

1 S.260

2 Introduced by Senators Bray, Lyons, and Clarkson

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; finance; water resources; water
6 quality

7 Statement of purpose of bill as introduced: This bill proposes to establish the
8 Vermont Clean Water Authority to coordinate, manage, plan, and ensure
9 accountability of the efforts of the State to clean up impaired waters, maintain
10 and achieve the Vermont Water Quality Standards in all waters, and prevent
11 the future degradation of waters. The bill would also establish a Clean Water
12 Assessment on all parcels in the State. Monies collected under the Clean
13 Water Assessment would be deposited in the Vermont Water Quality Fund to
14 fund water quality improvement projects in the State.

15 An act relating to funding the cleanup of State waters

16 It is hereby enacted by the General Assembly of the State of Vermont:

17 Sec. 1. FINDINGS

18 The General Assembly finds that:

19 (1) Within Vermont there are 7,100 miles of rivers and streams and 812
20 lakes and ponds of at least five acres in size.

1 (2) Current assessment of State waters or water segments indicates that
2 there are:

3 (A) 101 waters or water segments that do not meet the State's water
4 quality standards for at least one criterion and require a plan for cleanup;

5 (B) 114 waters or water segments that do not meet State water quality
6 standards and that do have a current cleanup plan, but which may not be
7 meeting water quality standards;

8 (C) 114 waters or water segments that are stressed, meaning that
9 there are one or more factors or influences that prohibit the water from
10 maintaining a higher quality; and

11 (D) at least 56 waters that are altered due to aquatic nuisance species,
12 meaning that one or more of the designated uses of the water are prohibited
13 due to the presence of aquatic nuisance species.

14 (3) In 2015, the General Assembly enacted 2015 Acts and Resolves
15 No. 64, An Act Relating to Improving the Quality of State Waters (Act 64), for
16 the purpose, among others, of providing mechanisms, staffing, and financing
17 necessary for the State to achieve and maintain compliance with the Vermont
18 Water Quality Standards for all State waters.

19 (4) Act 64 directed the State Treasurer to recommend to the General
20 Assembly a long-term mechanism for financing water quality improvement in

1 the State, including proposed revenue sources for water quality improvement
2 programs.

3 (5) The State Treasurer submitted a Clean Water Report in January 2017
4 that included:

5 (A) an estimate that over 20 years it would cost \$2.3 billion to
6 achieve compliance with water quality requirements;

7 (B) a projection that revenue available for water quality over the 20-
8 year period would be approximately \$1.06 billion, leaving a 20-year total
9 funding gap of \$1.3 billion;

10 (C) an estimate of annual compliance costs of \$115.6 million, which,
11 after accounting for projected revenue, would leave a funding gap of
12 \$48.5 million to pay for the costs of compliance with the first tier of federal
13 and State water quality requirements; and

14 (D) an estimate of the State share of the funding gap of between
15 \$20 to \$25 million annually.

16 (6) After determining that a method to achieve equitable and effective
17 long-term funding methods to support clean water efforts in Vermont was
18 necessary, the General Assembly established in 2017 Acts and Resolves
19 No. 73 Sec. 26 a Working Group on Water Quality Funding to develop draft
20 legislation to accomplish this purpose, but the Working Group on Water
21 Quality Funding failed to comply with its statutory charge.

1 (7) To ensure that the State has sufficient funds to clean and protect the
2 State's waters so that they will continue to provide their integral and inherent
3 environmental and economic benefits, the State should adopt an equitable and
4 effective long-term funding method to support clean water efforts in Vermont.

5 (8) The revenue generated by the equitable and effective long-term
6 funding method should be administered by an authority structured to have the
7 sole goal of financing the remediation, improvement, and protection of the
8 quality of the waters of the State in the most effective and expedient manner.

