

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Natural Resources, Fish, and Wildlife to which was
3 referred House Bill No. 260 entitled “An act relating to funding the cleanup of
4 State waters” respectfully reports that it has considered the same and
5 recommends that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

7 * * * Clean Water Working Group * * *

8 Sec. 1. FINDINGS

9 The General Assembly finds that for the purposes of this section and Secs.
10 2–5 of this act:

11 (1) Within Vermont there are 7,100 miles of rivers and streams and
12 812 lakes and ponds of at least five acres in size.

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

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

1 (4) Act 64 directed the State Treasurer to recommend to the General
2 Assembly a long-term mechanism for financing water quality improvement in
3 the State, including proposed revenue sources for water quality improvement
4 programs.

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

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

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

12 (C) an estimate of annual compliance costs of \$115.6 million, which,
13 after accounting for projected revenue, would leave a funding gap of
14 \$48.5 million to pay for the costs of compliance with the first tier of federal
15 and State water quality requirements; and

16 (D) a financing plan to provide more than \$25 million in additional
17 State funds for water quality programs.

18 (6) After determining that a method to achieve equitable and effective
19 long-term funding methods to support clean water efforts in Vermont was
20 necessary, the General Assembly established in 2017 Acts and Resolves

1 No. 73, Sec. 26 the Working Group on Water Quality Funding to develop draft
2 legislation to accomplish this purpose.

3 (7) The Act 73 Working Group did not recommend a long-term funding
4 method to support clean water efforts in Vermont and instead recommended
5 that the General Assembly maintain a Capital Bill clean water investment of
6 \$15 million a year through fiscal years 2020 and 2021.

7 (8) In the years beyond fiscal year 2021, the Act 73 Working Group
8 acknowledged that capital funds would need to be reduced to \$10 to \$12
9 million a year and that additional revenues would need to be raised.

10 (9) The U.S. Environmental Protection Agency (EPA) in a letter to the
11 General Assembly stated that it is important for the State of Vermont to
12 establish a long-term revenue source to support water quality improvement in
13 order to comply with the accountability framework of the Lake Champlain
14 Total Maximum Daily Load plan.

15 (10) To ensure that the State has sufficient funds to clean and protect the
16 State's waters so that they will continue to provide their integral and inherent
17 environmental and economic benefits, the State should require a Clean Water
18 Working Group to recommend to the General Assembly draft legislation to
19 establish equitable and effective long-term funding methods to support clean
20 water efforts in Vermont.

1 (11) If the Clean Water Working Group fails to provide
2 recommendations or the General Assembly does not enact a recommendation,
3 the State shall implement a water quality revenue occupancy surcharge to
4 support water quality improvement.

5 Sec. 2. CLEAN WATER WORKING GROUP

6 (a) Creation. There is created the Clean Water Working Group to
7 recommend to the General Assembly how to establish an equitable and
8 effective long-term funding method to:

- 9 (1) finance the necessary water quality programs and projects that will
10 remediate, improve, and protect the quality of the waters of the State;
11 (2) coordinate water quality financing in the State;
12 (3) plan for the water quality financing needs of the State; and
13 (4) ensure accountability of the State's efforts to clean up impaired
14 waters, maintain or achieve the Vermont Water Quality Standards in all waters,
15 and prevent the future degradation of waters.

16 (b) Membership. The Clean Water Working Group shall be composed of
17 the following ten members:

- 18 (1) the Secretary of Natural Resources or designee;
19 (2) the Secretary of Agriculture, Food and Markets or designee;

1 (3) one representative of a municipality in the State that has a
2 stormwater utility or other water quality funding mechanism, to be appointed
3 by the Speaker of the House;

4 (4) one representatives of a municipality in the State that does not have a
5 stormwater utility or other water quality funding mechanism, to be appointed
6 by the Committee on Committees;

7 (5) one representative of a business interest located in the State, to be
8 appointed by the Governor;

9 (6) a representative of the hospitality or tourism industry in the State, to
10 be appointed by the Speaker of the House;

11 (7) a representative of a regional or statewide watershed organization, to
12 be appointed by the Committee on Committees;

13 (8) a person with expertise in financial lending or investment, to be
14 appointed by the Governor;

15 (9) a farmer, to be appointed by the Speaker of the House; and

16 (10) an economist with expertise in tax policy, tax administration, and
17 tax collection, to be appointed by the Committee on Committees.

