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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. For the purpose of Secs. 1–21 of this act, the General  
11 Assembly finds that:

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

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

17 (3) The U.S. Environmental Protection Agency (EPA) revoked approval  
18 of the initial total maximum daily load (TMDL) plan for Lake Champlain  
19 despite the State’s reaching one-third of the TMDL’s goal in less than  
20 10 years.

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

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

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

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

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

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

19           (2) authorize and prioritize proactive measures designed to implement  
20 and meet the impending total maximum daily load (TMDL) plan for Lake

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1 Champlain, meet impending TMDL plans for other State waters, and improve  
2 water quality across the State;

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

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

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

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

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

14 Subchapter 5a. Small Farm Certification

15 § 4871. SMALL FARM CERTIFICATION

16 (a) Small farm definition. As used in this section, “small farm” means a  
17 parcel or parcels of land on which farming is conducted and that:

18 (1) are 10 or more acres in size;

19 (2) house no more than the number of animals specified under section  
20 4857 of this title;

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

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

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

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

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

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1 certification of compliance with the accepted agricultural practices. The rules  
2 required by this subsection shall be adopted as part of the accepted agricultural  
3 practices under section 4810 of this title.

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

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

15 (f)(1) Identification; ranking of water quality needs. During an inspection  
16 of a small farm under this section, the Secretary shall identify areas where the  
17 farm could benefit from capital, structural, or technical assistance in order to  
18 improve or come into compliance with the accepted agricultural practices and  
19 any applicable State water quality permit or certification required under this  
20 chapter.

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

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

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

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

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

18           § 4810a. ACCEPTABLE AGRICULTURAL PRACTICES; REVISION

19           (a) On or before July 1, 2016, the Secretary of Agriculture, Food, and  
20           Markets shall amend the accepted agricultural practices in order to improve

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1 water quality in the State, assure practices on all farms eliminate adverse  
2 impacts to water quality, and implement the small farm certification program  
3 required by section 4858a of this title. At a minimum, the amendments to the  
4 accepted agricultural practices shall:

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

10 (2) Specify those farms that:

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

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

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

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

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

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

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

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

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

18                   (7) Require a farm to comply with standards established by the  
19 Secretary for maintaining a vegetative buffer zone of perennial vegetation  
20 between annual croplands and the top of the bank of an adjoining water of the

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1 State. At a minimum the vegetative buffer standards established by the  
2 Secretary shall prohibit the application of manure on the farm within 25 feet of  
3 the top of the bank of an adjoining water of the State or within 10 feet of a  
4 ditch.

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

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

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

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

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

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

4 Fourth: By striking out Sec. 11 in its entirety and inserting in lieu thereof  
5 the following:

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

7 § 366. TONNAGE FEES

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

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

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

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

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

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

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

11       (h) There shall be paid annually to the Secretary for all fertilizers  
12 distributed to a nonregistrant consumer in this State an annual fee at a rate of  
13 \$15.00 per ton for the purpose of supporting agricultural water quality  
14 programs in Vermont.

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

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

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

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

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

12          Fifth: In Sec. 13, 6 V.S.A. § 4810, in subsection (e), as proposed for  
13          amendment, in the sixth sentence, after “shall be consistent with the” and  
14          before “duties, established under the provision of 10 V.S.A. § 1258(b),” by  
15          striking out “~~secretary’s~~ Secretary’s” and inserting in lieu thereof “~~secretary’s~~  
16          Secretaries”

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

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

3        § 4991. PURPOSE

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

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

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

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

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

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

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

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1           (7) referring the violation to the Secretary of Natural Resources for  
2           enforcement under 10 V.S.A. chapter 201.  
3           and in 6 V.S.A. § 4993, by striking out subdivision (a)(2) in its entirety and  
4           inserting in lieu thereof the following:

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

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

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

12          Eighth: By striking out Secs. 22–24 (AAPs as condition of use value  
13          appraisal) in their entirety and inserting [Omitted] in lieu thereof for each  
14          section.

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17          (Committee vote: \_\_\_\_\_)

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\_\_\_\_\_

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Representative \_\_\_\_\_

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FOR THE COMMITTEE