

# House Calendar

Tuesday, March 25, 2014

78th DAY OF THE ADJOURNED SESSION

House Convenes at 10:00 A.M.

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**ACTION CALENDAR**

**Action Postponed Until March 25, 2014**

**Committee Bill for Second Reading**

**H. 876**

An act relating to making miscellaneous amendments and technical corrections to education laws.

**(Rep. Rachelson of Burlington will speak for the Committee on Education.)**

**Amendment to be offered by Rep. Wright of Burlington to H. 876**

after Sec. 34 and before the reader assistance heading “\* \* \* Repeals \* \* \*”, by inserting a reader assistance heading and four new sections to be Secs. 35–38 to read:

\* \* \* Mandatory Binding Arbitration; Strikes; Imposed Contracts; Teachers  
and Administrators \* \* \*

Sec. 35. 16 V.S.A. § 2011 is added to read:

§ 2011. MANDATORY DETERMINATION BY THE VERMONT LABOR  
RELATIONS BOARD

(a) If the parties’ dispute remains unresolved as to any issue on the 15th day after delivery of the fact-finding commission’s report under section 2007 of this title or if the parties otherwise agree that they have reached an impasse, each party shall submit to the Vermont Labor Relations Board its last best offer on all undisputed issues, which shall be reviewed and decided upon as a single package. The Labor Relations Board may hold hearings and may consider the recommendations of the fact-finding committee, if one has been activated.

(b) In reaching a decision, the Labor Relations Board shall give weight to all relevant evidence presented by the parties, including:

(1) the lawful authority of the school board;

(2) stipulations of the parties;

(3) the interest and welfare of the public and the financial ability of the school board to pay for increased costs of public services, including the cost of labor;

(4) comparisons of the wages, hours, and conditions of employment of

the employees involved in the dispute with the wages, hours, and conditions of employment of other employees performing similar services in public schools in comparable communities or in private employment in comparable communities;

(5) the average consumer prices for goods and services commonly known as the cost of living;

(6) the overall compensation currently received by the employees, including direct wages, benefits, continuity conditions and stability of employment, and all other benefits received; and

(7) the prior negotiations and existing conditions of other school and municipal employees.

(c) Within 30 days of receiving the last best offers of the parties, the Labor Relations Board shall select between the offers, considered in their entirety without amendment, and shall determine the cost of its selection. The Labor Relations Board shall not issue an order under this subsection that is in conflict with any law or rule or that relates to an issue that is not bargainable. The Labor Relations Board shall file one copy of the decision with the relevant municipal clerk or clerks and the negotiations councils. Except as provided in subsection (d) of this section, the decision of the Labor Relations Board shall be final and binding on the parties.

(d) The parties shall share equally all mutually incurred costs incidental to this section.

(e) Upon application of a party, a Superior Court shall vacate an award on the same grounds as set forth in 21 V.S.A. § 1733(d) and according to the same procedures as set forth in 21 V.S.A. § 1733(e).

(f) Upon application by either party, a Superior Court may issue a temporary restraining order or other injunctive relief and may award costs, including reasonable attorney's fees in connection with any action taken by a representative organization, its officials, or its members or by a school board or its representative in violation of this section, including engaging in a strike, which shall have the same meaning as in 21 V.S.A. § 1722, and the imposition of contractual terms.

Sec. 36. 3 V.S.A. § 924(e) is amended to read:

(e) In addition to its responsibilities under this chapter, the ~~board~~ Board shall carry out the responsibilities given to it under 16 V.S.A. chapter 57, 21 V.S.A. chapters 19 and 22, and chapter 28 of this title and when so doing shall exercise the powers and follow the procedures set out in that chapter.

Sec. 37. REPEAL

The following sections of Title 16 are repealed:

- (1) § 2008 (finality of school board decisions);
- (2) § 2010 (injunctions granted only if action poses clear and present danger);
- (3) § 2021 (negotiated binding interest arbitration);
- (4) § 2022 (selection and decision of arbitrator);
- (5) § 2023 (jurisdiction of arbitrator);
- (6) § 2024 (judicial appeal);
- (7) § 2025 (factors to be considered by the arbitrator);
- (8) § 2026 (notice of award); and
- (9) § 2027 (fees and expenses of arbitration).

Sec. 38. IMPLEMENTATION

Secs. 35–37 of this act shall apply to negotiations beginning on or after that date for collective bargaining agreements for fiscal year 2016 and after.

and by renumbering the remaining sections to be numerically correct.

**Amendment to be offered by Rep. Greshin of Warren to H. 876**

After Sec. 34 and before the reader assistance heading “\* \* \* Repeals \* \* \*”, by inserting a reader assistance heading and a new section to be Sec. 35 to read:

\* \* \* Dual Enrollment \* \* \*

Sec. 35. 16 V.S.A. § 944 is amended to read:

§ 944. DUAL ENROLLMENT PROGRAM

\* \* \*

(b) Students.

(1) A Vermont resident who has completed grade 10 but has not received a high school diploma is eligible to participate in the Program if:

(A) the student:

(i) is enrolled in:

(I) a Vermont public school, including a Vermont career technical center;

(II) a public school in another state or an approved independent school that is designated as the public secondary school for the student’s

district of residence; or

(III) ~~at a nonsectarian~~ approved or recognized independent school in Vermont ~~to which the student's district of residence pays publicly funded tuition on behalf of the student;~~

(ii) is assigned to a public school through the High School Completion Program; or

(iii) is a home study student;

(B) dual enrollment is an element included within the student's personalized learning plan; and

(C) the secondary school and the postsecondary institution have determined that the student is sufficiently prepared to succeed in a dual enrollment course, which can be determined in part by the assessment tool or tools identified by the participating postsecondary institution.

(2) An eligible student may enroll in up to two dual enrollment courses prior to completion of secondary school for which neither the student nor the student's parent or guardian shall be required to pay tuition. A student may enroll in courses offered while secondary school is in session and during the summer.

\* \* \*

(f) Tuition and funding.

\* \* \*

(4) Notwithstanding any other provision of this subsection (f), a district of residence shall not be responsible for payments under this subsection on behalf of a student enrolled in an approved or recognized independent school for whom tuition is privately paid; rather, if the approved or recognized independent school chooses to participate in the Dual Enrollment Program, then the independent school shall pay the portion of a student's dual enrollment tuition not paid by the State pursuant to subdivision (2) of this subsection.

\* \* \*

and by renumbering the remaining sections to be numerically correct.

**Amendment to be offered by Rep. Lewis of Berlin to H. 876**

after Sec. 34 and before the reader assistance heading “\* \* \* Repeals \* \* \*”, by inserting a reader assistance heading and a new section to be Sec. 35 to read:

\* \* \* Public School Activities; Students Enrolled in Independent Schools \* \* \*

Sec. 35. 16 V.S.A. § 563(24) is amended to read:

(24) Shall adopt a policy ~~which that~~, in accordance with rules adopted by the ~~state board of education~~ State Board, will:

(A) integrate home study students into its schools through enrollment in courses, participation in cocurricular and extracurricular activities, including athletics, and use of facilities; and

(B) enable students enrolled in approved and recognized independent schools to participate in all extracurricular activities available to students enrolled in the schools maintained by the district, including membership on the district's athletic teams.

and by renumbering the remaining sections to be numerically correct.

**Amendment to be offered by Reps. Cross of Winooski, Botzow of Pownal, Bouchard of Colchester, Carr of Brandon, Dickinson of St. Albans Town, Kitzmiller of Montpelier, Kupersmith of South Burlington, Marcotte of Coventry, Ralston of Middlebury, Scheuermann of Stowe, and Young of Glover to H. 876**

By striking out Sec. 17 in its entirety and inserting in lieu thereof a new Sec. 17 to read:

Sec. 17. 16 V.S.A. § 1534 is amended to read:

§ 1534. ~~COURSE OF STUDY~~ PROGRAM EVALUATION

(a) At least once in each period of five years, ~~and in coordination with the Vermont Advisory Council on Technical Education~~, the Secretary shall evaluate the effectiveness of each ~~course of study~~ program offered by any ~~technical~~ CTE center in the State. The State Board by rule shall prescribe the method for conducting these evaluations.

(b) Evaluations of ~~courses of study~~ programs shall consider at least the following areas as they apply in every center offering that ~~course~~ program:

(1) the content, ~~size, scope~~, and quality of the program, including the ~~scope of instruction and the academic and practical competencies~~ technical proficiencies required for completion;

(2) the length of the ~~course~~ program;

(3) the adequacy of equipment used in the ~~course~~ program, including instructional technology;

(4) the appropriateness of the program and its content in light of later career and ~~higher~~ postsecondary education choices made by recent graduates;

(5) the usefulness of the program to recent graduates;

(6) coordination with other ~~state~~ State programs, especially licensing, job training, and apprenticeship programs;

(7) possibilities for decentralization of the program;

(8) participation and completion rates in the program;

(9) compliance with State Board rules; and

(10) compatibility with the then-current long-term and short-term occupational projections published by the Vermont Department of Labor.

(c) [Repealed.]

**Amendment to be offered by Reps. Bouchard of Colchester, Cross of Winooski, and Scheuermann of Stowe to H. 876**

By striking out Sec. 27 in its entirety and inserting in lieu thereof a new Sec. 27 to read:

Sec. 27. REPEAL

16 V.S.A. § 1565 (salary assistance; career technical education centers) is repealed effective on July 1, 2015.

**Action Postponed Until March 26, 2014**

**Committee Bill for Second Reading**

**H. 878**

An act relating to prevailing wages.

**(Rep. Moran of Wardsboro will speak for the Committee on General, Housing and Military Affairs.)**

**NEW BUSINESS**

**Third Reading**

**H. 448**

An act relating to Act 250 and primary agricultural soils

**H. 585**

An act relating to prohibiting the creation and renewal of State Police contracts with municipalities to provide police services

**H. 790**

An act relating to Reach Up eligibility



## Favorable with Amendment

### H. 239

An act relating to information regarding the rights of landlords and tenants

**Rep. Weed of Enosburgh**, for the Committee on **General, Housing and Military Affairs**, recommends the bill be amended as follows:

Sec. 2, the effective date, by striking out “2013” and inserting in lieu thereof 2014

( **Committee Vote: 7-0-1**)

**Rep. Keenan of St. Albans City**, for the Committee on **Appropriations**, recommends the bill ought to pass when amended as recommended by the Committee on **General, Housing and Military Affairs** and when further amended as follows:

Sec. 2, by striking out the section in its entirety and inserting in lieu thereof the following:

Sec. 2. APPROPRIATION

Up to \$32,000.00 in General Funds is appropriated to the Department of Housing and Community Development to fund the outreach and information program created in Sec. 1 of this act.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

( **Committee Vote: 10-1-0**)

### H. 880

An act relating to universal college savings accounts.

(**Rep. Krowinski of Burlington** will speak for the Committee on **Human Services**.)

**Rep. Miller of Shaftsbury**, for the Committee on **Appropriations**, recommends the bill be amended as follows::

Sec. 1, in subdivision (c)(2), by inserting a new subdivision (F) after the existing subdivision (E) to read as follows:

(F) the Vermont Student Assistance Corporation;

and by renumbering the remaining subdivisions to be alphabetically correct.

(**Committee Vote 11-0-0**)

**NOTICE CALENDAR**  
**Committee Bill for Second Reading**

**H. 882**

An act relating to compensation for certain State employees.

**(Rep. Townsend of South Burlington** will speak for the Committee on **Government Operations.**)

**Favorable with Amendment**

**H. 555**

An act relating to the commitment of a criminal defendant who is incompetent to stand trial because of a traumatic brain injury

**Rep. Koch of Barre Town**, for the Committee on **Judiciary**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 4801 is amended to read:

§ 4801. TEST OF INSANITY IN CRIMINAL CASES

(a) The test when used as a defense in criminal cases shall be as follows:

(1) A person is not responsible for criminal conduct if at the time of such conduct, as a result of mental ~~disease or defect~~ illness, intellectual disability, or traumatic brain injury, he or she lacks adequate capacity either to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law.

(2) The terms "~~mental disease or defect~~" "mental illness, intellectual disability, or traumatic brain injury" do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct. ~~The terms "mental disease or defect" shall include congenital and traumatic mental conditions as well as disease.~~

(b) The defendant shall have the burden of proof in establishing insanity as an affirmative defense by a preponderance of the evidence.

Sec. 2. 13 V.S.A. § 4814 is amended to read:

§ 4814. ORDER FOR EXAMINATION

(a) Any court before which a criminal prosecution is pending may order the ~~department of mental health~~ Department of Mental Health to have the defendant examined by a psychiatrist at any time before, during or after trial, and before final judgment in any of the following cases:

(1) ~~When~~ when the defendant enters a plea of not guilty, or when such a plea is entered in the defendant's behalf, and then gives notice of the defendant's intention to rely upon the defense of insanity at the time of the alleged crime, or to introduce expert testimony relating to a ~~mental disease, defect,~~ mental illness, intellectual disability, traumatic brain injury or other condition bearing upon the issue of whether he or she had the mental state required for the offense charged;

(2) ~~When~~ when the defendant, the ~~state~~ State, or an attorney, guardian, or other person acting on behalf of the defendant, raises before ~~such~~ the court the issue of whether the defendant is mentally competent to stand trial for the alleged offense;

(3) ~~When~~ when the court believes that there is doubt as to the defendant's sanity at the time of the alleged offense; or

(4) ~~When~~ when the court believes that there is doubt as to the defendant's mental competency to be tried for the alleged offense.

(b) ~~Such~~ An order under this section may be issued by the court on its own motion, or on motion of the ~~state~~ State, the defendant, or an attorney, guardian, or other person acting on behalf of the defendant.

Sec. 3. 13 V.S.A. § 4815 is amended to read:

§ 4815. PLACE OF EXAMINATION; TEMPORARY COMMITMENT

(a) It is the purpose of this section to provide a mechanism by which a defendant is examined in the least restrictive environment deemed sufficient to complete the examination and prevent unnecessary pre-trial detention and substantial threat of physical violence to any person, including a defendant.

(b) The order for examination may provide for an examination at any jail or correctional center, or at the State Vermont Psychiatric Care Hospital or a designated hospital, ~~or at its successor in interest~~, or at such other place as the Court shall determine, after hearing a recommendation by the Commissioner of Mental Health.

(c) A motion for examination shall be made as soon as practicable after a party or the Court has good faith reason to believe that there are grounds for an examination. An attorney making such a motion shall be subject to the potential sanctions of Rule 11 of the Vermont Rules of Civil Procedure.

(d) Upon the making of a motion for examination, the Court shall order a mental health screening to be completed by a designated mental health professional while the defendant is still at the Court.

(e) If the screening cannot be commenced and completed at the courthouse

within two hours from the time of the defendant's appearance before the Court, the Court may ~~forego~~ forgo consideration of the screener's recommendations.

(f) The Court and parties shall review the recommendation of the designated mental health professional and consider the facts and circumstances surrounding the charge and observations of the defendant in court. If the Court finds sufficient facts to order an examination, it may be ordered to be completed in the least restrictive environment deemed sufficient to complete the examination, consistent with subsection (a) of this section.

(g)(1) Inpatient examination at the Vermont ~~State~~ Psychiatric Care Hospital, ~~or its successor in interest~~, or a designated hospital. The Court shall not order an inpatient examination unless the designated mental health professional determines that the defendant is a person in need of treatment as defined in 18 V.S.A. § 7101(17).

(2) Before ordering the inpatient examination, the ~~court~~ Court shall determine what terms, if any, shall govern the defendant's release from custody under sections 7553-7554 of this title.

(3) An order for inpatient examination shall provide for placement of the defendant in the custody and care of the ~~commissioner of mental health~~ Commissioner of Mental Health.

(A) If a Vermont ~~State~~ Psychiatric Care Hospital psychiatrist, ~~or a psychiatrist of its successor in interest~~, or a designated hospital psychiatrist determines prior to admission that the defendant is not in need of inpatient hospitalization ~~prior to admission~~, the Commissioner shall release the defendant pursuant to the terms governing the defendant's release from the Commissioner's custody as ordered by the Court. The Commissioner of Mental Health shall ensure that all individuals who are determined not to be in need of inpatient hospitalization receive appropriate referrals for outpatient mental health services.

(B) If a Vermont ~~State~~ Psychiatric Care Hospital psychiatrist, ~~or a psychiatrist of its successor in interest~~, or designated hospital psychiatrist determines that the defendant is in need of inpatient hospitalization:

(i) The Commissioner shall obtain an appropriate inpatient placement for the defendant at the Vermont ~~State~~ Psychiatric Care Hospital psychiatrist, ~~or a psychiatrist of its successor in interest~~, or a designated hospital and, based on the defendant's clinical needs, may transfer the defendant between hospitals at any time while the order is in effect. A transfer to a designated hospital outside the no refusal system is subject to acceptance of the patient for admission by that hospital.

(ii) The defendant shall be returned to court for further appearance on the following business day if the defendant is no longer in need of inpatient hospitalization, unless the terms established by the ~~court~~ Court pursuant to subdivision (2) of this section permit the defendant to be released from custody.

(C) The defendant shall be returned to court for further appearance within two business days after the Commissioner notifies the ~~court~~ Court that the examination has been completed, unless the terms established by the Court pursuant to subdivision (2) of this section permit the defendant to be released from custody.

(4) If the defendant is to be released pursuant to subdivision (3)(A), (3)(B)(ii), or (3)(C) of this subsection and is not in the custody of the Commissioner of Corrections, the defendant shall be returned to the defendant's residence or ~~such other~~ to another appropriate place within the State of Vermont by the Department of Mental Health at the expense of the ~~court~~ Court.

(5) If it appears that an inpatient examination cannot reasonably be completed within 30 days, the Court issuing the original order, on request of the ~~commissioner~~ Commissioner and upon good cause shown, may order placement at the hospital extended for additional periods of 15 days in order to complete the examination, and the defendant on the expiration of the period provided for in such order shall be returned in accordance with this subsection.

(6) ~~For the purposes of~~ As used in this subsection, "in need of inpatient hospitalization" means an individual has been determined under clinical standards of care to require inpatient treatment.

(h) Except upon good cause shown, defendants charged with misdemeanor offenses who are not in the custody of the Commissioner of Corrections shall be examined on an outpatient basis for mental competency. Examinations occurring in the community shall be conducted at a location within 60 miles of the defendant's residence or at another location agreed to by the defendant.

