

## S.96. An Act Relating to the Provision of Water Quality Services

### Section by Section Summary

#### Section 1. Adds 10 V.S.A chapter 37, subchapter 5, §§ 921-930 Water Quality Restoration and Improvement

<p style="text-align: center;"><b>Sec. 1</b> <b>10 V.S.A. § 921</b> Definitions for the Subchapter</p>	<ul style="list-style-type: none"> <li>• “Administrative cost” means program and project costs incurred by a clean water service provider or a grantee, including costs to conduct procurement, contract preparation, and monitoring, reporting, and invoicing.</li> <li>• “Basin”: a watershed area designated by ANR for use as a planning unit for required water quality planning.</li> <li>• “Best management practice” or “BMP”: a schedule of activities, prohibitions, practices, maintenance procedures, green infrastructure, or other management practices to prevent or reduce water pollution.</li> <li>• “Clean water project”: a BMP or other program designed to improve water quality to achieve a target under 10 V.S.A. § 922 that:             <ul style="list-style-type: none"> <li>○ Does not need a permit under 10 V.S.A. ch. 47 (water quality permit), is not subject to 6 V.S.A. ch. 215 (agricultural water quality requirements), exceeds permit requirements of 10 V.S.A. ch. 47, or exceeds requirements of 6 V.S.A ch. 215; and</li> <li>○ is within the following activities: developed lands, natural resource protection, forestry, agriculture.</li> </ul> </li> <li>• “Co-benefit” means the additional benefit to local governments and the public provided by or associated with a clean water project, including flood resilience, ecosystem improvement, and local pollution prevention.</li> <li>• “Design life” means the period of time that a clean water project is designed to operate according to its intended purpose.</li> <li>• “Maintenance”: ensuring that a clean water project continues to achieve its designed pollution reduction value for its design life.</li> <li>• “Standard cost”: the projected cost of achieving a pollutant load reduction per unit or per best management practice in a basin.</li> </ul>
<p style="text-align: center;"><b>10 V.S.A. § 922</b> Water Quality Implementation Targets</p>	<ul style="list-style-type: none"> <li>• <u>§ 922(a)</u>: After listing a water as impaired, ANR shall include the following in any implementation plan for the TMDL for that water:             <ul style="list-style-type: none"> <li>○ An evaluation of whether implementing existing regulatory programs will achieve water quality standards in the water.</li> <li>○ If ANR determines that existing regulatory programs will not achieve water quality standards, ANR shall determine the amount of additional pollutant reduction necessary to achieve water quality standards in that water.                 <ul style="list-style-type: none"> <li>➤ When making this determination, ANR may express the pollutant reduction in a numeric reduction or through defining a clean water project that must be implemented to achieve water quality standards.</li> </ul> </li> <li>○ An allocation of the pollutant reduction identified by ANR to each basin and the clean water service provider for that basin.                 <ul style="list-style-type: none"> <li>➤ The allocations shall be expressed in annual pollution reduction goals and five-year pollution reduction targets.</li> </ul> </li> <li>○ A determination of the standard cost per unit of pollutant reduction.                 <ul style="list-style-type: none"> <li>➤ ANR shall publish a methodology for determining standard cost pollutant reductions.</li> <li>➤ The standard cost shall include the costs of project identification, project design, and project construction.</li> </ul> </li> </ul> </li> </ul>

