

# House Calendar

Tuesday, March 10, 2015

63rd DAY OF THE BIENNIAL SESSION

House Convenes at 10:00 A.M.

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**ORDERS OF THE DAY**

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**ACTION CALENDAR**

**Third Reading**

**H. 40**

An act relating to establishing a renewable energy standard and energy transformation program

**Favorable with Amendment**

**H. 18**

An act relating to Public Records Act exemptions

**Rep. Hubert of Milton**, for the Committee on **Government Operations**, recommends the bill be amended as follows:

by striking Secs. 20–21 and the reader assistance thereto in their entirety and inserting in lieu thereof the following:

\* \* \* Human Rights Commission Exemption \* \* \*

Sec. 20. 9 V.S.A. § 4555(a) is amended to read:

(a)(1) The Except as provided in this subsection, the Human Rights Commission’s complaint files and investigative files shall be confidential except that the.

(2) The Commission shall make the investigative file available to the charging party, the respondent, their attorneys, and any State or federal law enforcement agency seeking to enforce anti-discrimination statutes, upon reasonable request. The, except that the Commission may refuse to disclose:

(A) the identities of nonparty witnesses to the investigation may be revealed as part of the investigative file, upon request, unless if good cause is shown to protect the witness’s confidentiality; and

(B) records or information the release of which may be prohibited under State or federal law absent court order.

(3) A party or entity denied information or records under subdivision (2)(A) or (B) of this subsection may seek the information or records by subpoena. The Commission and any affected person may contest the subpoena in court.

(4) Any records or information described in subdivision (2)(A) or (B) of this subsection made available to a party or entity pursuant to a confidentiality

agreement or court order requiring confidentiality shall be kept confidential in accordance with the agreement or order, unless disclosure is otherwise authorized by law or court order.

\* \* \* Personal Records Exemption \* \* \*

Sec. 21. 1 V.S.A. § 317(c) is amended to read:

(c) The following public records are exempt from public inspection and copying:

\* \* \*

(7) Personal documents relating to an individual, including:

(A) ~~information~~ Information in any files maintained to hire, evaluate, promote, or discipline any employee of a public agency. However, such information shall be made available to that individual employee or his or her designated representative unless otherwise exempt from public inspection and copying.

(B) ~~information~~ Information in any files relating to personal finances.

(C) ~~Individually identifying medical or psychological facts concerning any individual or corporation; provided, however, that all information in personnel files of an individual employee of any public agency shall be made available to that individual employee or his or her designated representative~~ information.

\* \* \*

( Committee Vote: 8-0-4)

## NOTICE CALENDAR

### Favorable with Amendment

#### H. 35

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:

\* \* \* Purpose \* \* \*

Sec. 1. PURPOSE; IMPROVEMENT OF WATER QUALITY

It is the purpose of this act to:

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

(2) authorize and prioritize proactive measures designed to implement and meet the impending total maximum daily load (TMDL) plan for Lake Champlain, meet impending TMDL plans for other State waters, and improve water quality across the State;

(3) identify and prioritize cost-effective strategies for the State to address water quality issues; and

(4) engage more municipalities, agricultural operations, businesses, and other interested parties as part of the State's efforts to improve the quality of the waters of the State.

(5) provide mechanisms, staffing, and financing necessary for State waters to achieve and maintain compliance with the Vermont water quality standards.

\* \* \* Agricultural Water Quality;  
Definitions \* \* \*

Sec. 2. 6 V.S.A. § 4802 is amended to read:

§ 4802. ~~DEFINITION~~ DEFINITIONS

~~For purposes of As used in this chapter, the word “secretary,” when used by itself, means the secretary of agriculture, food and markets;~~

(1) “Agency” means the Agency of Agriculture, Food and Markets.

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

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

(4) “Top of bank” means the point along the bank of a stream where an abrupt change in slope is evident, and where the stream is generally able to overflow the banks and enter the adjacent floodplain during an annual flood event. Annual flood event shall be determined according to the Agency of Natural Resources’ Flood Hazard Area and River Corridor Protection Procedure.

(5) “Waste” or “agricultural waste” means material originating or emanating from a farm that is determined by the Secretary or the Secretary of Natural Resources to be harmful to the waters of the State, including: sediments; minerals, including heavy metals; plant nutrients; pesticides; organic wastes, including livestock waste, animal mortalities, compost, feed and crop debris; waste oils; pathogenic bacteria and viruses; thermal pollution; silage runoff; untreated milkhouse waste; and any other farm waste as the term “waste” is defined in 10 V.S.A. § 1251 (12).

(6) “Water” shall have the same meaning as used in 10 V.S.A. § 1251(13).

\* \* \* Agricultural Water Quality;  
Small Farm Certification and Inspection \* \* \*

Sec. 3. 6 V.S.A. subchapter 5a is added to read:

Subchapter 5a. Small Farm Certification

§ 4871. SMALL FARM CERTIFICATION

(a) Small farm definition. As used in this section, “small farm” means a parcel or parcels of land used for farming that:

(1) includes 10 or more tillable acres of land;

(2) houses no more than the number of animals specified under section 4857 of this title; and

(3)(A) houses five or more livestock; or

(B) produced an annual gross income of \$10,000.00 or more from the sale of farm crops or farm products in one of the two, or three of the five, preceding calendar years.

(b) Required small farm certification. A person who owns or operates a small farm shall, on a form provided by the Secretary, certify compliance with the accepted agricultural practices. The Secretary of Agriculture, Food and Markets shall establish the requirements and manner of certification of compliance with the accepted agricultural practices, provided that the Secretary shall require an owner or operator of a farm to submit a certification of compliance with the accepted agricultural practices at least once every five years.

(c) Rulemaking; small farm certification. The Secretary of Agriculture, Food and Markets shall adopt by rule requirements for a small farm 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.

(d) Small farm inspection. The Secretary may inspect a small farm in the State at any time for the purposes of assessing compliance by the small farm with the accepted agricultural practices and determining consistency with a certification of compliance submitted by the person who owns or operates the small farm. The Secretary may prioritize inspections of small farms in the State based on identified water quality issues posed by a small farm.

(e) Notice of change of ownership or change of lease. A person who owns or leases a small farm shall notify the Secretary of a change of ownership or change of lessee of a small farm within 30 days of the change. The notification shall include the certification of small farm compliance required under subsection (a) of this section.

(f)(1) Identification; ranking of water quality needs. During an inspection of a small farm under 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 and any applicable State water quality permit or certification required under this chapter.

(2) Notwithstanding the priority system established under section 4823 of this title, the Secretary annually shall establish a priority ranking system for small farms according to the water quality benefit associated with the capital, structural, or technical improvements identified as needed by the Secretary during an inspection of the farm.

(3) Notwithstanding the priority system established by subdivision (2) of this subsection, the Secretary may provide financial assistance to a small farm at any time, regardless of the priority ranking system, if the Secretary determines that the farm needs assistance to address a water quality issue that requires immediate abatement.

(g) Fees. A person required to submit a certification under this section shall submit an annual operating fee of \$250.00 to the Secretary. The fees collected under this section shall be deposited in the Agricultural Water Quality Special Fund under section 4803 of this title.

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

§ 4810a. ACCEPTABLE AGRICULTURAL PRACTICES; REVISION

(a) On or before July 1, 2016, the Secretary of Agriculture, Food, and Markets shall amend the accepted agricultural practices in order to improve water quality in the State, assure practices on all farms eliminate adverse impacts to water quality, and implement the small farm certification program required by section 4858a of this title. At a minimum, the amendments to the accepted agricultural practices shall:

(1) Specify those farms that:

(A) are required to comply with the small certification requirements under section 4858a of this title; and

(B) shall be subject to the accepted agricultural practices, but shall not be required to comply with small farm certification requirements under section 4858a of this title.

(2)(A) Prohibit a farm from stacking manure, storing fertilizer, or storing other nutrients on the farm:

(i) in a manner and location that presents a threat of discharge to a water of the State or presents a threat of contamination to groundwater; or

(ii) on lands in a floodway or otherwise subject to regular flooding.

(B) In no case shall manure stacking sites, fertilizer storage, or other nutrient storage be located within 100 feet of a private well or within 100 feet of a water of the State.

(3) Require the construction and management of barnyards, waste management systems, animal holding areas, and production areas in a manner to prevent runoff of waste to a surface water, to groundwater, or across property boundaries.

(4) Establish standards for nutrient management on farms, including required nutrient management planning on all farms that manage agricultural wastes.

(5) Require cropland on the farm to be 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.

(6) Require a farm to comply with standards established by the Secretary for maintaining a vegetative buffer zone of perennial vegetation between annual croplands and the top of the bank of an adjoining water of the State. At a minimum the vegetative buffer standards established by the Secretary shall prohibit the application of manure on the farm within 25 feet of the top of the bank of an adjoining water of the State or within 10 feet of a ditch.

(7) Prohibit the construction or siting of a farm structure for the storage of manure, fertilizer, or pesticide storage within a floodway area identified on a National Flood Insurance Program Map on file with a town clerk.

(8) Regulate, in a manner consistent with the Agency of Natural Resources' flood hazard area and river corridor rules, the construction or siting of a farm structure or the storage of manure, fertilizer, or pesticides storage within a river corridor designated by the Secretary of Natural Resources.

(9) Establish standards for the exclusion of livestock from the waters of the State to prevent erosion and adverse water quality impacts.

(10) Establish standards for the management of subsurface agriculture tile drainage consistent with subsection (b) of this section.

(b) On or before January 15, 2018, the Secretary of Agriculture, Food and Markets shall amend the accepted agricultural practices in order to include requirements for reducing nutrient contribution to waters of the State from subsurface tile drainage. Upon adoption of requirements for subsurface tile drainage, the Secretary may require an existing subsurface tile drain to comply with the requirements of the AAPs for subsurface tile drainage upon a determination that compliance is necessary to reduce adverse impacts to water quality from the subsurface tile drain.

#### Sec. 5. REPORT ON MANAGEMENT OF SUBSURFACE TILE DRAINAGE

(a) The Secretary of Agriculture, Food and Markets and the Secretary of Natural Resources, after consultation with the U.S. Department of Agriculture's Natural Resource Conservation Service, shall submit a joint report to the House Committee on Fish, Wildlife and Water Resources, the Senate Committee on Natural Resources and Energy, the House Committee on Agriculture and Forest Products, and the Senate Committee on Agriculture regarding the status of current, scientific research relating to the environmental management of subsurface agriculture tile drainage and how subsurface agriculture tile drainage contributes to nutrient loading of surface waters. The report shall include a recommendation from the Secretary of Agriculture, Food and Markets and the Secretary of Natural Resources regarding how best to manage subsurface agriculture tile drainage in the State in order to mitigate and prevent the contribution of tile drainage to waters of the State.

(b) On or before January 15, 2016, the Secretary of Agriculture, Food and Markets and the Secretary of Natural Resources shall submit an interim report that summarizes the progress of the Secretaries in preparing the report required by this section. The Secretary of Agriculture, Food and Markets and the Secretary of Natural Resources shall submit the final report required by this section on or before January 15, 2017.

\* \* \* Agricultural Water Quality; Permit Fees \* \* \*

Sec. 6. 6 V.S.A. § 4803 is added to read:

#### § 4803. AGRICULTURAL WATER QUALITY SPECIAL FUND

(a) There is created an Agricultural Water Quality Special Fund to be administered by the Secretary of Agriculture, Food and Markets. Fees



collected under this chapter, including fees for permits or certifications issued under the chapter, shall be deposited in the Fund.

(b) The Secretary may use monies deposited in the Fund for the Secretary's implementation and administration of agricultural water quality programs or requirements established by this chapter, including to pay salaries of Agency staff necessary to implement the programs and requirements of this chapter.

(c) Notwithstanding the requirements of 32 V.S.A. § 588(3), interest earned by the Fund shall be retained in the Fund from year to year.

Sec. 7. 6 V.S.A. § 4851 is amended to read:

§ 4851. PERMIT REQUIREMENTS FOR LARGE FARM OPERATIONS

(a) No person shall, without a permit from the ~~secretary~~ Secretary, construct a new barn, or expand an existing barn, designed to house more than 700 mature dairy animals, 1,000 cattle or cow/calf pairs, 1,000 veal calves, 2,500 swine weighing over 55 pounds, 10,000 swine weighing less than 55 pounds, 500 horses, 10,000 sheep or lambs, 55,000 turkeys, 30,000 laying hens or broilers with a liquid manure handling system, 82,000 laying hens without a liquid manure handling system, 125,000 chickens other than laying hens without a liquid manure handling system, 5,000 ducks with a liquid manure handling system, or 30,000 ducks without a liquid manure handling system. No permit shall be required to replace an existing barn in use for livestock or domestic fowl production at its existing capacity. The ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets, in consultation with the ~~secretary of natural resources~~ Secretary of Natural Resources, shall review any application for a permit under this section with regard to water quality impacts and, prior to approval of a permit under this subsection, shall issue a written determination regarding whether the applicant has established that there will be no unpermitted discharge to waters of the ~~state~~ State pursuant to the federal regulations for concentrated animal feeding operations. If upon review of an application for a permit under this subsection, the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets determines that the permit applicant may be discharging to waters of the ~~state~~ State, the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets and the ~~secretary of natural resources~~ Secretary of Natural Resources shall respond to the discharge in accordance with the memorandum of understanding regarding concentrated animal feeding operations under subsection ~~4810(b)~~ 4810 of this title. The ~~secretary of natural resources~~ Secretary of Natural Resources may require a large farm to obtain a permit under 10 V.S.A. § 1263 pursuant to federal regulations for concentrated animal feeding operations.

\* \* \*

(h) A person required to obtain a permit under this section shall submit an annual operating fee of \$2,500.00 to the Secretary. The fees collected under this section shall be deposited in the Agricultural Water Quality Special Fund under section 4803 of this title.

Sec. 8. 6 V.S.A. § 4858 is amended to read:

§ 4858. ANIMAL WASTE PERMITS MEDIUM FARM OPERATION

PERMITS

(a) No person shall operate a medium farm without authorization from the ~~secretary~~ Secretary pursuant to this section. Under exceptional conditions, specified in subsection ~~(e)~~(d) of this section, authorization from the ~~secretary~~ Secretary may be required to operate a small farm.

(b) Rules; general and individual permits. The ~~secretary~~ Secretary shall establish by rule, pursuant to 3 V.S.A. chapter 25 of Title 3, requirements for a “general permit” and “individual permit” to ~~ensure~~ assure that medium and small farms generating animal waste comply with the water quality standards of the ~~state~~ State.

\* \* \*

(2) The rules adopted under this section shall also address permit administration, public notice and hearing, permit enforcement, permit transition, revocation, and appeals consistent with provisions of sections 4859, ~~4860~~, and 4861 of this title and subchapter 10 of this chapter.

\* \* \*

(c)(1) Medium farm general permit. The owner or operator of a medium farm seeking coverage under a general permit adopted pursuant to this section shall certify to the ~~secretary~~ Secretary within a period specified in the permit, and in a manner specified by the ~~secretary~~ Secretary, that the medium farm does comply with permit requirements regarding an adequately sized and designed manure management system to accommodate the wastes generated and a nutrient management plan to dispose of wastes in accordance with accepted agricultural practices adopted under this chapter. Any certification or notice of intent to comply submitted under this subdivision shall be kept on file at the ~~agency of agriculture, food and markets~~ Agency of Agriculture, Food and Markets. The ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets, in consultation with the ~~secretary of natural resources~~ Secretary of Natural Resources, shall review any certification or notice of intent to comply submitted under this subdivision with regard to the water quality impacts of the medium farm for which the owner or operator is

seeking coverage, and, within 18 months of receiving the certification or notice of intent to comply, shall verify whether the owner or operator of the medium farm has established that there will be no unpermitted discharge to waters of the ~~state~~ State pursuant to the federal regulations for concentrated animal feeding operations. If upon review of a medium farm granted coverage under the general permit adopted pursuant to this subsection, the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets determines that the permit applicant may be discharging to waters of the ~~state~~ State, the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets and the ~~secretary of natural resources~~ Secretary of Natural Resources shall respond to the discharge in accordance with the memorandum of understanding regarding concentrated animal feeding operations under ~~subsection 4810(b)~~ section 4810 of this title.

\* \* \*

(e) A person required to obtain a permit or coverage under this section shall submit an annual operating fee of \$1,500.00 to the Secretary. The fees collected under this section shall be deposited in the Agricultural Water Quality Special Fund under section 4803 of this title.

Sec. 9. 6 V.S.A. § 324 is amended to read:

#### § 324. REGISTRATION AND FEES

(a) No person shall manufacture a commercial feed in this State unless that person has first filed with the Vermont Agency of Agriculture, Food and Markets, in a form and manner to be prescribed by rules by the Secretary:

- (1) the name of the manufacturer;
- (2) the manufacturer's place of business;
- (3) the location of each manufacturing facility; and
- (4) any other information which the Secretary considers to be necessary.

(b) A person shall not distribute in this State a commercial feed that has not been registered pursuant to the provisions of this chapter. Application shall be in a form and manner to be prescribed by rule of the Secretary. The application for registration of a commercial feed shall be accompanied by a registration fee of ~~\$85.00~~ \$100.00 per product. ~~The~~ Of the registration fees collected, \$85.00 of each collected fee, along with any surcharges collected under subsection (c) of this section, shall be deposited in the special fund created by subsection 364(e) of this title. Funds deposited in this account shall be restricted to implementing and administering the provisions of this title and any other provisions of the law relating to fertilizer, lime, or seeds. Of the registration fees collected, \$15.00 of each collected fee shall be deposited in

the Agricultural Water Quality Special Fund created under section 4803 of this title. If the Secretary so requests, the application for registration shall be accompanied by a label or other printed matter describing the product.

(c) No person shall distribute in this State any feed required to be registered under this chapter upon which the Secretary has placed a withdrawal from distribution order because of nonregistration. A surcharge of \$10.00, in addition to the registration fee required by subsection (b) of this section, shall accompany the application for registration of each product upon which a withdrawal from distribution order has been placed for reason of nonregistration, and must be received before removal of the withdrawal from distribution order.

Sec. 10. 6 V.S.A. § 328 is amended to read:

§ 328. TONNAGE REPORTING

(a) Every person who registers a commercial feed pursuant to the provisions of this chapter shall report to the ~~agency of agriculture, food and markets~~ Agency of Agriculture, Food and Markets annually the total amount of combined feed which is distributed within the state and which is intended for use within the ~~state~~ State. The report shall be made on forms and in a manner to be prescribed ~~by rules~~ by the ~~secretary~~ Secretary for calendar years ~~1986~~ 2016 and ~~1987~~ 2017.

(b) This reporting requirement shall not apply to pet foods, within the meaning of subdivisions 323(16) and (19) of this title, and shall not apply to feeds intended for use outside of the state.

Sec. 11. 6 V.S.A. § 366 is amended to read:

§ 366. TONNAGE FEES

(a) There shall be paid annually to the ~~secretary~~ Secretary for all fertilizers distributed to a nonregistrant consumer in this ~~state~~ State an annual ~~inspection~~ fee at a rate of \$0.25 cents per ton.

(b) Persons distributing fertilizer shall report annually by January 15 for the previous year ending December 31 to the ~~secretary~~ Secretary revealing the amounts of each grade of fertilizer and the form in which the fertilizer was distributed within this ~~state~~ State. Each report shall be accompanied with payment and written permission allowing the ~~secretary~~ Secretary to examine the person's books for the purpose of verifying tonnage reports.

(c) No information concerning tonnage sales furnished to the ~~secretary~~ Secretary under this section shall be disclosed in such a way as to divulge the details of the business operation to any person unless it is necessary for the enforcement of the provisions of this chapter.

~~(d) A \$50.00 minimum tonnage fee shall be assessed on all distributors who distribute fertilizers in this state. [Repealed.]~~

(e) Agricultural limes, including agricultural lime mixed with wood ash, are exempt from the tonnage fees required in this section.

(f) Lime and wood ash mixtures may be registered as agricultural liming materials and guaranteed for potassium or potash provided that the wood ash totals less than 50 percent of the mixture.

(g) All fees collected under subsection (a) of this section shall be deposited in the revolving fund created by section 364(e) of this title and used in accordance with its provisions.

(h) There shall be paid annually to the Secretary for all fertilizers distributed to a nonregistrant consumer in this State an annual fee at a rate of \$15.00 per ton for the purpose of supporting agricultural water quality programs in Vermont.

(1) Persons distributing fertilizer shall report annually on or before January 15 for the previous year ending December 31 to the Secretary revealing the amounts of each grade of fertilizer and the form in which the fertilizer was distributed within this State. Each report shall be accompanied with payment and written permission allowing the Secretary to examine the person's books for the purpose of verifying tonnage reports.

(2) No information concerning tonnage sales furnished to the Secretary under this section shall be disclosed in such a way as to divulge the details of the business operation to any person unless it is necessary for the enforcement of the provisions of this chapter.

(3) A \$150.00 minimum tonnage fee shall be assessed on all distributors who distribute fertilizers in this State.

(4) Agricultural limes, including agricultural lime mixed with wood ash, are exempt from the tonnage fees required under this subsection.

(5) All fees collected under this subsection shall be deposited in the deposited in the Agricultural Water Quality Special Fund created under section 4803 of this title.

Sec. 12. 6 V.S.A. § 918 is amended to read:

#### § 918. REGISTRATION

(a) Every economic poison which is distributed, sold, or offered for sale within this State or delivered for transportation or transported in intrastate commerce or between points within this State through any point outside this State shall be registered in the Office of the Secretary, and such registration

shall be renewed annually; provided, that products which have the same formula, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same economic poison may be registered as a single economic poison; and additional names and labels shall be added by supplement statements during the current period of registration. It is further provided that any economic poison imported into this State, which is subject to the provisions of any federal act providing for the registration of economic poisons and which has been duly registered under the provisions of this chapter, may, in the discretion of the Secretary, be exempted from registration under this chapter, when sold or distributed in the unbroken immediate container in which it was originally shipped. The registrant shall file with the Secretary a statement including:

(1) The name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant.

(2) The name of the economic poison.

(3) A complete copy of the labeling accompanying the economic poison and a statement of all claims to be made for it, including directions for use.

(4) If requested by the Secretary, a full description of the tests made and the results thereof upon which the claims are based. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the economic poison was registered or last re-registered.

(b) The registrant shall pay an annual fee of ~~\$140.00~~ \$125.00 for each product registered, and \$110.00 of that amount shall be deposited in the special fund created in section 929 of this title, of which \$5.00 from each product registration shall be used for an educational program related to the proper purchase, application, and disposal of household pesticides, and \$5.00 from each product registration shall be used to collect and dispose of obsolete and unwanted pesticides. Of the registration fees collected under this subsection, \$15.00 of the amount collected shall be deposited in the Agricultural Water Quality Special Fund created under section 4803 of this title. The annual registration year shall be from December 1 to November 30 of the following year.

\* \* \*

\* \* \* Agricultural Water Quality; Best Management Practices \* \* \*

Sec. 13. 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~~ satisfy the requirements of 33 U.S.C. § 1329 that the State identify and implement best management practices to control nonpoint sources of agricultural waste to waters of the State. These agricultural land use practices shall be created in ~~two~~ three categories, pursuant to ~~subdivisions (1) and (2) of this subsection~~ subsections (b), (c), and (d) of this section.

~~(1)~~(b) Accepted Agricultural Practices. “Accepted Agricultural Practices” (AAPs) shall be management standards to be followed in conducting agricultural activities by all persons engaged in farming 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~~ are in compliance with these practices shall be presumed to be in compliance with water quality standards. AAPs shall be practical and ~~cost effective~~ cost-effective to implement, as determined by the Secretary. 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.

(c) Enhanced Practices.

(1) As used in this subsection:

(A) “Enhanced practices” mean management standards for persons engaged in farming that exceed the requirements of the AAPs, and shall include cover cropping, conservation tillage, vegetative buffer zones adjacent to waters of the State based on site-specific conditions, and other management practices required by the Secretary.

(B) “Nutrient impaired watershed” means the watershed of a water of the State that is listed as impaired pursuant to 33 U.S.C. § 1313(d) and to which agricultural nutrients are a significant contributor of the impairment.

