

1 S.24

2 Introduced by Senator Chittenden

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; water quality; stormwater; three-acre
6 permit

7 Statement of purpose of bill as introduced: This bill proposes to amend
8 requirements related to the permitting of stormwater systems in the State. The
9 bill would extend the deadline by which owners of impervious surface subject
10 to the three-acre impervious surface permit must complete permitting. The bill
11 also would allow municipalities that assume full legal responsibility for a
12 stormwater system to assess municipal impact fees on users of the stormwater
13 system. In addition, the bill extends from July 1, 2027 to July 1, 2036 the
14 assessment of the 0.22 percent clean water surcharge on the property transfer
15 tax. The bill also would establish the Local Community Implementation
16 Special Fund to provide grants to municipalities to assist in the stormwater
17 permitting of residential subdivisions or orphan systems in the State.

18 An act relating to stormwater management

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

20 Sec. 1. 10 V.S.A. § 1264 is amended to read:

1 § 1264. STORMWATER MANAGEMENT

2 * * *

3 (b) Definitions. As used in this section:

4 * * *

5 (2) “Development” means the construction of impervious surface on a
6 tract or tracts of land where no impervious surface previously existed.

7 (3) “Expansion” and “the expanded portion of an existing discharge”
8 mean an increase or addition of impervious surface, such that the total resulting
9 impervious area is greater than the minimum regulatory threshold.

10 * * *

11 (6) “Impervious surface” means those manmade surfaces, including
12 paved and unpaved roads, parking areas, roofs, driveways, and walkways, from
13 which precipitation runs off rather than infiltrates.

14 * * *

15 (10) “Regulated stormwater runoff” means precipitation, snowmelt, and
16 the material dissolved or suspended in precipitation and snowmelt that runs off
17 impervious surfaces and discharges into surface waters or into groundwater via
18 infiltration.

19 (11) “Stormwater impact fee” means the monetary charge assessed to a
20 permit applicant for the discharge of regulated stormwater runoff in order to
21 mitigate impacts that the discharger is unable to control through on-site

1 treatment or completion of an offset on a site owned or controlled by the
2 permit applicant.

3 (12) “Stormwater-impaired water” means a State water that the
4 Secretary determines is significantly impaired by discharges of regulated
5 stormwater runoff.

6 (13) “Stormwater Management Manual” means the Agency of Natural
7 Resources’ Stormwater Management Manual, as adopted and amended by rule.

8 (14) “Stormwater runoff” means precipitation and snowmelt that does
9 not infiltrate into the soil, including material dissolved or suspended in it, but
10 does not include discharges from undisturbed natural terrain or wastes from
11 combined sewer overflows.

12 (15) “Stormwater system” includes the storm sewers; outfall sewers;
13 surface drains; manmade wetlands; channels; ditches; wet and dry bottom
14 basins; rain gardens; and other control equipment necessary and appurtenant to
15 the collection, transportation, conveyance, pumping, treatment, disposal, and
16 discharge of regulated stormwater runoff.

17 (16) “Total maximum daily load” (TMDL) means the calculations and
18 plan for meeting water quality standards approved by the U.S. Environmental
19 Protection Agency (EPA) and prepared pursuant to 33 U.S.C. § 1313(d) and
20 federal regulations adopted under that law.

21 * * *

1 (c) Prohibitions.

2 (1) A person shall not commence the construction or redevelopment of
3 one-half of an acre or more of impervious surface without first obtaining a
4 permit from the Secretary.

5 * * *

6 (7) In accordance with the schedule established under subdivision (g)(3)
7 of this section, a person shall not discharge stormwater from impervious
8 surface located within the Lake Champlain watershed or the Lake
9 Memphremagog watershed of three or more acres in size without first
10 obtaining an individual permit or coverage under a general permit issued under
11 this section if the discharge was never previously permitted or was permitted
12 under an individual permit or general permit that did not incorporate the
13 requirements of the 2002 Stormwater Management Manual or any
14 subsequently adopted Stormwater Management Manual.

15 (d) Exemptions.