(i) As used in this section:

(1) ~~No,~~ "no refusal system" means a system of hospitals and intensive residential recovery facilities under contract with the Department of Mental Health that provides high intensity services, in which the facilities shall admit any individual for care if the individual meets the eligibility criteria established by the Commissioner in contract.

(2) ~~"Successor in interest" shall mean the mental health hospital owned and operated by the State that provides acute inpatient care and replaces the~~

~~Vermont State Hospital.~~

Sec. 4. 13 V.S.A. § 4816 is amended to read:

§ 4816. SCOPE OF EXAMINATION; REPORT; EVIDENCE

(a) Examinations provided for in the preceding section shall have reference to:

(1) ~~Mental~~ mental competency of the person examined to stand trial for the alleged offense; and

(2) ~~Sanity~~ sanity of the person examined at the time of the alleged offense.

(b) A competency evaluation for an individual thought to have a ~~developmental~~ an intellectual disability or traumatic brain injury shall include a current evaluation by a psychologist or other appropriate medical professional skilled in assessing individuals with ~~developmental disabilities~~ those conditions.

(c) As soon as practicable after the examination has been completed, the examining psychiatrist or psychologist, if applicable, shall prepare a report containing findings in regard to each of the matters listed in subsection (a) of this section. The report shall be transmitted to the Court issuing the order for examination, and copies of the report shall be sent to the ~~state's attorney~~ State's Attorney, and to the respondent's attorney if the respondent is represented by counsel.

(d) No statement made in the course of the examination by the person examined, whether or not he or she has consented to the examination, shall be admitted as evidence in any criminal proceeding for the purpose of proving the commission of a criminal offense or for the purpose of impeaching testimony of the person examined.

(e) The relevant portion of a psychiatrist's report shall be admitted into evidence as an exhibit on the issue of the person's mental competency to stand trial, and the opinion therein shall be conclusive on the issue if agreed to by the parties and if found by the Court to be relevant and probative on the issue.

(f) Introduction of a report under subsection (d) of this section shall not preclude either party or the Court from calling the psychiatrist who wrote the report as a witness or from calling witnesses or introducing other relevant evidence. Any witness called by either party on the issue of the defendant's competency shall be at the state's expense, or, if called by the Court, at the Court's expense.

Sec. 5. 13 V.S.A. § 4817 is amended to read:

§ 4817. COMPETENCY TO STAND TRIAL; DETERMINATION

(a) A person shall not be tried for a criminal offense if he or she is incompetent to stand trial.

(b) If a person indicted, complained, or informed against for an alleged criminal offense, an attorney or guardian acting in his or her behalf, or the ~~state~~ State, at any time before final judgment, raises before the court before which ~~such~~ the person is tried or is to be tried, the issue of whether ~~such~~ the person is incompetent to stand trial, or if the court has reason to believe that ~~such~~ the person may not be competent to stand trial, a hearing shall be held before ~~such~~ the court at which evidence shall be received and a finding made regarding his or her competency to stand trial. However, in cases where the court has reason to believe that ~~such~~ the person may be incompetent to stand trial due to a ~~mental disease or mental defect,~~ such illness, intellectual disability, or traumatic brain injury, the hearing shall not be held until an examination has been made and a report submitted by an examining psychiatrist in accordance with sections 4814-4816 of this title.

(c) A person who has been found incompetent to stand trial for an alleged offense may be tried for that offense if, upon subsequent hearing, ~~such~~ the person is found by the court having jurisdiction of his or her trial for the offense to have become competent to stand trial.

Sec. 6. 13 V.S.A. § 4819 is amended to read:

§ 4819. ACQUITTAL BY REASON OF INSANITY

When a person tried on information, complaint, or indictment is acquitted by a jury by reason of insanity at the time of the alleged offense, the jury shall state in its verdict of not guilty that the ~~same is given for such cause~~ acquittal is for that reason.

Sec. 7. 13 V.S.A. § 4820 is amended to read:

§ 4820. HEARING REGARDING COMMITMENT

When a person charged on information, complaint, or indictment with a criminal offense:

(1) Is reported by the examining psychiatrist following examination pursuant to sections 4814-4816 of this title, to have been insane at the time of the alleged offense; ~~or,~~

(2) Is found upon hearing pursuant to section 4817 of this title to be incompetent to stand trial due to a ~~mental disease or mental defect,~~ or illness, intellectual disability, or traumatic brain injury.

(3) Is not indicted upon hearing by grand jury by reason of insanity at

the time of the alleged offense, duly certified to the court, ~~or~~.

(4) Upon trial by court or jury is acquitted by reason of insanity at the time of the alleged offense; the court before which ~~such~~ the person is tried or is to be tried for ~~such~~ the offense, shall hold a hearing for the purpose of determining whether ~~such~~ the person should be committed to the custody of the ~~commissioner of mental health~~ Commissioner of Mental Health or the Commissioner of Disabilities, Aging, and Independent Living. Such person may be confined in jail or some other suitable place by order of the court pending hearing for a period not exceeding 15 days.

Sec. 8. 13 V.S.A. § 4821 is amended to read:

§ 4821. NOTICE OF HEARING; PROCEDURES

The person who is the subject of the proceedings, his or her attorney, the legal guardian, if any, the ~~commissioner of mental health or the commissioner of disabilities, aging, and independent living, and the state's attorney~~ Commissioner of Mental Health or the Commissioner of Disabilities, Aging, and Independent Living, and the State's Attorney or other prosecuting officer representing the ~~state~~ State in the case, shall be given notice of the time and place of a hearing under the preceding section. Procedures for hearings for persons who are mentally ill shall be as provided in 18 V.S.A. chapter 181 of Title 18. Procedures for hearings for persons who are ~~mentally retarded~~ intellectually disabled or have a traumatic brain injury shall be as provided in 18 V.S.A. chapter 206, subchapter 3 of chapter 206 of Title 18.

Sec. 9. 13 V.S.A. § 4822 is amended to read:

§ 4822. FINDINGS AND ORDER; MENTALLY ILL PERSONS

(a) If the Court finds that ~~such~~ the person is a person in need of treatment or a patient in need of further treatment as defined in 18 V.S.A. § 7101, the ~~court~~ Court shall issue an order of commitment directed to the Commissioner of Mental Health, which shall admit the person to the care and custody of the Department of Mental Health for an indeterminate period. In any case involving personal injury or threat of personal injury, the committing Court may issue an order requiring a court hearing before a person committed under this section may be discharged from custody.

(b) ~~Such~~ The order of commitment shall have the same force and effect as an order issued under 18 V.S.A. §§ 7611-7622, and persons committed under such an order shall have the same status, and the same rights, including the right to receive care and treatment, to be examined and discharged, and to apply for and obtain judicial review of their cases, as persons ordered committed under 18 V.S.A. §§ 7611-7622.



(c) Notwithstanding the provisions of subsection (b) of this section, at least 10 days prior to the proposed discharge of any person committed under this section the Commissioner of Mental Health shall give notice thereof to the committing Court and ~~state's attorney~~ State's Attorney of the county where the prosecution originated. In all cases requiring a hearing prior to discharge of a person found incompetent to stand trial under section 4817 of this title, the hearing shall be conducted by the committing Court issuing the order under that section. In all other cases, when the committing Court orders a hearing under subsection (a) of this section or when, in the discretion of the Commissioner of Mental Health, a hearing should be held prior to the discharge, the hearing shall be held in the Family Division of the Superior Court to determine if the committed person is no longer a person in need of treatment or a patient in need of further treatment as set forth in subsection (a) of this section. Notice of the hearing shall be given to the Commissioner, the ~~state's attorney~~ State's Attorney of the county where the prosecution originated, the committed person, and the person's attorney. Prior to the hearing, the ~~state's attorney~~ State's Attorney may enter an appearance in the proceedings and may request examination of the patient by an independent psychiatrist, who may testify at the hearing.

(d) The Court may continue the hearing provided in subsection (c) of this section for a period of 15 additional days upon a showing of good cause.

(e) If the ~~court~~ Court determines that commitment shall no longer be necessary, it shall issue an order discharging the patient from the custody of the ~~department of developmental and mental health services~~ Department of Mental Health.

(f) The Court shall issue its findings and order not later than 15 days from the date of hearing.

Sec. 10. 13 V.S.A. § 4823 is amended to read:

§ 4823. FINDINGS AND ORDER; PERSONS WITH ~~MENTAL~~  
RETARDATION INTELLECTUAL DISABILITY OR  
TRAUMATIC BRAIN INJURY

(a) If the court finds that ~~such~~ the person is a person in need of custody, care, and habilitation as defined in 18 V.S.A. § 8839, the court shall issue an order of commitment directed to the Commissioner of Disabilities, Aging, and Independent Living for care and habilitation of such person for an indefinite or limited period in a designated program.

(b) ~~Such~~ The order of commitment shall have the same force and effect as an order issued under 18 V.S.A. § 8843 and persons committed under ~~such an~~

the order shall have the same status, and the same rights, including the right to receive care and habilitation, to be examined and discharged, and to apply for and obtain judicial review of their cases, as persons ordered committed under 18 V.S.A. § 8843.

(c) Section 4822 of this title shall apply to persons proposed for discharge under this section; however, judicial proceedings shall be conducted in the Criminal Division of the Superior Court in which the person then resides, unless the person resides out of state in which case the proceedings shall be conducted in the original committing Court.

Sec. 11. 18 V.S.A. § 8839 is amended to read:

#### § 8839. DEFINITIONS

As used in this subchapter:

\* \* \*

(3) “Person in need of custody, care, and habilitation” means:

(A) a ~~mentally retarded~~ person with an intellectual disability or a person with a traumatic brain injury;

(B) who presents a danger of harm to others; and

(C) for whom appropriate custody, care, and habilitation can be provided by the ~~commissioner~~ Commissioner in a designated program.

#### Sec. 12. CONSTRUCTION

This act’s replacement of the terms “mental disease or mental defect” with the terms “mental illness” or “intellectual disability” in 13 V.S.A. chapter 157 shall not be construed to alter the substance or effect of existing law or judicial precedent. These changes in terminology are merely meant to reflect evolving attitudes toward persons with disabilities.

#### Sec. 13. REPORTS

(a) On or before September 1, 2014 the Court Administrator shall report to the House and Senate Committees on Judiciary on the number of cases from July 1, 2011 through June 30, 2013 in which the Court ordered the Department of Mental Health to examine a defendant pursuant to 13 V.S.A. § 4814 to determine if he or she was insane at the time of the offense or is incompetent to stand trial. The report shall include a break-down indicating how many orders were based on mental illness, intellectual disability, and traumatic brain injury, and shall include the number of persons who were found to be in need of custody, care, and habilitation under 13 V.S.A. § 4823. A copy of the report shall be provided to the Department of Disabilities, Aging, and Independent Living.

(b)(1) On or before September 1, 2014, the Department of Sheriffs and State's Attorneys shall report to the House and Senate Committees on Judiciary regarding the charging practices of State's Attorneys for persons with traumatic brain injury.

(2) The report shall describe the number of cases from July 1, 2011 through June 30, 2013, broken down by the type of criminal charge, in which a person with traumatic brain injury was:

(A) charged with a criminal offense, including the disposition of the offense;

(B) charged with a criminal offense and the charges were dismissed because the person was suffering from a traumatic brain injury; and

(C) arrested for, or otherwise believed to be responsible for, a crime and criminal charges were not brought because the person was suffering from a traumatic brain injury.

(3) A copy of the report shall be provided to the Department of Disabilities, Aging, and Independent Living.

(c) On or before October 1, 2014 and on or before February 1, 2015, the Department of Disabilities, Aging, and Independent Living shall report to the House and Senate Committees on Judiciary on the status of the Department's implementation of this act. The status reports shall include updates on the Department's progress developing the programs and services needed to treat persons with traumatic brain injuries who have been found not guilty by reason of insanity or incompetent to stand trial as required by this act.

#### Sec. 14. EFFECTIVE DATES

(a) Secs. 1-12 shall take effect on July 1, 2015.

(b) Sec. 13 and this section shall take effect on passage.

#### **( Committee Vote: 10-0-1)**

**Rep. Manwaring of Wilmington**, for the Committee on **Appropriations**, recommends the bill ought to pass when amended as recommended by the Committee on **Judiciary** and when further amended as follows:

by striking out Sec. 14 in its entirety and inserting in lieu thereof new Secs. 14 and 15 to read as follows:

#### Sec. 14. APPROPRIATION

The amount of \$50,000.00 is appropriated in fiscal year 2014 from the Global Commitment Fund to the Department of Disabilities, Aging, and Independent Living to research and design a program that satisfies this act's

requirement that the Department treat persons with traumatic brain injuries who have been found not guilty by reason of insanity or incompetent to stand trial. To the maximum extent possible, the Department shall design the program to be integrated into the Department's existing framework of services.

Sec. 15. EFFECTIVE DATES

(a) Secs. 1–12 shall take effect on July 1, 2015.

(b) Secs. 13 and 14 and this section shall take effect on passage.

**( Committee Vote: 11-0-0)**

**H. 586**

An act relating to improving the quality of State waters

**Rep. Deen of Westminster**, for the Committee on **Fish, Wildlife & Water Resources**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

\* \* \* Agricultural Water Quality;

Small Farm Certification and Inspection \* \* \*

Sec. 1. 6 V.S.A. § 4858a is added to read:

§ 4858a. SMALL FARM CERTIFICATION

(a) Rulemaking; small farm certification. On or before January 1, 2016, the Secretary of Agriculture, Food and Markets shall adopt by rule a requirement that all small farms in the State submit to the Secretary a certification of compliance with the accepted agricultural practices. The rules required by this subsection shall be adopted as part of the accepted agricultural practices under section 4810 of this title.

(b) Content of rules. The rules for small farm certification shall:

(1) Define what constitutes a small farm for the purposes of certification.

(2) Require a small farm to be certified in order to operate in the State.

(3) Require the owner or operator of a small farm to certify to the Secretary of Agriculture, Food and Markets at least every five years that the owner or operator complies with the accepted agricultural practices adopted under section 4810 of this title. The certification shall identify the farm subject to the certification and the person or persons who own or operate the farm. The owner or operator of the farm shall certify compliance with the accepted agricultural practices, including that:

(A) The farm does not directly discharge wastes into the surface waters from a discrete conveyance such as a pipe, ditch, or conduit without a permit under 10 V.S.A. § 1258.

(B) Manure stacking sites, fertilizer storage, and other nutrient source storage on the farm are not located within 100 feet of private wells.

(C) Manure is not stacked or stored on lands subject to annual overflow from adjacent waters.

(D) Manure is not field stacked on unimproved sites within 100 feet of a surface water.

(E) Barnyards, waste management systems, animal holding areas, and production areas shall be constructed, managed, and maintained to prevent runoff of waste to surface water, to groundwater, or across property boundaries.

(F) Nutrient application on the farm is based on soil testing by field and is consistent with university recommendations, standard agricultural practices, or a Secretary-approved nutrient management plan for the farm.

(G) Manure on the farm is not applied within 25 feet of an adjoining surface water, is not applied within 10 feet of a ditch, or is applied in such a manner as to enter surface water.

(H) Fertigation and chemigation equipment is operated only with an adequate anti-siphon device between the system and the water source.

(I) Cropland on the farm is cultivated in a manner that results in an average soil loss of less than or equal to the soil loss tolerance for the prevalent soil, known as 1T, as calculated through application of the Revised Universal Soil Loss Equation, or through the application of similarly accepted models.

(J) A vegetative buffer zone of perennial vegetation is maintained between annual croplands and the top of the bank of adjoining surface waters in a manner that complies with requirements of the accepted agricultural practices.

(K) Manure, fertilizer, pesticide storage structures, and farm structures are not located within a floodway area as presented on National Flood Insurance Maps on file with town clerks or within a Fluvial Erosion Hazard Zone as designated by municipal bylaw or ordinance.

(4) Require the Secretary to visit small farms in the State for purposes of assessing compliance with the accepted agricultural practices and for consistency with a certification issued under this section. The Secretary may prioritize visits to small farms in the State based on identified water quality

issues posed by a farm.

(c)(1) Identification; ranking of water quality needs. During a visit to a small farm required under subsection (b) of this section, the Secretary shall identify areas where the farm could benefit from capital, structural, or technical assistance in order to improve or come into compliance with the accepted agricultural practices.

(2) Annually, the Secretary shall establish a priority ranking system for small farms according to the degree of assistance required for compliance with the accepted agricultural practices if the identified capital, structural, or technical needs on the farm are not addressed.

(3) Notwithstanding the requirements of section 4823 of this title, farms identified under subdivision (2) of this subsection in the greatest level of need in order to come into compliance with the accepted agricultural practices shall be given first priority for State financial assistance under subchapter 3 of this chapter, provided that the Secretary may give first priority for financial assistance to any farm other than one identified under subdivision (2) of this subsection when the Secretary determines that a farm needs assistance to address a water quality issue that requires immediate abatement.

Sec. 2. 6 V.S.A. § 4860 is amended to read:

§ 4860. REVOCATION; ENFORCEMENT

(a) ~~The secretary~~ Secretary may revoke coverage under a general permit ~~or~~, an individual permit, or a small farm certification issued under this subchapter after following the same process prescribed by section 2705 of this title regarding the revocation of a handler's license. ~~The secretary~~ Secretary may also seek enforcement remedies under sections 1, 11, 12, 13, 16, and 17 of this title as well as assess an administrative penalty under section 15 of this title from any person who fails to comply with any permit provision as required by this subchapter or who violates the terms or conditions of coverage under any general permit ~~or~~, any individual permit, or any small farm certification issued under this subchapter. However, notwithstanding provisions of section 15 of this title to the contrary, the maximum administrative penalty assessed for a violation of this subchapter shall not exceed \$5,000.00 for each violation, and the maximum amount of any penalty assessed for separate and distinct violations of this chapter shall not exceed \$50,000.00.

(b) Any person who violates any provision of this subchapter or who fails to comply with any order or the terms of any permit or certification issued in accordance with this subchapter shall be fined not more than \$10,000.00 for each violation. Each violation may be a separate offense and, in the case of a continuing violation, each day's continuance may be deemed a separate

offense.

(c) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, certification, or other document filed or required to be maintained by this subchapter or by any permit, rule, regulation, or order issued under this subchapter, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained by this subchapter or by any permit, rule, regulation, or order issued under this subchapter shall upon conviction be punished by a fine of not more than \$5,000.00 for each violation. Each violation may be a separate offense and, in the case of a continuing violation, each day's continuance may be deemed a separate offense.

