

No. 159. An act relating to miscellaneous agricultural subjects.

(H.869)

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

* * * Apple Marketing Board * * *

Sec. 1. 6 V.S.A. §§ 252 and 253 are amended to read:

§ 252. ~~VERMONT APPLE MARKETING BOARD~~

~~(a) The Vermont apple marketing board is hereby created. It shall consist of seven voting members. They shall be the secretary of agriculture, food and markets, who shall be the chair, and six producers who are appointed by the secretary. During the first year of the board's existence, the secretary shall appoint two members to three year terms, two members to two year terms and two members to one year terms. Thereafter, each appointment shall be for a three year term. The secretary shall also appoint a representative of the extension service to serve as an ex officio member of the board.~~

~~(b) Each appointed member of the board shall receive a per diem as established in 32 V.S.A. § 1010 and shall be entitled to his or her actual expenses incurred while attending meetings. The per diem expense shall be part of the costs incurred in subdivision 253(d)(4) of this title.~~

~~(c) The duties and responsibilities of the board shall include:~~

~~(1) the establishment of an appropriate marketing rule and such other rules as may be necessary;~~

~~(2) adopting amendments to the marketing rule as deemed advisable;~~

~~(3) the review and approval of the estimated budget prepared by the secretary required for the proper operation of the marketing rule;~~

~~(4) adopting methods by which the secretary shall assess members of the industry and methods for collecting the necessary funds;~~

~~(5) authorizing the secretary to collect and assemble information and data necessary for the proper administration of the rule;~~

~~(6) coordinating with the secretary in connection with the operation of the marketing rule; and~~

~~(7) coordinating marketing efforts with other states, federal officials, and public or private entities. [Repealed.]~~

~~§ 253. POWERS AND DUTIES OF THE VERMONT APPLE MARKETING BOARD~~

~~(a) The board may make and issue marketing rules, after due notice and opportunity for hearing, subject to approval of not less than 51 percent of the eligible producers who participate in the referendum.~~

~~(b) The board may, and upon written petition duly signed by 25 percent of the producers in the area, shall amend or terminate the marketing rule after due notice and opportunity for hearing, but subject to the approval of not less than 51 percent of producers participating in a referendum vote.~~

~~(c) Any marketing agreement or order issued by the board pursuant to this chapter may contain any or all of the following:~~

~~(1) establishment of research programs designed to further the purposes of this chapter; any research program shall be coordinated with the University of Vermont and the state colleges to assure that duplicate state research projects are not conducted simultaneously;~~

~~(2) provision for determining the handling and marketing conditions of apples;~~

~~(3) provision for contracting with appropriate parties for promotion, paid advertising, or publicity of apples; and~~

~~(4) establishment of a schedule of fees to be charged to producers that are necessary to fund the marketing order, but no producer shall be assessed a dollar amount which exceeds five percent of his or her gross sales of apples during the current year. Any producer who claims that he or she has been assessed a fee higher than a dollar amount which exceeds five percent of his or her gross sales of apples during the current year shall provide the board with all information that the board requests in order to evaluate the claim. The fee requirements of this subdivision shall not apply to those growers who annually produce or wholesale 500 bushels or fewer of apples.~~

~~(d) The board or the secretary may temporarily suspend the operations of an effective marketing rule for a continuing period of not longer than one growing and marketing season if the purposes of this chapter are deemed unnecessary during that season. [Repealed.]~~

Sec. 2. UNEXPENDED FUNDS OF APPLE MARKETING BOARD

Notwithstanding the requirements of 6 V.S.A. § 256, any cash balance in the Apple Marketing Board Special Fund shall be appropriated to the Secretary of Agriculture, Food and Markets, who shall issue the funds to the Vermont Tree Fruit Growers Association for the purposes of promoting and marketing the State's fruit tree sector. Once the cash balance of the Apple Marketing

Board Special Fund is appropriated under this section, the Apple Marketing Board Special Fund shall be closed.