16 * * *

17 (2) No permit is required under subdivision (c)(1), (5), or (7) of this
18 section and for which a municipality has assumed full legal responsibility as
19 part of a permit issued to the municipality by the Secretary. As used in this
20 subdivision, “full legal responsibility” means legal control of the stormwater
21 system, including a legal right to access the stormwater system, a legal duty to

1 properly maintain the stormwater system, and a legal duty to repair and replace
2 the stormwater system when it no longer adequately protects waters of the
3 State. When a municipality assumes full legal responsibility for a stormwater
4 system, the municipality may assess municipal impact fees on users of the
5 stormwater system provided that the impact fee assessed is a fair
6 apportionment to the user of the cost of the improvement in accordance with
7 the benefits the user received.

8 * * *

9 (f) Rulemaking. On or before December 31, 2017, the Secretary shall
10 adopt rules to manage stormwater runoff. At a minimum, the rules shall:

11 * * *

12 (7) Allow municipal governments to assume the full legal responsibility
13 for a stormwater system permitted under these rules as a part of a permit issued
14 by the Secretary, including authority of municipalities to assess municipal
15 impact fees on users of a stormwater system for which the municipal
16 government has assumed full responsibility.

17 (8) Include standards with respect to the use of offsets and stormwater
18 impact fees.

19 * * *

20 (g) General permits.

1 (1) The Secretary may issue general permits for classes of stormwater
2 runoff that shall be adopted and administered in accordance with the provisions
3 of subsection 1263(b) of this title.

4 * * *

5 (3) Within 120 days after the adoption by the Secretary of the rules
6 required under subsection (f) of this section, the Secretary shall issue a general
7 permit under this section for discharges of stormwater from impervious surface
8 of three or more acres in size, when the stormwater discharge previously was
9 not permitted or was permitted under an individual permit or general permit
10 that did not incorporate the requirements of the 2002 Stormwater Management
11 Manual or any subsequently adopted Stormwater Management Manual. Under
12 the general permit, the Secretary shall:

13 (A) Establish a schedule for implementation of the general permit by
14 geographic area of the State. The schedule shall establish the date by which an
15 owner of impervious surface shall apply for coverage under this subdivision

16 (3). The schedule established by the Secretary shall require an owner of
17 impervious surface subject to permitting under this subdivision to obtain
18 coverage ~~by the following dates:~~

19 (i) for impervious surface located within the Lake Champlain
20 watershed, the Lake Memphremagog watershed, or the watershed of a
21 stormwater-impaired water on or before October 1, ~~2023;~~ and 2028

1 (ii) ~~for impervious surface located within all other watersheds of~~
2 ~~the State, no later than October 1, 2033.~~

3 (B) Establish criteria and technical standards, such as best
4 management practices, for implementation of stormwater improvements for the
5 retrofitting of impervious surface subject to permitting under this subdivision
6 (3).

7 (C) Require that a discharge of stormwater from impervious surface
8 subject to the requirements of this section comply with the standards of
9 subsection (h) of this section for redevelopment of or renewal of a permit for
10 existing impervious surface.

11 (D) Allow the use of stormwater impact fees, offsets, and phosphorus
12 credit trading within the watershed of the water to which the stormwater
13 discharges or runs off.

14 * * *

15 Sec. 2. 2017 Acts and Resolves No. 85, Sec. I.12 is amended to read:

16 Sec. I.12. EFFECTIVE DATES

17 (a) Secs. I.1–I.12 shall take effect on July 1, 2017, except that Sec. I.10
18 (allocating clean water surcharge revenue to Vermont Housing and
19 Conservation Trust Fund) shall take effect on July 1, ~~2027~~ 2036.