Sec. 3. 6 V.S.A. § 4810 is amended to read:

§ 4810. AUTHORITY; COOPERATION; COORDINATION

(a) Agricultural land use practices. In accordance with 10 V.S.A. § 1259(i), the ~~secretary~~ Secretary shall adopt by rule, pursuant to 3 V.S.A. chapter 25 of ~~Title 3~~, and shall implement and enforce agricultural land use practices in order to reduce the amount of agricultural pollutants entering the waters of the ~~state~~ State. These agricultural land use practices shall be created in two categories, pursuant to subdivisions (1) and (2) of this subsection.

(1) "Accepted Agricultural Practices" (AAPs) shall be standards to be followed in conducting agricultural activities in this ~~state~~ State. These standards shall address activities which have a potential for causing pollutants to enter the groundwater and waters of the ~~state~~ State, including dairy and other livestock operations plus all forms of crop and nursery operations and on-farm or agricultural fairground, registered pursuant to 20 V.S.A. § 3902, livestock and poultry slaughter and processing activities. The AAPs shall include, as well as promote and encourage, practices for farmers in preventing pollutants from entering the groundwater and waters of the ~~state~~ State when engaged in, ~~but not limited to~~, animal waste management and disposal, soil amendment applications, plant fertilization, and pest and weed control. Persons engaged in farming, as defined in 10 V.S.A. § 6001, who follow these practices shall be presumed to be in compliance with water quality standards. AAPs shall be practical and cost effective to implement. The AAPs for groundwater shall include a process under which the ~~agency~~ Agency shall receive, investigate, and respond to a complaint that a farm has contaminated the drinking water or groundwater of a property owner.

(2) "Best Management Practices" (BMPs) may be required by the ~~secretary~~ Secretary on a ~~ease-by-ease~~ case-by-case basis. Before requiring BMPs, the ~~secretary~~ Secretary shall determine that sufficient financial

assistance is available to assist farmers in achieving compliance with applicable BMPs. BMPs shall be practical and cost effective to implement.

(b) Cooperation and coordination. ~~The secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets shall coordinate with the ~~secretary of natural resources~~ Secretary of Natural Resources in implementing and enforcing programs, plans, and practices developed for reducing and eliminating agricultural non-point source pollutants and discharges from concentrated animal feeding operations. ~~The secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets and the ~~secretary of natural resources~~ Secretary of Natural Resources shall develop a memorandum of understanding for the non-point program describing program administration, grant negotiation, grant sharing, and how they will coordinate watershed planning activities to comply with Public Law 92-500. ~~The secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets and the ~~secretary of the agency of natural resources~~ Secretary of Natural Resources shall also develop a memorandum of understanding according to the public notice and comment process of 10 V.S.A. § 1259(i) regarding the implementation of the federal concentrated animal feeding operation program and the relationship between the requirements of the federal program and the ~~state~~ State agricultural water quality requirements for large, medium, and small farms under chapter 215 of this title. The memorandum of understanding shall describe program administration, permit issuance, an appellate process, and enforcement authority and implementation. The memorandum of understanding shall be consistent with the federal National Pollutant Discharge Elimination System permit regulations for discharges from concentrated animal feeding operations. The allocation of duties under this chapter between the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets and the ~~secretary of natural resources~~ Secretary of Natural Resources shall be consistent with the ~~secretary's~~ Secretary's duties, established under the provisions of 10 V.S.A. § 1258(b), to comply with Public Law 92-500. ~~The secretary of natural resources~~ Secretary of Natural Resources shall be the ~~state~~ State lead person in applying for federal funds under Public Law 92-500, but shall consult with the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets during the process. The agricultural non-point source program may compete with other programs for competitive watershed projects funded from federal funds. ~~The secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets shall be represented in reviewing these projects for funding. Actions by the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets under this chapter concerning agricultural non-point source pollution shall be consistent with the water quality standards and water



pollution control requirements of 10 V.S.A. chapter 47 of Title 10 and the federal Clean Water Act as amended. In addition, the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets shall coordinate with the ~~secretary of natural resources~~ Secretary of Natural Resources in implementing and enforcing programs, plans, and practices developed for the proper management of composting facilities when those facilities are located on a farm.

(c) On or before January 1, 2016, the Secretary of Agriculture, Food and Markets shall amend by rule the accepted agricultural practices required under this section to include requirements for the certification of small farms under section 4858a of this title. The rules adopted under this section shall be at least as stringent as the requirements of section 4858a of this title.

\* \* \* Agricultural Water Quality; Corrective Actions \* \* \*

Sec. 4. 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 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.

\* \* \* Agricultural Water Quality; Livestock Exclusion \* \* \*

Sec. 5. 6 V.S.A. chapter 215, subchapter 8 is added to read:

#### Subchapter 8. Livestock Exclusion

##### § 4971. DEFINITIONS

As used in this subchapter:

(1) “Livestock” means cattle, sheep, goats, equines, fallow deer, red deer, American bison, swine, water buffalo, poultry, pheasant, Chukar partridge, Coturnix quail, camelids, ratites, and, as necessary, other animals designated by the Secretary by rule.

(2) “Waters” shall have the same meaning as in 10 V.S.A. § 1251(13).

##### § 4972. PURPOSE

The purpose of this subchapter is to authorize the Secretary of Agriculture, Food and Markets to require exclusion of livestock from a water of the State where continued access to the water by livestock poses a high risk of violating the accepted agricultural practices.

##### § 4973. LIVESTOCK EXCLUSION; PERMIT CONDITION

As a condition of a small farm certification, an animal waste permit, or a large farm permit issued under this chapter, the Secretary of Agriculture, Food and Markets may require exclusion of livestock from a water of the State where continued access to the water by livestock poses a high risk of violating

the accepted agricultural practices.

\* \* \* Seasonal Exemption for Manure Application \* \* \*

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

§ 4816. SEASONAL APPLICATION OF MANURE

(a) A person shall not apply manure to land in the State:

(1) between December 15 and April 1 of any calendar year, unless authorized under subsection (b) of this section; or

(2) between December 1 and December 15 and between April 1 and April 30 of any calendar year when prohibited under subsection (c) of this section.

(b) Seasonal exemption.

(1) The Secretary of Agriculture, Food and Market 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. An exemption issued under this section 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 the requirements of subdivision (2) of this subsection are complied with.

(2) Any exemption issued under this subsection shall:

(A) prohibit application of manure:

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

(ii) in nonharvested permanent vegetative buffers;

(iii) in a nonfarmed wetland, as that term is defined in 10 V.S.A. § 902(5);

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

(v) to fields exceeding tolerable soil loss; and

(vi) to saturated soils;

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

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

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

(c) Restriction on application. The Secretary of Agriculture, Food and Markets may by procedure prohibit the application of manure to land in the State between December 1 and December 15 and 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.

\* \* \* Agricultural Water Quality; Training \* \* \*

Sec. 7. 6 V.S.A. chapter 215, subchapter 9 is added to read:

Subchapter 9. Agricultural Water Quality Certification Training

§ 4981. AGRICULTURAL WATER QUALITY CERTIFICATION TRAINING; RULEMAKING

(a) On or before January 1, 2016, the Secretary of Agriculture, Food and Markets shall adopt by rule requirements for training classes or programs for owners or operators of small farms, medium farms, or large farms certified or permitted under this chapter regarding:

(1) the prevention of discharges, as that term is defined in 10 V.S.A. § 1251(3); and

(2) the mitigation and management of stormwater runoff, as that term is defined in 10 V.S.A. § 1264, from farms.

(b) Any training required by rules under this section shall:

(1) address the existing statutory and regulatory requirements for operation of a large, medium, or small farm in the State; and

(2) address the management practices and technical and financial resources available to assist in compliance with statutory or regulatory agricultural requirements.

\* \* \* Agricultural Water Quality;

Certification of Custom Applicators \* \* \*

Sec. 8. 6 V.S.A. chapter 215, subchapter 10 is added to read:

Subchapter 10. Certification of Custom Manure Applicators

§ 4987. DEFINITIONS

As used in this subchapter:

(1) “Custom manure applicator” means a person who applies manure.

nutrients, or sludge to land and who charges for the service.

(2) “Manure” means livestock waste that may also contain bedding, spilled feed, water, or soil.

(3) “Sludge” means any solid, semisolid, or liquid generated from a municipal, commercial, or industrial wastewater treatment plant or process, water supply treatment plant, air pollution control facility, or any other such waste having similar characteristics and effects.

§ 4988. CERTIFICATION OF CUSTOM MANURE APPLICATOR

(a) On or before January 1, 2015, the Secretary of Agriculture, Food and Markets shall adopt by procedure a process by which a custom applicator shall be certified to operate within the State. The certification process shall require a custom applicator to complete 16 hours of training over each five-year period regarding:

(1) application methods or techniques to minimize the runoff of land-applied manure, nutrients, or sludge to waters of the State; and

(2) identification of weather or soil conditions that increase the risk of runoff of land-applied manure, nutrients, or sludge to waters of the State.

(b) Beginning January 1, 2016, a custom applicator shall not apply manure, nutrients, or sludge unless certified by the Secretary of Agriculture, Food and Markets.

\* \* \* Agricultural Stream Alteration \* \* \*

Sec. 9. 6 V.S.A. § 4810a is added to read:

§ 4810a. AGRICULTURAL ACTIVITIES; STREAMS

(a) As used in this section:

(1) “Berm” means a linear fill of earthen material on or adjacent to the bank of a watercourse that constrains waters from entering a flood hazard area or river corridor, as those terms are defined in 10 V.S.A. §§ 752(3) and (11).

(2) “Instream material” means:

(A) all gradations of sediment from silt to boulders;

(B) ledge rock; or

(C) large woody debris in the bed of a watercourse or within the banks of a watercourse.

(3) “Intermittent stream” means any stream or stream segment of significant length that is not a perennial stream.

(4) “Large woody debris” means any piece of wood within a watercourse with a diameter of 10 or more inches and a length of 10 or more feet that is detached from the soil where it grew.

(5) “Perennial stream” means a watercourse or portion, segment, or reach of a watercourse, generally exceeding 0.5 square miles in watershed size, in which surface flows are not frequently or consistently interrupted during normal seasonal low flow periods. Perennial streams that begin flowing subsurface during low flow periods, due to natural geologic conditions, remain defined as perennial. “Perennial stream” shall not mean standing waters in wetlands, lakes, and ponds.

(6) “Secretary” means the Secretary of Agriculture, Food and Markets.

(7) “Stream” means a current of water that flows at any time at a rate of less than 1.5 cubic feet per second and exhibits evidence of sediment transport. A stream shall include the full length and width, including the bed and banks of any watercourse, including rivers, streams, creeks, brooks, and branches, which experience perennial flow. “Stream” shall not include swales, roadside ditches, ditches or other constructed channels primarily associated with land drainage or water conveyance through or around private infrastructure, excepting such ditches or conveyances that are connected directly with a stream or river at either end.

(b) On or before January 1, 2016, the Secretary shall amend the accepted agricultural practices to include requirements for agricultural activities that alter or impact streams in the State. The accepted agricultural practices for stream activities shall:

(1) prohibit the discharge or deposit of manure, milk house waste, compost, or other discarded substances in a stream or a ditch or ravine that are connected to a stream;

(2) require authorization from the Secretary, prior to any change, alteration, or modification of the course, current, or cross section of a perennial stream in this State either by movement, fill, or excavation of 10 cubic yards or more of instream material in any year; and

(3) require authorization from the Secretary to establish or construct a berm in a flood hazard area or river corridor, as those terms are defined in 10 V.S.A. § 752(3) and (11).

(c) The Secretary shall authorize an agricultural activity that alters or impacts streams in the State if the activity:

(1) will not adversely affect the public safety by increasing flood or fluvial erosion hazards;

(2) will not significantly damage fish life or wildlife;

(3) will not significantly damage the rights of riparian owners; and

(4) in case of any waters designated as outstanding resource waters, will not adversely affect the values sought to be protected by designation.

(d) Prior to issuing an authorization under subdivisions (b)(2) and (3) of this section, the Secretary shall consult with the Secretary of Natural Resources regarding appropriate management measures to be used in conducting any authorized activity.

\* \* \* Stormwater Management \* \* \*

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

§ 1264. STORMWATER MANAGEMENT

\* \* \*

(b) The ~~secretary~~ Secretary shall prepare a plan for the management of collected stormwater runoff found by the ~~secretary~~ Secretary to be deleterious to receiving waters. The plan shall recognize that the runoff of stormwater is different from the discharge of sanitary and industrial wastes because of the influence of natural events of stormwater runoff, the variations in characteristics of those runoffs, and the increased stream flows and natural degradation of the receiving water quality at the time of discharge. The plan shall be cost effective and designed to minimize any adverse impact of stormwater runoff to waters of the ~~state~~ State. By no later than February 1, 2001, the ~~secretary~~ Secretary shall prepare an enhanced stormwater management program and report on the content of that program to the ~~house committees on fish, wildlife and water resources and on natural resources and energy and to the senate committee on natural resources and energy~~ House Committees on Fish, Wildlife and Water Resources and on Natural Resources and Energy and to the Senate Committee on Natural Resources and Energy. In developing the program, the ~~secretary~~ Secretary shall consult with ~~the board~~, affected municipalities, regional entities, other ~~state~~ State and federal agencies, and members of the public. The ~~secretary~~ Secretary shall be responsible for implementation of the program. The ~~secretary's~~ Secretary's stormwater management program shall include, at a minimum, provisions that:

\* \* \*

(12) Encourage municipal governments to utilize existing regulatory and planning authority to implement improved stormwater management by providing technical assistance, training, research and coordination with respect to stormwater management technology, and by preparing and distributing a model local stormwater management ordinance or bylaw. Beginning on July 1, 2014, the Secretary annually shall provide municipalities with outreach

and education through published materials or training courses regarding the environmental and municipal benefits of adoption of a local stormwater management ordinance or bylaw. The stream alteration training and education activities required under subsection 1023(d) of this title and any education and outreach conducted under this subdivision (12) shall inform municipalities of model stormwater management ordinances or bylaws that are available in the State.

\* \* \*

\* \* \* Water Quality Data Coordination \* \* \*

Sec. 11. 10 V.S.A. § 1284 is added to read:

§ 1284. WATER QUALITY DATA COORDINATION

(a) To facilitate attainment or accomplishment of the purposes of this chapter, the Secretary shall coordinate and assess all available data and science regarding the quality of the waters of the State, including:

(1) light detection and ranging information data (LIDAR) identifying water quality issues;

(2) stream gauge data;

(3) stream mapping, including fluvial erosion hazard maps;

(4) water quality monitoring or sampling data;

(5) cumulative stressors on watershed, such as the frequency an activity is conducted within a watershed or the number of stormwater or other permits issued in a watershed; and

(6) any other data available to the Secretary.

(b) After coordination of the data required under subsection (a) of this section, the Secretary shall:

(1) assess where additional data are needed and the best methods for collection of such data;

(2) identify and map on a regional basis areas of the State that are significant contributors to water quality problems or are in critical need of water quality remediation or response.

(c) The Secretary shall post all data compiled under this section on the website of the Agency of Natural Resources.

\* \* \* Shoreland Contractor Certification \* \* \*

Sec. 12. VOLUNTARY SHORELAND EROSION CONTROL CERTIFICATION PROGRAM



(a) Definitions. As used in this section:

(1) “Impervious surface” shall have the same meaning as in section 1264 of this title.

(2) “Lake” means a body of standing water, including a pond or a reservoir, which may have natural or artificial water level control. Private ponds shall not be considered lakes.

(3) “Mean water level” means the mean water level of a lake as defined in the Mean Water Level Rules of the Agency of Natural Resources adopted under 29 V.S.A. § 410.

(4) “Shoreland area” means all land located within 250 feet of the mean water level of a lake that is greater than 10 acres in surface area.

(b) Voluntary certification. The Agency of Natural Resources, in consultation with the Associated General Contractors of Vermont, shall develop an optional shoreland erosion control certification program to begin on January 1, 2015. The program shall include training related to the disturbance of soil, clearance of vegetation, and construction of impervious surfaces of more than 1,000 square feet in a shoreland area. The voluntary certification program shall end on January 1, 2018.

(c) Report. On or before January 1, 2017, the Agency of Natural Resources shall report to the House and Senate Committees on Natural Resources and Energy and the House Committee on Fish, Wildlife, and Water Resources regarding the voluntary shoreland erosion control certification program created in subsection (b) of this section. The report shall include:

(1) a general summary of the program’s success, including an overview of shoreland projects constructed by certified persons;

(2) the number of persons certified under the certification program;

(3) a recommendation of whether the State should continue the voluntary certification program, including whether to make the program mandatory; and

(4) any other recommendations for improving the program.

(d) The requirements of this section shall not apply to the owner or operator of a farm conducting agricultural activities on the farm that comply with the rules adopted by the Secretary of Agriculture, Food and Markets under 6 V.S.A. chapter 215, regarding agricultural water quality, including accepted agricultural practices, best management practices, animal waste permits, and large farm permits. The requirements of this section shall apply to a person, other than an employee of the owner or operator of the farm, who

charges for the service of tillage, harvesting, or other agricultural activity that disturbs soil, clears vegetation, or constructs impervious surface of more than 500 square feet in a shoreland area.

\* \* \* Forestry Practices \* \* \*

Sec. 13. DEPARTMENT OF FORESTS, PARKS AND RECREATION;  
FORESTRY; PORTABLE SKIDDER PROJECT

In addition to any other funds appropriated to the Department of Forests, Parks and Recreation in fiscal year 2015 there is appropriated in fiscal year 2015 from the General Fund to the Department:

(1) \$100,000.00 for the purpose of providing technical assistance to persons engaged in silvicultural practices regarding improved stream crossing practices; and

(2) \$20,000.00 for the purchase or construction of portable skidder bridges.

\* \* \* Town Road and Bridge Standards \* \* \*

Sec. 14. 19 V.S.A. § 309b is amended to read:

§ 309b. LOCAL MATCH; CERTAIN TOWN HIGHWAY PROGRAMS

(a) Notwithstanding subsection 309a(a) of this title, grants provided to towns under the town highway structures program shall be matched by local funds sufficient to cover 20 percent of the project costs, unless the town has adopted road and bridge standards, has completed a network inventory, and has submitted an annual certification of compliance for town road and bridge standards to the secretary, in which event the local match shall be sufficient to cover ~~40~~ five percent of the project costs. The ~~secretary~~ Secretary may adopt rules to implement the town highway structures program. Town highway structures projects receiving funds pursuant to this subsection shall be the responsibility of the applicant municipality.