18 (c) Powers and duties. The Clean Water Working Group shall recommend
19 to the General Assembly;

1 (1) whether the State should establish an independent authority or
2 implement other alternatives to coordinate and finance water quality programs
3 and projects across State government;

4 (2) a description of the structure, powers, duties, and feasibility of the
5 independent authority or alternative mechanism recommended under
6 subdivision (1) of this subsection;

7 (3) a financing plan for water quality programs and projects in the State
8 that includes priorities for financing water quality programs in the State and
9 that will sufficiently fund the following State obligations:

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

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

13 (C) the Agency of Natural Resources' Combined Sewer
14 Overflow Rule;

15 (4) one or more funding alternatives that are sufficient to implement the
16 financing plan for water quality recommended under subdivision (3) of this
17 subsection, including how each recommended funding alternative revenue
18 source shall be implemented, assessed, and collected; and

19 (5) whether the State Treasurer's estimate of State funding needs in the
20 Clean Water Report in January 2017 should be revised or updated due to

1 economic conditions or due to the need to reflect the most effective measures
2 to improve water quality.

3 (d) Assistance. The Clean Water Working Group shall have the
4 administrative, technical, and legal assistance of the Agency of Natural
5 Resources and the Agency of Agriculture, Food and Markets and the fiscal
6 assistance of the Department of Taxes. The Working Group shall also be
7 entitled to seek financial, technical, and scientific input or services from the
8 Office of the State Treasurer, the Agency of Transportation, the Vermont
9 Center for Geographic Information Services, and the Agency of Commerce and
10 Community Development.

11 (e) Report. On or before January 15, 2019, the Clean Water Working
12 Group shall submit to the General Assembly draft legislation that addresses the
13 issues set forth under subsection (c) of this section.

14 (f) Meetings.

15 (1) The Secretary of Natural Resources shall call the first meeting of the
16 Clean Water Working Group to occur on or before August 1, 2018.

17 (2) The Clean Water Working Group shall select a chair or co-chairs
18 from among its members at its first meeting.

19 (3) A majority of the membership of the Clean Water Working Group
20 shall constitute a quorum.

1 (4) The Clean Water Working Group shall cease to exist on March 1,
2 2019.

3 (f) Compensation. Members of the Clean Water Working Group who are
4 not employees of the State of Vermont and who are not otherwise compensated
5 or reimbursed for their attendance shall be entitled to per diem compensation
6 and reimbursement of expenses pursuant to 32 V.S.A. § 1010, to be paid from
7 the budget of the Agency of Administration.

8 * * * Water Quality Occupancy Surcharge * * *

9 Sec. 3. 32 V.S.A. § 9241a is added to read:

10 § 9241a. WATER QUALITY OCCUPANCY SURCHARGE

11 (a) In addition to the tax on the rent of each occupancy imposed in section
12 9241 of this title, an operator shall collect a water quality occupancy surcharge
13 of \$2.00 for each night of occupancy.

14 (b) The revenues generated by the water quality occupancy surcharge
15 imposed in subsection (a) of this section shall be deposited in the Clean Water
16 Fund under 10 V.S.A. § 1389.

17 (c) The provisions of this chapter relating to the imposition, collection,
18 remission, and enforcement of the meals and rooms tax imposed in section
19 9241 of this title shall apply to the water quality occupancy surcharge imposed
20 in this section.

1 Sec. 5. 32 V.S.A. § 435(b) is amended to read:

2 (b) The General Fund shall be composed of revenues from the following
3 sources:

4 * * *

5 (7) Meals and rooms taxes levied pursuant to chapter 225 of this title,
6 except for the Clean Water Occupancy Surcharge levied under section 9241a
7 of this title;

8 * * *

9 * * * Clean Water Fund Board * * *

10 Sec. 6. 10 V.S.A. § 1389 is amended to read:

11 § 1389. CLEAN WATER FUND BOARD

12 (a) Creation.