* * * Mosquito Control * * *

Sec. 3. 6 V.S.A. § 1085(b) is amended to read:

(b) After submission of an application under subsection (a) of this section, the Secretary of Agriculture, Food and Markets may award a grant of 75 percent or less of the project costs for the purchase and application of larvicide and the costs associated with required larval survey activities within a mosquito control district. The mosquito control district may provide 25 percent of the project costs through in-kind services, including adulticide application or the purchase of capital equipment used for mosquito control activities. At the Secretary's discretion, costs associated with capital equipment that may be required for larval control programs within a mosquito control district may be eligible for grant awards up to 75 percent of the total equipment costs.

* * * Pesticide Applicators; Liability Insurance * * * *

Sec. 4. 6 V.S.A. § 1106 is amended to read:

§ 1106. FINANCIAL RESPONSIBILITY

The ~~secretary~~ Secretary may require from a licensee or an applicant for a license under this chapter evidence of his or her financial ability to properly indemnify persons suffering damage from the use or application of economic poison, in the form of a surety bond, liability insurance, or cash deposit, ~~none of which shall exceed \$10,000.00~~ of at least \$1,000,000.00, but this section

shall neither restrict nor enlarge the liability of any person under applicable laws.

* * * Dairy Operations; Milk Handlers * * *

Sec. 5. 6 V.S.A. § 2674 is amended to read:

§ 2674. RECORDS AND REPORTS-HANDLERS

(a) On or before March 1 of each year, all handlers shall send the ~~secretary~~ Secretary a full and accurate report of the amount of business done during the preceding year, together with such other statistical information as the ~~secretary~~ Secretary may require. Failure to file requested information shall be grounds for suspension of license. If the handler purchases milk from a Vermont farm, a cooperative representing a Vermont farm, or a marketing service owned by a cooperative, the handler, in addition to any other information required by the Secretary, shall provide the following information:

(1) the source or sources of milk purchased by the handler, and the monthly quantity purchased for each of the past 12 months;

(2) a sworn balance sheet showing assets and liabilities and a profit and loss statement as of the end of the handler's preceding fiscal year, and such other information regarding its financial condition as the Secretary may require; and

(3) a statement as to when all Vermont producers will be paid in part and in full, provided that payment shall be made as agreed upon but not later than the 25th day of the following month.

(b) A milk handler that is licensed under this chapter and that withdraws more than 57,600 gallons of groundwater per day averaged over any 30-consecutive-day period shall annually report estimated water use to the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets. The ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets shall share information reported under this section with the ~~agency of natural resources~~ Agency of Natural Resources.

Sec. 6. 6 V.S.A. § 2722 is amended to read:

§ 2722. APPLICATION

Applications shall be completely filled out and sworn to by the applicant or a partner or officer thereof and in case of renewal shall be filed with the ~~secretary by June 1~~ Secretary on or before July 15 of each year. New handlers may apply for a license at any time. Renewal applications not received ~~by July 1~~ on or before August 1 shall be assessed a late fee of \$50.00. The application for a handler's license shall provide the following information and such other information as the ~~secretary~~ Secretary by regulation shall reasonably require:

(1) Name and address of applicant and the location of all plants and facilities owned or operated or to be owned or operated within the ~~state~~ State of Vermont, outside the ~~state~~ State of Vermont, or both.

(2) A statement as to whether the applicant, or any partner, officer or director thereof, is presently the subject of any criminal, civil, or disciplinary

action by any federal or state agency, or has been convicted of a crime relating in any way to the business of milk processing, marketing, or both.

(3) In the case of a new application, the applicant shall provide the following information:

(A) The anticipated sources of supply of milk ~~and the daily quantity purchased in the past~~ for the next 12 months; ~~in the case of a new application, in addition to the foregoing, the applicant shall set forth its.~~

(B) The anticipated supply of milk and the daily quantity to be purchased from such sources. If a handler buys milk; or represents that he or she intends to buy milk; from Vermont producers, he or she shall provide a sworn balance sheet showing assets and liabilities and a profit and loss statement as of the end of the handler's preceding fiscal year and such other information regarding its financial condition as the ~~secretary~~ Secretary may require. ~~In the case of a new application, these~~ Upon the request of the Secretary, the financial statements shall be accompanied by an opinion of a certified public accountant.

