) (exemptions),
6 § 1110(3) (emergency action plan), § 1110(4) (hazard potential classification),
7 § 1110(5) (dam registration), and § 1110(6) (dam inspection) shall be adopted
8 on or before July 1, 2020; and

9 (2) the rules required under 10 V.S.A. § 1110(2) (dam design standards)
10 shall be adopted on or before July 1, ~~2022~~ 2024.

11 * * * Public Waters; Encroachment * * *

12 Sec. 3. 29 V.S.A. § 402(7) is amended to read:

13 (7) “Public waters” means navigable waters excepting those waters in
14 private ponds and private preserves as set forth in 10 V.S.A. ~~chapter 119~~
15 § 1442.

16 * * * Salvage Yards * * *

17 Sec. 4. 24 V.S.A. § 2248(d) is amended to read:

18 (d) No person may deliver salvage vehicles to or operate a mobile salvage
19 vehicle crusher at a salvage yard that does not hold a certificate of registration
20 under this subchapter. A salvage yard holding a certificate of registration
21 under this subchapter shall post a copy of its current certificate in a clearly

1 visible location in the proximity of each entrance to the salvage yard.

2 Notwithstanding any other provision of law to the contrary, a salvage yard that
3 does not hold a certificate of registration under this subchapter may operate a
4 mobile salvage vehicle crusher for the purpose of closing the salvage yard after
5 first notifying the Secretary.

6 * * * Water Quality Financing; State Revolving Loan Funds * * *

7 Sec. 5. 24 V.S.A. § 4753 is amended to read:

8 § 4753. REVOLVING LOAN FUNDS; AUTHORITY TO SPEND; REPORT

9 (a) There is hereby established a series of special funds to be known as:

10 (1) The Vermont Environmental Protection Agency (EPA) Pollution
11 Control Revolving Fund, which shall be used, consistent with federal law, to
12 provide loans for planning and construction of clean water projects, including
13 acquisitions of project-related easements, land, options to purchase land, and
14 temporary or permanent rights-of-way, and for implementing related
15 management programs.

16 * * *

17 (10) The Vermont Wastewater and Potable Water Revolving Loan
18 Fund, which shall be used to provide loans to individuals, in accordance with
19 section 4763b of this title, for the design and construction of repairs to or
20 replacement of wastewater systems and potable water supplies when the
21 wastewater system or potable water supply is a failed system or supply as

1 defined in 10 V.S.A. § 1972, or when a designer demonstrates that the
2 wastewater system or potable water supply has a high probability of failing.
3 The amount of up to \$275,000.00 from the fees collected pursuant to 3 V.S.A.
4 § 2822(j)(4) or from the Fund established in subdivision (a)(1) of this
5 subsection, or a combination of both, shall be deposited into this Fund at the
6 beginning of each fiscal year to ensure a minimum balance of available funds
7 of \$275,000.00 exists for each fiscal year.

8 (b)(1) Each of such funds shall be established and held separate and apart
9 from any other funds or monies of the State and shall be used and administered
10 exclusively for the purpose of this chapter with the exception of transferring
11 funds from the Vermont Drinking Water Planning Loan Fund and the Vermont
12 Drinking Water Source Protection Fund to the Vermont Environmental
13 Protection Agency (EPA) Drinking Water State Revolving Fund, and from the
14 Vermont Pollution Control Revolving Fund to the Vermont Environmental
15 Protection Agency (EPA) Pollution Control Revolving Fund, when authorized
16 by the Secretary.

17 (2) These funds shall be administered by the Bond Bank on behalf of the
18 State, except that:

19 (A) the Vermont EPA Drinking Water State Revolving Fund and the
20 Vermont Drinking Water Planning Loan Fund shall be administered by VEDA

1 concerning loans to privately owned public water systems in accordance with
2 subchapter 3 of this chapter;

3 (B) the Vermont Environmental Protection Agency (EPA) Pollution
4 Control Revolving Fund shall be administered by VEDA concerning loans to
5 private entities for clean water projects in accordance with subchapter 4 of this
6 chapter; and

7 (C) the Vermont Environmental Protection Agency (EPA) Pollution
8 Control Revolving Fund and the Vermont Wastewater and Potable Water
9 Revolving Loan Fund may be administered by a community development
10 financial institution, as that term is defined in 12 U.S.C. § 4702, that is
11 contracted with by the State for the purpose of providing loans to individuals
12 ~~for failed wastewater systems and potable water supplies~~ in accordance with
13 section 4763b of this chapter.