(2) The Secretary shall require a person engaged in farming to implement enhanced practices if, during inspection of a large farm, medium farm, or small farm located in a nutrient impaired watershed, the Secretary identifies areas on the farm with potential for the release, discharge, or runoff of nutrients or other pollutants to the waters of the State.

(2)(d) Best Management Practices. “Best Management Practices” (BMPs) may be required by the secretary on a case by case basis. Before requiring BMPs, the secretary shall determine that sufficient financial assistance is available to assist farmers in achieving compliance with applicable BMPs. Best management practices (BMPs) are site-specific on-farm remedies implemented in order to address water quality problems and in order to achieve compliance with the requirements of this chapter or State water quality standards. The Secretary may require any person engaged in farming to implement a BMP. When requiring implementation of a BMP, the Secretary shall inform a person engaged in farming of the resources available to assist the person in implementing BMPs and complying with the requirements of this chapter. BMPs shall be practical and cost effective to implement, as determined by the Secretary, and shall be designed to achieve compliance with the requirements of this chapter.

(b)(e) 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 this 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.

Sec. 14. 6 V.S.A. § 4813 is amended to read:

§ 4813. ~~BASIN MANAGEMENT; APPEALS TO THE WATER RESOURCES BOARD~~ ENVIRONMENTAL DIVISION

(a) The ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets shall cooperate with the ~~secretary of natural resources~~ Secretary of Natural Resources in the basin planning process with regard to the agricultural non-point source waste component of each basin plan. Any person with an interest in the agricultural non-point source component of the basin planning process may petition the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets to require, and the ~~secretary~~ Secretary may require, best management practices in the individual basin beyond accepted agricultural practices adopted by rule, in order to achieve compliance with the water quality goals in 10 V.S.A. § 1250 and any duly adopted basin plan. The ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets shall hold a public hearing within 60 days and shall issue a timely written decision that sets forth the facts and reasons supporting the decision.

(b) ~~Any person engaged in farming that has been required by the secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets to implement best management practices or any person who has petitioned the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets under subsection (a) of this section may appeal the ~~secretary of agriculture, food and market's~~ Secretary of Agriculture, Food and Markets' decision to the ~~environmental division~~ Environmental Division de novo.

(c) ~~Before requiring best management practices under this section, the secretary of agriculture, food and markets or the board shall determine that sufficient financial assistance is available to assist farmers in achieving compliance with applicable best management practices~~ When requiring implementation of a best management practice, the Secretary shall inform a farmer of the resources available to assist the farmer in implementing the best management practice and complying with the requirements of this chapter.

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

Sec. 15. 6 V.S.A. chapter 215, subchapter 8 is added to read:

Subchapter 8. Agricultural Water Quality Training

§ 4981. AGRICULTURAL WATER QUALITY TRAINING

(a) 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 of stormwater runoff, as that term is defined in 10 V.S.A. § 1264, from farms.

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

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

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

(3) the land application of manure, nutrients, septage, or sludge; methods or techniques to minimize the runoff of land-applied manure, nutrients, or sludge to waters of the State; and identification of weather or soil conditions that increase the risk of runoff of land-applied manure, nutrients, septage, or sludge to waters of the State.

(c) The Secretary shall include the training required by this section as a condition of a large farm permit, medium farm permit, or small farm certification required under this chapter. The Secretary may phase in training requirements under this section based on farm size, permit or certification category, or available staffing. On or before January 1, 2016 the Secretary shall establish a schedule by which all owners or operators of small farms, medium farms, or large farms shall complete the training required by this section.

\* \* \* Agricultural Water Quality;

Certification of Custom Applicators \* \* \*

Sec. 16. 6 V.S.A. chapter 215, subchapter 9 is added to read:

Subchapter 9. Certification of Custom Applicators of Manure, Nutrients, Septage, or Sludge

§ 4987. DEFINITIONS

As used in this subchapter:

(1) “Custom applicator” means the owner of a company engaged in the business of applying manure, nutrients, septage, or sludge to land and who charges or collects other consideration for the service. “Custom applicator” shall include employees of a custom applicator, when the employees apply manure, nutrients, septage, or sludge to land.

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

(3) “Septage” means the liquid and solid materials pumped from a septic tank or cesspool during cleaning.

(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) 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, septage, 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, septage, or sludge to waters of the State.

(b) A custom applicator shall not apply manure, nutrients, septage, or sludge unless certified by the Secretary of Agriculture, Food and Markets.

(c) The requirements of this section shall not apply to an owner or operator of a farm applying manure, nutrients, septage, or sludge to a field that he or she owns or controls, provided that the owner or operator has completed the agricultural water quality training required under section 4981 of this title.

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

Sec. 17. 6 V.S.A. chapter 215, subchapter 10 is added to read:

Subchapter 10. Enforcement

§ 4991. PURPOSE

The purpose of this subchapter is to provide the Secretary of Agriculture, Food and Markets with the necessary authority to enforce the agricultural water quality requirements of this chapter. When the Secretary of Agriculture, Food and Markets determines that a person subject to the requirements of the chapter is violating a requirement of this chapter, the Secretary shall respond to and require discontinuance of the violation. The Secretary may respond to a violation of the requirements of this chapter by:

(1) issuing a corrective action order under section 4992 of this title;

(2) issuing a cease and desist order under section 4993 of this title;

(3) issuing an emergency order under section 4993 of this title;

(4) revoking or conditioning coverage under a permit or certification under section 4994 of this title;

(5) bringing a civil enforcement action under section 4995 of this title;

(6) referring the violation to the Secretary of Natural Resources for enforcement under 10 V.S.A. chapter 201; or

(7) pursuing other action, such as consulting with a farmer, within the authority of the Secretary to assure discontinuance of the violation and remediation of any harm caused by the violation.

§ 4992. CORRECTIVE ACTIONS; ADMINISTRATIVE ENFORCEMENT

(a) When the Secretary of Agriculture, Food and Markets determines that a person is violating the requirements of this chapter, rules adopted under this chapter, or a permit or certification issued under this chapter, the Secretary

may issue a written warning that shall be served in person or by certified mail, return receipt requested. A warning issued under this subsection shall include:

(1) a description of the alleged violation;

(2) identification of this section;

(3) identification of the applicable statute, rule, or permit condition violated;

(4) the required corrective actions that the person shall take to correct the violation; and

(5) a summary of federal and State assistance programs that may be utilized by the person to assist in correcting the violation.

(b) A person issued a warning under this section 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.

(c) If a person who receives a warning under this subsection fails to respond in a timely manner to the written warning or to take corrective action, the Secretary may act pursuant to section 4993 or section 4995 of this section in order to protect water quality.

§ 4993. ADMINISTRATIVE ENFORCEMENT; CEASE AND DESIST ORDERS; EMERGENCY ORDERS

(a) Notwithstanding the requirements of section 4992 of this title, the Secretary at any time may pursue one or more of the following enforcement actions:

(1) Issue a cease and desist order in accordance with the requirements of subsection (b) of this section to a person the Secretary believes to be in violation of the requirements of this chapter.

(2) Issue emergency administrative orders to protect water quality when an alleged violation, activity, or farm practice:

(A) presents an immediate threat of substantial harm to the environment or immediate threat to the public health or welfare;

(B) is likely to result in an immediate threat of substantial harm to the environment or immediate threat to the public health or welfare; or

(C) requires a permit or amendment to a permit issued under this chapter and a farm owner or operator has commenced an activity or is continuing an activity without a permit or permit amendment.

(3) Institute appropriate proceedings on behalf of the Agency of Agriculture, Food and Markets to enforce the requirements of this chapter, rules adopted under this chapter, or a permit or certification issued under this chapter.

(4) Order mandatory corrective actions, including a requirement to remove livestock from a farm or production area when the volume of waste produced by livestock on the farm exceeds the infrastructure capacity of the farm or the production area to manage the waste or waste leachate and prevent runoff or leaching of wastes to waters of the State or groundwater, as required by this chapter.

(5) Seek administrative or civil penalties in accordance with the requirements of section 15, 16, 17, or 4995 of this title. Notwithstanding the requirements of section 15 of this title to the contrary, the maximum administrative penalty issued by the Secretary under this section shall not exceed \$5,000.00 for each violation, and the maximum amount of any administrative penalty assessed for separate and distinct violations of this chapter shall not exceed \$50,000.00.

(b) A person may request that the Secretary hold a hearing on a cease and desist order or an emergency order issued under this section within five days of receipt of the order. Upon receipt of a request for a hearing, the Secretary promptly shall set a date and time for a hearing. A request for a hearing on a cease and desist order or emergency order issued under this section shall not stay the order.

#### § 4994. PERMIT OR CERTIFICATION; REVOCATION; ENFORCEMENT

The Secretary may, after due notice and hearing, revoke or condition coverage under a general permit, an individual permit, a small farm certification, or other permit or certification issued under this chapter or rules adopted under this chapter when the person subject to the permit or certification fails to comply with a requirement of this chapter or any term, provision, or requirements of a permit or certification required by this chapter. The Secretary may also seek enforcement remedies and penalties under this subchapter against any person who fails to comply with any term, provision, or requirements of a permit or certification required by this chapter or who violates the terms or conditions of coverage under any general permit, any individual permit, or any certification issued under this chapter.

#### § 4995. CIVIL ENFORCEMENT

(a) The Secretary may bring an action in the Civil Division of the Superior Court to enforce the requirements of this chapter, or rules adopted under this chapter, or any permit or certification issued under this chapter, to assure

compliance, and to obtain penalties in the amounts described in subsection (b) of this section. The action shall be brought by the Attorney General in the name of the State.

(b) The court may grant temporary and permanent injunctive relief, and may:

(1) Enjoin future activities.

(2) Order corrective actions to be taken to mitigate or curtail any violation and to protect human health or the environment, including the removal of livestock from the farm or production area when the volume of wastes produced by livestock exceeds the infrastructure capacity of the farm or its production area to manage the waste or waste leachate to prevent runoff or leaching of wastes to waters of the State or groundwater as required by the standards in this chapter.

(3) Order the design, construction, installation, operation, or maintenance of facilities designed to mitigate or prevent a violation of this chapter or to protect human health or the environment or designed to assure compliance.

(4) Fix and order compensation for any public or private property destroyed or damaged.

(5) Revoke coverage under any permit or certification issued under this chapter.

(6) Order reimbursement from any person who caused governmental expenditures for the investigation, abatement, mitigation, or removal of a hazard to human health or the environment.

(7) Levy a civil penalty as provided in this subdivision. A civil penalty of not more than \$85,000.00 may be imposed for each violation. In addition, in the case of a continuing violation, a penalty of not more than \$42,500.00 may be imposed for each day the violation continues. In fixing the amount of the penalty, the court shall apply the criteria set forth in subsections (e) and (f) of this section. The cost of collection of penalties or other monetary awards shall be assessed against and added to a penalty assessed against a respondent.

(c)(1) In any civil action brought under this section in which a temporary restraining order or preliminary injunction is sought, relief shall be obtained upon a showing that there is the probability of success on the merits and that:

(A) a violation exists; or

(B) a violation is imminent and substantial harm is likely to result.

(2) In a civil action brought under this section in which a temporary restraining order or preliminary injunction is sought, the Secretary need not demonstrate immediate and irreparable injury, loss, or damage.

(d) Any balancing of the equities in actions under this section may affect the time by which compliance shall be attained, but not the necessity of compliance within a reasonable period of time.

(e) In determining the amount of the penalty provided in subsection (b) of this section, the court shall consider the following:

(1) the degree of actual or potential impact on public health, safety, welfare, and the environment resulting from the violation;

(2) the presence of mitigating circumstances, including unreasonable delay by the Secretary in seeking enforcement;

(3) whether the respondent knew or had reason to know the violation existed;

(4) the respondent's record of compliance;

(5) the deterrent effect of the penalty;

(6) the State's actual costs of enforcement; and

(7) the length of time the violation has existed.

(f) In addition to any penalty assessed under subsection (b) of this section, the Secretary may also recapture economic benefit resulting from a violation.

#### § 4996. APPEALS; ENFORCEMENT

(a) Any person subject, under this subchapter, to an administrative enforcement order, an administrative penalty, or revocation of a permit or certification who is aggrieved by a final decision of the Secretary may appeal to the Superior Court within 30 days of the decision. The administrative judge may specially assign an environmental judge to Superior Court for the purpose of hearing an appeal.

(b) If the Secretary issues an emergency order under this chapter, the person subject to the order may request a hearing before the Superior Court. Notice of the request for hearing under this subdivision shall be filed with the Superior Court and the Secretary within five days of receipt of the order. A hearing on the emergency order shall be held at the earliest possible time and shall take precedence over all other hearings. The hearing shall be held within five days of receipt of the notice of the request for hearing. A request for hearing on an emergency order shall not stay the order. The Superior Court shall issue a decision within five days from the conclusion of the hearing, and



no later than 30 days from the date the notice of request for hearing was received by the person subject to the order.

Sec. 18. 6 V.S.A. § 4812 is amended to read:

§ 4812. ~~CORRECTIVE ACTIONS~~

~~(a) When the Secretary of Agriculture, Food and Markets determines that a person engaged in farming is managing a farm using practices which are inconsistent with the requirements of this chapter or rules adopted under this subchapter, the 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. 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, the Secretary may act pursuant to subsection (b) of this section in order to protect water quality.~~

~~(b) 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 to enforce this subchapter.~~

~~(c) Whenever the 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 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) [Repealed.]~~

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

Sec. 19. 6 V.S.A. § 4854 is amended to read:

§ 4854. ~~REVOCATION; ENFORCEMENT~~

~~The secretary may revoke a permit 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 may also seek enforcement remedies under sections 1, 12, 13, 16, and 17 of this title as well as assess an administrative penalty under section 15 of this title to any person who fails to apply for a permit as required by this subchapter, or who violates the terms or conditions of a permit issued under this subchapter. However, notwithstanding the 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. [Repealed.]~~

Sec. 20. 6 V.S.A. § 4860 is amended to read:

§ 4860. ~~REVOCATION; ENFORCEMENT~~

~~(a) The secretary may revoke coverage under a general permit or an individual permit 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 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 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 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, 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. [Repealed.]~~

\* \* \* Stream Alteration; Agricultural Activities \* \* \*

Sec. 21. 10 V.S.A. § 1021 is amended to read:

§ 1021. ALTERATION PROHIBITED; EXCEPTIONS

(a) A person shall not change, alter, or modify the course, current, or cross section of any watercourse or of designated outstanding resource waters, within or along the boundaries of this State either by movement, fill, or excavation of ten cubic yards or more of instream material in any year, unless authorized by the Secretary. A person shall not establish or construct a berm in a flood hazard area or river corridor, as those terms are defined in subdivisions 752(3) and (11) of this title, unless permitted by the Secretary or constructed as an emergency protective measure under subsection (b) of this section.

\* \* \*

(f) This subchapter shall not apply to:

~~(1) accepted agricultural or silvicultural practices, as defined by the Secretary of Agriculture, Food and Markets, or timber harvesting activities in compliance with the acceptable management practices for maintaining water quality on logging jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation, respectively; or~~

~~(2) a farm that is implementing an approved U.S. Department of Agriculture Natural Resource Conservation Service streambank stabilization project or a streambank stabilization project approved by the Secretary of Agriculture, Food and Markets that is consistent with policies adopted by the Secretary of Natural Resources to reduce fluvial erosion hazards.~~

\* \* \*

\* \* \* Use Value Appraisal; Compliance with  
Accepted Agricultural Practices \* \* \*

Sec. 22. 32 V.S.A. § 3756(i) is amended to read:

(i)(1) The Director shall remove from use value appraisal an entire parcel of managed forest land forestland and notify the owner ~~in accordance with the procedure in subsection (b) of this section~~ when the ~~Department~~ Commissioner of Forests, Parks and Recreation has not received a management activity report or has received an adverse inspection report, unless the lack of conformance

consists solely of the failure to make prescribed planned cutting. In that case, the Director may delay removal from use value appraisal for a period of one year at a time to allow time to bring the parcel into conformance with the plan.

(2)(A) The Director shall remove from use value appraisal an entire parcel or parcels of agricultural land and farm buildings identified by the Secretary of Agriculture, Food and Markets as being used by a person:

(i) found, after administrative hearing, or contested judicial hearing or motion, to be in violation of water quality requirements established under 6 V.S.A. chapter 215, or any rules adopted or any permit or certification issued under 6 V.S.A. chapter 215; or

(ii) who is not in compliance with the terms of an administrative or court order issued under 6 V.S.A. chapter 215, subchapter 10 to remedy a violation of the requirements of 6 V.S.A. chapter 215 or any rules adopted or any permit or certification issued under 6 V.S.A. chapter 215.

(B) The Director shall notify the owner that agricultural land or a farm building has been removed from use value appraisal by mailing notification of removal to the owner or operator's last and usual place of abode. After removal of agricultural land or a farm building from use value appraisal under this section, the Director shall not consider a new application for use value appraisal for the agricultural land or farm building until the Secretary of Agriculture, Food and Markets submits to the Director a certification that the owner or operator of the agricultural land or farm building is complying with the water quality requirements of 6 V.S.A. chapter 215 or an order issued under 6 V.S.A. chapter 215. After submission of a certification by the Secretary of Agriculture, Food and Markets, an owner or operator shall be eligible to apply for enrollment of the agricultural land or farm building according to the requirements of section 3756 of this title.

Sec. 23. 32 V.S.A. § 3758 is amended to read:

§ 3758. APPEALS

(a) Whenever the Director denies in whole or in part any application for classification as agricultural land or managed forestland or farm buildings, or grants a different classification than that applied for, or the Director or assessing officials fix a use value appraisal or determine that previously classified property is no longer eligible or that the property has undergone a change in use, the aggrieved owner may appeal the decision of the Director to the Commissioner within 30 days of the decision, and from there to Superior Court in the county in which the property is located.

\* \* \*

(e) When the Director removes agricultural land or a farm building pursuant to notification from the Secretary of Agriculture, Food and Markets under section 3756 of this title, the exclusive right of appeal shall be as provided in 6 V.S.A. § 4996(a).

Sec. 24. 32 V.S.A. § 3752(5) is amended to read:

(5) “Development” means, for the purposes of determining whether a land use change tax is to be assessed under section 3757 of this chapter, the construction of any building, road, or other structure, or any mining, excavation, or landfill activity. “Development” also means the subdivision of a parcel of land into two or more parcels, regardless of whether a change in use actually occurs, where one or more of the resulting parcels contains less than 25 acres each; but if subdivision is solely the result of a transfer to one or more of a spouse, parent, grandparent, child, grandchild, niece, nephew, or sibling of the transferor, or to the surviving spouse of any of the foregoing, then “development” shall not apply to any portion of the newly created parcel or parcels which qualifies for enrollment and for which, within 30 days following the transfer, each transferee or transferor applies for reenrollment in the use value appraisal program. “Development” also means the cutting of timber on property appraised under this chapter at use value in a manner contrary to a forest or conservation management plan as provided for in subsection 3755(b) of this title during the remaining term of the plan, or contrary to the minimum acceptable standards for forest management if the plan has expired; or a change in the parcel or use of the parcel in violation of the conservation management standards established by the Commissioner of Forests, Parks and Recreation. “Development” also means notification of the Director by the Secretary of Agriculture, Food and Markets under section 3756 of this title that the owner or operator of agricultural land or a farm building is violating the water quality requirements of 6 V.S.A. chapter 215 or is failing to comply with the terms of an order issued under 6 V.S.A. chapter 215, subchapter 10. The term “development” shall not include the construction, reconstruction, structural alteration, relocation, or enlargement of any building, road, or other structure for farming, logging, forestry, or conservation purposes, but shall include the subsequent commencement of a use of that building, road, or structure for other than farming, logging, or forestry purposes.

\* \* \* Agency of Natural Resources Basin Planning \* \* \*

Sec. 25. 10 V.S.A. § 1253 is amended to read:

§ 1253. CLASSIFICATION OF WATERS DESIGNATED,  
RECLASSIFICATION

\* \* \*

(d)(1) ~~The~~ Through the process of basin planning, the Secretary shall determine what degree of water quality and classification should be obtained and maintained for those waters not classified by the Board before 1981 following the procedures in sections 1254 and 1258 of this title. Those waters shall be classified in the public interest. The Secretary shall prepare and maintain an overall surface water management plan to assure that the State water quality standards are met in all State waters. The surface water management plan shall include a schedule for updating the basin plans. The Secretary, in consultation with regional planning commissions and natural resource conservation districts, shall revise all 47 15 basin plans by January 1, 2006, and update them every five years thereafter the basin plans on a five-year rotating basis. On or before January 1 15 of each year, the Secretary shall report to the House Committees on Agriculture and Forest Products, on Natural Resources and Energy, and on Fish, Wildlife and Water Resources, and to the Senate Committees on Agriculture and on Natural Resources and Energy regarding the progress made and difficulties encountered in revising basin plans. By January 1, 1993, the Secretary shall prepare an overall management plan to ensure that the water quality standards are met in all State waters. The report shall include a schedule for the production of basin plans in the subsequent calendar year and a summary of actions to be taken over the subsequent three years. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.

(2) In developing a basin plan under this subsection, the Secretary shall:

(A) assure that municipal officials, citizens, watershed groups, and other interested groups and individuals are involved in the basin planning process;

(B) assure regional and local input in State water quality policy development and planning processes;

(C) provide education to municipal officials and citizens regarding the basin planning process; and

(D) develop, in consultation with the applicable regional planning commission, an analysis and formal recommendation on conformance with the goals and objectives of applicable regional plans.

(3) The Secretary may contract with a regional planning commission to assist in or to produce a basin plan under the schedule set forth in subdivision (1) of this subsection. When contracting with a regional planning commission to assist in or produce a basin plan, the Secretary may require the regional planning commission to:

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

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

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

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

(e) In determining the question of public interest, the Secretary shall give due consideration to, and explain his or her decision with respect to, the following:

- (1) existing and obtainable water qualities;
- (2) existing and potential use of waters for public water supply, recreational, agricultural, industrial, and other legitimate purposes;
- (3) natural sources of pollution;
- (4) public and private pollution sources and the alternative means of abating the same;
- (5) consistency with the State water quality policy established in 10 V.S.A. § 1250;
- (6) suitability of waters as habitat for fish, aquatic life, and wildlife;
- (7) need for and use of minimum streamflow requirements;
- (8) federal requirements for classification and management of waters;
- (9) consistency with applicable municipal, regional, and State plans; and
- (10) any other factors relevant to determine the maximum beneficial use and enjoyment of waters.

(f) Notwithstanding the provisions of subsection (c) of this section, when reclassifying waters to Class A, the Secretary need find only that the reclassification is in the public interest.

(g) The Secretary under the reclassification rule may grant permits for only a portion of the assimilative capacity of the receiving waters, or may permit only indirect discharges from on-site disposal systems, or both.

Sec. 26. 24 V.S.A. § 4302 is amended to read:

§ 4302. PURPOSE; GOALS

\* \* \*

(b) It is also the intent of the Legislature that municipalities, regional planning commissions, and State agencies shall engage in a continuing planning process that will further the following goals:

\* \* \*

(c) In addition, this chapter shall be used to further the following specific goals:

\* \* \*

(6) To maintain and improve the quality of air, water, wildlife, and land resources.

(A) Vermont's air, water, wildlife, mineral and land resources should be planned for use and development according to the principles set forth in 10 V.S.A. § 6086(a).

(B) Vermont's water quality should be maintained and improved according to the policies and actions developed in the basin plans established by the Secretary of Natural Resources under 10 V.S.A. § 1253.

\* \* \*

Sec. 27. 24 V.S.A. § 4348(c) is amended to read:

(c) At least 30 days prior to the first hearing, a copy of the proposed plan or amendment, with a request for general comments and for specific comments with respect to the extent to which the plan or amendment is consistent with the goals established in section 4302 of this title, shall be delivered with proof of receipt, or sent by certified mail, return receipt requested, to each of the following:

(1) the chair of the legislative body of each municipality within the region;

(2) the executive director of each abutting regional planning commission;

(3) the Department of Housing and Community Development within the Agency of Commerce and Community Development; ~~and~~

(4) business, conservation, low income advocacy, and other community or interest groups or organizations that have requested notice in writing prior to the date the hearing is warned; and



(5) The Agency of Natural Resources and the Agency of Agriculture, Food and Markets.

