

1 S.260

2 Introduced by Senators Bray, Lyons, and Clarkson

3 Referred to Committee on Natural Resources and Energy

4 Date: January 3, 2018

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~~

1 lakes and ponds of at least five acres in size.

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

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

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

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

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

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

20 (4) Act 64 directed the State Treasurer to recommend to the General
21 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 No. 73~~
19 ~~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;

21 ~~(3) provide adequate resources for the State to meet or exceed the~~

1 ~~Vermont Water Quality Standards so that all State waters may provide the~~
2 ~~environmental, natural resource, and recreational values inherent in clean~~
3 ~~water;~~

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

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

10 § 1352. DEFINITIONS

11 As used in this subchapter:

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

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

16 § 1353. VERMONT CLEAN WATER AUTHORITY

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

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

21 ~~(2) planning for the water quality financing needs of the State,~~

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

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

11 § 1354. VERMONT CLEAN WATER AUTHORITY; POWERS AND
12 DUTIES

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

17 (b) Water quality financing.

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

20 (A) State agencies, municipalities, private developers, and others in
21 order to comply with water quality requirements or to construct or implement

1 water quality projects or programs:

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

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

7 (c) Financing plans.

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

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

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

17 (B) the requirements of 2015 Acts and Resolves No. 04; and

18 (C) the Agency of Natural Resources' Combined Sewer
19 Overflow Rule.

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

21 (A) a management strategy for the disbursement of funds over the

1 term of the three-year plan:

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

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

4 (D) methods or measurements to ensure accountability of funded
5 projects.

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

10 (d) Assessment criteria; recommendation.

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

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

19 (3) The recommended fee adjustments of the Vermont Clean Water
20 Authority combined with the base Clean Water Assessment under section 1356
21 of this title and the Property Transfer tax under 32 V.S.A. § 9602a shall

1 ~~generate sufficient revenue to fund the Authority's subsequent three-year~~
2 ~~financing plan for water quality programs and projects in the State.~~

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

7 § 1355. COMPOSITION; APPOINTMENT

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

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

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

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

21 ~~(b) Member terms. The members appointed to the Board of Directors of~~

1 ~~the Vermont Clean Water Authority shall serve for terms of six years, except~~
2 ~~that the member first appointed by the Governor shall serve an initial term of~~
3 ~~one year and one of the members first appointed by the Committee on~~
4 ~~Committees and one of the members first appointed by the Speaker of the~~
5 ~~House each shall serve an initial term of three years. A vacancy occurring on~~
6 ~~the Board shall be filled by the respective appointing authority for the balance~~
7 ~~of the unexpired term. A member of the Board of the Vermont Clean Water~~
8 ~~Authority may be reappointed.~~

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

16 (d) ~~Staff. The Board of Directors of the Vermont Clean Water Authority~~
17 ~~may employ an executive director to administer, manage, and direct the affairs~~
18 ~~and business of the Vermont Clean Water Authority, subject to the policies,~~
19 ~~control, and direction of the Board of Directors. The Vermont Clean Water~~
20 ~~Authority may employ technical experts and other officers, agents, and~~
21 ~~employees as are necessary to implement the requirements of this subchapter~~

1 ~~and may fix their qualifications, duties, and compensation. The Vermont~~
2 Clean Water Authority shall be entitled to seek financial, technical, and
3 scientific input or services from the Office of the State Treasurer, the Agency
4 of Natural Resources, the Agency of Agriculture, Food and Markets, and the
5 Agency of Transportation. The Department of Taxes shall provide the
6 Vermont Clean Water Authority with technical assistance regarding calculation
7 of recommended fee adjustments under this subchapter. The Vermont Clean
8 Water Authority shall be entitled to the services of the Office of the Attorney
9 General for legal assistance.

10 (e) Public body; public agency. The Vermont Clean Water Authority is
11 a public body subject to the requirements of the Open Meeting Law under
12 1 V.S.A. chapter 5, subchapter 2 and a public agency subject to the Public
13 Records Act under 1 V.S.A. chapter 5, subchapter 3.

14 § 1356. CLEAN WATER ASSESSMENT

15 (a) Assessment; administration. There is imposed an annual Clean Water
16 Assessment on all parcels in the State. The Commissioner of Taxes shall
17 administer and enforce the collection of the Clean Water Assessment under
18 section 1358 of this title.

19 (b) Assessment amount. The amount of the Clean Water Assessment
20 shall be \$40.00 per parcel plus or minus any adjustment adopted by the
21 General Assembly and assessed to the parcel based on the criteria or category

1 ~~of property adopted by the Vermont Clean Water Authority by rule under~~
2 section 1357 of this title

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

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

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

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

14 § 1357. RULEMAKING; PRIORITIES; ADJUSTMENTS; CREDIT

15 (a) General authority. The Vermont Clean Water Authority may adopt
16 rules in accordance with 3 V.S.A. chapter 25 for the purpose of administering
17 the provisions of this subchapter, including rules governing application for and
18 issuance of grants or awards to eligible persons.

19 (b) Fee adjustment; criteria; parcel category. The Vermont Clean Water
20 Authority shall adopt by rule criteria or categories of parcels for which the
21 Authority annually shall recommend to the General Assembly adjustments to

1 ~~the base Clean Water Assessment. In adopting the criteria or categories, the~~

2 Authority shall consider:

3 (1) the size of the parcel;

4 (2) the location of the parcel;

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

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

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

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

10 (C) the number of residential, commercial, or industrial structures on
11 the parcel;

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

14 (6) whether to provide credits or reduced charges for payment of a
15 municipal stormwater utility fee or other similar water quality charge,
16 provided that no Clean Water Assessment for a parcel shall be reduced by
17 more than 75 percent; and

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

21 ~~(c) Priorities for award. The Vermont Clean Water Authority shall adopt~~

1 ~~by rule a system of priorities for issuance of grants or awards from the~~
2 Vermont Water Quality Fund. The system of priorities shall require
3 consideration of criteria, including:
4 (1) whether a project is grant eligible;
5 (2) the condition of the waters affected by the project, activity, or
6 program and whether the waters are:
7 (A) not in compliance with the Vermont Water Quality Standards; or
8 (B) have a total maximum daily load (TMDL) plan;
9 (3) whether the project will address water quality issues identified in a
10 basin plan;
11 (4) whether the project will abate or control pollution that is causing or
12 may cause a threat to public health;
13 (5) whether the project will address an emergency situation affecting or
14 constituting a threat to the environment or the public health, safety, or welfare;
15 (6) whether the project will address an agricultural water quality issue
16 for which other sources of funds are unavailable;
17 (7) the fiscal integrity and sustainability of the project, including
18 whether the project is a cost-effective alternative when compared to other
19 alternatives;
20 (8) if the project removes a pollutant by which the water or waters
21 affected by the project are impaired, the cost-effectiveness of the project at

1 ~~removing that pollutant; and~~

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

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

7 § 1358. COLLECTION OF CLEAN WATER ASSESSMENT

8 (a) Collection. The Clean Water Assessment established under section
9 1356 of this title shall be assessed and collected as part of the tax bill issued
10 under 32 V.S.A. § 5402(b), provided that the Clean Water Assessment shall be
11 listed separately from the tax collected.

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

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

19 (d) Insufficient payments. In case of insufficient payment of the Clean
20 Water Assessment by a taxpayer to a municipality, the municipality shall not
21 be required to remit to the State the amount of full liability for all parcels

1 ~~within the municipality, provided that the municipality submits to the~~
2 Commissioner of Taxes a list of those taxpayers who are delinquent in the
3 payment of the Clean Water Assessment.

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

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

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

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

16 § 1359. VERMONT WATER QUALITY FUND

17 (a) There is established the Vermont Water Quality Fund pursuant to
18 32 V.S.A. chapter 7, subchapter 5 to be administered by the Vermont Clean
19 Water Authority. The Fund shall be used to provide grants and loans to
20 municipalities, nonprofit entities, and private individuals to implement or
21 administer projects or programs consistent with the purposes of this

1 ~~subchapter. The Fund shall consist of:~~

2 (1) revenues dedicated for deposit into the Fund by the General
3 Assembly, including the Property Transfer Tax Surcharge established under
4 32 V.S.A. § 9602a and the Clean Water Assessment established under section
5 1356 of this title;

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

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

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

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

15 (B) to pay the administrative and staff costs of implementing and
16 administering the Vermont Clean Water Authority, provided that not more than
17 15 percent of the total amount in the Fund over its lifetime shall be used for
18 this purpose in any fiscal year.

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

1 ~~Monies in the Fund shall be invested in the same manner as permitted for~~
2 investment of funds belonging to the State or held in the Treasury. Monies in
3 the Fund shall not be available to meet the general obligations of the State.

