

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Agriculture and Forest Products to which was referred
3 House Bill No. 35 entitled “An act relating to improving the quality of State
4 waters” respectfully reports that it has considered the same and recommends
5 that the report of the Committee on Fish, Wildlife and Water Resources be
6 amended as follows:

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

9 Sec. 1. FINDINGS AND PURPOSE; AGRICULTURAL WATER QUALITY

10 (a) Findings. The General Assembly finds that:

11 (1) The U.S. Environmental Protection Agency (EPA) has worked with
12 the State of Vermont to improve the water quality in the Lake Champlain
13 Basin and the waters of Vermont; however, insufficient progress has been
14 made.

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

18 (3) Although Accepted Agricultural Practices (AAPs) were adopted in
19 1995, there is a continued need for increased awareness in the small farms
20 community about the AAPs, and the Agency of Agriculture, Food and Markets

1 should enlist partners to educate small farm operators concerning these
2 requirements.

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

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

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

1 subject Vermont’s farmers to additional requirements under the AAPs and
2 other agricultural water quality rules.

3 (7) The Vermont agricultural community recognizes that it has a role to
4 play in continuing efforts to reduce nutrient loading and improve water quality
5 in the State, but additional State and federal assistance is necessary to fulfill
6 this role successfully, including technical and financial assistance to encourage
7 small farms to adopt and implement nutrient management plans.

8 (8) Many drivers impact water quality in the State, including agriculture,
9 stormwater management, river channel stability, forest management, watershed
10 and wetland protection and restoration, shoreland management, and internal
11 phosphorus loading. In an effort to understand more fully the interconnections
12 between these drivers and their relative impacts on water quality in the State, a
13 six-month systems mapping process could lead to the identification of key
14 leverage points, which, if addressed, could lead to high impact change as
15 required in Vermont’s impending TMDL agreement with EPA.

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

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

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

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

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

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

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

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

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

18 Subchapter 5a. Small Farm Certification

19 § 4871. SMALL FARM CERTIFICATION

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

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

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

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

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

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

17 (c) Certification due to water quality threat. The Secretary may require any
18 person who owns or operates a farm to submit a small farm certification under
19 this section if the person is not required to obtain a permit or submit a
20 certification under this chapter and the Secretary determines that the farm

1 poses a threat of discharge to a water of the State or presents a threat of
2 contamination to groundwater.

3 (d) Rulemaking; small farm certification. The Secretary of Agriculture,
4 Food and Markets shall adopt by rule requirements for a small farm
5 certification of compliance with the accepted agricultural practices. The rules
6 required by this subsection shall be adopted as part of the accepted agricultural
7 practices under section 4810 of this title.

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

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

19 (g)(1) Identification; ranking of water quality needs. During an inspection
20 of a small farm under this section, the Secretary shall identify areas where the
21 farm could benefit from capital, structural, or technical assistance in order to

1 improve or come into compliance with the accepted agricultural practices and
2 any applicable State water quality permit or certification required under this
3 chapter.

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

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

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

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

17 § 4810a. ACCEPTABLE AGRICULTURAL PRACTICES; REVISION

18 (a) On or before July 1, 2016, the Secretary of Agriculture, Food, and
19 Markets shall amend the accepted agricultural practices in order to improve
20 water quality in the State, assure practices on all farms eliminate adverse
21 impacts to water quality, and implement the small farm certification program

1 required by section 4858a of this title. At a minimum, the amendments to the
2 accepted agricultural practices shall:

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

8 (2) Specify those farms that:

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

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

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

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

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

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

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

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

11 (6) Require cropland on the farm to be cultivated in a manner that
12 results in an average soil loss of less than or equal to the soil loss tolerance for
13 the prevalent soil, known as 1T, as calculated through application of the
14 Revised Universal Soil Loss Equation, or through the application of similarly
15 accepted models.