~~(4)(C) In case milk has been purchased from Vermont producers, or the applicant represents that he or she intends to purchase milk from Vermont producers, the value of milk purchased for each of the preceding 12 months, or the~~ The value of the milk he or she intends to purchase for each of the succeeding 12 months from Vermont producers. In case purchases from Vermont milk producers during the license period vary in any one month by more than 20 percent from the amount stated on the application for the same

month of the prior year or from the amount predicted for that month in the current year, as the case may be, the handler shall immediately notify the ~~secretary~~ Secretary in writing of the amount of variation.

~~(5)(D)~~ A statement as to when all Vermont producers will be paid in part and in full. Payment shall be made as agreed upon but shall not be later than the 25th of the following month.

~~(6)(E)~~ ~~In the case of a new application, the applicant shall provide such~~ The results of health tests certified by an appropriate public agency as the ~~secretary~~ Secretary shall by regulation require. The ~~secretary~~ Secretary may issue regulations establishing what tests ~~must~~ shall be administered and by whom they ~~must~~ shall be certified.

~~(7)(F)~~ A statement that the handler will pay to the ~~secretary~~ Secretary all milk taxes required by law.

~~(8)(G)~~ A statement that the handler will comply with all the provisions of this part and the regulations ~~promulgated~~ adopted thereunder.

Sec. 7. 6 V.S.A. § 2723 is amended to read:

§ 2723. EXEMPTIONS

Handlers' licenses shall not be required from the following persons:

(1) ~~Producers, except producers who sell fluid dairy products at retail in Vermont~~ A producer who only sells raw milk to milk handlers licensed to buy raw milk from Vermont farms.

(2) A hotel, restaurant, or other public eating place that sells dairy products for consumption on the premises, or a store which sells packaged

dairy products, provided the entire supply of dairy products is purchased from licensed milk handlers.

(3) A person producing unpasteurized milk under chapter 152 of this title, with respect to the sale of that unpasteurized milk only.

(4) A person who holds a frozen dessert license that only utilizes pasteurized frozen dessert mix.

* * * Dairy Operations; Equipment Seller Registration * * *

Sec. 8. 6 V.S.A. § 2724(b) is amended to read:

(b) Any commercial enterprise ~~which~~ that sells, installs, or repairs milking, milk cooling and storage, or dairy processing equipment shall register with the ~~secretary~~ Secretary. The company shall apply for registration on a form made available by the ~~agency~~ Agency. The registration shall be valid for three years. Before registering a company, the ~~secretary~~ Secretary shall determine that the company is qualified to sell, perform the installation, or repair service milking and dairy processing equipment. The registration form shall be accompanied by a fee of \$100.00. The ~~secretary~~ Secretary may suspend or revoke registration for cause after giving the installer the opportunity to be heard. Registration shall terminate on December 31 of each year. Electricians or plumbers licensed pursuant to Title 26 doing only electrical or plumbing work within a farm or plant shall be exempt from this registration provided any work directly related to the processing of dairy products or milking of animals is performed under the supervision of a person that is registered. Any company

that fails to renew ~~by~~ on or before December 31 shall pay a \$25.00 late fee, and the registration shall lapse if it is more than 30 days late.

* * * Nutrient Management Planning * * *

Sec. 9. 6 V.S.A. § 4827(e) is amended to read:

(e) If the Secretary ~~lacks~~ or the applicable U.S. Department of Agriculture conservation programs lack adequate funds necessary for the financial assistance required by subsection (a) of this section, the requirement to develop and implement a nutrient management plan under State statute or State regulation shall be suspended until adequate funding becomes available. Suspension of a ~~state-required~~ State-required nutrient management plan does not relieve an owner or operator of a farm permitted under section 4858 of this title of the remaining requirements of a State permit, including discharge standards, groundwater protection, and land application of manure. This subsection does not apply to farms permitted under 10 V.S.A. § 1263 or farms permitted under section 4851 of this title.