(b) Notwithstanding subsection 309a(a) of this title, grants provided to towns under the class 2 town highway roadway program shall be matched by local funds sufficient to cover 30 percent of the project costs, unless the town has adopted road and bridge standards, has completed a network inventory, and has submitted an annual certification of compliance for town road and bridge standards to the ~~secretary~~ Secretary, in which event the local match shall be sufficient to cover ~~20~~ 15 percent of the project costs. The ~~secretary~~ Secretary may adopt rules to implement the class 2 town highway roadway program. Class 2 town highway roadway projects receiving funds pursuant to this subsection shall be the responsibility of the applicant municipality, and a municipality shall not receive a grant in excess of \$175,000.00.

\* \* \*

\* \* \* Best Management Practices Income Tax Credit \* \* \*

Sec. 15. 32 V.S.A. § 5930mm is added to read:

§ 5930mm. AGRICULTURAL BEST MANAGEMENT PRACTICES TAX CREDIT

(a) A taxpayer of this State who is engaged in the business of farming or who is implementing a nutrient management plan approved by the Secretary of Agriculture, Food and Markets may claim a credit against his or her income taxes imposed by this chapter in an amount equal to 25 percent of the first \$70,000.00 expended by the taxpayer for an agricultural best management practice approved by the Secretary of Agriculture, Food and Markets under 6 V.S.A. chapter 215, provided that that the credit shall not exceed the liability of the taxpayer under this chapter for the year in which the credit is claimed.

(b) Best management practices eligible for the credit under this section shall include approved activities to:

(1) manage the waste from livestock, as that term is defined in 6 V.S.A. § 761;

(2) control soil erosion;

(3) nutrient and sediment filtration and detention;

(4) nutrient management planning; and

(5) pest and pesticide handling.

(c) After completion of the best management practice, the Secretary shall certify the practice as approved and completed, and eligible for credit. The taxpayer shall forward the certification of completion to the Department of Taxes on forms provided by the Department. The credit shall be allowed only for expenditures made by the taxpayer from his or her own funds.

(d) The credit under this section shall be available only for the tax year in which the funds were expended, as certified by the Secretary of Agriculture, Food and Markets. Any taxpayer claiming a credit under this section shall not claim a credit under any similar State law for costs related to the same eligible practices.

(e) The amount of any credit claimed under this section attributable to agricultural best management practices by a pass-through entity such as a partnership, limited liability company, or electing small business corporation (S Corporation) shall be allocated to the individual partners, members, or shareholders in proportion to their ownership or interest in such entity.

(f) As used in this section, “engaged in the business of farming” means a taxpayer earns at least one-half of his or her annual gross income from the business of farming, as that term is defined in the Internal Revenue Code, 26 C.F.R. § 1.175-3

\* \* \* Water Quality Restoration; Financing Report \* \* \*

Sec. 16. AGENCY OF NATURAL RESOURCES REPORT ON WATER QUALITY FINANCING

On or before January 15, 2015, the Secretary of Natural Resources, after consultation with the Joint Fiscal Office, shall submit to the Senate Committee on Natural Resources and Energy, the House Committee on Fish, Wildlife and Water Resources, and the Senate and House Committees on Appropriations a report that provides recommendations for establishing a financing mechanism that assesses property owners in the State based on the property’s impact on water quality. The report shall include:

(1) at least two alternative financing mechanisms;

(2) a summary of how each recommended financing mechanism would be implemented, including administration and enforcement; and

(3) an estimated amount of revenue that each recommended financing proposal would generate.

\* \* \* Rooms and Meals Tax; Ecosystem Restoration Program \* \* \*

Sec. 17. 32 V.S.A. § 9241 is amended to read:

§ 9241. IMPOSITION OF TAX

(a) An operator shall collect a tax of nine and one-quarter percent of the rent of each occupancy.

(b) An operator shall collect a tax on the sale of each taxable meal at the rate of nine and one-quarter percent of each full dollar of the total charge and on each sale for less than one dollar and on each part of a dollar in excess of a full dollar in accordance with ~~the following~~ a formula developed and published by the Department of Taxes:

<del>\$0.01-0.11</del>	<del>\$0.01</del>
<del>0.12-0.22</del>	<del>0.02</del>
<del>0.23-0.33</del>	<del>0.03</del>
<del>0.34-0.44</del>	<del>0.04</del>
<del>0.45-0.55</del>	<del>0.05</del>

<del>0.56-0.66</del>	0.06
<del>0.67-0.77</del>	0.07
<del>0.78-0.88</del>	0.08
<del>0.89-1.00</del>	0.09

(c) An operator shall collect a tax on each sale of alcoholic beverages at the rate of 10 and one-quarter percent of each full dollar of the total charge and on each sale for less than one dollar and on each part of a dollar in excess of a full dollar in accordance with ~~the following~~ a formula developed and published by the Department of Taxes:

<del>\$.01-.14</del>	<del>\$.01</del>
<del>.15-.24</del>	<del>.02</del>
<del>.25-.34</del>	<del>.03</del>
<del>.35-.44</del>	<del>.04</del>
<del>.45-.54</del>	<del>.05</del>
<del>.55-.64</del>	<del>.06</del>
<del>.65-.74</del>	<del>.07</del>
<del>.75-.84</del>	<del>.08</del>
<del>.85-.94</del>	<del>.09</del>
<del>.95-1.00</del>	<del>.10</del>

Sec. 18. 32 V.S.A. § 9242(c) is amended to read:

(c) A tax of nine and one-quarter percent of the gross receipts from ~~meals and occupancies, nine and one-quarter percent of the gross receipts from meals,~~ and 10 and one-quarter percent of the gross receipts from alcoholic beverages, exclusive of taxes collected pursuant to section 9241 of this title, received from occupancy rentals, taxable meals and alcoholic beverages by an operator, is hereby levied and imposed and shall be paid to the State by the operator as herein provided. Every person required to file a return under this chapter shall, at the time of filing the return, pay the Commissioner the taxes imposed by this chapter as well as all other monies collected by him or her under this chapter; provided, however, that every person who collects the taxes on taxable meals and alcoholic beverages according to the tax bracket schedules of section 9241 of this title shall be allowed to retain any amount lawfully collected by the person in excess of the tax imposed by this chapter as compensation for the keeping of prescribed records and the proper account and remitting of taxes.

Sec. 19. 32 V.S.A. § 435 is amended to read:

§ 435. GENERAL FUND

(a) There is established a General Fund which shall be the basic operating fund of the State. The General Fund shall be used to finance all expenditures for which no special revenues have otherwise been provided by law.

(b) The General Fund shall be composed of revenues from the following sources:

- (1) Alcoholic beverage tax levied pursuant to 7 V.S.A. chapter 15;
- (2) [Repealed.]
- (3) Electrical energy tax levied pursuant to chapter 213 of this title;
- (4) Corporate income and franchise taxes levied pursuant to chapter 151 of this title;
- (5) Individual income taxes levied pursuant to chapter 151 of this title;
- (6) All corporation taxes levied pursuant to chapter 211 of this title;
- (7) ~~Meals~~ 98 percent of the meals and rooms taxes levied pursuant to chapter 225 of this title;
- (8) [Repealed.]
- (9) Revenues from the Racing Fund consistent with 31 V.S.A. § ~~614~~ 609;
- (10) 33 percent of the revenue from the property transfer taxes levied pursuant to chapter 231 of this title and the revenue from the gains taxes levied each year pursuant to chapter 236 of this title;
- (11) 65 percent of the revenue from sales and use taxes levied pursuant to chapter 233 of this title;
- (12) All other revenues accruing to the State not otherwise required by law to be deposited in any other designated fund or used for any other designated purpose.

\* \* \* Rental Car Tax \* \* \*

Sec. 20. 32 V.S.A. § 8903(d) is amended to read:

(d) There is hereby imposed a use tax on the rental charge of each transaction, in which the renter takes possession of the vehicle in this State, during the life of a pleasure car purchased for use in short-term rentals, which tax is to be collected by the rental company from the renter and remitted to the Commissioner. The amount of the tax shall be ~~nine~~ 10 percent of the rental

charge. Rental charge means the total rental charge for the use of the pleasure car, but does not include a separately stated charge for insurance, or recovery of refueling cost, or other separately stated charges which are not for the use of the pleasure car. In the event of resale of the vehicle in this State for use other than short-term rental, such transaction shall be subject to the tax imposed by subsection (a) of this section.

Sec. 21. 32 V.S.A. § 8912 is amended to read:

§ 8912. ALLOCATION OF FUNDS

The taxes collected under this chapter shall be paid into and accounted for in the Transportation Fund, except that 10 percent of the tax collected under subsection 8903(d) of this title on rental cars shall be paid into the Ecosystem Restoration Program Fund under 10 V.S.A § 1285.

\* \* \* Ecosystem Restoration Program Fund \* \* \*

Sec. 22. 10 V.S.A. § 1285 is added to read:

§ 1285. ECOSYSTEM RESTORATION PROGRAM FUND

(a) Creation of Fund. There is created a special fund in the State Treasury to be known as the “Ecosystem Restoration Program Fund” to be administered and expended by the Secretary to fund administration and implementation of the Ecosystem Restoration Program. Within the Fund, there shall be two accounts: the Capital Account and the Administrative Account.

(b) Deposits to accounts:

(1) Within the Capital Account, there shall be deposited:

(A) appropriations by the General Assembly to the Vermont Environmental Protection Agency (EPA) Pollution Control Revolving Fund; and

(B) appropriations by the General Assembly to the Agency of Natural Resources for any other capital construction related to water pollution control.

(2) Within the Administrative Account, there shall be deposited:

(A) two percent of the meals and rooms tax levied pursuant to chapter 225 of this title;

(B) 10 percent of rental car tax under subsection 8903(d) of this title; and

(C) such sums as may be appropriated by the General Assembly.

(c) Disbursements from the Fund.

(1) The Secretary may authorize disbursement or expenditures from the Capital Account according to the requirements of 24 V.S.A. chapter 120 and the rules adopted thereunder or as authorized by the General Assembly.

(2) The Secretary may authorize disbursement or expenditures from the Administrative Account for administration of, education and outreach related to, monitoring, and implementation of the activities or projects under the Ecosystem Restoration Program.

(d) Interest. Interest earned by the Fund shall be credited and deposited to the Fund. All balances in the Fund at the end of the fiscal year shall be carried forward and remain a part of the Fund.

(e) Awards; priority. Except for grants or loans issues under 24 V.S.A. chapter 120, grants or loans from the Ecosystem Restoration Program shall be awarded in each fiscal year according to the following priorities:

(1) First priority shall be given to projects identified by the Secretary as significant contributors to water quality problems or in critical need of water quality remediation or response.

(2) Next priority shall be given to proposed projects to address or repair riparian conditions that increase the risk of flooding or pose a threat to life or property.

(3) Next priority shall be given to proposed projects or programs to address areas of high risk of pollution or high loading of sediment to a water listed as impaired on the list of waters required by 33 U.S.C. § 1313(d).

(4) Next priority shall be given to other projects implementing a total maximum daily load plan in a water listed as impaired on the list of waters required by 33 U.S.C. § 1313(d).

(5) Next priority shall be given to projects or programs to address areas of high risk of pollution or high loading of sediment to an unimpaired water.

(f) Secretary discretion. The Secretary may award financial assistance under this section for a project or program that otherwise would not receive assistance under the priorities established by this section when the Secretary determines a severe risk to water quality or risk of discharge exists which requires immediate abatement.

(g) Rule. The Secretary may adopt by rule additional priorities for the award of loans or grants in order to ensure equity in the distribution of awards under this section among service sectors or land use categories.

Sec. 23. REPORT ON ACCEPTED AGRICULTURAL PRACTICES  
UNDER USE VALUE APPRAISAL



On or before January 15, 2015, the Agency of Agriculture, Food and Markets (AAFM), after consultation with the Department of Forests, Parks and Recreation and the Division of Property Valuation and Review (PVR) at the Department of Taxes, shall submit to the House Committee on Fish, Wildlife and Water Resources, the Senate Committee on Natural Resources and Energy, the House Committee on Ways and Means, the Senate Committee on Finance, the House Committee on Agriculture and Forest Products, and the Senate Committee on Agriculture a report regarding compliance with the accepted agricultural practices (AAPs) issued under 6 V.S.A. chapter 215 as a requirement of eligibility for participation in the use value appraisal program. The report shall include:

(1) A proposed plan for implementing a requirement that an owner of agricultural land certify compliance with the AAPs in order to participate or continue participation in the use value appraisal program. The plan shall include:

(A) how the AAFM or PVR would record certifications of AAP compliance;

(B) how the AAFM or PVR would enforce compliance with the AAPs as a condition of participation in the use value appraisal program; and

(C) an estimate of the number of staff and other resources required by the AAFM or PVR to implement, administer, and enforce the requirement of compliance with AAPs as a condition of participation in the use value appraisal program.

(2) An estimate of how certification of compliance with the AAPs would impact the cost of the use value appraisal program to the State of Vermont, including whether fewer parcels would qualify for enrollment in the program.

#### Sec. 24. EFFECTIVE DATES

(a) This section and Secs. 1–3 (small farm certification rules), 4 (Agency of Agriculture, Food and Markets corrective action), 5 (livestock exclusion), 6 (seasonal exemption for application of manure), 8 (custom applicator certification), 9 (agricultural stream alteration), 10 (stormwater model bylaw), 11 (water quality data coordination), 12 (shoreland contractor certification), , 13 (financing; technical assistance for forestry), 15 (agricultural best management practices tax credit), and 23 (AAP; use value appraisal report) shall take effect on passage.

(b) Sec. 7 (agricultural water quality certification) shall take effect on January 1, 2015.

(c) Secs. 14 (town road and bridge standards), 16 (Ecosystem Restoration fee), 17–19 (meals and rooms tax), 20–21 (rental car tax), and 22 (Ecosystem Restoration Program Fund) shall take effect on July 1, 2015.

**( Committee Vote: 7-1-1)**

**Rep. Partridge of Windham**, for the Committee on **Agriculture and Forest Products**, recommends the bill ought to pass when amended as recommended by the Committee on **Fish, Wildlife & Water Resources** and when further amended as follows:

First: By striking Secs. 1–9 in their entirety and inserting in lieu thereof the following:

\* \* \* Findings; Agricultural Water Quality \* \* \*

Sec. 1. FINDINGS AND PURPOSE; AGRICULTURAL WATER QUALITY

(a) Findings. For the purpose of Secs. 1–9b of this act, the General Assembly finds that:

(1) Significant State, federal, and private financial resources have been expended over the past 20 years to address water quality issues in the State of Vermont, such as the cleanup of Lake Champlain.

(2) Despite significant funding and efforts to address the State’s water quality issues, insufficient progress has been made.

(3) The U.S. Environmental Protection Agency (EPA) revoked approval of the initial total maximum daily load (TMDL) plan for Lake Champlain despite the State’s reaching one-third of the TMDL’s goal in less than 10 years.

(4) EPA is in the process of developing a new TMDL for Lake Champlain, but Vermont may be responsible for the large majority of implementation costs.

(5) Much of the responsibility and cost for meeting the new EPA TMDL may fall on Vermont’s farmers, who likely will be subject to additional requirements under the accepted agricultural practices (AAPs) and other agricultural water quality rules.

(6) Although the AAP rules were adopted in 1995, there is a general lack of awareness in the “small farm” community about the AAPs, and the Agency of Agriculture, Food and Markets should educate small farm operators in the State concerning the requirements of the AAPs.

(7) The Vermont agricultural community recognizes that it has a role to play in the future efforts to reduce nutrient loading and improve water quality in the State, but additional State and federal assistance is necessary to fulfill

this role successfully, including technical and financial assistance to encourage small farms to adopt and implement nutrient management plans.

(b) Purpose. It is the purpose of Secs. 1–9b of this act to:

(1) improve the quality of the waters of Vermont;

(2) authorize proactive measures designed to implement and ultimately meet the impending TMDL for Lake Champlain and improve water quality across the State;

(3) identify cost-effective strategies for the agricultural community to address water quality issues, including best management practices and conservation practices of cover cropping, grassed waterways, manure drag lines and injection, no-till production, and contour plowing; and

(4) engage more agricultural operations in meaningful ways as part of the State’s efforts to improve the quality of the waters of Vermont.

\* \* \* Agricultural Water Quality;

Small Farm Certification and Inspection \* \* \*

Sec. 2. 6 V.S.A. § 4858a is added to read:

§ 4858a. SMALL FARM CERTIFICATION

(a) Rulemaking; small farm certification. On or before January 1, 2016, the Secretary of Agriculture, Food and Markets shall adopt by rule a requirement that all small farms in the State submit to the Secretary a certification of compliance with the accepted agricultural practices. The rules required by this subsection shall be adopted as part of the accepted agricultural practices under section 4810 of this title.

(b) Content of rules. The rules for small farm certification shall:

(1) Define what constitutes a small farm for the purposes of certification.

(2) Require a small farm to be certified under this section in order to operate in the State.

(3) Require the owner or operator of a small farm to certify to the Secretary of Agriculture, Food and Markets at least every five years that the owner or operator complies with the accepted agricultural practices adopted under section 4810 of this title. The certification shall identify the farm subject to the certification and the person or persons who own or operate the farm. The owner or operator of the farm shall certify compliance with the accepted agricultural practices, including that:

(A) The farm does not directly discharge wastes into the surface waters from a discrete conveyance such as a pipe, ditch, or conduit without a permit under 10 V.S.A. § 1258.

(B) Manure stacking sites, fertilizer storage, and other nutrient source storage on the farm are not located within 100 feet of private wells.

(C) Manure is not stacked or stored on lands subject to annual overflow from adjacent waters.

(D) Manure is not field stacked on unimproved sites within 100 feet of a surface water.

(E) Barnyards, waste management systems, animal holding areas, and production areas shall be constructed, managed, and maintained to prevent runoff of waste to surface water, to groundwater, or across property boundaries.

(F) Nutrient application on the farm is based on soil testing by field and is consistent with University recommendations, standard agricultural practices, or a Secretary-approved nutrient management plan for the farm.

(G) Manure on the farm is not applied within 25 feet of an adjoining surface water, is not applied within 10 feet of a ditch, or is applied in such a manner as to enter surface water.

(H) Fertigation and chemigation equipment is operated only with an adequate anti-siphon device between the system and the water source.

