

TO THE HONORABLE SENATE

The Committee on Natural Resources and Energy to which was referred Senate Bill No. S. 96, entitled "An act relating to establishing a Clean Water Assessment to fund State water quality programs"

respectfully reports that it has considered the same and recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. chapter 37, subchapter 5 is amended to read:

Subchapter 5. Aquatic Nuisance Control Water Quality Restoration and Improvement

§ 921. DEFINITIONS

As used in this subchapter:

(1) "Basin" means a watershed basin designated by the Secretary for use as a planning unit under subsection 1253(d) of this title.

(2) "Best management practice" or "BMP" means a schedule of activities, prohibitions, practices, maintenance procedures, green infrastructure, or other management practices to prevent or reduce water pollution.

(3) "Clean water project" means a best management practice or other program designed to improve water quality to achieve a target established under section 922 of this title that:

(A) is not subject to a permit under chapter 47 of this title, is not subject to the requirements of 6 V.S.A. chapter 215, exceeds the requirements of a permit issued under chapter 47 of this title, or exceeds the requirements of 6 V.S.A chapter 215; and

(B) is within the activities identified in subsection 924(b) of this title.

(4) "Design life" means the period of time that a clean water project is designed to operate according to its intended purpose.

(5) "Maintenance" means ensuring that a clean water project continues to achieve its designed pollution reduction value for its design life.

(6) "Standard cost" means the projected cost of achieving a pollutant load reduction per unit or per best management practice in a basin.

§ 922. WATER QUALITY IMPLEMENTATION PLANNING AND TARGETS

(a) After listing a water as impaired on the list of waters required by 33 U.S.C. § 1313(d), the Secretary shall include the following in any plan to

implement the requirements of any total maximum daily load adopted for an impaired water:

(1) An evaluation of whether implementation of existing regulatory programs will achieve water quality standards in the impaired water. If the Secretary determines that existing regulatory programs will not achieve water quality standards, the Secretary shall determine the amount of additional pollutant reduction necessary to achieve water quality standards in that water. When making this determination, the Secretary 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.

(2) An allocation of the pollutant reduction identified under subdivision (a)(1) of this section to each basin and the clean water service provider assigned to that basin pursuant to subsection 924(a) of this title. When making this allocation, the Secretary shall consider the sectors contributing to the water quality impairment in the impaired water's boundaries and the contribution of the pollutant from regulated and nonregulated sources within the basin. Those allocations shall be expressed in annual pollution reduction goals and five-year pollution reduction targets.

(3) A determination of the standard cost per unit of pollutant reduction. The Secretary shall publish a methodology for determining standard cost pollutant reductions. The standard cost shall include the costs of project identification, project design, and project construction.

(b)(1) The Secretary shall conduct the analysis required by subsection (a) of this section for previously listed waters as follows:

(A) For phosphorous in the Lake Champlain watershed, not later than November 1, 2021.

(B) For phosphorous in the Lake Memphremagog watershed, not later than November 1, 2022.

(C) For all other waters impaired by phosphorous, nutrients, or sediment, not later than November 1, 2024.

(2) By not later than November 1, 2020, the Secretary shall adopt a schedule for implementing the requirements of this chapter in all other previously listed impaired waters not set forth in subdivision (1) of this subsection.

(c) When implementing the requirements of this section, the Secretary shall follow the type 3 notice process established in section 7714 of this title.

§ 923. QUANTIFICATION OF POLLUTION REDUCTION; CLEAN WATER PROJECTS

(a) After listing a water as impaired on the list of waters required by 33 U.S.C. § 1313(d), the Secretary shall publish a methodology for calculating pollution reduction values associated with a clean water project in that water. Pollution reduction values established by the Secretary shall be the exclusive method for determining the pollutant reduction value of a clean water project.

(b) After listing a water as impaired on the list of waters required by 33 U.S.C. § 1313(d), the Secretary shall publish a methodology for establishing a design life associated with a clean water project. The design life of a clean water project shall be determined based on a review of values established in other jurisdictions, values recommended by organizations that regularly estimate the design life of clean water projects, actual data documenting the design life of a practice, or a comparison to other similar practices if no other data exists. A design life adopted by the Secretary shall be the exclusive method for determining the design life of a best management practice or other control.