<p><b>10 V.S.A. § 922</b></p> <p>Water Quality Implementation Targets</p>	<ul style="list-style-type: none"> <li>• <u>§ 922(b)</u>: ANR shall conduct the analysis required by § 922(a) for previously listed waters as follows: <ul style="list-style-type: none"> <li>○ For phosphorous in the Lake Champlain watershed, not later than November 1, 2021.</li> <li>○ For phosphorous in the Lake Memphremagog watershed, not later than November 1, 2022.</li> </ul> </li> <li>• By not later than November 1, 2023, ANR shall adopt a schedule for implementing the requirements of this section in all other previously listed impaired waters not set forth in subdivision (1) of this subsection.</li> <li>• When implementing this section, the Secretary shall follow the type 3 notice process established in 10 V.S.A. § 7714.</li> </ul>
<p><b>10 V.S.A. § 923</b></p> <p>Quantification of Pollution Reduction; Clean Water Projects</p>	<ul style="list-style-type: none"> <li>• <u>§ 923(a)</u>: After listing a water as impaired, ANR shall publish a methodology for calculating pollution reduction values for a clean water project in that water. Pollution reduction values set by ANR are the exclusive method for determining a value. <ul style="list-style-type: none"> <li>○ When establishing a pollutant reduction value, ANR shall consider pollution reduction values established in other TMDLs; pollution reduction values established by other jurisdictions; pollution reduction values recommended by organizations that conduct similar work; applicable monitored data for a clean water project, if available; modeled data, if available; or a comparison to similar projects or programs if no other data on a pollution reduction value or design life exists.</li> </ul> </li> <li>• <u>§ 923(b)</u>: After listing a water as impaired, ANR shall publish a methodology to establish a design life for a clean water project. <ul style="list-style-type: none"> <li>○ The design life shall be determined based on a review of values in other jurisdictions, values recommended by qualified organizations, actual data on design life of a practice, or a comparison to other similar practices if no other data exists.</li> <li>○ A design life adopted by ANR shall be the exclusive method for determining the design life of a BMP or other control.</li> </ul> </li> <li>• <u>§ 923(c)(1)</u>: If a proposed clean water project has no pollution reduction value or design life for a listed water, ANR shall establish the reduction value or design life for the project within <u>60</u> days of a request from the person proposing the project. <ul style="list-style-type: none"> <li>○ A pollution reduction value or design life established under this subdivision shall be based on a review of: pollution reduction values established in the TMDL; pollution reduction values or design lives established by other jurisdictions; pollution reduction values or design lives recommended by qualified organizations; and other applicable data.</li> <li>○ Upon request of a clean water service provider, ANR shall evaluate a proposed clean water project and determine whether the project is eligible to receive funding as a part of a State Water Quality Restoration Grant under 10 V.S.A. § 925.</li> </ul> </li> <li>• <u>§ 923(d)(1)</u>: ANR shall conduct the analysis required by § 923(a) and (b) as follows: <ul style="list-style-type: none"> <li>○ For clean water projects and design lives related to phosphorous, not later than November 1, 2021.</li> <li>○ By Nov. 1, 2023, ANR shall adopt a schedule to implement §§ 923(a)-(b) for clean water projects and design lives for all other impairments.</li> </ul> </li> <li>• <u>§ 923(e)</u>: ANR shall periodically review pollution reduction values and design lives at least every 5 years to determine adequacy.</li> <li>• <u>§ 923(f)</u>: When implementing §§ 923(a) and (b), ANR shall follow the type 3 notice process under 10 V.S.A. § 7714. When implementing the requirements of § 923(c), ANR shall follow the type 4 notice process in 10 V.S.A. § 7715.</li> </ul>