14 * * *

15 Sec. 6. 24 V.S.A. chapter 120, subchapter 2 is amended to read:

16 Subchapter 2. ~~Municipal~~ Loans to Municipalities and Individuals

17 * * *

18 § 4757. REVOLVING LOAN FUNDS; ADDITIONAL USES

19 In addition to providing a source of funds from which loans may be made to
20 municipalities under this chapter, each fund created under section 4753 of this
21 chapter may be used for one or more of the following purposes:

1 (1) To make loans, to refund bonds or notes of a municipality issued
2 after March 7, 1985 for sewerage works, or after July 1, 1993 for water supply
3 systems for the purpose of financing the construction of any capital
4 improvements or management program described in section 4753 and certified
5 under section 4756 of this title.

6 (2) To guarantee or insure, directly or indirectly, the payment of notes or
7 bonds issued or to be issued by a municipality for the purpose of financing the
8 construction of any capital improvement or management program described in
9 section 4754 of this title and certified under section 4756.

10 (3) To guarantee or insure, directly or indirectly, funds established by
11 municipalities for the purpose of financing construction of any capital
12 improvement described in section 4754 of this title.

13 (4) To invest available fund balances, and to credit the net interest
14 income thereon to the particular fund providing investment funds.

15 (5) To pay the costs of the Bond Bank, VEDA, and the agency
16 associated with the administration of each fund; provided, however, that no
17 more than four percent of the aggregate of the highest fund balances in any
18 fiscal year shall be used for such purposes, and that a separate account be
19 established outside the Drinking Water State Revolving Fund for such
20 purposes. As used in this subsection, costs shall include fiscal, clerical,
21 administrative, and issuance expenditures directly attributable and allocated to

1 the maintenance implementation and administration of the loan funds created
2 under this chapter.

3 (6) To pay from the Vermont Environmental Protection (EPA) Pollution
4 Control Revolving Fund or the Vermont Wastewater and Potable Water
5 Revolving Loan Fund the costs of administration of loans awarded under
6 ~~subdivision 4753(a)(10)~~ section 4763b of this title.

7 * * *

8 § 4763b. LOANS TO INDIVIDUALS FOR FAILED WASTEWATER
9 SYSTEMS AND FAILED POTABLE WATER SUPPLIES

10 (a) Notwithstanding any other provision of law to the contrary, when the
11 wastewater system or potable water supply serving only single-family and
12 multifamily residences either meets the definition of a failed supply or system
13 in 10 V.S.A. § 1972 or is demonstrated by a designer to have a high probability
14 of failing, the Secretary of Natural Resources may lend monies to an owner of
15 one or more of the residences from the Vermont Wastewater and Potable
16 Water Revolving Loan Fund established in section 4753 of this title. In such
17 cases, the following conditions shall apply:

18 (1) a loan may only be made to an owner with a household income equal
19 to or less than 200 percent of the State average median household income;

20 (2) a loan may only be made to an owner who resides in one of the
21 residences served by the failed supply or system on a year-round basis;

1 (3) ~~a loan may only be made to an owner who has been denied financing~~
2 ~~for the repair, replacement, or construction due to involuntary disconnection by~~
3 ~~at least one other financing entity; [Repealed.]~~

4 (4) when the failed supply or system also serves residences owned by
5 persons other than the loan applicant, a loan may only be made for an equitable
6 share of the cost to repair or replace the failed supply or system that is
7 determined through agreement of all of the owners of residences served by the
8 failed system or supply;

9 (5) no construction loan shall be made to an individual under this
10 subsection, nor shall any part of any revolving loan made under this subsection
11 be expended, until all of the following take place:

12 (A) the Secretary of Natural Resources determines that if a
13 wastewater system and potable water supply permit is necessary for the design
14 and construction of the project to be financed by the loan, the permit has been
15 issued to the owner of the failed system or supply; and

16 (B) the individual applying for the loan certifies to the Secretary of
17 Natural Resources that the proposed project has secured all State and federal
18 permits, licenses, and approvals necessary to construct and operate the project
19 to be financed by the loan;

1 (6) all funds from the repayment of loans made under this section shall
2 be deposited into the Vermont Wastewater and Potable Water Revolving Loan
3 Fund.