(c)(1) If a person is proposing a clean water project for which no pollution reduction value or design life exists for a listed water, the Secretary shall establish a pollution reduction value or design life for that clean water project within 14 days of a request from the person proposing the clean water project. 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 organizations that develop pollutant reduction values or design lives for a clean water project; applicable monitored data with respect to a clean water project, if available; modeled data, if available; actual data documenting the design life of a clean water project; or a comparison to other similar projects or programs if no other data on a pollution reduction value or design life exists. Any estimate developed under this subsection by the Secretary shall be posted on the Agency of Natural Resources' website.

(2) Upon the request of a clean water service provider, the Secretary shall evaluate a proposed clean water project and issue a determination as to whether the proposed clean water project is eligible to receive funding as a part of a Water Quality Restoration Grant awarded by the State pursuant to subsection 925(a) of this title.

(d)(1) The Secretary shall conduct the analysis required by subsections (a) and (b) of this section as follows:

(A) For clean water projects and design lives related to phosphorous, not later than November 1, 2021.

(B) For clean water projects and design lives related to nutrients or sediment, not later than November 1, 2024.

(2) By not later than November 1, 2020, the Secretary shall adopt a schedule for implementing the requirements of subsections (a) and (b) of this section for clean water projects and design lives related to all other impairments not listed under subdivision (1) of this subsection.

(e)(1) When implementing the requirements of subsections (a) and (b) of this section, the Secretary shall follow the type 3 notice process established in section 7714 of this title.

(2) When implementing the requirements of subsection (c) of this section, the Secretary shall follow the type 4 notice process in section 7715 of this title.

§ 924. CLEAN WATER SERVICE PROVIDER; RESPONSIBILITY FOR CLEAN WATER PROJECTS

(a) Clean water service providers; establishment. On or before March 1, 2020, the Secretary shall adopt rules that assign a clean water service provider to each basin for the purposes of achieving pollutant reduction values established by the Secretary for the basin and for identification, design, construction, operation, and maintenance of clean water projects within a basin. The rulemaking shall be done in consultation with regional planning commissions, natural resource conservation districts, watershed organizations, and municipalities located within each basin. The Secretary shall assign a regional planning commission as the clean water service provider for a basin unless the Secretary, by rule, designates an alternate entity to be accountable for a basin in lieu of a regional planning commission. If the Secretary assigns an alternate entity to serve as the clean water service provider in a basin, the Secretary shall ensure that the entity has the authority and capacity to fulfill the duties set forth under 24 V.S.A. § 4345a(20). An alternate entity assigned as a clean water service provider shall establish a basin water quality advisory council that meets the requirements of 24 V.S.A. § 4353. An alternate entity assigned as a clean water service provider shall receive assistance from the Secretary under section 926 of this title.

(b) Project identification, prioritization, selection. When identifying, prioritizing, and selecting an activity to meet a pollution reduction value, the clean water service provider may consider, in no particular order of priority, funding clean water projects in the following sectors:

(1) developed lands, including municipal separate storm sewers, operational stormwater discharges, municipal roads, and other developed lands discharges;

(2) natural resource protection and restoration, including river corridor protection, wetland protection and restoration, and riparian corridor protection and restoration;

(3) forestry; and

(4) agriculture.

(c) Maintenance responsibility. A clean water service provider shall be responsible for maintaining a clean water project or ensuring the maintenance for the entirety of the design life of that clean water project.

(d) Water quality improvement work. If a clean water service provider achieves a greater level of pollutant reduction than a pollution reduction goal or five-year target established by the Secretary, the clean water service provider may carry those reductions forward into a future year. If a clean water service provider achieves its pollutant reduction goal or five-year target and has excess grant funding available, a clean water service provider may use those funds towards other eligible projects, operation and maintenance responsibilities for existing constructed projects, projects within the basin that are required by federal or State law, or other work that improves water quality within the geographic area of the basin, including protecting river corridors, aquatic species passage, and other similar projects.

(e) Reporting. A clean water service provider shall report annually to the Secretary. The report shall contain the following:

(1) a summary of all clean water projects completed that year in the basin;

(2) a summary of any inspections of previously implemented clean water projects and whether those clean water projects continue to operate in accordance with their design;

(3) all indirect and administrative costs incurred by the clean water service provider;

(4) a list of all of the subgrants awarded by the clean water service provider in the basin; and

(5) all data necessary for the Secretary to determine the pollutant reduction achieved by the clean water service provider during the prior year.