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

6 § 1360. ANNUAL REPORT

7 Beginning on January 15, 2022 and annually thereafter, the Vermont Clean
8 Water Authority shall submit to the Senate Committee on Natural Resources
9 and Energy, the Senate Committee on Finance, the House Committee on
10 Natural Resources, Fish and Wildlife, and the House Committee on Ways and
11 Means a report regarding the progress of the Vermont Clean Water Authority
12 in remediating pollution in State waters and improving and protecting the
13 quality of the waters of the State. The report shall include all of the following:

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

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

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

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

21 ~~(3) the number of parcel owners from which the assessment was~~

1 ~~collected, the number of parcel owners who failed to pay the assessment, and a~~
2 summary of any enforcement action taken by the Commissioner for
3 nonpayment of the assessment;

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

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

9 § 1361. PROGRAM AUDIT OF VERMONT CLEAN WATER

10 AUTHORITY

11 (a) On or before January 15, 2023, and every three years thereafter, the
12 Vermont Clean Water Authority shall submit to the House and Senate
13 Committees on Appropriations, the Senate Committee on Finance, the House
14 Committee on Ways and Means, the Senate Committee on Agriculture, the
15 House Committee on Agriculture and Forestry, the Senate Committee on
16 Natural Resources and Energy, and the House Committee on Natural
17 Resources, Fish and Wildlife a program audit of the Vermont Clean Water
18 Authority established under section 1353 of this title.

19 (b) The audit shall include:

20 (1) the amount of the Property Transfer Tax Surcharge collected under
21 32 V.S.A. § 9602a and the amount of the Clean Water Assessment collected

1 under section 1356 of this title:

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

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

6 (4) an analysis and summary of the efficacy of the water quality projects
7 and programs funded by the Vermont Clean Water Authority, including
8 whether the funded projects and programs are achieving the intended water
9 quality benefits; and

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

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

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

21 Sec. 5. TRANSITION, IMPLEMENTATION

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

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

5 ~~(c) On or before January 15, 2020, the Vermont Clean Water Authority~~
6 ~~shall provide to the General Assembly the first financing plan required under~~
7 ~~10 V.S.A. § 1354(c) and its first recommended adjustments to Clean Water~~
8 ~~Assessments as required by 10 V.S.A. § 1354(d)(2).~~

9 ~~(d) On or before July 1, 2021, the Clean Water Assessment, as adjusted by~~
10 ~~the General Assembly, shall be collected as provided for under 10 V.S.A.~~
11 ~~§ 1358.~~

12 Sec. 4. REPEAL

13 ~~10 V.S.A. chapter 47, subchapter 3a (Vermont Clean Water Authority;~~
14 ~~Clean Water Assessment) shall be repealed on July 1, 2040.~~

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

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

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

21 ~~Sec. 6. EFFECTIVE DATE~~

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

~~*** Clean Water Planning, Funding, and Implementation Committee ***~~

~~Sec. 1. FINDINGS~~

~~The General Assembly finds that for the purposes of this section and Sec. 2 of this act:~~

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

~~(2) Currently, over 350 waters or water segments in the State do not meet water quality standards, are at risk of not meeting water quality standards, or are altered due to the presence of aquatic nuisances.~~

~~(3) The U.S. Environmental Protection Agency (EPA) testified to the General Assembly that the State of Vermont was overdue in establishing a long-term revenue source to support water quality improvement that the EPA required of Vermont in the accountability framework of the Lake Champlain Total Maximum Daily Load plan.~~

~~(4) To ensure that the State has sufficient funds to clean and protect the State's waters so that they will continue to provide their integral and inherent environmental and economic benefits, the State should require the Clean Water Board and a legislative study committee to recommend separately to the General Assembly draft legislation to establish equitable and effective long-term funding methods to support clean water efforts in Vermont.~~

~~Sec. 2. LEGISLATIVE CLEAN WATER PLANNING, FUNDING, AND IMPLEMENTATION COMMITTEE~~

~~(a) Creation. There is created the Clean Water Planning, Funding, and Implementation Committee to recommend to the General Assembly draft legislation to establish an equitable and effective long-term funding method for:~~

~~(1) financing the necessary water quality programs and projects that will remediate, improve, and protect the quality of the waters of the State;~~

~~(2) coordinating water quality financing in the State;~~

~~(3) planning for the water quality financing needs of the State; and~~

~~(4) ensuring accountability of the State's efforts to clean up impaired waters, maintain or achieve the Vermont Water Quality Standards in all waters, and prevent the future degradation of waters.~~

~~(b) Membership. The Clean Water Planning, Funding, and Implementation~~

~~Committee shall be composed of the following eight members:~~

- ~~(1) the Chair of the Senate Committee on Appropriations or designee;~~
- ~~(2) the Chair of the House Committee on Appropriations or designee;~~
- ~~(3) the Chair of the Senate Committee on Natural Resources and Energy or designee;~~
- ~~(4) the Chair of the House Committee on Natural Resources, Fish, and Wildlife or designee;~~
- ~~(5) the Chair of the Senate Committee on Finance or designee;~~
- ~~(6) the Chair of the House Committee on Ways and Means or designee;~~
- ~~(7) the Chair of the Senate Committee on Agriculture or designee; and~~
- ~~(8) the Chair of the House Committee on Agriculture and Forestry or designee.~~

~~(c) Powers and duties. The Clean Water Planning, Funding, and Implementation Committee shall study the following issues:~~

~~(1) Whether and how the State should establish an independent authority to coordinate, plan, and finance water quality programs and projects across State government.~~

~~(2) How to develop a financing plan for water quality programs and projects in the State that will generate revenue sufficient to fund the following State obligations:~~

~~(A) federally required or State-required cleanup plans for individual waters or water segments, such as total maximum daily load plans;~~

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

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

~~(3)(A) How the State will raise the revenue or reduce existing expenditures to enable an equivalent level of support necessary to fund fully a financing plan for water quality that:~~

~~(i) meets the State's obligations;~~

~~(ii) maintains a water quality budget that is not less than the funding provided in fiscal year 2019 and that is capable of meeting an equivalent level of support, adjusted for inflation, for fiscal years 2020 through 2024; and~~

~~(iii) includes how a per parcel fee or other fee shall be assessed to~~

property owners in a manner that corresponds to the effect of the parcel on water quality.

(B) In determining how a fee will be assessed to a property, the Committee shall consider whether the fee should account for:

(i) the size of the parcel;

(ii) the location of the parcel;

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

(iv) the surface coverage of the parcel, including the amount of impervious surface on the parcel, the amount of cropland or forestland on the parcel, or the number of residential, commercial, or industrial structures on the parcel;

(v) stormwater treatment practices or other water quality measures implemented on the parcel;

(vi) whether to provide credits or reduced charges for payment of a municipal stormwater utility fee or other similar water quality charge; and

(vii) whether the enforcement history or continuing violation of a parcel owner shall be a basis for an adjustment to a fee.

(4) How the State would most efficiently assess and collect a fee on property owners contributing to water quality issues in the State.

(5) Whether the State should adopt by rule a system of priorities for issuance of water quality grants or other financing from the Clean Water Fund and other State-administered financing programs, including whether priorities should be adjusted based on:

(A) the condition of the waters affected by the project, activity, or program;

(B) whether a project will address water quality issues identified in a basin plan;

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

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

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

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

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

~~(H) income or financial resources available to an applicant to conduct the proposed project.~~

~~(6) How the State should maintain accountability of the efforts of the State to clean up impaired waters, maintain and achieve the Vermont Water Quality Standards in all waters, and prevent the future degradation of waters.~~

~~(d) Assistance. The Clean Water Planning, Funding, and Implementation Committee shall have the administrative, technical, legal, and fiscal assistance of the Office of Legislative Council and the Joint Fiscal Office. The Committee shall also be entitled to seek financial, technical, and scientific input or services from the Office of the State Treasurer, the Agency of Natural Resources, the Agency of Agriculture, Food and Markets, the Agency of Transportation, the Vermont Center for Geographic Information Services, the Agency of Commerce and Community Development, and the Department of Taxes.~~

~~(e) Report. On or before November 15, 2018, the Clean Water Planning, Funding, and Implementation Committee shall submit to the General Assembly draft legislation that addresses the issues set forth under subsection (c) of this section.~~

~~(f) Meetings.~~

~~(1) The Office of Legislative Council shall call the first meeting of the Clean Water Planning, Funding, and Implementation Committee to occur on or before August 1, 2018.~~

~~(2) The Committee shall select a chair or co-chair from among its members at its first meeting.~~

~~(3) A majority of the membership of the Committee shall constitute a quorum.~~

~~(4) The Clean Water Planning, Funding, and Implementation Committee shall cease to exist on February 1, 2019.~~

~~(g) Compensation and reimbursement. For attendance at meetings during adjournment of the General Assembly, a legislative member of the Clean Water Planning, Funding, and Implementation Committee shall be entitled to po~~

~~Item compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for not more than six meetings. These payments shall be made from monies appropriated to the General Assembly.~~

~~*** Clean Water Board ***~~

~~Sec. 3. 19 V.S.A. § 1389 is amended to read:~~

~~§ 1389. CLEAN WATER FUND BOARD~~

~~(a) Creation.~~

~~(1) There is created the Clean Water Fund Board which that shall:~~

~~(A) be responsible and accountable for advising the General Assembly regarding planning, coordinating, and financing of the remediation, improvement, and protection of the quality of State waters;~~

~~(B) recommend to the Secretary of Administration expenditures General Assembly:~~

~~(i) appropriations from the Clean Water Fund, including appropriate block grant amounts from the Agency of Natural Resources' River Basin Block Grant Program; and~~

~~(ii) clean water projects to be funded by capital appropriations.~~

~~(2) The Clean Water Fund Board shall be attached to the Agency of Administration for administrative purposes.~~