9 Sec. 2. 10 V.S.A. chapter 47, subchapter 3a is added to read:

10 Subchapter 3a. Vermont Clean Water Authority

11 § 1351. PURPOSE

12 The purpose of this subchapter is to:

13 (1) establish an equitable, broad-based, long-term, flexible mechanism
14 to support clean water in Vermont;

15 (2) support the implementation of all of the following:

16 (A) the requirements of 2015 Acts and Resolves No. 64;

17 (B) federal or State required cleanup plans for individual waters or
18 water segments, such as total maximum daily load plans; and

19 (C) the Agency of Natural Resources' Combined Sewer
20 Overflow Rule;

1 (3) provide adequate resources for the State to meet or exceed the
2 Vermont Water Quality Standards so that all State waters may provide the
3 environmental, natural resource, and recreational values inherent in clean
4 water;

5 (4) protect public health and the State's economy from the long-term
6 costs of failing to clean up Vermont waters; and

7 (5) establish an entity that will work in concert with the Agency of
8 Natural Resources and other State agencies to provide the necessary leadership
9 and accountability on funding and implementing water quality improvement
10 projects in the State.

11 § 1352. DEFINITIONS

12 As used in this subchapter:

13 (1) "Authority" means the Vermont Clean Water Authority.

14 (2) "Parcel" means all contiguous land in the same ownership, together
15 with all improvements therein and shall include a parcel exempt from taxation
16 under 32 V.S.A. § 3802.

17 § 1353. VERMONT CLEAN WATER AUTHORITY

18 (a) Establishment. There is established the Vermont Clean Water
19 Authority whose sole purpose shall be to finance the remediation,
20 improvement, and protection of the quality of the waters of the State by:

21 (1) coordinating water quality financing in the State;

1 (2) planning for the water quality financing needs of the State;
2 (3) financing necessary water quality programs and projects; and
3 (4) maintaining accountability of the efforts of the State to clean up
4 impaired waters, maintain and achieve the Vermont Water Quality Standards
5 in all waters, and prevent the future degradation of waters.

6 (b) Public instrumentality. The Vermont Clean Water Authority is
7 constituted as a public instrumentality exercising public and essential
8 governmental functions. The exercise by the Vermont Clean Water Authority
9 of the powers conferred by this subchapter shall be deemed and held to be the
10 performance of an essential governmental function of the State. The Vermont
11 Clean Water Authority is exempt from licensure under 8 V.S.A. chapter 73.

12 § 1354. VERMONT CLEAN WATER AUTHORITY; POWERS AND
13 DUTIES

14 (a) General authority. The Vermont Clean Water Authority shall have all
15 the powers necessary and convenient to carry out and effectuate the purposes
16 and provisions of this subchapter, including those general powers provided to a
17 business corporation by Title 11A.

18 (b) Water quality financing.

19 (1) The Vermont Clean Water Authority is authorized to issue grants or
20 awards from the Vermont Water Quality Fund to one or both of the following:

1 (A) State agencies, municipalities, private developers, and others in
2 order to comply with water quality requirements or to construct or implement
3 water quality projects or programs;

4 (B) nonprofit organizations, regional associations, and other entities
5 for implementation and administration of community-based water quality
6 programs or projects.

7 (2) The Vermont Clean Water Authority shall issue grants or awards to
8 eligible parties after application on a form prescribed by the Authority.

9 (c) Financing plans.

10 (1) The Vermont Clean Water Authority, every three years, shall
11 develop a financing plan for the disbursement of money from the Vermont
12 Water Quality Fund for water quality programs and projects in the State
13 necessary to fulfill the purposes of this subchapter.

14 (2) The financing plan shall be designed to disburse the amount needed
15 to fund the costs of complying with the following water quality programs after
16 accounting for other available sources of State and federal revenue:

17 (A) federal or State required cleanup plans for individual waters or
18 water segments, such as total maximum daily load plans;

19 (B) the requirements of 2015 Acts and Resolves No. 64; and

20 (C) the Agency of Natural Resources' Combined Sewer
21 Overflow Rule.

1 (3) A financing plan shall include all of the following:

2 (A) a management strategy for the disbursement of funds over the
3 term of the three-year plan;

4 (B) the type of projects or programs to be funded;

5 (C) criteria for prioritizing the funding of projects; and

6 (D) methods or measurements to ensure accountability of funded
7 projects.

8 (4) The Vermont Clean Water Authority shall submit a copy of each
9 three-year plan to the Senate Committee on Natural Resources and Energy, the
10 Senate Committee on Finance, the House Committee on Natural Resources,
11 Fish and Wildlife, and the House Committee on Ways and Means.

12 (d) Assessment criteria; recommendation.