(f) Accountability for pollution reduction goals. If a clean water service provider fails to meet its allocated pollution reduction goals or its five-year target or fails to maintain previously implemented clean water projects the Secretary shall take appropriate steps to hold the clean water service provider accountable for the failure to meet pollution reduction goals or its five-year target. The Secretary may take the following steps:

(1) Enter a plan to ensure that the clean water service provider meets current and future year pollution reduction goals and five-year targets;

(2) Initiate an enforcement action pursuant to chapter 201 or 211 of this title for the failure of a clean water service provider to meet its obligations; or

(3) Initiate rulemaking to designate an alternate entity as accountable for the basin.

§ 925. WATER QUALITY GRANT PROGRAMS

(a) The Secretary 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. The grant amount shall be based on the annual pollutant reduction goal established for the clean water service provider multiplied by the standard cost for pollutant reduction including the costs of administration and reporting. No more than 15 percent of the total grant amount awarded to a clean water service provider shall be used for administrative costs.

(b) The Secretary shall administer a Water Quality Enhancement Grant Program. This program shall be a competitive grant program to fund projects that protect high quality waters, create resilient communities, and promote the public's use and enjoyment of the State's waters. When making awards under this program, the Secretary shall consider the cost-effectiveness of an award and the funding needs of each basin. No more than 15 percent of the total grant amount awarded to a clean water service provider shall be used for administrative costs.

(c) The Secretary shall administer a Stormwater Implementation Grant Program to provide grants to persons who are required to obtain a permit to implement regulatory requirements that are necessary to achieve water quality standards. The grant program shall only be available in basins where a clean water service provider has met its annual goals or is making sufficient progress, as determined by the Secretary, towards those goals. This grant program may fund projects related to the permitting of impervious surface of three acres or more under subdivision 1264(g)(3) of this title. No more than 15 percent of the total grant amount awarded to a clean water service provider shall be used for administrative costs.

(d) The Secretary shall administer a Municipal Stormwater Assistance Grant Program to provide grants to any municipality required to obtain a permit pursuant to section 1264 of this title. The grant program shall only be available in basins where a clean water service provider has met its annual goals or is making sufficient progress, as determined by the Secretary, towards those goals. No more than 15 percent of the total grant amount awarded to a clean water service provider shall be used for administrative costs.

§ 926. CLEAN WATER PROJECT TECHNICAL ASSISTANCE

The Secretary shall provide technical assistance upon the request of any person who, under this chapter, receives a grant or is a subgrantee of funds to implement a clean water project.

§ 927. RULEMAKING

The Secretary may adopt rules to implement the requirements of this subchapter.

Sec. 2. 10 V.S.A. § 1253(d)(2) is amended to read:

(2) In developing a basin plan under this subsection, the Secretary shall:

(A) identify waters that should be reclassified outstanding resource waters or that should have one or more uses reclassified under section 1252 of this title;

(B) identify wetlands that should be reclassified as Class I wetlands;

(C) identify projects or activities within a basin that will result in the protection and enhancement of water quality;

(D) review the evaluations performed by the Secretary under subdivisions 922(a)(1) and (2) of this title and update those findings based on any new data collected as part of a basin plan;

(E) for projects in the basin that will result in enhancement of resources, including those that protect high quality waters of significant natural resources, the Secretary shall identify the funding needs beyond those currently funded by the Clean Water Fund;

(F) ensure that municipal officials, citizens, natural resources conservation districts, watershed groups, and other interested groups and individuals are involved in the basin planning process;

~~(E)~~(G) ensure regional and local input in State water quality policy development and planning processes;

~~(F)~~(H) provide education to municipal officials and citizens regarding the basin planning process;

~~(G)~~(I) develop, in consultation with the regional planning commission, an analysis and formal recommendation on conformance with the goals and objectives of applicable regional plans;

~~(H)~~(J) provide for public notice of a draft basin plan; and

~~(I)~~(K) provide for the opportunity of public comment on a draft basin plan.

Sec. 3. 10 V.S.A. § 1387 is amended to read:

§ 1387. FINDINGS; PURPOSE; CLEAN WATER INITIATIVE

(a)(1) The State has committed to implementing a long-term Clean Water Initiative to provide mechanisms, staffing, and financing necessary to achieve and maintain compliance with the Vermont Water Quality Standards for all State waters.

(2) Success in implementing the Clean Water Initiative will depend largely on providing sustained and adequate funding to support the implementation of all of the following:

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

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

(C) the Agency of Natural Resources' Combined Sewer Overflow Rule; and

(D) the operations of clean water service providers under chapter 37, subchapter 5 of this title.