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

~~(1) the Secretary of Administration or designee;~~

~~(2) the Secretary of Natural Resources or designee;~~

~~(3) the Secretary of Agriculture, Food and Markets or designee;~~

~~(4) the Secretary of Commerce and Community Development or designee; and~~

~~(5) the Secretary of Transportation or designee; and~~

~~(6) four members of the public, who are not legislators, with expertise in one or more of the following subject matters: public management, civil engineering, agriculture, ecology, wetlands, stormwater system management, forestry, transportation, law, banking, finance, and investment, to be appointed as follows:~~

~~(A) the Speaker of the House shall appoint two members of the public, one of whom shall represent a municipality subject to the municipal~~

~~separate storm sewer system (MS4) permit; and~~

~~(B) the Committee on Committees shall appoint two members of the public.~~

~~(c) Officers; committees; rules.~~

~~(1) The Clean Water Fund Board shall annually elect a chair from its members. Secretary of Administration or designee shall serve as the Chair of the Board. The Clean Water Fund Board may elect additional officers from its members, establish committees or subcommittees, and adopt procedural rules as necessary and appropriate to perform its work.~~

~~(2) Members of the Board who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010 paid from the budget of the Agency of Administration for attendance of meetings of the Board.~~

~~(d) Powers and duties of the Clean Water Fund Board. The Clean Water Fund Board shall have the following powers and authority:~~

~~(1) Annually, on or before December 15, the Clean Water Board shall submit to the General Assembly a plan for the appropriation of all State water quality revenues in a manner that:~~

~~(A) maintains a water quality budget that is not less than the funding provided in fiscal year 2019 and that is capable of meeting an equivalent level of support, adjusted for inflation, for fiscal years 2020 through 2024; and~~

~~(B) adequately funds the following State obligations in the subsequent fiscal years:~~

~~(i) federally required or State-required cleanup plans for individual waters or water segments, such as total maximum daily load plans;~~

~~(ii) the requirements of 2015 Acts and Resolves No. 64; and~~

~~(iii) the Agency of Natural Resources' Combined Sewer Overflow Rule.~~

~~(2) The Clean Water Fund Board shall recommend to the Secretary of Administration General Assembly the appropriate allocation of funds from the Clean Water Fund for the purposes of developing the State budget required to be submitted to the General Assembly under 32 V.S.A. § 306 financing the Board's recommended annual financing plan. The recommendation shall include a recommended appropriation to the Agency of Natural Resources' River Basin Block Grant Program under section 1309c of this title. All recommendations from the Board should be intended to achieve the greatest~~

~~water quality gain for the investment.~~

~~(2)(3) The Clean Water Fund Board may pursue and accept grants, gifts, donations, or other funding from any public or private source and may administer such grants, gifts, donations, or funding consistent with the terms of the grant, gift, or donation.~~

~~(3)(4) The Clean Water Fund Board shall:~~

~~(A) establish a process by which watershed organizations, State agencies, and other interested parties may propose water quality projects or programs for financing from the Clean Water Fund;~~

~~(B) develop an annual revenue estimate and proposed budget for the Clean Water Fund;~~

~~(C) establish measures for determining progress and effectiveness of expenditures for clean water restoration efforts;~~

~~(D) issue the annual Clean Water Investment Report required under section 1389a of this title; and~~

~~(E) solicit, consult with, and accept public comment from organizations interested in improving water quality in Vermont regarding recommendations under this subsection (d) for the allocation of funds from the Clean Water Fund.~~

~~(e) Priorities.~~

~~(1) In making recommendations under subsection (d) of this section regarding the appropriate allocation of funds from the Clean Water Fund, the Board shall prioritize:~~

~~(A) funding to programs and projects that address sources of water pollution in waters listed as impaired on the list of waters established by 33 U.S.C. § 1313(d);~~

~~(B) funding to projects that address sources of water pollution identified as a significant contributor of water quality pollution, including financial assistance to grant recipients at the initiation of a funded project;~~

~~(C) funding to programs or projects that address or repair riparian conditions that increase the risk of flooding or pose a threat to life or property;~~

~~(D) assistance required for State and municipal compliance with stormwater requirements for highways and roads;~~

~~(E) funding for education and outreach regarding the implementation of water quality requirements, including funding for education, outreach, demonstration, and access to tools for the implementation of the Acceptable~~

~~Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation;~~

~~(F) funding for innovative or alternative technologies or practices designed to improve water quality or reduce sources of pollution to surface waters, including funding for innovative nutrient removal technologies and community-based methane digesters that utilize manure, wastewater, and food residuals to produce energy;~~

~~(G) funding to purchase agricultural land in order to take that land out of practice when the State water quality requirements cannot be remediated through agricultural Best Management Practices; and~~

~~(H) funding to municipalities for the establishment and operation of stormwater utilities.~~

~~(2) In developing its recommendations under subsection (d) of this section regarding the appropriate allocation of funds from the Clean Water Fund, the Clean Water Fund Board shall, during the first three years of its existence and within the priorities established under subdivision (1) of this subsection (e), prioritize awards or assistance to municipalities for municipal compliance with water quality requirements, and to municipalities for the establishment and operation of stormwater utilities.~~

~~(3) In developing its recommendations under subsection (d) of this section regarding the appropriate allocation of funds from the Clean Water Fund, the Board shall, after satisfaction of the priorities established under subdivision (1) of this subsection (e), attempt to provide for equitable apportionment of awards from the Fund to all regions of the State and for control of all sources of point and ~~non-point~~ nonpoint sources of pollution in the State.~~

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

~~(g) Terms; appointed members. Members who are appointed to the Clean Water Board shall be appointed for terms of four years, except initially, appointments shall be made such that one member appointed by the Speaker shall be appointed for a term of two years, and one member appointed by the Committee on Committees shall be appointed for a term of one year. Vacancies on the Board shall be filled for the remaining period of the term in~~

~~in the same manner as initial appointments.~~

~~Sec. 4. CLEAN WATER BOARD RECOMMENDED DRAFT
LEGISLATION; WATER QUALITY FUNDING METHOD~~

~~(a) On or before November 15, 2018, the Clean Water Board shall submit to the General Assembly draft legislation to establish an equitable and effective long-term funding method for:~~

~~(1) financing the necessary water quality programs and projects that will remediate, improve, and protect the quality of the waters of the State;~~

~~(2) coordinating water quality financing in the State;~~

~~(3) planning for the water quality financing needs of the State; and~~

~~(4) ensuring accountability of the State's efforts to clean up impaired waters, maintain or achieve the Vermont Water Quality Standards in all waters, and prevent the future degradation of waters.~~

~~(b) In developing the draft legislation required under subsection (a) of this section, the Clean Water Board shall study the following issues:~~

~~(1) Whether and how the State should establish an independent authority to coordinate, plan, and finance water quality programs and projects across State government.~~

~~(2) How to develop a financing plan for water quality programs and projects in the State that will generate revenue sufficient to fund the following State obligations:~~

~~(A) federally required or State-required cleanup plans for individual waters or water segments, such as total maximum daily load plans;~~

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

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

~~(3)(A) How the State will raise the revenue or reduce existing State expenditures to enable an equivalent level of support necessary to fund fully a financing plan for water quality that:~~

~~(i) meets the State's obligations;~~

~~(ii) maintains a water quality budget that is not less than the funding provided in fiscal year 2019 and that is capable of meeting an equivalent level of support, adjusted for inflation, for fiscal years 2020 through 2024; and~~

~~(iii) includes how a per parcel fee or other fee shall be assessed to~~

~~property owners in a manner that corresponds to the effect of the parcel on water quality.~~

~~(B) In determining how a fee will be assessed to a property, the Committee shall consider whether the fee should account for:~~

~~(i) the size of the parcel;~~

~~(ii) the location of the parcel;~~

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

~~(iv) the surface coverage of the parcel, including the amount of impervious surface on the parcel, the amount of cropland or forestland on the parcel, or the number of residential, commercial, or industrial structures on the parcel;~~

~~(v) stormwater treatment practices or other water quality measures implemented on the parcel;~~

~~(vi) whether to provide credits or reduced charges for payment of a municipal stormwater utility fee or other similar water quality charge; and~~

~~(vii) whether the enforcement history or continuing violation of a parcel owner shall be a basis for an adjustment to a fee.~~

~~(4) How the State would most efficiently assess and collect a fee on property owners contributing to water quality issues in the State.~~

~~(5) Whether the State should adopt by rule a system of priorities for issuance of water quality grants or other financing from the Clean Water Fund and other State-administered financing programs, including whether priorities should be adjusted based on:~~

~~(A) the condition of the waters affected by the project, activity, or program;~~

~~(B) whether a project will address water quality issues identified in a basin plan;~~

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

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

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

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

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

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

(6) How the State should maintain accountability of the efforts of the State to clean up impaired waters, maintain and achieve the Vermont Water Quality Standards in all waters, and prevent the future degradation of waters.

* * * Water Quality Block Grant * * *

Sec. 5. WATER QUALITY BLOCK GRANTS

(a) Definition. As used in this section, "local partner" means a regional planning commission, natural resource conservation district, or watershed organization located or operating in the watershed for which the Agency of Natural Resources has issued a watershed basin plan.

(b) Establishment; purpose.