13 (1) There is created the Clean Water Fund Board ~~which~~ that shall
14 recommend to the Secretary of Administration ~~expenditures;~~

15 (A) appropriations from the Clean Water Fund; and

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

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

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

21 (1) the Secretary of Administration or designee;

- 1 (2) the Secretary of Natural Resources or designee;
2 (3) the Secretary of Agriculture, Food and Markets or designee;
3 (4) the Secretary of Commerce and Community Development or
4 designee;
5 (5) the Secretary of Transportation or designee; and

6 (6) two members of the public who are not legislators, one of whom
7 shall represent a municipality subject to the municipal separate storm sewer
8 system (MS4) permit and one of whom shall represent a municipality that is
9 not subject to the MS4 permit, appointed as follows:

10 (A) the Speaker of the House shall appoint the member from an MS4
11 municipality; and

12 (B) the Committee on Committees shall appoint the member who is
13 not from an MS4 municipality.

14 (c) Officers; committees; rules.

15 (1) The Clean Water Fund Board shall annually elect a chair from its
16 members Secretary of Administration shall serve as the Chair of the Board.

17 The Clean Water Fund Board may elect additional officers from its members,
18 establish committees or subcommittees, and adopt procedural rules as
19 necessary and appropriate to perform its work.

20 (2) Members of the Board who are not employees of the State of
21 Vermont and who are not otherwise compensated or reimbursed for their

1 attendance shall be entitled to per diem compensation and reimbursement of
2 expenses pursuant to 32 V.S.A. § 1010 paid from the budget of the Agency of
3 Administration for attendance of meetings of the Board.

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

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

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

1 (3) The Clean Water Fund Board shall:

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

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

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

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

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

15 (e) Priorities.

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

19 (A) funding to programs and projects that address sources of water
20 pollution in waters listed as impaired on the list of waters established by
21 33 U.S.C. § 1313(d);

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

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

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

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

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

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

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

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

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

17 (f) Assistance. The Clean Water Fund Board shall have the administrative,
18 technical, and legal assistance of the Agency of Administration, the Agency of
19 Natural Resources, the Agency of Agriculture, Food and Markets, the Agency
20 of Transportation, and the Agency of Commerce and Community
21 Development for those issues or services within the jurisdiction of the

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

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

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

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

13 (1) requirements for eligibility;

14 (2) a system of priorities for the award of block grants;

15 (3) performance measures, reporting requirements, or accountability
16 requirements for recipients of water quality block grants;

17 (4) uses for which a recipient of a water block grant may allocate or
18 award portions of the block grants to other eligible entities for implementation
19 of water quality programs or projects in a river basin;

20 (5) methods for identifying watersheds or other areas where the State
21 should focus on enhancing the capacity of local partners; and

1 comprehensive crisis response plan for the management of the lake in crisis in
2 order to improve water quality in the lake or to mitigate or eliminate the
3 potential harm to public health or the risk of damages to the environment or
4 natural resources. The Secretary shall coordinate with the Secretary of
5 Agriculture, Food and Markets, and the Secretary of Transportation in the
6 development of the crisis response plan. The crisis response plan shall require
7 implementation of one or both of the following in the watershed of the lake in
8 crisis:

9 (1) water quality requirements not set forth in existing statute or rule
10 that are designed to address specific harms to public health or risks to the
11 environment or natural resources; or

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

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

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

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

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

11 § 1312. LAKE IN CRISIS ORDER

12 (a) Lake in crisis order. The Secretary, after consultation with the
13 Secretary of Agriculture, Food and Markets, may issue a lake in crisis order to
14 require a person to:

15 (1) take an action identified in the lake in crisis response plan;

16 (2) cease any acts, discharges, or processes contributing to the
17 impairment of the lake in crisis;

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

20 (4) conduct testing, sampling, monitoring, surveying, or other analytical
21 operations required to determine the nature, extent, duration, or severity of the

1 potential harm to the public health or a risk of damage to the environment or
2 natural resources.

3 (b) Notice. Prior to issuing a lake in crisis order under this section, the
4 Secretary shall provide notice as provided in this subsection.

5 (1) The Secretary shall prepare a notice of intent to seek the order,
6 setting forth the reasons to believe a lake in crisis order should be issued.

7 (2) The notice of intent, together with the supporting evidence and a
8 statement of procedural rights available under this section, shall be served on
9 the person or persons against whom the lake in crisis order is sought in
10 accordance with the procedures set forth in Vermont Rules of Civil Procedure.

