

1 TO THE HONORABLE SENATE:

2 The Committee on Natural Resources and Energy to which was referred  
3 Senate Bill No. 260 entitled “An act relating to funding the cleanup of State  
4 waters” respectfully reports that it has considered the same and recommends  
5 that the bill be amended by striking out all after the enacting clause and  
6 inserting in lieu thereof the following:

7 Sec. 1. FINDINGS

8 The General Assembly finds that:

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

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

15 (B) 114 waters or water segments that do not meet State water quality  
16 standards and that do have a current cleanup plan, but which may not be  
17 meeting water quality standards;

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

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

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

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

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

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

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

20           (C) an estimate of annual compliance costs of \$115.6 million, which,  
21           after accounting for projected revenue, would leave a funding gap of

1 \$48.5 million to pay for the costs of compliance with the first tier of federal  
2 and State water quality requirements; and

3 (D) an estimate of the State share of the funding gap of between  
4 \$20 to \$25 million annually.

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

11 (7) To ensure that the State has sufficient funds to clean and protect the  
12 State's waters so that they will continue to provide their integral and inherent  
13 environmental and economic benefits, the State should establish a legislative  
14 study committee to achieve what the Act 73 Working Group on Water Quality  
15 failed to accomplish by recommending an equitable and effective long-term  
16 funding method to support clean water efforts in Vermont.

17 Sec. 2. LEGISLATIVE CLEAN WATER PLANNING, FUNDING, AND  
18 IMPLEMENTATION COMMITTEE

19 (a) Creation. There is created the Clean Water Planning, Funding, and  
20 Implementation Committee to recommend to the General Assembly a  
21 mechanism or system beginning in fiscal year 2020 to:

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

3           (2) coordinate water quality financing in the State;

4           (3) plan for the water quality financing needs of the State; and

5           (4) ensure accountability of the State's efforts to clean up impaired  
6 waters, maintain or achieve the Vermont Water Quality Standards in all waters,  
7 and prevent the future degradation of waters.

8           (b) Membership. The Clean Water Planning, Funding, and Implementation  
9 Committee shall be composed of the following six members:

10           (1) The chair of the Senate Committee on Appropriations or his or her  
11 designee;

12           (2) The chair of the House Committee on Appropriations or her  
13 designee;

14           (3) The chair of the Senate Committee on Natural Resources and Energy  
15 or his or her designee;

16           (4) The chair of the House Committee on Natural Resources, Fish and  
17 Wildlife or his or her designee;

18           (5) The chair of the Senate Committee on Finance or his or her designee;  
19 and

20           (6) The chair of the House Committee on Ways and Means or his or her  
21 designee/

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

3           (1) Whether and how the State should establish an independent authority  
4           to coordinate, plan, and finance water quality programs and projects across  
5           State government

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

9                   (A) federal or State required cleanup plans for individual waters or  
10                  water segments, such as total maximum daily load plans;

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

12                   (C) the Agency of Natural Resources' Combined Sewer  
13                  Overflow Rule.

14           (3)(A) How will the State raise the revenue necessary to fully fund the  
15           financing plan for water quality that meets the State's obligations, including  
16           how a per parcel fee or other fee shall be assessed to property owners  
17           contributing to water quality issues in the State.

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

20                   (i) the size of the parcel;

21                   (ii) the location of the parcel;

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

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

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

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

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

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

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

19                  (A) the condition of the waters affected by the project, activity, or  
20                  program;

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

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

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

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

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

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

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

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

1        (d) Assistance. The Clean Water Planning, Funding, and Implementation  
2        Committee shall have the administrative, technical, legal, and fiscal assistance  
3        of the Office of Legislative Council and the Joint Fiscal Office. The  
4        Committee shall also be entitled to seek financial, technical, and scientific  
5        input or services from the Office of the State Treasurer, the Agency of Natural  
6        Resources, the Agency of Agriculture, Food and Markets, the Agency of  
7        Transportation, the Vermont Center for Geographic Information Services, the  
8        Agency of Commerce and Community Development, and the Department of  
9        Taxes.

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

14       (f) Meetings.

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

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

20           (3) A majority of the membership of the Committee shall constitute a  
21       quorum.