(1) The Secretary of Natural Resources, the Secretary of Agriculture, Food and Markets, and the Secretary of Transportation shall coordinate prior to awarding water quality grants or financing in order to maximize the water quality benefit or impact of funded projects in a watershed planning basin. When possible, grants or financing for water quality programs shall be issued as a block grant that enhances the capacity of local partners.

(2) A portion of each block grant issued under this section shall include funds authorized for the following:

(A) to support capacity to implement projects in the watershed basin; and

(B) to identify and develop water quality projects listed under the basin plan for the watershed as necessary for the restoration and protection of the waters of the State.

(c) Requirements. On or before January 1, 2019, the Secretary of Natural Resources, the Secretary of Agriculture, Food and Markets, and the Secretary of Transportation shall establish a process for coordinating water quality grants and issuing water quality block grants under this section. The process shall address the following:

- ~~(1) requirements for eligibility;~~
- ~~(2) a system of priorities for the award of block grants;~~
- ~~(3) performance measures, reporting requirements, or accountability requirements for recipients of water quality block grants;~~
- ~~(4) uses for which a recipient of a water block grant may allocate or award portions of the block grants to other eligible entities for implementation of water quality programs or projects in a river basin;~~
- ~~(5) methods for identifying watersheds or other areas where the State should focus on enhancing the capacity of local partners; and~~
- ~~(6) any other provision necessary to implement the block grants under this section.~~

~~*** Citizen Right of Action ***~~

~~Sec. 6. 10 V.S.A. chapter 205 is added to read:~~

~~CHAPTER 205. CITIZEN RIGHT OF ACTION~~

~~§ 8055. CITIZEN RIGHT OF ACTION~~

~~(a) Suit authorized. Except as provided in subsection (c) of this section, a person may commence a civil action for equitable or declaratory relief on the person's own behalf against one or more of the following persons:~~

~~(1) any person who is alleged to be in violation of any statute, permit, certification, rule, permit condition, prohibition, or order set forth, issued, or required under 6 V.S.A. chapter 215;~~

~~(2) any person subject to regulation under this chapter who is alleged to be in violation of any statute, permit, certification, rule, permit condition, prohibition, or order set forth, issued, or required under chapter 37 or 47 of this title;~~

~~(3) the Secretary of Agriculture, Food and Markets when there is an alleged failure of the Agency of Agriculture, Food and Markets to perform any act or duty under 6 V.S.A. chapter 215 that is not discretionary for the Secretary of Agriculture, Food and Markets or the Agency of Agriculture, Food and Markets; and~~

~~(4) the Secretary of Natural Resources when there is an alleged failure of the Agency of Natural Resources to perform any act or duty under chapter 37 or 47 of this title that is not discretionary for the Secretary of Natural Resources or the Agency of Natural Resources.~~

~~(b) Prerequisite to commencement of action. A person shall not commence an action under subsection (a) of this section prior to 90 days after the plaintiff~~

has given notice of the violation to:

(1) the Secretary of Agriculture, Food and Markets for an action initiated under subdivision (a)(1) or (3) of this section;

(2) the Secretary of Natural Resources for an action initiated under subdivision (a)(2) or (4) of this section; and

(3) any person who is alleged to be in violation of a statute, permit, certification, rule, permit condition, prohibition, or order set forth, issued, or required under 6 V.S.A. chapter 215 or under chapter 37 or 47 of this title.

(c) Action prohibited. A person shall not commence an action under subsection (a) of this section under either of the following circumstances:

(1) if the Secretary of Agriculture, Food and Markets, the Secretary of Natural Resources, or the Attorney General has commenced and is diligently prosecuting a civil or criminal action to require compliance with a statute, permit, certification, rule, permit condition, prohibition, or order set forth, issued, or required under 6 V.S.A. chapter 215 or under chapter 37 or 47 of this title; or

(2) if the alleged violator is diligently proceeding with complying with an assurance of discontinuance, corrective action, cease and desist order, or emergency administrative order issued under 6 V.S.A. chapter 215 or under chapter 201 of this title.

(d) Venue. A person shall bring an action under subsection (a) of this section in the Environmental Division of the Superior Court.

(e) Intervention. In any action under subsection (a) of this section:

(1) Any person may intervene as a matter of right when:

(A) the person seeking intervention claims an interest relating to the subject of the action and he or she is so situated that the disposition of the action may, as a practical matter, impair or impede his or her ability to protect that interest; and

(B)(i) for an action initiated under subdivision (a)(1) or (3) of this section, the Secretary of Agriculture, Food and Markets or the Secretary of Natural Resources demonstrates that the applicant's interest is inadequately represented by existing parties; or

(ii) for an action initiated under subdivision (a)(2) or (4) of this section, the Secretary of Natural Resources demonstrates that the applicant's interest is adequately represented by existing parties.

(2) The Secretary of Agriculture, Food and Markets, the Secretary of

~~Natural Resources, or the Attorney General may intervene as a matter of right as a party to represent its interests.~~

~~(f) Notice of action. A person bringing an action under subsection (a) of this section shall provide the notice required under subsection (b) of this section in writing. The notice shall be served on the alleged violator in person or by certified mail, return receipt requested. The notice to the Secretary shall be served by certified mail, return receipt requested. The notice shall include a brief description of the alleged violation and identification of the statute, permit, certification, rule, permit condition, prohibition, or order that is the subject of the violation.~~

~~(g) Attorney's fees; costs. The Environmental Division of the Superior Court may award costs, including reasonable attorney's fees and fees for expert witnesses, to a person bringing an action under subsection (a) of this section when the court determines that the award is appropriate. The Environmental Division of the Superior Court may award costs, including reasonable attorney's fees and fees for expert witnesses, to the State or to a person subject to an action under this section if the court determines that the action was frivolous, unreasonable, or without foundation.~~

~~(h) Rights preserved. Nothing in this section shall be construed to impair or diminish any common law or statutory right or remedy that may be available to any person. Rights and remedies created by this section shall be in addition to any other right or remedy, including the authority of the State to bring an enforcement action separate from an action brought under this section. No determination made by a court in an action maintained under this section, to which the State has not been a party, shall be binding upon the State in any enforcement action.~~

~~*** Required Agricultural Practices; Healthy Soils ***~~

~~Sec. 7. 6 V.S.A. § 4810a is amended to read:~~

~~§ 4810a. REQUIRED AGRICULTURAL PRACTICES; REVISION~~

~~(a) On or before September 15, 2016, the The Secretary of Agriculture, Food and Markets shall file under 3 V.S.A. § 841 a final proposal of a rule amending amend by rule the required agricultural practices in order to improve water quality in the State, assure practices on all farms eliminate adverse impacts to water quality, and implement the small farm certification program required by section 4871 of this title. At a minimum, the amendments to the required agricultural practices shall:~~

~~***~~

~~(1) Establish standards for nutrient management on farms, including:~~

~~(A) required nutrient management planning on all farms that manage agricultural wastes;~~

~~(B) recommended required practices incorporated within a nutrient management plan for improving and maintaining soil quality and healthy soils in order to increase the capacity of soil to retain water; improve flood resiliency; reduce sedimentation; reduce reliance on fertilizers and pesticides; and prevent agricultural stormwater runoff, including requirements for tillage; and~~

~~(C) methods for complying with individual load allocations, if any, for a farm if required under a total maximum daily load plan or other remediation plan for an impaired water.~~

~~***~~

~~Sec. 8. IMPLEMENTATION~~

~~On or before July 1, 2019, the Secretary of Agriculture, Food and Markets shall revise the Required Agricultural Practices to include the practices for improving and maintaining soil quality and healthy soils required under 6 V.S.A. § 4810a(a)(4).~~

~~*** Joint Lake Carmi Pilot Project ***~~

~~Sec. 9. AGENCY OF NATURAL RESOURCES AND AGENCY OF AGRICULTURE, FOOD AND MARKETS JOINT LAKE CARMI PILOT PROGRAM FOR PHOSPHORUS MANAGEMENT~~

~~(a) Farm-specific plans.~~

~~(1) On or before July 1, 2018, the Secretary of Natural Resources, in consultation with the Secretary of Agriculture, Food and Markets, shall contract with a third-party consultant to develop individual water quality remediation plans that each owner or operator of farmland within the Lake Carmi watershed shall be required to implement.~~

~~(2) A water quality remediation plan shall:~~

~~(A) include an analysis of the soil phosphorus levels, the nutrient sources produced or imported to farmland to be applied on the land, the crop nutrient requirements, phosphorus index rating, tillage methods, land application of nutrients, methods and timing of nutrient application, and any other data necessary to reduce the export or runoff of nutrients from the farmland and ensure that the nutrient management plan for the farmland meets the State and federal requirements;~~

~~(B) specify requirements, measures, or management practices that an owner or operator of farmland shall implement according to a nutrient~~

management plan; and

(C) identify options available to owners or operators of farmland to protect their land in a manner that mitigates existing environmental impacts while maintaining economic viability or to provide alternatives when the costs of improving water quality exceed the value of the farmland.

(3) Beginning on May 1, 2018, the owner or operator of farmland within the Lake Carmi watershed shall document the following on an annual basis:

(A) the amount of total nutrient sources imported to, produced on, or applied to the farmland in the past year; and

(B) a summary of practices that an owner or operator of farmland has implemented in the past year in order to prevent an increase of phosphorus loads from the farmland.

