

1 H.746

2 Introduced by Representatives Olson of Starksboro, Burke of Brattleboro,  
3 Carris Duncan of Whitingham, Charlton of Chester, Duke of  
4 Burlington, Harple of Glover, Lalley of Shelburne, and Priestley  
5 of Bradford

6 Referred to Committee on

7 Date:

8 Subject: Conservation and development; potable water supply and wastewater  
9 system permitting; siting; isolation distances; design flows; taxation

10 Statement of purpose of bill as introduced: This bill proposes to amend  
11 multiple provisions of the potable water supply and wastewater system  
12 requirements in statute and in rule in order to enable additional housing  
13 development in the State. The bill also would allow a permitted potable water  
14 supply used for a public benefit, such as a school, child or elder care, or a  
15 government building, to change to another use for a public benefit with a  
16 similar number of users without redesign of the supply or required additional  
17 capacity for the supply. The bill would require the potable water supply and  
18 wastewater system rules to be amended to provide design standards for the  
19 construction of wastewater systems underneath land used for parking, car  
20 parks, or other similar paved surfaces. The bill would also require the rules to  
21 be amended to reduce design flows to allow for compact housing and other

1 appropriate development. In addition, the bill would provide that the minimum  
2 horizontal isolation distance between all components of a wastewater system  
3 and a potable water supply shall be 75 feet unless, based on the specific site  
4 conditions, the Secretary of Natural Resources determines that a greater  
5 isolation distance or larger isolation zone is necessary due to designated  
6 criteria. The bill would provide that when issuing a permit for an indirect  
7 discharge system, the Secretary shall require an easement or other permanent  
8 legal access only to the indirect discharge system and the disposal area and not  
9 for all potential service connections. The bill would provide that no wetlands  
10 permit would be required for the siting of a leachfield in the buffer zone of a  
11 Class II wetland when the leachfield is part of a permitted wastewater system.  
12 The bill also would provide that no Act 250 permit or permit amendment is  
13 required for the construction of improvements for water or wastewater  
14 infrastructure serving a village and downtown center. In addition, the bill  
15 would exempt from the land use change tax the construction on or  
16 development of land enrolled in the Use Value Appraisal Program for the  
17 purpose of permitting a potable water supply or wastewater system for  
18 residential housing.

19 An act relating to potable water supply and wastewater system permitting

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

2 Sec. 1. PURPOSE

3 The purpose of this act is to simplify the design and installation  
4 requirements for public and private water supplies and for public and private  
5 wastewater systems in order to reduce the cost of housing and other  
6 development while also maintaining essential protections for human health and  
7 the environment.

8 Sec. 2. 10 V.S.A. § 1971 is amended to read:

9 § 1971. PURPOSE

10 It is the purpose of this chapter to:

11 (1) establish a comprehensive program to regulate the construction,  
12 replacement, modification, and operation of potable water supplies and  
13 wastewater systems in the State in order to ~~protect~~ encourage construction of  
14 housing and foster economic development while also protecting human health  
15 and the environment, including potable water supplies, surface water, and  
16 groundwater;

17 (2) eliminate duplicative or unnecessary permitting requirements  
18 through the consolidation of existing authorities and, where appropriate, the  
19 use of permits by rule;

1           (3) allow the use of alternative, innovative, and experimental  
2 technologies for the treatment and disposal of wastewater in the appropriate  
3 circumstances;

4           (4) protect the investment of homeowners through a flexible remediation  
5 process for failed potable water supplies and wastewater systems;

6           (5) increase reliance on and the accountability of the private sector for  
7 the design and installation of potable water supplies and wastewater systems,  
8 through licensing and enforcement; and

9           (6) allow delegation of the permitting program created by this chapter to  
10 municipalities demonstrating the capacity to administer the chapter.

