

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

8 Sec. 1. FINDINGS

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

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

13 (2) Current assessment of State waters or water segments indicates that  
14 there are:

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

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

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

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

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

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

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

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

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

4           (C) an estimate of annual compliance costs of \$115.6 million, which,  
5           after accounting for projected revenue, would leave a funding gap of  
6           \$48.5 million to pay for the costs of compliance with the first tier of federal  
7           and State water quality requirements; and

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

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

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

1           (8) To ensure that the State has sufficient funds to clean and protect the  
2           State’s waters so that they will continue to provide their integral and inherent  
3           environmental and economic benefits, the State should commit to achieving  
4           what the Act 73 Working Group on Water Quality failed to accomplish by  
5           requiring the Clean Water Board and a legislative study committee to  
6           recommend separately to the General Assembly draft legislation to establish  
7           equitable and effective long-term funding methods to support clean water  
8           efforts in Vermont.

9           Sec. 2. LEGISLATIVE CLEAN WATER PLANNING, FUNDING, AND

10                   IMPLEMENTATION COMMITTEE

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

- 15           (1) financing the necessary water quality programs and projects that will  
16           remediate, improve, and protect the quality of the waters of the State;  
17           (2) coordinating water quality financing in the State;  
18           (3) planning for the water quality financing needs of the State; and  
19           (4) ensuring accountability of the State’s efforts to clean up impaired  
20           waters, maintain or achieve the Vermont Water Quality Standards in all waters,  
21           and prevent the future degradation of waters.

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

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

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

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

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

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

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

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

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

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

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

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

1                   (C) the Agency of Natural Resources’ Combined Sewer  
2 Overflow Rule.

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

6                   (i) meets the State’s obligations;

7                   (ii) maintains a water quality budget that is not less than the  
8 funding provided in fiscal year 2019 and that is capable of meeting an  
9 equivalent level of support, adjusted for inflation, for fiscal years 2020 through  
10 2024; and

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

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

16                   (i) the size of the parcel;

17                   (ii) the location of the parcel;

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

20                   (iv) the surface coverage of the parcel, including the amount of  
21 impervious surface on the parcel, the amount of cropland or forestland on the

1 parcel, or the number of residential, commercial, or industrial structures on the  
2 parcel;

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

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

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

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

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

15 (A) the condition of the waters affected by the project, activity, or  
16 program;

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

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

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

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

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

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

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

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

17          (d) Assistance. The Clean Water Planning, Funding, and Implementation  
18          Committee shall have the administrative, technical, legal, and fiscal assistance  
19          of the Office of Legislative Council and the Joint Fiscal Office. The  
20          Committee shall also be entitled to seek financial, technical, and scientific  
21          input or services from the Office of the State Treasurer, the Agency of Natural



1 Resources, the Agency of Agriculture, Food and Markets, the Agency of  
2 Transportation, the Vermont Center for Geographic Information Services, the  
3 Agency of Commerce and Community Development, and the Department of  
4 Taxes.

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

9 (f) Meetings.

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

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

15 (3) A majority of the membership of the Committee shall constitute a  
16 quorum.

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

19 (g) Compensation and reimbursement. For attendance at meetings during  
20 adjournment of the General Assembly, a legislative member of the Clean  
21 Water Planning, Funding, and Implementation Committee shall be entitled to

1 per diem compensation and reimbursement of expenses pursuant to 2 V.S.A.  
2 § 406 for not more than six meetings. These payments shall be made from  
3 monies appropriated to the General Assembly.

4 \* \* \* Clean Water Board \* \* \*

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

6 § 1389. CLEAN WATER FUND BOARD

7 (a) Creation.

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

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

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

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

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

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

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

- 1 (1) the Secretary of Administration or designee;
- 2 (2) the Secretary of Natural Resources or designee;
- 3 (3) the Secretary of Agriculture, Food and Markets or designee;
- 4 (4) the Secretary of Commerce and Community Development or
- 5 designee;
- 6 (5) the Secretary of Transportation or designee; and
- 7 (6) four members of the public, who are not legislators, with expertise in
- 8 one or more of the following subject matters: public management, civil
- 9 engineering, agriculture, ecology, wetlands, stormwater system management,
- 10 forestry, transportation, law, banking, finance, and investment, to be appointed
- 11 as follows:
- 12 (A) the Speaker of the House shall appoint two members of the
- 13 public; 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. The Clean Water Fund Board may elect additional officers from its
- 19 members, establish committees or subcommittees, and adopt procedural rules
- 20 as 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) federal- or State-required cleanup plans for individual waters or  
17                           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) federal- or State-required cleanup plans for individual waters or  
5                   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                           \* \* \* ANR River Basin Block Grant \* \* \*

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

6           § 1389c. RIVER BASIN BLOCK GRANT PROGRAM

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

11           (b) Eligible entities; programs and projects.

