

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (6) How the State should most efficiently assess and collect a fee
17 assessed to property owners contributing to water quality issues in the State.

18 (7) 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, and the Department of Taxes.

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

12 (f) Meetings.

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

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

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

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

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

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

8 § 1389. CLEAN WATER FUND BOARD

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

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

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

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

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

18 (4) ~~the~~ The Secretary of Commerce and Community Development or
19 designee; and

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

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

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

4 § 8055. CITIZEN RIGHT OF ACTION

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

8 (1) any person who is alleged to be in violation of any statute, permit,
9 certification, rule, permit condition, prohibition, or order set forth, issued, or
10 required under 6 V.S.A. chapter 215, provided that a civil action is also
11 commenced against the Secretary of Agriculture Food and Markets under
12 subdivision (a)(3) of this section;

13 (2) any person subject to regulation under this chapter who is alleged to
14 be in violation of any statute, permit, certification, rule, permit condition,
15 prohibition, or order set forth, issued, or required under chapter 47 of this title,
16 provided that a civil action is also commenced against the Natural Resources
17 under subdivision (a)(4) of this section;

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

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

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

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

9 (g) Attorney’s fees; costs. The Environmental Division of the Superior
10 Court may award costs, including reasonable attorney’s fees and fees for
11 expert witnesses, to a person bringing an action under subsection (a) of this
12 section when the court determines that the award is appropriate.

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

21 Sec. 5. EFFECTIVE DATE

1 This act shall take effect on passage.

2

3

4 (Committee vote: _____)

5

6

Senator _____

7

FOR THE COMMITTEE