<p><b>10 V.S.A. § 924</b> Clean Water Service Provider; Responsibility for Clean Water Projects</p>	<ul style="list-style-type: none"> <li>• <u>§ 924(a)</u> On or before Nov. 1, 2020, ANR shall adopt rules to assign a clean water service provider to each basin in the Lake Champlain and Memphremagog basins to achieve the pollutant reduction values established by ANR and maintain clean water projects <ul style="list-style-type: none"> <li>○ For other impaired waters, ANR shall assign a clean water service provider no later than 6 months before the schedule under 922(b)</li> </ul> </li> <li>• ANR shall adopt guidance on a clean water service provider’s obligations. At a minimum, the guidance shall address how the service provider prioritizes and selects projects, how to account for co-benefits, how to manage administrative costs, and maintenance of projects. <ul style="list-style-type: none"> <li>○ A clean water service provider will adopt guidance for subgrants consistent with the ANR guidance.</li> </ul> </li> <li>• <u>§ 924(b)</u>: When prioritizing or selecting projects, a clean water service provider shall consider projects listed in a basin plan.</li> <li>• <u>§ 924(c)</u>: A provider shall be responsible for maintaining a clean water project for at least the design life of that project.</li> <li>• <u>§ 924(d)</u>: If a clean water service provider achieves a greater level of pollutant reduction than a pollution reduction goal or five-year target the provider may carry those reductions forward into a future year, use those funds towards other eligible projects, use for operation and maintenance for existing projects, fund projects within the basin that are required by law, or fund other work.</li> <li>• <u>§ 924(e)</u> A clean water service provider shall report annually to ANR regarding clean water projects completed that year; inspections of previously implemented projects; all indirect and administrative costs incurred; all of the subgrants awarded by the provider; and all data necessary for ANR to determine the pollutant reduction achieved by the clean provider in that year.</li> <li>• <u>§ 924(f)</u>: If a clean water service provider fails to meet its allocated reduction goals or its five-year target or fails to maintain previously implemented clean water projects ANR shall take appropriate steps to hold the provider accountable, including: <ul style="list-style-type: none"> <li>○ entering a plan to ensure that the provider meets current and future pollution reduction goals and five-year targets; or</li> <li>○ initiating rulemaking to designate an alternate entity as accountable for the basin.</li> </ul> </li> <li>• <u>§ 924(g)</u>. A clean water service provider shall designate a basin water quality council, which shall establish policy and make decisions for the clean water service provider. (see membership in text of bill).</li> </ul>
<p><b>10 V.S.A. § 925</b> Water Quality Restoration Formula Grant Program</p>	<ul style="list-style-type: none"> <li>• <u>§ 925</u>: ANR shall administer a Water Quality Restoration Formula Grant Program to award grants to clean water service providers to meet the pollution reduction requirements under this subchapter <ul style="list-style-type: none"> <li>○ The grant amount shall be based on the annual reduction goal for the provider multiplied by the standard cost for pollutant reduction including the costs of administration and reporting.</li> </ul> </li> <li>• For all grant programs in the bill, no more than 15% of the total amount awarded to a provider can be used for administrative costs.</li> </ul>
<p><b>10 V.S.A. § 926</b> Water Quality Enhancement Grant Program</p>	<ul style="list-style-type: none"> <li>• <u>§ 926</u>: ANR shall administer a competitive Water Quality Enhancement Grant Program to fund projects that protect high quality waters, maintain or improve water quality in all waters, restore degraded or stressed waters, create resilient watersheds communities, and promote the public’s use and enjoyment of the State’s water.</li> <li>• This is a competitive grant available across the State to all applicants. Projects are not required to be in an impaired watershed.</li> </ul>

