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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. 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

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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

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1 water quality plan. Addressing agriculture’s contribution to the problem will  
2 subject Vermont’s farmers to additional requirements under the AAPs and  
3 other agricultural water quality rules.

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

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

17 (9) Numerous stakeholder organizations have been working for many  
18 years to improve water quality in Vermont’s watersheds, each in their own  
19 way. Given the complexity of the challenge we face in improving water  
20 quality as well as the complexity of natural systems in general, the General

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1 Assembly recognizes that a collaborative approach will be critical to  
2 addressing these challenges.

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

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

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

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

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

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

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

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

20 Subchapter 5a. Small Farm Certification

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1     § 4871. SMALL FARM CERTIFICATION

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

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

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

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

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

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

20           (c) Certification due to water quality threat. The Secretary may require any  
21     person who owns or operates a farm to submit a small farm certification under

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1 this section if the person is not required to obtain a permit or submit a  
2 certification under this chapter and the Secretary determines that the farm  
3 poses a threat of discharge to a water of the State or presents a threat of  
4 contamination to groundwater.

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

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

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

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

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

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

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

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

20       § 4810a. ACCEPTABLE AGRICULTURAL PRACTICES; REVISION

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

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

12               (2) Specify those farms that:

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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1 drainage, the Secretary may require an existing subsurface tile drain to comply  
2 with the requirements of the AAPs for subsurface tile drainage upon a  
3 determination that compliance is necessary to reduce adverse impacts to water  
4 quality from the subsurface tile drain.

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

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

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

13 Sec. 7. [Deleted.]

14 Sec. 8. [Deleted.]

15 Sec. 9. [Deleted.]

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

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1 Sec. 11. [Deleted.]

2 Sec. 12. [Deleted.]

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

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

6 § 4810. AUTHORITY; COOPERATION; COORDINATION

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

8 § 1259(i), the ~~secretary~~ Secretary shall adopt by rule, pursuant to 3 V.S.A.

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

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

11 ~~waters of the state~~ satisfy the requirements of 33 U.S.C. § 1329 that the State

12 identify and manage nonpoint sources of agricultural waste to waters of the

13 State. These agricultural land use practices shall be created in two categories,

14 pursuant to ~~subdivisions (1) and (2) of this subsection~~ subsections (b) and (c)

15 of this section.

16 ~~(1)(b)~~ Accepted Agricultural Practices. “Accepted Agricultural

17 Practices” (AAPs) shall be management standards to be followed ~~in~~

18 ~~conducting agricultural activities by all persons engaged in farming in this state~~

19 State. These standards shall address activities which have a potential for

20 causing pollutants to enter the groundwater and waters of the ~~state~~ State,

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1 including dairy and other livestock operations plus all forms of crop and  
2 nursery operations and on-farm or agricultural fairground, registered pursuant  
3 to 20 V.S.A. § 3902, livestock and poultry slaughter and processing activities.  
4 The AAPs shall include, as well as promote and encourage, practices for  
5 farmers in preventing pollutants from entering the groundwater and waters of  
6 the ~~state~~ State when engaged in, ~~but not limited to,~~ animal waste management  
7 and disposal, soil amendment applications, plant fertilization, and pest and  
8 weed control. Persons engaged in farming, ~~as defined in 10 V.S.A. § 6001,~~  
9 ~~who follow~~ are in compliance with these practices shall be presumed to be in  
10 compliance with water quality standards. AAPs shall be practical and ~~cost~~  
11 ~~effective~~ cost-effective to implement, as determined by the Secretary. Where  
12 the Secretary determines, after inspection of a farm, that a person engaged in  
13 farming is complying with the AAPs but is not complying with the  
14 requirements of the State water quality standards, the Secretary shall require  
15 the person to implement additional, site-specific conservation practices  
16 designed to meet the State water quality standards. When requiring  
17 implementation of a conservation practice under this subsection, the Secretary  
18 shall inform the person engaged in farming of the resources available to assist  
19 the person in implementing the conservation practice and complying with the  
20 requirements of this chapter. The AAPs for groundwater shall include a

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1 process under which the ~~agency~~ Agency shall receive, investigate, and respond  
2 to a complaint that a farm has contaminated the drinking water or groundwater  
3 of a property owner.

