

1 S.260

2 Senator Bray moves that the report of the Committee on Natural Resources
3 and Energy be amended by striking all sections and inserting in lieu thereof the
4 following:

5 * * * Clean Water Planning, Funding, and Implementation Committee * * *

6 Sec. 1. FINDINGS

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

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

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

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

19 (4) To ensure that the State has sufficient funds to clean and protect the
20 State's waters so that they will continue to provide their integral and inherent
21 environmental and economic benefits, the State should require the Clean Water

1 Board and a legislative study committee to recommend separately to the
2 General Assembly draft legislation to establish equitable and effective long-
3 term funding methods to support clean water efforts in Vermont.

4 Sec. 2. LEGISLATIVE CLEAN WATER PLANNING, FUNDING, AND
5 IMPLEMENTATION COMMITTEE

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

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

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

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

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

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

19 (1) the Chair of the Senate Committee on Appropriations or designee;

20 (2) the Chair of the House Committee on Appropriations or designee;

1 (3) the Chair of the Senate Committee on Natural Resources and Energy
2 or designee;

3 (4) the Chair of the House Committee on Natural Resources, Fish, and
4 Wildlife or designee;

5 (5) the Chair of the Senate Committee on Finance or designee;

6 (6) the Chair of the House Committee on Ways and Means or designee;

7 (7) the Chair of the Senate Committee on Agriculture; and

8 (8) the Chair of the House Committee on Agriculture and Forestry.

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

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

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

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

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

20 (C) the Agency of Natural Resources' Combined Sewer
21 Overflow Rule.

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

4 (i) meets the State’s obligations;

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

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

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

14 (i) the size of the parcel;

15 (ii) the location of the parcel;

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

18 (iv) the surface coverage of the parcel, including the amount of
19 impervious surface on the parcel, the amount of cropland or forestland on the
20 parcel, or the number of residential, commercial, or industrial structures on the
21 parcel;

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

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

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

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

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

13 (A) the condition of the waters affected by the project, activity, or
14 program;

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

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

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

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

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

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

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

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

14 (d) Assistance. The Clean Water Planning, Funding, and Implementation
15 Committee shall have the administrative, technical, legal, and fiscal assistance
16 of the Office of Legislative Council and the Joint Fiscal Office. The
17 Committee shall also be entitled to seek financial, technical, and scientific
18 input or services from the Office of the State Treasurer, the Agency of Natural
19 Resources, the Agency of Agriculture, Food and Markets, the Agency of
20 Transportation, the Vermont Center for Geographic Information Services, the

1 Agency of Commerce and Community Development, and the Department of
2 Taxes.

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

7 (f) Meetings.

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

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

13 (3) A majority of the membership of the Committee shall constitute a
14 quorum.

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

17 (g) Compensation and reimbursement. For attendance at meetings during
18 adjournment of the General Assembly, a legislative member of the Clean
19 Water Planning, Funding, and Implementation Committee shall be entitled to
20 per diem compensation and reimbursement of expenses pursuant to 2 V.S.A.

1 § 406 for not more than six meetings. These payments shall be made from
2 monies appropriated to the General Assembly.

3 * * * Clean Water Board * * *

4 Sec. 3. 10 V.S.A. § 1389 is amended to read:

5 § 1389. CLEAN WATER FUND BOARD

6 (a) Creation.

7 (1) There is created the Clean Water Fund Board ~~which~~ that shall:

8 (A) be responsible and accountable for advising the General
9 Assembly regarding planning, coordinating, and financing of the remediation,
10 improvement, and protection of the quality of State waters;

11 (B) recommend to the Secretary of Administration expenditures
12 General Assembly:

13 (i) appropriations from the Clean Water Fund, including
14 appropriate block grant amounts from the Agency of Natural Resources' River
15 Basin Block Grant Program; and

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

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

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

21 (1) the Secretary of Administration or designee;

- 1 (2) the Secretary of Natural Resources or designee;
- 2 (3) the Secretary of Agriculture, Food and Markets or designee;
- 3 (4) the Secretary of Commerce and Community Development or
- 4 designee;
- 5 (5) the Secretary of Transportation or designee; and
- 6 (6) four members of the public, who are not legislators, with expertise in
- 7 one or more of the following subject matters: public management, civil
- 8 engineering, agriculture, ecology, wetlands, stormwater system management,
- 9 forestry, transportation, law, banking, finance, and investment, to be appointed
- 10 as follows:
- 11 (A) the Speaker of the House shall appoint two members of the
- 12 public, one of whom shall represent a municipality subject to the municipal
- 13 separate storm sewer system (MS4) permit; and
- 14 (B) the Committee on Committees shall appoint two members of the
- 15 public.
- 16 (c) Officers; committees; rules.
- 17 ~~(1) The Clean Water Fund Board shall annually elect a chair from its~~
- 18 ~~members~~ Secretary of Administration shall serve as the Chair of the Board.
- 19 The Clean Water Fund Board may elect additional officers from its members,
- 20 establish committees or subcommittees, and adopt procedural rules as
- 21 necessary and appropriate to perform its work.

