

H.26

Introduced by Representatives Webb of Shelburne, Deen of Westminster,
Krebs of South Hero, McCullough of Williston and Spengler of
Colchester

Referred to Committee on

Date:

Subject: Conservation and development; water quality; fertilizer

Statement of purpose: This bill proposes to prohibit the application of
fertilizer containing phosphorus or nitrogen to nonagricultural turf unless
certain conditions are satisfied. The bill also would prohibit the application of
any fertilizer to an impervious surface or within 25 feet of a water of the state.
In addition, enforcement of the requirements for the application of fertilizer to
nonagricultural turf would be enforceable as a judicial bureau offense.

~~An act relating to limiting the application of fertilizer containing
phosphorus or nitrogen to nonagricultural turf~~ *An act relating to the
application of phosphorus fertilizer to nonagricultural turf*

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

~~Sec. 1. 10 V.S.A. § 1266b is added to read:~~

~~§ 1266b. USE OF FERTILIZER CONTAINING PHOSPHORUS OR~~

~~NITROGEN~~

~~(a) Definitions. As used in this section:~~

~~(1) "Fertilizer" shall have the same meaning as in 6 V.S.A. § 363(5).~~

~~(2) "Impervious surface" means a highway, street, sidewalk, parking lot, driveway, or other material that prevents infiltration of water into soil.~~

~~(3) "Manipulated animal or vegetable manure" means manure that is ground, pelletized, mechanically dried, or otherwise treated to assist with the use of manure as fertilizer.~~

~~(4) "Slow release nitrogen" means nitrogen in a form that is released over time and that is not water-soluble.~~

~~(5) "Turf" means land planted in closely mowed, managed grasses, including residential and commercial property, private and public golf courses, and publicly owned land, parks, and recreation areas. "Turf" shall not include pasture, cropland, land used to grow food, or any other land used for agricultural production.~~

~~(6) "Water" or "water of the state" means all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs, and all bodies of surface waters, artificial or natural, which are contained within, flow through, or border upon the state or any portion of it.~~

~~(7) "Water-soluble nitrogen" means nitrogen in a water-soluble form that does not have slow or controlled release properties.~~

~~(b) Use of fertilizer containing phosphorus. No person shall apply to turf fertilizer labeled as containing phosphorus or phosphate unless:~~

1 (1) the turf is deficient in phosphorus as shown by a soil test approved
2 by the agency of agriculture, food and markets and performed no more than 36
3 months before the proposed application of the fertilizer;

4 (2) a property owner or an agent of a property owner is first establishing
5 grass in turf via seed or sod procedures and the application of fertilizer is
6 limited to the first growing season;

7 (3) a property owner is reestablishing or repairing a turf area; or

8 (4) the fertilizer consists of manipulated animal or vegetable manure
9 that includes no more than 0.25 pounds of phosphorus per 1,000 square feet
10 when applied pursuant to the instructions on the container.

11 (c) Use of fertilizer containing nitrogen. No person shall apply to turf
12 fertilizer:

13 (1) containing nitrogen in an amount that is more than an annual total of
14 3.2 pounds of total nitrogen per 1,000 square feet;

15 (2) that is less than 20 percent slow-release nitrogen;

16 (3) containing more than 0.7 pounds of water-soluble nitrogen per 1,000
17 square feet per application; or

18 (4) at a rate of more than 0.9 pounds of total nitrogen per 1,000 square
19 feet per application.

20 (d) Application of fertilizer to impervious surface; in proximity to water;
21 and seasonal restriction. No person shall apply any fertilizer:

~~(1) to an impervious surface. Fertilizer applied or released to an~~
impervious surface shall be immediately contained, returned to a container,
legally applied, or legally disposed of;

~~(2) to turf before April 1 or after December 15 in any calendar year or at~~
any time when the ground is frozen; or

~~(3) within 25 feet of a water of the state.~~

~~(e) A person who violates this section shall be subject to a civil penalty of~~
not more than \$3,000.00 per violation. A violation of this section shall be
enforceable in the judicial bureau pursuant to the provisions of chapter 29 of
Title 4 in an action that may be brought by the agency of agriculture, food and
markets, the agency of natural resources, or other enforcement officers as that
term is defined in 23 V.S.A. § 4(11).

Sec. 2. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

(a) A judicial bureau is created within the judicial branch under the
supervision of the supreme court.

(b) The judicial bureau shall have jurisdiction of the following matters:

(1) Traffic violations alleged to have been committed on or after July 1,
1990.

(2) Civil ordinance violations alleged to have been committed on or
after July 1, 1994.

