

1 TO THE HONORABLE SENATE:

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

8 \* \* \* Clean Water Planning, Funding, and Implementation Committee \* \* \*

9 Sec. 1. FINDINGS

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

12 (1) Within Vermont there are 7,100 miles of rivers and streams and  
13 812 lakes and ponds of at least five acres in size.

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

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

1           (4) 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 require the Clean Water  
4           Board and a legislative study committee to recommend separately to the  
5           General Assembly draft legislation to establish equitable and effective long-  
6           term funding methods to support clean water efforts in Vermont.

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

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

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

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

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

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

20           (b) Membership. The Clean Water Planning, Funding, and Implementation  
21           Committee shall be composed of the following eight members:

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

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

- 14           (1) Whether and how the State should establish an independent authority
- 15 to coordinate, plan, and finance water quality programs and projects across
- 16 State government.
- 17           (2) How to develop a financing plan for water quality programs and
- 18 projects in the State that will generate revenue sufficient to fund the following
- 19 State obligations:
- 20           (A) federally required or State-required cleanup plans for individual
- 21 waters or water segments, such as total maximum daily load plans;

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

2           (C) the Agency of Natural Resources' Combined Sewer

3           Overflow Rule.

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

7                   (i) meets the State's obligations;

8                   (ii) maintains a water quality budget that is not less than the  
9           funding provided in fiscal year 2019 and that is capable of meeting an  
10           equivalent level of support, adjusted for inflation, for fiscal years 2020 through  
11           2024; and

12                   (iii) includes how a per parcel fee or other fee shall be assessed to  
13           property owners in a manner that corresponds to the effect of the parcel on  
14           water quality.

15           (B) In determining how a fee will be assessed to a property, the

16           Committee shall consider whether the fee should account for:

17                   (i) the size of the parcel;

18                   (ii) the location of the parcel;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19          (d) Assistance. The Clean Water Planning, Funding, and Implementation  
20          Committee shall have the administrative, technical, legal, and fiscal assistance  
21          of the Office of Legislative Council and the Joint Fiscal Office. The

1 Committee shall also be entitled to seek financial, technical, and scientific  
2 input or services from the Office of the State Treasurer, the Agency of Natural  
3 Resources, the Agency of Agriculture, Food and Markets, the Agency of  
4 Transportation, the Vermont Center for Geographic Information Services, the  
5 Agency of Commerce and Community Development, and the Department of  
6 Taxes.

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

11 (f) Meetings.

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

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

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

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





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

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

5           (1) the Secretary of Administration or designee;

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

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

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

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

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

16           (A) the Speaker of the House shall appoint two members of the  
17 public, one of whom shall represent a municipality subject to the municipal  
18 separate storm sewer system (MS4) permit; and

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

21           (c) Officers; committees; rules.

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

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

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

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

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

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

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

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

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

6                    (2) The Clean Water Fund Board shall recommend to the Secretary of  
7                    Administration General Assembly the appropriate allocation of funds from the  
8                    Clean Water Fund for the purposes of developing the State budget required to  
9                    be submitted to the General Assembly under 32 V.S.A. § 306 financing the  
10                   Board's recommended annual financing plan. The recommendations shall  
11                   include a recommended appropriation to the Agency of Natural Resources'  
12                   River Basin Block Grant Program under section 1389c of this title. All  
13                   recommendations from the Board should be intended to achieve the greatest  
14                   water quality gain for the investment.

15                   (2)(3) The Clean Water Fund Board may pursue and accept grants, gifts,  
16                   donations, or other funding from any public or private source and may  
17                   administer such grants, gifts, donations, or funding consistent with the terms of  
18                   the grant, gift, or donation.

19                   (3)(4) The Clean Water Fund Board shall:

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

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

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

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

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

14          (e) Priorities.

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

18           (A) funding to programs and projects that address sources of water  
19 pollution in waters listed as impaired on the list of waters established by  
20 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        respective agency. The cost of the services provided by agency staff shall be  
2        paid from the budget of the agency providing the staff services.

3        (g) Terms; appointed members. Members who are appointed to the Clean  
4        Water Board shall be appointed for terms of four years, except initially,  
5        appointments shall be made such that one member appointed by the Speaker  
6        shall be appointed for a term of two years, and one member appointed by the  
7        Committee on Committees shall be appointed for a term of one year.  
8        Vacancies on the Board shall be filled for the remaining period of the term in  
9        the same manner as initial appointments.

10       Sec. 4. CLEAN WATER BOARD RECOMMENDED DRAFT

11                LEGISLATION; WATER QUALITY FUNDING METHOD

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

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

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

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

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

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

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

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

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

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

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

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

17           (i) meets the State's obligations;

18           (ii) maintains a water quality budget that is not less than the  
19       funding provided in fiscal year 2019 and that is capable of meeting an  
20       equivalent level of support, adjusted for inflation, for fiscal years 2020 through  
21       2024; and



1                   (iii) includes how a per parcel fee or other fee shall be assessed to  
2 property owners in a manner that corresponds to the effect of the parcel on  
3 water quality.

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

6                   (i) the size of the parcel;

7                   (ii) the location of the parcel;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6                           \* \* \* Water Quality Block Grant \* \* \*

7           Sec. 5. WATER QUALITY BLOCK GRANTS

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

12           (b) Establishment; purpose.

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

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

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

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

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

11           (1) requirements for eligibility;

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

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

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

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

20           (6) any other provision necessary to implement the block grants under  
21 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

1 chapter 37 or 47 of this title that is not discretionary for the Secretary of  
2 Natural Resources or the Agency of Natural Resources.

3 (b) Prerequisite to commencement of action. A person shall not commence  
4 an action under subsection (a) of this section prior to 90 days after the plaintiff  
5 has given notice of the violation to:

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

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

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

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

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

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

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

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

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

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

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

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

1           (2) The Secretary of Agriculture, Food and Markets, the Secretary of  
2           Natural Resources, or the Attorney General may intervene as a matter of right  
3           as a party to represent its interests.

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

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

20           (h) Rights preserved. Nothing in this section shall be construed to impair  
21           or diminish any common law or statutory right or remedy that may be available



1 to any person. Rights and remedies created by this section shall be in addition  
2 to any other right or remedy, including the authority of the State to bring an  
3 enforcement action separate from an action brought under this section. No  
4 determination made by a court in an action maintained under this section, to  
5 which the State has not been a party, shall be binding upon the State in any  
6 enforcement action.

7 \* \* \* Required Agricultural Practices; Healthy Soils \* \* \*

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

9 § 4810a. REQUIRED AGRICULTURAL PRACTICES; REVISION

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

17 \* \* \*

18 (4) Establish standards for nutrient management on farms, including:

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



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

6           (2) A water quality remediation plan shall:

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

14           (B) specify requirements, measures, or management practices that an  
15           owner or operator of farmland shall implement according to a nutrient  
16           management plan; and

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

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

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

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

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

11           (c) Best management practices. If monitoring conducted under subsection  
12           (b) of this section indicates increasing phosphorus loads in the waters due to  
13           nonpoint source pollution from farmland within the Lake Carmi watershed, the  
14           Secretary of Agriculture, Food and Markets shall require the owner or operator  
15           of the farmland to implement best management practices under 6 V.S.A.  
16           § 4810 to reduce runoff from the farmland.

17           (d) Enforcement; appeal.

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

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

4                           \* \* \* ANR Report on Future Farming Practices \* \* \*

5           Sec. 10. AGENCY OF AGRICULTURE, FOOD AND MARKETS

6                           REPORT ON FARMING PRACTICES IN VERMONT

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

14                   (1) building healthy soils;

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

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

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