Sec. 28. 24 V.S.A. § 4348a(a) is amended to read:

(a) A regional plan shall be consistent with the goals established in section 4302 of this title and shall include the following:

\* \* \*

(6) A statement of policies on the:

(A) preservation of rare and irreplaceable natural areas, scenic and historic features and resources; and

(B) protection and improvement of the quality of waters of the State to be used in the development and furtherance of the applicable basin plans established by the Secretary of Natural Resources under 10 V.S.A. § 1253;

\* \* \*

\* \* \* Antidegradation Policy Implementation Rule \* \* \*

Sec. 29. 10 V.S.A. § 1251a(c) is amended to read:

(c) On or before ~~January 15, 2008~~ July 1, 2016, the Secretary of Natural Resources shall ~~propose draft rules for~~ adopt by rule an implementation process for the antidegradation policy in the water quality standards of the State. The implementation process for the antidegradation policy shall be consistent with the State water quality policy established in section 1250 of this title, the Vermont Water Quality Standards, and any applicable requirements of the federal Clean Water Act. ~~On or before July 1, 2008, a final proposal of the rules for an implementation process for the antidegradation policy shall be filed with the Secretary of State under 3 V.S.A. § 841.~~

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

Sec. 30. 10 V.S.A. § 1264 is amended to read:

§ 1264. STORMWATER MANAGEMENT

~~(a) The General Assembly finds that the management of stormwater runoff is necessary to reduce stream channel instability, pollution, siltation, sedimentation, and local flooding, all of which have adverse impacts on the water and land resources of the State. The General Assembly intends, by enactment of this section, to reduce the adverse effects of stormwater runoff. The General Assembly determines that this intent may best be attained by a process that: assures broad participation; focuses upon the prevention of pollution; relies on structural treatment only when necessary; establishes and~~

~~maintains accountability; tailors strategies to the region and the locale; assures an adequate funding source; builds broadbased programs; provides for the evaluation and appropriate evolution of programs; is consistent with the federal Clean Water Act and the State water quality standards; and accords appropriate recognition to the importance of community benefits that accompany an effective stormwater runoff management program. In furtherance of these purposes, the Secretary shall implement two stormwater permitting programs. The first program is based on the requirements of the federal National Pollutant Discharge Elimination System (NPDES) permit program in accordance with section 1258 of this title. The second program is a State permit program based on the requirements of this section for the discharge of “regulated stormwater runoff” as that term is defined in subdivision (11) of this subsection. As used in this section:~~

~~(1) “2002 Stormwater Management Manual” means the Agency of Natural Resources’ Stormwater Management Manual dated April 2002, as amended from time to time by rule.~~

~~(2) “Best management practice” (BMP) means a schedule of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce water pollution.~~

~~(3) “Development” means the construction of impervious surface on a tract or tracts of land where no impervious surface previously existed.~~

~~(4) “Existing stormwater discharge” means a discharge of regulated stormwater runoff which first occurred prior to June 1, 2002 and that is subject to the permitting requirements of this chapter.~~

~~(5) “Expansion” and “the expanded portion of an existing discharge” mean an increase or addition of impervious surface, such that the total resulting impervious area is greater than the minimum regulatory threshold. Expansion does not mean an increase or addition of impervious surface of less than 5,000 square feet.~~

~~(6) “Impervious surface” means those manmade surfaces, including paved and unpaved roads, parking areas, roofs, driveways, and walkways, from which precipitation runs off rather than infiltrates.~~

~~(7) “New stormwater discharge” means a new or expanded discharge of regulated stormwater runoff, subject to the permitting requirements of this chapter, which first occurs after June 1, 2002 and has not been previously authorized pursuant to this chapter.~~

~~(8) “Offset” means a State permitted or approved action or project within a stormwater impaired water that a discharger or a third person may~~

~~complete to mitigate the impacts that a discharge of regulated stormwater runoff has on the stormwater-impaired water.~~

~~(9) “Offset charge” means the amount of sediment load or hydrologic impact that an offset must reduce or control in the stormwater-impaired water in which the offset is located.~~

~~(10) “Redevelopment” means the construction or reconstruction of an impervious surface where an impervious surface already exists when such new construction involves substantial site grading, substantial subsurface excavation, or substantial modification of existing stormwater conveyance, such that the total of impervious surface to be constructed or reconstructed is greater than the minimum regulatory threshold. Redevelopment does not mean the construction or reconstruction of impervious surface where impervious surface already exists when the construction or reconstruction involves less than 5,000 square feet. Redevelopment does not mean public road management activities, including any crack sealing, patching, coldplaning, resurfacing, reclaiming, or grading treatments used to maintain pavement, bridges, and unpaved roads.~~

~~(11) “Regulated stormwater runoff” means precipitation, snowmelt, and the material dissolved or suspended in precipitation and snowmelt that runs off impervious surfaces and discharges into surface waters or into groundwater via infiltration.~~

~~(12) “Stormwater impact fee” means the monetary charge assessed to a permit applicant for the discharge of regulated stormwater runoff to a stormwater-impaired water that mitigates a sediment load level or hydrologic impact that the discharger is unable to control through on-site treatment or completion of an offset on a site owned or controlled by the permit applicant.~~

~~(13) “Stormwater-impaired water” means a State water that the Secretary determines is significantly impaired by discharges of regulated stormwater runoff.~~

~~(14) “Stormwater runoff” means precipitation and snowmelt that does not infiltrate into the soil, including material dissolved or suspended in it, but does not include discharges from undisturbed natural terrain or wastes from combined sewer overflows.~~

~~(15) “Total maximum daily load” (TMDL) means the calculations and plan for meeting water quality standards approved by the U.S. Environmental Protection Agency (EPA) and prepared pursuant to 33 U.S.C. § 1313(d) and federal regulations adopted under that law.~~

~~(16) “Water quality remediation plan” means a plan, other than a TMDL or sediment load allocation, designed to bring an impaired water body into compliance with applicable water quality standards in accordance with 40 C.F.R. § 130.7(b)(1)(ii) and (iii).~~

~~(17) “Watershed improvement permit” means a general permit specific to a stormwater impaired water that is designed to apply management strategies to existing and new discharges and that includes a schedule of compliance no longer than five years reasonably designed to assure attainment of the Vermont water quality standards in the receiving waters.~~

~~(18) “Stormwater system” means the storm sewers; outfall sewers; surface drains; manmade wetlands; channels; ditches; wet and dry bottom basins; rain gardens; and other control equipment necessary and appurtenant to the collection, transportation, conveyance, pumping, treatment, disposal, and discharge of regulated stormwater runoff.~~

~~(19) “Net zero standard” means:~~

~~(A) A new discharge or the expanded portion of an existing discharge meets the requirements of the 2002 Stormwater Management Manual and does not increase the sediment load in the receiving stormwater impaired water; or~~

~~(B) A discharge from redevelopment; from an existing discharge operating under an expired stormwater discharge permit where the property owner applies for a new permit; or from any combination of development, redevelopment, and expansion meets on-site the water quality, recharge, and channel protection criteria set forth in Table 1.1 of the 2002 Stormwater Management Manual that are determined to be technically feasible by an engineering feasibility analysis conducted by the Agency and if the sediment load from the discharge approximates the natural runoff from an undeveloped field or open meadow that is not used for agricultural activity.~~

~~(b) The Secretary shall prepare a plan for the management of collected stormwater runoff found by the 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. By no later than February 1, 2001, the 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. In developing the program, the Secretary shall consult with the Board, affected municipalities, regional entities, other State and federal agencies, and members of the public. The Secretary shall be responsible for implementation of the program. The Secretary's stormwater management program shall include, at a minimum, provisions that:~~

~~(1) Indicate that the primary goals of the State program will be to assure compliance with the Vermont Water Quality Standards and to maintain after development, as nearly as possible, the predevelopment runoff characteristics.~~

~~(2) Allow for differences in hydrologic characteristics in different parts of the State.~~

~~(3) Incorporate stormwater management into the basin planning process conducted under section 1253 of this title.~~

~~(4) Assure consistency with applicable requirements of the federal Clean Water Act.~~

~~(5) Address stormwater management in new development and redevelopment.~~

~~(6) Control stormwater runoff from construction sites and other land disturbing activities.~~

~~(7) Indicate that water quality mitigation practices may be required for any redevelopment of previously developed sites, even when preredevlopment runoff characteristics are proposed to be maintained.~~

~~(8) Specify minimum requirements for inspection and maintenance of stormwater management practices.~~

~~(9) Promote detection and elimination of improper or illegal connections and discharges.~~

~~(10) Promote implementation of pollution prevention during the conduct of municipal operations.~~

~~(11) Provide for a design manual that includes technical guidance for the management of stormwater runoff.~~

~~(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.~~

~~(13) Promote public education and participation among citizens and municipalities about cost-effective and innovative measures to reduce stormwater discharges to the waters of the State.~~

~~(e) The Secretary shall submit the program report to the House Committees on Agriculture and Forest Products, on Transportation, and on Natural Resources and Energy and to the Senate Committees on Agriculture and on Natural Resources and Energy.~~

~~(d)(1) The Secretary shall initiate rulemaking by October 15, 2004, and shall adopt a rule for a stormwater management program by June 15, 2005. The rule shall be adopted in accordance with 3 V.S.A. chapter 25 and shall include:~~

~~(A) the regulatory elements of the program identified in subsection (b) of this section, including the development and use of offsets and the establishment and imposition of stormwater impact fees to apply when issuing permits that allow regulated stormwater runoff to stormwater impaired waters;~~

~~(B) requirements concerning the contents of permit applications that include, at a minimum, for regulated stormwater runoff, the permit application requirements contained in the Agency's 1997 stormwater management procedures;~~

~~(C) a system of notifying interested persons in a timely way of the Agency's receipt of stormwater discharge applications, provided any alleged failures with respect to such notice shall not be relevant in any Agency permit decision or any appeals brought pursuant to section 1269 of this chapter;~~

~~(D) requirements concerning a permit for discharges of regulated stormwater runoff from the development, redevelopment, or expansion of impervious surfaces equal to or greater than one acre or any combination of development, redevelopment, and expansion of impervious surfaces equal to or greater than one acre; and~~

~~(E) requirements concerning a permit for discharges of regulated stormwater runoff from an impervious surface of any size to stormwater impaired waters if the Secretary determines that treatment is necessary to reduce the adverse impact of such stormwater discharges due to the size of the impervious surface, drainage patterns, hydraulic connectivity, existing stormwater treatment, or other factors identified by the Secretary.~~

~~(2) Notwithstanding 3 V.S.A. § 840(a), the Secretary shall hold at least three public hearings in different areas of the State regarding the proposed rule.~~

~~(e)(1) Except as otherwise may be provided in subsection (f) of this section, the Secretary shall, for new stormwater discharges, require a permit~~

~~for discharge of, regulated stormwater runoff consistent with, at a minimum, the 2002 Stormwater Management Manual. The Secretary may issue, condition, modify, revoke, or deny discharge permits for regulated stormwater runoff, as necessary to assure achievement of the goals of the program and compliance with State law and the federal Clean Water Act. The permit shall specify the use of best management practices to control regulated stormwater runoff. The permit shall require as a condition of approval, proper operation, and maintenance of any stormwater management facility and submittal by the permittee of an annual inspection report on the operation, maintenance and condition of the stormwater management system. The permit shall contain additional conditions, requirements, and restrictions as the Secretary deems necessary to achieve and maintain compliance with the water quality standards, including requirements concerning recording, reporting, and monitoring the effects on receiving waters due to operation and maintenance of stormwater management facilities.~~

~~(2) As one of the principal means of administering an enhanced stormwater program, the Secretary may issue and enforce general permits. To the extent appropriate, such permits shall include the use of certifications of compliance by licensed professional engineers practicing within the scope of their engineering specialty. The Secretary may issue general permits for classes of regulated stormwater runoff permittees and may specify the period of time for which the permit is valid other than that specified in subdivision 1263(d)(4) of this title when such is consistent with the provisions of this section. General permits shall be adopted and administered in accordance with the provisions of subsection 1263(b) of this title. No permit is required under this section for:~~

~~(A) Stormwater runoff from farms subject to accepted agricultural practices adopted by the Secretary of Agriculture, Food and Markets;~~

~~(B) Stormwater runoff from concentrated animal feeding operations that require a permit under subsection 1263(g) of this chapter; or~~

~~(C) Stormwater runoff from silvicultural activities subject to accepted management practices adopted by the Commissioner of Forests, Parks and Recreation.~~

~~(3) Prior to issuing a permit under this subsection, the Secretary shall review the permit applicant's history of compliance with the requirements of this chapter. The Secretary may, at his or her discretion and as necessary to assure achievement of the goals of the program and compliance with State law and the federal Clean Water Act, deny an application for the discharge of regulated stormwater under this subsection if review of the applicant's compliance history indicates that the applicant is discharging regulated~~

~~stormwater in violation of this chapter or is the holder of an expired permit for an existing discharge of regulated stormwater.~~

~~(f)(1) In a stormwater impaired water, the Secretary may issue:~~

~~(A) An individual permit in a stormwater impaired water for which no TMDL, water quality remediation plan, or watershed improvement permit has been established or issued, provided that the permitted discharge meets the following discharge standard: prior to the issuance of a general permit to implement a TMDL or a water quality remediation plan, the discharge meets the net zero standard;~~

~~(B) An individual permit or a general permit to implement a TMDL or water quality remediation plan in a stormwater impaired water, provided that the permitted discharge meets the following discharge standard:~~

~~(i) a new stormwater discharge or the expansion of an existing discharge shall meet the treatment standards for new development and expansion in the 2002 Stormwater Management Manual and any additional requirements deemed necessary by the Secretary to implement the TMDL or water quality remediation plan;~~

~~(ii) for a discharge of regulated stormwater runoff from redeveloped impervious surfaces:~~

~~(I) the existing impervious surface shall be reduced by 20 percent, or a stormwater treatment practice shall be designed to capture and treat 20 percent of the water quality volume treatment standard of the 2002 Stormwater Management Manual from the existing impervious surface; and~~

~~(II) any additional requirements deemed necessary by the Secretary to implement the TMDL or the water quality remediation plan;~~

~~(iii) an existing stormwater discharge shall meet the treatment standards deemed necessary by the Secretary to implement a TMDL or a water quality remediation plan;~~

~~(iv) if a permit is required for an expansion of an existing impervious surface or for the redevelopment of an existing impervious surface, discharges from the expansion or from the redeveloped portion of the existing impervious surface shall meet the relevant treatment standard of the 2002 Stormwater Management Manual, and the existing impervious surface shall meet the treatment standards deemed necessary by the Secretary to implement a TMDL or the water quality remediation plan;~~

~~(C) A watershed improvement permit, provided that the watershed improvement permit provides reasonable assurance of compliance with the Vermont water quality standards in five years;~~



~~(D) A general or individual permit that is implementing a TMDL or water quality remediation plan; or~~

~~(E) A statewide general permit for new discharges that the Secretary deems necessary to assure attainment of the Vermont Water Quality Standards.~~

~~(2) An authorization to discharge regulated stormwater runoff pursuant to a permit issued under this subsection shall be valid for a time period not to exceed five years. A person seeking to discharge regulated stormwater runoff after the expiration of that period shall obtain an individual permit or coverage under a general permit, whichever is applicable, in accordance with subsection 1263(e) of this title.~~

~~(3) By January 15, 2010, the Secretary shall issue a watershed improvement permit, issue a general or individual permit implementing a TMDL approved by the EPA, or issue a general or individual permit implementing a water quality remediation plan for each of the stormwater impaired waters on the Vermont Year 2004 Section 303(d) List of Waters required by 33 U.S.C. 1313(d). In developing a TMDL or a water quality remediation plan for a stormwater impaired water, the Secretary shall consult "A Scientifically Based Assessment and Adaptive Management Approach to Stormwater Management" and "Areas of Agreement about the Scientific Underpinnings of the Water Resources Board's Original Seven Questions" set out in appendices A and B, respectively, of the final report of the Water Resources Board's "Investigation Into Developing Cleanup Plans For Stormwater Impaired Waters, Docket No. Inv-03-01," issued March 9, 2004.~~

~~(4) Discharge permits issued under this subsection shall require BMP-based stormwater treatment practices. Permit compliance shall be judged on the basis of performance of the terms and conditions of the discharge permit, including construction and maintenance in accordance with BMP specifications. Any permit issued for a new stormwater discharge or for the expanded portion of an existing discharge pursuant to this subsection shall require compliance with BMPs for stormwater collection and treatment established by the 2002 Stormwater Management Manual, and any additional requirements for stormwater treatment and control systems as the Secretary determines to be necessary to ensure that the permitted discharge does not cause or contribute to a violation of the Vermont Water Quality Standards.~~

~~(5) In addition to any permit condition otherwise authorized under subsection (e) of this section, in any permit issued pursuant to this subsection, the Secretary may require an offset or stormwater impact fee as necessary to ensure the discharge does not cause or contribute to a violation of the Vermont Water Quality Standards. Offsets and stormwater impact fees, where utilized,~~

~~shall incorporate an appropriate margin of safety to account for the variability in quantifying the load of pollutants of concern. To facilitate utilization of offsets and stormwater impact fees, the Secretary shall identify by January 1, 2005 a list of potential offsets in each of the waters listed as a stormwater impaired water under this subsection.~~

~~(g)(1) The Secretary may issue a permit consistent with the requirements of subsection (f) of this section, even where a TMDL or wasteload allocation has not been prepared for the receiving water. In any appeal under this chapter an individual permit meeting the requirements of subsection (f) of this section shall have a rebuttable presumption in favor of the permittee that the discharge does not cause or contribute to a violation of the Vermont Water Quality Standards for the receiving waters with respect to the discharge of regulated stormwater runoff. This rebuttable presumption shall only apply to permitted discharges into receiving waters that are principally impaired by sources other than regulated stormwater runoff.~~

~~(2) This subsection shall apply to stormwater permits issued under the federally delegated NPDES program only to the extent allowed under federal law.~~

~~(h) The rebuttable presumption specified in subdivision (g)(1) of this section shall also apply to permitted discharges into receiving waters that meet the water quality standards of the State, provided the discharge meets the requirements of subsection (e) of this section.~~

~~(i) A residential subdivision may transfer a pretransition stormwater discharge permit or a stormwater discharge permit implementing a total maximum daily load plan to a municipality, provided that the municipality assumes responsibility for the permitting of the stormwater system that serves the residential subdivision. As used in this section:~~

~~(1) "Pretransition stormwater discharge permit" means any permit issued by the Secretary of Natural Resources pursuant to this section on or before June 30, 2004 for a discharge of stormwater.~~

~~(2) "Residential subdivision" means land identified and demarcated by recorded plat or other device that a municipality has authorized to be used primarily for residential construction.~~

~~(j) Notwithstanding any other provision of law, if an application to discharge stormwater runoff pertains to a telecommunications facility as defined in 30 V.S.A. § 248a and is filed before July 1, 2017 and the discharge will be to a water that is not principally impaired by stormwater runoff:~~

~~(1) The Secretary shall issue a decision on the application within 40 days of the date the Secretary determines the application to be complete, if the application seeks authorization under a general permit.~~

~~(2) The Secretary shall issue a decision on the application within 60 days of the date the Secretary determines the application to be complete, if the application seeks or requires authorization under an individual permit.~~

~~(k) The Secretary may adopt rules regulating stormwater discharges and stormwater infrastructure repair or maintenance during a state of emergency declared under 20 V.S.A. chapter 1 or during flooding or other emergency conditions that pose an imminent risk to life or a risk of damage to public or private property. Any rule adopted under this subsection shall comply with National Flood Insurance Program requirements. A rule adopted under this subsection shall include a requirement that an activity receive an individual stormwater discharge emergency permit or receive coverage under a general stormwater discharge emergency permit.~~

~~(1) A rule adopted under this subsection shall establish:~~

~~(A) criteria for coverage under an individual or general emergency permit;~~

~~(B) criteria for different categories of activities covered under a general emergency permit;~~

~~(C) requirements for public notification of permitted activities, including notification after initiation or completion of a permitted activity;~~

~~(D) requirements for coordination with State and municipal authorities;~~

~~(E) requirements that the Secretary document permitted activity, including, at a minimum, requirements for documenting permit terms, documenting permit duration, and documenting the nature of an activity when the rules authorize notification of the Secretary after initiation or completion of the activity.~~

~~(2) A rule adopted under this section may:~~

~~(A) establish reporting requirements for categories of activities;~~

~~(B) authorize an activity that does not require reporting to the Secretary; or~~

~~(C) authorize an activity that requires reporting to the Secretary after initiation or completion of an activity.~~

(a) Findings and intent.

(1) Findings. The General Assembly finds that the management of stormwater runoff is necessary to reduce stream channel instability, pollution, siltation, sedimentation, and flooding, all of which have adverse impacts on the water and land resources of the State.

(2) Intent. The General Assembly intends, by enactment of this section to:

(A) Reduce the adverse effects of stormwater runoff.

(B) Direct the Agency of Natural Resources to develop a process that assures broad participation; focuses upon the prevention of pollution; relies on structural treatment only when necessary; establishes and maintains accountability; tailors strategies to the region and the locale; builds broad-based programs; provides for the evaluation and appropriate evolution of programs; is consistent with the federal Clean Water Act and the State water quality standards; and accords appropriate recognition to the importance of community benefits that accompany an effective stormwater runoff management program. In furtherance of these purposes, the Secretary shall implement a stormwater permitting program. The stormwater permitting program developed by the Secretary shall recognize that stormwater runoff 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 causing degradation of the quality of the receiving water at the time of discharge.

(b) Definitions. As used in this section:

(1) “Best management practice” (BMP) means a schedule of activities, prohibitions or practices, maintenance procedures, and other management practices to prevent or reduce water pollution.

(2) “Development” means the construction of impervious surface on a tract or tracts of land where no impervious surface previously existed.

(3) “Expansion” and “the expanded portion of an existing discharge” mean an increase or addition of impervious surface, such that the total resulting impervious area is greater than the minimum regulatory threshold.

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

(5) “New stormwater discharge” means a new or expanded discharge of regulated stormwater runoff, subject to the permitting requirements of this chapter that has not been previously authorized pursuant to this chapter.

(6) “Offset” means a State-permitted or -approved action or project within a stormwater-impaired water that a discharger or a third person may complete to mitigate the impacts that a discharge of regulated stormwater runoff has on the stormwater-impaired water.

(7) “Redevelopment” or “redevelop” means the construction or reconstruction of an impervious surface where an impervious surface already exists when such new construction involves substantial site grading, substantial subsurface excavation, or substantial modification of an existing stormwater conveyance, such that the total of impervious surface to be constructed or reconstructed is greater than the minimum regulatory threshold. Redevelopment does not mean public road management activities, including any crack sealing, patching, coldplaning, resurfacing, reclaiming, or grading treatments used to maintain pavement, bridges, and unpaved roads.

(8) “Regulated stormwater runoff” means precipitation, snowmelt, and the material dissolved or suspended in precipitation and snowmelt that runs off impervious surfaces and discharges into surface waters or into groundwater via infiltration.

(9) “Stormwater impact fee” means the monetary charge assessed to a permit applicant for the discharge of regulated stormwater runoff to a stormwater-impaired water that mitigates a sediment load level or hydrologic impact that the discharger is unable to control through on-site treatment or completion of an offset on a site owned or controlled by the permit applicant.

(10) “Stormwater-impaired water” means a State water that the Secretary determines is significantly impaired by discharges of regulated stormwater runoff.

(11) “Stormwater Management Manual” means the Agency of Natural Resources’ Stormwater Management Manual, as adopted and amended by rule.

(12) “Stormwater runoff” means precipitation and snowmelt that does not infiltrate into the soil, including material dissolved or suspended in it, but does not include discharges from undisturbed natural terrain or wastes from combined sewer overflows.

