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H.730

SHORT FORM

Introduced by Representative Deen of Westminster

Referred to Committee on

Date:

Subject: Conservation and development; water resources; water quality; lake
in crisis

Statement of purpose of bill as introduced: This bill proposes to authorize the Agency of Natural Resources (ANR) to declare a lake to be in crisis if the condition of the water poses a potential harm to the public health, poses a risk of damage to the environment or natural resources, or is likely to cause significant devaluation of property value or other significant negative economic effects. When a lake is declared to be in crisis, ANR shall be designated the State agency with sole authority for regulation of water quality requirements in the watershed of the lake in crisis, provided that all other State agencies shall provide ANR with necessary technical and administrative services for the required responses. When a lake is declared to be in crisis, the State shall appropriate financial resources to ANR sufficient to improve the quality of the lake in crisis.

1 ANR is authorized to issue emergency orders requiring activities
2 contributing to the conditions of the lake in crisis to cease, including, if the
3 source of pollution in the lake is phosphorus, cessation in the watershed of
4 agricultural practices that contribute phosphorus to the lake. If an ANR
5 emergency order requires cessation of agricultural practices in the watershed
6 of the lake in crisis, ANR shall compensate farmers in the watershed for
7 economic losses directly attributable to the emergency order. ANR shall
8 review all agricultural practices in the watershed, including application of
9 nutrients according to a nutrient management plan. ANR shall hold at least
10 one public hearing and accept notice and comment for any water quality
11 program or project implemented in the watershed of a lake in crisis. All
12 records produced or acquired by ANR in establishing a water quality program
13 or project in the watershed shall be subject to public inspection and copying
14 under the Public Records Act, including nutrient management plans of farms
15 in the watershed.

16 The bill would declare Lake Carmi to be a lake in crisis. ANR would be
17 required to establish an emergency response plan for Lake Carmi on or before
18 April 1, 2018. The emergency response plan for Lake Carmi shall include
19 funding necessary for implementation of a phosphorus management plan that
20 incorporates requirements for aeration of the lake.

1 An act relating to State response to waters in crisis

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

3 ~~(TEXT OMITTED IN SHORT FORM BILLS)~~

Sec. 1. 10 V.S.A. chapter 47, subchapter 2A is added to read:

Subchapter 2A. Lake in Crisis

§ 1310. DESIGNATION OF LAKE IN CRISIS

(a) The Secretary of Natural Resources (Secretary) shall review whether a lake in the State should be designated as a lake in crisis upon the Secretary's own motion or upon petition of 15 or more persons or a selectboard of a municipality in which the lake or a portion of the lake is located.

(b) The Secretary shall designate a lake as a lake in crisis if, after review under subsection (a) of this section, the Secretary determines that:

(1) the lake or segments of the lake have been listed as impaired;

(2) the condition of the lake will cause:

(A) a potential harm to the public health; and

(B) a risk of damage to the environment or natural resources; and

(3) a municipality in which the lake or a portion of the lake is located has reduced the valuation of real property due to the condition of the lake.

§ 1311. STATE RESPONSE TO A LAKE IN CRISIS

(a) Adoption of crisis response plan. When a lake is declared in crisis, the Secretary shall within 90 days after the designation of the lake in crisis issue a

comprehensive crisis response plan for the management of the lake in crisis in order to improve water quality in the lake or to mitigate or eliminate the potential harm to public health or the risk of damages to the environment or natural resources. The Secretary shall coordinate with the Secretary of Agriculture, Food and Markets, and the Secretary of Transportation in the development of the crisis response plan. The crisis response plan shall require implementation of one or both of the following in the watershed of the lake in crisis:

(1) water quality requirements not set forth in existing statute or rule that are designed to address specific harms to public health or risks to the environment or natural resources; or

(2) implementation of or compliance with existing water quality requirements under one or more of the following:

(A) water quality requirements under chapter 47 of this title, including requiring a property owner to obtain a permit or implement best management practices for the discharge or stormwater runoff from any size of impervious surfaces if the Secretary determines that the treatment of the discharge or stormwater runoff is necessary to reduce the adverse impacts to water quality of the discharge or stormwater on the lake in crisis;

(B) agricultural water quality requirements under 6 V.S.A. chapter 215, including best management practices under 6 V.S.A. § 4810 to reduce

runoff from the farm; or

(C) water quality requirements adopted under section 1264 of this section for stormwater runoff from municipal or State roads.

(b) Agency cooperation and services. All other State agencies shall cooperate with the Secretary in responding to the lake in crisis, and the Secretary shall be entitled to seek technical and scientific input or services from the Agency of Agriculture, Food and Markets, the Agency of Transportation, or other necessary State agencies.

§ 1312. LAKE IN CRISIS ORDER

(a) Lake in crisis order. The Secretary, after consultation with the Secretary of Agriculture, Food and Markets, may issue a lake in crisis order to require a person to:

(1) take an action identified in the lake in crisis response plan;

(2) cease any acts, discharges, or processes contributing to the impairment of the lake in crisis;

(3) mitigate a significant contributor of a pollutant to the lake in crisis; or

(4) conduct testing, sampling, monitoring, surveying, or other analytical operations required to determine the nature, extent, duration, or severity of the potential harm to the public health or a risk of damage to the environment or natural resources.

(b) Notice. Prior to issuing a lake in crisis order under this section, the Secretary shall provide notice as provided in this subsection.

(1) The Secretary shall prepare a notice of intent to seek the order, setting forth the reasons to believe a lake in crisis order should be issued.