13 (1) The Vermont Clean Water Authority shall adopt by rule under
14 section 1357 of this title criteria for adjusting the base Clean Water
15 Assessment under section 1356 of this title based on the degree of adverse
16 effect a parcel type poses on the waters of the State.

17 (2) Annually, the Vermont Clean Water Authority shall submit to the
18 House Committee on Ways and Means and the Senate Committee on Finance
19 recommended fee adjustments for each criterion or category of parcel
20 established by rule.

1 (3) The recommended fee adjustments of the Vermont Clean Water
2 Authority combined with the base Clean Water Assessment under section 1356
3 of this title and the Property Transfer tax under 32 V.S.A. § 9602a shall
4 generate sufficient revenue to fund the Authority's subsequent three-year
5 financing plan for water quality programs and projects in the State.

6 (e) Cooperative agreements; transfers. The Vermont Clean Water
7 Authority shall have the authority to enter into cooperative agreements with
8 private organizations or individuals or with any agency or instrumentality of
9 the United States or of this State to carry out the purposes of this subchapter.

10 § 1355. COMPOSITION; APPOINTMENT

11 (a) Board; appointment. The Vermont Clean Water Authority shall be
12 governed by a Board of Directors consisting of five members with expertise in
13 one or more of the following subject matters: public health, public
14 management, civil engineering, agriculture, ecology, wetlands, forestry,
15 transportation, law, banking, finance, and investment. The members of the
16 Board shall be appointed as follows:

17 (1) one member who shall have expertise in banking, finance, or
18 investment shall be appointed by the Governor;

19 (2) two members shall be appointed by the Committee on Committees,
20 and one of the members shall have expertise in ecosystem restoration; and

1 (3) two members shall be appointed by the Speaker of the House, and
2 one of the members shall have expertise in agricultural water quality
3 management.

4 (b) Member terms. The members appointed to the Board of Directors of
5 the Vermont Clean Water Authority shall serve for terms of six years, except
6 that the member first appointed by the Governor shall serve an initial term of
7 one year and one of the members first appointed by the Committee on
8 Committees and one of the members first appointed by the Speaker of the
9 House each shall serve an initial term of three years. A vacancy occurring on
10 the Board shall be filled by the respective appointing authority for the balance
11 of the unexpired term. A member of the Board of the Vermont Clean Water
12 Authority may be reappointed.

13 (c) Board officers; meetings; decisions. Annually, the Board of Directors
14 of the Vermont Clean Water Authority shall elect from among its members a
15 chair and vice chair. The Board may elect officers as it may determine.
16 Meetings shall be held at the call of the Chair or at the request of three
17 members. A majority of the sitting members shall constitute a quorum and
18 action taken by the Board under this subchapter may be authorized by a
19 majority of the members present and voting at any regular or special meeting.

20 (d) Staff. The Board of Directors of the Vermont Clean Water Authority
21 may employ an executive director to administer, manage, and direct the affairs

1 and business of the Vermont Clean Water Authority, subject to the policies,
2 control, and direction of the Board of Directors. The Vermont Clean Water
3 Authority may employ technical experts and other officers, agents, and
4 employees as are necessary to implement the requirements of this subchapter
5 and may fix their qualifications, duties, and compensation. The Vermont
6 Clean Water Authority shall be entitled to seek financial, technical, and
7 scientific input or services from the Office of the State Treasurer, the Agency
8 of Natural Resources, the Agency of Agriculture, Food and Markets, and the
9 Agency of Transportation. The Department of Taxes shall provide the
10 Vermont Clean Water Authority with technical assistance regarding
11 calculation of recommended fee adjustments under this subchapter. The
12 Vermont Clean Water Authority shall be entitled to the services of the Office
13 of the Attorney General for legal assistance.

14 (e) Public body; public agency. The Vermont Clean Water Authority is
15 a public body subject to the requirements of the Open Meeting Law under
16 1 V.S.A. chapter 5, subchapter 2 and a public agency subject to the Public
17 Records Act under 1 V.S.A. chapter 5, subchapter 3.

18 § 1356. CLEAN WATER ASSESSMENT

19 (a) Assessment; administration. There is imposed an annual Clean Water
20 Assessment on all parcels in the State. The Commissioner of Taxes shall

1 administer and enforce the collection of the Clean Water Assessment under
2 section 1358 of this title.