4 (b) Notwithstanding any other provision of law to the contrary, when the
5 wastewater system serving only single-family and multifamily residences
6 either meets the definition of a failed system in 10 V.S.A. § 1972 or is
7 demonstrated by a designer to have a high probability of failing, the Secretary
8 of Natural Resources may lend monies to an owner of one or more of the
9 residences from the Vermont Wastewater and Potable Water Revolving Loan
10 Fund and capitalized by money that has been transferred from the Vermont
11 Environmental Protection Agency (EPA) Pollution Control Revolving Fund
12 pursuant to subsection 4753(a)(10) of this title, provided that no State funds are
13 used. In such cases, all of the following conditions shall apply:

14 (1) A loan may only be made to an owner with a household income
15 equal to or less than 200 percent of the State average median household
16 income.

17 (2) A loan may only be made to an owner who resides in one of the
18 residences served by the failed system on a year-round basis.

19 (3) A loan may only be made to an owner who demonstrates sufficient
20 means to pay the principal and interest on the loan.

1 (4) A loan may only be made for a project that is a clean water project
2 the Secretary has designated as a priority for receipt of financial assistance.

3 (5) When the failed system also serves residences owned by persons
4 other than the loan applicant, a loan may only be made for an equitable share
5 of the cost to repair or replace the failed system that is determined through
6 agreement of all of the owners of residences served by the failed system.

7 (6) No construction loan shall be made to an individual under this
8 subsection, nor shall any part of any revolving loan made under this subsection
9 be expended, until all of the following take place:

10 (A) the Secretary of Natural Resources determines that if a
11 wastewater system and potable water supply permit is necessary for the design
12 and construction of the project to be financed by the loan, the permit has been
13 issued to the owner of the failed system; and

14 (B) the individual applying for the loan certifies to the Secretary of
15 Natural Resources that the proposed project has secured all State and federal
16 permits, licenses, and approvals necessary to construct and operate the project
17 to be financed by the loan.

18 (8) Loans shall be awarded at or below market interest rates.

19 (9) All funds from the repayment of loans made under this subsection
20 shall be deposited into the Vermont Environmental Protection Agency (EPA)
21 Pollution Control Revolving Fund.

1 (c) Loans awarded under this section:

2 (1) shall include a loan repayment schedule that commences not later
3 than one year after completion of the funded project for which loan funds have
4 been issued; and

5 (2) shall not be used for the operation and maintenance expenses, or
6 laboratory fees for monitoring, of a wastewater system or potable water supply.

7 (d) The Secretary of Natural Resources shall establish standards, policies,
8 and procedures as necessary for the implementation of this section. The
9 Secretary may establish criteria to extend the payment period of a loan or to
10 waive all or a portion of the loan amount.

11 * * * Clean Water Reporting * * *

12 Sec. 7. 10 V.S.A. § 1264(k) is amended to read:

13 (k) Report on treatment practices. ~~Report on treatment practices.~~ As part
14 of the report required under section 1389a of this title, the Secretary annually
15 shall report the following:

16 (1) whether the phosphorus load from new development permitted under
17 this section by the Secretary in the Lake Champlain watershed in the previous
18 ~~calendar~~ State fiscal year is achieving at least a 70 percent average phosphorus
19 load reduction;

1 (2) the estimated total phosphorus load reduction from new
2 development, redevelopment, and retrofit of impervious surface permitted
3 under this section in the previous State fiscal year; and

4 (3) the number of projects and the percentage of projects as a whole that
5 implemented Tier 1 stormwater treatment practices, Tier 2 stormwater
6 treatment practices, or Tier 3 stormwater treatment practices in the previous
7 State fiscal year.