20 Sec. 3. 2017 Acts and Resolves No. 85, Sec. I.7(d) is amended to read:

1 (d) To compensate for this reduction of available property transfer tax
2 revenue, it is the intent of the General Assembly through this act to provide for
3 the transfer of \$2,500,000.00 to the Vermont Housing and Conservation Trust
4 Fund, as follows:

5 (1) Sec. D.100 of this act appropriates \$11,304,840.00 in fiscal year
6 2018 from the Vermont Housing and Conservation Trust Fund to the Vermont
7 Housing and Conservation Board. Upon the effective date of this act,
8 \$1,500,000.00 shall revert to the Fund, resulting in a fiscal year 2018 total
9 appropriation to the Board of \$9,804,840.00. In fiscal year 2018 only, the
10 amount of \$1,500,000.00 from the Vermont Housing and Conservation Trust
11 Fund shall be transferred to the General Fund.

12 (2) As provided in Sec. I.9 of this act, from July 1, 2017 until
13 July 1, ~~2027~~ 2036, pursuant to 32 V.S.A. § 9602a, the first \$1,000,000.00 in
14 revenue generated by the clean water surcharge of 0.2 percent shall be
15 transferred to the Vermont Housing and Conservation Trust Fund. In fiscal
16 year 2018 only, the Commissioner shall transfer the amount of \$1,000,000.00
17 from the Vermont Housing and Conservation Trust Fund to the General Fund.

18 (3) After July 1, ~~2027~~ 2036, pursuant to 32 V.S.A. § 9602a as amended
19 in Sec. I.10 of this act, \$1,000,000.00 in total revenue generated by the clean
20 water surcharge of 0.04 percent shall be transferred to the Vermont Housing
21 and Conservation Trust Fund.

1 (4) As provided in Sec. I.11 of this act, the clean water surcharge will be
2 repealed in its entirety on July 1, 2039.

3 Sec. 4. 10 V.S.A. § 1264c is added to read:

4 § 1264c. LOCAL COMMUNITY IMPLEMENTATION SPECIAL FUND

5 (a) There is established the Local Community Implementation Special
6 Fund to be administered by the Secretary of Natural Resources in accordance
7 with 32 V.S.A. chapter 7, subchapter 5 to provide grants to municipalities to
8 assist in the stormwater permitting of residential subdivisions or orphan
9 systems in the State. The Fund shall consist of:

10 (1) an annual appropriation of at least \$1,000,000.00 from the Clean
11 Water Fund;

12 (2) private gifts, bequests, and donations made to the State for any of the
13 purposes for which the Fund was established; and

14 (3) other funds from any public or private source intended for use for
15 any of the purposes for which the Fund has been established.

16 (b) The Secretary may issue grants from the funds to:

17 (1) a municipality subject to the permitting requirement under
18 subdivision 1264(c)(3) of this title for its municipal separate storm sewer
19 system when the municipality assumes under its municipal separate storm
20 sewer system permit the permitting requirements of an orphan system or other
21 residential stormwater system under subdivision 1264(d)(2) of this title; or

1 (2) a municipality that is not subject to the permitting requirement under
2 subdivision 1264(c)(3) of this title for its municipal separate storm sewer
3 system when the municipality assumes the full legal responsibility for a
4 stormwater system under subdivision 1264(d)(2) of this title or agrees to be a
5 co-applicant for a permit for an orphan system within the municipality.

6 (c) The Secretary of Natural Resources shall accept applications for grants
7 from the Fund until September 1 of each fiscal year. Grants shall be awarded
8 on a priority basis for stormwater systems with impending timing constraints
9 or for those projects that will achieve the greatest reduction in pollutant load.

10 (d) Annually, on or before January 31, the Department shall report to the
11 House Committee on Environment and the Senate Committee on Natural
12 Resources and Energy regarding operation and administration of the Local
13 Community Implementation Special Fund. The report shall include a
14 description of each grant awarded from the Fund in the previous calendar year.

15 (e) As used in this section, “orphan stormwater system” means a
16 stormwater system:

17 (1) that serves a residential subdivision;

18 (2) that operates under an expired stormwater discharge permit or was
19 never issued a stormwater discharge permit; and

20 (3) for which the original permittee, in the discretion of the Secretary of
21 Natural Resources, is no longer associated with the system.

