



**Testimony of Jared Carpenter
Water Protection Advocate, Lake Champlain Committee
Before the House Committee on Natural Resources, Fish & Wildlife
April 9, 2019**

Good Afternoon, Chair Sheldon and Members of the Committee,

Thank you for inviting me to testify on S.96, “An act relating to the provision of water quality services.” Securing adequate revenue and establishing an implementation plan for clean water restoration is one of the most important issues before the Vermont Legislature since the passage of the Vermont Clean Water Act (Act 64) in 2015.

Lake Champlain Committee (LCC) supports S.96 and believes it will create a regional service delivery mechanism to prioritize projects and distribute funds in a transparent and accountable manner. We thank the Vermont Agency of Natural Resources (ANR) for their hard work and willingness to work with us on the funding distribution mechanism and process. Since their initial proposal, the Agency has acknowledged our concerns and made substantial changes based on our suggestions.

General Comments

First, S.96 creates an important accountability framework: ANR is ultimately accountable for the attainment of phosphorus reduction goals statewide, and the clean water service providers are responsible for meeting regional goals. There are two mechanisms for accountability in S.96. The first involves ANR reporting to the Governor and the General Assembly and possible increased regulations. The second mechanism involves service providers reporting to ANR and possible ANR enforcement action.

Second, S.96 creates a fair and inclusive process. Watershed groups, regional and statewide nonprofit organizations, conservation districts, and municipalities should be and are involved in all stages of the process, from initial rulemaking to project selection, development, and implementation. This bill addresses much more than just a new means of distributing clean water funds. While a larger staff at ANR would be adequate if this was just about distribution of funds, this measure establishes pollution reduction goals for each watershed basin and then a process for prioritization and implementation of projects to achieve those goals. This cannot be accomplished with an agency top-down approach. Only on-the-ground regional project prioritization, coordination and cooperation of local partners can successfully meet our pollution reduction goals.

Specific Comments

I would like to take the opportunity to highlight some sections and their importance to achieving clean water in the state.

§922 Water Quality Implementation Targets (pg. 2)

As a first step, ANR will evaluate whether the existing regulatory programs will meet the state's water quality standards. If it is determined that these standards will not be met, ANR will determine how much additional pollution reduction is necessary through implementation of non-regulatory projects. It is these non-regulatory projects that will be funded by the programs in this bill. Annual and five-year pollution reduction goals will be set for each watershed basin.

Why this is important –

Since the passage of Act 64, there has been no means to measure whether we are achieving the goals set in the Act. This bill is about the process to reach our clean water goals. This evaluation and the determination of pollution reduction goals will indicate whether the state is successful in achieving water quality restoration or if more efforts need to be undertaken.

§923 Quantification of Pollution Reduction (pg. 4)

ANR will then calculate how much phosphorus and other nutrients each type of project will reduce and the design life of the projects, or how long each project is expected to achieve those goals.

Why this is important –

By setting the pollution reduction goal for each watershed basin and knowing how much of a reduction a certain type of project will achieve, the reduction of phosphorus and other nutrients can

be quantified, projects can be prioritized based on need, and it is known when the target reduction goal is reached.

§924(a) Clean Water Service Provider and (g) Water Quality Advisory Councils (pgs. 7, 10)

Under (a), ANR will establish a ‘clean water service provider’ for each of the fourteen watershed basins through rulemaking. This can be any qualified organization within the basin, there is no default entity, and the process will be done with the consultation of regional planning commissions, natural resource conservation districts, watershed groups, and municipalities within that basin. The service provider then must establish a basin water quality advisory council of local experts within the basin to assist and coordinate in the prioritization and implementation of projects. The advisory council will consist of representatives from the natural resource conservation districts, watershed groups, land conservation organizations, and municipalities within that basin.

Why this is important –

Any qualified entity can be the service provider and this will be determined in consultation and cooperation with others in the region. In order to be successful, the service provider and the advisory council must work together on project selection, prioritization and implementation.

§924 (a)(2) and (3) Project Prioritization, Selection and Implementation (pg. 7)

In consultation with the basin water quality advisory council, the service provider is required to identify, prioritize, develop, construct, monitor, operate and maintain clean water projects. Further, subject to the approval of the advisory council, the service provider will adopt guidance for subgrants to the organizations in the watershed basin that will implement the selected projects.

Why this is important –

Regional expertise is utilized in prioritizing, undertaking and then maintaining clean water projects within the basin to achieve water quality restoration. This is a bottom-up approach to meet pollution reduction goals that cannot be achieved by ANR alone, and will ensure that local knowledge is involved in the selection process. A provider is responsible for maintaining a clean water project for the entirety of the design life of that project.

§924(f) Accountability (pg. 10)

If the service provider fails to reach its annual or five-year pollution reduction targets, ANR has three enforcement options – it can enter into a plan with the service provider, it can engage in civil

enforcement, or it can initiate rulemaking and find a new service provider.

Why this is important –

ANR is still ultimately accountable to the U.S. Environmental Protection Agency for the goals of the TMDL. This responsibility cannot be put upon a service provider. But, it is the service provider that receives state funding for implementation of projects and is accountable for reaching the pollution reduction goals. ANR has options if a target is not reached.

§925 Water Quality Grant Programs (pg. 12)

The bill establishes four water quality grant programs, but two have priority before the others can be filled. The Water Quality Restoration Formula Grant Program is established to provide funding to service providers to meet annual and five-year pollution reduction goals. The Water Quality Enhancement Grant Program provides funds for projects that protect high quality waters. The Stormwater Implementation Grant Program provides funds to those that must obtain a permit for stormwater requirements and the Municipal Stormwater Assistance Grant Program will provide funds for municipalities for permit programs. However, these last two programs will only receive funds in a basin where the service provider has met pollution reduction goals.

As it does currently, the Clean Water Board allocates funds to each of these Grant Programs, but S.96 is prescriptive in how these funds are allocated. Funds must first be allocated for project maintenance and operation, for the Water Quality Restoration Grant Program, for Agency of Agriculture, Food & Markets programs, and for Water Quality Enhancement Grants. If there is funding available, the other programs can be funded, including the Stormwater Implementation Grant Program and the Municipal Stormwater Assistance Grant Program.

Why this is important –

Not only is funding provided for restoration projects to assist impaired waters, but funding is available for other projects that protect high quality waters and promote public enjoyment of the state's waters. Further, funds for the non-regulatory projects needed to achieve pollution reduction goals are prioritized over regulatory projects and programs.

In conclusion, LCC supports S.96 as it will create a process to determine the pollution reduction goals needed to achieve water quality restoration and a regional service delivery mechanism to coordinate in partnership with local organizations on projects to restore and protect Vermont's waters. We thank this Committee and the Vermont Agency of Natural Resources for their work.