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

1 the top of the bank of an adjoining water of the State or within 10 feet of a
2 ditch.

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

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

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

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

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

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

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

7 Sec. 7. [Deleted.]

8 Sec. 8. [Deleted.]

9 Sec. 9. [Deleted.]

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

12 Sec. 11. [Deleted.]

13 Sec. 12. [Deleted.]

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

16 Sec. 13. 6 V.S.A. § 4810 is amended to read:

17 § 4810. AUTHORITY; COOPERATION; COORDINATION

18 (a) Agricultural land use practices. In accordance with 10 V.S.A.

19 § 1259(i), the ~~secretary~~ Secretary shall adopt by rule, pursuant to 3 V.S.A.

20 chapter 25 of ~~Title 3~~, and shall implement and enforce agricultural land use

21 practices in order to ~~reduce the amount of agricultural pollutants entering the~~

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

6 ~~(1)(b)~~ Accepted Agricultural Practices. “Accepted Agricultural
7 Practices” (AAPs) shall be management standards to be followed ~~in~~
8 ~~conducting agricultural activities by all persons engaged in farming in this state~~
9 State. These standards shall address activities which have a potential for
10 causing pollutants to enter the groundwater and waters of the ~~state~~ State,
11 including dairy and other livestock operations plus all forms of crop and
12 nursery operations and on-farm or agricultural ~~fairground~~ fairgrounds,
13 registered pursuant to 20 V.S.A. § 3902, livestock and poultry slaughter and
14 processing activities. The AAPs shall include, as well as promote and
15 encourage, practices for farmers in preventing pollutants from entering the
16 groundwater and waters of the ~~state~~ State when engaged in, ~~but not limited to,~~
17 animal waste management and disposal, soil amendment applications, plant
18 fertilization, and pest and weed control. Persons engaged in farming, ~~as~~
19 ~~defined in 10 V.S.A. § 6001,~~ who ~~follow~~ are in compliance with these
20 practices shall be presumed to be in compliance with water quality standards.
21 AAPs shall be practical and ~~cost-effective~~ cost-effective to implement, as

1 determined by the Secretary. Where the Secretary determines, after inspection
2 of a farm, that a person engaged in farming is complying with the AAPs but is
3 not complying with the requirements of the State water quality standards, the
4 Secretary shall require the person to implement additional, site-specific
5 conservation practices designed to meet the State water quality standards.
6 When requiring implementation of a conservation practice under this
7 subsection, the Secretary shall inform the person engaged in farming of the
8 resources available to assist the person in implementing the conservation
9 practice and complying with the requirements of this chapter. The AAPs for
10 groundwater shall include a process under which the ~~agency~~ Agency shall
11 receive, investigate, and respond to a complaint that a farm has contaminated
12 the drinking water or groundwater of a property owner.

13 ~~(2)(c) Best Management Practices. “Best Management Practices”~~
14 ~~(BMPs) may be required by the secretary on a case by case basis. Before~~
15 ~~requiring BMPs, the secretary shall determine that sufficient financial~~
16 ~~assistance is available to assist farmers in achieving compliance with~~
17 ~~applicable BMPs. “Best management practices” (BMPs) are site-specific~~
18 on-farm conservation practices implemented in order to address water quality
19 problems and in order to achieve compliance with the requirements of this
20 chapter or State water quality standards. The Secretary may require any person
21 engaged in farming to implement a BMP. When requiring implementation of a

1 BMP, the Secretary shall inform a person engaged in farming of the resources
2 available to assist the person in implementing BMPs and complying with the
3 requirements of this chapter. BMPs shall be practical and ~~cost-effective~~
4 cost-effective to implement, as determined by the Secretary, and shall be
5 designed to achieve compliance with the requirements of this chapter.