1 ~~(3) Minor fish and wildlife violations alleged to have been committed on~~
2 or after September 1, 1996.

3 * * *

4 (21) Violations of 13 V.S.A. §§ 3602 and 3603, relating to the unlawful
5 cutting of trees and the marking of harvest units.

6 (22) Violations of 10 V.S.A. § 1266b, relating to the application of
7 fertilizer to nonagricultural turf.

8 (c) The judicial bureau shall not have jurisdiction over municipal parking
9 violations.

10 (d) Three hearing officers appointed by the court administrator shall
11 determine waiver penalties to be imposed for violations within the judicial
12 bureau's jurisdiction, except:

13 (1) Municipalities shall adopt full and waiver penalties for civil
14 ordinance violations pursuant to 24 V.S.A. § 1979. For purposes of municipal
15 violations, the issuing law enforcement officer shall indicate the appropriate
16 full and waiver penalty on the complaint.

17 (2) The agency of natural resources and the natural resources board shall
18 include full and waiver penalties in each rule that is adopted under 10 V.S.A.
19 § 8019. For purposes of environmental violations, the issuing entity shall
20 indicate the appropriate full and waiver penalties on the complaint.

1 ~~Sec. 3. EFFECTIVE DATE~~

2 ~~This act shall take effect on January 1, 2012.~~

~~Sec. 1. 10 V.S.A. § 1266b is added to read:~~

~~§ 1266b. SALE AND USE OF PHOSPHORUS AND NITROGEN~~

~~FERTILIZER~~

~~(a) Definitions. As used in this section:~~

~~(1) "Fertilizer" shall have the same meaning as in 6 V.S.A. § 363(5).~~

~~(2) "Impervious surface" means those manmade surfaces, including paved and unpaved roads, parking areas, roofs, driveways, and walkways, from which precipitation runs off rather than infiltrates.~~

~~(3) "Manipulated animal or vegetable manure" means manure that is ground, pelletized, mechanically dried, supplemented with plant nutrients or substances other than phosphorus or phosphate, or otherwise treated to assist with the use of manure as fertilizer.~~

~~(4) "Nitrogen fertilizer" means fertilizer labeled for use on turf in which the nitrogen content consists of less than 15 percent slow-release nitrogen.~~

~~(5) "Phosphorus fertilizer" means fertilizer in which the available phosphate content is greater than 0.67 percent by weight.~~

~~(5) "Phosphorus fertilizer" means fertilizer labeled for use on turf in which the available phosphate content is greater than 0.67 percent by weight.~~

~~(6) "Slow release nitrogen" means nitrogen in a form that is released over time and that is not water-soluble nitrogen.~~

~~(7)(A) "Turf" means land planted in closely mowed, managed grasses, including residential and commercial property and publicly owned land, parks, and recreation areas.~~

~~(B) "Turf" shall not include:~~

~~(i) pasture, cropland, land used to grow sod, or any other land used for agricultural production; or~~

~~(ii) private and public golf courses.~~

~~(8) "Water" or "water of the state" means all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs, and all bodies of surface waters, artificial or natural, which are contained within, flow through, or border upon the state or any portion of it.~~

~~(9) "Water-soluble nitrogen" means nitrogen in a water-soluble form~~

~~that does not have slow release properties.~~

~~(b) Sale and use of phosphorus fertilizer.~~

~~(1) No person shall sell phosphorus fertilizer and no person shall apply phosphorus fertilizer to turf except for:~~

~~(A) phosphorus fertilizer necessary for application to turf that is deficient in phosphorus as shown by a soil test performed no more than 36 months before the application of the fertilizer;~~

~~(B) phosphorus fertilizer that is labeled as starter fertilizer and that is intended for application to turf when a property owner or an agent of a property owner is first establishing grass in turf via seed or sod procedures, and the application of starter fertilizer is limited to the first growing season;~~

~~(C) phosphorus fertilizer that is labeled as repair or patch fertilizer and that is intended for application to damaged turf; or~~

~~(D) phosphorus fertilizer that consists of manipulated animal or vegetable manure that, when applied pursuant to the instructions on the container, results in no more than 0.25 pounds of phosphorus applied per 1,000 square feet of turf.~~

~~(2) The secretary of agriculture, food and markets shall approve a standard for the soil test required under subdivision (1)(A) of this subsection.~~

~~(2) The secretary of agriculture, food and markets shall approve a standard, which may authorize multiple testing methods, for the soil test required under subdivision (1)(A) of this subsection.~~