(13) “Stormwater system” includes the storm sewers; outfall sewers; surface drains; manmade wetlands; channels; ditches; wet and dry bottom basins; rain gardens; and other control equipment necessary and appurtenant to the collection, transportation, conveyance, pumping, treatment, disposal, and discharge of regulated stormwater runoff.

(14) “Total maximum daily load” (TMDL) means the calculations and plan for meeting water quality standards approved by the U.S. Environmental

Protection Agency (EPA) and prepared pursuant to 33 U.S.C. § 1313(d) and federal regulations adopted under that law.

(15) “Water quality remediation plan” means a plan, other than a TMDL, designed to bring an impaired water body into compliance with applicable water quality standards in accordance with 40 C.F.R. § 130.7(b)(1)(ii) and (iii).

(16) “Watershed improvement permit” means a general permit specific to a stormwater-impaired water that is designed to apply management strategies to existing and new discharges and that includes a schedule of compliance no longer than five years reasonably designed to assure attainment of the Vermont water quality standards in the receiving waters.

(c) Prohibitions.

(1) A person shall not commence the construction or redevelopment of one acre or more of impervious surface without first obtaining a permit from the Secretary.

(2) A person shall not discharge from a facility that has a standard industrial classification identified in 40 C.F.R. § 122.26 without first obtaining a permit from the Secretary.

(3) A person that has been designated by the Secretary as requiring coverage for its municipal separate storm sewer system may not discharge without first obtaining a permit from the Secretary.

(4) A person shall not commence a project that will result in an earth disturbance of one acre or greater, or less than one acre if part of a common plan of development, without first obtaining a permit from the Secretary.

(5) A person shall not expand existing impervious surface by more than 5,000 square feet, such that the total resulting impervious area is greater than one acre, without first obtaining a permit from the Secretary.

(6)(A) In accordance with the schedule established under subsection (g)(2) of this section, a municipality shall not discharge stormwater from a municipal road without first obtaining:

(i) an individual permit;

(ii) coverage under a municipal road general permit; or

(iii) coverage under a municipal separate stormsewer system permit that implements the technical standards and criteria established by the Secretary for stormwater improvements of municipal roads.

(B) As used in this subdivision, “municipality” means a city, town, or village.

(7) In accordance with the schedule established under subsection (g)(3), a person shall not discharge stormwater from impervious surface of three or more acres in size without first obtaining an individual permit or coverage under a general permit issued under this section if the discharge was never previously permitted or was permitted under an individual permit or general permit that did not incorporate the requirements of the 2002 Stormwater Management Manual or any subsequently adopted Stormwater Management Manual.

(d) Exemptions. No permit is required under this section for:

(1) Stormwater runoff from farms subject in compliance with agricultural practices adopted by the Secretary of Agriculture, Food and Markets.

(2) Stormwater runoff from concentrated animal feeding operations permitted under subsection 1263(g) of this chapter.

(3) Stormwater runoff from silvicultural activities in compliance with the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation.

(4) Stormwater systems that were permitted under subdivision (c)(1) or (5) of this section and for which a municipality has assumed full legal responsibility for that stormwater system. As used in this subdivision, “full legal responsibility” means a legal control of the stormwater system, including a legal right to access the stormwater system, a legal duty to properly maintain the stormwater system, and a legal duty to repair and replace the stormwater system when it no longer adequately protects waters of the State.

(5) Stormwater runoff permitted under section 1263 of this title.

(e) State designation. The Secretary shall require a permit under this section for a discharge or stormwater runoff from any size of impervious surfaces upon a determination by the Secretary that the treatment of the discharge or stormwater runoff is necessary to reduce the adverse impacts to water quality of the discharge or stormwater runoff taking into consideration any of the following factors: the size of the impervious surface, drainage patterns, hydraulic connectivity, existing stormwater treatment, stormwater controls necessary to implement the wasteload allocation of a TMDL, or other factors. The Secretary may make this determination on a case-by-case basis or according to classes of activities, classes of runoff, or classes of discharge.

The Secretary may make a determination under this subsection based on activities, runoff, discharges, or other information identified during the basin planning process.

(f) Rulemaking. The Secretary shall adopt rules to manage regulated stormwater runoff. At a minimum, the rules shall:

(1) Establish as the primary goals of the rules:

(A) assuring compliance with the Vermont Water Quality Standards; and

(B) maintenance after development, as nearly as possible, of the predevelopment runoff characteristics.

(2) Establish criteria for the use of the basin planning process to establish watershed-specific priorities for the management of stormwater runoff.

(3) Assure consistency with applicable requirements of the federal Clean Water Act.

(4) Include technical standards and best management practices that address stormwater discharges from existing development, new development, and redevelopment.

(5) Specify minimum requirements for inspection and maintenance of stormwater management practices.

(6) Include standards for the management of stormwater runoff from construction sites and other land disturbing activities.

(7) Allow municipal governments to assume the full legal responsibility for a stormwater system permitted under these rules as a part of a permit issued by the Secretary.

(8) Include standards with respect to the use of offsets and stormwater impact fees.

(9) Include minimum standards for the issuance of stormwater permits during emergencies for the repair or maintenance of stormwater infrastructure during a state of emergency declared under 20 V.S.A. chapter 1 or during flooding or other emergency conditions that pose an imminent risk to life or a risk of damage to public or private property. Minimum standards adopted under this subdivision shall comply with National Flood Insurance Program requirements.



(10) To the extent appropriate, authorize in the permitting process use of certifications of compliance by licensed professional engineers practicing within the scope of their engineering specialty.

(g) General permits.

(1) The Secretary may issue general permits for classes of regulated stormwater runoff that shall be adopted and administered in accordance with the provisions of subsection 1263(b) of this title.

(2)(A) The Secretary shall issue by December 31, 2017, a general permit for discharges of regulated stormwater from municipal roads. Under the municipal roads stormwater general permit, the Secretary shall:

(i) Establish a schedule for implementation of the general permit by each municipality in the State. Under the schedule, the Secretary shall establish:

(I) the date by which each municipality shall apply for coverage under the municipal roads general permit;

(II) the date by which each municipality shall inventory necessary stormwater management projects on municipal roads;

(III) the date by which each municipality shall establish a plan for implementation of stormwater improvements that prioritizes stormwater improvements according to criteria established by the Secretary under the general permit; and

(IV) the date by which each municipality shall implement stormwater improvements of municipal roads according to a municipal implementation plan.

(ii) Establish criteria and technical standards, such as best management practices, for implementation of stormwater improvements of municipal roads.

(iii) Establish criteria for municipal prioritization of stormwater improvements of municipal roads. The Secretary shall base the criteria on the water quality impacts of a stormwater discharge, the current state of a municipal road, the priority of a municipal road or stormwater project in any existing transportation capital plan developed by a municipality, and the benefits of the stormwater improvement to the life of the municipal road.

(iv) Require each municipality to submit to the Secretary and periodically update its implementation plan for stormwater improvements.

(B) The Secretary may require an individual permit for a stormwater improvement at any time under subsection (e) of this section. An individual permit shall include site-specific standards for the stormwater improvement.

(C) All municipalities shall apply for coverage under the municipal road general permit by July 1, 2021.

(D) As used in this subdivision (g)(2), “municipality” means a city, town, or village.

(3) On or before January 1, 2018, the Secretary shall issue a general permit under this section for discharges of stormwater from impervious surface of three or more acres in size, when the stormwater discharge previously was not permitted or was permitted under an individual permit or general permit that did not incorporate the requirements of the 2002 Stormwater Management Manual or any subsequently adopted Stormwater Management Manual. Under the general permit, the Secretary shall:

(A) Establish a schedule for implementation of the general permit by geographic area of the State. The schedule shall establish the date by which an owner of impervious surface shall apply for coverage under subdivision (g)(3) of this section. The schedule established by the Secretary shall require an owner of impervious surface subject to permitting under this subdivision to obtain coverage by the following dates:

(i) for impervious surface located within the Lake Champlain watershed, no later than October 1, 2023; and

(ii) for impervious surface located within all other watersheds of the State, no later than October 1, 2028.

(B) Establish criteria and technical standards, such as best management practices, for implementation of stormwater improvements for the retrofitting of impervious surface subject to permitting under this subdivision.

(C) Require that a discharge of stormwater from redeveloped or retrofitted impervious surface comply with the applicable standards of subsection (h) of this section.

(D) Allow the use of stormwater impact fees, offsets, and phosphorus credit trading within the watershed of the water to which the stormwater discharges or runs off.

(h) Permit requirements. An individual or general stormwater permit shall:

(1) Be valid for a period of time not to exceed ten years.

(2) For discharges of regulated stormwater to a stormwater impaired water, to Lake Champlain, or to a water that contributes to the impairment of Lake Champlain:

(A) In which no TMDL, watershed improvement permit, or water quality remediation plan has been approved, require that the discharge shall comply with the following discharge standards:

(i) A new discharge or the expanded portion of an existing discharge shall satisfy the requirements of the Stormwater Management Manual and shall not increase the pollutant load in the receiving water for stormwater.

(ii) For redevelopment of or renewal of a permit for existing impervious surface, the discharge shall satisfy on-site the water quality, recharge, and channel protection criteria set forth in the Stormwater Management Manual that are determined to be technically feasible by an engineering feasibility analysis conducted by the Agency and the discharge shall not increase the pollutant load in the receiving water for stormwater.

(B) In which a TMDL or water quality remediation plan has been adopted, require that the discharge shall comply with the following discharge standards:

(i) For a new discharge of the expanded portion of an existing discharge, the discharge shall satisfy the requirements of the Stormwater Management Manual, and the Secretary shall determine that there is sufficient pollutant load allocations for the discharge.

(ii) For redevelopment of or renewal of a permit for existing impervious surface, the Secretary shall determine that there is sufficient pollutant load allocations for the discharge and the Secretary shall include any requirements that the Secretary deems necessary to implement the TMDL or water quality remediation plan.

(3) Contain requirements necessary to comply with the minimum requirements of the rules adopted under this section, the Vermont water quality standards, and any applicable provision of the Clean Water Act.

(i) Disclosure of violations. The Secretary may, at his or her discretion and as necessary to assure achievement of the goals of the program and compliance with State law and the federal Clean Water Act, deny an application for the discharge of regulated stormwater under this subsection if review of the applicant's compliance history indicates that the applicant is discharging regulated stormwater in violation of this chapter or is the holder of an expired permit for an existing discharge of regulated stormwater.

(j) Presumption. In any appeal under this chapter, an individual permit issued under subdivisions (c)(1) and (c)(5) of this section shall have a rebuttable presumption in favor of the permittee that the discharge does not cause or contribute to a violation of the Vermont Water Quality Standards for the receiving waters with respect to the discharge of regulated stormwater runoff, provided that the discharge is to a water that is not principally impaired due to stormwater.

Sec. 31. ANR REPORT ON REGULATORY THRESHOLD FOR PERMITTING STORMWATER RUNOFF FROM IMPERVIOUS SURFACES

(a) On or before January 15, 2016, the Secretary of Natural Resources shall submit to the House Committee on Fish, Wildlife and Water Resources and the Senate Committee on Natural Resources and Energy a report regarding whether and how the State should lower from one acre to one-half acre of impervious surface the regulatory permitting threshold for an operating permit for stormwater runoff from new development, redevelopment, or expansion. The report shall include:

(1) a recommendation as to whether the State should lower the regulatory permitting threshold from one acre to one-half acre of impervious surface;

(2) an estimate of the number of additional development projects that would require an operating permit for stormwater runoff if the regulatory permitting threshold were lowered from one acre to one-half acre of impervious surface;

(3) an estimate of the environmental benefit of reducing the regulatory permitting threshold from one acre to one-half acre of impervious surface;

(4) an estimate of the number of staff that would be needed by the Agency of Natural Resources to effectively implement a stormwater operating permit program with a regulatory permitting threshold of one-half acre of impervious surface; and

(5) a recommendation for regulating construction, redevelopment, or expansion of impervious surface based on a tiered system of acreage, square footage, or other measure.

(b) The definitions provided in 10 V.S.A. § 1264 shall apply to this section.

Sec. 32. STORMWATER MANAGEMENT PRACTICES HANDBOOK

On or before January 1, 2016, the Secretary of Natural Resources shall publish as a handbook a suite of practical and cost-effective best management practices for the control of stormwater runoff from the construction,

redevelopment, or expansion of impervious surface that does not require a permit under 10 V.S.A. § 1264. The best management practices shall address activities that control, mitigate, or eliminate stormwater runoff to waters of the State. The stormwater management practices shall be voluntary and shall not be mandatory.

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

Sec. 33. 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);
- (2) stream gauge data;
- (3) stream mapping, including fluvial erosion hazard maps;
- (4) water quality monitoring or sampling data;
- (5) cumulative stressors on a 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 watershed 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.

\* \* \* Water Quality Funding; Clean Water Fund; Rooms, Meals,  
and Alcohol Tax \* \* \*

Sec. 34. 10 V.S.A. chapter 47, subchapter 7 is added to read:

Subchapter 7. Vermont Clean Water Fund

§ 1387. PURPOSE

The General Assembly establishes in this subchapter a Vermont Clean Water Fund as a mechanism for financing the improvement of water quality in the State. The Clean Water Fund shall be used to:

(1) assist the State in complying with water quality requirements and construction or implementation of water quality projects or programs; and

(2) provide funding to nonprofit organizations, regional associations, and other entities for implementation and administration of community-based water quality programs or projects.

§ 1388. CLEAN WATER FUND

(a) There is created a special fund to be known as the “Clean Water Fund.” Notwithstanding any contrary provisions of 32 V.S.A. chapter 7, subchapter 5:

(1) the Fund shall be administered by the Clean Water Fund Board established under section 1388 of this title;

(2) the Fund shall consist of:

(A) Revenues dedicated for deposit into the Fund by the General Assembly, including:

(i) five percent of the meals, rooms, and alcohol taxes levied pursuant to chapter 225 of this title; and

(ii) those taxes imposed under 23 V.S.A. § 3106(a)(1)(A)(ii)

(B) Other gifts, donations, and impact fees received from any source, public or private, dedicated for deposit into the Fund and approved by the Board. Gifts or donations submitted to the Fund shall be deductible from the tax levied under 32 V.S.A. chapter 151.

(b) The Clean Water Fund Board shall make recommendations on expenditures from the Fund consistent with the following priorities:

(1) to provide funding to programs and projects to address sources of water pollution in waters listed as impaired under 33 U.S.C. § 1313(d) or waters contributing to a listed impairment;

(2) to provide funding to address water pollution identified as a critical source of water quality pollution;

(3) to provide funding to address or repair conditions that increase the risk of flooding or pose a threat to life or property; and

(4) to provide funding to innovative nutrient removal technologies and community-based methane digesters that utilize manure, wastewater, and food residuals to produce energy.

(c) In the first three years of its existence, the Clean Water Fund Board shall prioritize under subsection (b) of this section recommendation of awards

or assistance to municipalities for municipal compliance with the water quality requirements.

(d) Unexpended balances and any earnings shall remain in the Fund from year to year.

§ 1389. CLEAN WATER FUND BOARD

(a) Creation. There is created a Clean Water Fund Board which shall be attached to the Agency of Administration for administrative purposes.

(b) Organization of the Board. The Clean Water Fund Board shall be composed of:

(1) The Secretary of Administration or designee.

(2) The Secretary of Natural Resources or designee.

(3) The Secretary of Agriculture, Food and Markets or designee.

(4) The Secretary of Commerce and Community Development or designee.

(5) The Secretary of Transportation or designee.

(6) Three members of the public or the House of Representatives appointed by the Speaker of the House, each of whom shall be from separate watersheds of the State. At least one of the members appointed under this subdivision shall be a municipal official.

(7) Three members of the public or the Senate appointed by the Committee on Committees, each of whom shall be from separate watersheds of the State. At least one of the members appointed under this subdivision shall be a municipal official.

(8) Two members of the public appointed by the Governor.

(c) Officers; committees; rules. The Clean Water Fund Board shall annually elect a chair from its members. The Clean Water Fund Board may elect additional officers from its members, establish committees or subcommittees, and adopt procedural rules as necessary and appropriate to perform its work.

(d) Member terms. Members of the Clean Water Fund Board appointed by the Governor shall serve initial terms of three years, members appointed by the Speaker of the House shall serve initial terms of two years, and members appointed by the Committee on Committees shall serve initial terms of one year. Thereafter, each of the above appointed members shall serve a term of three years. A vacancy shall be filled by the appointing authority for the remainder of the unexpired term. An appointed member shall not serve more than three consecutive three-year terms.

(e) Compensation. Public members of the Clean Water Fund Board may receive compensation according to 32 V.S.A. § 1010(b).

(f) Powers and duties of the Clean Water Fund Board.

(1) The Clean Water Fund Board shall have the following powers and authority:

(A) to receive proposals from the Secretaries of Agriculture, Food, and Markets, of Commerce and Community Development, of Natural Resources, and of Transportation on the expenditures of the Fund;

(B) to make recommendations to the Secretary of Administration regarding the appropriate allocation of funds from the Clean Water Fund for the purposes of developing the State budget; and

(C) to pursue and accept grants, gifts, donations, or other funding from any public or private source and to administer such grants, gifts, donations, or funding consistent with the terms of the grant, gift, or donation.

(2) The Clean Water Fund Board shall develop:

(A) an annual revenue estimate and proposed budget for the Clean Water Fund;

(B) measures for determining progress and effectiveness of expenditures for clean water restoration efforts; and

(C) the annual Clean Water Investment Report required under section 1389 of this title.

(3) The Clean Water Fund Board shall solicit public comment and consult with organizations interested in improving water quality in Vermont.

(g) The Clean Water Fund Board shall have the administrative, technical, and legal assistance of the Agency of Administration, the Agency of Natural Resources, the Agency of Agriculture, Food and Markets, the Agency of Transportation, and the Agency of Commerce and Community Development for those issues or services within the jurisdiction of the respective agency. The cost of the services provided by agency staff shall be paid from the budget of the agency providing the staff services.

#### § 1390. CLEAN WATER INVESTMENT REPORT

Beginning on January 15, 2017, and annually thereafter, the Clean Water Fund Board shall publish a Clean Water Investment Report. The report shall summarize all investments made by the Clean Water Fund Board and other State agencies for clean water restoration over the past calendar year. The report shall include expenditures from the Clean Water Fund, the General



Fund, the Transportation Fund, and any other State expenditures for clean water restoration, regardless of funding source. The report shall document progress or shortcomings in meeting established indicators for clean water restoration. The report may also provide an overview of additional funding necessary to meet objectives established for clean water restoration and recommendations for additional revenue to meet those restoration objectives. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report required by this section.

Sec. 35. 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):

(i) interest income from non-Vermont state and local obligations;

(ii) dividends or other distributions from any fund to the extent they are attributable to non-Vermont state or local obligations; and

(iii) the amount in excess of \$5,000.00 of State and local income taxes deducted from federal adjusted gross income for the taxable year, but in no case in an amount that will reduce total itemized deductions below the standard deduction allowable to the taxpayer; and

(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) reduced by the total amount of any qualified dividend income: either the first \$5,000.00 of such adjusted net capital gain income; or 40 percent of adjusted net capital gain income from the sale of assets held by the taxpayer for more than three years, except not adjusted net capital gain income from:

(I) the sale of any real estate or portion of real estate used by the taxpayer as a primary or nonprimary residence; or

(II) the sale of depreciable personal property other than farm property and standing timber; or stocks or bonds publicly traded or traded on an exchange, or any other financial instruments; regardless of whether sold by an individual or business;

and provided that the total amount of decrease under this subdivision (21)(B)(ii) shall not exceed 40 percent of federal taxable income; ~~and~~

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

(iv) gifts or donations to special funds of the State.

Sec. 36. 32 V.S.A. § 9241 is amended to read:

§ 9241. IMPOSITION OF TAX

(a) An operator shall collect a tax of nine and one-half 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-half 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 formula:

|                        |                   |
|------------------------|-------------------|
| <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>   | <del>0.06</del>   |
| <del>0.67-0.77</del>   | <del>0.07</del>   |
| <del>0.78-0.88</del>   | <del>0.08</del>   |
| <del>0.89-1.00</del>   | <del>0.09</del>   |
| <u>\$0.01-0.05</u>     | <u>\$0.00</u>     |
| <u>0.06-0.15</u>       | <u>0.01</u>       |
| <u>0.16-0.26</u>       | <u>0.02</u>       |
| <u>0.27-0.36</u>       | <u>0.03</u>       |
| <u>0.37-0.47</u>       | <u>0.04</u>       |
| <u>0.48-0.57</u>       | <u>0.05</u>       |
| <u>0.58-0.68</u>       | <u>0.06</u>       |
| <u>0.69-0.78</u>       | <u>0.07</u>       |

|                  |             |
|------------------|-------------|
| <u>0.79-0.89</u> | <u>0.08</u> |
| <u>0.90-0.99</u> | <u>0.09</u> |

(c) An operator shall collect a tax on each sale of alcoholic beverages at the rate of ~~40~~ 10.5 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 formula:

|                      |                  |
|----------------------|------------------|
| <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>   |
| <u>\$0.01-0.08</u>   | <u>\$0.00</u>    |
| <u>0.09-0.18</u>     | <u>0.01</u>      |
| <u>0.19-0.28</u>     | <u>0.02</u>      |
| <u>0.29-0.38</u>     | <u>0.03</u>      |
| <u>0.39-0.48</u>     | <u>0.04</u>      |
| <u>0.49-0.58</u>     | <u>0.05</u>      |
| <u>0.59-0.68</u>     | <u>0.06</u>      |
| <u>0.69-0.78</u>     | <u>0.07</u>      |
| <u>0.79-0.88</u>     | <u>0.08</u>      |
| <u>0.89-0.99</u>     | <u>0.09</u>      |

Sec. 37. 32 V.S.A. § 9242(c) is amended to read:

(c) A tax of nine and one-half percent of the gross receipts from ~~meals and occupancies, nine and one-half percent of the gross receipts from meals,~~ and 10 and one-half 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. 38. 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 and 95 percent of the meals, rooms, and alcohol 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.

\* \* \* Secretary of Administration; Report on Per Parcel Fee \* \* \*

Sec. 39. SECRETARY OF ADMINISTRATION REPORT ON PER PARCEL WATER QUALITY FEE

(a) On or before January 15, 2016, the Secretary of Administration, after consultation with 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 Agriculture and Forest Products, the Senate Committee on Agriculture, the House Committee on Ways and Means, and the Senate Committee on Finance a recommendation for establishing a fee on parcels of property in the State for the purpose of raising revenue to fund water quality improvement programs in the State. The recommendation shall include:

(1) a tiered per parcel fee that provides for equitable apportionment among all parcel owners, including owners of industrial property, commercial property, residential property, or agricultural lands;

(2) an estimate of the amount of revenue to be generated from the proposed per parcel fee;

(3) a summary of how assessment of the fee will be administered, collected, and enforced; and

(4) a legislative proposal to implement the proposed per parcel fee program.

(b) As used in this section, "parcel" shall have the same meaning as defined in section 4152 of this title.

\* \* \* Gas Tax; Water Quality \* \* \*

Sec. 40. 32 V.S.A. § 3106 is amended to read:

§ 3106. IMPOSITION, RATE, AND PAYMENT OF TAX

(a)(1) Except for sales of motor fuels between distributors licensed in this State, which sales shall be exempt from the taxes and assessments authorized under this section, unless exempt under the laws of the United States at the time of filing the report required by section 3108 of this title, each distributor shall pay to the Commissioner:

(A)(i) a tax of \$0.121 upon each gallon of motor fuel sold by the distributor for deposit in the Transportation Fund under 19 V.S.A. § 11; and

(ii) a tax of \$0.02 upon each gallon of motor fuel sold by the distributor, for deposit in the Clean Water Fund under 10 V.S.A. § 1388; and

(B) the following assessments, which shall be levied on the tax-adjusted retail price of gasoline as defined herein:

(i) a motor fuel transportation infrastructure assessment in the amount of two percent of the tax-adjusted retail price upon each gallon of motor fuel sold by the distributor; and

(ii) a fuel tax assessment, which shall be used exclusively for transportation purposes and not be transferred from the Transportation Fund, that is the greater of:

(I) \$0.134 per gallon; or

(II) four percent of the tax-adjusted retail price or \$0.18 per gallon, whichever is less, upon each gallon of motor fuel sold by the distributor.

