

TO THE HONORABLE SENATE

The Committee on Natural Resources and Energy to which was referred Senate Bill No. S. 260, entitled "An act relating to funding the cleanup of State waters"

respectfully reports that it has considered the same and recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * 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) Current assessment of State waters or water segments indicates that there are:

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

(B) 114 waters or water segments that are impaired due to a pollutant and that do have a current cleanup plan, but which may not be meeting water quality standards;

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

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

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

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

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

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

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

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

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

(6) After determining that a method to achieve equitable and effective long-term funding methods to support clean water efforts in Vermont was necessary, the General Assembly established in 2017 Acts and Resolves No. 73, Sec. 26 the Working Group on Water Quality Funding to develop draft legislation to accomplish this purpose, but the Working Group on Water Quality Funding failed to comply with its statutory charge.

(7) 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.

(8) 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 commit to achieving what the Act 73 Working Group on Water Quality failed to accomplish by requiring 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 six 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; and

(6) the Chair of the House Committee on Ways and Means 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, including appropriate block grant amounts from the Agency of Natural Resources' River Basin Block Grant Program; and

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

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

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

(1) the Secretary of Administration or designee;

(2) the Secretary of Natural Resources or designee;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Priorities.

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

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

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

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

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

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

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

(G) funding to purchase agricultural land in order to take that land

out of practice when the State water quality requirements cannot be remediated through agricultural Best Management Practices; and

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

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

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

* * * ANR River Basin Block Grant * * *

Sec. 5. 10 V.S.A. § 1389c is added to read:

§ 1389c. RIVER BASIN BLOCK GRANT PROGRAM

(a) Establishment. There is established within the Agency of Natural Resources the River Basin Block Grant Program to fund annually in each of the river basins of the State water quality programs and projects that restore and protect the waters of the State.

(b) Eligible entities; programs and projects.

(1) River basin cooperative councils, regional planning commissions, natural resources conservation districts, nonprofit associations, citizen groups, and municipalities are eligible to apply for a river basin block grant.

(2) One or more of following shall be eligible for funding under a block grant issued under this section:

(A) a water quality program or project identified in the tactical basin plan for a river basin;

(B) a water quality program or project to fund compliance with one or more of the following:

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

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

(iii) the requirements of 6 V.S.A. chapter 215; and

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

(c) Priorities. The Secretary, after consultation with the Secretary of Agriculture, Food and Markets, shall grant river basin block grants under this section to eligible parties for eligible projects on the basis of need within a river basin as determined according to a system of priorities adopted by procedure by the Secretary. In developing the system of priorities, the Secretary shall give additional weight to the following factors:

(1) whether the applicant is a river basin cooperative council;

(2) the need within a river basin for funding or administrative capacity to implement water quality programs or projects;

(3) whether a proposed program or project is identified within a tactical basin plan;

(4) the estimated nutrient pollutant reduction potential of the proposed program or project;

(5) the cost effectiveness of the program or project at removing the pollutant when compared to other alternatives; and

(6) the readiness of the program or project for timely implementation.

(d) Administrative costs. Each river basin block grant shall include funds eligible for use by the recipient for administrative costs or costs of providing technical services.

(e) Application. The Secretary of Natural Resources may establish requirements for application for a river basin block grant, including the manner of application and timing of applications.

(f) Performance measures. To ensure accountability of block grant recipients, each river basin block grant shall include performance measures.

(g) Report. As part of the Clean Water Investment report required under section 1389a of this title, the Clean Water Board shall report on the implementation of the River Basin Block Grant Program, including:

(1) the name and location of each river basin cooperative council sponsored project;

(2) the entity or organization implementing each river basin cooperative council sponsored project;

(3) the estimated reduction in the pollutant targeted for reduction or remediation by each river basin cooperative council sponsored project;

(4) the cost of each river basin cooperative council sponsored project; and

(5) administrative costs for each river basin cooperative council sponsored project as compared to all other costs of the project.

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

§ 1389d. RIVER BASIN COOPERATIVE COUNCILS

(a) Formation. The State encourages the formation of River Basin Cooperative Councils within each river basin of the State to assist in the coordination, planning, implementation, and administration of water quality programs and projects within a river basin.

(b) Composition. A River Basin Cooperative Council shall comprise at a minimum the following members:

(1) the Agency of Natural Resources' tactical basin planner for the river basin;

(2) a representative of the regional planning commission or commissions in which the basin is located;

(3) a representative of the natural resource conservation district or districts in which the basin is located; and

(4) a representative of at least one community organization the primary purpose of which is water quality improvement in the river basin in which the organization is located.