* * * Bulk Milk Tanks; Calibration * * *

Sec. 10. 9 V.S.A. § 2692(b) is amended to read:

(b) Whenever a check of a bulk milk tank by the Agency of Agriculture, Food and Markets or by a competent person or agency indicates a tank calibration is not accurate within official tolerances, ~~the Secretary~~ the first handler receiving milk from the producer shall recalibrate the tank, unless the out-of-tolerance is caused by movement of the tank and the Secretary feels

there will be continued movement, then the recalibration shall not be performed until a solid foundation has been constructed.

* * * Weights and Measures; Exemptions * * *

Sec. 11. REPEAL OF EXEMPTIONS FOR WEIGHTS AND MEASURES
FEES

9 V.S.A. § 2730(g) (license fee exemptions; commercial scale and motor fuel dispensers) shall be repealed on July 1, 2016.

* * * Emergency Authority * * *

Sec. 12. 6 V.S.A. § 21 is added to read:

§ 21. AUTHORITY TO ADDRESS PUBLIC HEALTH HAZARDS AND
FOOD SAFETY ISSUES

(a) As used in this section:

(1) “Adulterated” shall have the same meaning as in 18 V.S.A. § 4059 and shall include adulteration under rules adopted under 18 V.S.A. chapter 82.

(2) “Emergency” means any natural disaster, weather-related incident, health- or disease-related incident, resource shortage, plant pest outbreak, accident, or fire that poses a threat or may pose a threat, as determined by the Secretary, to health, safety, the environment, or property in Vermont.

(3) “Farm” means a site or parcel on which farming is conducted.

(4) “Farming” shall have the same meaning as in 10 V.S.A. § 6001(22).

(5) “Public health hazard” means the potential harm to the public health by virtue of any condition or any biological, chemical, or physical agent. In

determining whether a health hazard is public or private, the Secretary shall consider at least the following factors:

(A) the number of persons at risk;

(B) the characteristics of the person or persons at risk;

(C) the characteristics of the condition or agent that is the source of potential harm;

(D) the availability of private remedies;

(E) the geographical area and characteristics thereof where the condition or agent that is the source of the potential harm or the receptors exists; and

(F) the policy of the Agency of Agriculture, Food and Markets as established by rule or procedure.

(6) "Raw agricultural commodity" means any food in its raw or natural state, including all fruits or vegetables that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(7) "Secretary" means the Secretary of Agriculture, Food and Markets.

(b) The Secretary shall have the authority to:

(1) respond to and remediate incidences of mass animal death, agricultural structure fires, or other emergencies on a farm in order to prevent a public health hazard;

(2) condemn, confiscate, or establish restrictions on the use, sale, or distribution of adulterated raw agricultural commodities or animal feed; and

(3) cooperate with the Department of Health and other State and federal agencies regarding:

(A) the prevention or remediation of the adulteration of raw agricultural commodities, food, or animal feed on farms; and

(B) application of the FDA Food Safety Modernization Act, 21 U.S.C. §§ 2201–2252, to farms, farm products, or value-added products produced in the State.

* * * Testing of Captive Deer * * *

Sec. 13. 6 V.S.A. § 1165 is amended to read:

§ 1165. TESTING OF CAPTIVE DEER

(a) Definitions. As used in this section:

(1) “Captive deer operation” means a place where deer are privately or publicly maintained or held for economic or other purposes within a perimeter fence or confined space.

(2) “Chronic wasting disease” or “CWD” means a transmissible spongiform encephalopathy.

(b) Testing. A person operating a captive deer operation under the jurisdiction of the Secretary of Agriculture, Food and Markets shall inform the Secretary when a captive deer in his or her control dies or is sent to slaughter. The person operating the captive deer operation shall make the carcass of a deceased or slaughtered animal available to the Secretary for testing for CWD.

(c) Cost. The cost of CWD testing required under this section shall be paid by the Secretary, and shall not be assessed to the person operating the captive deer operation from which a tested captive deer originated.