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

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

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

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

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

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

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

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

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

10 ~~(2)~~(3) The Clean Water ~~Fund~~ Board may pursue and accept grants, gifts,
11 donations, or other funding from any public or private source and may
12 administer such grants, gifts, donations, or funding consistent with the terms of
13 the grant, gift, or donation.

14 ~~(3)~~(4) The Clean Water ~~Fund~~ Board shall:

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

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

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

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

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

7 (e) Priorities.

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

11 (A) funding to programs and projects that address sources of water
12 pollution in waters listed as impaired on the list of waters established by
13 33 U.S.C. § 1313(d);

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

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

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

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

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

11 (G) funding to purchase agricultural land in order to take that land
12 out of practice when the State water quality requirements cannot be remediated
13 through agricultural Best Management Practices; and

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

16 (2) In developing its recommendations under subsection (d) of this
17 section regarding the appropriate allocation of funds from the Clean Water
18 Fund, the Clean Water Fund Board shall, during the first three years of its
19 existence and within the priorities established under subdivision (1) of this
20 subsection (e), prioritize awards or assistance to municipalities for municipal

1 compliance with water quality requirements, and to municipalities for the
2 establishment and operation of stormwater utilities.

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

9 (f) Assistance. The Clean Water ~~Fund~~ Board shall have the administrative,
10 technical, and legal assistance of the Agency of Administration, the Agency of
11 Natural Resources, the Agency of Agriculture, Food and Markets, the Agency
12 of Transportation, and the Agency of Commerce and Community
13 Development for those issues or services within the jurisdiction of the
14 respective agency. The cost of the services provided by agency staff shall be
15 paid from the budget of the agency providing the staff services.

16 (g) Terms; appointed members. Members who are appointed to the Clean
17 Water Board shall be appointed for terms of four years, except initially,
18 appointments shall be made such that one member appointed by the Speaker
19 shall be appointed for a term of two years, and one member appointed by the
20 Committee on Committees shall be appointed for a term of one year.

1 Vacancies on the Board shall be filled for the remaining period of the term in
2 the same manner as initial appointments.

3 Sec. 4. CLEAN WATER BOARD RECOMMENDED DRAFT

4 LEGISLATION; WATER QUALITY FUNDING METHOD

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

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

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

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

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

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

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

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

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

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

7 (C) the Agency of Natural Resources' Combined Sewer
8 Overflow Rule.

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

12 (i) meets the State's obligations;

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

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

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

1 (i) the size of the parcel;

2 (ii) the location of the parcel;

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

5 (iv) the surface coverage of the parcel, including the amount of
6 impervious surface on the parcel, the amount of cropland or forestland on the
7 parcel, or the number of residential, commercial, or industrial structures on the
8 parcel;

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

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

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

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

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

1 (A) the condition of the waters affected by the project, activity, or
2 program;

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

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

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

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

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

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

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

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

4 * * * **Water Quality** Block Grant * * *

5 **Sec. 5. WATER QUALITY BLOCK GRANTS**

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

10 (b) Establishment; purpose.

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

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

19 (A) to support capacity to implement projects in the watershed
20 basin; and

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

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

9 (1) requirements for eligibility;

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

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

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

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

18 (6) any other provision necessary to implement the block grants under
19 this section.

20 * * * Citizen Right of Action * * *

21 Sec. 6. 10 V.S.A. chapter 205 is added to read:

1 CHAPTER 205. CITIZEN RIGHT OF ACTION

2 § 8055. CITIZEN RIGHT OF ACTION

3 (a) Suit authorized. Except as provided in subsection (c) of this section, a
4 person may commence a civil action for equitable or declaratory relief on the
5 person’s own behalf against one or more of the following persons:

6 (1) any person who is alleged to be in violation of any statute, permit,
7 certification, rule, permit condition, prohibition, or order set forth, issued, or
8 required under 6 V.S.A. chapter 215;

9 (2) any person subject to regulation under this chapter who is alleged to
10 be in violation of any statute, permit, certification, rule, permit condition,
11 prohibition, or order set forth, issued, or required under **chapter 37 or 47** of this
12 title;

13 (3) the Secretary of Agriculture, Food and Markets when there is an
14 alleged failure of the Agency of Agriculture, Food and Markets to perform any
15 act or duty under 6 V.S.A. chapter 215 that is not discretionary for the
16 Secretary of Agriculture, Food and Markets or the Agency of Agriculture,
17 Food and Markets; and

18 (4) the Secretary of Natural Resources when there is an alleged
19 failure of the Agency of Natural Resources to perform any act or duty under
20 **chapter 37 or 47** of this title that is not discretionary for the Secretary of
21 Natural Resources or the Agency of Natural Resources.

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

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

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

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

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

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

19 (2) if the alleged violator is diligently proceeding with complying with
20 an assurance of discontinuance, corrective action, cease and desist order, or

1 emergency administrative order issued under 6 V.S.A. chapter 215 or under
2 chapter 201 of this title.