3 (b) Assessment amount. The amount of the Clean Water Assessment
4 shall be \$40.00 per parcel plus or minus any adjustment adopted by the
5 General Assembly and assessed to the parcel based on the criteria or category
6 of property adopted by the Vermont Clean Water Authority by rule under
7 section 1357 of this title

8 (c) Exemption. The Commissioner shall not collect the Clean Water
9 Assessment from the owner of a parcel that:

10 (1) is composed entirely of a railroad track right-of-way, provided that
11 the Commissioner shall collect the Clean Water Assessment for parcels on
12 which railroad stations, maintenance buildings, or other developed land used
13 for railroad purposes is located; or

14 (2) the State lacks authority under State or federal law on which to
15 impose the fee established by this section.

16 (d) Calculation. In calculating the Clean Water Assessment, the
17 Commissioner shall round the acreage of a parcel down to the nearest whole
18 acre.

19 § 1357. RULEMAKING; PRIORITIES; ADJUSTMENTS; CREDIT

20 (a) General authority. The Vermont Clean Water Authority may adopt
21 rules in accordance with 3 V.S.A. chapter 25 for the purpose of administering

1 the provisions of this subchapter, including rules governing application for and
2 issuance of grants or awards to eligible persons.

3 (b) Fee adjustment; criteria; parcel category. The Vermont Clean Water
4 Authority shall adopt by rule criteria or categories of parcels for which the
5 Authority annually shall recommend to the General Assembly adjustments to
6 the base Clean Water Assessment. In adopting the criteria or categories, the
7 Authority shall consider:

8 (1) the size of the parcel;

9 (2) the location of the parcel;

10 (3) whether the parcel or use of the parcel contributes to an impairment
11 of a water of the State or otherwise adversely affects water quality;

12 (4) an assessment of the surface coverage of the parcel, including:

13 (A) the amount of impervious surface on the parcel;

14 (B) the amount of cropland on the parcel; or

15 (C) the number of residential, commercial, or industrial structures on
16 the parcel;

17 (5) stormwater treatment practices or other water quality measures
18 implemented on the parcel;

19 (6) whether to provide credits or reduced charges for payment of a
20 municipal stormwater utility fee or other similar water quality charge, provided

1 that no Clean Water Assessment for a parcel shall be reduced by more than
2 75 percent; and

3 (7) whether the enforcement history or continuing violation of a parcel
4 owner shall be a basis for an adjustment to the Clean Water Assessment for a
5 parcel.

6 (c) Priorities for award. The Vermont Clean Water Authority shall adopt
7 by rule a system of priorities for issuance of grants or awards from the
8 Vermont Water Quality Fund. The system of priorities shall require
9 consideration of criteria, including:

10 (1) whether a project is grant eligible;

11 (2) the condition of the waters affected by the project, activity, or
12 program and whether the waters are:

13 (A) not in compliance with the Vermont Water Quality Standards; or

14 (B) have a total maximum daily load (TMDL) plan;

15 (3) whether the project will address water quality issues identified in a
16 basin plan;

17 (4) whether the project will abate or control pollution that is causing or
18 may cause a threat to public health;

19 (5) whether the project will address an emergency situation affecting or
20 constituting a threat to the environment or the public health, safety, or welfare;

1 (6) whether the project will address an agricultural water quality issue
2 for which other sources of funds are unavailable;

3 (7) the fiscal integrity and sustainability of the project, including
4 whether the project is a cost-effective alternative when compared to other
5 alternatives;

6 (8) if the project removes a pollutant by which the water or waters
7 affected by the project are impaired, the cost-effectiveness of the project at
8 removing that pollutant; and

9 (9) income or financial resources available to an applicant to conduct the
10 proposed project.

11 (d) Conditions; terms of grants or awards. The Clean Water Authority may
12 adopt by rule conditions or terms for grants or awards from the Vermont Water
13 Quality Fund.

14 § 1358. COLLECTION OF CLEAN WATER ASSESSMENT

15 (a) Collection. The Clean Water Assessment established under section
16 1356 of this title shall be assessed and collected as part of the tax bill issued
17 under 32 V.S.A. § 5402(b), provided that the Clean Water Assessment shall be
18 listed separately from the tax collected.