(I) Cropland on the farm is cultivated in a manner that results in an average soil loss of less than or equal to the soil loss tolerance for the prevalent soil, known as 1T, as calculated through application of the Revised Universal Soil Loss Equation, or through the application of similarly accepted models.

(J) A vegetative buffer zone of perennial vegetation is maintained between annual croplands and the top of the bank of adjoining surface waters in a manner that complies with requirements of the accepted agricultural practices.

(K) Manure, fertilizer, pesticide storage structures, and farm structures are not located within a floodway area as presented on National Flood Insurance Maps on file with town clerks or within a Fluvial Erosion Hazard Zone as designated by municipal bylaw or ordinance.

(4) Authorize the Secretary to visit small farms in the State for the purposes of assessing compliance with the accepted agricultural practices and consistency with a certification issued under this section. The Secretary may prioritize visits to small farms in the State based on identified water quality

issues posed by a farm.

(5) Require notice to the Secretary of a change of ownership or a change of operator of a small farm and the time frame by which a new owner or operator shall be required to certify compliance with the accepted agricultural practices under this section.

(c)(1) Identification; ranking of water quality needs. During a visit to a small farm required under subsection (b) of this section, the Secretary shall identify areas where the farm could benefit from capital, structural, or technical assistance in order to improve or come into compliance with the accepted agricultural practices.

(2) Annually, the Secretary shall establish a priority ranking system for small farms according to the degree of assistance required for compliance with the accepted agricultural practices if the identified capital, structural, or technical needs on the farm are not addressed.

(3) Notwithstanding the requirements of section 4823 of this title, farms identified under subdivision (2) of this subsection in the greatest level of need in order to come into compliance with the accepted agricultural practices shall be given first priority for State financial assistance under subchapter 3 of this chapter, provided that the Secretary may give first priority for financial assistance to any farm other than one identified under subdivision (2) of this subsection when the Secretary determines that a farm needs assistance to address a water quality issue that requires immediate abatement.

Sec. 3. 6 V.S.A. § 4860 is amended to read:

§ 4860. REVOCATION; ENFORCEMENT

(a) The ~~secretary~~ Secretary may revoke coverage under a general permit ~~or~~, an individual permit, or a small farm certification issued under this subchapter after following the same process prescribed by section 2705 of this title regarding the revocation of a handler's license. The ~~secretary~~ Secretary may also seek enforcement remedies under sections 1, 11, 12, 13, 16, and 17 of this title as well as assess an administrative penalty under section 15 of this title from any person who fails to comply with any permit provision as required by this subchapter or who violates the terms or conditions of coverage under any general permit ~~or~~, any individual permit, or any small farm certification issued under this subchapter. However, notwithstanding provisions of section 15 of this title to the contrary, the maximum administrative penalty assessed for a violation of this subchapter shall not exceed \$5,000.00 for each violation, and the maximum amount of any penalty assessed for separate and distinct violations of this chapter shall not exceed \$50,000.00.

(b) Any person who violates any provision of this subchapter or who fails to comply with any order or the terms of any permit or certification issued in accordance with this subchapter shall be fined not more than \$10,000.00 for each violation. Each violation may be a separate offense and, in the case of a continuing violation, each day's continuance may be deemed a separate offense.

(c) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, certification, or other document filed or required to be maintained by this subchapter or by any permit, rule, regulation, or order issued under this subchapter, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained by this subchapter or by any permit, rule, regulation, or order issued under this subchapter shall upon conviction be punished by a fine of not more than \$5,000.00 for each violation. Each violation may be a separate offense and, in the case of a continuing violation, each day's continuance may be deemed a separate offense.

Sec. 4. 6 V.S.A. § 4810 is amended to read:

§ 4810. AUTHORITY; COOPERATION; COORDINATION

(a) Agricultural land use practices. In accordance with 10 V.S.A. § 1259(i), the ~~secretary~~ Secretary shall adopt by rule, pursuant to 3 V.S.A. chapter 25 ~~of Title 3~~, and shall implement and enforce agricultural land use practices in order to reduce the amount of agricultural pollutants entering the waters of the ~~state~~ State. These agricultural land use practices shall be created in two categories, pursuant to subdivisions (1) and (2) of this subsection.

(1) "Accepted Agricultural Practices" (AAPs) shall be standards to be followed in conducting agricultural activities in this ~~state~~ State. These standards shall address activities which have a potential for causing pollutants to enter the groundwater and waters of the ~~state~~ State, including dairy and other livestock operations plus all forms of crop and nursery operations and on-farm or agricultural fairground, registered pursuant to 20 V.S.A. § 3902, livestock and poultry slaughter and processing activities. The AAPs shall include, as well as promote and encourage, practices for farmers in preventing pollutants from entering the groundwater and waters of the ~~state~~ State when engaged in, ~~but not limited to~~, animal waste management and disposal, soil amendment applications, plant fertilization, and pest and weed control. Persons engaged in farming, as defined in 10 V.S.A. § 6001, who follow these practices shall be presumed to be in compliance with water quality standards. AAPs shall be practical and cost effective to implement. The AAPs for groundwater shall include a process under which the ~~agency~~ Agency shall receive, investigate, and respond to a complaint that a farm has contaminated

the drinking water or groundwater of a property owner.

(2) “Best Management Practices” (BMPs) may be required by the ~~secretary~~ Secretary on a ~~ease-by-case~~ case-by-case basis. Before requiring BMPs, the ~~secretary~~ Secretary shall determine that sufficient financial assistance is available to assist farmers in achieving compliance with applicable BMPs. BMPs shall be practical and cost effective to implement.

(b) Cooperation and coordination. The ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets shall coordinate with the ~~secretary of natural resources~~ Secretary of Natural Resources in implementing and enforcing programs, plans, and practices developed for reducing and eliminating agricultural non-point source pollutants and discharges from concentrated animal feeding operations. The ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets and the ~~secretary of natural resources~~ Secretary of Natural Resources shall develop a memorandum of understanding for the non-point program describing program administration, grant negotiation, grant sharing, and how they will coordinate watershed planning activities to comply with Public Law 92-500. The ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets and the ~~secretary of the agency of natural resources~~ Secretary of Natural Resources shall also develop a memorandum of understanding according to the public notice and comment process of 10 V.S.A. § 1259(i) regarding the implementation of the federal concentrated animal feeding operation program and the relationship between the requirements of the federal program and the ~~state~~ State agricultural water quality requirements for large, medium, and small farms under chapter 215 of this title. The memorandum of understanding shall describe program administration, permit issuance, an appellate process, and enforcement authority and implementation. The memorandum of understanding shall be consistent with the federal National Pollutant Discharge Elimination System permit regulations for discharges from concentrated animal feeding operations. The allocation of duties under this chapter between the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets and the ~~secretary of natural resources~~ Secretary of Natural Resources shall be consistent with the ~~secretary's~~ Secretary's duties, established under the provisions of 10 V.S.A. § 1258(b), to comply with Public Law 92-500. The ~~secretary of natural resources~~ Secretary of Natural Resources shall be the ~~state~~ State lead person in applying for federal funds under Public Law 92-500, but shall consult with the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets during the process. The agricultural non-point source program may compete with other programs for competitive watershed projects funded from federal funds. The ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and

Markets shall be represented in reviewing these projects for funding. Actions by the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets under this chapter concerning agricultural non-point source pollution shall be consistent with the water quality standards and water pollution control requirements of 10 V.S.A. chapter 47 ~~of Title 10~~ and the federal Clean Water Act as amended. In addition, the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets shall coordinate with the ~~secretary of natural resources~~ Secretary of Natural Resources in implementing and enforcing programs, plans, and practices developed for the proper management of composting facilities when those facilities are located on a farm.

(c) On or before January 1, 2016, the Secretary of Agriculture, Food and Markets shall amend by rule the accepted agricultural practices required under this section to include requirements for the certification of small farms under section 4858a of this title. The rules adopted under this section shall be at least as stringent as the requirements of section 4858a of this title.

\* \* \* Agricultural Water Quality; Corrective Actions \* \* \*

Sec. 5. 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 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.

\* \* \* Agricultural Water Quality; Livestock Exclusion \* \* \*

Sec. 6. 6 V.S.A. chapter 215, subchapter 8 is added to read:

#### Subchapter 8. Livestock Exclusion

##### § 4971. DEFINITIONS

As used in this subchapter:

(1) “Livestock” means cattle, sheep, goats, equines, fallow deer, red deer, American bison, swine, water buffalo, poultry, pheasant, Chukar partridge, Coturnix quail, camelids, ratites, and, as necessary, other animals designated by the Secretary by rule.

(2) “Waters” shall have the same meaning as in 10 V.S.A. § 1251(13).

##### § 4972. PURPOSE

The purpose of this subchapter is to authorize the Secretary of Agriculture, Food and Markets to require exclusion of livestock from a water of the State where continued access to the water by livestock poses a high risk of violating the accepted agricultural practices.

##### § 4973. LIVESTOCK EXCLUSION; PERMIT CONDITION

As a condition of a small farm certification, an animal waste permit, or a large farm permit issued under this chapter, the Secretary of Agriculture, Food and Markets may require exclusion of livestock from a water of the State where continued access to the water by livestock poses a high risk of violating the accepted agricultural practices.

\* \* \* Seasonal Exemption for Manure Application \* \* \*

Sec. 7. 6 V.S.A. § 4816 is added to read:

§ 4816. SEASONAL APPLICATION OF MANURE

(a) Unless authorized under subsection (b) of this section, a person shall not apply manure to land in the State:

(1) between December 15 and April 1 of any calendar year; or

(2) between December 1 and December 15 and between April 1 and April 30 of any calendar year when prohibited under subsection (c) of this section.

(b) Seasonal exemption.

(1) The Secretary of Agriculture, Food and Market 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 (c) of this section when manure is prohibited from application. An exemption issued under this section 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 the requirements of subdivision (2) of this subsection are complied with.

(2) Any exemption issued under this subsection shall:

(A) prohibit application of manure:

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

(ii) in nonharvested permanent vegetative buffers;

(iii) in a nonfarmed wetland, as that term is defined in 10 V.S.A. § 902(5);

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

(v) to fields exceeding tolerable soil loss; and

(vi) to saturated soils;

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

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

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

(c) Restriction on application. The Secretary of Agriculture, Food and Markets may by procedure prohibit the application of manure to land in the State between December 1 and December 15 and 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.

\* \* \* Agricultural Water Quality; Training \* \* \*

Sec. 8. 6 V.S.A. chapter 215, subchapter 9 is added to read:

Subchapter 9. Agricultural Water Quality Certification Training

§ 4981. AGRICULTURAL WATER QUALITY CERTIFICATION TRAINING; RULEMAKING

(a) On or before January 1, 2016, the Secretary of Agriculture, Food and Markets shall adopt by procedure requirements for training classes or programs for owners or operators of small farms, medium farms, or large farms certified or permitted under this chapter regarding:

(1) the prevention of discharges, as that term is defined in 10 V.S.A. § 1251(3); and

(2) the mitigation and management from farms of stormwater runoff, as that term is defined in 10 V.S.A. § 1264.

(b) Any training required by procedure under this section shall:

(1) address the existing statutory and regulatory requirements for operation of a large, medium, or small farm in the State; and

(2) address the management practices and technical and financial resources available to assist in compliance with statutory or regulatory agricultural requirements.

\* \* \* Agricultural Water Quality;

Certification of Custom Applicators \* \* \*

Sec. 9. 6 V.S.A. chapter 215, subchapter 10 is added to read:

Subchapter 10. Certification of Custom Applicators of Manure,

Nutrients, or Sludge

§ 4987. DEFINITIONS

As used in this subchapter:

(1) “Custom applicator” means a person who applies manure, nutrients, or sludge to land and who charges or collects other consideration for the service.

(2) “Manure” means livestock waste that may also contain bedding, spilled feed, water, or soil.

(3) “Seasonal employee” means a person who:

(A) works for a custom applicator for 20 weeks or fewer in a calendar year; and

(B) works in a job scheduled to last 20 weeks or fewer.

(4) “Sludge” means any solid, semisolid, or liquid generated from a municipal, commercial, or industrial wastewater treatment plant or process, water supply treatment plant, air pollution control facility, or any other such waste having similar characteristics and effects.

§ 4988. CERTIFICATION OF CUSTOM APPLICATOR

(a) On or before January 1, 2015, the Secretary of Agriculture, Food and Markets shall adopt by rule a process by which a custom applicator shall be certified to operate within the State. The certification process shall require a custom applicator to complete eight hours of training over each five-year period regarding:

(1) application methods or techniques to minimize the runoff of land-applied manure, nutrients, or sludge to waters of the State; and

(2) identification of weather or soil conditions that increase the risk of runoff of land-applied manure, nutrients, or sludge to waters of the State.

(b) Beginning January 1, 2016, a custom applicator shall not apply manure, nutrients, or sludge unless certified by the Secretary of Agriculture, Food and Markets.

(c) A custom applicator certified under this section may train seasonal employees in methods or techniques to minimize runoff to surface waters and to identify weather or soil conditions that increase the risk of runoff. A custom applicator that trains a seasonal employee under this subsection shall be liable for damages done and liabilities incurred by a seasonal employee who

improperly applies manure, nutrients, or sludge.

(d) The requirements of this section shall not apply to an owner or operator of a farm applying manure, nutrients, or sludge to a field that he or she owns or controls.

\* \* \* Agricultural Stream Alteration \* \* \*

Sec. 9a. 6 V.S.A. § 4810a is added to read:

§ 4810a. AGRICULTURAL ACTIVITIES; STREAMS

(a) As used in this section:

(1) “Instream material” means:

(A) all gradations of sediment from silt to boulders;

(B) ledge rock; or

(C) large woody debris in the bed of a perennial stream or within the banks of a perennial stream.

(2) “Intermittent stream” means any stream or stream segment of significant length that is not a perennial stream.

(3) “Large woody debris” means any piece of wood within a perennial stream with a diameter of 10 or more inches and a length of 10 or more feet that is detached from the soil where it grew.

(4) “Perennial stream” means a stream or portion, segment, or reach of a stream, generally exceeding 0.5 square miles in watershed size, in which surface flows are not frequently or consistently interrupted during normal seasonal low flow periods. Perennial streams that begin flowing subsurface during low flow periods, due to natural geologic conditions, remain defined as perennial. “Perennial stream” shall not mean standing waters in wetlands, lakes, and ponds.

(5) “Secretary” means the Secretary of Agriculture, Food and Markets.

(6) “Stream” means a current of water that flows at any time at a rate of less than 1.5 cubic feet per second and exhibits evidence of sediment transport. A stream shall include the full length and width, including the bed and banks of any watercourse, including rivers, streams, creeks, brooks, and branches, which experience perennial flow. “Stream” shall not include swales, roadside ditches, or ditches or other constructed channels primarily associated with land drainage or water conveyance through or around private infrastructure.

(b) On or before January 1, 2016, the Secretary shall amend the accepted agricultural practices to include requirements for agricultural activities that

alter or impact streams in the State. The accepted agricultural practices for stream activities shall:

(1) prohibit the discharge or deposit of manure, milk house waste, compost, or other waste in a stream; and

(2) require authorization from the Secretary, prior to any change, alteration, or modification of the course, current, or cross section of a perennial stream in this State either by movement, fill, or excavation of 10 cubic yards or more of instream material in any year.

(c) The Secretary shall authorize an agricultural activity that alters or impacts streams in the State if the activity:

(1) will not adversely affect the public safety by increasing flood or fluvial erosion hazards;

(2) will not significantly damage fish life or wildlife;

(3) will not significantly damage the rights of riparian owners; and

(4) in case of any waters designated as outstanding resource waters, will not adversely affect the values sought to be protected by designation.

(d) Prior to issuing an authorization under subdivision (b)(2) of this section, the Secretary shall consult with the Secretary of Natural Resources regarding appropriate management measures to be used in conducting any authorized activity.

Sec. 9b. 32 V.S.A. § 5811(21) is amended to read:

(21) “Taxable income” means federal taxable income determined without regard to 26 U.S.C. § 168(k) and:

(A) Increased by the following items of income (to the extent such income is excluded from federal adjusted gross income):

\* \* \*

(B) Decreased by the following items of income (to the extent such income is included in federal adjusted gross income):

(i) income from United States government obligations;

(ii) with respect to adjusted net capital gain income as defined in 26 U.S.C. § 1(h):

(I) if the taxpayer is ~~aged~~ 70 years of age or older as of the last day of the tax year, or for adjusted net capital gain income from the sale of a farm or from the sale of standing timber, each as defined in subdivision (27) of this section, 40 percent of adjusted net capital gain income but the total amount

of decrease under this subdivision (ii)(I) shall not exceed 40 percent of federal taxable income; provided, however, that a taxpayer ~~aged 70 years of age~~ or older as of the last day of the tax year may elect to subtract his or her adjusted net capital gains pursuant to subdivision (21)(B)(ii)(II) of this section.

(II) for taxpayers ~~aged 70 years of age~~ or older as of the last day of the tax year who so elect and for all other capital gain income, the first \$2,500.00 of adjusted net capital gain income; ~~and~~

(iii) recapture of State and local income tax deductions not taken against Vermont income tax; and

(iv) financial assistance received from the State under 6 V.S.A. chapter 215 for the purpose of encouraging farmers in the State to invest in infrastructure or practices to improve water quality.

Second: By striking Sec. 15 (best management practices tax credit) in its entirety and inserting in lieu thereof “Sec. 15. ~~[Deleted]~~”

Third: By striking Sec. 23 (report on use value appraisal program; AAPs) in its entirety and inserting in lieu thereof “Sec. 23. ~~[Deleted]~~”

Fourth: By striking Sec. 24 in its entirety and inserting in lieu thereof the following:

#### Sec. 24. EFFECTIVE DATES

(a) This section and Secs. 1 (agricultural findings), 2–4 (small farm certification rules), 5 (Agency of Agriculture, Food and Markets corrective action), 6 (livestock exclusion), 7 (seasonal exemption for application of manure), 9 (custom applicator certification), 9a (agricultural stream alteration), 10 (stormwater model bylaw), 11 (water quality data coordination), 12 (shoreland contractor certification), 13 (financing; technical assistance for forestry), 15 (agricultural best management practices tax credit), and 23 (AAP; use value appraisal report) shall take effect on passage.

(b) Secs. 8 (agricultural water quality certification) and 9b (income tax exemption; water quality assistance) shall take effect on January 1, 2015.