(3) To ensure success in implementing the Clean Water Initiative, the State should commit to an annual appropriation over the duration of the Initiative of not less than \$57,811,342.00, beginning in fiscal year 2020 and adjusted thereafter to ensure maintenance of effort.

(b) The General Assembly establishes in this subchapter a Vermont Clean Water Fund as a mechanism for financing the improvement of water quality in the State. The Clean Water Fund shall be used to:

(1) ~~assist the State in complying with water quality requirements and construction or implementation of water quality projects or programs~~ the implementation of the Clean Water Initiative;

(2) fund staff positions at the Agency of Natural Resources, Agency of Agriculture, Food and Markets, or Agency of Transportation when the positions are necessary to achieve or maintain compliance with water quality requirements and existing revenue sources are inadequate to fund the necessary positions; and

(3) ~~provide funding to nonprofit organizations, regional associations, and other entities for implementation and administration of community-based water quality programs or projects~~ clean water service providers to meet the obligations of chapter 37, subchapter 5 of this title.

Sec. 4. 10 V.S.A. § 1389 is amended to read:

§ 1389. CLEAN WATER BOARD

(a) Creation.

(1) There is created the Clean Water Board that shall:

(A) be responsible and accountable for planning, coordinating, and financing of the remediation, improvement, and protection of the quality of State waters;

(B) recommend to the Secretary of Administration expenditures:

- (i) appropriations from the Clean Water Fund; and
- (ii) clean water projects to be funded by capital appropriations.

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

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

- (1) the Secretary of Administration or designee;
- (2) the Secretary of Natural Resources or designee;
- (3) the Secretary of Agriculture, Food and Markets or designee;
- (4) the Secretary of Commerce and Community Development or designee;
- (5) the Secretary of Transportation or designee; and
- (6) four members of the public, who are not legislators, with expertise in one or more of the following subject matters: public management, civil engineering, agriculture, ecology, wetlands, stormwater system management, forestry, transportation, law, banking, finance, and investment, to be appointed by the Governor.

* * *

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

* * *

(3) The Clean Water Board shall:

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

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

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

(C) if the Board determines that there are insufficient funds in the Clean Water Fund to issue all grants required by section 925(a) of this title, conduct all of the following:

(i) Direct the Secretary of Natural Resources to prioritize the work needed in every basin, adjust pollution allocations assigned to clean water service providers, and issue grants based on available funding.

(ii) Make recommendations to the Governor and General Assembly on additional revenue to address unmet needs.

(iii) Notify the Secretary of Natural Resources that there are insufficient funds in the Fund. The Secretary of Natural Resources shall consider additional regulatory controls to address water quality improvements that could not be funded.

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

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

~~(F) establish a process under which a watershed organization, State agency, or other interested party may propose that a water quality project or program identified in a watershed basin plan receive funding from the Clean Water Fund.~~

(e) Priorities.

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

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

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

(1) funding for the following grants and programs:

(A) grants to clean water service providers to fund the reasonable costs associated with the monitoring, operation, and maintenance of clean water projects in a basin;

(B) the Water Quality Enhancement Grant Program as provided under subsection 925(b) of this title;

(C) the Agency of Agriculture, Food, and Markets' Conservation Reserve Enhancement Program, Farm Agronomic Practice Program, and Clean Water Initiative Partner Grant Program; and

(D) the Water Quality Restoration Grants as provided in subsection 925(b) of this title, provided funding shall be at least \$1,500,000.00;

(2) to the extent that funding is available after funding grants and programs identified under subdivision (1) of this subsection:

(A) investment in watershed planning;

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

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

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

~~(F)~~(D) funding for education, outreach, demonstration, and implementation for required agricultural practices and any required best management practices on agricultural land;

(E) funding for the Municipal Stormwater Assistance Grant as provided in subsection 925(d) of this title;

(F) funding for education and outreach regarding implementation of water quality requirements;

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

(H) funding for the Stormwater Implementation Grant Program as provided in subsection 925(c) of this title

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

~~(H) funding to municipalities for the establishment and operation of stormwater utilities; and~~

~~(1) investment in watershed basin planning, water quality project identification screening, water quality project evaluation, and conceptual plan development of water quality projects.~~

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

~~(3) In developing its recommendations under subsection (d) of this section regarding the appropriate allocation of funds from the Clean Water Fund, the Board shall, after satisfaction of the priorities established under subdivision (1) of this subsection (e), attempt to provide investment in all watersheds of the State based on the needs identified in watershed basin plans.~~

(f) Assistance. The Clean Water Board shall have the administrative, technical, and legal assistance of the Agency of Administration, the Agency of Natural Resources, the Agency of Agriculture, Food and Markets, the Agency of Transportation, and the Agency of Commerce and Community Development for those issues or services within the jurisdiction of the respective agency. The cost of the services provided by agency staff shall be paid from the budget of the agency providing the staff services.