~~(c) Sale and use of nitrogen fertilizer. No person shall sell nitrogen fertilizer or apply nitrogen fertilizer to turf.~~

~~(d) Application of fertilizer to impervious surface; in proximity to water; and seasonal restriction. No person shall apply any fertilizer:~~

~~(1) to an impervious surface. Fertilizer applied or released to an impervious surface shall be immediately collected and returned to a container for legal application;~~

~~(2) to turf before April 1 or after October 15 in any calendar year or at any time when the ground is frozen; or~~

~~(3) to turf within 25 feet of a water of the state.~~

~~(e) Retail display of phosphorus fertilizer. A retailer who sells phosphorus fertilizer or who offers phosphorus fertilizer for sale to consumers shall:~~

~~(1) Display nonphosphorus fertilizer separately from phosphorus fertilizer; and~~

~~(2) Post in the location where phosphorus fertilizer is displayed a clearly visible sign that is at least eight and one-half inches by 11 inches in size and that states "Phosphorus runoff poses a threat to water quality. Under Vermont law, fertilizer containing phosphorus shall not be applied to lawn unless applied to new lawn, damaged lawn, or lawn that is deficient for phosphorus as indicated by a soil test."~~

~~(2) Post in the location where phosphorus fertilizer is displayed a clearly visible sign that is at least eight and one-half inches by 11 inches in size and that states "Phosphorus runoff poses a threat to water quality. Most Vermont lawns do not benefit from fertilizer containing phosphorus. Under Vermont law, fertilizer containing phosphorus shall not be applied to lawn unless applied to new lawn, damaged lawn, or lawn that is deficient for phosphorus as indicated by a soil test."~~

~~(f) Violations. A person who violates this section shall be subject to a civil penalty of not more than \$500.00 per violation. A violation of this section shall be enforceable in the judicial bureau pursuant to the provisions of chapter 29 of Title 4 in an action that may be brought by the agency of agriculture, food and markets or the agency of natural resources. A violation as an environmental violation under chapter 29 of Title 4 for the purposes of appeal and setting the applicable penalty.~~

~~(f) Violations. A person who knowingly and intentionally violates this section shall be subject to a civil penalty of not more than \$500.00 per violation. A violation of this section shall be enforceable in the judicial bureau pursuant to the provisions of chapter 29 of Title 4 in an action that may be brought by the agency of agriculture, food and markets or the agency of natural resources. A violation enforced by the agency of natural resources under this section shall be treated as an environmental violation under chapter 29 of Title 4 for the purposes of appeal and setting the applicable penalty.~~

Sec. 2. 6 V.S.A. § 381 is added to read:

§ 381. GOLF COURSES; NUTRIENT MANAGEMENT PLAN

Beginning July 1, 2012, as a condition of the permit issued to golf courses under chapter 87 of this title and regulations adopted thereunder, a golf course shall be required to submit to the secretary of agriculture, food and markets a nutrient management plan for the use and application of fertilizer to grasses or other lands owned or controlled by the golf course. The nutrient management plan shall ensure that the golf course applies fertilizer according to the agronomic rates for the site-specific conditions of the golf course.

Sec. 3. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

~~(a) A judicial bureau is created within the judicial branch under the supervision of the supreme court.~~

~~(b) The judicial bureau shall have jurisdiction of the following matters:~~

~~(1) Traffic violations alleged to have been committed on or after July 1, 1990.~~

~~(2) Civil ordinance violations alleged to have been committed on or after July 1, 1994.~~

~~(3) Minor fish and wildlife violations alleged to have been committed on or after September 1, 1996.~~

~~* * *~~

~~(21) Violations of 13 V.S.A. §§ 3602 and 3603, relating to the unlawful cutting of trees and the marking of harvest units.~~

~~(22) Violations of 10 V.S.A. § 1266b, relating to the application of fertilizer to nonagricultural turf.~~

~~(c) The judicial bureau shall not have jurisdiction over municipal parking violations.~~

~~(d) Three hearing officers appointed by the court administrator shall determine waiver penalties to be imposed for violations within the judicial bureau's jurisdiction, except:~~

~~(1) Municipalities shall adopt full and waiver penalties for civil ordinance violations pursuant to 24 V.S.A. § 1979. For purposes of municipal violations, the issuing law enforcement officer shall indicate the appropriate full and waiver penalty on the complaint.~~

~~(2) The agency of natural resources and the natural resources board shall include full and waiver penalties in each rule that is adopted under 10 V.S.A. § 8019. For purposes of environmental violations, the issuing entity shall indicate the appropriate full and waiver penalties on the complaint.~~

