

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 Sections 1 and 2 of
10 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 do not meet State water quality
18 standards and that do have a current cleanup plan, but which may not be
19 meeting water 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 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 separately recommend 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 method
14 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 his or her
4 designee;

5 (2) The chair of the House Committee on Appropriations or her
6 designee;

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

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

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

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

15 (c) Powers and duties. The Clean Water Planning, Funding, and
16 Implementation Committee 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 will the State raise the revenue or reduce existing
10 expenditures to enable an equivalent level of support necessary to fully fund 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) include 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 (d) Assistance. The Clean Water Planning, Funding, and Implementation
5 Committee shall have the administrative, technical, legal, and fiscal assistance
6 of the Office of Legislative Council and the Joint Fiscal Office. The
7 Committee shall also be entitled to seek financial, technical, and scientific
8 input or services from the Office of the State Treasurer, the Agency of Natural
9 Resources, the Agency of Agriculture, Food and Markets, the Agency of
10 Transportation, the Vermont Center for Geographic Information Services, the
11 Agency of Commerce and Community Development, and the Department of
12 Taxes.

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

17 (f) Meetings.

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

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

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

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

7 (g) Compensation and reimbursement. For attendance at meetings during
8 adjournment of the General Assembly, a legislative member of the Clean
9 Water Planning, Funding, and Implementation Committee s shall be entitled to
10 per diem compensation and reimbursement of expenses pursuant to 2 V.S.A.
11 § 406 for not more than six meetings. These payments shall be made from
12 monies appropriated to the General Assembly.

13 * * * Clean Water Board * * *

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

15 § 1389. CLEAN WATER FUND BOARD

16 (a) Creation.

17 (1) There is created the Clean Water Fund Board which shall:

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

1 (B) recommend to the ~~Secretary of Administration expenditures~~

2 General Assembly:

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

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

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

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

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

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

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

14 (4) ~~the~~ The Secretary of Commerce and Community Development or
15 designee; and

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

17 (6) four members of the public, who are not legislators, with expertise in
18 one or more of the following subject matters: public management, civil
19 engineering, agriculture, ecology, wetlands, stormwater system management,
20 forestry, transportation, law, banking, finance, and investment, to be appointed
21 as follows:

1 (A) The Speaker of the House shall appoint two members of the
2 public; and

3 (B) The Committee on Committees shall appoint two members of the
4 public.

5 (c) Officers; committees; rules.

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

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

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

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

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

4 (B) adequately funds the following State obligations in the
5 subsequent fiscal year:

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

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

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

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

20 (2)(3) The Clean Water ~~Fund~~ Board may pursue and accept grants, gifts,
21 donations, or other funding from any public or private source and may

1 administer such grants, gifts, donations, or funding consistent with the terms of
2 the grant, gift, or donation.

3 (3) The Clean Water Fund Board shall:

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

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

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

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

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

17 (e) Priorities.

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

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

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

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

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

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

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

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

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

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

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

19 (f) **Assistance**. The Clean Water **Fund** Board shall have the administrative,
20 technical, and legal assistance of the Agency of Administration, the Agency of
21 Natural Resources, the Agency of Agriculture, Food and Markets, the Agency

1 of Transportation, and the Agency of Commerce and Community
2 Development for those issues or services within the jurisdiction of the
3 respective agency. The cost of the services provided by agency staff shall be
4 paid from the budget of the agency providing the staff services.

5 (g) Terms; appointed members. Members who are appointed to the **Clean**
6 **Water Board** shall be appointed for terms of four years, except initially,
7 appointments shall be made such that one member appointed by the Speaker
8 shall be appointed for a term of two years, and one member appointed by the
9 Committee on Committees shall be appointed for a term of one year.
10 Vacancies on the Board shall be filled for the remaining period of the term in
11 the same manner as initial appointments.

12 **Sec. 4. CLEAN WATER BOARD RECOMMENDED DRAFT**

13 **LEGISLATION; WATER QUALITY FUNDING METHOD**

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

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

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

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

1 (4) ensuring accountability of the State’s efforts to clean up impaired
2 waters, maintain or achieve the Vermont Water Quality Standards in all waters,
3 and prevent the future degradation of waters.

4 (b) In developing the draft legislation required under subsection (a), the
5 Clean Water Board shall study the following issues:

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

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

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

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

15 (C) the Agency of Natural Resources’ Combined Sewer
16 Overflow Rule.

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

20 (i) meets the State’s obligations;

1 (ii) maintains a water quality budget that is not less than the
2 funding provided in fiscal year 2019 and that is capable of meeting an
3 equivalent level of support, adjusted for inflation, for fiscal years 2020 through
4 2024; and

5 (iii) include how a per parcel fee or other fee shall be assessed to
6 property owners in a manner that corresponds to the effect of the parcel on
7 water quality.