11       Sec. 3. 10 V.S.A. § 1973 is amended to read:

12       § 1973. PERMITS

13       (a) Except as provided in this section and sections 1974 and 1978 of this  
14 title, a person shall obtain a permit from the Secretary before:

15           (1) subdividing land;

16           (2) creating or modifying a campground in a manner that affects a  
17 potable water supply or wastewater system or the requirements for providing  
18 potable water and wastewater disposal;

19           (3) constructing, replacing, or modifying a potable water supply or  
20 wastewater system;

21           (4) using or operating a failed supply or failed system;

1 (5) constructing a new building or structure;

2 (6) modifying an existing building or structure in a manner that  
3 increases the design flow or modifies other operational requirements of a  
4 potable water supply or wastewater system, provided that when the use of an  
5 existing, permitted potable water supply used for a public benefit, such as a  
6 school, child or elder care, or government use, is altered for use for another  
7 public benefit with a similar number of users, the Secretary shall not require  
8 redesign of the supply or require additional capacity for the supply;

9 (7) making a new or modified connection to a new or existing potable  
10 water supply or wastewater system; or

11 (8) changing the use of a building or structure in a manner that increases  
12 the design flows or modifies other operational requirements of a potable water  
13 supply or wastewater system.

14 \* \* \*

15 (f)(1) The Secretary shall give deference to a certification by a licensed  
16 designer with respect to the engineering design or judgment exercised by the  
17 designer in order to minimize Agency review of certified designs. Nothing in  
18 this section shall limit the responsibility of the licensed designer to comply  
19 with all standards and rules, or the authority of the Secretary to review and  
20 comment on design aspects of an application or to enforce Agency rules with  
21 respect to the design or the design certification. This section shall allow the

1 Secretary to issue a permit under this chapter based on the certification by a  
2 licensed designer of record drawings or the design of a wastewater system or  
3 potable water supply without individual review of each certification by the  
4 Secretary.

5 (2) The Secretary shall issue a permit for a new or modified connection  
6 to a water main and a sewer main or indirect discharge system from a building  
7 or structure in a designated downtown development district upon submission  
8 of an application under subsection (b) of this section that consists solely of the  
9 certification of a licensed designer, in accordance with subsection (d) of this  
10 section, and a letter from the owner of the water main and sewer main or  
11 indirect discharge system allocating the capacity needed to accommodate the  
12 new or modified connection. However, this subdivision ~~(2)~~ shall not apply if  
13 the Secretary finds one of the following:

14 (A) The Secretary has prohibited the system that submitted the  
15 allocation letter from issuing new allocation letters due to a lack of capacity.

16 (B) As a result of an audit of the application performed on a random  
17 basis or in response to a complaint, the system is not designed in accordance  
18 with the rules adopted under this chapter.

19 (3) When the Secretary issues a permit for a new or modified connection  
20 to an existing permitted indirect discharge system, the approval of the

1 connection shall not require reissuance, reevaluation, or modification of the  
2 existing permitted indirect discharge system permit.

3 \* \* \*

4 (k) When issuing a permit for an indirect discharge system, the Secretary  
5 shall require an easement or other permanent legal access only to the indirect  
6 discharge system and the disposal area. An easement or other permanent legal  
7 access shall not be required prior to issuance of the permit for every potential  
8 service connection from a building or structure to the indirect discharge  
9 system.

10 Sec. 4. 10 V.S.A. § 1978 is amended to read:

11 § 1978. RULES

12 (a) The Secretary shall adopt rules, in accordance with 3 V.S.A. chapter 25,  
13 necessary for the administration of this chapter. These rules shall include the  
14 following:

15 (1) Performance standards for wastewater systems, including standards  
16 for the maximum application rates for the sizing of a leachfield for a  
17 wastewater system based on soil texture and soil structure.

18 (2) Design flow standards for potable water supplies and wastewater  
19 systems, including:

20 (A) design standards for the construction of wastewater systems  
21 underneath land used for parking, car parks, or other similar paved surfaces;

(D) design flow requirements for community-based wastewater systems that replace on-site wastewater systems that reflect the actual flow for living units served.

(3) Design requirements, including isolation distances, provided that for wastewater systems that include a leachfield in a mound, the rules shall allow any fill material that meets ASTM International specification C-33 or type 2 soil standards.