19 (b) Municipal retention. A municipality may retain 0.225 of one percent of
20 the total of the Clean Water Assessment collected, provided that the
21 municipality timely remits net payment to the State Treasurer.

1 (c) Remittance. The treasurer of each municipality shall remit the collected
2 Clean Water Assessment minus the municipally retained amount to the
3 Commissioner of Taxes in two payments due on December 1 and June 1 of
4 each year for deposit in the Vermont Water Quality Fund.

5 (d) Insufficient payments. In case of insufficient payment of the Clean
6 Water Assessment by a taxpayer to a municipality, the municipality shall not
7 be required to remit to the State the amount of full liability for all parcels
8 within the municipality, provided that the municipality submits to the
9 Commissioner of Taxes a list of those taxpayers who are delinquent in the
10 payment of the Clean Water Assessment.

11 (e) Offset. The Commissioner of Taxes may, under chapter 151,
12 subchapter 12 of this title, offset any delinquent Clean Water Assessment
13 against any refund owed the delinquent taxpayer, including, notwithstanding
14 the monetary limit of 32 V.S.A. § 5933(a), an amount of less than \$50.00.

15 (f) Form or format. The Commissioner of Taxes shall specify the form or
16 format for the remission of the collected Clean Water Assessment.

17 (g) Abatement. A person may seek and a municipality may grant
18 abatement under 24 V.S.A. § 1535 of the Clean Water Assessment assessed
19 under this section.

1 (h) Disposition. The Commissioner of Taxes shall deposit all assessments
2 and fees collected under this section in the Vermont Water Quality Fund,
3 established under section 1359 of this title, for the authorized uses of the Fund.

4 § 1359. VERMONT WATER QUALITY FUND

5 (a) There is established the Vermont Water Quality Fund pursuant to
6 32 V.S.A. chapter 7, subchapter 5 to be administered by the Vermont Clean
7 Water Authority. The Fund shall be used to provide grants and loans to
8 municipalities, nonprofit entities, and private individuals to implement or
9 administer projects or programs consistent with the purposes of this
10 subchapter. The Fund shall consist of:

11 (1) revenues dedicated for deposit into the Fund by the General
12 Assembly, including the Property Transfer Tax Surcharge established under
13 32 V.S.A. § 9602a and the Clean Water Assessment established under section
14 1356 of this title;

15 (2) any federal funds awarded to the Vermont Clean Water Authority in
16 accordance with State and federal laws; and

17 (3) other gifts, donations, or impact fees received from any source,
18 public or private, dedicated for deposit into the Fund and approved by the
19 General Assembly, or the Joint Fiscal Committee when the General Assembly
20 is not in session.

21 (b)(1) Monies in the Fund shall be used solely for the following purposes:

1 (A) to fund water quality grants and awards by the Vermont Clean
2 Water Authority as authorized under section 1353 of this title; and

3 (B) to pay the administrative and staff costs of implementing and
4 administering the Vermont Clean Water Authority, provided that not more than
5 15 percent of the total amount in the Fund over its lifetime shall be used for
6 this purpose in any fiscal year.

7 (2) The Vermont Water Quality Fund shall be established and held
8 separate and apart from any other funds or monies of the State and shall be
9 used and administered exclusively for the purposes set forth in this section.

10 Monies in the Fund shall be invested in the same manner as permitted for
11 investment of funds belonging to the State or held in the Treasury. Monies in
12 the Fund shall not be available to meet the general obligations of the State.

13 (3) Notwithstanding any contrary provisions of 32 V.S.A. chapter 7,
14 subchapter 5, unexpended balances shall remain in the Fund from year to year.

15 § 1360. ANNUAL REPORT

16 Beginning on January 15, 2022 and annually thereafter, the Vermont Clean
17 Water Authority shall submit to the Senate Committee on Natural Resources
18 and Energy, the Senate Committee on Finance, the House Committee on
19 Natural Resources, Fish and Wildlife, and the House Committee on Ways and
20 Means a report regarding the progress of the Vermont Clean Water Authority

1 in remediating pollution in State waters and improving and protecting the
2 quality of the waters of the State. The report shall include all of the following:

3 (1) an enumeration of the indicators of improved water quality,
4 including any indicators required to be monitored under federal or State law;