<p><b>10 V.S.A. § 927</b></p> <p>Developed Lands Implementation Grant Program</p>	<ul style="list-style-type: none"> <li>• <u>§ 927</u>: ANR shall administer a Developed Lands Implementation Grant Program to provide grants to persons who are required to obtain a permit for 3 acres or more of impervious surface that was not regulated or permitted prior to 2002. <ul style="list-style-type: none"> <li>○ The grant is only available in impaired watersheds where a provider has met annual goals or is making sufficient progress.</li> <li>○ The grant is available to any person in the watershed and does not need to be directed through the service provider.</li> </ul> </li> </ul>
<p><b>10 V.S.A. § 928</b></p> <p>Municipal Stormwater Assistance Grant Program</p>	<ul style="list-style-type: none"> <li>• <u>§ 928</u>: ANR shall administer a Municipal Stormwater Assistance Grant Program to provide grants to municipalities to implement a municipal roads general permit, an MS4 permit, a 3-acre impervious surface permit, or an ANR permit to reduce the adverse impacts. <ul style="list-style-type: none"> <li>○ The grant is only available in basins where a provider has met annual goals or is making sufficient progress towards the goals.</li> </ul> </li> <li>• This grant is only available to municipalities.</li> </ul>
<p><b>10 V.S.A. § 929</b></p> <p>Technical Assistance</p>	<ul style="list-style-type: none"> <li>• ANR shall give technical assistance, upon request, to persons who receive a grant or subgrant to implement a clean water project.</li> </ul>
<p><b>10 V.S.A. § 930</b></p> <p>Rulemaking</p>	<ul style="list-style-type: none"> <li>• ANR may adopt rules to implement the requirements of this subchapter.</li> </ul>
<p><b>Sec. 2. 10 V.S.A. § 1253(d)(2): Basin Planning Requirements</b></p>	
<p><b>Sec. 2</b></p> <p><b>10 V.S.A. § 1253(d)(2)-(3)</b></p> <p>Basin Planning</p>	<ul style="list-style-type: none"> <li>• Sec. 2 amends ANR’s duties when conducting watershed basin planning to require ANR to review and update the pollution evaluations and design life estimates that it conducts for clean water projects under 10 V.S.A. §§ under 922(a)(1) and (2).</li> <li>• Sec. 2 also requires ANR to identify funding needs for projects in the basin that will result in enhancement of resources.</li> <li>• Sec. 2 requires ANR, as funding is available, to negotiate and issue performance grants to RPCs, conservation districts, and Watersheds United Vermont to assist in basin planning.</li> </ul>
<p><b>Sec. 3. 10 V.S.A. § 1387. Findings and Purpose for Clean Water Fund</b></p>	
<p><b>Sec. 3</b></p> <p><b>10 V.S.A. § 1387</b></p> <p>Findings for Clean Water Fund and Board</p>	<ul style="list-style-type: none"> <li>• Sec. 3 adds a findings section in the statute that established the Clean Water Fund to provide that success in implementing the Clean Water Initiative will depend on providing sustained and adequate funding to support implementation of the following: <ul style="list-style-type: none"> <li>○ the requirements of Act 64; TMDLs; ANR’s CSO rule; operations of clean water service providers, and permanent protection of land and waters from development through conservation.</li> </ul> </li> <li>• The findings also note that to ensure success in implementing the Clean Water Initiative, the State should commit to an annual appropriation of between \$50 and \$60 million, beginning in FY 2020 and adjusted thereafter to ensure maintenance of effort.</li> <li>• Sec. 3 provides that the Fund shall be used to implement the Initiative, including funding clean water service providers and committing to continued conservation of lands through agricultural and natural resources conservation.</li> </ul>

**Sec. 4. 10 V.S.A. § 1389. Clean Water Board**

**Sec. 4**  
**10 V.S.A. §1389**  
Clean Water Board

- § 1389(a)(B)(i) clarifies that when making recommendations for appropriations from the Clean Water Fund, the recommendations shall be made in accordance with the priorities of § 1389(e).
- § 1389(a)(B)(ii) clarifies that the Board will make recommendations was water quality programs and projects to be funded from capital appropriations, not from the Clean Water Fund.
- § 1389(d)(3) amends the authority of the Clean Water Board to add to the Board’s authority a requirement that if there are insufficient funds in the Clean Water Fund to issue all grants required to clean water service providers, the Board shall:
  - Direct ANR to prioritize work for basins, adjust pollution allocations to providers, and issue grants based on available funds;
  - Make recommendations to the Governor and General Assembly on additional revenue to address unmet needs.
  - Notify ANR of the insufficient funds so that ANR can consider additional regulatory controls to address water quality.
- § 1389(e) amends the priorities for the Clean Water Board’s recommend appropriations from the Clean Water Fund.
- First and equal priority shall be given to:
  - grants to clean water service providers to fund costs associated with the monitoring, operation, and maintenance of projects;
  - Agency of Agriculture agricultural water quality programs;
  - the Water Quality Enhancement Grant Program, at a funding level of at least 20% of the Clean Water Fund, with a \$5 million annual maximum;
  - funding to partners for basin planning, of at least \$500,000 annually;
- § 1389(e) provides that as a second priority, the Board shall recommend funding for water quality grants and programs, including:
  - Programs or projects to address riparian conditions;
  - funding for education, outreach, demonstration, and implementation of the AMPs for logging jobs; and
  - funding for the Municipal Stormwater Assistance Grant as provided in subsection 925(d) of this title.
- § 1389(e) provides that as a third priority, the Board should recommend funding for the Developed Lands Implementation Grant Program as provided in subsection 925(c) of this title