* * * Agricultural Water Quality* * *

Sec. 14. 6 V.S.A. § 4812 is amended to read:

§ 4812. CORRECTIVE ACTIONS

(a) When the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets determines that a person engaged in farming is managing a farm using practices which are inconsistent with the ~~practices defined by requirements of this chapter or rules adopted~~ under this subchapter, the ~~secretary~~ Secretary may issue a written warning which shall be served in person or by certified mail, return receipt requested. The warning shall include a brief description of the alleged violation, identification of this statute and applicable rules, a recommendation for corrective actions that may be taken by the person, along with a summary of federal and ~~state~~ State assistance programs which may be utilized by the person to remedy the violation ~~and a request for an abatement schedule from the person according to which the practice shall be altered.~~ The person shall have 30 days to respond to the written warning and shall provide an abatement schedule for curing the violation and a description of the corrective action to be taken to cure the violation. If the person fails to respond to the written warning within this period or to take corrective action to change the practices ~~in order to protect~~

~~water quality~~, the ~~secretary~~ Secretary may act pursuant to subsection (b) of this section in order to protect water quality.

(b) ~~After an opportunity for a hearing, the secretary~~ The Secretary may:

(1) issue cease and desist orders and administrative penalties in accordance with the requirements of sections 15, 16, and 17 of this title; and

(2) institute appropriate proceedings on behalf of the ~~agency~~ Agency to enforce this subchapter.

(c) Whenever the ~~secretary~~ Secretary believes that any person engaged in farming is in violation of this subchapter or rules adopted thereunder, an action may be brought in the name of the ~~agency~~ Agency in a court of competent jurisdiction to restrain by temporary or permanent injunction the continuation or repetition of the violation. The court may issue temporary or permanent injunctions, and other relief as may be necessary and appropriate to curtail any violations.

(d) ~~The secretary may assess administrative penalties in accordance with sections 15, 16, and 17 of this title against any farmer who violates a cease and desist order or other order issued under subsection (b) of this section.~~

[Repealed.]

(e) Any person subject to an enforcement order or an administrative penalty who is aggrieved by the final decision of the ~~secretary~~ Secretary may appeal to the ~~superior court~~ Superior Court within 30 days of the decision. The administrative judge may specially assign an ~~environmental~~ Environmental judge to ~~superior court~~ Superior Court for the purpose of hearing an appeal.

Sec. 15. 6 V.S.A. § 4816 is added to read:

§ 4816. SEASONAL APPLICATION OF MANURE

(a) Prohibition on application. A person shall not apply manure to land in the State between December 15 and April 1 of any calendar year unless authorized by this section.

(b) Extension of prohibition. The Secretary of Agriculture, Food and Markets shall amend the accepted agricultural practices by rule in order to establish a process under which the Secretary may prohibit the application of manure to land in the State between December 1 and December 15 and between April 1 and April 30 of any calendar year when the Secretary determines that due to weather conditions, soil conditions, or other limitations, application of manure to land would pose a significant potential of discharge or runoff to State waters.

(c) Seasonal exemption. The Secretary of Agriculture, Food and Markets shall amend the accepted agricultural practices by rule in order to establish a process under which the Secretary may authorize an exemption to the prohibition on the application of manure to land in the State between December 15 and April 1 of any calendar year or during any period established under subsection (b) of this section when manure is prohibited from application. Any process established for the issuance of an exemption under the accepted agricultural practices may authorize land application of manure on a weekly, monthly, or seasonal basis or in authorized regions, areas, or fields in the State, provided that any exemption shall:

(1) prohibit application of manure:

(A) in areas with established channels of concentrated stormwater runoff to surface waters, including ditches and ravines;

(B) in nonharvested permanent vegetative buffers;

(C) in a nonfarmed wetland, as that term is defined in 10 V.S.A.

§ 902(5);

(D) within 50 feet of a potable water supply, as that term is defined in 10 V.S.A. § 1972(6);

(E) to fields exceeding tolerable soil loss; and

(F) to saturated soils;

(2) establish requirements for the application of manure when frozen or snow-covered soils prevent effective incorporation at the time of application;

(3) require manure to be applied according to a nutrient management plan; and

(4) establish the maximum tons of manure that may be applied per acre during any one application.