(4) Monitoring and reporting requirements.

(5) Soils and hydrogeologic requirements.

(6) Operation and maintenance requirements appropriate to the complexity of the system.

\* \* \*

(16) Performance standards, design requirements, and design flow standards for compact wastewater systems that use advanced filtration technologies, such as aerobic treatment units, biofilters, compact leachfields, or drip irrigation. Any standards adopted for compact wastewater systems shall



1 allow for importation of materials into the State for the design and installation  
2 of the compact wastewater system.

3 (b) The Secretary may, by rule, establish permitting exemptions upon a  
4 determination that those exemptions are consistent with the purposes of this  
5 chapter, and are necessary for the appropriate implementation of this chapter.

6 (c) ~~The Secretary shall first adopt rules under this section no later than July~~  
7 ~~30, 2002.~~ [Repealed.]

8 (d) The Secretary shall not adopt rules under this chapter that allow  
9 wastewater systems that serve lots created after June 13, 2002, to be  
10 constructed on ground with a maximum slope in excess of 20 percent. This  
11 limitation shall not apply to replacement wastewater systems.

12 (e)(1) The Secretary shall periodically review and, if necessary, revise the  
13 rules adopted under this chapter to ensure that the technical standards remain  
14 current with the known and proven technologies regarding potable water  
15 supplies and wastewater systems.

16 (2) The Secretary shall seek advice from a Technical Advisory  
17 Committee in carrying out the mandate of this subdivision. The Governor  
18 shall appoint the members of the Committee and ensure that there is at least  
19 one representative of the following entities on the Committee: professional  
20 engineers, site technicians, well drillers, hydrogeologists, town officials with  
21 jurisdiction over potable water supplies and wastewater systems, water quality

1 specialists, technical staff of the Agency of Natural Resources, and technical  
2 staff of the Department of Health. Administrative support for the Advisory  
3 Committee shall be provided by the Secretary of Natural Resources.

4 (3) The Technical Advisory Committee shall provide annual reports,  
5 starting on January 15, 2003, to the Chairs of the House Committee on  
6 Corrections and Institutions and the Senate Committee on Institutions. The  
7 reports shall include information on the following topics: the implementation  
8 of this chapter and the rules adopted under this chapter; the number and type of  
9 alternative or innovative systems approved for general use, approved for use as  
10 a pilot project, and approved for experimental use; the functional status of  
11 alternative or innovative systems approved for use as a pilot project or  
12 approved for experimental use; the number of permit applications received  
13 during the preceding calendar year; the number of permits issued during the  
14 preceding calendar year; and the number of permit applications denied during  
15 the preceding calendar year, together with a summary of the basis of denial.

16 \* \* \*

17 (f) The Secretary may adopt emergency rules as necessary to assure that the  
18 implementation of this chapter does not have an undue adverse effect upon the  
19 marketability of title to real estate.

1 Sec. 5. 10 V.S.A. § 1983 is added to read:

2 § 1983. ISOLATION DISTANCES

3 (a) The minimum horizontal isolation distance between all components of a  
4 wastewater system and a potable water supply, including a public water source,  
5 shall be 75 feet unless, based on the specific site conditions, the Secretary  
6 determines that a greater isolation distance or larger isolation zone is necessary  
7 to:

8 (1) prevent the potential subsurface flow of effluent from impacting a  
9 potable water supply;

10 (2) prevent the potable water supply from impacting the performance of  
11 a wastewater system; or

12 (3) protect human health and the environment from a threat or potential  
13 threat of contamination posed by the construction techniques or materials used  
14 in the wastewater system or the potable water supply.

15 (b) The maximum horizontal isolation distance or isolation zone that the  
16 Secretary can approve under subsection (a) of this section is 200 feet.

17 Sec. 6. TRANSITION; IMPLEMENTATION; EFFECTIVE DATE

18 (a) The Secretary of Natural Resources shall consult with the Technical  
19 Advisory Committee regarding the rulemaking required under 10 V.S.A.  
20 § 1978 in Sec. 4 of this act on or before October 1, 2026.