\* \* \*

Sec. 41. 19 V.S.A. § 11 is amended to read:

#### § 11. TRANSPORTATION FUND

The Transportation Fund shall comprise the following:

(1) all taxes, penalties, and fees received by the Commissioner of Motor Vehicles except those relating to motorboats imposed under 23 V.S.A. chapter 29 which shall be expended pursuant to 23 V.S.A. § 3319;

(2) the revenue derived from the taxes on motor fuel as provided for by Title 23 except those taxes imposed under 23 V.S.A. § 3106(a)(1)(A)(ii);

\* \* \*

\* \* \* Department of Environmental Conservation Water Quality Fees \* \* \*

Sec. 42. 3 V.S.A. § 2822 is amended to read:

#### § 2822. BUDGET AND REPORT; POWERS

\* \* \*

(i) The Secretary shall not process an application for which the applicable fee has not been paid unless the Secretary specifies that the fee may be paid at a different time or unless the person applying for the permit is exempt from the permit fee requirements pursuant to 32 V.S.A. § 710. ~~In addition, the persons who are exempt under 32 V.S.A. § 710 are also exempt from the application fees for stormwater operating permits specified in subdivisions (j)(2)(A)(iii)(I)~~

~~and (II) of this section if they otherwise meet the requirements of 32 V.S.A. § 710. Municipalities shall be exempt from the payment of fees under this section except for those fees prescribed in subdivisions (j)(1), (2), (7), (8), (14), and (15) of this section for which a municipality may recover its costs by charging a user fee to those who use the permitted services. Municipalities shall pay fees prescribed in subdivisions (j)(2), (10), (11), and (26), except that a municipality shall also be exempt from those fees for orphan stormwater systems prescribed in subdivisions (j)(2)(A)(iii) and (2)(B)(iv)(I) or (II) of this section when the municipality agrees to become an applicant or co-applicant for an orphan stormwater system under 10 V.S.A. § 1264e for which a municipality has assumed full legal responsibility under 10 V.S.A. § 1264.~~

(j) In accordance with subsection (i) of this section, the following fees are established for permits, licenses, certifications, approvals, registrations, orders, and other actions taken by the Agency of Natural Resources.

\* \* \*

(2) For discharge permits issued under 10 V.S.A. chapter 47 and orders issued under 10 V.S.A. § 1272, an administrative processing fee of ~~\$120.00~~ \$240.00 shall be paid at the time of application for a discharge permit in addition to any application review fee and any annual operating fee, except for permit applications under subdivisions (2)(A)(iii)(III) and (V) of this subsection:

(A) Application review fee.

(i) Municipal, industrial, noncontact cooling water, and thermal discharges.

|  |  |
|--|--|
| (I) Individual permit: original application; amendment for increased flows; amendment for change in treatment process; | <del>\$0.0023</del> <u>\$0.003</u> per gallon design flow; minimum |
|  | <del>\$50.00</del> <u>\$100.00</u> per outfall; maximum            |
|  | 30,000.00 per application.   |
| (II) Renewal, transfer, or minor amendment of individual permit;   | <del>\$0.00</del> <u>\$0.002</u> per gallon design flow; minimum   |
|  | <u>\$50.00</u> per outfall;  |
|  | <u>maximum \$5,000.00</u> per                                      |

|  |  |
|--|--|
|  | <u>application.</u>  |
| (III) General permit-;   | \$0.00.  |
| (ii) Pretreatment discharges.  |  |
| (I) Individual permit: original application; amendment for increased flows; amendment for change in treatment process-;  | <del>\$0.12</del> <u>\$0.20</u> per gallon design flow; minimum <del>\$50.00</del> <u>\$100.00</u> per outfall.            |
| (II) Renewal, transfer, or minor amendment of individual permit-;  | <del>\$0.00</del> <u>\$0.002 per gallon design flow; minimum \$50.00 per outfall.</u>                                      |
| (iii) Stormwater discharges.   |  |
| (I) Individual operating permit or application to operate under general operating permit for collected stormwater runoff which is discharged to Class B waters: original application; amendment for increased flows; amendment for change in treatment process-; | <del>\$430.00</del> <u>\$860.00</u> per acre impervious area; minimum <del>\$220.00</del> <u>\$440.00</u> per application. |
| (II) Individual operating permit or application to operate under general operating permit for collected stormwater runoff which is discharged to Class A waters; original application; amendment for increased flows; amendment for change in treatment process. | \$1,400.00 per acre impervious area; minimum \$1,400.00 per application.   |
| (III) Individual permit or   |  |



application to operate under  
general permit for construction  
activities; original application;  
amendment for increased acreage.

(aa) Projects with low risk to waters of the State-; ~~\$50.00~~ five acres or less: \$100.00 per project; original application.

(bb) Projects with low risk to waters of the State; greater than five acres: \$220.00 per project.

(cc) ~~Projects with moderate risk to waters of the State-;~~ ~~\$360.00;~~ five acres or less: \$480.00 per project original application.

~~(ee) Projects that require an individual permit.~~ ~~\$720.00 per project original application.~~

(dd) Projects with moderate risk to waters of the State; greater than five acres: \$640.00.

(ee) Projects that require an individual permit; ten acres or less: \$1,200.00.

(ff) Projects that require an individual permit; greater than 10 acres: \$1,800.00.

(IV) Individual permit or application to operate under general permit for stormwater runoff associated with industrial ~~\$220.00~~ \$440.00 per facility.

activities with specified SIC codes; original application; amendment for change in activities-;

(V) Individual permit or application to operate under ~~\$1,200.00~~ \$2,400.00 per system.

general permit for stormwater runoff associated with municipal separate storm sewer systems; original application; amendment for change in activities-;

(VI) Individual operating permit or application to operate under a general permit for a residually designated stormwater discharge original application; amendment; for increased flows amendment; for change in treatment process.

(aa) For discharges to Class B water; ~~\$430.00~~ \$860.00 per acre of impervious area, minimum ~~\$220.00~~ \$280.00.

(bb) For discharges to Class A water; ~~\$1,400.00~~ \$1,700.00 per acre of impervious area, minimum ~~\$1,400.00~~ \$1,700.00.

(VII) Renewal, transfer, or minor amendment of individual permit ~~or approval under general permit-;~~ \$0.00.

(VIII) Application for coverage under the municipal roads stormwater general permit: \$400.00 per application.

(IX) Application for coverage under the State roads stormwater general permit: \$1,200.00.

\* \* \*

(B) Annual operating fee.

(i) Industrial, noncontact cooling ~~\$0.004~~ \$0.0015 per gallon

|  |  |
|--|--|
| water and thermal discharges;  | design capacity. <del>\$150.00</del><br><u>\$200.00</u> minimum;<br>maximum \$210,000.00.  |
| (ii) Municipal;  | \$0.003 per gallon of <del>actual</del><br><u>design</u> flows. <del>\$150.00</del><br><u>\$200.00</u> minimum;<br>maximum \$12,500.00.  |
| (iii) Pretreatment discharges;   | <del>\$0.0385</del> <u>\$0.04</u> per gallon<br>design capacity. <del>\$150.00</del><br><u>\$200.00</u> minimum;<br>maximum \$27,500.00. |
| (iv) Stormwater.   |  |
| (I) Individual operating permit<br>or approval under general operating<br>permit for collected stormwater<br>runoff which is discharged to<br>class A waters;  | <del>\$255.00</del> <u>\$310.00</u> per acre<br>impervious area; <del>\$235.00</del><br><u>\$310.00</u> minimum.                         |
| (II) Individual operating permit<br>or approval under general operating<br>permit for collected stormwater<br>runoff which is discharged to<br>Class B waters; | <del>\$80.00</del> <u>\$160.00</u> per acre<br>impervious area; <del>\$80.00</del><br><u>\$160.00</u> minimum.                           |
| (III) Individual permit or<br>approval under general permit<br>for stormwater runoff from<br>industrial facilities with<br>specified SIC codes;                | <del>\$80.00</del> <u>\$160.00</u><br>per facility.  |

(IV) Individual permit or application to operate under general permit for stormwater runoff associated with municipal separate storm sewer systems; ~~\$80.00 per system~~ \$10.00 per acre of impervious surface within the municipality; annually.

(V) Individual permit or approval under general permit for residually designated stormwater discharges.

(aa) For discharges to Class A water; ~~\$255.00~~ \$310.00 per acre of impervious area, minimum ~~\$255.00~~ \$310.00.

(bb) For discharges to Class B water; ~~\$80.00~~ \$160.00 per acre of impervious area, minimum ~~\$80.00~~ \$160.00.

(VI) Application to operate under a general permit for stormwater runoff associated with municipal roads: \$2,000.00 per authorization annually.

(VII) Application to operate under a general permit for stormwater runoff associated with State roads: \$90,000.00 per authorization annually.

\* \* \*

(11) For stream alteration and flood hazard area permits issued under 10 V.S.A. ~~chapter~~ chapters 41 and 32: \$225.00 per application.

(A) Stream alteration; individual permit: \$350.00.

(B) Stream alteration; general permit; reporting category: \$ 200.00.

(C) Stream alteration; individual permit; municipal bridge, culvert, and unimproved property protection: \$350.00.

(D) Stream alteration; general permit; municipal bridge, culvert, and unimproved property protection: \$200.00.

(E) Stream alteration; Agency of Transportation reviews; bridge, culvert, and high risk projects: \$350.00.

(F) Flood hazard area; individual permit; State facilities; hydraulic and hydrologic modeling required: \$350.00.

(G) Flood hazard area; individual permit; State facilities; hydraulic and hydrologic modeling not required: \$200.00.

(H) Flood hazard area; municipal reviews; reviews requiring hydraulic and hydrologic modeling, compensatory storage volumetric analysis, or river corridor equilibrium: \$350.00.

(I) Flood hazard area; municipal review; projects not requiring hydraulic or hydrologic modeling: \$200.00.

(J) River corridor; major map amendments: \$350.00.

\* \* \*

(14) For certification of sewage treatment plant operators issued under 10 V.S.A. chapter 47:

(A) original application: ~~\$110.00~~ \$125.00.

(B) renewal application: ~~\$110.00~~ \$125.00.

(15) For sludge or septage facility certifications issued under 10 V.S.A. chapter 159:

(A) land application sites; facilities that further reduce pathogens; disposal facilities: ~~\$950.00~~ \$1,000.00 per application.

(B) all other types of facilities: ~~\$110.00~~ \$125.00 per application.

\* \* \*

(26) For individual conditional use determinations, for individual wetland permits, for general conditional use determinations issued under 10 V.S.A. § 1272, or for wetland authorizations issued under a general permit, an administrative processing fee assessed under subdivision (2) of this subsection (j) and an application fee of:

(A) \$0.75 per square foot of proposed impact to Class I or II wetlands;

(B) \$0.25 per square foot of proposed impact to Class I or II wetland buffers;

(C) maximum fee, for the conversion of Class II wetlands or wetland buffers to cropland use, \$200.00 per application. ~~For purposes of As used in~~ this subdivision, "cropland" means land that is used for the production of agricultural crops, including row crops, fibrous plants, pasture, fruit-bearing bushes, trees, or vines and the production of Christmas trees;

(D) \$0.25 per square foot of proposed impact to Class I or II wetlands or Class I or II wetland buffer for utility line, pipeline, and ski trail projects when the proposed impact is limited to clearing forested wetlands in a corridor and maintaining a cleared condition in that corridor for the project life;

(E) \$1.50 per square foot of impact to Class I or II wetlands when the permit is sought after the impact has taken place;

(F) \$100.00 per revision to an application for an individual wetland permit or authorization under a general permit when the supplement is due to a change to the project that was not requested by the Secretary; and

(G) minimum fee, \$50.00 per application.

\* \* \*

(33) \$10.00 per 1000 gallons based on the rated capacity of the tank being pumped rounded to the nearest 1000 gallon.

\* \* \*

Sec. 43. 32 V.S.A. § 710 is amended to read:

§ 710. PAYMENT OF STATE AGENCY FEES

(a) Notwithstanding any other provision of law, the Agency of Transportation, any cooperating municipalities, and their contractors or agents shall be exempt from the payment of fee charges for reviews, inspections, or nonoperating permits issued by the Department of Public Safety, a District Environmental Commission, and the Agency of Natural Resources for any projects undertaken by or for the Agency and any cooperating municipalities for which all or a portion of the funds are authorized by a legislatively approved transportation construction, rehabilitation, or paving program within a general appropriation act introduced pursuant to section 701 of this title except for those fees established under 3 V.S.A. § 2822(j)(2)(A)(iii), (j)(10), (j)(11), and (j)(26).

(b) Notwithstanding any other provision of law, no fees shall be charged for reviews, inspections, or nonoperating permits issued by the Department of Public Safety, a District Environmental Commission, and the Agency of Natural Resources for:

(1) Any project undertaken by the Department of Buildings and General Services, the Agency of Natural Resources or the Agency of Transportation which is authorized or funded in whole or in part by the capital construction act introduced pursuant to section 701a of this title except for those fees established under 3 V.S.A. § 2822(j)(2)(A)(iii), (j)(10), (j)(11), and (j)(26).

(2) Any project undertaken by a municipality, which is funded in whole or in part by a grant or loan from the Agency of Natural Resources or the Agency of Transportation financed by an appropriation of a capital construction act introduced pursuant to section 701a of this title except for those fees established under 3 V.S.A. § 2822(j)(2)(A)(iii), (j)(7)(A) and (B),

(j)(10), (j)(11), and (j)(26). However, all such fees shall be paid for reviews, inspections, or permits required by municipal solid waste facilities developed by a solid waste district which serves, or is expected to serve, in whole or in part, parties located outside its own district boundaries pursuant to 10 V.S.A. chapter 159.

\* \* \* Wastewater Treatment Plants; Financial Assistance for  
Phosphorus Reduction \* \* \*

Sec. 44. 10 V.S.A. § 1266a is amended to read:

§ 1266a. DISCHARGES OF PHOSPHORUS

(a) No person directly discharging into the drainage basins of Lake Champlain or Lake Memphremagog shall discharge any waste that contains a phosphorus concentration in excess of 0.80 milligrams per liter on a monthly average basis. Discharges of less than 200,000 gallons per day, permitted on or before July 1, 1991, shall not be subject to the requirements of this subsection. Discharges from a municipally owned aerated lagoon type secondary sewage treatment plant in the Lake Memphremagog drainage basin, permitted on or before July 1, 1991 shall not be subject to the requirements of this subsection unless the plant is modified to use a technology other than aerated lagoons.

(b) Notwithstanding any provision of subsection (a) of this section to the contrary, the Secretary shall establish effluent phosphorus wasteload allocations or concentration limits within any drainage basin in Vermont, as needed to achieve wasteload allocations in a total maximum daily load document approved by the U.S. Environmental Protection Agency, or as needed to attain compliance with water quality standards adopted by the Secretary pursuant to chapter 47 of this title.

~~(c) The Secretary of Natural Resources shall establish a schedule for municipalities that requires compliance with this section at a rate that corresponds to the rate at which funds are provided under subsection 1625(e) of this title. To the extent that funds are not provided to municipalities eligible under that subsection, municipal compliance with this section shall not be required. [Repealed.]~~

Sec. 45. 10 V.S.A. § 1625 is amended to read:

§ 1625. AWARDS FOR POLLUTION ABATEMENT PROJECTS TO  
ABATE DRY WEATHER SEWAGE FLOWS

(a) When the Department finds that a proposed water pollution abatement project is necessary to maintain water quality standards during dry weather sewage flows, and that the proposed type, kind, quality, size, and estimated

cost, including operation cost and sewage disposal charges, of the project are suitable for abatement of pollution, and the project or the prescribed project phases are necessary to meet the intent of the water quality classifications established by the Secretary or by statute under chapter 47 of this title, the Department may award to municipalities a State assistance grant of up to 25 percent of the eligible project cost, provided that in no case shall the total of the State and federal grants exceed 90 percent of the eligible project costs:

(1) except that the 90 percent limitation shall not apply when the municipality provides, as their local share, federal funds allocated to them for the purpose of matching other federal grant programs having a matching requirement; and

(2) except that the total of state and federal grants issued under P.L. 92-500 section 202(a)(2) may equal up to 95 percent of the eligible costs for innovative or alternative wastewater treatment processes and techniques.

(b) In carrying out the purposes of this subchapter, the Department shall define the purpose and scope of an eligible project, including a determination of the area to be served, type of treatment, effluent limitations, eligible construction costs, cost accounting procedures and methods and other such project construction, operation and fiscal elements necessary to meet federal aid requirements. The Department shall, as a part of the administration of this grant program, encourage municipalities to undertake capital development planning and to establish water and sewer charges along public utility concepts.

(c) Any municipality having proceeded with construction of facilities with a State grant of 25 percent since July 1, 1984 shall be eligible for an increase in the State grant to a total of 35 percent of the eligible project costs.

(d) The Department may award a State assistance grant of up to 50 percent of the eligible costs of an approved pollution abatement project or a portion thereof not eligible for federal financial assistance in a municipality that is certified by the Secretary of Commerce and Community Development to be within the designated job development zone. To achieve the objectives of chapter 29, subchapter 2 of this title, the eligibility and priority provisions of this chapter do not apply to municipalities within a designated job development zone.

~~(e) If the Department finds that a proposed municipal water pollution control project is necessary to reduce effluent phosphorus concentration or mass loading to the level required in section 1266a of this title, the Department shall award to the municipality, subject to the availability of funds, a state assistance grant. Such grants shall be for 100 percent of the eligible project~~



~~cost. This funding shall not be available for phosphorus removal projects where the effluent concentration must be reduced in order to maintain a previously permitted mass loading of phosphorus.~~

\* \* \* Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont \* \* \*

Sec. 46. 10 V.S.A. § 2622 is amended to read:

§ 2622. RULES; HARVESTING TIMBER; FORESTS; ACCEPTABLE MANAGEMENT PRACTICES FOR MAINTAINING WATER QUALITY

(a) Silvicultural practices. The ~~commissioner~~ Commissioner shall adopt rules to establish methods by which the harvest and utilization of timber in private and public ~~forest land~~ forestland will be consistent with continuous forest growth, including reforestation, will prevent wasteful and dangerous forestry practices, will regulate heavy cutting, will encourage good forestry management, will enable and assist landowners to practice good forestry management, and will conserve the natural resources consistent with the purposes and policies of this chapter, giving due consideration to the need to assure continuous supplies of forest products and to the rights of the owner or operator of the land. Such rules adopted under this subsection shall be advisory, and not mandatory except that the rules adopted under section 2625 of this title for the regulation of heavy cutting shall be mandatory as shall other rules specifically authorized to be mandatory.

(b) Acceptable management practices. On or before March 1, 2016, the Commissioner shall revise by rule the acceptable management practices for maintaining water quality on logging jobs in Vermont. The revised acceptable management practices shall ensure that all logging operations, on both public and private forestland, are designed to: prevent or minimize discharges of sediment, petroleum products, and woody debris (logging slash) from entering streams and other bodies of water; protect aquatic habitat and aquatic wildlife; and prevent erosion and maintain natural water temperature. The purpose of the acceptable management practices is to provide a guide for loggers, foresters, and landowners to design logging operations to comply with the Vermont Water Quality Standards and minimize the potential for a discharge from logging operations in Vermont in accordance with section 1259 of this title.

Sec. 47. DEPARTMENT OF FORESTS, PARKS AND RECREATION  
REPORT; ACCEPTABLE MANAGEMENT PRACTICES;  
MAPLE SYRUP PRODUCTION UNDER USE VALUE

## APPRAISAL

On or before March 1, 2016, the Commissioner of Forests, Parks and Recreation shall submit to the House Committee on Fish, Wildlife and Water Resources, the Senate Committee on Natural Resources and Energy, and the House Committee on Natural Resources and Energy a recommendation and supporting basis as to whether:

(1) the acceptable management practices for maintaining water quality on logging jobs in Vermont should be mandatory for all logging operations on public and private forestland; and

(2) whether maple syrup production on forestland should be required to enroll in the use value appraisal program under 32 V.S.A. chapter 124 as managed forestland and not agricultural land.

Sec. 48. 10 V.S.A. § 1259(f) is amended to read:

(f) The provisions of subsections (c), (d), and (e) of this section shall not regulate accepted agricultural ~~or silvicultural~~ practices, as ~~such are defined adopted by rule by the secretary of agriculture, food and markets and the commissioner of forests, parks and recreation, respectively, after an opportunity for a public hearing~~ Secretary of Agriculture, Food and Markets, or the acceptable management practices for maintaining water quality on logging jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation; nor shall these provisions regulate discharges from concentrated animal feeding operations that require a permit under section 1263 of this title; nor shall those provisions prohibit stormwater runoff or the discharge of nonpolluting wastes, as defined by the ~~secretary~~ Secretary.

Sec. 49. 24 V.S.A. § 4413(d) is amended to read:

(d) A bylaw under this chapter shall not regulate accepted agricultural ~~and silvicultural~~ practices, including the construction of farm structures, as those practices are defined by the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets or ~~the commissioner of forests, parks and recreation~~ acceptable management practices for maintaining water quality on logging jobs in Vermont as adopted by the Commissioner of Forests, Parks and Recreation, respectively, under 10 V.S.A. §§ ~~1021(f) and 1259(f)~~ § 2622 and 6 V.S.A. § 4810.

\* \* \*

\* \* \* Eligibility for Ecosystem Restoration Program Assistance \* \* \*

Sec. 50. ECOSYSTEM RESTORATION PROGRAM; CLEAN WATER FUND; ELIGIBILITY FOR FINANCIAL ASSISTANCE

It is the policy of the State of Vermont that all municipal separate storm sewer system (MS4) communities in the State shall be eligible for grants and other financial assistance from the Agency of Natural Resources' Ecosystem Restoration Program, the Clean Water Fund, or any other State water quality financing program. A project or proposal that is the subject of an application for a grant or other assistance from the Agency of Natural Resources shall not be denied solely on the basis that the project or proposal may be construed as a regulatory requirement of the MS4 permit program.

\* \* \* Sunset of Rooms, Meals, and Alcohol Tax \* \* \*

Sec. 51. 32 V.S.A. § 9241 is amended to read:

§ 9241. IMPOSITION OF TAX

(a) An operator shall collect a tax of nine ~~and one-half~~ 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-half~~ 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 formula:

|                        |                   |
|------------------------|-------------------|
| <del>\$0.01-0.05</del> | <del>\$0.00</del> |
| <del>0.06-0.15</del>   | <del>0.01</del>   |
| <del>0.16-0.26</del>   | <del>0.02</del>   |
| <del>0.27-0.36</del>   | <del>0.03</del>   |
| <del>0.37-0.47</del>   | <del>0.04</del>   |
| <del>0.48-0.57</del>   | <del>0.05</del>   |
| <del>0.58-0.68</del>   | <del>0.06</del>   |
| <del>0.69-0.78</del>   | <del>0.07</del>   |
| <del>0.79-0.89</del>   | <del>0.08</del>   |
| <del>0.90-0.99</del>   | <del>0.09</del>   |
| <u>\$0.01-0.11</u>     | <u>\$0.01</u>     |
| <u>0.12-0.22</u>       | <u>0.02</u>       |
| <u>0.23-0.33</u>       | <u>0.03</u>       |

|                  |             |
|------------------|-------------|
| <u>0.34-0.44</u> | <u>0.04</u> |
| <u>0.45-0.55</u> | <u>0.05</u> |
| <u>0.56-0.66</u> | <u>0.06</u> |
| <u>0.67-0.77</u> | <u>0.07</u> |
| <u>0.78-0.88</u> | <u>0.08</u> |
| <u>0.89-1.00</u> | <u>0.09</u> |

(c) An operator shall collect a tax on each sale of alcoholic beverages at the rate of ~~10.5~~ 10 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 formula:

|                        |                   |
|------------------------|-------------------|
| <del>\$0.01-0.08</del> | <del>\$0.00</del> |
| <del>0.09-0.18</del>   | <del>0.01</del>   |
| <del>0.19-0.28</del>   | <del>0.02</del>   |
| <del>0.29-0.38</del>   | <del>0.03</del>   |
| <del>0.39-0.48</del>   | <del>0.04</del>   |
| <del>0.49-0.58</del>   | <del>0.05</del>   |
| <del>0.59-0.68</del>   | <del>0.06</del>   |
| <del>0.69-0.78</del>   | <del>0.07</del>   |
| <del>0.79-0.88</del>   | <del>0.08</del>   |
| <del>0.89-0.99</del>   | <del>0.09</del>   |
| <u>\$0.01-0.14</u>     | <u>\$0.01</u>     |
| <u>0.15-0.24</u>       | <u>0.02</u>       |
| <u>0.25-0.34</u>       | <u>0.03</u>       |
| <u>0.35-0.44</u>       | <u>0.04</u>       |
| <u>0.45-0.54</u>       | <u>0.05</u>       |
| <u>0.55-0.64</u>       | <u>0.06</u>       |
| <u>0.65-0.74</u>       | <u>0.07</u>       |
| <u>0.75-0.84</u>       | <u>0.08</u>       |
| <u>0.85-0.94</u>       | <u>0.09</u>       |
| <u>0.95-1.00</u>       | <u>0.10</u>       |

Sec. 52. 32 V.S.A. § 9242(c) is amended to read:

(c) A tax of nine ~~and one-half~~ percent of the gross receipts from ~~meals and~~ occupancies, nine ~~and one-half~~ percent of the gross receipts from meals, and 10 ~~and one-half~~ 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. 53. 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) ~~95 percent of the meals~~ Meals, rooms, and alcohol taxes levied pursuant to chapter 225 of this title;
- (8) [Repealed.]
- (9) Revenues from the Racing Fund consistent with 31 V.S.A. § ~~611~~ 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.