(b) Monitoring. The Secretary of Natural Resources shall conduct monitoring of the watershed to establish accountability for the nonpoint source pollution load into the Lake Carmi watershed.

(c) Best management practices. If monitoring conducted under subsection (b) of this section indicates increasing phosphorus loads in the waters due to nonpoint source pollution from farmland within the Lake Carmi watershed, the Secretary of Agriculture, Food and Markets shall require the owner or operator of the farmland to implement best management practices under 6 V.S.A. § 4810 to reduce runoff from the farmland.

(d) Enforcement; appeal.

(1) The Secretary of Natural Resources may take action under 10 V.S.A. chapter 201 to enforce the requirements of this section.

(2) A person may appeal an act or decision of the Secretary of Natural Resources under this section, excluding enforcement actions under 10 V.S.A. chapter 201 or 220.

* * * ANR Report on Future Farming Practices * * *

Sec. 10. AGENCY OF AGRICULTURE, FOOD AND MARKETS
REPORT ON FARMING PRACTICES IN VERMONT

On or before January 15, 2019, the Secretary of Agriculture, Food and Markets shall submit to the Senate Committees on Natural Resources and Energy and on Agriculture and to the House Committees on Natural Resources, Fish, and Wildlife and on Agriculture and Forestry a report regarding how to revise farming practice in Vermont in a manner that mitigates existing environmental impacts while maintaining economic viability.

~~The report shall include recommendations for:~~

- ~~(1) building healthy soils;~~
- ~~(2) reducing agriculturally based pollution in areas of high pollution, stressed, or impaired waters;~~
- ~~(3) establishing a carrying capacity or maximum number of livestock that the land used for nutrient application on a farm can support without contribution of nutrients to a water;~~
- ~~(4) how to provide financial and technical support to facilitate the transition by farms to less-polluting practices, including:
 - ~~(A) cover cropping;~~
 - ~~(B) reduced tillage or no tillage;~~
 - ~~(C) transition out of dairy farming through a whole-herd buyout program;~~
 - ~~(D) how to accelerate the implementation of best management practices (BMPs);~~
 - ~~(E) how to evaluate the effectiveness of using riparian buffers in excess of 25 feet;~~
 - ~~(F) how to accelerate the use of direct manure injection;~~
 - ~~(G) how to use crop rotations to build soil health, including limits on the planting of continuous corn; and~~
 - ~~(H) how to eliminate, or at least reduce, the use of herbicides in the termination of cover crops.~~~~

~~*** Effective Date ***~~

~~Sec. II. EFFECTIVE DATE~~

~~This act shall take effect on passage.~~

~~*** Clean Water Board ***~~

~~Sec. 1. 10 V.S.A. § 1389 is amended to read:~~

~~§ 1389. CLEAN WATER FUND BOARD~~

~~(a) Creation.~~

~~(1) There is created the Clean Water Fund Board which shall:~~

~~(A) be responsible and accountable for planning, coordinating, and financing of the remediation, improvement, and protection of the quality of State waters;~~

(B) recommend to the Secretary of Administration expenditures;

(i) appropriations from the Clean Water Fund; and

(ii) clean water projects to be funded by capital appropriations.

(2) The Clean Water Fund Board shall be attached to the Agency of Administration for administrative purposes.

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

(1) the Secretary of Administration or designee;

(2) the Secretary of Natural Resources or designee;

(3) the Secretary of Agriculture, Food and Markets or designee;

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

(5) the Secretary of Transportation or designee; and

(6) four members of the public, who are not legislators, with expertise in one or more of the following subject matters: public management, civil engineering, agriculture, ecology, wetlands, stormwater system management, forestry, transportation, law, banking, finance, and investment, to be appointed by the Governor.

(c) Officers; committees; rules; compensation; term.

(1) The Clean Water Fund Board shall annually elect a chair from its members. Secretary of Administration shall serve as the Chair of the Board. The Clean Water Fund Board may elect additional officers from its members, establish committees or subcommittees, and adopt procedural rules as necessary and appropriate to perform its work.

(2) Members of the Board who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010 paid from the budget of the Agency of Administration for attendance of meetings of the Board.

(3) Members who are appointed to the Clean Water Board shall be appointed for terms of four years, except initial appointments shall be made such that two members appointed by the Governor shall be appointed for a term of two years. Vacancies on the Board shall be filled for the remaining period of the term in the same manner as initial appointments.

(d) Powers and duties of the Clean Water Fund Board. The Clean Water Fund Board shall have the following powers and authority:

(1) The Clean Water ~~Fund~~ Board shall recommend to the Secretary of Administration the appropriate allocation of funds from the Clean Water Fund for the purposes of developing the State budget required to be submitted to the General Assembly under 32 V.S.A. § 306. All recommendations from the Board should be intended to achieve the greatest water quality gain for the investment. The recommendations of the Clean Water Board shall be open to inspection and copying under the Public Records Act, and the Clean Water Board shall submit to the Senate Committees on Appropriations, on Finance, on Agriculture, and on Natural Resources and Energy and the House Committees on Appropriations, on Ways and Means, on Agriculture and Forestry, and on Natural Resources, Fish, and Wildlife a copy of any recommendations provided to the Governor.

(2) The Clean Water ~~Fund~~ Board may pursue and accept grants, gifts, donations, or other funding from any public or private source and may administer such grants, gifts, donations, or funding consistent with the terms of the grant, gift, or donation.

(3) The Clean Water ~~Fund~~ Board shall:

(A) establish a process by which watershed organizations, State agencies, and other interested parties may propose water quality projects or programs for financing from the Clean Water Fund;

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

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

(D) issue the annual Clean Water Investment Report required under section 1389a of this title; ~~and~~

(E) solicit, consult with, and accept public comment from organizations interested in improving water quality in Vermont regarding recommendations under this subsection (d) for the allocation of funds from the Clean Water Fund; and

(F) establish a process under which a watershed organization, State agency, or other interested party may propose that a water quality project or program identified in a watershed basin plan receive funding from the Clean Water Fund.

(e) Priorities.

(1) In making recommendations under subsection (d) of this section regarding the appropriate allocation of funds from the Clean Water Fund, the Board shall prioritize:

(A) funding to programs and projects that address sources of water pollution in waters listed as impaired on the list of waters established by 33 U.S.C. § 1313(d);

(B) funding to projects that address sources of water pollution identified as a significant contributor of water quality pollution, including financial assistance to grant recipients at the initiation of a funded project;

(C) funding to programs or projects that address or repair riparian conditions that increase the risk of flooding or pose a threat to life or property;

(D) assistance required for State and municipal compliance with stormwater requirements for highways and roads;

(E) funding for education and outreach regarding the implementation of water quality requirements, including funding for education, outreach, demonstration, and access to tools for the implementation of the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation;

(F) funding for innovative or alternative technologies or practices designed to improve water quality or reduce sources of pollution to surface waters, including funding for innovative nutrient removal technologies and community-based methane digesters that utilize manure, wastewater, and food residuals to produce energy;

(G) funding to purchase agricultural land in order to take that land out of practice when the State water quality requirements cannot be remediated through agricultural Best Management Practices; ~~and~~

(H) funding to municipalities for the establishment and operation of stormwater utilities; and

(I) investment in watershed basin planning, water quality project identification screening, water quality project evaluation, and conceptual plan development of water quality projects.

(2) In developing its recommendations under subsection (d) of this section regarding the appropriate allocation of funds from the Clean Water Fund, the Clean Water Fund Board shall, during the first three years of its existence and within the priorities established under subdivision (1) of this subsection (e), prioritize awards or assistance to municipalities for municipal compliance with water quality requirements, and to municipalities for the establishment and operation of stormwater utilities.

(3) In developing its recommendations under subsection (d) of this section regarding the appropriate allocation of funds from the Clean Water Fund, the Board shall, after satisfaction of the priorities established under

subdivision (1) of this subsection (e), attempt to provide for equitable apportionment of awards from the Fund to all regions of the State and for control of all sources of point and non-point sources of pollution in the State investment in all watersheds of the State based on the needs identified in watershed basin plans.

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

Sec. 2. 10 V.S.A. § 1389a is amended to read:

§ 1389a. CLEAN WATER INVESTMENT REPORT

(a) Beginning on January 15, 2017, and annually thereafter, the Secretary of Administration shall publish the Clean Water Investment Report. The Report shall summarize all investments, including their cost-effectiveness, made by the Clean Water Fund Board and other State agencies for clean water restoration over the prior ~~calendar~~ fiscal year. The Report shall include expenditures from the Clean Water Fund, the General Fund, the Transportation Fund, and any other State expenditures for clean water restoration, regardless of funding source.

** * **

** * * Coordinated Water Quality Grants; Performance Grants * * **

Sec. 3. COORDINATED WATER QUALITY GRANTS

The Secretary of Natural Resources, the Secretary of Agriculture, Food and Markets, and the Secretary of Transportation shall coordinate prior to awarding water quality grants or funding in order to maximize the water quality benefit or impact of funded projects in a watershed planning basin. When grants are issued, the Secretary of Natural Resources, the Secretary of Agriculture, Food and Markets, and the Secretary of Transportation shall, when allowed by law, authorize funds or identify other funding opportunities that may be used to support capacity to implement projects in the watershed basin.