Sec. 16. SMALL FARM AGRICULTURAL WATER QUALITY TRAINING

On or before January 15, 2015, the Secretary of Agriculture, Food and Markets shall submit to the Senate Committee on Agriculture and the House Committee on Agriculture and Forest Products a proposed voluntary training program for owners or operators of small farms. The proposed voluntary training program shall include:

- (1) the prevention of discharges, as that term is defined in 10 V.S.A. § 1251(3);
- (2) the requirements for small farms under the accepted agricultural practices;
- (3) the mitigation and management from farms of stormwater runoff, as that term is defined in 10 V.S.A. § 1264.
- (4) the existing statutory and regulatory requirements for operation of a small farm in the State; and
- (5) address the management practices and technical and financial resources available to assist in compliance with statutory or regulatory agricultural requirements.

* * * Primary Agricultural Soils * * *

Sec. 16a. 10 V.S.A. § 6093 is amended to read:

§ 6093. MITIGATION OF PRIMARY AGRICULTURAL SOILS

(a) Mitigation for loss of primary agricultural soils. Suitable mitigation for the conversion of primary agricultural soils necessary to satisfy subdivision 6086(a)(9)(B)(iv) of this title shall depend on where the project tract is located.

(1) Project located in ~~growth center~~ certain designated areas. This subdivision applies to projects located in the following areas designated under 24 V.S.A. chapter 76A: a downtown development district, a growth center, a new town center designated on or before January 1, 2014, and a neighborhood development area associated with a designated downtown development district. If the project tract is located in a ~~designated growth center~~ one of

these designated areas, an applicant who complies with subdivision 6086(a)(9)(B)(iv) of this title shall deposit an offsite mitigation fee into the Vermont ~~housing and conservation trust fund~~ Housing and Conservation Trust Fund established under section 312 of this title for the purpose of preserving primary agricultural soils of equal or greater value with the highest priority given to preserving prime agricultural soils as defined by the U.S. Department of Agriculture. Any required offsite mitigation fee shall be derived by:

(A) ~~determining~~ Determining the number of acres of primary agricultural soils affected by the proposed development or subdivision;

(B) ~~multiplying~~ Multiplied the number of affected acres of primary agricultural soils by a factor resulting in a ratio established as follows:

(i) ~~for~~ For development or subdivision within a designated ~~growth center~~ area described in this subdivision (a)(1), the ratio shall be 1:1;

(ii) ~~for~~ For residential construction that has a density of at least eight units of housing per acre, of which at least eight units per acre or at least 40 percent of the units, on average, in the entire development or subdivision, whichever is greater, meets the definition of affordable housing established in this chapter, no mitigation shall be required, regardless of location in or outside a designated area described in this subdivision (a)(1). However, all affordable housing units shall be subject to housing subsidy covenants, as defined in 27 V.S.A. § 610, that preserve their affordability for a period of 99 years or longer. ~~For purposes of~~ As used in this section, housing that is rented shall be considered affordable housing when its inhabitants have a gross annual

household income that does not exceed 60 percent of the county median income or 60 percent of the standard metropolitan statistical area income if the municipality is located in such an area.

(C) ~~multiplying~~ Multiplying the resulting product by a “price-per-acre” value, which shall be based on the amount that the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets has determined to be the recent, per-acre cost to acquire conservation easements for primary agricultural soils in the same geographic region as the proposed development or subdivision.

(2) Project located outside certain designated ~~growth-center areas~~. If the project tract is not located in a designated ~~growth-center~~ area described in subdivision (1) of this subsection, mitigation shall be provided on site in order to preserve primary agricultural soils for present and future agricultural use, with special emphasis on preserving prime agricultural soils. Preservation of primary agricultural soils shall be accomplished through innovative land use design resulting in compact development patterns which will maintain a sufficient acreage of primary agricultural soils on the project tract capable of supporting or contributing to an economic or commercial agricultural operation and shall be enforceable by permit conditions issued by the ~~district commission~~ District Commission. The number of acres of primary agricultural soils to be preserved shall be derived by:

(A) ~~determining~~ Determining the number of acres of primary agricultural soils affected by the proposed development or subdivision; ~~and~~.