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

18 ~~(b)(d)~~ Cooperation and coordination. ~~The secretary of agriculture, food~~  
19 ~~and markets~~ Secretary of Agriculture, Food and Markets shall coordinate with  
20 ~~the secretary of natural resources~~ Secretary of Natural Resources in

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1 implementing and enforcing programs, plans, and practices developed for  
2 reducing and eliminating agricultural non-point source pollutants and  
3 discharges from concentrated animal feeding operations. The ~~secretary of~~  
4 ~~agriculture, food and markets~~ Secretary of Agriculture, Food and Markets and  
5 the ~~secretary of natural resources~~ Secretary of Natural Resources shall develop  
6 a memorandum of understanding for the non-point program describing  
7 program administration, grant negotiation, grant sharing, and how they will  
8 coordinate watershed planning activities to comply with Public Law 92-500.  
9 The ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food  
10 and Markets and the ~~secretary of the agency of natural resources~~ Secretary of  
11 Natural Resources shall also develop a memorandum of understanding  
12 according to the public notice and comment process of 10 V.S.A. § 1259(i)  
13 regarding the implementation of the federal concentrated animal feeding  
14 operation program and the relationship between the requirements of the federal  
15 program and the ~~state~~ State agricultural water quality requirements for large,  
16 medium, and small farms under this chapter ~~215 of this title~~. The  
17 memorandum of understanding shall describe program administration, permit  
18 issuance, an appellate process, and enforcement authority and implementation.  
19 The memorandum of understanding shall be consistent with the federal  
20 National Pollutant Discharge Elimination System permit regulations for

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1 discharges from concentrated animal feeding operations. The allocation of  
2 duties under this chapter between the ~~secretary of agriculture, food and~~  
3 ~~markets~~ Secretary of Agriculture, Food and Markets and the ~~secretary of~~  
4 ~~natural resources~~ Secretary of Natural Resources shall be consistent with the  
5 ~~secretary's~~ Secretaries' duties, established under the provisions of 10 V.S.A. §  
6 1258(b), to comply with Public Law 92-500. The ~~secretary of natural~~  
7 ~~resources~~ Secretary of Natural Resources shall be the ~~state~~ State lead person in  
8 applying for federal funds under Public Law 92-500, but shall consult with the  
9 ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and  
10 Markets during the process. The agricultural non-point source program may  
11 compete with other programs for competitive watershed projects funded from  
12 federal funds. The ~~secretary of agriculture, food and markets~~ Secretary of  
13 Agriculture, Food and Markets shall be represented in reviewing these projects  
14 for funding. Actions by the ~~secretary of agriculture, food and markets~~  
15 Secretary of Agriculture, Food and Markets under this chapter concerning  
16 agricultural non-point source pollution shall be consistent with the water  
17 quality standards and water pollution control requirements of 10 V.S.A.  
18 ~~chapter 47 of Title 10~~ and the federal Clean Water Act as amended. In  
19 addition, the ~~secretary of agriculture, food and markets~~ Secretary of  
20 Agriculture, Food and Markets shall coordinate with the ~~secretary of natural~~



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1 ~~resources~~ Secretary of Natural Resources in implementing and enforcing  
2 programs, plans, and practices developed for the proper management of  
3 composting facilities when those facilities are located on a farm.

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

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

9 § 4991. PURPOSE

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

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

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

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- 1           (3) issuing a cease and desist order under section 4993 of this title;  
2           (4) issuing an emergency order under section 4993 of this title;  
3           (5) revoking or conditioning coverage under a permit or certification  
4 under section 4994 of this title;  
5           (6) bringing a civil enforcement action under section 4995 of  
6 this title; or  
7           (7) referring the violation to the Secretary of Natural Resources for  
8 enforcement under 10 V.S.A. chapter 201.

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

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

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

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

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

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1 Sec. 22. [Deleted.]

2 Sec. 23. [Deleted.]

3 Sec. 24. [Deleted.]

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

6 (2) the Fund shall consist of:

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

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

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

15 Sec. 36. [Deleted.]

16 Sec. 37. [Deleted.]

17 Sec. 38. [Deleted.]

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

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1 Sec. 40. [Deleted.]

2 Sec. 41. [Deleted.]

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

6 Sec. 42. [Deleted.]

7 Sec. 43. [Deleted.]

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

11 Sec. 51. [Deleted.]

12 Sec. 52. [Deleted.]

13 Sec. 53. [Deleted.]

14 Sec. 54. [Deleted.]

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

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

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3 (Committee vote: \_\_\_\_\_)

4

\_\_\_\_\_

5

Representative \_\_\_\_\_

6

FOR THE COMMITTEE