~~Sec. 4. Sec. X. Sec. E.700.1 of Act No. 1 2009 Special Sess. is amended to read:~~

~~Sec. E.700.1 REPORT AND RULEMAKING ON WATER~~

~~MANAGEMENT TYPING FOR THE WHITE RIVER BASIN~~

~~AND THE WEST, WILLIAMS, AND SAXONS RIVER BASIN~~

~~(a) On or before January 31, 2011, the Two Rivers Ottauquechee Regional Commission and the Windham Regional Commission shall submit to the agency of natural resources and the natural resources board the recommended water management type designations required under Sec.~~

~~E.700(a)(1) and (2) of this act. Upon receipt of the recommended water management type designations required under this section, the agency of natural resources shall post the recommended water management type designations to its website and shall make the recommendations available to any person upon request.~~

~~(b) Within three months of receipt of the recommended water management type designations under this section, the~~ The natural resources board shall initiate rulemaking to amend the water management types in order to consider the recommended water management type designations for the White River basin and the West, Williams and Saxons River basin.

Sec. 5. EFFECTIVE DATE

~~(a) This section and Sec. 4 (water management typing) of this act shall take effect on passage~~

~~(b) Secs. 1 (sale and use of fertilizer), 2 (golf course management plans) and 3 (judicial bureau offense) of this act shall take effect on January 1, 2012.~~

Sec. 1. 10 V.S.A. § 1266b is added to read:

§ 1266b. APPLICATION OF PHOSPHORUS FERTILIZER

(a) Definitions. As used in this section:

(1) "Compost" means a stable humus-like material produced by the controlled biological decomposition of organic matter through active management, but shall not mean sewage, septage, or materials derived from sewage or septage.

(2) "Fertilizer" shall have the same meaning as in 6 V.S.A. § 363(5).

(3) "Impervious surface" means those manmade surfaces, including paved and unpaved roads, parking areas, roofs, driveways, and walkways, from which precipitation runs off rather than infiltrates.

(4) "Manipulated animal or vegetable manure" means manure that is ground, pelletized, mechanically dried, supplemented with plant nutrients or substances other than phosphorus or phosphate, or otherwise treated to assist with the use of manure as fertilizer.

(5) "Nitrogen fertilizer" means fertilizer labeled for use on turf in which the nitrogen content consists of less than 15 percent slow-release nitrogen.

(6) "Phosphorus fertilizer" means fertilizer labeled for use on turf in which the available phosphate content is greater than 0.67 percent by weight, except that "phosphorus fertilizer" shall not include compost or manipulated animal or vegetable manure.

(7) "Slow-release nitrogen" means nitrogen in a form that is released over time and that is not water-soluble nitrogen.

(8)(A) "Turf" means land planted in closely mowed, managed grasses, including residential and commercial property and publicly owned land, parks, and recreation areas.

(B) "Turf" shall not include:

(i) pasture, cropland, land used to grow sod, or any other land used for agricultural production; or

(ii) private and public golf courses.

(9) "Water" or "water of the state" means all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs, and all bodies of surface waters, artificial or natural, which are contained within, flow through, or border upon the state or any portion of it.

(10) "Water-soluble nitrogen" means nitrogen in a water-soluble form that does not have slow-release properties.

(b) Application of phosphorus fertilizer.

(1) No person shall apply phosphorus fertilizer to turf except for:

(A) phosphorus fertilizer necessary for application to turf that is deficient in phosphorus as shown by a soil test performed no more than 18 months before the application of the fertilizer; or

(B) phosphorus fertilizer that is labeled as starter fertilizer and that is intended for application to turf when a property owner or an agent of a property owner is first establishing grass in turf via seed or sod procedures and the application of starter fertilizer is limited to the first growing season.

(2) On or before October 1, 2011, the secretary of agriculture, food and markets, after consultation with the University of Vermont, shall approve a standard, which may authorize multiple testing methods, for the soil test required under subdivision (1)(A) of this subsection.

(c) Application of nitrogen fertilizer. No person shall apply nitrogen fertilizer to turf.

(d) Application of fertilizer to impervious surface; in proximity to water; and seasonal restriction. No person shall apply any fertilizer:

(1) to an impervious surface. Fertilizer applied or released to an impervious surface shall be immediately collected and returned to a container for legal application. This subdivision shall not apply to activities regulated under the accepted agricultural practices as those practices are defined by the

secretary of agriculture, food and markets under 6 V.S.A. § 4810;

(2) to turf before April 1 or after October 15 in any calendar year or at any time when the ground is frozen; or

(3) to turf within 25 feet of a water of the state.