(B) ~~multiplying~~ Multiplying the number of affected acres of primary agricultural soils by a factor based on the quality of those primary agricultural soils, and other factors as the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets may deem relevant, including the soil's location; accessibility; tract size; existing agricultural operations; water sources; drainage; slope; the presence of ledge or protected wetlands; the infrastructure of the existing farm or municipality in which the soils are located; and the ~~N.R.C.S.~~ NRCS rating system for Vermont soils. This factor shall result in a ratio of no less than 2:1, but no more than 3:1, protected acres to acres of impacted primary agricultural soils.

(3) Mitigation flexibility.

(A) Notwithstanding the provisions of subdivision ~~(a)~~(1) of this ~~subsection~~ section pertaining to a development or subdivision on primary agricultural soils within a certain designated ~~growth-center~~ areas, the ~~district commission~~ District Commission may, in appropriate circumstances, require onsite mitigation with special emphasis on preserving prime agricultural soils if that action is deemed consistent with the agricultural elements of local and regional plans and the goals of 24 V.S.A. § 4302. In this situation, the approved plans must designate specific soils that shall be preserved inside ~~growth-centers~~ a designated area described in subdivision (a)(1) of this section. For projects located within such a designated ~~growth-center~~ area, all factors used to calculate suitable mitigation acreage or fees, or some combination of these measures, shall be as specified in this subsection, subject to a ratio of 1:1.

(B) Notwithstanding the provisions of subdivision ~~(a)~~(2) of this ~~subsection~~ section pertaining to a development or subdivision on primary agricultural soils outside a designated ~~growth center~~ area described in subdivision (a)(1) of this section, the ~~district commission~~ District Commission may, in appropriate circumstances, approve off-site mitigation or some combination of onsite and off-site mitigation if that action is deemed consistent with the agricultural elements of local and regional plans and the goals of 24 V.S.A. § 4302. For projects located outside such a designated ~~growth center~~ area, all factors used to calculate suitable mitigation acreage or fees, or some combination of these measures, shall be as specified in this subsection (a), subject to a ratio of no less than 2:1, but no more than 3:1.

* * *

(b) Easements required for protected lands. All primary agricultural soils preserved for commercial or economic agricultural use by the Vermont ~~housing and conservation board~~ Housing and Conservation Board pursuant to this section shall be protected by permanent conservation easements (grant of development rights and conservation restrictions) conveyed to a qualified holder, as defined in section 821 of this title, with the ability to monitor and enforce easements in perpetuity. Off-site mitigation fees may be used by the Vermont ~~housing and conservation board~~ Housing and Conservation Board and shall be used by the Agency of Agriculture, Food and Markets to pay reasonable staff or transaction costs, or both, of the ~~board and agency of agriculture, food, and markets~~ Board and Agency related to preserve the

preservation of primary agricultural soils or to ~~implement section the~~
implementation of subdivision 6086(a)(9)(B) or section 6093 of this title.

Sec. 16b. 10 V.S.A. § 6001(15) is amended to read:

(15) “Primary agricultural soils” means ~~soil map units with the best combination of physical and chemical characteristics that have a potential for growing food, feed, and forage crops, have sufficient moisture and drainage, plant nutrients or responsiveness to fertilizers, few limitations for cultivation or limitations which may be easily overcome, and an average slope that does not exceed 15 percent. Present uses may be cropland, pasture, regenerating forests, forestland, or other agricultural or silvicultural uses. However, the soils must be of a size and location, relative to adjoining land uses, so that those soils will be capable, following removal of any identified limitations, of supporting or contributing to an economic or commercial agricultural operation. Unless contradicted by the qualifications stated in this subdivision, primary agricultural soils shall include important farmland soils map units with a rating of prime, statewide, or local importance as defined by the Natural Resources Conservation Service (N.R.C.S.) of the United States Department of Agriculture (U.S.D.A.)~~ each of the following:

(A) An important farmland soils map unit that the Natural Resources Conservation Service of the U.S. Department of Agriculture (NRCS) has identified and determined to have a rating of prime, statewide, or local importance, unless the District Commission determines that the soils within the unit have lost their agricultural potential. In determining that soils within an

important farmland soils map unit have lost their agricultural potential, the

Commission shall consider:

(i) impacts to the soils relevant to the agricultural potential of the soil from previously constructed improvements;

(ii) the presence on the soils of a Class I or Class II wetland under chapter 37 of this title;

(iii) the existence of topographic or physical barriers that reduce the accessibility of the rated soils so as to cause their isolation and that cannot reasonably be overcome; and

(iv) other factors relevant to the agricultural potential of the soils, on a site-specific basis, as found by the Commission after considering the recommendation, if any, of the Secretary of Agriculture, Food and Markets.

