



To: Senate Natural Resources Committee & Energy

February 7, 2018

Vermont REALTORS® represents approximately 1700 real estate agents in Vermont who work directly for the citizens and homeowners of Vermont. Our interest is preserving the quality of our real estate inventory and we understand that our environment has a direct impact on value. We are supportive of most of the clean water efforts that are in your processes. We are specifically in support of the some of the changes made to S.260 and would like to share our position.

We support creation of the Legislative Committee that will work through the summer to produce a clear and *fair* recommendation to fund clean water paid by polluters and draft legislation for introduction in January 2019. We are extremely supportive of using existing infrastructure to collect, manage and disperse funds needed to comply with the TMDLs. The board model you have presented allows the people most qualified AND with the appropriate authority to manage our water ways.

We cannot support the inclusion of the “Citizen Suits” portion in S.260. We know from experience that this has an extreme potential for abuse. Our association receives calls regularly from citizens looking for ways to compete with, attack or impugn their neighbors using law or their perception thereof.

After some review of National Citizen Suits its quite apparent that this is a complex and evolving issue. A report titled “Sue and Settle Updated: Damage Done” by the U.S. Chamber of Commerce outlines how “sue and settle” has been used to legislate via courtroom and closed doors rather than representative government. The U.S. Chamber has many recommendations to change law in respect to the EPA and Citizen Suits. One of those recommendations is to extend/stagger deadlines in the Clean Air Act and Clean Water Act. The timelines written in the 1970s do not allow the EPA a reasonable chance to comply with law prompting suits from advocate groups, according the report. The appendix in the report cites all Federal settlement agreements since 2013 and current intent to sue notices with the overwhelming majority being advocacy groups as the complainant. The report also shows a maintained 100% increase in these “Sue and Settle” cases starting in 2012 than previous years, apparently demonstrating this as an advocacy model. According to the report these suits often require heavy financial burdens on the states and do not include the extra federal funding needed.

We have also seen these types of competitions play out in Vermont life when Costco in Colchester applied to install gas pumps. Amazingly the surrounding gas stations out on their environmental hat to present their own *loose* environmental case appealing a 2015 VT Environmental Court decision with concerns citing storm water among other issues including wetlands and traffic. This case went to the Vermont Supreme Court where Costco prevailed. Costco has millions available in legal funds, while that is not the case for most Vermonters. These suits will clog the system and will make accomplishing our TMDLs much more difficult and costly to Vermonters. We ask for removal of “Citizen Suits” from S.260.

Thank you,
Matthew Musgrave, Government Affairs Director

https://www.uschamber.com/sites/default/files/u.s._chamber_sue_and_settle_2017_updated_report.pdf