**Sec. 5. 24 V.S.A. § 4345a. Regional Planning Commission Authority**

<p align="center"><b>Sec. 5</b> <b>24 V.S.A. § 4345a</b> Regional Planning Commission Authority Clean Water Projects</p>	<ul style="list-style-type: none"> <li>• Sec. 5 amends the enabling statute for regional planning commissions to provide that RPCs shall have the authority, if designated as a clean water service provider under 10 V.S.A. § 924, to provide for the identification, prioritization, development, construction, inspection, verification, operation, and maintenance of clean water projects in an assigned watershed basin.</li> <li>• In carrying out these duties, RPCs shall adopt a policy for how the RPC will issue subgrants to other organizations in the basin giving due consideration to the expertise of those organizations.</li> <li>• When selecting clean water projects, RPCs shall prioritize projects identified in the basin plan and shall consider the pollutant targets provided by ANR and the recommendations of the basin water quality council.</li> </ul>
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**Sec. 6. 10 V.S.A. § 704. Natural Resources Conservation Council**

<p align="center"><b>Sec. 6</b> <b>10 V.S.A. § 704</b> Natural Resources Conservation Council</p>	<ul style="list-style-type: none"> <li>• Sec. 6 amends the enabling statute for natural resources conservation districts to provide that the districts shall have the authority, if designated as a clean water service provider under 10 V.S.A. § 924, to provide for the identification, prioritization, development, construction, inspection, verification, operation, and maintenance of clean water projects in an assigned watershed basin</li> </ul>
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**Sec. 7. Recommendations on Nutrient Credit Trading**

<p align="center"><b>Sec. 7</b> Recommendations on Nutrient Credit Trading</p>	<ul style="list-style-type: none"> <li>• On or before July 1, 2022, ANR shall submit to the General Assembly recommendations regarding implementation of a market-based mechanism that allows the purchase of water quality credits by water quality and other entities.</li> <li>• The report shall include information on the cost to develop and manage any recommended program.</li> </ul>
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**Sec. 8. Transition**

<p align="center"><b>Sec. 8</b> Transition</p>	<ul style="list-style-type: none"> <li>• Provides that until November 1, 2021, ANR shall implement the existing ecosystem restoration funding delivery program and shall not make substantial modifications to the manner in which that program has been implemented.</li> <li>• Until the plan required by 10 V.S.A. § 923(d)(2) has been fully implemented, ANR shall provide additional weight to geographic areas of the State not receiving a grant pursuant to 10 V.S.A. § 925 when making funding decisions for Enhancement Grants.</li> </ul>
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**Sec. 9. Land and Water Conservation Study**

<p align="center"><b>Sec. 9</b> Land and Water Conservation Study</p>	<ul style="list-style-type: none"> <li>• Requires ANR to convene a Land and Water Conservation Study Stakeholder Group to develop a recommended framework for statewide land conservation. On or before January 15, 2020, the Secretary shall submit the Stakeholder Group's recommended framework for statewide land conservation to the General Assembly.</li> </ul>
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**Sec. 10. Clean Water Investment Report**

**Sec. 10**  
Investment Report

- Beginning January 2023, requires the annual Clean Water Investment Report to include a summary of the administration of the grant programs established under this bill.
- The report shall include a summary of whether the grant programs in S.96 adequately fund implementation of the Clean Water Initiative and whether the funding limits for Water Quality Enhancement Grants should be amended to improve implementation of the Clean Water Initiative.

**Sec. 9. Effective Date**

This act shall take effect on July 1, 2019