(c) Authority; eligibility. A River Basin Cooperative Council shall have the authority to:

(1) apply for a river basin block grant under section 1389c of this title;

(2) allocate funds received in a river basin block grant to other entities, projects, or programs within the river basin, provided that:

(A) the recipient entity, project, or program is an eligible entity under the River Basin Block Grant Program;

(B) the funds are allocated in a manner consistent with the Agency of Natural Resources' system of priorities established under section 1389c of this title; and

(C) the River Basin Cooperative Council requires performance measures and maintains accountability for any funds allocated to an entity, project, or program; and

(3) implement or administer eligible water quality programs or projects funded by a river basin block grant.

(d) Limitation. Only one River Basin Cooperative Council shall be formed for each river basin of the State. The Secretary of Natural Resources shall approve a River Basin Cooperative Council for each river basin.

(e) Report. Annually, each River Basin Cooperative Council shall report to the Secretary of Natural Resources on the implementation of any river basin block grant it receives. The report shall include the following:

(1) the name and location of each river basin cooperative council sponsored project;

(2) the entity or organization implementing each river basin cooperative council sponsored project;

(3) the estimated reduction in the pollutant targeted for reduction or remediation by each river basin cooperative council sponsored project;

(4) the cost of each river basin cooperative council sponsored project; and

(5) administrative costs for each river basin cooperative council sponsored project as compared to all other costs of the project.

* * * Citizen Right of Action * * *

Sec. 7. 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 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 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 60 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 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 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) Joinder; necessary parties.

(1) If a person brings an action in the Environmental Division of the Superior Court under subdivision (a)(1) of this section, the Secretary of Agriculture, Food and Markets shall be deemed a necessary party to the action and shall be joined as a party under Rule 19 of the Vermont Rules of Civil Procedure.

(2) If a person brings an action in the Environmental Division of the Superior Court under subdivision (a)(2) of this section, the Secretary of Natural Resources shall be deemed a necessary party to the action and shall be joined as a party under Rule 19 of the Vermont Rules of Civil Procedure.

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

(1) Any person may intervene as a matter of right when 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, unless the Secretary of Agriculture, Food and Markets or the Secretary of Natural Resources shows 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.

(g) 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.

(h) 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.

(i) 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. 8. 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. 9. 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. 10. AGENCY OF NATURAL RESOURCES AND AGENCY OF
AGRICULTURE, FOOD AND MARKETS JOINT LAKE CARMİ
PILOT PROGRAM FOR PHOSPHORUS MANAGEMENT

(a) Definitions. As used in this section:

(1) "Commercial feed" shall have the same meaning as in 6 V.S.A. § 323.

(2) "Custom formula feed" shall have the same meaning as in 6 V.S.A. § 323.

(3) "Farm" means a parcel or parcels of land used for farming.

(4) "Farming" shall have the same meaning as in 10 V.S.A. § 6001.

(5) "Fertilizer" shall have the same meaning as in 6 V.S.A. § 363.

(6) "Manure" shall have the same meaning as in 6 V.S.A. § 4802.

(7) "Total nutrient sources" mean the sum of all commercial feed, custom formula feed, fertilizer, or manure used or produced by a farm.

(b) Farm-specific nutrient management.

(1) On or before July 1, 2018, the Secretary of Natural Resources, in consultation with the Secretary of Agriculture, Food and Markets, shall develop individual water quality remediation plans for each farm within the Lake Carmi watershed. The water quality remediation plan shall:

(A) establish the annual tonnage of total nutrient sources that a farm may import, produce on, or apply to land in a year without increasing the phosphorus load in the waters to which the non-point source pollution from the farm runs off;

(B) specify measures or management practices that a farm may be required to implement in order to prevent an increase of phosphorus loads in the waters to which the non-point source pollution from the farm runs off; and

(C) require a farm to cover crop fields in the winter.

(2) Beginning on August 1, 2018, the owner or operator of a farm within the Lake Carmi watershed shall document the following on a monthly basis:

(A) the amount of total nutrient sources imported to, produced on, or applied to land in the prior 30 days on the farm; and

(B) implementation or administration of measures or management practices that a farm may be required to implement in order to prevent an increase of phosphorus loads.

(3) The owner or operator of a farm within the Lake Carmi watershed

shall submit to the Secretary of Natural Resources the monthly documentation required under subdivision (2) of this subsection.

(c) Monitoring. The Secretary of Natural Resources shall conduct monitoring of the waters to which the non-point source pollution from each farm within the Lake Carmi watershed runs off.

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

(e) 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 under this section, excluding enforcement actions under 10 V.S.A. chapter 201 or 220.

(f) Term. A farm subject to the requirements of this section shall implement an individual water quality remediation plan until January 1, 2021, provided that the Secretary of Natural Resources may, by order, require a farm to continue implementation of the plan.

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

Sec. 11. 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. 12. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 4-1-0)

Senator Bray
FOR THE COMMITTEE