8 Sec. 8. 10 V.S.A. § 1389a(b)(6) is amended to read:

9 (6) Beginning on January ~~2023~~ 2024, a summary of the administration
10 of the grant programs established under sections 925–928 of this title,
11 including whether these grant programs are adequately funding
12 implementation of the Clean Water Initiative and whether the funding limits
13 for the Water Quality Enhancement Grants under subdivision 1389(e)(1)(D) of
14 this title should be amended to improve State implementation of the Clean
15 Water Initiative.

16 Sec. 9. 2019 Acts and Resolves No. 76, Sec. 7

17 Sec. 7. RECOMMENDATIONS ON NUTRIENT CREDIT

18 TRADING

19 On or before July 1, ~~2022~~ 2024, the Secretary of Natural Resources, after
20 consultation with the Clean Water Board, shall submit to the Senate
21 Committees on Appropriations, on Natural Resources and Energy, and on

1 Finance and the House Committees on Appropriations, on ~~Natural Resources,~~
2 ~~Fish, and Wildlife~~ Environment and Energy, and on Ways and Means
3 recommendations regarding implementation of a market-based mechanism that
4 allows the purchase of water quality credits by permittees under 10 V.S.A.
5 chapter 47, and other entities. The report shall include information on the cost
6 to develop and manage any recommended trading program.

7 * * * ANR Enforcement Practices * * *

8 Sec. 10. 10 V.S.A. § 1527 is amended to read:

9 § 1527. PENALTY

10 A person who violates a provision of this chapter shall be ~~fin~~~~ed not more~~
11 ~~than \$1,000.00 for each violation~~ in accordance with subdivision 8003(a)(7) of
12 this title.

13 Sec. 11. 10 V.S.A. § 6697 is amended to read:

14 § 6697. CIVIL PENALTIES; WARNING

15 (a) A person, store, or food service establishment that violates the
16 requirements of this subchapter shall:

17 ~~(1) receive a written warning for a first offense;~~

18 ~~(2) be subject to a civil penalty of \$25.00 for a second offense; and~~

19 ~~(3) be subject to a civil penalty of \$100.00 for a third or subsequent~~
20 ~~offense~~ be fined in accordance with subdivision 8003(a)(12) of this title.

1 (b) For the purposes of enforcement under this subchapter, an offense shall
2 be each day a person, store, or food service establishment is violating a
3 requirement of this subchapter.

4 Sec. 12. 24 V.S.A. § 2282 is amended to read:

5 § 2282. PENALTY

6 A person who violates this subchapter shall be fined ~~not less than \$5.00 nor~~
7 ~~more than \$50.00 for each day of the violation~~ in accordance with 10 V.S.A.
8 §8003(a)(12) of this title.

9 * * * Solid Waste Certification * * *

10 Sec. 13. 10 V.S.A. § 6605f(a) is amended to read:

11 (a) Disqualifying criteria. Any nongovernmental entity or person applying
12 for a certification under section 6605, 6605a, or 6606 of this title, for interim
13 certification under section 6605b of this title, ~~or for a waste transportation~~
14 ~~permit under section 6607a of this title~~, shall be denied certification or other
15 authorization if the Secretary finds:

16 * * *

17 * * * DEC Procedural Requirements * * *

18 Sec. 14. 10 V.S.A. § 7716 is amended to read:

19 § 7716. TYPE 5 PROCEDURES

20 (a) Purpose; scope.

1 Sec. 15. 29 V.S.A. § 405(d) is added to read:

2 (d) A permit issued pursuant to this section shall be effective on the date
3 that is signed and issued to the applicant.

4 * * * Potable Water Supply * * *

5 Sec. 16. 10 V.S.A. § 1972(4) is amended to read:

6 (4)(A) “Failed supply” means a potable water supply:

7 (i) that has been found to exceed the standard set by the Secretary
8 in rule for one or more of the following contaminants:

9 (I) total coliform;

10 (II) nitrates;

11 (III) nitrites;

12 (IV) arsenic; or

13 (V) uranium;

14 (ii) that the Secretary affirmatively determines as not potable, due
15 to the presence of a contaminated site, a leaking underground storage tank, or
16 other known sources of groundwater contamination or naturally occurring
17 contaminants, ~~and that information has been posted on the Agency of Natural~~
18 ~~Resources’ website;~~ or

