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Written Remarks Provided to House Natural Resources, Fish & Wildlife

Thank you for the opportunity to share my thoughts and concerns regarding S.260, an Act relating to funding the cleanup of State waters. These comments are based on the version of the bill as passed the Senate. I recognize that the conversation around clean water continues to evolve quickly and the work of HNR&W may have moved passed this version of the bill.

I want to start by thanking you, your committee and this body for your commitment to clean water. It is important that we maintain the perspective that the on-going dialogue between the legislature and the administration when it comes to clean water is not about whether we will meet our shared obligation to all Vermonter's to protect and restore the quality of Vermont's waterways, but rather how to best achieve this outcome.

I also appreciate the desire of the Senate, as reflected in S.260, to ensure sufficient long-term funding for necessary investments in clean water. The Act 73 Working Group did excellent work in this regard following the 2017 legislative session to fulfill its charge to identify a method to achieve equitable and effective long-term funding to support clean water efforts in Vermont. The Working Group identified a series decision points that need to be addressed to advance the conversation. These are:

- Prioritize which sectors, if any, need additional financial assistance (i.e. cost share) in order to achieve their clean water targets. It is decisions about cost-sharing that determine the level of state funding required to support water quality.
- Complete an evaluation of possible service delivery models, with an eye toward approaches that will expand technical innovation and capacity. This evaluation should consider and recommend whether ongoing implementation is best accomplished by an entity, or entities, within or outside state government such as a Clean Water Authority.
- Further investigate potential revenue collection mechanisms. The Working Group found that administering a water quality fee outside of existing collection and billing structures would be inefficient for the State and municipalities. This investigation should consider the type of collection (e.g., local, regional, sector-specific or statewide) and whether enlisting a third-party, such a Clean Water Authority, would be an efficient tool for collecting revenue.

The administration worked with the Senate Agriculture Committee to develop a charge to the Clean Water Fund Board to address these questions and was supportive of the strike-all version recommended by that committee. Unfortunately, the bill as passed the Senate did not adopt the recommendations in the Act 73 Report.

With regard to S.260 as passed the Senate, the administration specifically opposes Section 3 (composition of the Clean Water Board), Section 4 (study mandate for the Clean Water Board) and Section 6 (citizen suits).

Section 3 – Composition of the Clean Water Board

As passed the Senate, S.260 raises a number of significant separation of powers issues. Of particular concern, the proposed changes to the Clean Water (Fund) Board would add legislative designees and have them be part of the process that ultimately makes budget recommendations to the legislature. This structure ignores the separation of powers provision in Chapter II, Section of the Constitution which gives the Governor independent authority to bring such business before the legislature as he deems necessary. It improperly dilutes the reporting relationship of executive branch officials to the Governor.

Section 4 – Study Mandate to the Clean Water Board

Section 4 outlines a study mandate for the Clean Water Board that mirrors the mandate given to a legislative study committee in Section 2, which is a duplication of effort. Further, as noted above, we are concerned that this charge does not build on the work of the Act 73 Working Group and will therefore fall short of the necessary decisions and evaluations needed to operationalize the State's water quality work. Finally, Part (b)(3)(A)(iii) of Section 4 is problematic because it directs the Clean Water Fund Board to include as part of its report "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."

Section 6 – Citizen Suit Provision

Our final concern regards the civil right of action provision of the bill. This provision would give any citizen standing in a civil suit to allege a violation of the water quality laws and sue the State for alleged failure to enforce. The state has robust toolbox for obtaining compliance with water quality laws, from education to incentives to enforcement. Jumping straight to enforcement will not achieve the state's water quality goals in the best and most efficient manner possible and could be a significant drain on the state's legal resources and technical expertise. We believe that responding to civil suits would necessarily consume capacity within the agencies of Natural Resources and Agriculture, Food & Markets that is currently being deployed for technical, boots-on-the-ground work essential to project implementation.

In conclusion, we understand and value the desire of the Senate, as reflected in S.260, to ensure that the capacity and tools exist within Vermont state government to achieve our clean water goals. We encourage you to consider how to build on the recommendations of the Act 73 Working Group, address separation of powers issues raised with how S.260 is currently drafted and reconsider the net impact that civil right of action suits could have on the capacity of state agencies to achieve our shared clean water goals.