Sec. 4. 10 V.S.A. § 1253(d) is amended to read:

(d)(1) Through the process of basin planning, the Secretary shall determine what degree of water quality and classification should be obtained and maintained for those waters not classified by the Board before 1981 following

the procedures in sections 1254 and 1258 of this title. Those waters shall be classified in the public interest. The Secretary shall prepare and maintain an overall surface water management plan to assure that the State water quality standards are met in all State waters. The surface water management plan shall include a schedule for updating the basin plans. The Secretary, in consultation with regional planning commissions and the Natural Resources Conservation Council, shall revise all 15 basin plans and update the basin plans on a five-year rotating basis. On or before January 15 of each year, the Secretary shall report to the House Committees on Agriculture and Forestry, ~~and on Natural Resources and Energy, and on Fish, Wildlife and Water Resources, Fish, and Wildlife~~ and to the Senate Committees on Agriculture and on Natural Resources and Energy regarding the progress made and difficulties encountered in revising basin plans. The report shall include a summary of basin planning activities in the previous calendar year, a schedule for the production of basin plans in the subsequent calendar year, and a summary of actions to be taken over the subsequent three years. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.

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

(A) identify waters that should be reclassified outstanding resource waters or that should have one or more uses reclassified under section 1252 of this title;

(B) identify wetlands that should be reclassified as Class I wetlands;

(C) identify projects or activities within a basin that will result in the protection and enhancement of water quality;

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

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

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

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

(H) provide for public notice of a draft basin plan; and

(I) *provide for the opportunity of public comment on a draft basin plan.*

(3) *The Secretary shall, contingent upon the availability of funding, ~~contract with a regional planning commission or~~ negotiate and issue performance grants to the Vermont Association of Planning and Development Agencies or its designee and the Natural Resources Conservation Council or its designee to assist in or to produce a basin plan under the schedule set forth in subdivision (1) of this subsection in a manner consistent with the authority of regional planning commissions under 24 V.S.A. chapter 117 and the authority of the natural resources conservation districts under chapter 31 of this title. ~~When contracting~~ negotiating a scope of work with a regional planning commission or the Vermont Association of Planning and Development Agencies or its designee and the Natural Resources Conservation Council or its designee to assist in or produce a basin plan, the Secretary may require the ~~regional planning commission~~ Vermont Association of Planning and Development Agencies or the Natural Resources Conservation Council to:*

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

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

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

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

** * * Lakes in Crisis * * **

Sec. 5. 10 V.S.A. chapter 47, subchapter 2A is added to read:

Subchapter 2A. Lake in Crisis

§ 1310. DESIGNATION OF LAKE IN CRISIS

(a) The Secretary of Natural Resources (Secretary) shall review whether a lake in the State should be designated as a lake in crisis upon the Secretary's own motion or upon petition of 15 or more persons or a selectboard of a municipality in which the lake or a portion of the lake is located.

(b) The Secretary shall designate a lake as a lake in crisis if, after review under subsection (a) of this section, the Secretary determines that:

- (1) the lake or segments of the lake have been listed as impaired;
- (2) the condition of the lake will cause:
 - (A) a potential harm to the public health; and
 - (B) a risk of damage to the environment or natural resources; and
- (3) a municipality in which the lake or a portion of the lake is located has reduced the valuation of real property due to the condition of the lake.

§ 1311. STATE RESPONSE TO A LAKE IN CRISIS

(a) Adoption of crisis response plan. When a lake is declared in crisis, the Secretary shall within 90 days after the designation of the lake in crisis issue a comprehensive crisis response plan for the management of the lake in crisis in order to improve water quality in the lake or to mitigate or eliminate the potential harm to public health or the risk of damages to the environment or natural resources. The Secretary shall coordinate with the Secretary of Agriculture, Food and Markets and the Secretary of Transportation in the development of the crisis response plan. The crisis response plan may require implementation of one or both of the following in the watershed of the lake in crisis:

(1) water quality requirements necessary to address specific harms to public health or risks to the environment or natural resources; or

(2) implementation of or compliance with existing water quality requirements under one or more of the following:

(A) water quality requirements under chapter 47 of this title, including requiring a property owner to obtain a permit or implement best management practices for the discharge of stormwater runoff from any size of impervious surfaces if the Secretary determines that the treatment of the discharge of stormwater runoff is necessary to reduce the adverse impacts to water quality of the discharge or stormwater on the lake in crisis;

(B) agricultural water quality requirements under 6 V.S.A. chapter 215, including best management practices under 6 V.S.A. § 4810 to reduce runoff from the farm; or

(C) water quality requirements adopted under section 1264 of this section for stormwater runoff from municipal or State roads.

(b) Public hearing. The Secretary shall hold at least one public hearing in the watershed of the lake in crisis and shall provide an opportunity for public notice and comment for a proposed lake in crisis response plan.

(c) Term of designation. A lake shall remain designated as in crisis under

this section until the Secretary determines that the lake no longer satisfies the criteria for designation under subsection (b) of this section.

(d) Agency cooperation and services. All other State agencies shall cooperate with the Secretary in responding to the lake in crisis, and the Secretary shall be entitled to seek technical and scientific input or services from the Agency of Agriculture, Food and Markets, the Agency of Transportation, or other necessary State agencies.

§ 1312. LAKE IN CRISIS ORDER

The Secretary of Natural Resources, pursuant to chapter 201 of this title, or the Secretary of Agriculture, Food and Markets, pursuant to 6 V.S.A. chapter 215, may issue an order to require a person to:

- (1) take an action identified in the lake in crisis response plan;
- (2) cease or remediate any acts, discharges, site conditions, or processes

contributing to the impairment of the lake in crisis;

(3) mitigate a significant contributor of a pollutant to the lake in crisis; or

(4) conduct testing, sampling, monitoring, surveying, or other analytical operations required to determine the nature, extent, duration, or severity of the potential harm to the public health or a risk of damage to the environment or natural resources.

§ 1313. ASSISTANCE

(a) A person subject to a lake in crisis order shall be eligible for technical and financial assistance from the Secretary to be paid from the Lake in Crisis Response Program Fund. The Secretary shall adopt by procedure the process for application for assistance under this section.

(b) State financial assistance awarded under this section shall be in the form of a grant. An applicant for a State grant shall pay at least 35 percent of the total eligible project cost or shall pay the specific cost share authorized by statute for the program from which the grant is awarded. The dollar amount of a State grant shall be equal to the total eligible project cost, less the percent of the total required to be paid by the applicant, and less the amount of any federal assistance awarded.

(c) A grant awarded under this section shall comply with all terms and conditions for the issuance of State grants.

§ 1314. FUNDING OF STATE RESPONSE TO A LAKE IN CRISIS

(a) Initial response. Upon designation of a lake in crisis, the Secretary may, for the purposes of the initial response to the lake in crisis, expend up to \$50,000.00 appropriated to the Agency of Natural Resources from the Clean Water Fund for authorized contingency spending.

(b) Long-term funding. Annually, the Secretary of Natural Resources shall present to the House and Senate Committees on Appropriations a multiyear plan for the funding of all lakes designated in crisis under this subchapter. Based on the multiyear plan, the Secretary of Administration annually shall recommend to the House and Senate Committees on Appropriations recommended appropriations to the Lake in Crisis Response Program Fund for the subsequent fiscal year.

§ 1315. LAKE IN CRISIS RESPONSE PROGRAM FUND

(a) There is created a special fund known as the Lake in Crisis Response Program Fund to be administered by the Secretary of Natural Resources. The Fund shall consist of:

(1) funds that may be appropriated by the General Assembly; and

(2) other gifts, donations, or funds received from any source, public or private, dedicated for deposit into the Fund.

(b) The Secretary shall use monies deposited in the Fund for the Secretary's implementation of a crisis response plan for a lake in crisis and for financial assistance under section 1313 of this title to persons subject to a lake in crisis order.

(c) Notwithstanding the requirements of 32 V.S.A. § 588(3) and (4), interest earned by the Fund and the balance of the Fund at the end of the fiscal year shall be carried forward in the Fund and shall not revert to the General Fund.

Sec. 6. LAKE CARMI; LAKE IN CRISIS

The General Assembly declares Lake Carmi as a lake in crisis under 10 V.S.A. chapter 47, subchapter 2A. The crisis response plan for Lake Carmi shall include implementation of runoff controls.