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

3           (g) Compensation and reimbursement. For attendance at meetings during  
4           adjournment of the General Assembly, a legislative member of the Clean  
5           Water Planning, Funding, and Implementation Committee s shall be entitled to  
6           per diem compensation and reimbursement of expenses pursuant to 2 V.S.A.  
7           § 406 for not more than six meetings. These payments shall be made from  
8           monies appropriated to the General Assembly.

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

10          § 1389. CLEAN WATER FUND BOARD

11           (a) Creation. There is created the Clean Water Fund Board which shall  
12           recommend to the Secretary of Administration expenditures from the Clean  
13           Water Fund. The Clean Water Fund Board shall be attached to the Agency of  
14           Administration for administrative purposes.

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

17           (1) ~~the~~ The Secretary of Administration or designee;

18           (2) ~~the~~ The Secretary of Natural Resources or designee;

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

20           (4) ~~the~~ The Secretary of Commerce and Community Development or  
21           designee; and

1 (5) ~~the~~ The Secretary of Transportation or designee.

2 (6) Four members of the public to be appointed as follows:

3 (A) The Speaker of the House shall appoint two members of the  
4 public; and

5 (B) The Committee on Committees shall appoint two members of the  
6 public.

7 (c) Officers; committees; rules.

8 (1) The Clean Water Fund Board shall annually elect a chair from its  
9 members. The Clean Water Fund Board may elect additional officers from its  
10 members, establish committees or subcommittees, and adopt procedural rules  
11 as necessary and appropriate to perform its work.

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

17 \* \* \*

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

1 Committee on Committees shall be appointed for a term of one year.

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

4 Sec. 4. 10 V.S.A. chapter 205 is added to read:

5 § 8055. CITIZEN RIGHT OF ACTION

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

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

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

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

20 (4) the Secretary of Natural Resources when there is an alleged  
21 failure of the Agency of Natural Resources to perform any act or duty under

1 10 V.S.A. chapter 47 that is not discretionary for the Secretary of Natural  
2 Resources or the Agency of Natural Resources.

3 (b) Prerequisite to commencement of action. A person shall not commence  
4 an action under subsection (a) of this section prior to 60 days after the plaintiff  
5 has given notice of the violation to:

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

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

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

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

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

20 or

1           (2) if the alleged violator is diligently proceeding with complying with  
2           an assurance of discontinuance, corrective action, cease and desist order, or  
3           emergency administrative order issued under 6 V.S.A. chapter 215 or under  
4           chapter 201 of this title;

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

7           (e) Joinder; Necessary Parties.

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

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

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

17           (1) Any person may intervene as a matter of right when the person  
18           seeking intervention claims an interest relating to the subject of the action and  
19           he or she is so situated that the disposition of the action may, as a practical  
20           matter, impair or impede his or her ability to protect that interest, unless the  
21           Secretary of Agriculture, Food and Markets or the Secretary of Natural

1 Resources shows that the applicant's interest is adequately represented by  
2 existing parties.

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

6 (g) Notice of action. A person bringing an action under subsection (a) of  
7 this section shall provide the notice required under subsection (b) of this  
8 section in writing. The notice shall be served on the alleged violator in person  
9 or by certified mail, return receipt requested. The notice to the Secretary shall  
10 be served by certified mail, return receipt requested. The notice shall include a  
11 brief description of the alleged violation and identification of the statute,  
12 permit, certification, rule, permit condition, prohibition, or order that is the  
13 subject of the violation.

14 (h) Attorney's fees; costs. The Environmental Division of the Superior  
15 Court may award costs, including reasonable attorney's fees and fees for  
16 expert witnesses, to a person bringing an action under subsection (a) of this  
17 section when the court determines that the award is appropriate.

18 (i) Rights preserved. Nothing in this section shall be construed to impair or  
19 diminish any common law or statutory right or remedy that may be available to  
20 any person. Rights and remedies created by this section shall be in addition to  
21 any other right or remedy, including the authority of the State to bring an

1 enforcement action separate from an action brought under this section. No  
2 determination made by a court in an action maintained under this section, to  
3 which the State has not been a party, shall be binding upon the State in any  
4 enforcement action.

5 Sec. 5. EFFECTIVE DATE

6 This act shall take effect on passage.

7

8

9 (Committee vote: \_\_\_\_\_)

10

\_\_\_\_\_

11

Senator \_\_\_\_\_

12

FOR THE COMMITTEE