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

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

6 (1) Any person may intervene as a matter of right when the person
7 seeking intervention claims an interest relating to the subject of the action and
8 he or she is so situated that the disposition of the action may, as a practical
9 matter, impair or impede his or her ability to protect that interest, unless the
10 Secretary of Agriculture, Food and Markets or the Secretary of Natural
11 Resources shows that the applicant's interest is adequately represented by
12 existing parties.

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

16 (f) Notice of action. A person bringing an action under subsection (a) of
17 this section shall provide the notice required under subsection (b) of this
18 section in writing. The notice shall be served on the alleged violator in person
19 or by certified mail, return receipt requested. The notice to the Secretary shall
20 be served by certified mail, return receipt requested. The notice shall include a
21 brief description of the alleged violation and identification of the statute,

1 permit, certification, rule, permit condition, prohibition, or order that is the
2 subject of the violation.

3 (g) Attorney’s fees; costs. The Environmental Division of the Superior
4 Court may award costs, including reasonable attorney’s fees and fees for
5 expert witnesses, to a person bringing an action under subsection (a) of this
6 section when the court determines that the award is appropriate. The
7 Environmental Division of the Superior Court may award costs, including
8 reasonable attorney’s fees and fees for expert witnesses, to the State or to a
9 person subject to an action under this section if the court determines that the
10 action was frivolous, unreasonable, or without foundation.

11 (h) Rights preserved. Nothing in this section shall be construed to impair
12 or diminish any common law or statutory right or remedy that may be available
13 to any person. Rights and remedies created by this section shall be in addition
14 to any other right or remedy, including the authority of the State to bring an
15 enforcement action separate from an action brought under this section. No
16 determination made by a court in an action maintained under this section, to
17 which the State has not been a party, shall be binding upon the State in any
18 enforcement action.

19 * * * Required Agricultural Practices; Healthy Soils * * *

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

21 § 4810a. REQUIRED AGRICULTURAL PRACTICES; REVISION

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

8 * * *

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

10 (A) required nutrient management planning on all farms that manage
11 agricultural wastes;

12 (B) ~~recommended~~ required practices incorporated within a nutrient
13 management plan for improving and maintaining soil quality and healthy soils
14 in order to increase the capacity of soil to retain water, improve flood
15 resiliency, reduce sedimentation, reduce reliance on fertilizers and pesticides,
16 and prevent agricultural stormwater runoff, including requirements for
17 tillage; and

18 (C) methods for complying with individual load allocations, if any,
19 for a farm if required under a total maximum daily load plan or other
20 remediation plan for an impaired water.

21 * * *

1 Sec. 8. IMPLEMENTATION

2 On or before July 1, 2019, the Secretary of Agriculture, Food and Markets
3 shall revise the Required Agricultural Practices to include the practices for
4 improving and maintaining soil quality and healthy soils required under
5 6 V.S.A. § 4810a(a)(4).

6 * * * Joint Lake Carmi Pilot Project * * *

7 Sec. 9. AGENCY OF NATURAL RESOURCES AND AGENCY OF
8 AGRICULTURE, FOOD AND MARKETS JOINT LAKE CARMI
9 PILOT PROGRAM FOR PHOSPHORUS MANAGEMENT

10 (a) Farm-specific plans.

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

16 (2) A water quality remediation plan shall:

17 (A) include an analysis of the soil phosphorus levels, the nutrient
18 sources produced or imported to farmland to be applied on the land, the crop
19 nutrient requirements, phosphorus index rating, tillage methods, land
20 application of nutrients, methods and timing of nutrient application, and any

1 other data necessary to ensure that the nutrient management plan for the
2 farmland meets the State and federal requirements;

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

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

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

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

14 (B) a summary of practices that an owner or operator of farmland has
15 implemented in the last year in order to prevent an increase of phosphorus
16 loads.

17 (b) Monitoring. The Secretary of Natural Resources shall conduct
18 monitoring of the watershed to establish accountability for the non-point
19 source pollution load into the Lake Carmi watershed.

20 (c) Best management practices. If monitoring conducted under subsection
21 (c) of this section indicates increasing phosphorus loads in the waters due to

1 non-point source pollution from farmland within the Lake Carmi watershed,
2 the Secretary of Agriculture, Food and Markets shall require the owner or
3 operator of the farmland to implement best management practices under 6
4 V.S.A. § 4810 to reduce runoff from the farmland.

5 (e) Enforcement; appeal.

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

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

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

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

12 REPORT ON FARMING PRACTICES IN VERMONT

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

20 (1) building healthy soils;

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

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

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

8 (A) cover cropping;

9 (B) reduced tillage or no tillage;

10 (C) transition out of dairy farming through a whole-herd buyout
11 program;

12 (D) how to accelerate the implementation of best management
13 practices (BMPs);

14 (E) how to evaluate the effectiveness of using riparian buffers in
15 excess of 25 feet;

16 (F) how to accelerate the use of direct manure injection;

17 (G) how to use crop rotations to build soil health, including limits on
18 the planting of continuous corn; and

19 (H) how to eliminate, or at least reduce, the use of herbicides in the
20 termination of cover crops.

21 * * * Effective Date * * *

- 1 Sec. 11. EFFECTIVE DATE
- 2 This act shall take effect on passage.