(2) The notice of intent, together with the supporting evidence and a statement of procedural rights available under this section, shall be served on the person or persons against whom the lake in crisis order is sought in accordance with the procedures set forth in Vermont Rules of Civil Procedure.

(3) Upon request of a person against whom a lake in crisis order is sought, the Secretary shall hold a hearing. At the hearing, the person against whom the order is sought shall be given an opportunity to rebut the allegations and demonstrate that the Secretary should not issue the lake in crisis order against the person.

(c) Phosphorus practices. If the source of pollution in the lake in crisis includes phosphorus from a specific source, the Secretary shall issue a lake in crisis order requiring the source of phosphorus in the watershed to implement practices that reduce the phosphorus loads to the lake.

~~(d) Term of order. When the Secretary issues a lake in crisis order under this section, the order shall include a term for the duration of any water quality requirement in the order.~~

(d) Term of order. When the Secretary issues a lake in crisis order under

this section, the order shall include a term for the duration of each water quality requirement in the order.

(e) Term of designation. A lake shall remain designated as in crisis under this subchapter until the Secretary determines that the lake no longer satisfies the criteria for designation under subsection 1310(b) of this title.

§ 1313. ASSISTANCE

(a) A person subject to a lake in crisis order shall be eligible for technical and financial assistance from the Secretary to be paid from the Lake in Crisis Response Program Fund. The Secretary shall adopt by procedure the process for application for assistance under this section.

(b) State financial assistance awarded under this section shall be in the form of a grant. An applicant for a State grant shall pay at least 35 percent of the total eligible project cost. The dollar amount of a State grant shall be equal to the total eligible project cost, less 35 percent of the total as paid by the applicant, and less the amount of any federal assistance awarded.

(c) A grant awarded under this section shall comply with all terms and conditions for the issuance of State grants.

§ 1314. FUNDING OF STATE RESPONSE TO A LAKE IN CRISIS

~~(a) Initial response. Upon designation of a lake in crisis, the Secretary, notwithstanding the requirement of 32 V.S.A. § 706, may transfer the balances of appropriations not to exceed \$50,000.00 made under any appropriation to~~

~~for the support of the Agency from one department or other unit of the Agency
to fund the initial response to the lake in crisis.~~

(a) Initial response. Upon designation of a lake in crisis, the Secretary may, for the purposes of the initial response to the lake in crisis, expend up to \$50,000.00 appropriated to the Agency of Natural Resources from the Clean Water Fund for authorized contingency spending.

(b) Long-term funding. In the subsequent budget submitted to the General Assembly under 32 V.S.A. § 701, the Secretary of Administration shall propose appropriations to the Lake in Crisis Response Program Fund to implement fully the crisis response plan for the lake in crisis, including recommended appropriations from one or more of the following:

(1) the Clean Water Fund established under section 1389 of this title;

(2) the Environmental Contingency Fund established under section 1289 of this title;

(3) the Vermont Housing and Conservation Trust Fund established under section 312 of this title;

(4) capital funds and other monies available from the Secretary of Agriculture, Food and Markets for water quality programs or projects;

(5) capital funds and other monies available from the Secretary of Natural Resources for water quality programs or projects; and

(6) General Fund appropriations.

§ 1315. LAKE IN CRISIS RESPONSE PROGRAM FUND

~~(a) There is created a special fund known as the Lake in Crisis Response Program Fund to be administered by the Secretary of Natural Resources. The Fund shall consist of funds that may be appropriated by the General Assembly.~~

(a) There is created a special fund known as the Lake in Crisis Response Program Fund to be administered by the Secretary of Natural Resources. The Fund shall consist of:

(1) funds that may be appropriated by the General Assembly; and

(2) other gifts, donations, or funds received from any source, public or private, dedicated for deposit into the Fund.

(b) The Secretary shall use monies deposited in the Fund for the Secretary's implementation of a crisis response plan for a lake in crisis and for financial assistance under section 1313 of this title to persons subject to a lake in crisis order.

(c) Notwithstanding the requirements of 32 V.S.A. § 588(3) and (4), interest earned by the Fund and the balance of the Fund at the end of the fiscal year shall be carried forward in the Fund and shall not revert to the General Fund.

§ 1316. PUBLIC HEARING; TRANSPARENCY

The Secretary shall hold at least one public hearing in the watershed of the lake in crisis and shall provide an opportunity for public notice and comment for each water quality program, project, or crisis order proposed for

implementation in the watershed of the lake in crisis.

Sec. 2. LAKE CARMI; LAKE IN CRISIS

The General Assembly declares Lake Carmi as a lake in crisis under 10 V.S.A. chapter 47, subchapter 2A. The crisis response plan for Lake Carmi shall include implementation of runoff controls.

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

(a) The Secretary may take action under this chapter to enforce the following statutes and rules, permits, assurances, or orders implementing the following statutes, and the Board may take such action with respect to subdivision (10) of this subsection:

(1) 10 V.S.A. chapter 23, relating to air quality;

(2) 10 V.S.A. chapter 32, relating to flood hazard areas;

(3) 10 V.S.A. chapters 47 and 56, relating to water pollution control, water quality standards, ~~and~~ public water supply, and lakes in crisis;

** * **

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

(a) This chapter shall govern all appeals of an act or decision of the Secretary, excluding enforcement actions under chapters 201 and 211 of this title and rulemaking, under the following authorities and under the rules adopted under those authorities:

(1) The following provisions of this title:

(A) chapter 23 (air pollution control);

(B) chapter 50 (aquatic nuisance control);

(C) chapter 41 (regulation of stream flow);

(D) chapter 43 (dams);

(E) chapter 47 (water pollution control; lakes in crisis);

* * *

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.