(c) Secs. 14 (town road and bridge standards), 16 (Ecosystem Restoration fee), 17–19 (meals and rooms tax), 20–21 (rental car tax), and 22 (Ecosystem Restoration Program Fund) shall take effect on July 1, 2015.

**( Committee Vote: 10-0-0)**

## H. 590

An act relating to the safety and regulation of dams

**Rep. McCullough of Williston**, for the Committee on **Fish, Wildlife & Water Resources**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

\* \* \* Registration and Inspection of Dams \* \* \*

Sec. 1. 10 V.S.A. chapter 43 is amended to read:

### CHAPTER 43. DAMS

#### § 1080. DEFINITIONS

As used in this chapter:

(1) "Department" means the ~~department of environmental conservation~~ Department of Environmental Conservation.

(2) "Person" means any individual; partnership; company; corporation; association; joint venture; trust; municipality; the ~~state~~ State of Vermont or any agency, department, or subdivision of the ~~state~~ State, any federal agency, or any other legal or commercial entity.

(3) "Person in interest" means, in relation to any dam, a person who has riparian rights affected by that dam, a substantial interest in economic or recreational activity affected by the dam, or whose safety would be endangered by a failure of the dam.

(4) "Engineer" means a professional engineer ~~registered~~ licensed under Title 26 who has experience in the design and investigation of dams.

(5) "Time" shall be reckoned in the manner prescribed by 1 V.S.A. § 138.

(6) "Abandoned dam" means a dam that has no identifiable owner or a dam for which the owner fails to comply with the requirements of section 1104 of this title.

(7) "Dam" means any artificial barrier, impoundment, or structure and its appurtenant works that are, were, or will be capable of impounding water or other liquid after construction or alteration, except for:

(A) waste management systems constructed and operated according to the accepted agricultural practices as administered by the Agency of Agriculture, Food and Markets; or

(B) barriers, impoundments, or structures impounding water with one acre or less of surface area.



(8) "Pond" means a natural body of water with a volume exceeding 500,000 cubic feet.

## § 1081. JURISDICTION OF DEPARTMENT AND PUBLIC SERVICE

### BOARD

(a) Unless otherwise provided, the powers and duties authorized by this chapter shall be exercised by the ~~department, except that the public service board~~ Department, except that the Public Service Board shall exercise those powers and duties over dams and projects that relate to or are incident to the generation of electric energy for public use or as a part of a public utility system.

(b) Transfer of jurisdiction. Jurisdiction over a dam is transferred from the ~~department~~ Department to the ~~public service board~~ Public Service Board whenever the Federal Energy Regulatory Commission grants a license to generate electricity at the dam or whenever the ~~public service board~~ Public Service Board receives an application for a certificate of public good for electricity generation at that dam. Jurisdiction is transferred from the ~~public service board~~ Public Service Board to the ~~department~~ Department whenever such a federal license expires or is otherwise lost, whenever such a certificate of public good is revoked or otherwise lost, or whenever the ~~public service board~~ Public Service Board denies an application for a certificate of public good.

(c) Upon transfer of jurisdiction as set forth above and upon written request, the state agency having former jurisdiction shall transfer copies of all records pertaining to the dam to the agency acquiring jurisdiction.

## § 1082. AUTHORIZATION

(a) No person shall construct, enlarge, raise, lower, remodel, reconstruct, or otherwise alter any dam; ~~or the natural outlet of a pond or impoundment or other structure which is or will be capable of impounding more than 500,000 cubic feet of water or other liquid after construction or alteration,~~ or remove, breach, or otherwise lessen the capacity of an existing dam that is or was capable of impounding more than 500,000 cubic feet within or along the borders of this ~~state~~ State where land in this ~~state~~ State is proposed to be overflowed, or at the outlet of any body of water within this ~~state~~ State, unless authorized by the ~~state agency having jurisdiction so to do~~ Department or the Public Service Board. However, in the matter of flood control projects where cooperation with the federal government is provided for by the provisions of section 1100 of this title, that section shall control.

(b) For the purposes of this chapter, the volume a dam or other structure is

capable of impounding is the volume of water or other liquid, including any accumulated sediments, controlled by the structure with the water or liquid level at the top of the nonoverflow part of the structure.

### § 1083. APPLICATION

(a) Any person who proposes to undertake an action subject to regulation pursuant to section 1082 of this title shall apply in writing to the ~~state agency having jurisdiction,~~ Department or the Public Service Board and shall give notice thereof to the governing body of the municipality or municipalities in which the dam or any part of the dam is to be located. The application shall set forth:

(1) the location, the height, length and other dimensions, and any proposed changes to any existing dam;

(2) the approximate area to be overflowed and the approximate number of, or any change in the number of cubic feet of water to be impounded;

(3) the plans and specifications to be followed in the construction, remodeling, reconstruction, altering, lowering, raising, removal, breaching, or adding to;

(4) any change in operation and maintenance procedures; and

(5) other information that the ~~state agency having jurisdiction~~ Department or the Public Service Board considers necessary to properly review the application.

(b) The plans and specifications shall be prepared under the supervision of an engineer.

### § 1083a. AGRICULTURAL DAMS

~~(a) Notwithstanding the provisions of sections 1082, 1083, 1084, and 1086 of this title, the owners of an agricultural enterprise who propose, as an integral and exclusive part of the enterprise, to construct or alter any dam, pond or impoundment or other structure requiring a permit under section 1083 shall apply to the natural resources conservation district in which his land is located. The natural resources conservation districts created under the provisions of chapter 31 of this title shall be the state agency having jurisdiction and shall review and approve the applications in the same manner as would the department. The districts may request the assistance of the department for any investigatory work necessary for a determination of public good and for any review of plans and specifications as provided in section 1086.~~

~~(b) As used in this section, "agricultural enterprise" means any farm, including stock, dairy, poultry, forage crop and truck farms, plantations,~~

~~ranches and orchards, which does not fall within the definition of “activities not engaged in for a profit” as defined in Section 183 of the Internal Revenue Code and regulations relating thereto. The growing of timber does not in itself constitute farming.~~

~~(c) Notwithstanding the provisions of this section, jurisdiction shall revert to the department when there is a change in use or when there is a change in ownership which affects use. In those cases the department may, on its own motion, hold meetings in order to determine the effect on the public good and public safety. The department may issue an order modifying the terms and conditions of approval.~~

~~(d) The natural resources conservation districts may adopt any rules necessary to administer this chapter. The districts shall adhere to the requirements of chapter 25 of Title 3 in the adoption of those rules.~~

~~(e) Notwithstanding the provisions of chapter 7 of Title 3, the attorney general shall counsel the districts in any case where a suit has been instituted against the districts for any decision made under the provisions of this chapter. [Repealed.]~~

#### § 1084. DEPARTMENT OF FISH AND WILDLIFE; INVESTIGATION

~~The commissioner of fish and wildlife~~ Commissioner of Fish and Wildlife shall investigate the potential effects on fish and wildlife habitats of any proposal subject to section 1082 of this title and shall certify the results to the ~~state agency having jurisdiction~~ Department or the Public Service Board prior to any hearing or meeting relating to the determination of public good and public safety.

#### § 1085. NOTICE OF APPLICATION

Upon receipt of the application required by section 1082 of this title, the ~~state agency having jurisdiction~~ Department or the Public Service Board shall give notice to all persons interested.

~~(1) For any project subject to its jurisdiction under this chapter, on~~ On the petition of 25 or more persons, the ~~department~~ Department or the Public Service Board shall, or on its own motion it may, hold a public information meeting in a municipality in the vicinity of the proposed project to hear comments on whether the proposed project serves the public good and provides adequately for the public safety. Public notice shall be given by posting in the municipal offices of the towns in which the project will be completed and by publishing in a local newspaper at least 10 days before the meeting.

~~(2) For any project subject to its jurisdiction under this chapter, the~~

~~public service board shall hold a hearing on the application. The purpose of the hearing shall be to determine whether the project serves the public good as defined in section 1086 of this title and provides adequately for the public safety. The hearing shall be held in a municipality in the vicinity of the proposed project and may be consolidated with other hearings, including hearings under 30 V.S.A. § 248 concerning the same project. Notice shall be given at least 10 days before the hearing to interested persons by posting in the municipal offices of the towns in which the project will be completed and by publishing in a local newspaper.~~

#### § 1086. DETERMINATION OF PUBLIC GOOD; CERTIFICATES

(a) “Public good” means the greatest benefit of the people of the State. In determining whether the public good is served, the ~~state agency having jurisdiction~~ Department or the Public Service Board shall give due consideration to, among other things, ~~to~~ the effect the proposed project will have on:

- (1) the quantity, kind, and extent of cultivated agricultural land that may be rendered unfit for use by or enhanced by the project, including both the immediate and ~~long range~~ long-range agricultural land use impacts;
- (2) scenic and recreational values;
- (3) fish and wildlife;
- (4) forests and forest programs;
- (5) the need for a minimum water discharge flow rate schedule to protect the natural rate of flow and the water quality of the affected waters;
- (6) the existing uses of the waters by the public for boating, fishing, swimming, and other recreational uses;
- (7) the creation of any hazard to navigation, fishing, swimming, or other public uses;
- (8) the need for cutting clean and removal of all timber or tree growth from all or part of the flowage area;
- (9) the creation of any public benefits;
- (10) consistency with the Vermont water quality standards and the classification, if any, of the affected waters under chapter 47 of this title;
- (11) any applicable ~~state~~ State, regional, or municipal plans;
- (12) municipal grand lists and revenues;
- (13) public safety; and

(14) in the case of proposed removal of a dam that formerly related to or was incident to the generation of electric energy, but which was not subject to a memorandum of understanding dated prior to January 1, 2006 relating to its removal, the potential for and value of future power production.

(b) If the ~~State agency having jurisdiction~~ Department or the Public Service Board finds that the proposed project will serve the public good, and, in case of any waters designated by the Secretary as outstanding resource waters, will preserve or enhance the values and activities sought to be protected by designation, the ~~agency~~ Department or the Public Service Board shall issue its order approving the application. The order shall include conditions for minimum stream flow to protect fish and instream aquatic life, as determined by the Agency of Natural Resources, and such other conditions as the ~~agency having jurisdiction~~ Department or the Public Service Board considers necessary to protect any element of the public good listed above. Otherwise it shall issue its order disapproving the application.

(c) The ~~agency~~ Department or the Public Service Board shall provide the applicant and interested parties with copies of its order.

(d) ~~In the case of a proposed removal of a dam that is under the jurisdiction of the department and that formerly related to or was incident to the generation of electric energy but that was not subject to a memorandum of understanding dated before January 1, 2006 relating to its removal, the department shall consult with the department of public service regarding the potential for and value of future power production at the site. [Repealed.]~~

#### § 1087. REVIEW OF PLANS AND SPECIFICATIONS

Upon receipt of an application, the ~~state agency having jurisdiction~~ Department or the Public Service Board shall employ a ~~registered~~ licensed engineer experienced in the design and investigation of dams to investigate the property, review the plans and specifications, and make additional investigations as it considers necessary to ensure that the project adequately provides for the public safety. The engineer shall report his or her findings to the ~~agency~~ Department or the Public Service Board.

#### § 1089. EMPLOYMENT OF HYDRAULIC ENGINEER

With the approval of the ~~governor~~ Governor, the ~~state agency having jurisdiction~~ Department or the Public Service Board may employ a competent hydraulic engineer to investigate the property, review the plans and specifications, and make such additional investigation as ~~such agency~~ the Department or the Public Service Board shall deem necessary, and such engineer shall report to the ~~agency~~ Department or the Public Service Board his or her findings in respect thereto.

§ 1090. CONSTRUCTION SUPERVISION

The construction, alteration, or other action authorized in section 1086 of this title shall be supervised by a ~~registered~~ licensed engineer employed by the applicant. Upon completion of the authorized project, the engineer shall certify to the ~~agency having jurisdiction~~ Department or the Public Service Board that the project has been completed in conformance with the approved plans and specifications.

§ 1095. UNSAFE DAM; PETITION; HEARING; EMERGENCY

(a) On receipt of a petition signed by ~~not less~~ no fewer than ten persons in interest or the legislative body of a municipality, the ~~agency having jurisdiction~~ Department or the Public Service Board shall, or upon its own motion it may, institute investigations by an engineer as described in section 1087 of this title regarding the safety of any existing dam or portion of a dam, of any size. The ~~agency~~ Department or the Public Service Board may fix a time and place for hearing and shall give notice in the manner it directs to all parties interested. The engineer shall present his or her findings and recommendations at the hearing. After the hearing, if the ~~agency~~ Department or the Public Service Board finds that the dam or portion of the dam as maintained or operated is unsafe or is a menace to people or property above or below the dam, it shall issue an order directing reconstruction, repair, removal, breaching, draining, or other action it considers necessary to make the dam safe.

(b) If, upon the expiration of such date as may be ordered, the owner of such dam has not complied with the order directing the reconstruction, repair, breaching, removal, draining, or other action of such unsafe dam, the ~~state agency having jurisdiction~~ Department or the Public Service Board may petition the ~~superior court~~ Superior Court in the county in which the dam is located to enforce its order or exercise the right of eminent domain to acquire such rights as may be necessary to effectuate a remedy as the public safety or public good may require. If the order has been appealed, the ~~court~~ Court may prohibit the exercise pending disposition of the appeal.

(c) If, upon completion of the investigation described in subsection (a) of this section, the ~~state agency having jurisdiction~~ Department or the Public Service Board considers the dam to present an imminent threat to human life or property it shall take whatever action it considers necessary to protect life and property and subsequently conduct the hearing described in subsection (a).

\* \* \*

§ 1098. REMOVAL OF OBSTRUCTIONS; APPROPRIATION

The ~~department~~ Department may contract for the removal of sandbars, debris, or other obstructions from streams which the ~~department~~ Department

finds that while so obstructed may be a menace in time of flood, or endanger property or life below, or the property of riparian owners. The expense of investigation and removal of the obstruction shall be paid by the ~~state~~ State from funds provided for that purpose.

#### § 1099. APPEALS

(a) Appeals of any act or decision of the ~~department~~ Department under this chapter shall be made in accordance with chapter 220 of this title.

(b) Appeals from actions or orders of the ~~public service board~~ Public Service Board may be taken in the ~~supreme court~~ Supreme Court in accord with 30 V.S.A. § 12.

\* \* \*

#### § 1104. DAM REGISTRATION

(a) Application of section. The requirements of this section shall apply to all dams in the State within the jurisdiction of the Department regardless of whether the dam is permitted or approved under this chapter. The rules of the Public Service Board shall control the regulation and inspection of dams and projects over which the Public Service Board has jurisdiction.

(b) Dam registration. On or before January 1, 2015 and annually thereafter, the owner of property on which a dam is located or the owner of the dam, if that person is not the owner of the property, shall, on a form provided by the Department, register the dam with the Department.

(c) Department identification of dam.

(1) The Department shall post the location and hazard potential classification of every dam in the State on the Agency of Natural Resources' website.

(2) The standards for hazard classification shall be equivalent to the standards for low, significant, and high hazard dams under the U.S. Army Corps of Engineers Hazard Potential Classification of Dams, under 33 C.F.R. § 222.6. The Department may designate a dam as an unknown hazard dam when it lacks information sufficient to classify it as a low, significant, or high hazard dam.

(d) Failure to submit registration. If the Department identifies the owner of an unregistered dam, the Department shall notify the owner of the requirement to register the dam under this section. The owner of a dam who receives notice of required registration under this subsection shall have 60 days from the date of the Department's notice to submit a complete dam registration form to the Department.

(e) Dam safety inspection. Fees collected under 3 V.S.A. § 2822(j)(12)(B) shall be deposited into the Environmental Permit Fund under 3 V.S.A. § 2805 and shall be used to implement the requirements of this chapter.

(f) Designation of dam as abandoned. If an owner of a dam classified as an unknown hazard fails to submit to the Department the dam registration form required by this section, the dam may be designated an abandoned dam subject to the provisions of section 1104a of this title.

(g) Failure to file dam evaluation report. If an owner of a dam fails to submit the dam registration form as required under subsection (b) of this section, the Department may inspect, or retain a licensed professional engineer to inspect, the dam. The cost to the Department of the inspection shall be assessed against the owner of the dam.

#### § 1104a. ABANDONED DAMS

(a) Designation of dam as abandoned. The Department may designate a dam as abandoned if the Department:

(1) has identified an owner of the dam, but the owner fails to comply with the requirements of section 1104 of this title or the owner fails to comply with an action or order required under this chapter; or

(2) cannot identify an owner of the dam; and

(3) publishes notice of a pending determination of abandonment of the dam in a newspaper of general circulation in the county in which the dam is located; and after 45 days from the date of publication of pending determination of abandonment, no person has asserted ownership or control of the dam.

(b) Inspection of abandoned dam. Upon designation of a dam as abandoned, the Department shall conduct an inspection of the dam according to its inspection authority under section 1105 of this title.

(c) Lien on property on which dam is situated. When the Department takes action under this section to inspect an abandoned dam or when the Department takes any action under this chapter to alleviate or address a risk to life or property from an abandoned dam, the costs of the action shall be a lien in favor of the State on the property on which the dam is located and on the buildings and structures located on that property in order to secure repayment of the State of inspection or other action. The lien shall arise at the time demand is made by the Secretary and shall continue until the liability for such sum with interest and costs is satisfied or becomes unenforceable. A lien under this section shall be subordinate to a primary mortgage on the property. Notice of a lien under this section shall be recorded in the land records of the town in



which the property is located.

(d) Assumption of ownership of an abandoned dam. A person may assume ownership of a dam designated by the Department as abandoned by:

(1) notifying the Department, where applicable, of the intent to assume ownership;

(2) submission of the dam registration form required under section 1104 of this title;

(3) payment of costs or liabilities due the Department; and

(4) submission of indicia of ownership of the dam.

\* \* \*

\* \* \* Disclosure of Dam at Conveyance \* \* \*

Sec. 2. 27 V.S.A. § 617 is added to read:

§ 617. DISCLOSURE OF DAM ON PROPERTY AT CONVEYANCE

(a) Definitions. As used in this section, “dam” shall have the same meaning as provided for in 10 V.S.A. § 1080(7).

(b) Seller; disclosure of dam on property. A seller of real property on which a dam is located shall:

(1) prior to the execution of a contract for the conveyance of real property:

(A) disclose to the buyer the presence and location of the dam on the property; and

(B) provide the buyer with an inspection report for the dam that accurately reflects the current condition of the dam by an independent licensed engineer experienced in the design and investigation of dams; and

(2) submit to the Department a notice of property transfer of the dam no later than 15 days from execution of the contract for the conveyance of the real property.