Sec. 54. CLEAN WATER FUND; REPEAL OF DEPOSIT OF ROOMS,  
MEALS, AND ALCOHOL TAX

10 V.S.A. § 1388(a)(2)(A)(i) (Clean Water Fund; rooms, meals, and alcohol tax) shall be repealed on July 1, 2018.

Sec. 55. EFFECTIVE DATES

This act shall take effect on July 1, 2015, except that:

(1) Sec. 3 (small farm certification) shall take effect on July 1, 2017;

(2) 6 V.S.A. § 4988(b) of Sec. 16 shall take effect 45 days after the effective date of rules adopted under 6 V.S.A. § 4988(a).

(3) In Sec. 30, the permit requirements under 10 V.S.A. § 1264(h)(2) for discharges of regulated stormwater to Lake Champlain or to a water that contributes to the impairment of Lake Champlain shall take effect on October 1, 2015.

(4) Sec. 34 (Clean Water Fund) shall take effect on passage; and

(5) Secs. 51-54 (repeal of increase in rooms, meals, and alcohol tax) shall take effect July 1, 2018.

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

**Rep. Partridge of Windham**, for the Committee on **Agriculture & Forest Products**, recommends the report by the Committee on **Fish, Wildlife & Water Resources** be amended as follows:

First: By striking out Sec. 1 in its entirety and inserting in lieu thereof the following:

Sec. 1. FINDINGS AND PURPOSE; AGRICULTURAL WATER QUALITY

(a) Findings. The General Assembly finds that:

(1) The U.S. Environmental Protection Agency (EPA) has worked with the State of Vermont to improve the water quality in the Lake Champlain

Basin and the waters of Vermont; however, insufficient progress has been made.

(2) Vermont has recently received approximately \$60,000,000.00 from federal sources to be used over the next five years. These funds are dedicated to improving the water quality of the Lake Champlain Basin area.

(3) Although Accepted Agricultural Practices (AAPs) were adopted in 1995, there is a continued need for increased awareness in the small farms community about the AAPs, and the Agency of Agriculture, Food and Markets should enlist partners to educate small farm operators concerning these requirements.

(4) There are 27 Large Farm Operations (LFOs) and 139 Medium Farm Operations (MFOs) that have been identified to date. Accurate data do not exist to identify the number of Small Farm Operations (SFOs) in Vermont, but estimates indicate approximately 6,500 SFOs exist in the State.

(5) Vermont agriculture has been identified as contributing 40 percent of the phosphorus loading to Lake Champlain. Although 60 percent of phosphorus loading to Lake Champlain comes from other sources, agricultural enterprises account for the largest single source. The other sources of phosphorus loading to Lake Champlain are stream instability at 22 percent, forestlands at 15 percent, developed lands and paved roads at 14 percent, unpaved roads at six percent, and wastewater treatment facilities at three percent.

(6) If EPA fails to accept Vermont's water quality implementation plan, much of the responsibility and cost for meeting a new Total Maximum Daily Load (TDML) plan will likely fall on municipalities and their wastewater treatment plants, which contribute only three percent to the phosphorus load in Lake Champlain. More effective leverage points are agricultural runoff and other nonpoint sources, and these should be an integral part of Vermont's water quality plan. Addressing agriculture's contribution to the problem will subject Vermont's farmers to additional requirements under the AAPs and other agricultural water quality rules.

(7) The Vermont agricultural community recognizes that it has a role to play in continuing 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.

(8) Many drivers impact water quality in the State, including agriculture, stormwater management, river channel stability, forest management, watershed and wetland protection and restoration, shoreland management, and internal

phosphorus loading. In an effort to understand more fully the interconnections between these drivers and their relative impacts on water quality in the State, a six-month systems mapping process could lead to the identification of key leverage points, which, if addressed, could lead to high impact change as required in Vermont's impending TMDL agreement with EPA.

(9) Numerous stakeholder organizations have been working for many years to improve water quality in Vermont's watersheds, each in their own way. Given the complexity of the challenge we face in improving water quality as well as the complexity of natural systems in general, the General Assembly recognizes that a collaborative approach will be critical to addressing these challenges.

(b) Purpose. It is the purpose of this act to:

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

(2) authorize and prioritize proactive measures designed to implement and meet the impending Total Maximum Daily Load (TMDL) plan for Lake Champlain, meet impending TMDL plans for other State waters, and improve water quality across the State;

(3) identify and prioritize cost-effective strategies for the State to address water quality issues; and

(4) engage more municipalities, agricultural operations, businesses, and other interested parties as part of the State's efforts to improve the quality of the waters of the State.

(5) provide mechanisms, staffing, and sustainable financing necessary for State waters to achieve and maintain compliance with the Vermont water quality standards.

Second: By striking out Sec. 3 in its entirety and inserting in lieu thereof the following:

Sec. 3. 6 V.S.A. subchapter 5a is added to read:

Subchapter 5a. Small Farm Certification

§ 4871. SMALL FARM CERTIFICATION

(a) Small farm definition. As used in this section, "small farm" means a parcel or parcels of land:

(1) on which 10 or more acres are used for farming;

(2) that house no more than the number of animals specified under section 4857 of this title; and



(3)(A) that house at least the number of adult animals that the Secretary of Agriculture, Food and Markets designates by rule under the Accepted Agricultural Practices; or

(B) are used for the preparation, tilling, fertilization, planting, protection, irrigation, and harvesting of crops for sale.

(b) Required small farm certification. A person who owns or operates a small farm shall, on a form provided by the Secretary, certify compliance with the accepted agricultural practices. The Secretary of Agriculture, Food and Markets shall establish the requirements and manner of certification of compliance with the accepted agricultural practices, provided that the Secretary shall require an owner or operator of a farm to submit a certification of compliance with the accepted agricultural practices at least once every five years.

(c) Certification due to water quality threat. The Secretary may require any person who owns or operates a farm to submit a small farm certification under this section if the person is not required to obtain a permit or submit a certification under this chapter and the Secretary determines that the farm poses a threat of discharge to a water of the State or presents a threat of contamination to groundwater.

(d) Rulemaking; small farm certification. The Secretary of Agriculture, Food and Markets shall adopt by rule requirements for a small farm 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.

(e) Small farm inspection. The Secretary may inspect a small farm in the State at any time for the purposes of assessing compliance by the small farm with the accepted agricultural practices and determining consistency with a certification of compliance submitted by the person who owns or operates the small farm. The Secretary may prioritize inspections of small farms in the State based on identified water quality issues posed by a small farm.

(f) Notice of change of ownership or change of lease. A person who owns or leases a small farm shall notify the Secretary of a change of ownership or change of lessee of a small farm within 30 days of the change. The notification shall include the certification of small farm compliance required under subsection (a) of this section.

(g)(1) Identification; ranking of water quality needs. During an inspection of a small farm under 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 and

any applicable State water quality permit or certification required under this chapter.

(2) Notwithstanding the priority system established under section 4823 of this title, the Secretary annually shall establish a priority ranking system for small farms according to the water quality benefit associated with the capital, structural, or technical improvements identified as needed by the Secretary during an inspection of the farm.

(3) Notwithstanding the priority system established by subdivision (2) of this subsection, the Secretary may provide financial assistance to a small farm at any time, regardless of the priority ranking system, if the Secretary determines that the farm needs assistance to address a water quality issue that requires immediate abatement.

Third: By striking out Sec. 4 in its entirety and inserting in lieu thereof the following:

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

§ 4810a. ACCEPTABLE AGRICULTURAL PRACTICES; REVISION

(a) On or before July 1, 2016, the Secretary of Agriculture, Food, and Markets shall amend the accepted agricultural practices in order to improve water quality in the State, assure practices on all farms eliminate adverse impacts to water quality, and implement the small farm certification program required by section 4858a of this title. At a minimum, the amendments to the accepted agricultural practices shall:

(1) Specify the number and type of animals housed on a farm that are subject to the small farm certification requirements under section 4871 of this title. The Secretary shall establish the number and type of animals under this subdivision based on the potential impact of the number and type of animals on the quality of the waters of the State.

(2) Specify those farms that:

(A) are required to comply with the small certification requirements under section 4871 of this title; and

(B) shall be subject to the accepted agricultural practices, but shall not be required to comply with small farm certification requirements under section 4871 of this title.

(3)(A) Prohibit a farm from stacking manure, storing fertilizer, or storing other nutrients on the farm:

(i) in a manner and location that presents a threat of discharge to a water of the State or presents a threat of contamination to groundwater; or

(ii) on lands in a floodway or otherwise subject to regular flooding.

(B) In no case shall manure stacking sites, fertilizer storage, or other nutrient storage be located within 100 feet of a private well or within 100 feet of a water of the State.

(4) Require the construction and management of barnyards, waste management systems, animal holding areas, and production areas in a manner to prevent runoff of waste to a surface water, to groundwater, or across property boundaries.

(5) Establish standards for nutrient management on farms, including required nutrient management planning on all farms that manage agricultural wastes.

(6) Require cropland on the farm to be 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.

(7) Require a farm to comply with standards established by the Secretary for maintaining a vegetative buffer zone of perennial vegetation between annual croplands and the top of the bank of an adjoining water of the State. At a minimum the vegetative buffer standards established by the Secretary shall prohibit the application of manure on the farm within 25 feet of the top of the bank of an adjoining water of the State or within 10 feet of a ditch.

(8) Prohibit the construction or siting of a farm structure for the storage of manure, fertilizer, or pesticide storage within a floodway area identified on a National Flood Insurance Program Map on file with a town clerk.

(9) Regulate, in a manner consistent with the Agency of Natural Resources' flood hazard area and river corridor rules, the construction or siting of a farm structure or the storage of manure, fertilizer, or pesticides storage within a river corridor designated by the Secretary of Natural Resources.

(10) Establish standards for the exclusion of livestock from the waters of the State to prevent erosion and adverse water quality impacts.

(b) On or before January 15, 2018, the Secretary of Agriculture, Food and Markets shall amend the accepted agricultural practices in order to include requirements for reducing nutrient contribution to waters of the State from subsurface tile drainage. Upon adoption of requirements for subsurface tile drainage, the Secretary may require an existing subsurface tile drain to comply

with the requirements of the AAPs for subsurface tile drainage upon a determination that compliance is necessary to reduce adverse impacts to water quality from the subsurface tile drain.

Fourth: In Sec. 6, 6 V.S.A. § 4803, by striking out subsection (a) in its entirety and inserting in lieu thereof the following:

(a) There is created an Agricultural Water Quality Special Fund to be administered by the Secretary of Agriculture, Food and Markets. The Fund shall consist of revenues dedicated for deposit to the Fund by the General Assembly.

Fifth: By striking out Secs. 7, 8, and 9 (LFO, MFO, and commercial feed fees) in their entirety and inserting in lieu thereof the following:

Sec. 7. [Deleted.]

Sec. 8. [Deleted.]

Sec. 9. [Deleted.]

Sixth: By striking out Secs. 11 and 12 (fertilizer and economic poison fees) in their entirety and inserting in lieu thereof the following:

Sec. 11. [Deleted.]

Sec. 12. [Deleted.]

Seventh: By striking out Sec. 13 in its entirety and inserting in lieu thereof the following:

Sec. 13. 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~~ satisfy the requirements of 33 U.S.C. § 1329 that the State identify and manage nonpoint sources of agricultural waste to waters of the State. These agricultural land use practices shall be created in two categories, pursuant to ~~subdivisions (1) and (2) of this subsection~~ subsections (b) and (c) of this section.

~~(1)(b)~~ (b) Accepted Agricultural Practices. “Accepted Agricultural Practices” (AAPs) shall be management standards to be followed in conducting agricultural activities by all persons engaged in farming 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~~ fairgrounds, 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~~ are in compliance with these practices shall be presumed to be in compliance with water quality standards. AAPs shall be practical and ~~cost-effective~~ cost-effective to implement, as determined by the Secretary. Where the Secretary determines, after inspection of a farm, that a person engaged in farming is complying with the AAPs but is not complying with the requirements of the State water quality standards, the Secretary shall require the person to implement additional, site-specific conservation practices designed to meet the State water quality standards. When requiring implementation of a conservation practice under this subsection, the Secretary shall inform the person engaged in farming of the resources available to assist the person in implementing the conservation practice and complying with the requirements of this chapter. 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)(c)~~ (2)(c) Best Management Practices. ~~“Best Management Practices” (BMPs) may be required by the secretary on a case by case basis. Before requiring BMPs, the secretary shall determine that sufficient financial assistance is available to assist farmers in achieving compliance with applicable BMPs.~~ “Best management practices” (BMPs) are site-specific on-farm conservation practices implemented in order to address water quality problems and in order to achieve compliance with the requirements of this chapter or State water quality standards. The Secretary may require any person engaged in farming to implement a BMP. When requiring implementation of a BMP, the Secretary shall inform a person engaged in farming of the resources available to assist the person in implementing BMPs and complying with the requirements of this chapter. BMPs shall be practical and ~~cost-effective~~ cost-effective to implement, as determined by the Secretary, and shall be designed to achieve compliance with the requirements of this chapter.

~~(b)(d)~~ (b)(d) 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 this 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~~ Secretaries' 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.

Eighth: In Sec. 15, 6 V.S.A. § 4981, in subdivision (b)(3), after “land-applied manure, nutrients,” and before “or sludge to waters of the State” by inserting “septage,”

Ninth: In Sec. 17, by striking out 6 V.S.A. § 4991 in its entirety and inserting in lieu thereof the following:

§ 4991. PURPOSE

The purpose of this subchapter is to provide the Secretary of Agriculture, Food and Markets with the necessary authority to enforce the agricultural water quality requirements of this chapter. When the Secretary of Agriculture, Food and Markets determines that a person subject to the requirements of the chapter is violating a requirement of this chapter, the Secretary shall respond to and require discontinuance of the violation. The Secretary may respond to a violation of the requirements of this chapter by:

(1) consulting with a farmer or pursuing other nonregulatory action within the authority of the Secretary to assure discontinuance of the violation and remediation of any harm caused by the violation;

(2) issuing a corrective action order under section 4992 of this title;

(3) issuing a cease and desist order under section 4993 of this title;

(4) issuing an emergency order under section 4993 of this title;

(5) revoking or conditioning coverage under a permit or certification under section 4994 of this title;

(6) bringing a civil enforcement action under section 4995 of this title; or

(7) referring the violation to the Secretary of Natural Resources for enforcement under 10 V.S.A. chapter 201.

and in 6 V.S.A. § 4993, by striking out subdivision (a)(2) in its entirety and inserting in lieu thereof the following:

(2) Issue emergency administrative orders to protect water quality when an alleged violation, activity, or farm practice:

(A) presents or is likely to result in an immediate threat of substantial harm to the environment or immediate threat to the public health or welfare; or

(B) requires a permit or amendment to a permit issued under this chapter and a farm owner or operator has commenced an activity or is continuing an activity without a permit or permit amendment.

Tenth: By striking out Secs. 22–24 (AAPs as condition of use value appraisal) in their entirety, including the reader assistance associated with these sections, and inserting in lieu thereof the following:

Sec. 22. [Deleted.]

Sec. 23. [Deleted.]

Sec. 24. [Deleted.]

Eleventh: In Sec. 34, 10 V.S.A. § 1388, by striking out subdivision (a)(2) in its entirety and inserting in lieu thereof the following:

(2) the Fund shall consist of:

(A) Revenues dedicated for deposit into the Fund by the General Assembly.

(B) Other gifts, donations, and impact fees received from any source, public or private, dedicated for deposit into the Fund and approved by the Board. Gifts or donations submitted to the Fund shall be deductible from the tax levied under 32 V.S.A. chapter 151.

Twelfth: By striking out Secs. 36, 37, and 38 (rooms, meals, and alcohol tax) and inserting in lieu thereof:

Sec. 36. [Deleted.]

Sec. 37. [Deleted.]

Sec. 38. [Deleted.]

Thirteenth: By striking out Secs. 40 and 41 (gasoline tax) in their entirety, including the reader assistance associated with these sections, and inserting in lieu thereof:

Sec. 40. [Deleted.]

Sec. 41. [Deleted.]

Fourteenth: By striking out Secs. 42 and 43 (DEC permit fees) in their entirety, including the reader assistance associated with these sections, and inserting in lieu thereof the following:

Sec. 42. [Deleted.]

Sec. 43. [Deleted.]

Fifteenth: By striking out Secs. 51–54 (sunset of increase on rooms, meals and alcohol tax) in their entirety, including the reader assistance associated with these sections, and inserting in lieu thereof the following:

Sec. 51. [Deleted.]

Sec. 52. [Deleted.]

Sec. 53. [Deleted.]

Sec. 54. [Deleted.]

Sixteenth: By including a reader assistance prior to Sec. 55 to read as follows: \* \* \* Effective Dates \* \* \*



Seventeenth: In Sec. 55 (effective dates), in subdivision (4) by striking out “; and” where it appears and inserting in lieu thereof “;” and by striking out subdivision (5) (effective date of sunset of rooms, meals, and alcohol tax) in its entirety

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

## H. 117

An act relating to creating a Division for Telecommunications and Connectivity within the Department of Public Service

**Rep. Carr of Brandon**, for the Committee on **Commerce & Economic Development**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. REPEAL

3 V.S.A. § 2225 (creating the Division for Connectivity within the Agency of Administration) and 2014 Acts and Resolves No. 190, Secs. 12 (Division for Connectivity), 14 (creation of positions; transfer; reemployment rights), and 30(a)(2) and (b) (statutory revision authority regarding the Division for Connectivity) are repealed.

Sec. 2. 30 V.S.A. § 1 is amended to read:

§ 1. COMPOSITION OF DEPARTMENT

(a) ~~The department of public service~~ Department of Public Service shall consist of the ~~commissioner of public service, a director for regulated utility planning, a director for public advocacy, a director for energy efficiency,~~ Commissioner of Public Service, a Director for Regulated Utility Planning, a Director for Public Advocacy, a Director for Energy Efficiency, a Director for Telecommunications and Connectivity, and such other persons as the ~~commissioner~~ Commissioner considers necessary to conduct the business of the ~~department~~ Department.

(b) ~~The commissioner of public service~~ Commissioner shall be appointed by the ~~governor~~ Governor with the advice and consent of the ~~senate~~ Senate. ~~The commissioner of public service~~ Commissioner shall serve for a term of two years beginning on February 1 of the year in which the appointment is made. ~~The commissioner~~ Commissioner shall serve at the pleasure of the ~~governor~~ Governor. ~~The directors for regulated utility planning, for energy efficiency and for public advocacy~~ Directors for Regulated Utility Planning, for Public Advocacy, and for Energy Efficiency shall be appointed by the ~~commissioner~~ Commissioner. The Director for Telecommunications and Connectivity shall be appointed by the Commissioner in consultation with the Secretary of Administration.

(c) The ~~director for public advocacy~~ Directors for Public Advocacy and for Telecommunications and Connectivity may employ, with the approval of the ~~commissioner~~ Commissioner, legal counsel and other experts, and clerical assistance, and the ~~directors of regulated utility planning and energy efficiency~~ Directors for Regulated Utility Planning and for Energy Efficiency may employ, with the approval of the ~~commissioner~~ Commissioner, experts and clerical assistance.

Sec. 3. 30 V.S.A. § 202d is amended to read:

§ 202d. TELECOMMUNICATIONS PLAN

(a) The Department of Public Service shall constitute the responsible planning agency of the State for the purpose of obtaining for all consumers in the State stable and predictable rates and a technologically advanced telecommunications network serving all service areas in the State. The Department shall be responsible for the provision of plans for meeting emerging trends related to telecommunications technology, markets, financing, and competition.

(b) The Department shall prepare a Telecommunications Plan for the State. The Department of Innovation and Information, ~~the Division for Connectivity~~ and the Agency of Commerce and Community Development, and the Agency of Transportation shall assist the Department of ~~Public Service~~ in preparing the Plan. The Plan shall be for a ten-year period and shall serve as a basis for State telecommunications policy. Prior to preparing the Plan, the Department shall prepare:

(1) an overview, looking ten years ahead, of future requirements for telecommunications services, considering services needed for economic development, technological advances, and other trends and factors which, as determined by the Department of Public Service, will significantly affect State telecommunications policy and programs;

(2) a survey of Vermont residents and businesses, conducted in cooperation with the Agency of Commerce and Community Development ~~and the Division for Connectivity~~, to determine what telecommunications services are needed now and in the succeeding ten years;

(3) an assessment of the current state of telecommunications infrastructure;

(4) an assessment, conducted in cooperation with the Department of Innovation and Information and the ~~Division for Connectivity~~ Agency of Transportation, of the current State telecommunications system and evaluation

of alternative proposals for upgrading the system to provide the best available and affordable technology for use by government; and

(5) an assessment of the state of telecommunications networks and services in Vermont relative to other states, including price comparisons for key services and comparisons of the state of technology deployment.

(c) In developing the Plan, the Department shall take into account the State telecommunications policies and goals of section 202c of this title.

(d) In establishing plans, public hearings shall be held and the Department shall consult with members of the public, representatives of telecommunications utilities with a certificate of public good, other providers, including the Vermont Electric Power Co., Inc. (VELCO), and other interested State agencies, particularly the Agency of Commerce and Community Development, ~~the Division for Connectivity~~, the Agency of Transportation, and the Department of Innovation and Information, whose views shall be considered in preparation of the Plan. To the extent necessary, the Department shall include in the Plan surveys to determine existing, needed, and desirable plant improvements and extensions, access and coordination between telecommunications providers, methods of operations, and any change that will produce better service or reduce costs. To this end, the Department may require the submission of data by each company subject to supervision by the Public Service Board.

(e) Before adopting a Plan, the Department shall conduct public hearings on a final draft and shall consider the testimony presented at such hearings in preparing the final Plan. At least one hearing shall be held jointly with Committees of the General Assembly designated by the General Assembly for this purpose. The Plan shall be adopted by September 1, 2014, and then reviewed and updated as provided in subsection (f) of this section.

(f) The Department, from time to time, but in no event less than every three years, shall institute proceedings to review ~~a~~ the Plan and make revisions, where necessary. The three-year major review shall be made according to the procedures established in this section for initial adoption of the Plan. For good cause or upon request by a Joint Resolution passed by the General Assembly, an interim review and revision of any section of the Plan may be made after conducting public hearings on the interim revision. At least one hearing shall be held jointly with Committees of the General Assembly designated by the General Assembly for this purpose.