1       **(b) On or before January 1, 2028, the Secretary of Natural Resources shall**  
2       **amend the Department of Environmental Conservation's Wastewater System**  
3       **and Potable Water Supply Rules in order to ensure consistency with the**  
4       **requirements of this act, including the required rulemaking under 10 V.S.A.**  
5       **§ 1978.**

6       **(c) Potable water supply and wastewater system permits shall be issued**  
7       **under the Department of Environmental Conservation's current Wastewater**  
8       **System and Potable Water Supply Rules until the rules are amended for**  
9       **consistency with the requirements of this act or until July 1, 2027, whichever**  
10       **occurs first.**

11       Sec. 7. 10 V.S.A. § 913 is amended to read:

12       § 913. PROHIBITION

13       (a) Except for allowed uses adopted by the Department by rule, no person  
14       shall conduct or allow to be conducted an activity in a significant wetland or  
15       buffer zone of a significant wetland except in compliance with a permit,  
16       conditional use determination, or order issued by the Secretary.

17       (b) A permit shall not be required under this section for:

18               (1) any activity that occurred before the effective date of this section  
19       unless the activity occurred within:

20                       (A) an area identified as a wetland on the Vermont significant  
21       wetlands inventory maps;

1 (B) a wetland that was contiguous to an area identified as a wetland  
2 on the Vermont significant wetlands inventory maps; or

3 (C) the buffer zone of a wetland referred to in subdivision (A) or (B)  
4 of this subdivision (1); and

5 (2) any construction within a wetland that is identified on the Vermont  
6 significant wetlands inventory maps or within the buffer zone of such a  
7 wetland, provided that the construction was completed prior to February 23,  
8 1992, and no action for which a permit is required under the rules of the  
9 Department was taken or caused to be taken on or after February 23, 1992.

10 (c) Notwithstanding the requirement under subsection (b) of this section for  
11 a permit to conduct an activity in a wetland or wetland buffer zone, no permit  
12 shall be required under this section for the siting of a leachfield in the buffer  
13 zone of a Class II wetland when the leachfield is part of a wastewater system  
14 permitted by the Secretary of Natural Resources under chapter 64 of this title.

15 Sec. 8. 10 V.S.A. § 1263(f) is amended to read:

16 (f)(1) Existing indirect discharges to the waters of the State from on-site  
17 disposal of sewage shall comply with and be subject to the provisions of this  
18 chapter, and shall obtain the required permit, ~~no~~ not later than July 1, 1991.  
19 Notwithstanding the requirements of subsections 1259(d) and (e) of this title,  
20 the Secretary shall grant a permit for an existing indirect discharge to the  
21 waters of the State for on-site disposal of sewage unless ~~he or she~~ the Secretary

1 finds that the discharge violates the water quality standards. Existing indirect  
2 discharges from on-site sewage disposal systems of less than 6,500 gpd  
3 capacity shall not require a permit.

4 (2) Notwithstanding the requirements of chapter 170 of this title, prior to  
5 issuing a permit under this chapter for a new indirect discharge, the Secretary  
6 shall provide notice to the public of a draft permit and a comment period of not  
7 more than 15 days. After the conclusion of the comment period, the Secretary  
8 shall allow any person to request a public hearing on the draft permit for a  
9 period of not more than 15 days.

10 Sec. 9. 10 V.S.A. § 6081 is amended to read:

11 § 6081. PERMITS REQUIRED; EXEMPTIONS

12 \* \* \*

13 (ee) No permit or permit amendment is required for the construction of  
14 improvements for water or wastewater infrastructure serving a village and  
15 downtown center.

16 Sec. 10. 32 V.S.A. § 3752(5) is amended to read:

17 (5)(A) “Development” means, for the purposes of determining whether  
18 a land use change tax is to be assessed under section 3757 of this chapter, the  
19 construction of any building, road, or other structure, or any mining,  
20 excavation, or landfill activity.

\* \* \*

\* \* \*

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1      Sec. 12. EFFECTIVE DATE

2      This act shall take effect on July 1, 2026.