(e) Retail display of phosphorus fertilizer. If a retailer sells or offers for sale phosphorus fertilizer to consumers and consumers have direct access to the phosphorus fertilizer, the retailer shall:

(1) In the retail area where phosphorus fertilizer is accessible by a consumer, display nonphosphorus fertilizer separately from phosphorus fertilizer; and

(2) Post in the retail location, if any, where phosphorus fertilizer is accessible by the consumer a clearly visible sign that is at least eight and one-half inches by 11 inches in size and that states "Phosphorus runoff poses a threat to water quality. Most Vermont lawns do not benefit from fertilizer containing phosphorus. Under Vermont law, fertilizer containing phosphorus shall not be applied to lawn unless applied to new lawn or lawn that is deficient for phosphorus as indicated by a soil test."

(f) Violations. A person who knowingly and intentionally violates this section shall be subject to a civil penalty of not more than \$500.00 per violation. A violation of this section shall be enforceable in the judicial bureau pursuant to the provisions of chapter 29 of Title 4 in an action that may be brought by the agency of agriculture, food and markets or the agency of natural resources.

Sec. 2. 6 V.S.A. § 381 is added to read:

§ 381. GOLF COURSES; NUTRIENT MANAGEMENT PLAN

Beginning July 1, 2012, as a condition of the permit issued to golf courses under chapter 87 of this title and regulations adopted thereunder, a golf course shall be required to submit to the secretary of agriculture, food and markets a nutrient management plan for the use and application of fertilizer to grasses or other lands owned or controlled by the golf course. The nutrient management plan shall ensure that the golf course applies fertilizer according to the agronomic rates for the site-specific conditions of the golf course.

Sec. 3. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

(a) A judicial bureau is created within the judicial branch under the supervision of the supreme court.

(b) The judicial bureau shall have jurisdiction of the following matters:

(1) Traffic violations alleged to have been committed on or after July 1, 1990.

(2) Civil ordinance violations alleged to have been committed on or after July 1, 1994.

(3) Minor fish and wildlife violations alleged to have been committed on or after September 1, 1996.

** * **

(21) Violations of 13 V.S.A. §§ 3602 and 3603, relating to the unlawful cutting of trees and the marking of harvest units.

(22) Violations of 10 V.S.A. § 1266b, relating to the application of fertilizer to nonagricultural turf.

(c) The judicial bureau shall not have jurisdiction over municipal parking violations.

(d) Three hearing officers appointed by the court administrator shall determine waiver penalties to be imposed for violations within the judicial bureau's jurisdiction, except:

(1) Municipalities shall adopt full and waiver penalties for civil ordinance violations pursuant to 24 V.S.A. § 1979. For purposes of municipal violations, the issuing law enforcement officer shall indicate the appropriate full and waiver penalty on the complaint.

(2) The agency of natural resources and the natural resources board shall include full and waiver penalties in each rule that is adopted under 10 V.S.A. § 8019. For purposes of environmental violations, the issuing entity shall indicate the appropriate full and waiver penalties on the complaint.

Sec. 4. Sec. E.700.1 of No. 1 of the 2009 Special Session is amended to read:

Sec. E.700.1 REPORT AND RULEMAKING ON WATER MANAGEMENT TYPING FOR THE WHITE RIVER BASIN AND THE WEST, WILLIAMS, AND SAXONS RIVER BASIN

(a) On or before January 31, 2011, the Two Rivers Ottauquechee Regional Commission and the Windham Regional Commission shall submit to the agency of natural resources and the natural resources board the recommended water management type designations required under Sec. E.700(a)(1) and (2) of this act. Upon receipt of the recommended water management type designations required under this section, the agency of natural resources shall post the recommended water management type designations to its website and shall make the recommendations available to any person upon request.

(b) ~~Within three months of receipt of the recommended water management~~

~~type designations under this section, the~~ The natural resources board shall initiate rulemaking to amend the water management types in order to consider the recommended water management type designations for the White River basin and the West, Williams and Saxons River basin.

Sec. 5. EFFECTIVE DATE

(a) This section and Sec. 4 (water management typing) of this act shall take effect on passage.

(b) Secs. 1 (application of fertilizer), 2 (golf course management plans), and 3 (judicial bureau offense) of this act shall take effect on January 1, 2012, except that 10 V.S.A. § 1266b(b)(2) (agency of agriculture, food and markets soil test authorization) shall take effect on passage.