19 (iii) the Secretary affirmatively determines to be failed due to the
20 supply providing an insufficient quantity of water to maintain the usual and

1 customary uses of a building or structure or campground, ~~and that information~~
2 ~~has been posted on the Agency of Natural Resources' website.~~

3 (B) Notwithstanding the provisions of this subdivision, a potable
4 water supply shall not be a failed supply if:

5 (i) these effects can be and are remedied solely by minor repairs,
6 including the repair of a broken pipe leading from a building or structure to a
7 well, the replacement of a broken pump, repair or replacement of a mechanical
8 component, or deepening or hydrofracturing a well; or

9 (ii) these effects have lasted for only a brief period of time, the
10 cause of the failure has been determined to be an unusual and nonrecurring
11 event, and the supply has recovered from the state of failure. Supplies that
12 have recurring, continuing, or seasonal failures shall be considered to be failed
13 supplies.

14 (C) If a project is served by multiple potable water supplies, the
15 failure of one supply will not require the issuance of a permit or permit
16 amendment for any other supply that is not in a state of failure.

17 * * * Petroleum Cleanup Fund Assistance Program * * *

18 Sec. 17. 10 V.S.A. § 1941(g) is amended to read:

19 (g) The owner of a farm or residential heating fuel storage tank used for on-
20 premises heating or an underground or aboveground heating fuel storage tank
21 used for on-premises heating by a mobile home park resident, as defined in

1 section 6201 of this title, who desires assistance to close, replace, or upgrade
2 the tank or replace their heating fuel system with advanced wood heat or a heat
3 pump may apply to the Secretary for such assistance. The financial assistance
4 may be in the form of grants of up to: \$2,000.00 or the costs of closure,
5 replacement, or upgrade, whichever is less for an aboveground storage tank
6 located inside a structure; up to \$3,000.00 or the costs of closure, replacement,
7 or upgrade, whichever is less for an aboveground storage tank located outside a
8 structure; ~~and~~ up to \$4,000.00 or the costs of closure, replacement, or upgrade,
9 whichever is less for an underground storage tank; and up to \$4,000.00 or the
10 actual cost of replacing their heating system with advanced wood heat or a heat
11 pump, whichever is less. As used in this subsection, “structure” means any
12 assembly of materials that is intended for occupancy or use by a person and
13 that has at least three walls and a roof. Grants shall be made only to the
14 current property owners, except at mobile home parks where a grant may be
15 awarded to a mobile home park resident. To be eligible to receive the grant, an
16 environmental site assessment must be conducted by a qualified consultant
17 during the tank closure, replacement, or upgrade if the tank is an underground
18 heating fuel storage tank. In addition, if the closed tank is to be replaced with
19 an underground heating fuel storage tank, the replacement tank and piping
20 shall provide a level of environmental protection at least equivalent to that
21 provided by a double wall tank and secondarily contained piping. Grants shall

1 be awarded on a priority basis to projects that will avoid the greatest
2 environmental or health risks. The Secretary shall also give priority to
3 applicants who are replacing their underground heating fuel tanks with
4 aboveground heating fuel storage tanks that will be installed in accordance
5 with the Secretary's recommended standards. The Secretary shall also give
6 priority to lower income applicants. To be eligible to receive the grant, the
7 owner must provide the previous year's financial information and, if the
8 replacement tank is an aboveground tank, must ensure that any work to replace
9 or upgrade a tank shall be done in accordance with industry standards
10 (National Fire Protection Association, or NFPA, Code 31), as it existed on July
11 1, 2004, until another date or edition is specified by rule of the Secretary. The
12 Secretary shall authorize only up to \$400,000.00 in assistance for underground
13 and aboveground heating fuel tanks in any one fiscal year from the Heating
14 Fuel Account for this purpose. The application must be accompanied by the
15 following information:

16 (1) proof of ownership, including information disclosing all owners of
17 record of the property, except in the case where the applicant is a mobile home
18 park resident;

19 (2) for farm or residential aboveground heating fuel storage tank
20 owners, a copy of the federal income tax return for the previous year;