(c) Buyer; registration with Department. No later than 15 days from execution of a contract for the conveyance of real property on which a dam is located, the buyer of the real property shall, on a form provided by the Department, notify the Department and the municipality or municipalities in which the dam is located of the property transfer. The notification form shall include:

(1) a copy of the current dam safety inspection report provided by the seller prior to execution of the contract for the conveyance; and

(2) the name, mailing address, and telephone number of the buyer.

(d) Marketability of title. Noncompliance with the requirements of this section shall not affect the marketability of title of a property.

(e) Penalty; liability. Liability for failure to provide the informational materials required by this section shall be limited to a civil penalty, imposed by the Agency of Natural Resources under 10 V.S.A. chapter 201, of no less than \$100.00 and no more than \$250.00 for each day in violation.

\* \* \* Dam Registration Fees \* \* \*

Sec. 3. 3 V.S.A. § 2805 is amended to read:

§ 2805. ENVIRONMENTAL PERMIT FUND

(a) There is hereby established a special fund to be known as the Environmental Permit Fund. Within the Fund, there shall be two accounts: the Environmental Permit Account and the Air Pollution Control Account. Unless otherwise specified, fees collected in accordance with subsections 2822(i) and (j) of this title, and 10 V.S.A. § 2625 and gifts and appropriations shall be deposited in the Environmental Permit Account. Fees collected in accordance with subsections 2822(j)(1), (k), (l), and (m) of this title shall be deposited in the Air Pollution Control Account. The Environmental Permit Fund shall be used to implement the programs specified under section 2822 of this title. The Secretary of Natural Resources shall be responsible for the fund and shall account for the revenues and expenditures of the Agency of Natural Resources. The Environmental Permit Fund shall be subject to the provisions of 32 V.S.A. chapter 7, subchapter 5. The Environmental Permit Fund shall be used to cover a portion of the costs of administering the Environmental Division established under 4 V.S.A. chapter 27. The amount of \$143,000.00 per fiscal year shall be disbursed for this purpose.

(b) Any fee required to be collected under subdivision 2822(j)(1) of this title shall be utilized solely to cover all reasonable (direct or indirect) costs required to support the operating permit program authorized under 10 V.S.A. chapter 23. Any fee required to be collected under subsection 2822(k), (l), or (m) of this title for air pollution control permits or registrations or motor vehicle registrations shall be utilized solely to cover all reasonable (direct or indirect) costs required to support the programs authorized under 10 V.S.A. chapter 23. Fees collected pursuant to subsections 2822(k), (l), and (m) of this title shall be used by the Secretary to fund activities related to the Secretary's hazardous or toxic contaminant monitoring programs and motor vehicle-related programs.

(c) Any fee required to be collected under subdivision 2822(j)(12) of this

title for dam registrations shall be used solely to cover all direct or indirect costs required to support the programs authorized under 10 V.S.A. chapter 43. When the fees collected under subdivision 2822(j)(12) of this title exceed the annual funding needs of 10 V.S.A. chapter 43, the excess funds shall be deposited into the Unsafe Dam Revolving Loan Fund under 10 V.S.A. § 1106.

Sec. 4. 3 V.S.A. § 2822(j)(12) is amended to read:

(12)(A) For dam permits issued under 10 V.S.A. chapter 43: 0.525 percent of construction costs, minimum fee of \$200.00.

(B) For dam registration forms submitted under 10 V.S.A. chapter 43, a person registering a dam shall pay an annual registration fee. The annual fee shall be based on the hazard classification of the dam as follows:

- (i) Low hazard dam                      \$200.00;
- (ii) Unknown hazard dam              \$200.00;
- (iii) Significant hazard dam        \$350.00; and
- (iv) High hazard dam                  \$1,000.00.

\* \* \* Dam Registration Report \* \* \*

#### Sec. 5. DAM REGISTRATION PROGRAM REPORT

On or before January 1, 2016, the Department of Environmental Conservation shall submit a report to the House Committee on Fish, Wildlife and Water Resources and the Senate Committee on Natural Resources and Energy. The report shall contain:

(1) an evaluation of the dam registration program under 10 V.S.A. chapter 43, including whether impoundments of water with less than one acre of surface area should continue to be exempt from the definition of dam;

(2) a summary of the dams registered under the program, organized by amount of water impounded; and

(3) an evaluation of any other hydrologic concerns related to dam registration.

\* \* \* Effective Date \* \* \*

#### Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

**( Committee Vote: 7-0-2)**

**Rep. Clarkson of Woodstock, for the Committee on Ways and Means, recommends the bill ought to pass when amended as recommended by the**

Committee on **Fish, Wildlife & Water Resources** and when further amended as follows:

First: In Sec. 1, in 10 V.S.A. § 1080, by striking out subdivision (7) in its entirety and inserting in lieu thereof a new subdivision (7) to read:

(7) “Dam” means any artificial barrier, impoundment, or structure and its appurtenant works that are, were, or will be capable of impounding water or other liquid after construction or alteration, except for:

(A) waste management systems constructed and operated according to the accepted agricultural practices as administered by the Agency of Agriculture, Food and Markets;

(B) impoundments that are capable of impounding no more than 500,000 cubic feet of liquid with a surface area less than one acre;

(C) municipal underground or elevated tanks to store water; or

(D) any other structure identified by the Department in a duly-adopted rule.

Second: In Sec. 1, in 10 V.S.A. § 1104, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read:

(b) Dam registration.

(1) On or before January 1, 2015, the person owning legal title to a dam shall, on a form provided by the Department, register the dam with the Department.

(2) Beginning one year from the date of dam registration, a dam registered under subdivision (1) shall be subject to an annual dam safety program operation fee.

(3) If no person owns legal title to a dam, the person owning the property on which the dam is located shall submit the registration required under subdivisions (1) and (2) of this subsection.

Third: By striking out Sec. 4 in its entirety and inserting in lieu thereof a new Sec. 4 to read:

Sec. 4. 3 V.S.A. § 2822(j)(12) is amended to read:

(12)(A) For dam permits issued under 10 V.S.A. chapter 43: 0.525 percent of construction costs, minimum fee of \$200.00.

(B) For the dam registration under 10 V.S.A. § 1104(b)(1), a person registering a dam shall pay a registration fee based on the hazard classification of the dam as follows:

- (i) Low hazard dam \$200.00;
- (ii) Significant hazard dam \$350.00;
- (iii) High hazard dam \$1,000.00.

(C) The annual dam safety program operation fee submitted under 10 V.S.A. § 1104(b)(2) shall be based on the hazard classification of the dam as follows:

- (i) Low hazard dam \$200.00;
- (ii) Significant hazard dam \$350.00;
- (iii) High hazard dam \$1,000.00.

Fourth: By striking out Sec. 5 in its entirety and inserting in lieu thereof a new Sec. 5 to read:

**Sec. 5. DAM REGISTRATION PROGRAM REPORT**

On or before January 1, 2016, the Department of Environmental Conservation shall submit a report to the House Committee on Fish, Wildlife and Water Resources, the House Committee on Ways and Means, the Senate Committee on Natural Resources and Energy, and the Senate Committee on Finance. The report shall contain:

(1) an evaluation of the dam registration program under 10 V.S.A. chapter 43, including whether impoundments of water with less than one acre of surface area should continue to be exempt from the definition of dam;

(2) a recommendation on whether to modify the fee structure of the dam registration program;

(3) a summary of the dams registered under the program, organized by amount of water impounded; and

(4) an evaluation of any other hydrologic concerns related to dam registration.

and by renumbering the remaining subdivisions to be numerically correct.

**( Committee Vote: 11-0-0)**

**H. 695**

An act relating to establishing a product stewardship program for primary batteries

**Rep. Yantachka of Charlotte**, for the Committee on **Natural Resources and Energy**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. chapter 168 is added to read:

CHAPTER 168. PRODUCT STEWARDSHIP

FOR PRIMARY BATTERIES AND RECHARGEABLE BATTERIES

Subchapter 1. Definitions

§ 7581. DEFINITIONS

As used in this chapter:

(1) “Agency” means the Agency of Natural Resources.

(2) “Brand” means a name, symbol, word, or traceable mark that identifies a primary battery and attributes the primary battery to the owner or licensee of the brand as the producer.

(3) “Calendar year” means the period commencing January 1 and ending December 31 of the same year.

(4) “Collection rate” means a percentage by weight that each producer or primary battery stewardship organization collects by an established date. The collection rate shall be calculated by dividing the total weight of the primary batteries that are collected during a calendar year by the average annual weight of primary batteries that were estimated to have been sold in the State by participating producers during the previous three calendar years. Estimates of primary batteries sold in the State may be based on a reasonable pro rata calculation based on national sales.

(5) “Consumer” means any person who presents or delivers any number of primary batteries to a collection facility that is included in an approved primary battery stewardship plan.

(6) “Consumer product” means any product that is regularly used or purchased to be used for personal, family, or household purposes. “Consumer product” shall not mean a product primarily used or purchased for industrial or business use.

(7) “Discarded primary battery” means a primary battery that is no longer used for its manufactured purpose.

(8) “Easily removable” means readily detachable by a person without the use of tools or with the use of common household tools.

(9) “Participate” means to appoint a primary battery stewardship organization or rechargeable battery stewardship organization to operate on behalf of oneself and to have that appointment accepted by the stewardship organization.

(10) “Primary battery” means a nonrechargeable battery weighing two kilograms or less, including alkaline, carbon-zinc, and lithium metal batteries. “Primary battery” shall not mean batteries intended for industrial, business-to-business, warranty or maintenance services, or nonpersonal use.

(11) “Primary battery producer” or “producer” means one of the following with regard to a primary battery that is sold, offered for sale, or distributed in the State:

(A) a person who manufactures a primary battery and who sells, offers for sale, or distributes that primary battery in the State under the person’s own name or brand;

(B) if subdivision (A) of this subdivision (11) does not apply, a person who owns or licenses a trademark or brand under which a primary battery is sold, offered for sale, or distributed in the State, whether or not the trademark is registered; or

(C) if subdivisions (A) and (B) of this subdivision (11) do not apply, a person who imports a primary battery into the State for sale or distribution.

(12) “Primary battery stewardship organization” means an organization appointed by one or more producers to act as an agent on behalf of a producer or producers to design, submit, implement, and administer a primary battery stewardship plan under this chapter.

(13) “Primary battery stewardship plan” or “plan” means a plan submitted to the Secretary pursuant to section 7584 of this title by an individual producer or a primary battery stewardship organization.

(14) “Program” or “stewardship program” means the system for the collection, transportation, recycling, and disposal of primary batteries implemented pursuant to an approved primary battery stewardship plan.

(15)(A) “Rechargeable battery” means:

(i) one or more voltaic or galvanic cells, electrically connected to produce electric energy and designed to be recharged and weighing less than 11 pounds; or

(ii) a battery pack designed to be recharged that weighs less than 11 pounds and that is designed to provide less than 40 volts direct current.

(B) “Rechargeable battery” shall not mean:

(i) a battery that is not easily removable or is not intended or designed to be removed from the covered product, other than by the manufacturer;

(ii) a battery that contains electrolyte as a free liquid;

(iii) a battery or battery pack that employs lead-acid technology, unless the battery or battery pack:

(I) is sealed;

(II) contains no liquid electrolyte; and

(III) is intended by its manufacturer to power a handheld device or to provide uninterrupted backup electrical power protection for stationary consumer products or stationary office equipment; or

(iv) a battery intended for industrial, business-to-business, warranty or maintenance services, or nonpersonal use.

(16) “Rechargeable battery steward” means a person who:

(A) manufactures a rechargeable battery or a rechargeable product that is sold, offered for sale, or distributed in the State under its own brand name;

(B) owns or licenses a trademark or brand under which a rechargeable battery or rechargeable product is sold, offered for sale, or distributed in the State, whether or not the trademark is registered; or

(C) if subdivisions (A) and (B) of this subdivision (16) do not apply, imports a rechargeable battery or rechargeable product into the State for sale or distribution.

(17) “Rechargeable battery stewardship organization” means an entity registered by the Secretary pursuant to section 7588 of this title that is either a single rechargeable battery steward operating on its own behalf; an organization appointed by one or more rechargeable battery stewards to operate a plan in which each steward is participating; or a retailer or franchisor of retailers operating a plan on behalf of itself or its franchisees.

(18) “Rechargeable product” means a consumer product that contains or is packaged with a rechargeable battery at the time the product is sold, offered for sale, or distributed in the State. “Rechargeable product” shall not mean:

(A) a product from which a rechargeable battery is not easily removable or is not intended or designed to be removed from the product, other than by the manufacturer; or

(B) an implanted medical device, as that term is defined in the federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 321(h), as amended.

(19) “Recycling” means any process by which discarded products, components, and by-products are transformed into new usable or marketable



materials in a manner in which the original products may lose their identity, but does not include energy recovery or energy generation by means of combusting discarded products, components, and by products with or without other waste products.

(20) “Retailer” means a person who offers a primary battery for sale to any consumer or business at retail in the State through any means, including remote offerings such as sales outlets, catalogues, or an Internet website.

(21) “Secretary” means the Secretary of Natural Resources.

## Subchapter 2. Primary Battery Stewardship Program

### § 7582. SALE OF PRIMARY BATTERIES

(a) Sale prohibited. Except as set forth under subsections (c) and (d) of this section, beginning on January 1, 2016, a producer of a primary battery shall not sell, offer for sale, or deliver to a retailer for subsequent sale a primary battery unless the producer has complied with the requirements of subsection (b) of this section.

(b) Requirements for sale. No producer shall sell, offer for sale, or deliver to a retailer for subsequent sale a primary battery in the State unless:

(1) the producer or the primary battery stewardship organization in which the producer is participating is registered under an approved and implemented primary battery stewardship plan;

(2) the producer or primary battery stewardship organization has paid the fee under section 7594 of this title; and

(3) the name of the producer and the producer’s brand are designated on the Agency website as covered by an approved primary battery stewardship plan.

(c) New producers.

(1) A producer of a primary battery who, after January 1, 2016, seeks to sell, offer for sale, or offer for promotional purposes in the State a primary battery not previously sold in State, shall notify the Secretary prior to selling or offering for sale or promotion a primary battery not covered by an approved primary battery stewardship plan.

(2) The Secretary shall list a producer who supplies notice under this subsection as a “new producer” on the Agency’s website. A producer that supplies notice under this subsection shall have 90 days, not including the time required for public comment under subsection 7586(c) of this section, to either join an existing primary battery stewardship organization or submit a primary battery stewardship plan for approval to the State.

(d) Exemption. A producer who annually sells, offers for sale, distributes, or imports in or into the State primary batteries with a total retail value of less than \$2,000.00 shall be exempt from the requirements of this chapter.

§ 7583. PRIMARY BATTERY STEWARDSHIP ORGANIZATION; REQUIREMENTS; REGISTRATION

(a) Participation in a primary battery stewardship organization. A producer of primary batteries may meet the requirements of this chapter by participating in a primary battery stewardship organization that undertakes the producer's responsibilities under sections 7582, 7584, and 7585 of this title.

(b) Qualifications for a primary battery stewardship organization. To qualify as a primary battery stewardship organization under this chapter, an organization shall:

(1) commit to assume the responsibilities, obligations, and liabilities of all producers participating in the primary battery stewardship organization;

(2) not create unreasonable barriers for participation by producers in the primary battery stewardship organization; and

(3) maintain a public website that lists all producers and producers' brands covered by the primary battery stewardship organization's approved collection plan.

(c) Registration requirements.

(1) Beginning on March 1, 2015 and annually thereafter, a primary battery stewardship organization shall file a registration form with the Secretary. The Secretary shall provide the registration form to a primary battery stewardship organization. The registration form shall require submission of the following information:

(A) a list of the producers participating in the primary battery stewardship organization;

(B) the name, address, and contact information of a person responsible for ensuring a producer's compliance with this chapter;

(C) a description of how the primary battery stewardship organization proposes to meet the requirements of subsection (a) of this section, including any reasonable requirements for participation in the primary battery stewardship organization; and

(D) the name, address, and contact information of a person for a nonmember manufacturer to contact on how to participate in the primary battery stewardship organization to satisfy the requirements of this chapter.

(2) A renewal of a registration without changes may be accomplished through notifying the Secretary on a form provided by the Secretary.

#### § 7584. PRIMARY BATTERY STEWARDSHIP PLAN

(a) Primary battery stewardship plan required. On or before June 1, 2015, each producer selling, offering for sale, distributing, or offering for promotional purposes a primary battery in the State shall individually or as part of a primary battery stewardship organization submit a primary battery stewardship plan to the Secretary for review.

(b) Primary battery stewardship plan; minimum requirements. Each primary battery stewardship plan shall include, at a minimum, all of the following elements:

(1) List of producers and brands. Each primary battery stewardship plan shall list:

(A) all participating producers and contact information for each of the participating producers; and

(B) the brands of primary batteries covered by the plan.

(2) Free collection. Each primary battery stewardship plan shall provide for the collection of primary batteries from consumers at no cost to consumers. A producer shall not refuse the collection of a primary battery based on the brand or producer of the primary battery.

(3) Collection; convenience. Each primary battery stewardship plan shall:

(A) Allow all retailers who meet requirements specified in the plan, all municipalities, and all certified solid waste management facilities to opt to be a collection facility.

(B) Provide, at a minimum, no fewer than two collection facilities in each county in the State that provide for collection throughout the year.

(C) Provide for the acceptance from a consumer of up to 100 batteries per visit. A collection facility may agree to accept more than 100 batteries per visit from a consumer.

(4) Method of disposition. Each primary battery stewardship plan shall include a description of the method that will be used to responsibly manage discarded primary batteries to ensure that the components of the discarded primary batteries, to the extent economically and technically feasible, are recycled.

(5) Roles and responsibilities. A primary battery stewardship plan shall

list all key participants in the primary battery collection chain, including:

(A) the number and name of the collection facilities accepting primary batteries under the plan, including the address and contact information for each facility; and

(B) the name and contact information of a transporter or contractor collecting primary batteries from collection facilities.

(C) the name, address, and contact information of the recycling facilities that process the collected primary batteries.

