

PROPOSAL IN RESPONSE TO

H.507 An act relating to eligibility for economic development in impaired waters of the State

An applicant for a state-funded grant must certify that the applicant, as well as any business in which the applicant has greater than 10% interest, is not a named party in any administrative order, consent decree or judicial order relating to water quality that has been issued by the State of Vermont or any of its agencies. This new certification requirement will be implemented in the next fiscal year by the State of Vermont, Agency of Administration.

The certification will be required for state-funded grant programs only. The certification will not apply to federally funded grants, federal funded contracts, or federally funded tax credits; nor will the certification apply to state or federal loan programs. Each agency will be solely responsible for determining which of its programs are state-funded grant programs.

If the applicant cannot make this certification, the applicant must explain the circumstances of the administrative order, consent decree or judicial order.

The State of Vermont may exercise its discretion regarding the grant award based on the circumstances surrounding the order. Factors to be considered include: compliance with the conditions of the order; the magnitude of the violation that forms the basis of the order; the applicant's level of involvement in the violation; and the environmental benefits of awarding the grant.

The applicant has an obligation to update the certification at any time prior to the award of the grant; and an obligation to inform the State of Vermont if it becomes a named party on a water-quality related administrative order, consent decree or judicial order during implementation of the grant.

If the applicant falsely certifies that is not a named party to any administrative order, consent decree or judicial order issued by the State of Vermont or its agencies, then the State of Vermont or its agencies may seek to recover the grant award at its discretion. The State of Vermont or its agencies may also seek to recover the grant award if the applicant becomes a named party on a water-quality related administrative order, consent decree or judicial order during the implementation of the grant. If the State of Vermont seeks to recover a grant award, the applicant will be liable for the amount of the grant award and costs. In these circumstances the State of Vermont may, at its discretion, deny any future grant awards for up to five years.

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Commented [ER1]: Self-certification of good standing

Commented [ER2]: Certification of good standing applies to all businesses in which applicant has more than 10% ownership.

Commented [ER3]: Bright-line test ("named party in administrative order, consent decree or judicial order")

The certification will be required for state-funded grant programs only. The certification will not apply to federally funded grants, federal funded contracts, or federally funded tax credits; nor will the certification apply to state or federal loan programs. Each agency will be solely responsible for determining which of its programs are state-funded grant programs.

Commented [ER4]: The requirement applies only to grant programs, which the State can condition using Attachment C of Bulletin 5, ("Policy for Grant Issuance and Monitoring"). If the certification goes beyond grant programs, need to consider how the condition will be implemented.

If the applicant cannot make this certification, the applicant must explain the circumstances of the administrative order, consent decree or judicial order.

The State of Vermont may exercise its discretion regarding the grant award based on the circumstances surrounding the order. Factors to be considered include: compliance with the conditions of the order; the magnitude of the violation that forms the basis of the order; the applicant's level of involvement in the violation; and the environmental benefits of awarding the grant.

Commented [ER5]: State exercises its discretion whether or not to award a grant to an applicant that is not in good standing.

The applicant has an obligation to update the certification at any time prior to the award of the grant; and an obligation to inform the State of Vermont if it becomes a named party on a water-quality related administrative order, consent decree or judicial order during implementation of the grant.

Commented [ER6]: Applicant has ongoing obligation to notify the state if its good standing lapses.

If the applicant falsely certifies that is not a named party to any administrative order, consent decree or judicial order issued by the State of Vermont or its agencies, then the State of Vermont or its agencies may seek to recover the grant award at its discretion. The State of Vermont or its agencies may also seek to recover the grant award if the applicant becomes a named party on a water-quality related administrative order, consent decree or judicial order during the implementation of the grant. If the State of Vermont seeks to recover a grant award, the applicant will be liable for the amount of the grant award and costs. In these circumstances the State of Vermont may, at its discretion, deny any future grant awards for up to five years.

Commented [ER7]: If the applicant falsely certifies that it is in good standing, the State of Vermont at its discretion may seek to recover the grant award and costs.

Commented [ER8]: The State of Vermont may, at its discretion, deny future grant awards for up to five years.

(A) conduct any of the activities required under subdivision (2) of this subsection;

(B) provide technical assistance and data collection activities to inform municipal officials and the State in making water quality investment decisions;

(C) coordinate municipal planning and adoption or implementation of municipal development regulations to better meet State water quality policies and investment priorities; or

(D) assist the Secretary in implementing a project evaluation process to prioritize water quality improvement projects within the region to assure cost effective use of State and federal funds.

* * * State Grants; Water Quality Certification * * *

Sec. 13. SECRETARY OF ADMINISTRATION; WATER QUALITY
STANDARDS CERTIFICATION FOR STATE-FUNDED
GRANTS; REPORT

(a) As used in this section:

(1) "Applicant" shall include all entities, including businesses in which the applicant has a greater than 10 percent interest, or land owned or controlled by the applicant.

(2) “Good standing” means the applicant:

(A) is not a named party in any administrative order, consent decree, or judicial order relating to Vermont water quality standards issued by the State or any of its agencies or departments; and

(B) is in compliance with all federal and State water quality laws and regulations.

(b)(1) The Secretary of Administration shall amend the Standard State Provisions for Contracts and Grants, referred to as Attachment C to Administrative Bulletin 5, to require an applicant for a State-funded grant to certify, under penalty of perjury, that the applicant is in good standing with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets.

(2) The requirement under this subsection shall allow for an attachment or include space for an applicant who cannot certify under subdivision (1) of this subsection to explain the circumstances surrounding the applicant’s inability to certify under subdivision (1) of this subsection.

(3) At any time prior to the award of a State-funded grant or during implementation of a State-funded grant, an applicant shall notify the State agency or department administering the State-funded grant if the applicant is no longer in good standing with the Agency of Natural Resources or the Agency of Agriculture, Food and Markets.

(c) A State agency or department may consider an applicant's certification or explanation under subsection (b) of this section in determining whether or not to award a State-funded grant to the applicant.

(d)(1) If a State-funded grant applicant knowingly provides a false certification or explanation under subsection (b) of this section or fails to notify the State agency or department administering the State-funded grant if the applicant is no longer in good standing with the Agency of Natural Resources or the Agency of Agriculture, Food and Markets as required in subdivision (b)(3) of this section, the State or its agencies or departments may:

(A) seek to recover the grant award; and

(B) deny any future grant award to the applicant, based on the false certification or explanation or failure to notify, for up to five years.

(2) In recovering a grant award under this section, the State or its agencies or departments shall be entitled to costs and expenses, including attorney's fees.

(e) This section shall not apply to federally funded grants, contracts, or tax credits or federal or State loan programs.

(f) On or before January 15, 2021, the Secretary of Administration shall submit a report to the House Committees on Fish, Wildlife and Water Resources and on Commerce and Economic Development and the Senate Committees on Natural Resources and Energy and on Economic Development, Housing and General Affairs regarding methods to require all economic

development assistance applications to include a certification that the applicant is not in violation of the requirements of programs enforced by the Agency of Natural Resources under 10 V.S.A. § 8003(a). The report shall also include information regarding any enforcement action taken by the State or its agencies or departments under subsection (d) of this section.

* * * Effective Dates * * *

Sec. 14. EFFECTIVE DATES

(a) This act shall take effect on passage, except that:

(1) Sec. 13 (State grants; water quality certification) shall take effect on July 1, 2016; and

(2) Sec. 2 (permitting of surface water sources) shall take effect on July 1, 2017.

Date Governor signed bill: June 1, 2016