5 (2) an assessment of the water quality of the State, including:

6 (A) documented progress or shortcomings in meeting established
7 indicators for clean water restoration; and

8 (B) whether the water quality of each river basin in the State is
9 improving or deteriorating or remains unchanged from the previous year;

10 (3) the number of parcel owners from which the assessment was
11 collected, the number of parcel owners who failed to pay the assessment, and a
12 summary of any enforcement action taken by the Commissioner for
13 nonpayment of the assessment;

14 (4) the amount of Clean Water Assessment collected by the
15 Commissioner under section 1358 of this title; and

16 (5) an accounting of expenditures from the Vermont Water Quality
17 Fund in the previous calendar year, including a summary of the projects,
18 activities, or programs funded in each river basin of the State.

1 § 1361. PROGRAM AUDIT OF VERMONT CLEAN WATER

2 AUTHORITY

3 (a) On or before January 15, 2023, and every three years thereafter, the
4 Vermont Clean Water Authority shall submit to the House and Senate
5 Committees on Appropriations, the Senate Committee on Finance, the House
6 Committee on Ways and Means, the Senate Committee on Agriculture, the
7 House Committee on Agriculture and Forestry, the Senate Committee on
8 Natural Resources and Energy, and the House Committee on Natural
9 Resources, Fish and Wildlife a program audit of the Vermont Clean Water
10 Authority established under section 1353 of this title.

11 (b) The audit shall include:

12 (1) the amount of the Property Transfer Tax Surcharge collected under
13 32 V.S.A. § 9602a and the amount of the Clean Water Assessment collected
14 under section 1356 of this title;

15 (2) the amount of monies expended from the Vermont Water Quality
16 Fund for the administration of the Vermont Clean Water Authority;

17 (3) a list or accounting of the projects, activities, or programs funded by
18 the Vermont Clean Water Authority;

19 (4) an analysis and summary of the efficacy of the water quality projects
20 and programs funded by the Vermont Clean Water Authority, including

1 whether the funded projects and programs are achieving the intended water
2 quality benefits; and

3 (5) a recommendation of whether the General Assembly should
4 authorize the continuation of the Vermont Clean Water Authority and, if so, at
5 what funding level.

6 (c) The audit required by this section shall be conducted by a qualified,
7 independent environmental consultant or organization with knowledge of the
8 federal Clean Water Act, State water quality requirements and programs, the
9 Lake Champlain Total Maximum Daily Load Plan, and the program elements
10 of the State clean water initiative.

11 (d) Notwithstanding provisions of section 1359 of this title to the contrary,
12 the Vermont Clean Water Authority shall pay for the costs of the audit required
13 under this section from the Vermont Water Quality Fund.

14 Sec. 3. TRANSITION; IMPLEMENTATION

15 (a) The Board of Directors of the Vermont Clean Water Authority shall be
16 appointed on or before January 1, 2019.

17 (b) On or before January 1, 2020, the Vermont Clean Water Authority shall
18 adopt the rules required under 10 V.S.A. § 1357.

19 (c) On or before January 15, 2020, the Vermont Clean Water Authority
20 shall provide to the General Assembly the first financing plan required under

1 10 V.S.A. § 1354(c) and its first recommended adjustments to Clean Water
2 Assessments as required by 10 V.S.A. § 1354(d)(2).

3 (d) On or before July 1, 2021, the Clean Water Assessment, as adjusted by
4 the General Assembly, shall be collected as provided for under 10 V.S.A.
5 § 1358.

6 Sec. 4. REPEAL

7 10 V.S.A. chapter 47, subchapter 3a (Vermont Clean Water Authority;
8 Clean Water Assessment) shall be repealed on July 1, 2040.

9 Sec. 5. REPEAL OF ACT 64 CLEAN WATER FUND

10 (a) 10 V.S.A. chapter 47, subchapter 7 (Act 64 Clean Water Fund) shall be
11 repealed on July 1, 2018.

12 (b) Prior to the repeal of the Act 64 Clean Water Fund under subsection (a)
13 of this section, all unexpended funds in the Act 64 Clean Water Fund shall be
14 transferred to the Vermont Water Quality Fund under 10 V.S.A. § 1359.

15 Sec. 6. EFFECTIVE DATE

16 This act shall take effect on July 1, 2018.