

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) an estimate of the State share of the funding gap of between
9 \$20 to \$25 million annually.

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

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

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

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

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

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

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

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

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

17 (2) The chair of the House Committee on Appropriations or her
18 designee;

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

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

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

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

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

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

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

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

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

18 (C) the Agency of Natural Resources' Combined Sewer
19 Overflow Rule.

20 (3)(A) How will the State raise the revenue necessary to fully fund the
21 financing plan for water quality that meets the State's obligations, including

1 how a per parcel fee or other fee shall be assessed to property owners
2 contributing to water quality issues in the State.

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

5 (i) the size of the parcel;

6 (ii) the location of the parcel;

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

9 (iv) the surface coverage of the parcel, including the amount of
10 impervious surface on the parcel, the amount of cropland or forestland on the
11 parcel, or the number of residential, commercial, or industrial structures on the
12 parcel;

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

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

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

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

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

5 (A) the condition of the waters affected by the project, activity, or
6 program;

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

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

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

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

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

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

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

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

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

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

19 (f) Meetings.

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

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

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

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

10 (g) Compensation and reimbursement. For attendance at meetings during
11 adjournment of the General Assembly, a legislative member of the Clean
12 Water Planning, Funding, and Implementation Committee s shall be entitled to
13 per diem compensation and reimbursement of expenses pursuant to 2 V.S.A.
14 § 406 for not more than six meetings. These payments shall be made from
15 monies appropriated to the General Assembly.

16 * * * Clean Water Fund Board * * *

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

18 § 1389. CLEAN WATER FUND BOARD

19 (a) Creation. There is created the Clean Water Fund Board which shall
20 recommend to the Secretary of Administration expenditures from the Clean

1 Water Fund. The Clean Water Fund Board shall be attached to the Agency of
2 Administration for administrative purposes.

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

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

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

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

8 (4) ~~the~~ The Secretary of Commerce and Community Development or
9 designee; and

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

11 (6) four members of the public with expertise in one or more of the
12 following subject matters: public management, civil engineering, agriculture,
13 ecology, wetlands, forestry, transportation, law, banking, finance, and
14 investment, to be appointed as follows:

15 (A) The Speaker of the House shall appoint two members of the
16 public; and

17 (B) The Committee on Committees shall appoint two members of the
18 public.

19 (c) Officers; committees; rules.

20 (1) The Clean Water Fund Board shall annually elect a chair from its
21 members. The Clean Water Fund Board may elect additional officers from its

1 members, establish committees or subcommittees, and adopt procedural rules
2 as necessary and appropriate to perform its work.

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

8 * * *

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

16 * * * Discharges from Subsurface Tile Drains * * *

17 Sec. 4. 10 V.S.A. § 1252 is amended to read:

18 § 1251. DEFINITIONS

19 Whenever used or referred to in this chapter, unless a different meaning
20 clearly appears from the context:

21 * * *

1 (3) “Discharge” means the placing, depositing, or emission of any
2 wastes, directly or indirectly, into an injection well or into the waters of the
3 State.

4 * * *

5 (8) “Person” means any individual; partnership; company; corporation;
6 association; joint venture; trust; municipality; the State of Vermont or any
7 agency, department, or subdivision of the State, any federal agency, or any
8 other legal or commercial entity.

9 * * *

10 (11) “Secretary” means the Secretary of Natural Resources or his or her
11 authorized representative.

12 (12) “Waste” means effluent, sewage or any substance or material,
13 liquid, gaseous, solid or radioactive, including heated liquids, whether or not
14 harmful or deleterious to waters; provided, however, the term “sewage” as
15 used in this chapter shall not include the rinse or process water from a cheese
16 manufacturing process.

17 (13) “Waters” includes all rivers, streams, creeks, brooks, reservoirs,
18 ponds, lakes, springs, and all bodies of surface waters, artificial or natural,
19 ~~which~~ that are contained within, flow through, or border upon the State or any
20 portion of it.

21 * * *

1 * * *

2 (20) “Farm” a parcel or parcels of land owned, leased, or managed by a
3 person and devoted primarily to farming.

4 (21) “Farming” shall have the same meaning as in 10 V.S.A. § 6001.

5 (22) “Subsurface tile drainage” means a system that:

6 (A) is located on a farm;

7 (B) is below the surface of the ground; and

8 (C) utilizes drainage tiles, perforated pipe, or other materials to drain
9 water from a field.

10 Sec. 5. 10 V.S.A. § 1263b is added to read:

11 § 1263b. DISCHARGE FROM SUBSURFACE TILE DRAINAGE; PERMIT

12 (a) Prohibition; permit. A person shall not discharge waste from
13 subsurface tile drainage to a water of the State without first obtaining a permit
14 from the Secretary.

15 (b) Exemption. No permit is required under this section for a discharge of
16 waste from subsurface tile drainage on a farm when the discharge is permitted
17 under a concentrated animal feeding operation issued under subsection 1263(g)
18 of this chapter.

19 (c) Rulemaking. The Secretary shall adopt rules for the regulation and
20 permitting of discharges to waters from subsurface tile drainage. The rules, at
21 a minimum, shall:

1 (1) Establish criteria or standards for the permitting of discharges to
2 waters from subsurface tile drainage that assure compliance with the Vermont
3 Water Quality Standards.

4 (2) Establish technical standards and best management practices for the
5 management and maintenance of subsurface tile drainage that discharges to
6 waters.

7 (3) Specify minimum requirements for inspection by the Secretary of
8 subsurface tile drainage that discharges to waters.

9 (4) To the extent appropriate, authorize in the permitting process use of
10 certifications of compliance by licensed professional engineers practicing
11 within the scope of their engineering specialty.

12 (5) Require a person to notify the Secretary prior to installation of
13 subsurface tile drainage that may discharge to a water.

14 (d) General permits. The Secretary shall issue a general permit for similar
15 classes of discharges from subsurface tile drainage to waters, provides that the
16 general permit shall be adopted as part of the rule required under subsection (c)
17 of this section.

18 Sec. 6. TRANSITION AND IMPLEMENTATION

19 (a) On or before July 1, 2019, the Secretary of Natural Resources shall
20 adopt the rules required under 10 V.S.A. § 1263b(c) for discharges of waste to
21 waters from subsurface tiles drainage.

1 (b) A person discharging waste to a water from subsurface tile drainage
2 shall apply for a permit under 10 V.S.A. § 1263b on or before January 1, 2020.
3 Discharges of waste to waters from subsurface tile drainage initiated on or
4 before January 1, 2020 are deemed ongoing discharges subject to permitting
5 under 10 V.S.A. § 1263b.

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; and

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 **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 6
12 V.S.A. § 4810a(a)(4).

13 * * * Effective Date * * *

14 **Sec. 10. EFFECTIVE DATE**

15 This act shall take effect on passage.

16

17

18 (Committee vote: _____)

19

20

21

Senator _____

FOR THE COMMITTEE