1 Sec. 5. 10 V.S.A. § 1389(e) is amended to read:

2 (e) Priorities. In making recommendations under subsection (d) of this
3 section regarding the appropriate allocation of funds from the Clean Water
4 Fund, the Board shall prioritize as follows:

5 (1) As a first priority, make recommendations regarding funding for the
6 following grants and programs, which shall each be given equal priority:

7 (A) grants to clean water service providers to fund the reasonable
8 costs associated with the inspection, verification, operation, and maintenance
9 of clean water projects in a basin;

10 (B) grants to municipalities or property owners to assist with the
11 costs of complying with permitting requirements under subdivisions
12 1264(c)(1) and (7) of this title;

13 (C) the Water Quality Restoration Formula Grant under section 925
14 of this title;

15 ~~(C)(D)~~ the Agency of Agriculture, Food and Markets' agricultural
16 water quality programs; ~~and~~

17 ~~(D)(E)~~ the Water Quality Enhancement Grants under section 926 of
18 this title at a funding level of at least 20 percent of the annual balance of the
19 Clean Water Fund, provided that the maximum amount recommended under
20 this subdivision ~~(D)~~ (E) in any year shall not exceed \$5,000,000.00; and

1 ~~(E)~~(F) funding to partners for basin planning, basin water quality
2 council participation, education, and outreach as provided in subdivision
3 1253(d)(3) of this title, provided funding shall be at least \$500,000.00.

4 (2) As the next priority after reviewing funding requests for programs
5 identified under subdivision (1) of this subsection:

6 (A) funding to programs or projects that address or repair riparian
7 conditions that increase the risk of flooding or pose a threat to life or property;

8 (B) funding for education and outreach regarding the implementation
9 of water quality requirements, including funding for education, outreach,
10 demonstration, and access to tools for the implementation of the Acceptable
11 Management Practices for Maintaining Water Quality on Logging Jobs in
12 Vermont, as adopted by the Commissioner of Forests, Parks and Recreation;

13 (C) funding for the Municipal Stormwater Implementation Grant as
14 provided in section 928 of this title;

15 (D) funding for innovative or alternative technologies or practices
16 designed to improve water quality or reduce sources of pollution to surface
17 waters, including funding for innovative nutrient removal technologies and
18 community-based methane digesters that utilize manure, wastewater, and food
19 residuals to produce energy; and

1 (E) funding to purchase agricultural land in order to take that land out
2 of practice when the State water quality requirements cannot be remediated
3 through agricultural Best Management Practices.

4 (3) As the next priority after reviewing funding requests under
5 subdivisions (1) and (2) of this subsection, funding for the Developed Lands
6 Implementation Grant Program as provided in section 927 of this title.

7 Sec. 6. APPROPRIATION

8 Notwithstanding any other provision of law, \$5,000,000.00 is transferred
9 from the Clean Water Fund to the Local Community Implementation Special
10 Fund in fiscal year 2025.

11 Sec. 7. 24 V.S.A. § 3616 is amended to read:

12 § 3616. RENTS; RATES

13 (a) A municipal corporation, through its board may establish rates, rents, or
14 charges to be paid as the board may prescribe. The board may establish annual
15 charges separately for bond repayment, fixed operations and maintenance costs
16 and variable operations and maintenance costs dependent on flow.

17 (b) The rates, rents, or charges may be based upon:

18 (1) the metered consumption of water on premises connected with the
19 sewer system, however, the board may determine no user will be billed for
20 fixed operations and maintenance costs and bond payment less than the
21 average single-family charge;

1 (2) the number of equivalent units connected with or served by the
2 sewage system based upon their estimated flows compared to the estimated
3 flows from a single-family dwelling, however, the board may determine no
4 user will be billed less than the minimum charge determined for the single-
5 family dwelling charge for fixed operations and maintenance costs and bond
6 payment;

7 * * *

8 (6) for groundwater, surface, or stormwater an equivalent residential
9 unit based on an average or median of the area of impervious surface on
10 residential property within the municipality; or

11 (7) any combination of these bases, provided the combination is
12 equitable.

13 * * *

14 Sec. 8. EFFECTIVE DATE

15 This act shall take effect on July 1, 2025.