(B) Soils on the project tract that the District Commission finds to be of agricultural importance, due to their present or recent use for agricultural activities and that have not been identified by the NRCS as important farmland soil map units.

* * * Use Value Appraisal * * *

Sec. 16c. 32 V.S.A. § 3752 is amended to read:

§ 3752. DEFINITIONS

* * *

(9) “Managed forestland” means:

(A) any land, exclusive of any house site, which is at least 25 acres in size and which is under active long-term forest management for the purpose of

growing and harvesting repeated forest crops in accordance with minimum acceptable standards for forest management. Such land may include eligible ecologically significant treatment areas in accordance with minimum acceptable standards for forest management and as approved by the Commissioner; or

* * *

Sec. 16d. 32 V.S.A. § 3755 is amended to read:

§ 3755. ELIGIBILITY FOR USE VALUE APPRAISALS

* * *

(b) Managed forestland shall be eligible for use value appraisal under this subchapter only if:

* * *

(3) there has not been filed with the Director an adverse inspection report by the Department stating that the management of the tract is contrary to the forest or conservation management plan, or contrary to the minimum acceptable standards for forest or conservation management. The management activity report shall be on a form prescribed by the Commissioner of Forests, Parks and Recreation in consultation with the Commissioner of Taxes and shall include a detachable section signed by all the owners that shall contain the federal tax identification numbers of all the owners. The section containing federal tax identification numbers shall not be made available to the general public, but shall be forwarded to the Commissioner of Taxes within 30 days after receipt and used for tax administration purposes. If any owner shall

satisfy the Department that he or she was prevented by accident, mistake, or misfortune from filing ~~a~~ an initial or revised management plan which is required to be filed on or before October 1, or a management plan update which is required to be filed on or before April 1 of the year in which the plan expires, or a management activity report which is required to be filed on or before February 1 of the year following the year when the management activity occurred, the Department may receive that management plan or management activity report at a later date; provided, however, no initial or revised management plan shall be received later than December 31, and no management plan update shall be received later than one year after April 1 of the year the plan expires, and no management activity report shall be received later than March 1.

Sec. 16e. 2008 Acts and Resolves No. 205, Sec. 7 is amended to read:

Sec. 7. COMMISSIONER OF FORESTS, PARKS AND RECREATION

* * *

(3) If more than 20 percent of the acres to be enrolled are Site 4, plus open not to be restocked, plus ecologically significant not to be managed for timber production, landowners may apply to the ~~commissioner~~ Commissioner for approval. The plans and maps shall be reviewed by the county foresters of the county where the parcel is located. ~~In no situation shall a parcel be approved that does not provide for at least 80 percent of the land classified as Site 1, 2, or 3 to be managed for timber production.~~

* * *

* * * Neonicotinoid Pesticides * * *

Sec. 17. NEONICOTINOID PESTICIDES; SAFETY AND USE

The Secretary of Agriculture Food, and Markets shall evaluate whether the use or application of the pesticides imidacloprid, clothianiden, thiamethoxam, donotafuran, or any other member of the nitro group of neonicotinoid pesticides is safe and not harmful to human health or the health of bees and other pollinators in the State.

* * * Effective Dates * * *

Sec. 18. EFFECTIVE DATES

This section and Secs. 12 (AAFM emergency authority), 13 (captive deer testing), 14 (corrective actions; agricultural water quality), and 17 (neonicotinoid pesticides) shall take effect on passage. All other sections shall take effect on July 1, 2014.

Date Governor signed bill: May 28, 2014