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

10 (i) the size of the parcel;

11 (ii) the location of the parcel;

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

14 (iv) the surface coverage of the parcel, including the amount of
15 impervious surface on the parcel, the amount of cropland or forestland on the
16 parcel, or the number of residential, commercial, or industrial structures on the
17 parcel;

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

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

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

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

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

9 (A) the condition of the waters affected by the project, activity, or
10 program;

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

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

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

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

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

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

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

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

12

13 * * * ANR River Basin Block Grant * * *

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

15 § 1389c. RIVER BASIN BLOCK GRANT PROGRAM

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

20 (b) Eligible entities; programs and projects.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 § 1389d. RIVER BASIN COOPERATIVE COUNCILS

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

1 **(b) Composition. A River Basin Cooperative Council shall be comprised at**
2 **a minimum of the following members:**

3 **(1) the tactical basin planner for the river basin;**

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

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

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

11 **(c) Authority; eligibility. A River Basin Cooperative Council shall**
12 **authority to:**

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

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

16 **(A) the recipient entity, project, or program is an eligible entity under**
17 **the river basin block grant program; and**

18 **(B) the River Basin Cooperative Council requires performance**
19 **measures and maintains accountability for any funds allocated to an entity,**

20 **project, or program.**

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

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

6 * * * Citizen Right of Action * * *

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

8 § 8055. CITIZEN RIGHT OF ACTION

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

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

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

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

1 Secretary of Agriculture, Food and Markets or the Agency of Agriculture,
2 Food and Markets; and

3 (4) the Secretary of Natural Resources when there is an alleged
4 failure of the Agency of Natural Resources to perform any act or duty under
5 10 V.S.A. chapter 47 that is not discretionary for the Secretary of Natural
6 Resources or the Agency of Natural Resources.

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

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

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

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

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

19 (1) if the Secretary of Agriculture, Food and Markets, the Secretary of
20 Natural Resources, or the Attorney General has commenced and is diligently
21 prosecuting a civil or criminal action to require compliance with a statute,

1 permit, certification, rule, permit condition, prohibition, or order set forth,
2 issued, or required under 6 V.S.A. chapter 215 or under chapter 47 of this title;

3 or

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

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

10 (e) Joinder; Necessary Parties.

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

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

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

20 (1) Any person may intervene as a matter of right when the person
21 seeking intervention claims an interest relating to the subject of the action and

1 he or she is so situated that the disposition of the action may, as a practical
2 matter, impair or impede his or her ability to protect that interest, unless the
3 Secretary of Agriculture, Food and Markets or the Secretary of Natural
4 Resources shows that the applicant's interest is adequately represented by
5 existing parties.

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

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

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

1 (i) Rights preserved. Nothing in this section shall be construed to impair or
2 diminish any common law or statutory right or remedy that may be available to
3 any person. Rights and remedies created by this section shall be in addition to
4 any other right or remedy, including the authority of the State to bring an
5 enforcement action separate from an action brought under this section. No
6 determination made by a court in an action maintained under this section, to
7 which the State has not been a party, shall be binding upon the State in any
8 enforcement action.

9 * * * Required Agricultural Practices; Healthy Soils* * *

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

11 § 4810a. REQUIRED AGRICULTURAL PRACTICES; REVISION

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

19 * * *

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

1 (A) required nutrient management planning on all farms that manage
2 agricultural wastes;

3 (B) ~~recommended~~ required practices incorporated within a nutrient
4 management plan for improving and maintaining soil quality and healthy soils
5 in order to increase the capacity of soil to retain water, improve flood
6 resiliency, reduce sedimentation, reduce reliance on fertilizers and pesticides,
7 and prevent agricultural stormwater runoff, including requirements for tillage.

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

11 **Sec. 9. IMPLEMENTATION**

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

16 * * * Lake Carmi Pilot Project * * *

17 **Sec. 10. LAKE CARMİ PILOT PROGRAM FOR PHOSPHORUS**
18 **MANAGEMENT**

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

20 (1) “Commercial feed” shall have the same meaning as in 6 V.S.A.

21 § 323.

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

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

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

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

8 (1) mixed or unmixed fertilizer containing phosphorus;

9 (2) commercial feed containing phosphorus;

10 (3) custom formula feed containing phosphorus; or

11 (4) manure.

12 (c) Extension. The Secretary of Natural Resources may, by order, extend
13 the moratorium established under subsection (b) of this section until January 1,
14 2020 upon a determination that the continuation of the moratorium is necessary
15 to prevent or mitigate a threat to public health or the environment due to
16 phosphorus loads in Lake Carmi.

17 (d) Enforcement; Appeal.

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

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

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

5 *** Effective Date ***

6 **Sec. 11. EFFECTIVE DATE**

7 This act shall take effect on passage.

8
9

10 (Committee vote: _____)

11 _____

12 Senator _____

13 FOR THE COMMITTEE