Sec. 5. 10 V.S.A. § 8003(a) is amended to read

(a) The Secretary may take action under this chapter to enforce the following statutes and rules, permits, assurances, or orders implementing the following statutes, and the Board may take such action with respect to subdivision (10) of this subsection:

* * *

(5) 10 V.S.A. chapter 37, relating to wetlands protection, water restoration goals and targets, and water resources management;

* * *

Sec. 6. 24 V.S.A. § 4345a is amended to read:

§ 4345a. DUTIES OF REGIONAL PLANNING COMMISSIONS

A regional planning commission created under this chapter shall:

* * *

(20)(A) If designated as a clean water service provider under 10 V.S.A. § 924, provide for the identification, prioritization, development, construction, monitoring, operation, and maintenance of clean water projects in the basin

assigned to the regional planning commission in accordance with the requirements of 10 V.S.A. chapter 37, subchapter 5 and in consultation with the basin water quality advisory council established under section 4353 of this title. In carrying out these duties, the regional planning commission shall adopt guidance for subgrants that establishes a policy for how the commission will issue subgrants to other organizations in the basin giving due consideration to the expertise of those organizations and other requirements for the administration of the grant program. The subgrant guidance shall be subject to the approval of the basin water quality advisory council.

(B) When selecting projects, a regional planning commission shall prioritize projects identified in the basin plan for the area where the project is located and consider the pollutant targets provided by the Secretary and the recommendations of the basin water quality advisory council.

(21) As used in this section, "clean water project" means a best management practice or other program designed to improve water quality to achieve a target established under 10 V.S.A. § 922 that:

(A) is not subject to a permit under 10 V.S.A. chapter 47, is not subject to the requirements of 6 V.S.A. chapter 215, exceeds the requirements of a permit issued under 10 V.S.A. chapter 47, or exceeds the requirements of 6 V.S.A chapter 215; and

(B) is within the activities identified 10 V.S.A. § 924(c).

Sec. 7. 24 V.S.A. § 4353 is added to read:

§ 4353. BASIN WATER QUALITY ADVISORY COUNCIL

(a) A regional planning commission designated as a clean water service provider under 10 V.S.A. § 924 shall establish a basin water quality advisory council for each basin assigned to it pursuant to 10 V.S.A. § 924(a). The purpose of basin water quality advisory council is to make recommendations to the regional planning commission on identifying the most significant water quality impairments that exist in the basin and prioritizing the projects that will address those impairments.

(b) A basin water quality advisory council shall include, at a minimum, the following:

(1) representatives from each natural resource conservation district in that basin, selected by the applicable natural resource conservation district;

(2) representatives from each local watershed protection organization operating in that basin, selected by the applicable watershed protection organization;

(3) representatives from applicable local or statewide land conservation organizations selected by the conservation organization in consultation with the regional planning commission; and

(4) representatives from each municipality within the basin, selected by the municipality.

(c) The regional planning commission and the basin planner from the Agency of Natural Resources shall provide staff support to the council. The regional planning commission may invite support from persons with specialized expertise to address matters before a basin water quality advisory council, including support from the University of Vermont Extension, staff of the Agency of Natural Resources, and staff of the Agency of Agriculture, Food, and Markets.

Sec. 8. RECOMMENDATIONS ON NUTRIENT CREDIT TRADING

On or before July 1, 2022, the Secretary of Natural Resources, after consultation with the Clean Water Board, shall submit to the Senate Committees on Appropriations, on Natural Resources and Energy, and on Finance and the House Committees on Appropriations, on Natural Resources, Fish, and Wildlife, and on Ways and Means recommendations regarding implementation of a market-based mechanism that allows the purchase of water quality credits by permittees under 10 V.S.A. Chapter 47, and other entities.

Sec. 9. EFFECTIVE DATE

This act shall take effect on July 1, 2019.

And that after passage the bill be amended to read:

An act relating to the provision of water quality services.

(Committee vote: 4-1-0)



Senator E. Ay
FOR THE COMMITTEE