(g) The Department shall review and update the minimum technical service characteristic objectives not less than every three years beginning in 2017. In the event such review is conducted separately from an update of the Plan, the

Department shall issue revised minimum technical service characteristic objectives as an amendment to the Plan.

Sec. 4. 30 V.S.A. § 202e is added to read:

§ 202e. TELECOMMUNICATIONS AND CONNECTIVITY

(a) Among other powers and duties specified in this title, the Department of Public Service, through the Division for Telecommunications and Connectivity, shall promote:

(1) access to affordable broadband service to all residences and businesses in all regions of the State, to be achieved in a manner that is consistent with the State Telecommunications Plan;

(2) universal availability of mobile telecommunication services, including voice and high-speed data along roadways, and near universal availability statewide;

(3) investment in telecommunications infrastructure in the State that creates or completes the network for service providers to create last-mile connection to the home or business and supports the best available and economically feasible service capabilities;

(4) the continuous upgrading of telecommunications and broadband infrastructure in all areas of the State to reflect the rapid evolution in the capabilities of available broadband and mobile telecommunications technologies, the capabilities of broadband and mobile telecommunications services needed by persons, businesses, and institutions in the State; and

(5) the most efficient use of both public and private resources through State policies by encouraging the development, funding, and implementation of open access telecommunications infrastructure.

(b) To achieve the goals specified in subsection (a) of this section, the Division shall:

(1) provide resources to local, regional, public, and private entities in the form of grants, technical assistance, coordination, and other incentives;

(2) prioritize the use of existing buildings and structures, historic or otherwise, as sites for visually-neutral placement of mobile telecommunications and wireless broadband antenna facilities;

(3) inventory and assess the potential to use federal radio frequency licenses held by instrumentalities of the State to enable broadband service in unserved areas of the State; take steps to promote the use of those licensed radio frequencies for that purpose; and recommend to the General Assembly

any further legislative measures with respect to ownership, management, and use of these licenses as would promote the general good of the State;

(4) coordinate telecommunications initiatives among Executive Branch agencies, departments, and offices;

(5) identify the types and locations of infrastructure and services needed to carry out the goals stated in subsection (a) of this section;

(6) formulate, with the advice and assistance of the Telecommunications and Connectivity Board and with input from the Regional Planning Commissions, an action plan that conforms with the State Telecommunications Plan, as updated and revised, and carries out the goals stated in subsection (a) of this section;

(7) coordinate the agencies of the State to make public resources available to support the extension of broadband and mobile telecommunications infrastructure and services to all unserved and underserved areas;

(8) support and facilitate initiatives to extend the availability of broadband and mobile telecommunications, and promote development of the infrastructure that enables the provision of these services;

(9) work cooperatively with the Agency of Transportation and the Department of Buildings and General Services to assist in making available transportation rights-of-way and other State facilities and infrastructure for telecommunications projects in conformity with applicable federal statutes and regulations; and

(10) receive all technical and administrative assistance as deemed necessary by the Director for Telecommunications and Connectivity.

(c)(1) The Director may request from telecommunications service providers voluntary disclosure of information regarding deployment of broadband, telecommunications facilities, or advanced metering infrastructure that is not publicly funded. Such information may include data identifying projected coverage areas, projected average speed of service, service type, and the anticipated date of completion in addition to identifying the location and routes of proposed cables, wires, and telecommunications facilities.

(2) The Director may enter into a nondisclosure agreement with respect to any voluntary disclosures under this subsection, and the information disclosed pursuant thereto shall remain confidential. Alternatively, entities that voluntarily provide information requested under this subsection may select a third party to be the recipient of such information. The third party may aggregate information provided by the entities, but shall not disclose

provider-specific information it has received under this subsection to any person, including the Director. The third party shall only disclose the aggregated information to the Director. The Director may publicly disclose aggregated information based upon the information provided under this subsection. The confidentiality requirements of this subsection shall not affect whether information provided to any agency of the State or a political subdivision of the State pursuant to other laws is or is not subject to disclosure.

(d) The Division shall only promote the expansion of broadband services that offer actual speeds that meet or exceed the minimum technical service characteristic objectives contained in the State's Telecommunications Plan.

(e) Notwithstanding 2 V.S.A. § 20(d), on or before January 15 of each year, the Director, with the advice and assistance of the Telecommunications and Connectivity Board, shall submit a report of its activities pursuant to this section and duties of title 30 V.S.A. subsection 202f (f) for the preceding fiscal year to the General Assembly. Each report shall include an operating and financial statement covering the Division's operations during the year, including a summary of all grant awards and contracts and agreements entered into by the Division, as well as the action plan required under subdivision (b)(6) of this section. In addition, the report shall include an accurate map and narrative description of each of the following:

(1) the areas served and the areas not served by broadband that has a download speed of at least 4 Mbps and an upload speed of at least 1 Mbps, and cost estimates for providing such service to unserved areas;

(2) the areas served and the areas not served by broadband that has a download speed of at least 25 Mbps and an upload speed of at least 3 Mbps, or as defined by the FCC in its annual report to Congress required by section 706 of the Telecommunications Act of 1996, whichever is higher, and the cost estimates for providing such service to unserved areas;

(3) the areas served and the areas not served by broadband that has a download speed of at least 100 Mbps and is symmetrical, and the cost estimates for providing such service to unserved areas; and

(4) if monetarily feasible, the areas served and the areas not served by wireless communications service, and cost estimates for providing such service to unserved areas.

Sec. 5. 30 V.S.A. § 202f is added to read:

§ 202f. TELECOMMUNICATIONS AND CONNECTIVITY BOARD

(a) There is created a Telecommunications and Connectivity Board for the purpose of making recommendations to the Commissioner of Public Service

regarding his or her telecommunications responsibilities and duties as provided in this section. The Connectivity Board shall consist of 10 members, nine voting and one nonvoting, selected as follows:

(1) the State Treasurer or designee;

(2) the Secretary of Commerce and Community Development or designee;

(3) one member of the House of Representatives appointed by the Speaker of the House;

(4) one member of the Senate appointed by the Committee on Committees of the Senate;

(5) five at-large members appointed by the Governor, who shall not be employees or officers of the State at the time of appointment;

(6) the Secretary of Transportation or designee, who shall be a nonvoting member; and

(b) A quorum of the Connectivity Board shall consist of five voting members. No action of the Board shall be considered valid unless the action is supported by a majority vote of the members present and voting and then only if at least five members vote in favor of the action. The Governor shall select, from among the at-large members, a Chair and Vice Chair, who shall not be members of the General Assembly or employees or officers of the State at the time of the appointment.

(c) In making appointments of at-large and legislative members, the appointing authorities shall give consideration to citizens of the State with knowledge of telecommunications technology, telecommunications regulatory law, transportation rights-of-way and infrastructure, finance, environmental permitting, and expertise regarding the delivery of telecommunications services in rural, high-cost areas. However, the legislative and five at-large members may not be persons with a financial interest in or owners or employees of an enterprise that provides broadband or cellular service or that is seeking in-kind or financial support from the Department of Public Service. The conflict of interest provision in this subsection shall not be construed to disqualify a member who has ownership in a mutual fund, exchange traded fund, pension plan, or similar entity that owns shares in such enterprises as part of a broadly diversified portfolio. The legislative and at-large members shall serve terms of two years beginning on February 1 in odd-numbered years, and until their successors are appointed and qualified. However, three of the five at-large members first appointed by the Governor shall serve an initial term of three years. Vacancies shall be filled by the respective appointing bodies for

the balance of the unexpired term. A member may be reappointed for up to three consecutive terms. Upon completion of a term of service for any reason, including the term's expiration or a member's resignation, and for one year from the date of such completion, a former Board member shall not advocate before the Connectivity Board, Department of Public Service, or the Public Service Board on behalf of an enterprise that provides broadband or cellular service.

(d) Except for those members otherwise regularly employed by the State, the compensation of the Board's members is that provided by 32 V.S.A. § 1010(a). Legislative members are entitled to compensation for services and reimbursement of expenses as provided in 2 V.S.A. § 406. All members of the Board, including those members otherwise regularly employed by the State, shall receive their actual and necessary expenses when away from home or office upon their official duties.

(e) In performing its duties, the Connectivity Board may use the legal and technical resources of the Department of Public Service. The Department of Public Service shall provide the Board with administrative services.

(f) The Connectivity Board shall:

(1) have review and nonbinding approval authority with respect to the awarding of grants under the Connectivity Initiative. The Commissioner shall have sole authority to make the final decision on grant awards, as provided in subsection (g) of this section.

(2) function in an advisory capacity to the Commissioner on the development of State telecommunications policy and planning, including the action plan required under subdivision 202e(b)(6) of this chapter and the State Telecommunications Plan.

(3) annually advise the Commissioner on the development of requests for proposals under the Connectivity Initiative.

(4) annually provide the Commissioner with recommendations for the apportionment of funds to the High-Cost Program and the Connectivity Initiative.

(5) annually provide the Commissioner with recommendations on the appropriate Internet access speeds for publicly funded telecommunication and connectivity projects.

(g) The Commissioner shall make an initial determination as to whether a proposal submitted under the Connectivity Initiative meets the criteria of the request for proposals. The Commissioner shall then provide the Connectivity Board a list of all eligible proposals and recommendations. The Connectivity



Board shall review the recommendations of the Commissioner and may review any proposal submitted, as it deems necessary, and either approve or disapprove each recommendation and may make new recommendations for the Commissioner's final consideration. The Commissioner shall have final decision-making authority with respect to the awarding of grants under the Connectivity Initiative. If the Commissioner does not accept a recommendation of the Board, he or she shall provide the Board with a written explanation for such decision.

(h) On September 15, 2015, and annually thereafter, the Commissioner shall submit to the Connectivity Board an accounting of monies in the Connectivity Fund and anticipated revenue for the next year. On or before January 1 of each year, the Commissioner, after consulting with the Connectivity Board, shall recommend to the relevant legislative committees of jurisdiction a plan for apportioning such funds to the High-Cost Program and the Connectivity Initiative.

(i) The Chair shall call the first meeting of the Connectivity Board. The Chair or a majority of Board members may call a Board meeting. The Board may meet up to six times a year.

(j) At least annually, the Connectivity Board and the Commissioner or designee shall jointly hold a public meeting to review and discuss the status of State telecommunications policy and planning, the Telecommunications Plan, the Connectivity Fund, the Connectivity Initiative, the High-Cost Program, and any other matters they deem necessary to fulfill their obligations under this section.

(k) Information and materials submitted by a telecommunications service provider concerning confidential financial or proprietary information shall be exempt from public inspection and copying under the Public Records Act, nor shall any information that would identify a provider who has submitted a proposal under the Connectivity Initiative be disclosed without the consent of the provider, unless a grant award has been made to that provider. Nothing in this subsection shall be construed to prohibit the publication of statistical information, determinations, reports, opinions, or other information so long as the data are disclosed in a form that cannot identify or be associated with a particular telecommunications service provider.

Sec. 6. CREATION OF POSITIONS; TRANSFER OF VACANT POSITIONS; REEMPLOYMENT RIGHTS; TRANSITIONAL PROVISIONS

(a) Up to three additional exempt full-time positions are created within the Division for Telecommunications and Connectivity, as deemed necessary by the Secretary of Administration.

(b) The positions created under subsection (a) of this section shall only be filled to the extent there are existing vacant positions in the Executive Branch available to be transferred and converted to the new positions in the Division for Telecommunications and Connectivity, as determined by the Secretary of Administration and the Commissioner of Human Resources, so that the total number of authorized positions in the State shall not be increased by this act.

(c) All full-time personnel of the Vermont Telecommunications Authority employed by the Authority on the day immediately preceding the effective date of this act who do not obtain a position in the Division for Telecommunications and Connectivity pursuant to subsection (a) of this section shall be entitled to the same reemployment or recall rights available to nonmanagement State employees under the existing collective bargaining agreement entered into between the State and the Vermont State Employees' Association.

(d) The Department of Public Service shall assume possession and responsibility for all assets and liabilities of the Vermont Telecommunications Authority (VTA).

(e) The VTA shall not enter into any new contracts without the approval of the Commissioner of Public Service.

Sec. 7. 30 V.S.A. § 7503 is amended to read:

§ 7503. FISCAL AGENT

(a) A fiscal agent shall be selected to receive and distribute funds under this chapter.

(b) The fiscal agent shall be selected by the ~~Public Service Board~~ Commissioner of Public Service after competitive bidding. No telecommunications service provider shall be eligible to be the fiscal agent. The duties of the fiscal agent shall be determined by a contract with a term not greater than three years.

(c) In order to finance grants and other expenditures that have been approved by the ~~Public Service Board~~ Commissioner of Public Service, the fiscal agent may borrow money from time to time in anticipation of receipts during the current fiscal year. No such note shall have a term of repayment in

excess of one year, but the fiscal agent may pledge its receipts in the current and future years to secure repayment. Financial obligations of the fiscal agent are not guaranteed by the State of Vermont.

(d) The fiscal agent shall be audited annually by a certified public accountant in a manner determined by and under the direction of the ~~Public Service Board~~ Commissioner of Public Service.

(e) The financial accounts of the fiscal agent shall be available at reasonable times to any telecommunications service provider in this State. The ~~Public Service Board~~ Commissioner of Public Service may investigate the accounts and practices of the fiscal agent and may enter orders concerning the same.

(f) The fiscal agent acts as a fiduciary and holds funds in trust for the ratepayers until the funds have been disbursed as provided pursuant to ~~sections 7511 through 7515~~ section 7511 of this chapter.

#### Sec. 8. REPEAL

30 V.S.A. § 7515a (additional program support for Executive Branch activities) is repealed.

Sec. 9. 30 V.S.A. § 7511 is amended to read:

#### § 7511. DISTRIBUTION GENERALLY

(a)(1) As directed by the ~~Public Service Board~~ Commissioner of Public Service, funds collected by the fiscal agent, and interest accruing thereon, shall be distributed as follows:

~~(1)(A)~~ to pay costs payable to the fiscal agent under its contract with the ~~Board~~ Commissioner;

~~(2)(B)~~ to support the Vermont telecommunications relay service in the manner provided by section 7512 of this title;

~~(3)(C)~~ to support the Vermont Lifeline program in the manner provided by section 7513 of this title;

~~(4)(D)~~ to support Enhanced-911 services in the manner provided by section 7514 of this title; and

~~(5)(E)~~ to support the Connectivity Fund established in section 7516 of ~~this chapter; and~~ of this title; and

(2) Any personnel or administrative costs associated with the Connectivity Initiative shall come from the Connectivity Fund as determined by the Commissioner in consultation with the Connectivity Board.

(b) If insufficient funds exist to support all of the purposes contained in subsection (a) of this section, the Board Commissioner shall ~~conduct an expedited proceeding to~~ allocate the available funds, giving priority in the order listed in subsection (a).

Sec. 10. 30 V.S.A. § 7516 is amended to read:

§ 7516. CONNECTIVITY FUND

There is created a Connectivity Fund for the purpose of providing support to the High-Cost Program established under section 7515 of this chapter and the Connectivity Initiative established under section 7515b of this chapter. The fiscal agent shall determine annually, on or before September 1, the amount of monies available to the Connectivity Fund. Such funds shall be apportioned equally as follows: 45 percent to the High-Cost Program and 55 percent to the Connectivity Initiative ~~referenced in this section~~.

Sec. 11. 30 V.S.A. § 7515 is amended to read:

§ 7515. HIGH-COST PROGRAM

(a) The Universal Service Charge shall be used as a means of keeping basic telecommunications service affordable in all parts of this State, thereby maintaining universal service, and as a means of supporting access to broadband service in all parts of the State.

(b) The Public Service Board, after review of a petition of a company holding a certificate of public good to provide telecommunications service in Vermont, and upon finding that the company meets all requirements for designation as an “eligible telecommunications carrier” as defined by the FCC, may designate the company as a Vermont-eligible telecommunications carrier (VETC).

(c) The supported services a designated VETC must provide are voice telephony services, as defined by the FCC, and broadband Internet access, directly or through an affiliate. A VETC receiving support under this section shall use that support for capital improvements in high cost areas, as defined in subsection (f) of this section, to build broadband capable networks.

(d) The Board may designate multiple VETCs for a single high cost area, but each designated VETC shall:

(1) offer supported services to customers at all locations throughout the service high cost area or areas for which it has been designated; and

(2) for its voice telephone services, meet service quality standards set by the Board.

(e) A VETC shall receive support as defined in subsection (i) of this section from the fiscal agent of the Vermont Universal Service Fund for each telecommunications line in service or service location, whichever is greater in number, in each high cost area it services. Such support may be made in the form of a net payment against the carrier's liability to the Fund. If multiple VETCs are designated for a single area, then each VETC shall receive support for each line it has in service.

(f) As used in this section, a Vermont telephone exchange is a "high cost area" if the exchange is served by a rural telephone company, as defined by federal law, or if the exchange is designated as a rural exchange in the wholesale tariff of a regional bell operating company (RBOC), as defined by the FCC, or of a successor company to an RBOC. An exchange is not a high cost area if the Public Service Board finds that the supported services are available to all locations throughout the exchange from at least two service providers.

(g) Except as provided in subsection (h) of this section, a VETC shall provide broadband Internet access at speeds no lower than 4 Mbps download and 1 Mbps upload in each high cost area it serves within five years of designation. A VETC need not provide broadband service to a location that has service available from another service provider, as determined by the Department of Public Service.

(h) The Public Service Board may modify the build out requirements of subsection (d) of this section as it relates to broadband Internet access to be the geographic area that could be reached using one-half of the funds to be received over five years. A VETC may seek such waiver of the build out requirements ~~in subsection (e)~~ within one year of designation and shall demonstrate the cost of meeting broadband Internet access requirements on an exchange basis and propose an alternative build out plan.

(i) The amount of the monthly support under this section shall be the pro rata share of available funds ~~as provided in subsection (e) of this section~~ based on the total number of incumbent local exchange carriers in the State and reflecting each carrier's lines in service or service locations in its high-cost area or areas, as determined under subsection (e) of this section. If an incumbent local exchange carrier does not petition the Board for VETC designation, or is found ineligible by the Board, the share of funds it otherwise would have received under this section shall be used to support the Connectivity Initiative established in section 7515b of this chapter.

(j) The Public Service Board shall adopt by rule standards and procedures for ensuring projects funded under this section are not competitive overbuilds of existing wired telecommunications services.

(k) Each VETC shall submit certification that it is meeting the requirements of this section and an accounting of how it expended the funds received under this section in the previous calendar year, with its annual report to the Department of Public Service. For good cause shown, the Public Service Board may investigate submissions required by this subsection and may revoke a company's designation if it finds that the company is not meeting the requirements of this subsection.

Sec. 12. 30 V.S.A. § 7515b is amended to read:

§ 7515b. CONNECTIVITY INITIATIVE

(a) The purpose of the Connectivity Initiative is to provide each service location in Vermont access to Internet service that is capable of speeds of at least ~~4~~ 10 Mbps download and 1 Mbps upload, or the FCC speed requirements established under Connect America Fund Phase II, whichever is higher, beginning with locations not served as of December 31, 2013 according to the minimum technical service characteristic objectives applicable at that time. Within this category of service locations, priority shall be given first to unserved and then to underserved locations. As used in this section, "unserved" means a location having access to only satellite or dial-up Internet service and "underserved" means a location having access to Internet service with speeds that exceed satellite and dial-up speeds but are less than 4 Mbps download and 1 Mbps upload. Any new services funded in whole or in part by monies ~~in this Fund~~ from this Initiative shall be capable of being continuously upgraded to reflect the best available, most economically feasible service capabilities.

(b) The Department of Public Service shall publish annually a list of census blocks eligible for funding based on the Department's most recent broadband mapping data. The Department annually shall solicit proposals from service providers, ~~the Vermont Telecommunications Authority, and the Division for Connectivity~~ to deploy broadband to eligible census blocks. The Department shall give priority to proposals that reflect the lowest cost of providing services to unserved and underserved locations; however, the Department also shall consider:

- (1) the proposed data transfer rates and other data transmission characteristics of services that would be available to consumers;
- (2) the price to consumers of services;
- (3) the proposed cost to consumers of any new construction, equipment installation service, or facility required to obtain service;

(4) whether the proposal would use the best available technology that is economically feasible;

(5) the availability of service of comparable quality and speed; and

(6) the objectives of the State's Telecommunications Plan.

Sec. 13. 30 V.S.A. § 246(e) is added to read:

(e) Notwithstanding any contrary provisions of this section, the holder of a certificate of public good for a constructed meteorological station may apply under section 248a of this title or 10 V.S.A. chapter 151 to convert the station to a wireless telecommunications facility, provided the application is filed at least 90 days before the expiration of the certificate for the station. Any such application shall constitute a new application to be reviewed under the facts and circumstances as they exist at the time of the review.

Sec. 14. STATUTORY REVISION

In its statutory revision capacity under 2 V.S.A. § 424, the Office of Legislative Council shall, where appropriate in 30 V.S.A. chapter 88:

(1) replace the words "Public Service Board" with the words "Department of Public Service";

(2) replace the word "Board" with the word "Commissioner"; and

(3) make other similar amendments necessary to effect the purposes of this act.

Sec. 15. EFFECTIVE DATES

This act shall take effect on July 1, 2015, except that this section and Secs. 6(e) (Commissioner approval of all Vermont Telecommunications Contracts), 13 (conversion of a meteorological station to wireless telecommunications facility), and 14 (statutory revision authority) shall take effect on passage.

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

**Rep. Ancel of Calais**, for the Committee on **Ways & Means**, recommends the bill ought to pass when amended as recommended by the Committee on **Commerce & Economic Development** and when further amended as follows:

First: In Sec.9, 30 V.S.A. § 7511(a) by striking out subdivision (2) in its entirety and by inserting in lieu thereof the following:

(2) For fiscal year 2016 only, any personnel or administrative costs associated with the Connectivity Initiative shall come from the Connectivity

Fund, as determined by the Commissioner in consultation with the Connectivity Board.

Second: By adding Sec. 9a to read as follows:

Sec. 9a. FUNDING FOR CONNECTIVITY PERSONNEL; GROSS RECEIPTS TAX

Not later than January 15, 2016, the Commissioner shall determine whether the revenues raised from the existing gross receipts tax on public service companies, 30 V.S.A. § 22, is sufficient to finance the personnel and administrative costs associated with the Connectivity Initiative, beginning in fiscal year 2017. If the Commissioner determines the revenues are not sufficient for this purpose, he or she shall recommend to the General Assembly a new rate of tax applicable to one or more categories of public service companies, as he or she deems necessary and appropriate.

( Committee Vote: 11-0-0)

## H. 120

An act relating to creating a Vermont false claims act

**Rep. Jewett of Ripton**, 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. 32 V.S.A. chapter 7, subchapter 8 is added to read:

Subchapter 8. Vermont False Claims Act

§ 630. DEFINITIONS

As used in this chapter:

(1) "Claim" means any request or demand, whether under a contract or otherwise, for money or property, and whether or not the State has title to the money or property, that:

(A) is presented to an officer, employee, or agent of the State; or

(B) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the State's behalf or to advance a State program or interest, and if the State:

(i) provides or has provided any portion of the money or property that is requested or demanded, or

(ii) will reimburse directly or indirectly such contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded. A claim shall not include a request or demand for money or



property that the State has paid to an individual as compensation for State employment or as an income subsidy with no restrictions on that individual's use of the money or property.

(2) “Knowing” and “knowingly”:

(A) means that a person, with respect to information:

(i) has actual knowledge of the information;

(ii) acts in deliberate ignorance of the truth or falsity of the information; or

(iii) acts in reckless disregard of the truth or falsity of the information; and

(B) requires no proof of specific intent to defraud.

(3) “Material” means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(4) “Obligation” means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment after the deadline for reporting and returning the overpayment under subdivision 631(a)(10) of this chapter.

(5) “Original source” means an individual who:

(A) prior to a public disclosure under subsection 636(c) of this chapter, has voluntarily disclosed to the State the information on which allegations or transactions in a claim are based; or

(B) has knowledge that is independent of and materially adds to the publicly-disclosed allegations or transactions, and who has voluntarily provided the information to the State before filing a false claims action.

(6) “Overpayment” means any State or federal funds that a person receives or retains to which the person, after applicable reconciliation, is not entitled.

