

S.260

An act relating to funding the cleanup of State waters

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

* * * 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-chairs 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 per diem 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. 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~~ 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; 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. 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 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 adequately 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:

* * *

(4) 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 CARM 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 last 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. 11. EFFECTIVE DATE

This act shall take effect on passage.