Sec. 7. 10 V.S.A. § 8003(a) is amended to read:

(a) The Secretary may take action under this chapter to enforce the following statutes and rules, permits, assurances, or orders implementing the following statutes, and the Board may take such action with respect to subdivision (10) of this subsection:

- (1) *10 V.S.A. chapter 23, relating to air quality;*
- (2) *10 V.S.A. chapter 32, relating to flood hazard areas;*
- (3) *10 V.S.A. chapters 47 and 56, relating to water pollution control, water quality standards, ~~and~~ public water supply, and lakes in crisis;*

* * *

Sec. 8. 10 V.S.A. § 8503(a) is amended to read:

(a) This chapter shall govern all appeals of an act or decision of the Secretary, excluding enforcement actions under chapters 201 and 211 of this title and rulemaking, under the following authorities and under the rules adopted under those authorities:

- (1) The following provisions of this title:*
 - (A) chapter 23 (air pollution control);*
 - (B) chapter 50 (aquatic nuisance control);*
 - (C) chapter 41 (regulation of stream flow);*
 - (D) chapter 43 (dams);*
 - (E) chapter 47 (water pollution control; lakes in crisis);*

* * *

** * * Report on Future Farming Practices * * **

*Sec. 9. AGENCY OF AGRICULTURE, FOOD AND MARKETS
REPORT ON FARMING PRACTICES IN VERMONT*

(a) The Nutrient Management Commission convened by the Secretary of Agriculture, Food and Markets as a requirement of the U.S. Environmental Protection Agency's approved implementation plan for the Lake Champlain total maximum daily load plan shall review whether and how to revise farming practices in Vermont in a manner that mitigates existing environmental impacts while maintaining economic viability. In conducting its review, the Commission shall consider whether and how to:

- (1) revise farming practice to improve or build healthy soils;*
- (2) reduce agriculturally based pollution in areas of high pollution, stressed waters, or impaired waters;*
- (3) establish a carrying capacity or maximum number of livestock that the land used for nutrient application on a farm can support without contribution of nutrients to a water;*

(4) provide financial and technical support to facilitate the transition by farms to less-polluting practices through one or more of the following:

(A) cover cropping;

(B) reduced tillage or no tillage;

(C) accelerated implementation of best management practices (BMPs);

(D) evaluation of the effectiveness of using riparian buffers in excess of 25 feet;

(E) increased use of direct manure injection;

(F) crop rotations to build soil health, including limits on the planting of continuous corn;

(G) elimination or reduction of the use of herbicides in the termination of cover crops; and

(H) diversification of dairy farming.

(b) On or before January 15, 2019, the Secretary of Agriculture, Food and Markets shall submit to the Senate Committees on Natural Resources and Energy and on Agriculture and to the House Committees on Natural Resources, Fish, and Wildlife and on Agriculture and Forestry any recommendation of the Nutrient Management Commission regarding any of the farming practices or subject areas listed under subdivisions (a)(1)–(4) of this section.

** * * Petroleum Cleanup Fund * * **

Sec. 10. 10 V.S.A. § 1941(b) is amended to read:

(b) The Secretary may authorize disbursements from the Fund for the purpose of the cleanup and restoration of contaminated soil and groundwater caused by releases of petroleum from underground storage tanks and aboveground storage tanks, including air emissions for remedial actions, and for compensation of third parties for injury and damage caused by a release. This Fund shall be used for no other governmental purposes, nor shall any portion of the Fund ever be available to borrow from by any branch of government; it being the intent of the General Assembly that this Fund and its increments shall remain intact and inviolate for the purposes set out in this chapter. Disbursements under this section may be made only for uninsured costs incurred after January 1, 1987 and for which a claim is made prior to July 1, ~~2019~~ 2029 and judged to be in conformance with prevailing industry rates. This includes:

* * *

Sec. 11. 10 V.S.A. § 1942 is amended to read:

§ 1942. PETROLEUM DISTRIBUTOR LICENSING FEE

(a) There is hereby established a licensing fee of one cent per gallon of motor fuel sold by a distributor or dealer or used by a user in this State, ~~which~~ that will be assessed against every distributor, dealer, or user as defined in 23 V.S.A. chapters 27 and 28, and ~~which~~ that will be deposited into the Petroleum Cleanup Fund established pursuant to subsection 1941(a) of this title. The Secretary, in consultation with the Petroleum Cleanup Fund Advisory Committee established pursuant to subsection 1941(e) of this title, shall annually report to the General Assembly on the balance of the Motor Fuel Account and shall make recommendations, if any, for changes to the program. The Secretary shall also determine the unencumbered balance of the Motor Fuel Account as of May 15 of each year, and if the balance is equal to or greater than \$7,000,000.00, then the licensing fee shall not be assessed in the upcoming fiscal year. The Secretary shall promptly notify all sellers assessing this fee of the status of the fee for the upcoming fiscal year. This fee ~~will~~ shall be paid in the same manner, at the same time, and subject to the same restrictions or limitations as the tax on motor fuels. The fee ~~will~~ shall be collected by the Commissioner of Motor Vehicles and deposited into the Petroleum Cleanup Fund. This fee requirement shall terminate on April 1, ~~2021~~ 2031.

(b) There is assessed a licensing fee of one cent per gallon for the bulk retail sale of heating oil, kerosene, or other dyed diesel fuel sold in this State. This fee shall be subject to the collection, administration, and enforcement provisions of 32 V.S.A. chapter 233, and the fees collected under this subsection by the Commissioner of Taxes shall be deposited into the Petroleum Cleanup Fund established pursuant to subsection 1941(a) of this title. The Secretary, in consultation with the Petroleum Cleanup Fund Advisory Committee established pursuant to subsection 1941(e) of this title, shall annually report to the General Assembly on the balance of the Heating Fuel Account and shall make recommendations, if any, for changes to the program. The Secretary shall also determine the unencumbered balance of the Heating Fuel Account as of May 15 of each year, and if the balance is equal to or greater than \$3,000,000.00, then the licensing fee shall not be assessed in the upcoming fiscal year. The Secretary shall promptly notify all sellers assessing this fee of the status of the fee for the upcoming fiscal year. This fee provision shall terminate on April 1, 2021 2031.

Sec. 12. 10 V.S.A. § 1943(c) is amended to read:

(c) This tank assessment shall terminate on July 1, 2019 2029.

Sec. 13. COMBINATION TANK SYSTEMS; CONTINUATION OF SERVICE

(a) As used in this section:

(1) "Combination tank system" shall have the same meaning as set forth in 10 V.S.A. § 1922.

(2) "Motor fuel" means fuel subject to the licensing fee under 10 V.S.A. § 1942(a).

(b) Notwithstanding the requirements in 10 V.S.A. § 1927(e)(2) that a combination tank system shall be closed by January 1, 2018, the Secretary of Natural Resources may authorize a combination tank service to supply motor fuel after January 1, 2018 upon a determination that the combination tank system:

(1) is the sole supply of motor fuel in the municipality in which the combination tank system is located;

(2) is needed to supply motor fuel to public safety or fire control services in the municipality; and

(3) the owner of the combination system has entered into a contract and obtained financing to replace the tank as required under 10 V.S.A. § 1927.

(c) The Secretary may authorize the continued supply of motor fuel from a combination tank system under this section until October 1, 2018.

(d) This section shall be repealed on October 1, 2018.

** * * Municipal Roads General Permit Fees * * **

Sec. 14. 3 V.S.A. § 2822(j)(2)(B)(iv)(VI) is amended to read:

(VI) ~~Application~~ For application to operate under a general permit for stormwater runoff associated with municipal roads: ~~\$2,000.00~~, the following fees per authorization annually:

(aa) in a municipality with a population of more than 5,000 persons: \$1,800.00;

(bb) in a municipality with a population of 2,500 to 5,000 persons and 95 miles or more of maintained road: \$1,800.00;

(cc) in a municipality with a population of 2,500 to 5,000 persons and 25 to less than 95 miles of maintained road: \$1,350.00;

(dd) in a municipality with a population of 2,500 to 5,000 persons and less than 25 miles of maintained road: \$500.00;

(ee) in a municipality with a population of fewer than 2,500 but more than 500 persons and 25 miles or more of maintained road: \$1,350.00;

(ff) in a municipality with a population of fewer than 2,500 but more than 500 persons and less than 25 miles of maintained road: \$500.00;

(gg) in a municipality with a population of fewer than 500 persons: \$500.00;

(hh) in a municipality that is covered under a municipal separate storm sewer system permit: \$0.00; and

(ii) in an unincorporated or disincorporated municipality: \$0.00.

**** Mercury-Added Motor Vehicle Components ****

Sec. 15. 10 V.S.A. § 7108 is added to read:

§ 7108. MERCURY-ADDED MOTOR VEHICLE COMPONENTS

(a) Applicability. This section applies to:

(1) a motor vehicle recycler or scrap metal recycling facility in the State; and

(2) a manufacturer of motor vehicles sold in this State.

(b) Mercury-added switch removal requirements. A motor vehicle recycler that accepts end-of-life motor vehicles shall remove mercury-added vehicle switches prior to crushing, shredding, or other scrap metal processing and prior to conveying for crushing, shredding, or other scrap metal processing.

(1) Motor vehicle recyclers shall maintain a log sheet of switches removed from end-of-life motor vehicles and shall provide such log to the Agency annually or upon request of the Agency.

(2) Switches, including switches encased in light or brake assemblies, shall be collected, stored, transported, and handled in accordance with all applicable State and federal laws.

(c) Manufacturer mercury-added switch recovery program. A manufacturer of vehicles sold in this State, individually or as part of a group, shall implement a mercury-added vehicle switch recovery program that includes the following:

(1) educational material to assist motor vehicle recyclers in identifying mercury-added vehicle switches and safely removing, properly handling, and storing switches;

(2) storage containers provided at no cost to all motor vehicle recyclers identified by the Agency, suitable for the safe storage of switches, including switches encased in light or brake assemblies;

(3) collection, packaging, shipping, and recycling of mercury-added switches, including switches encased in light or brake assemblies, provided to all motor vehicle recyclers at no cost and that comply with all applicable State and federal laws; and

(4) a report on or before December 1 annually to the Agency that includes the total number of mercury-added switches recovered in the program, the names of the motor vehicle recyclers and the number of switches removed from each, and the total amount of mercury collected during the previous 12-month period.