11 (3) Upon request of a person against whom a lake in crisis order is
12 sought, the Secretary shall hold a hearing. At the hearing, the person against
13 whom the order is sought shall be given an opportunity to rebut the allegations
14 and demonstrate that the Secretary should not issue the lake in crisis order
15 against the person.

16 (c) Phosphorus practices. If the source of pollution in the lake in crisis
17 includes phosphorus from a specific source, the Secretary shall issue a lake in
18 crisis order requiring the source of phosphorus in the watershed to implement
19 practices that reduce the phosphorus loads to the lake.

1 (d) Term of order. When the Secretary issues a lake in crisis order under
2 this section, the order shall include a term for the duration of each water
3 quality requirement in the order.

4 (e) Term of designation. A lake shall remain designated as in crisis under
5 this subchapter until the Secretary determines that the lake no longer satisfies
6 the criteria for designation under subsection 1310(b) of this title.

7 § 1313. ASSISTANCE

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

12 (b) State financial assistance awarded under this section shall be in the
13 form of a grant. An applicant for a State grant shall pay at least 35 percent of
14 the total eligible project cost. The dollar amount of a State grant shall be equal
15 to the total eligible project cost, less 35 percent of the total as paid by the
16 applicant, and less the amount of any federal assistance awarded.

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

19 § 1314. FUNDING OF STATE RESPONSE TO A LAKE IN CRISIS

20 (a) Initial response. Upon designation of a lake in crisis, the Secretary
21 may, for the purposes of the initial response to the lake in crisis, expend up to

1 \$50,000.00 appropriated to the Agency of Natural Resources from the Clean
2 Water Fund for authorized contingency spending.

3 (b) Long-term funding. In the subsequent budget submitted to the General
4 Assembly under 32 V.S.A. § 701, the Secretary of Administration shall
5 propose appropriations to the Lake in Crisis Response Program Fund to
6 implement fully the crisis response plan for the lake in crisis, including
7 recommended appropriations from one or more of the following:

8 (1) the Clean Water Fund established under section 1389 of this title;

9 (2) the Environmental Contingency Fund established under section 1289
10 of this title;

11 (3) the Vermont Housing and Conservation Trust Fund established
12 under section 312 of this title;

13 (4) capital funds and other monies available from the Secretary of
14 Agriculture, Food and Markets for water quality programs or projects;

15 (5) capital funds and other monies available from the Secretary of
16 Natural Resources for water quality programs or projects; and

17 (6) General Fund appropriations.

18 § 1315. LAKE IN CRISIS RESPONSE PROGRAM FUND

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

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

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

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

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

12 § 1316. PUBLIC HEARING; TRANSPARENCY

13 The Secretary shall hold at least one public hearing in the watershed of the
14 lake in crisis and shall provide an opportunity for public notice and comment
15 for each water quality program, project, or crisis order proposed for
16 implementation in the watershed of the lake in crisis.

17 Sec. 9. LAKE CARM; LAKE IN CRISIS

18 The General Assembly declares Lake Carmi as a lake in crisis under
19 10 V.S.A. chapter 47, subchapter 2A. The crisis response plan for Lake Carmi
20 shall include implementation of runoff controls.

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

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

2 Sec. 12. AGENCY OF AGRICULTURE, FOOD AND MARKETS

3 REPORT ON FARMING PRACTICES IN VERMONT

4 On or before January 15, 2019, the Secretary of Agriculture, Food and
5 Markets shall submit to the Senate Committees on Natural Resources and
6 Energy and on Agriculture and to the House Committees on Natural
7 Resources, Fish, and Wildlife and on Agriculture and Forestry a report
8 regarding how to revise farming practice in Vermont in a manner that mitigates
9 existing environmental impacts while maintaining economic viability. The
10 report shall include recommendations for:

11 (1) building healthy soils;

12 (2) reducing agriculturally based pollution in areas of high pollution,
13 stressed, or impaired waters;

14 (3) establishing a carrying capacity or maximum number of livestock
15 that the land used for nutrient application on a farm can support without
16 contribution of nutrients to a water;

17 (4) how to provide financial and technical support to facilitate the
18 transition by farms to less-polluting practices, including:

19 (A) cover cropping;

20 (B) reduced tillage or no tillage;