(6) Education and outreach. A primary battery stewardship plan shall include an education and outreach program. The education and outreach program may include mass media advertising in radio or television broadcasts or newspaper publications of general circulation in the State, retail displays, articles in trade and other journals and publications, and other public educational efforts. The education and outreach program shall describe the outreach procedures that will be used to provide notice of the program to businesses, municipalities, certified solid waste management facilities, retailers, wholesalers, and haulers. At a minimum, the education and outreach program shall notify the public of the following:

(A) that there is a free collection program for all primary batteries; and

(B) the location of collection points and how to access the collection program.

(7) Reimbursement. A primary battery stewardship plan shall include a reimbursement procedure that is consistent with the requirements of subchapter 4 of this chapter.

(8) Performance goal; collection rate. A primary battery stewardship plan shall include a collection rate performance goal for the primary batteries subject to the plan.

(c) Implementation. A producer or a primary battery stewardship organization shall include provisions in the plan for the implementation of the program in conjunction with those retailers, municipalities, and certified solid waste management facilities acting as collection facilities under a program. No transportation or recycling cost shall be imposed on retailers, municipalities, or certified solid waste management facilities acting as collection facilities under a program. A producer or a primary battery stewardship organization shall provide retailers, municipalities, and certified solid waste management facilities acting as collection facilities products or equipment for setting up a collection point and for providing for the pickup of

collected primary batteries, including arranging for the management of those primary batteries.

§ 7585. ANNUAL REPORT; PLAN AUDIT

(a) Annual report. On or before March 1, 2017, and annually thereafter, a producer or a primary battery stewardship organization shall submit a report to the Secretary that contains the following:

(1) the weight of primary batteries collected by the producer or the primary battery stewardship organization in the prior calendar year;

(2) the collection rate achieved in the prior calendar year under the primary battery stewardship plan;

(3) the locations for all collection points set up by the primary battery producers covered by the primary battery stewardship plan and contact information for each location;

(4) examples and description of educational materials used to increase collection;

(5) the manner in which the collected primary batteries were managed;

(6) any material change to the primary battery stewardship plan approved by the Secretary pursuant to section 7586 of this title; and

(7) the cost of implementation of the primary battery stewardship plan, including the costs of collection, recycling, education, and outreach.

(b) Plan audit. After five years of implementation of an approved primary battery stewardship plan, a primary battery producer or primary battery stewardship organization shall hire an independent third party to conduct a one-time audit of the primary battery stewardship plan and plan operation. The auditor shall examine the effectiveness of the primary battery stewardship plan in collecting and recycling primary batteries. The independent auditor shall examine the cost-effectiveness of the plan and compare it to that of collection plans or programs for primary batteries in other jurisdictions. The independent auditor shall submit the results of the audit to the Secretary as part of the annual report required under subsection (a) of this section.

§ 7586. AGENCY RESPONSIBILITIES; APPROVAL OF PLANS

(a) Approval of plan. Within 90 days after receipt of a proposed primary battery stewardship plan, not including the time required for public comment under subsection (c) of this section, the Secretary shall determine whether the plan complies with the requirements of section 7584 of this title. If the Secretary determines that a plan complies with the requirements of section 7584 of this title, the Secretary shall notify the applicant of the plan approval in

writing. If the Secretary rejects a primary battery stewardship plan, the Secretary shall notify the applicant in writing of the reasons for rejecting the plan. An applicant whose plan is rejected by the Secretary shall submit a revised plan to the Secretary within 45 days of receiving notice of rejection. A primary battery stewardship plan that is not approved or rejected by the Secretary within 90 days, not including the time required for public comment under subsection (c) of this section, of submission by a producer shall be deemed approved.

(b) Plan amendment; changes. Any changes to a proposed primary battery stewardship plan shall be approved by the Secretary in writing. The Secretary, in his or her discretion or at the request of a producer, may require a producer or a primary battery stewardship organization to amend an approved plan.

(c) Public notice. The Secretary shall post all proposed primary battery stewardship plans and all proposed amendments to a primary battery stewardship plan on the Agency's website for 30 days from the date the application for a plan or a plan amendment is deemed complete by the Secretary, subject to the confidentiality provisions of section 7594 of this title.

(d) Public input. The Secretary shall establish a process under which a primary battery stewardship plan, prior to plan approval or amendment, is available for public review and comment.

(e) Registrations. The Secretary shall accept, review, and approve or deny primary battery stewardship organization registrations submitted under section 7583 of this title.

(f) Agency website. The Secretary shall maintain a website that includes a copy of all approved primary battery stewardship plans, the names of producers with approved plans, participation in approved plans, or other compliance with this chapter. The website shall list all of an approved primary battery producer's brands covered by a primary battery stewardship plan filed with the Secretary. The Secretary shall update information on the website within 10 days of receipt of notice of any change to the listed information. The website shall list all known primary battery producers exempt from the requirements of this chapter under subsection 7582(d) of this title.

(g) Term of primary battery stewardship plan. A primary battery stewardship plan approved by the Secretary under this section shall have a term not to exceed five years, provided that the primary battery producer or primary battery stewardship organization remains in compliance with the requirements of this chapter and the terms of the approved plan.

#### § 7587. RETAILER OBLIGATIONS

(a) Sale prohibited. Except as set forth in subsection (b) of this section, no retailer shall sell or offer for sale a primary battery on or after January 1, 2016 unless the producer of the primary battery is implementing an approved primary battery stewardship plan, is a member of a primary battery stewardship organization implementing an approved primary battery stewardship plan, or is exempt from participation in an approved plan, as determined by review of the producers listed on the Agency website required in subsection 7586(f) of this title.

(b) Inventory exception; expiration or revocation of producer registration. A retailer shall not be responsible for an unlawful sale of a primary battery under this subsection if:

(1) the retailer purchased the primary battery prior to January 1, 2016 and sells the primary battery on or before January 1, 2017; or

(2) the producer's primary battery stewardship plan expired or was revoked, and the retailer took possession of the in-store inventory of primary batteries prior to the expiration or revocation of the producer's primary battery stewardship plan.

(c) Educational material. A producer or primary battery stewardship organization supplying primary batteries to a retailer shall provide the retailer with educational materials describing collection opportunities for primary batteries. The retailer shall make the educational materials available to consumers.

### Subchapter 3. Registration of Rechargeable Battery

#### Stewardship Organization

#### § 7588. REGISTRATION OF RECHARGEABLE BATTERY

##### STEWARDSHIP ORGANIZATION

(a) A rechargeable battery steward or rechargeable battery stewardship organization shall register with the Secretary in order to seek reimbursement under subchapter 4 of this chapter.

(b) The Secretary shall register a rechargeable battery steward or rechargeable battery stewardship organization upon:

(1) submission of a registration form, provided by the Secretary, that includes:

(A) the name of a rechargeable battery steward implementing an individual program or a list of the producers participating in a rechargeable battery stewardship organization; and

(B) the name, address, and contact information of a person responsible for implementing the rechargeable battery stewardship program;

(2) a determination by the Secretary that the rechargeable battery steward or rechargeable battery stewardship organization offers to municipalities, certified solid waste management facilities, and retailers a year-round free collection and recycling program.

#### Subchapter 4. Reimbursement

#### § 7589. REIMBURSEMENT; AUTHORIZATION

##### (a) Reimbursement of primary battery producers.

(1) A producer or a primary battery stewardship organization operating under an approved primary battery stewardship plan that collects primary batteries or rechargeable batteries that are not listed under its approved plan shall be entitled to reimbursement from the following entities of direct costs per unit of weight incurred in collecting the batteries:

(A) the producer of the collected primary battery or the primary battery stewardship organization representing the producer of the collected primary battery; or

(B) the rechargeable battery steward responsible for the collected rechargeable batteries, or where the rechargeable battery steward responsible for the collected rechargeable batteries is participating in a rechargeable battery stewardship organization, the stewardship organization.

(2) Reimbursement may be requested by a collecting primary battery producer or primary battery stewardship organization only after that producer has achieved the collection rate performance goal approved by the Secretary under section 7584 of this title.

(b) Reimbursement of rechargeable battery stewardship organization. A registered rechargeable battery steward or rechargeable battery stewardship organization shall be entitled to reimbursement from the producer of the collected primary battery or the primary battery stewardship organization representing the producer of the collected primary battery.

(c) Direct costs. Under this subchapter, reimbursement shall be allowed only for those direct costs incurred in collecting the batteries subject to the reimbursement request. Direct costs include costs of collection, transport, recycling, and other methods of disposition identified in a primary battery stewardship plan approved pursuant to section 7586 of this title, plus an additional negotiated amount not to exceed 10 percent of the direct costs.

#### § 7590. REIMBURSEMENT PROCESS



(a) Reimbursement request.

(1) A primary battery producer, primary battery stewardship organization, or rechargeable battery stewardship organization that incurs reimbursable direct costs under section 7589 of this title shall submit a request to the producer of the collected primary battery or the primary battery stewardship organization in which the producer is participating or the rechargeable battery stewardship organization responsible for the collected rechargeable battery.

(2) A producer or primary battery stewardship organization or rechargeable battery stewardship organization that receives a request for reimbursement may, prior to payment and within 30 days of receipt of the request for reimbursement, request an independent audit of submitted reimbursement costs.

(3) The independent auditor shall be responsible for verifying the reasonableness of the reimbursement request, including the costs sought for reimbursement, the amount of reimbursement, and the direct costs assessed by each of the two programs.

(4) If the independent audit confirms the reasonableness of the reimbursement request, the producer, primary battery stewardship organization, or rechargeable battery stewardship organization requesting the audit shall pay the cost of the audit and the amount of the reimbursement calculated by the independent auditor. If the independent audit indicates the reimbursement request was not reasonable, the producer or primary battery stewardship organization that initiated the reimbursement request shall pay the cost of the audit and the amount of the reimbursement calculated by the independent auditor.

(b) Role of Agency. The Agency shall not be required to provide assistance or otherwise participate in a reimbursement request, audit, or other action under this section, unless subject to subpoena before a court of jurisdiction.

Subchapter 5. Private Right of Action

§ 7591. PRIVATE RIGHT OF ACTION

(a) Action against producer with no primary battery stewardship plan. A producer or a primary battery stewardship organization implementing an approved primary battery stewardship plan in compliance with the requirements of this chapter may bring a civil action against another producer or primary battery stewardship organization for damages when:

(1) the plaintiff producer or primary battery stewardship organization

incurs more than \$1,000.00 in actual direct costs collecting, handling, recycling, or properly disposing of primary batteries sold or offered for sale in the State by that other producer;

(2) the producer from whom damages are sought:

(A) can be identified as the producer of the collected batteries from a brand or marking on the discarded battery or from other information available to the plaintiff producer or primary battery stewardship organization; and

(B) does not operate or participate in an approved primary battery stewardship organization in the State or is not otherwise in compliance with the requirements of this chapter.

(b) Action against producer with an approved primary battery stewardship plan. A producer or primary battery stewardship organization in compliance with the requirements of this chapter may bring a civil action for damages against another producer or primary battery stewardship organization in the State that is in compliance with the requirements of this chapter provided that the conditions of subsection (e) of this section have been met.

(c) Action against rechargeable battery stewardship organization. A producer or primary battery stewardship organization implementing an approved primary battery stewardship plan in compliance with the requirements of this chapter may bring a civil action for damages against a rechargeable battery stewardship organization registered by the Secretary provided that the conditions of subsection (e) of this section have been met.

(d) Action by rechargeable battery stewardship organization. A rechargeable battery steward may bring a civil action for damages against a primary battery producer or primary battery stewardship organization that is implementing an approved primary battery stewardship plan in the State provided that the conditions of subsection (e) of this section have been met.

(e) Condition precedent to cause of action. Except as authorized under subsection (a) of this section, a cause of action under this section shall be allowed only if:

(1) a plaintiff producer, primary battery stewardship organization or rechargeable battery stewardship organization submitted a reimbursement request to another producer, primary battery stewardship organization, or rechargeable battery stewardship organization under subchapter 4 of this chapter; and

(2) the plaintiff producer, primary battery stewardship organization or rechargeable battery stewardship organization does not receive reimbursement within:

(A) 90 days of the reimbursement request, if no independent audit is requested under subchapter 4 of this chapter; or

(B) 60 days after completion of an audit if an independent audit is requested under subchapter 4 of this chapter, and the audit confirms the validity of the reimbursement request.

(f) Action against individual producer or steward.

(1) A civil action under this section may be brought against an individual primary battery producer or an individual rechargeable battery steward only if the primary battery producer is implementing its own primary battery stewardship plan, the primary battery producer has failed to register to participate in a primary battery stewardship plan, or the rechargeable battery steward is implementing its own registered rechargeable battery stewardship organization.

(2) A primary battery producer participating in an approved primary battery stewardship plan covering multiple producers or a rechargeable battery steward participating in a rechargeable battery stewardship organization representing multiple stewards shall not be sued individually for reimbursement.

(3) An action against a primary battery producer participating in a primary battery stewardship plan covering multiple producers or an action against a rechargeable battery steward participating in a rechargeable battery stewardship organization shall be brought against the stewardship organization implementing the plan.

(g) Role of Agency. The Agency shall not be a party to or be required to provide assistance or otherwise participate in a civil action authorized under this section solely due to its regulatory requirements under this chapter, unless subject to subpoena before a court of jurisdiction.

(h) Damages; definitions. As used in this section, “damages” means the actual, direct costs a plaintiff producer, primary battery stewardship organization, or rechargeable battery stewardship organization incurs in collecting, handling, recycling, or properly disposing of primary batteries reasonably identified as having originated from another primary battery producer, primary battery stewardship organization, or rechargeable battery stewardship organization.

#### Subchapter 6. General Provisions

#### § 7592. CONFIDENTIALITY OF SUBMITTED DATA

(a) Confidentiality. Reports and data submitted under this chapter shall be available for public inspection and copying, provided that:

(1) Information protected under the Uniform Trade Secrets Act, as codified under 9 V.S.A. chapter 143, or under the trade secret exemption under 1 V.S.A. § 317(c)(9) shall be exempt from public inspection and copying under the Public Records Act.

(2) The Secretary may publish information confidential under subdivision (1) of this subsection in a summary or aggregated form that does not directly or indirectly identify individual producers, battery stewards, distributors, or retailers.

(b) Omission of trade secret information. The Secretary may require, as a part of a report submitted under this chapter, that the producer, primary battery stewardship organization, rechargeable battery steward, or rechargeable battery stewardship organization submit a report that does not contain trade secret information and is available for public inspection and review.

(c) Total weight of batteries. The total weight of batteries collected under an approved primary battery stewardship plan is not confidential business information under the Uniform Trade Secrets Act, as codified under 9 V.S.A. chapter 143, and shall be subject to inspection and review under the Public Records Act, 1 V.S.A chapter 5, subchapter 3.

#### § 7593. ANTITRUST; CONDUCT AUTHORIZED

(a) Activity authorized. A producer, group of producers, or primary battery stewardship organization implementing or participating in an approved primary battery stewardship plan under this chapter for the collection, transport, processing, and end-of-life management of primary batteries is individually or jointly immune from liability for the conduct under State laws relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce under 9 V.S.A. chapter 63, subchapter 1, to the extent that the conduct is reasonably necessary to plan, implement, and comply with the producer's, group of producers', or primary battery stewardship organization's chosen system for managing discarded primary batteries. This subsection shall also apply to conduct of a retailer or wholesaler participating in a producer or primary battery stewardship organization's approved primary battery stewardship plan when the conduct is necessary to plan and implement the producer's or primary battery stewardship organization's organized collection or recycling system for discarded batteries

(b) Limitations on anti-trust activity. Subsection (a) of this section shall not apply to an agreement among producers, groups of producers, retailers, wholesalers, or primary battery stewardship organizations affecting the price of primary batteries or any agreement restricting the geographic area in which, or customers to whom, primary batteries shall be sold.

§ 7594. ADMINISTRATIVE FEE

(a) Fees assessed. A primary battery producer or primary battery stewardship organization shall pay a fee of \$15,000.00 annually for operation under a primary battery stewardship plan approved by the Secretary under section 7586 of this title.

(b) Disposition of fees. The fees collected under subsection (a) of this section shall be deposited in the Environmental Permit Fund under 3 V.S.A. § 2805.

§ 7595. RULEMAKING; PROCEDURE

The Secretary may adopt rules or procedures to implement the requirements of this chapter.

Sec. 2. AGENCY OF NATURAL RESOURCES REPORT ON

IMPLEMENTATION OF PRIMARY BATTERY STEWARDSHIP

On or before January 15, 2019, the Agency of Natural Resources shall submit to the House and Senate Committees on Natural Resources and Energy a report on the progress of the primary battery stewardship program under 10 V.S.A. chapter 168. The report shall include:

(1) the amount, by weight, of primary batteries and rechargeable batteries collected under approved primary battery stewardship plans;

(2) the percentage of collected batteries not covered by or attributable to a primary battery producer implementing an approved primary battery stewardship plan or participating in an approved primary battery stewardship organization; and

(3) recommendation for any amendments to the requirements of 10 V.S.A. chapter 168, including whether additional manufacturers of batteries or battery containing products should be required to implement primary battery stewardship plans.

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:

\* \* \*

(22) 10 V.S.A. chapter 164A, collection and disposal of mercury-containing lamps; ~~and~~

(23) 24 V.S.A. § 2202a, relating to a municipality's adoption and implementation of a solid waste implementation plan that is consistent with the

State Solid Waste Plan; and

(24) 10 V.S.A. chapter 168, relating to the collection and disposal of primary batteries.

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:

\* \* \*

(Q) chapter 164A (collection and disposal of mercury-containing lamps).

(R) chapter 32 (flood hazard areas).

(S) chapter 168 (collection and disposal of primary batteries).

(2) 29 V.S.A. chapter 11 (management of lakes and ponds).

(3) 24 V.S.A. chapter 61, subchapter 10 (relating to salvage yards).

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

**( Committee Vote: 11-0-0)**

**Rep. Masland of Thetford**, for the Committee on **Ways and Means**, recommends the bill ought to pass when amended as recommended by the Committee on **Natural Resources and Energy**.

**(Committee Vote: 6-5-0)**

### **Information Notice**

Deadline for Introducing Bills

Pursuant to Rule 40(c) during the second year of the biennium, except with the prior consent of the Committee on Rules, no committee, except the Committees on Appropriations, Ways and Means or Government Operations, may introduce a bill drafted in standard form after the last day of March (March 31, 2014). The Committees on Appropriations and Ways and Means bill may be drafted in standard form at any time, and Government Operations bills pertaining to city or town charters, may be drafted in standard form at any time.