(d) Agency responsibility.

(1) The Agency shall provide workshops and other training to motor vehicle recyclers to inform them of the requirements of this section.

(2) The Agency may develop, by procedure, exemptions of certain mercury-added vehicle switches and other components from the requirements of this section, including mercury-added switches that are inaccessible due to motor vehicle damage and anti-lock brake switches in certain motor vehicle types that are difficult or labor-intensive to remove.

Sec. 16. APPLICATION OF ENACTMENT

On December 31, 2017, the former 10 V.S.A. § 7108, requiring establishing mercury-added vehicle component requirements, as established by 2006 Acts and Resolves No. 117, was repealed. Sec. 15 of this act reenacts 10 V.S.A. § 7108 in substantially the same form as the section was enacted by 2006 Acts and Resolves No. 117. Notwithstanding the requirements of 1 V.S.A. § 214, the requirements of 10 V.S.A. § 7108 as enacted by Sec. 15 of this act shall apply retroactively to December 31, 2017 and shall be implemented prospectively from that date.

Sec. 17. REPEAL OF MERCURY-ADDED MOTOR VEHICLE COMPONENT REQUIREMENTS

10 V.S.A. § 7108 (mercury-added vehicle component requirements) shall be repealed on December 31, 2021.

** * * Forgiveness of Municipal Water Supply and
Pollution Control Planning Advances * * **

Sec. 18. FORGIVENESS OF REPAYMENT OF PLANNING ADVANCES

The Secretary of Natural Resources shall not require a municipality to repay engineering planning advances awarded under 24 V.S.A. chapter 120, subchapter 2 if the Secretary determines that:

(1) the engineering planning advance was awarded prior to September 1, 2011; and

(2) due to the effects of Tropical Storm Irene, documentation is no longer available to establish the engineering planning scope and associated construction project for which the engineering planning advance was awarded.

** * * Environmental Enforcement Report * * **

Sec. 19. 10 V.S.A. § 8017 is amended to read:

§ 8017. ANNUAL REPORT

The Secretary and the Attorney General shall report annually to the President Pro Tempore of the Senate, the Speaker of the House, the House Committee on ~~Fish, Wildlife and Water Resources~~ Natural Resources, Fish, and Wildlife, and the Senate ~~and House Committees~~ Committee on Natural Resources and Energy. The report shall be filed ~~no later than January 15~~ on or before February 15, on the enforcement actions taken under this chapter, and on the status of citizen complaints about environmental problems in the State. The report shall describe, at a minimum, the number of violations, the actions taken, the disposition of cases, the amount of penalties collected, and the cost of administering the enforcement program. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this section.

** * * Wastewater System and Potable Water Supplies Lending * * **

Sec. 20. 24 V.S.A. § 4752 is amended to read:

§ 4752. DEFINITIONS

As used in this chapter:

** * **

(13) "Potable water supply facilities" means municipal water sources, water treatment plants, structures, pipe lines, storage facilities, pumps, and attendant facilities necessary to develop a source of water and to treat and convey it in proper quantity and quality for public use within a municipality shall have the same meaning as in 10 V.S.A. § 1972.

* * *

(17) "Designer" means a person authorized to design wastewater systems and potable water supplies as identified in 10 V.S.A. § 1975.

Sec. 21. 24 V.S.A. § 4753 is amended to read:

§ 4753. REVOLVING LOAN FUNDS; AUTHORITY TO SPEND; REPORT

(a) There is hereby established a series of special funds to be known as:

* * *

(10) The Vermont Wastewater and Potable Water Revolving Loan Fund, which shall be used to provide loans to individuals, in accordance with section 4763b of this title, for the design and construction of repairs to or replacement of wastewater systems and potable water supplies when the wastewater system or potable water supply is a failed system or supply as defined in 10 V.S.A. § 1972, or when a designer demonstrates that the wastewater system or potable water supply has a high probability of failing. The amount of up to \$275,000.00 from the fees collected pursuant to 3 V.S.A. § 2822(j)(4) shall be deposited ~~on an annual basis~~ into this Fund at the beginning of each fiscal year to ensure a minimum balance of available funds of \$275,000.00 exists for each fiscal year.

* * *

Sec. 22. 24 V.S.A. § 4763b is amended to read:

§ 4763b. LOANS TO INDIVIDUALS FOR FAILED WASTEWATER SYSTEMS AND FAILED POTABLE WATER SUPPLIES

(a) Notwithstanding any other provision of law, when the wastewater system or potable water supply serving only ~~one single-family residence on its own lot~~ single-family and multifamily residences either meets the definition of a failed supply or system in 10 V.S.A. § 1972 or is demonstrated by a designer to have a high probability of failing, the Secretary of Natural Resources may lend monies to the owner of the residence an owner of one or more of the residences from the Vermont Wastewater and Potable Water Revolving Loan Fund established in section 4753 of this title. In such cases, the following conditions shall apply:

(1) loans a loan may only be made to households with an owner with a household income equal to or less than 200 percent of the State average median household income;

(2) loans a loan may only be made to households where the recipient of the loan resides in the residence an owner who resides in one of the residences served by the failed supply or system on a year-round basis;

(3) ~~loans a loan may only be made if the owner of the residence to an owner who has been denied financing for the repair, replacement, or construction due to involuntary disconnection by at least one other financing entity;~~

(4) ~~when the failed supply or system also serves residences owned by persons other than the loan applicant, a loan may only be made for an equitable share of the cost to repair or replace the failed supply or system that is determined through agreement of all of the owners of residences served by the failed system or supply;~~

(5) ~~no construction loan shall be made to an individual under this subsection, nor shall any part of any revolving loan made under this subsection be expended, until all of the following take place:~~

(A) ~~the Secretary of Natural Resources determines that if a wastewater system and potable water supply permit is necessary for the design and construction of the project to be financed by the loan, the permit has been issued to the owner of the failed system or supply; and~~

(B) ~~the individual applying for the loan certifies to the Secretary of Natural Resources that the proposed project has secured all State and federal permits, licenses, and approvals necessary to construct and operate the project to be financed by the loan;~~

~~(5)(6) all funds from the repayment of loans made under this section shall be deposited into the Vermont Wastewater and Potable Water Revolving Loan Fund.~~

(b) ~~The Secretary of Natural Resources shall establish standards, policies, and procedures as necessary for the implementation of this section. The Secretary may establish criteria to extend the payment period of a loan or to waive all or a portion of the loan amount.~~

** * * Stormwater Permitting * * **

Sec. 23. 27 V.S.A. § 613(b) is amended to read:

(b) ~~Beginning on July 1, 2004, and notwithstanding any law to the contrary, no encumbrance on record title to real property or effect on marketability of title shall be created by the failure of the holder of real property from which regulated stormwater runoff discharges to an impaired watershed to obtain, renew, or comply with the terms and conditions of a pretransition stormwater discharge permit for a conveyance or refinancing, provided that such holder:~~

(1) provides a notice of deferral of permit to the Secretary of Natural Resources with a property description, the identity of the impaired watershed, the permit number of any expired pretransition stormwater discharge permit covering the property, and such other information as the Secretary may require; and

(2) records in the land records a notice indicating, in an appropriate form to be determined by the Secretary of Natural Resources, that at the time of establishment of a general permit in the impaired watershed where the real property is located, but not later than ~~June 30, 2018~~ 180 days after the date of adoption by the Agency of Natural Resources of the stormwater rule pursuant to 10 V.S.A. § 1264, the mortgagor (in the case of a refinancing) or the grantee (in the case of a conveyance) shall be subject to all applicable requirements of the water quality remediation plan, TMDL, or watershed improvement permit established under 10 V.S.A. chapter 47.

Sec. 24. 2012 Acts and Resolves No. 91, Sec. 3, as amended by 2016 Acts and Resolves No. 73, Sec. 1, is further amended to read:

Sec. 3. REPEAL

27 V.S.A. § 613 (stormwater discharges during transition period; encumbrance on title) shall be repealed ~~on June 30, 2018~~ 180 days after the date the Agency of Natural Resources adopts the stormwater rule pursuant to 10 V.S.A. § 1264.

** * * Mixed Paper; Disposal * * **

Sec. 25. ANR SUSPENSION OF LANDFILL DISPOSAL BAN ON MIXED PAPER

Upon finding that insufficient markets exist for the recycling of paper and adequate uses are not reasonably available to serve as an alternative to disposal of paper, the Secretary of Natural Resources may suspend the application of the landfill disposal ban under 10 V.S.A. § 6621a to a solid waste management facility for one or more of the following materials: white and colored paper, newspaper, magazines, catalogues, paper mail and envelopes, boxboard, and paper bags.

Sec. 26. REPEAL; SUSPENSION OF LANDFILL DISPOSAL BAN

Sec. 25 (ANR suspension of landfill disposal ban; mixed paper) shall be repealed on July 1, 2019.

** * * Effective Dates * * **

Sec. 27. EFFECTIVE DATES

This act shall take effect on passage, except that Secs. 14 (municipal road stormwater fees) and 19 (environmental enforcement report) shall take effect on July 1, 2018.