(7) “Relator” or “qui tam plaintiff” means an individual who brings an action under subsection 632(b) of this chapter.

(8) “State” means the State of Vermont, a county, a municipality or other subdivision thereof and commission, board, department, or agency thereof or any other governmental entity authorized or created by State law, including public corporations and authorities.

§ 631. PROHIBITION; PENALTIES

(a) No person shall:

(1) knowingly present, or cause to be presented, a false or fraudulent claim for payment or approval;

(2) knowingly make, use, or cause to be made or used, a false record or statement material to a false or fraudulent claim;

(3) knowingly present, or cause to be presented, a claim that includes items or services resulting from a violation of 13 V.S.A. chapter 21 or section 1128B of the Social Security Act, 42 U.S.C. §§ 1320a–7b;

(4) knowingly present, or cause to be presented, a claim that includes items or services for which the State could not receive payment from the federal government due to the operation of 42 U.S.C. § 1396b(s) because the claim includes designated health services (as defined in 42 U.S.C. § 1395nn(h)(6)) furnished to an individual on the basis of a referral that would result in the denial of payment under 42 U.S.C. chapter 7, subchapter XVIII (the “Medicare program”), due to a violation of 42 U.S.C. § 1395nn;

(5) having possession, custody, or control of property or money used, or to be used, by the State, knowingly deliver, or cause to be delivered to the State or its agent, less than all of that property or money for which the person receives a certificate or receipt;

(6) being authorized to make or deliver a document certifying receipt of property used, or to be used, by the State or its agent and, intending to defraud the State, make or deliver the receipt without completely knowing that the information on the receipt is true;

(7) knowingly buy, or receive as a pledge of an obligation or debt, public property from an officer or employee of the State, who lawfully may not sell or pledge the property;

(8) enter into a written agreement or contract with an official of the State or its agent knowing the information contained therein is false;

(9) knowingly make, use or cause to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the State;

(10) knowingly conceal or knowingly and improperly avoid or decrease an obligation to pay or transmit money or property to the State;

(11) as a beneficiary of an inadvertent submission of a false claim to the State, or as a beneficiary of an overpayment from the State, and who subsequently discovers the falsity of the claim or the receipt of overpayment,

fail to disclose the false claim or receipt of overpayment to the State by the later of:

(A) a date which is 120 days after the date on which the false claim or receipt of overpayment was identified; or

(B) the date any corresponding cost report is due, if applicable; or

(12) conspire to commit a violation of this subsection.

(b) Any person who violates a provision of subsection (a) of this section shall be liable to the State for:

(1) a civil penalty of not less than \$5,500.00 and not more than \$11,000.00 for each act constituting a violation of subsection (a) of this section, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461);

(2) three times the amount of damages that the State sustains because of the act of that person; and

(3) the costs of the investigation and prosecution of such violation.

(c) Notwithstanding subdivisions (b)(1) and (b)(2) of this section, the Court may enter judgment for not less than two times the amount of damages that the State sustains because of the act of that person, and assessing no civil penalties, if the Court finds that:

(1) the person committing the violation of subsection (a) of this section furnished officials of the State responsible for investigating false claims violations with all information known to that person about the violation within 30 days after the date on which the person first obtained the information;

(2) the person fully cooperated with any investigation by the State of such violation; and

(3) at the time the person furnished the State with the information about the violation, no criminal prosecution, civil action or administrative action had commenced under the false claims law with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into the violation.

(d) This chapter shall not apply to claims, records, or statements made or presented to establish, limit, reduce, or evade liability for the payment of tax to the State or other governmental authority.

#### § 632. CIVIL ACTIONS FOR FALSE CLAIMS

(a) The Attorney General shall investigate violations of subsection 631(a) of this chapter. If the Attorney General finds that a person has violated or is

violating subsection 631(a), the Attorney General may bring a civil action in the Civil Division of the Superior Court under this section against the person. The action may be brought in Washington County or in any county where an act prohibited by section 631 occurred.

(b)(1) A relator may bring a civil action in the Civil Division of the Superior Court in Washington County or in any county where an act prohibited by section 631 of this chapter occurred for a violation of this chapter on behalf of the relator and the State. The action shall be brought in the name of the State. The relator must file the complaint in camera. The complaint must remain under seal for at least 60 days after being served on the Attorney General and must not be served on the defendant until the Court so orders.

(2) Once filed, the action may be dismissed only if the Attorney General gives written reasons for consenting to the dismissal and the Court approves the dismissal. Notwithstanding any law to the contrary, it shall not be a cause for dismissal or a basis for a defense that the relator could have brought another action based on the same or similar facts under any other law.

(3) A relator filing an action under this chapter must serve a copy of the complaint and written disclosure of substantially all material evidence and information the relator possesses on the Attorney General in an electronic format determined by the Attorney General. The Attorney General may elect to intervene and proceed with the action within 60 days after the later of the date the Attorney General is served with:

(A) the complaint; and

(B) the material evidence and information.

(4) The Attorney General may, for good cause shown, move the Court for extensions of the time during which the complaint remains under seal under subdivision (b)(1) of this section. Any such motions may be supported by affidavits or other submissions in camera.

(5) Before the expiration of the 60-day period or any extensions obtained under subdivision (4) of this subsection, the State shall:

(A) proceed with the action, in which case the action shall be conducted by the Attorney General; or

(B) notify the Court that it declines to take over the action, in which case the relator shall have the right to conduct the action.

(6) When a relator brings an action under this subsection, no person other than the Attorney General may intervene or bring a related action based on the facts underlying the pending action.

§ 633. RIGHTS OF THE PARTIES TO QUI TAM ACTIONS

(a) If the State proceeds with the action, the Attorney General shall have the primary responsibility for prosecuting the action, and shall not be bound by any act of the relator. The relator shall have the right to continue as a party to the action, subject to the limitations in subsection (b) of this section.

(b)(1) The Attorney General may move to dismiss the action if the relator has been notified by the Attorney General of the filing of the motion and the Court has provided the relator with an opportunity for a hearing on the motion.

(2) Notwithstanding any objection of a relator, the Attorney General may settle the action with the defendant if after a hearing the Court determines that the proposed settlement is fair, adequate, and reasonable under all the circumstances.

(3) Upon a showing by the Attorney General that unrestricted participation during the course of the litigation by the relator would interfere with or unduly delay the prosecution of the case or would be repetitious, irrelevant, or for purposes of harassment, the Court may, in its discretion, impose limitations on the relator's participation, such as:

- (A) limiting the number of witnesses the relator may call;
- (B) limiting the length of the testimony of such witnesses;
- (C) limiting the relator's cross-examination of witnesses; or
- (D) otherwise limiting the participation by the relator in the litigation.

(4) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the relator would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the Court may limit the participation by the relator in the litigation.

(c) If the Attorney General elects not to proceed with the action, the relator who initiated the action shall have the right to conduct the action. If the Attorney General so requests, it shall be served with copies of all pleadings filed in the action in an electronic format determined by the Attorney General and shall be supplied with copies of all deposition transcripts at the State's expense. When a relator proceeds with the action, the Court, without limiting the status and rights of the relator, may nevertheless permit the Attorney General to intervene at a later date upon a showing of good cause.

(d) Whether or not the Attorney General proceeds with the action, upon a showing by the Attorney General that discovery by the relator would interfere with the State's investigation or prosecution of a criminal or civil matter arising out of the same or similar facts, the Court may stay such discovery for a

period of not more than 60 days. The Court may extend the 60-day period upon a further showing that the Attorney General has pursued the criminal or civil investigation or proceedings with reasonable diligence and may stay any proposed discovery in the civil action that will interfere with the ongoing criminal or civil investigation or proceedings.

§ 634. ALTERNATE REMEDIES AVAILABLE TO DETERMINE CIVIL PENALTY

Notwithstanding sections 632 and 633 of this chapter, the Attorney General may elect to pursue its claim through any alternate remedy available to the State under any other law or regulation, including any administrative proceeding to determine a civil monetary penalty. If any such alternate remedy is pursued in another proceeding, a relator shall have the same rights in such proceeding as said relator would have had if the action had continued under this section.

§ 635. PAYMENTS TO RELATORS; LIMITATIONS

(a) If the Attorney General proceeds with an action brought by a relator under subsection (b) of this section, the relator shall, subject to subsection (b) of this section, receive at least 15 percent but not more than 25 percent of the proceeds recovered and collected in the action or in settlement of the claim, depending upon the extent to which the relator substantially contributed to the prosecution of the action.

(b) Where the action is one which the Court finds to be based primarily on disclosures of specific information, other than information provided by the relator, relating to allegations or transactions in a criminal, civil, or administrative hearing; in a legislative, administrative, or State auditor hearing, audit, investigation, or report; or from the news media, the Court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the relator in advancing the case to litigation.

(c) Any payment to a relator under the subsection (a) or (b) of this section shall be made only from the proceeds recovered and collected in the action or in settlement of the claims. Any such relator shall also receive an amount for reasonable expenses which the appropriate court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All such expenses, fees, and costs shall be awarded against the defendant, and paid directly by the defendant to the relator.

(d) If the Attorney General does not proceed with an action under this chapter, the relator bringing the action or settling the claim shall receive an

amount which the Court decides is reasonable for collecting the civil penalty and damages on behalf of the State. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds recovered and collected in the action or in settlement of the claim, and shall be paid out of such proceeds. In such circumstances, the relator shall also receive an amount for reasonable expenses which the Court finds to have been necessarily incurred, including reasonable attorney's fees and costs. All such expenses, fees, and costs shall be awarded against the defendant and paid directly by the defendant to the relator.

(e) Whether or not the Attorney General proceeds with the action, if the Court finds that the action was brought by a relator who planned and initiated the violation of section 631 of this chapter upon which the action was brought, then the Court may, to the extent the Court considers appropriate, reduce or eliminate the share of the proceeds of the action which the relator would otherwise receive pursuant to this section, taking into account the role of the relator in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the relator bringing the action is convicted of criminal conduct arising from his or her role in the violation of section 631 of this chapter, that relator shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the State to continue the action.

#### § 636. CERTAIN ACTIONS BARRED

(a) An individual may not bring an action under subsection 632(b) of this chapter against a member of the State Legislative Branch, the Attorney General, a member of the Judiciary, or a senior Executive Branch official if the action is based on evidence or information known to the State when the action was brought.

(b) An individual may not bring an action under subsection 632(b) of this chapter that is based upon allegations or transactions that are the subject of a civil suit or an administrative proceeding in which the State is already a party.

(c) Unless opposed by the Attorney General, the Court shall dismiss an action or claim under subsection 632(b) of this chapter if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed:

(1) in a criminal, civil, or administrative hearing in which the State or its agent is a party;

(2) in a State legislative, administrative, or State Auditor's report, hearing, audit, or investigation; or

(3) from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

§ 637. AWARDS OF COSTS AND ATTORNEY'S FEES AGAINST

RELATORS; LIABILITY

(a) If the Attorney General does not proceed with the action and the person bringing the action conducts the action, the Court may award to the defendant reasonable attorney's fees and expenses if the defendant prevails in the action and the Court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(b) No liability shall be incurred by the State for any expenses, attorney's fees, or other costs incurred by any person bringing or defending an action under this chapter.

§ 638. RELIEF FROM RETALIATORY ACTIONS

(a) Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent, or a person associated with the employee, contractor, or agent in furtherance of an action under section 632 of this chapter, or other efforts to stop one or more violations of this chapter.

(b) Notwithstanding any law to the contrary, relief under subsection (a) of this section shall include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees. An employee, contractor, or agent may bring an action in the Civil Division of the Superior Court or any other appropriate court for the relief provided in this section.

(c) No employer shall make, adopt, or enforce any rule, regulation, or policy preventing an employee, contractor, or agent from disclosing information to a government or law enforcement agency or from acting to further efforts to stop one or more violations of this chapter. No employer shall require as a condition of employment, during the term of employment or at the termination of employment that any employee, contractor, or agent agree to, accept, or sign an agreement that limits or denies the rights of such employee, contractor, or agent to bring an action or provide information to a



government or law enforcement agency pursuant to this chapter. Any such agreement shall be void.

(d) A civil action under this section may not be brought more than three years after the date when the retaliation occurred and became known to the employee, contractor, or agent.

#### § 639. LIMITATION OF ACTIONS; FINAL JUDGMENTS IN CRIMINAL PROCEEDINGS

(a) A civil action under section 632 of this chapter for a violation of subsection 631(a) of this chapter may not be brought:

(1) more than six years after the date on which the violation was committed; or

(2) more than three years after the date when facts material to the right of action are known or reasonably should have been known by the official within the Attorney General's office with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed; whichever occurs last.

(b) A civil action under this act may be brought for activity prior to enactment, if the limitations period set in subsection (a) of this section has not lapsed.

(c) If the State elects to intervene and proceed with an action brought under subsection 632(b) of this chapter, the State may file its own complaint or amend the complaint of a person who has brought an action pursuant to subsection 632(b). For statute of limitations purposes, any such pleading shall relate back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the State arises out of the conduct, transactions or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.

#### § 640. PREPONDERANCE OF THE EVIDENCE STANDARD

In any action brought under section 632 of this chapter, the party bringing the action shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

#### § 641. REMEDIES UNDER OTHER LAWS; LEGISLATIVE

##### CONSTRUCTION

(a) The provisions of this chapter are not exclusive, and the remedies provided for in this chapter shall be in addition to any other remedies provided for in any other law or available under common law.

(b) It is the intent of the Legislature that in construing this chapter, the courts of this State will be guided by the construction of similar terms contained in the Federal False Claims Act, 31 U.S.C. §§ 3729–3733, as from time to time amended by the U.S. Congress and the courts of the United States.

#### § 642. CIVIL INVESTIGATIVE DEMANDS

(a) In general.

(1) Issuance and service. Whenever the Attorney General or a designee has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Attorney General or a designee may, before commencing a civil proceeding under subsection 632(a) or making an election under subsection 633(b) of this title, issue in writing and cause to be served upon such person a civil investigative demand requiring such person:

(A) to produce such documentary material for inspection and copying;

(B) to answer in writing written interrogatories with respect to such documentary material or information;

(C) to give oral testimony concerning such documentary material or information; or

(D) to furnish any combination of such material, answers, or testimony.

(2) The Attorney General may delegate the authority to issue civil investigative demands under this subsection. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served. Any information obtained by the Attorney General or a designee of the Attorney General under this section may be shared with any qui tam relator if the Attorney General or designee determines it is necessary as part of any false claims act investigation.

(3) Contents and deadlines.

(A) Each civil investigative demand issued under subdivision (1) of this subsection (a) shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to be violated.

(B) If such demand is for the production of documentary material, the demand shall:

(i) describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;

(ii) prescribe a return date for each such class which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and

(iii) identify the false claims law investigator to whom such material shall be made available.

(C) If such demand is for answers to written interrogatories, the demand shall:

(i) set forth with specificity the written interrogatories to be answered;

(ii) prescribe dates at which time answers to written interrogatories shall be submitted; and

(iii) identify the false claims law investigator to whom such answers shall be submitted.

(D) If such demand is for the giving of oral testimony, the demand shall:

(i) prescribe a date, time, and place at which oral testimony shall be commenced;

(ii) identify a false claims law investigator who shall conduct the examination;

(iii) specify that such attendance and testimony are necessary to the conduct of the investigation;

(iv) notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and

(v) describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.

(E) Any civil investigative demand issued under this section which is an express demand for any product of discovery shall not be returned or returnable until 20 days after a copy of such demand has been served upon the person from whom the discovery was obtained.

(F) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this section shall be a date which is not less than seven days after the date on which demand is received, unless the Attorney General or an Assistant Attorney General designated by the Attorney General determines that exceptional circumstances are present which warrant the commencement of such testimony within a lesser period of time.

(G) The Attorney General shall not authorize the issuance under this section of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Attorney General, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary.

(b) Protected material or information.

(1) In general. A civil investigative demand issued under subsection (a) of this section may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under:

(A) the standards applicable to subpoenas or subpoenas duces tecum issued by a court of the State of Vermont to aid in a grand jury investigation or conduct an inquest; or

(B) the standards applicable to discovery requests under the Vermont Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this section.

(2) Effect on other orders, rules, and laws. Any such demand which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law (other than this section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

(c) Service; jurisdiction.

(1) By whom served. Any civil investigative demand issued under this section may be served by a false claims law investigator, by a law enforcement officer, or by any other individual authorized by law to serve legal process in the jurisdiction in which the demand is served.

(2) Service outside Vermont. Any demand issued under this section or any petition filed under subsection (i) of this section may be served upon any person or entity who is not found in Vermont, consistent with 12 V.S.A. chapter 25 and in any such manner as provided in the Vermont Rules of Civil Procedure for personal service outside the State. To the extent that the courts of Vermont can assert jurisdiction over any person consistent with due process, the Civil Division of the Superior Court of Washington County shall have the same jurisdiction to take any action respecting compliance with this section by any such person that such court would have if such person were personally within the jurisdiction of such court.

(d) Service upon legal entities and natural persons.

(1) Legal entities. Service of any civil investigative demand issued under subsection (a) of this section or of any petition filed under subsection (i) may be made upon a partnership, corporation, association, or other legal entity by:

(A) delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(B) delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity;

(C) depositing an executed copy of such demand or petition in the U.S. mail by registered or certified mail, return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business; or

(D) by any other method provided by 12 V.S.A. chapter 25 or the Vermont Rules of Civil Procedure.

(2) Natural persons. Service of any such demand or petition may be made upon any natural person by:

(A) delivering an executed copy of such demand or petition to the person;

(B) depositing an executed copy of such demand or petition in the U.S. mail by registered or certified mail, return receipt requested, addressed to the person at the person's residence or principal office or place of business; or

(C) by any other method provided by 12 V.S.A. chapter 25 or the Vermont Rules of Civil Procedure.

(e) Proof of service. A verified return by the individual serving any civil investigative demand issued under subsection (a) of this section or any petition filed under subsection (i) setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f) Documentary material.

(1) Sworn certificates. The production of documentary material in response to a civil investigative demand served under this section shall be made under a sworn certificate, in such form as the demand designates, by:

(A) in the case of a natural person, the person to whom the demand is directed; or

(B) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person.

(2) Contents of certificate. The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false claims law investigator identified in the demand. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(3) Production of materials. Any person upon whom any civil investigative demand for the production of documentary material has been served under this section shall make such material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under subdivision (i)(1) of this section. Such material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such material.

(g) Interrogatories.

(1) Each interrogatory in a civil investigative demand served under this section shall be answered separately and fully in writing under oath and shall

be submitted under a sworn certificate, in such form as the demand designates, by:

(A) in the case of a natural person, the person to whom the demand is directed; or

(B) in the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.

(2) If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(h) Oral examinations.

(1) Procedures. The examination of any person pursuant to a civil investigative demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of Vermont or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the Attorney General or a designee. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Vermont Rules of Civil Procedure.

(2) Persons present. The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the government, any person who may be agreed upon by the attorney for the government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(3) Where testimony taken. The oral testimony of any person taken pursuant to a civil investigative demand served under this section shall be taken not more than 50 miles from where such person resides, is found, or transacts business, or in such other place as may be agreed upon by the false claims law investigator conducting the examination and such person.

(4) Transcript of testimony. When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons, if any, given therefor.

(5) Certification and delivery to Attorney General. The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or false claims law investigator shall promptly deliver the transcript or send the transcript by registered or certified mail to the Attorney General or a designee.

(6) Furnishing or inspection of transcript by witness. Upon payment of reasonable charges therefor, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General, the Deputy Attorney General, or an Assistant Attorney General may, for good cause, limit such witness to inspection of the official transcript of the witness' testimony.

(7) Conduct of oral testimony.

(A) Any person compelled to appear for oral testimony under a civil investigative demand issued under subsection (a) of this section may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the Civil Division of Washington County Superior



Court under subdivision (i)(1) of this section for an order compelling such person to answer such question.

(B) If such person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of 12 V.S.A. § 1664.

(8) Witness fees and allowances. Any person appearing for oral testimony under a civil investigative demand issued under subsection (a) of this section shall be entitled to the same fees and allowances which are paid to witnesses in the courts of the State of Vermont.

(i) Judicial proceedings.

(1) Petition for enforcement. Whenever any person fails to comply with any civil investigative demand issued under subsection (a) of this section, or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Attorney General may file, in the Civil Division of Washington County Superior Court or the Civil Division in any county in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of the civil investigative demand.

(2) Petition to modify or set aside demand.

(A) Any person who has received a civil investigative demand issued under subsection (a) of this section may file, in the Civil Division of Washington County Superior Court or the Civil Division in any county in which such person resides, is found, or transacts business, and serve upon the Attorney General's Office a petition for an order of the court to modify or set aside such demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the Civil Division in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this subdivision (2) must be filed:

(i) within 20 days after the date of service of the civil investigative demand or at any time before the return date specified in the demand, whichever date is earlier; or

(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subdivision (A) of this subdivision (2), and may be based upon any failure of the demand to comply with the provisions of this

section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

(3) Petition to modify or set aside demand for product of discovery.

(A) In the case of any civil investigative demand issued under subsection (a) of this section which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the Civil Division in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any false claims law investigator identified in the demand and upon the recipient of the demand, a petition for an order of such court to modify or set aside those portions of the demand requiring production of any such product of discovery. Any petition under this subdivision (3) must be filed:

(i) within 20 days after the date of service of the civil investigative demand or at any time before the return date specified in the demand, whichever date is earlier; or

(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subdivision (A) of this subdivision (3), and may be based upon any failure of the portions of the demand from which relief is sought to comply with the provisions of this section or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

(4) Jurisdiction. Whenever any petition is filed under this subsection, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered may be appealed to the Vermont Supreme Court. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of the court.

(5) Applicability of Rules of Civil Procedure. The Rules of Civil Procedure shall apply to any petition under this subsection, to the extent that such rules are not inconsistent with the provisions of this section.

(j) Use and disclosure of material, answers, or transcripts. The Office of the Attorney General may use the material, answers to interrogatories, or

transcripts for any lawful purpose in conducting its investigation under the false claims law, including sharing the materials with the relator as provided in subdivision (a)(1) of this section. Further, whenever any attorney from the Office of the Attorney General has been designated to appear before any court, grand jury, or agency in any case or proceeding, such attorney may obtain, possess, and use any documentary material, answers to interrogatories, or transcripts of oral testimony received under this section for official use in connection with any such case or proceeding as such attorney determines to be required. Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under subsection (a) of this section shall not be used or disclosed in any other manner than set forth in this subsection without a Court order. No order authorizing such further use or disclosure shall issue without notice to the Attorney General and the person from whom such discovery was obtained, and, if requested by either of those parties, an opportunity to present arguments or evidence, or both, on the issue of disclosure.

(k) Definitions. As used in this section:

(1) “False claims law investigation” means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law.

(2) “False claims law investigator” means any attorney or investigator employed by the Attorney General’s Office who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of Vermont acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation.

(3) “Documentary material” includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery.

(4) “Product of discovery” includes:

(A) the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;

(B) any digest, analysis, selection, compilation, or derivation of any item listed in subdivision (A) of this subdivision (5); and

(C) any index or other manner of access to any item listed in subdivision (A) of this subdivision (5); and

(5) “Official use” means any use that is consistent with the law, and the regulations and policies of the Office of the Attorney General, including use in connection with internal office memoranda and reports; communications between the office and a federal, State, or local government agency, or a contractor of a federal, State, or local government agency, undertaken in furtherance of an office investigation or prosecution of a case; interviews of any qui tam relator or other witness; oral examinations; depositions; preparation for and response to civil discovery requests; introduction into the record of a case or proceeding; applications, motions, memoranda, and briefs submitted to a court or other tribunal; and communications with government investigators, auditors, consultants, experts, the counsel of other parties, arbitrators, and mediators, concerning an investigation, case, or proceeding.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

( Committee Vote: 11-0-0)

**Favorable**

**H. 270**

An act relating to definitions for pretrial screenings and assessments

**Rep. Martel of Waterford**, for the Committee on **Judiciary**, recommends the bill ought to pass.

( Committee Vote: 11-0-0)