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

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

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

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

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

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

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

6                    (c) Priorities. The Secretary shall grant river basin block grants under this  
7                    section to eligible parties for eligible projects on the basis of need within a  
8                    river basin as determined according to a system of priorities adopted by  
9                    procedure by the Secretary. In developing the system of priorities, the  
10                   Secretary shall give additional weight to the following factors:

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

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

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

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

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

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

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

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

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

7       § 1389d. RIVER BASIN COOPERATIVE COUNCILS

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

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

14               (1) the tactical basin planner for the river basin;

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

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

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

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

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

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

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

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

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

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

16                                   \* \* \* Citizen Right of Action \* \* \*

17           Sec. 7. 10 V.S.A. chapter 205 is added to read:

18                                   CHAPTER 205. CITIZEN RIGHT OF ACTION



1     § 8055. CITIZEN RIGHT OF ACTION

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

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

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

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

16          (4) the Secretary of Natural Resources when there is an alleged  
17    failure of the Agency of Natural Resources to perform any act or duty under  
18    chapter 47 of this title that is not discretionary for the Secretary of Natural  
19    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 60 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 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 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) Joinder; necessary parties.

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

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

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

16 (1) Any person may intervene as a matter of right when the person  
17 seeking intervention claims an interest relating to the subject of the action and  
18 he or she is so situated that the disposition of the action may, as a practical  
19 matter, impair or impede his or her ability to protect that interest, unless the  
20 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 \* \* \* Required Agricultural Practices; Healthy Soils \* \* \*

6 Sec. 8. 6 V.S.A. § 4810a is amended to read:

7 § 4810a. REQUIRED AGRICULTURAL PRACTICES; REVISION

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

15 \* \* \*

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

17 (A) required nutrient management planning on all farms that manage  
18 agricultural wastes;

19 (B) ~~recommended~~ required practices incorporated within a nutrient  
20 management plan for improving and maintaining soil quality and healthy soils  
21 in order to increase the capacity of soil to retain water, improve flood

1 resiliency, reduce sedimentation, reduce reliance on fertilizers and pesticides,  
2 and prevent agricultural stormwater runoff, including requirements for  
3 tillage; and

4 (C) methods for complying with individual load allocations for a  
5 farm if required under a total maximum daily load plan or other remediation  
6 plan for an impaired water.

7 \* \* \*

8 **Sec. 9. IMPLEMENTATION**

9 On or before July 1, 2019, the Secretary of Agriculture, Food and Markets  
10 shall revise the Required Agricultural Practices to include the practices for  
11 improving and maintaining soil quality and health soils required under  
12 6 V.S.A. § 4810a(a)(4).

13 \* \* \* Lake Carmi Pilot Project \* \* \*

14 **Sec. 10. LAKE CARM PILOT PROGRAM FOR PHOSPHORUS**  
15 **MANAGEMENT**

16 (a) Definitions. As used in this section:

17 (1) “Commercial feed” shall have the same meaning as in 6 V.S.A.  
18 § 323.

19 (2) “Custom formula feed” shall have the same meaning as in 6 V.S.A.  
20 § 323.

21 (3) “Fertilizer” shall have the same meaning as in 6 V.S.A. § 363.

1           (4) “Manure” shall have the same meaning as in 6 V.S.A. § 4802.

2           (b) Moratorium. Prior to January 1, 2019, a person shall not import,  
3 transport, offer for sale, sell, or otherwise supply one or more of the following  
4 in or into the watershed of Lake Carmi:

5           (1) mixed or unmixed fertilizer containing phosphorus;

6           (2) commercial feed containing phosphorus;

7           (3) custom formula feed containing phosphorus; or

8           (4) manure.

9           (c) Extension. The Secretary of Natural Resources may, by order, extend  
10 the moratorium established under subsection (b) of this section until January 1,  
11 2020 upon a determination that the continuation of the moratorium is necessary  
12 to prevent or mitigate a threat to public health or the environment due to  
13 phosphorus loads in Lake Carmi.

14           (d) Enforcement; appeal.

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

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

19           (e) Repeal. This section shall be repealed on January 1, 2020.

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\* \* \* Effective Date \* \* \*

**Sec. 11.** EFFECTIVE DATE

This act shall take effect on passage.

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

\_\_\_\_\_

Senator \_\_\_\_\_

FOR THE COMMITTEE