6 ~~(b)~~(d) Cooperation and coordination. ~~The secretary of agriculture, food~~
7 ~~and markets~~ Secretary of Agriculture, Food and Markets shall coordinate with
8 ~~the secretary of natural resources~~ Secretary of Natural Resources in
9 implementing and enforcing programs, plans, and practices developed for
10 reducing and eliminating agricultural non-point source pollutants and
11 discharges from concentrated animal feeding operations. ~~The secretary of~~
12 ~~agriculture, food and markets~~ Secretary of Agriculture, Food and Markets and
13 ~~the secretary of natural resources~~ Secretary of Natural Resources shall develop
14 a memorandum of understanding for the non-point program describing
15 program administration, grant negotiation, grant sharing, and how they will
16 coordinate watershed planning activities to comply with Public Law 92-500.
17 ~~The secretary of agriculture, food and markets~~ Secretary of Agriculture, Food
18 ~~and Markets~~ and ~~the secretary of the agency of natural resources~~ Secretary of
19 Natural Resources shall also develop a memorandum of understanding
20 according to the public notice and comment process of 10 V.S.A. § 1259(i)
21 regarding the implementation of the federal concentrated animal feeding

1 operation program and the relationship between the requirements of the federal
2 program and the ~~state~~ State agricultural water quality requirements for large,
3 medium, and small farms under this chapter ~~215 of this title~~. The
4 memorandum of understanding shall describe program administration, permit
5 issuance, an appellate process, and enforcement authority and implementation.
6 The memorandum of understanding shall be consistent with the federal
7 National Pollutant Discharge Elimination System permit regulations for
8 discharges from concentrated animal feeding operations. The allocation of
9 duties under this chapter between the ~~secretary of agriculture, food and~~
10 ~~markets~~ Secretary of Agriculture, Food and Markets and the ~~secretary of~~
11 ~~natural resources~~ Secretary of Natural Resources shall be consistent with the
12 ~~secretary's~~ Secretaries' duties, established under the provisions of 10 V.S.A. §
13 1258(b), to comply with Public Law 92-500. The ~~secretary of natural~~
14 ~~resources~~ Secretary of Natural Resources shall be the ~~state~~ State lead person in
15 applying for federal funds under Public Law 92-500, but shall consult with the
16 ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and
17 Markets during the process. The agricultural non-point source program may
18 compete with other programs for competitive watershed projects funded from
19 federal funds. The ~~secretary of agriculture, food and markets~~ Secretary of
20 Agriculture, Food and Markets shall be represented in reviewing these projects
21 for funding. Actions by the ~~secretary of agriculture, food and markets~~

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

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

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

15 § 4991. PURPOSE

16 The purpose of this subchapter is to provide the Secretary of Agriculture,
17 Food and Markets with the necessary authority to enforce the agricultural
18 water quality requirements of this chapter. When the Secretary of Agriculture,
19 Food and Markets determines that a person subject to the requirements of the
20 chapter is violating a requirement of this chapter, the Secretary shall respond to

1 and require discontinuance of the violation. The Secretary may respond to a
2 violation of the requirements of this chapter by:

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

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

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

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

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

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

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

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

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

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

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

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

7 Sec. 22. [Deleted.]

8 Sec. 23. [Deleted.]

9 Sec. 24. [Deleted.]

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

12 (2) the Fund shall consist of:

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

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

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

21 Sec. 36. [Deleted.]

1 Sec. 37. [Deleted.]

2 Sec. 38. [Deleted.]

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

6 Sec. 40. [Deleted.]

7 Sec. 41. [Deleted.]

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

11 Sec. 42. [Deleted.]

12 Sec. 43. [Deleted.]

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

16 Sec. 51. [Deleted.]

17 Sec. 52. [Deleted.]

18 Sec. 53. [Deleted.]

19 Sec. 54. [Deleted.]

20 Sixteenth: By including a reader assistance prior to Sec. 55 to read as

21 follows: * * * Effective Dates * * *

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

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6

7 (Committee vote: _____)

8

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Representative _____

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FOR THE COMMITTEE