

1 TO THE HONORABLE SENATE:

2 The Committee on Natural Resources and Energy to which was referred
3 Senate Bill No. 96 entitled “An act relating to establishing a Clean Water
4 Assessment to fund State water quality programs” respectfully reports that it
5 has considered the same and recommends that the bill be amended by striking
6 out all after the enacting clause and inserting in lieu thereof the following:

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

8 Subchapter 5. ~~Aquatic Nuisance Control~~ Water Quality Restoration and
9 Improvement

10 § 921. WATER QUALITY IMPLEMENTATION PLANNING AND
11 TARGETS

12 (a) After listing a water as impaired on the list of waters established by 33
13 U.S.C. § 1313(d), the Secretary shall include the following in any plan to
14 implement the requirements of any total maximum daily load adopted for an
15 impaired water:

16 (1) Evaluate whether existing regulatory programs will cause the water
17 to meet water quality standards. If the Secretary determines that regulatory
18 programs will not achieve water quality standards, the Secretary shall
19 determine the amount of additional pollutant reduction necessary to achieve
20 water quality standards in that waterbody. When making this determination,
21 the Secretary may express the pollutant reduction in a numeric reduction or

1 through defining best management practices that must be implemented to
2 achieve standards.

3 (2) Allocate the pollutant reduction identified under subdivision (a)(1) to
4 each basin and the regional planning commission assigned to that basin
5 pursuant to subsection 923(a) of this section. When making this allocation, the
6 Secretary shall consider the sectors contributing to the water quality
7 impairment in the impaired water's boundaries and the contribution of the
8 pollutant from regulated and nonregulated sources within the basin. Those
9 allocations shall be expressed in annual pollution reduction goals and five-year
10 pollution reduction targets.

11 (3) Determine the standard cost of pollutant reduction per unit or per
12 best management practice. When determining standard cost, the Secretary
13 shall conduct a survey of the costs associated with common pollution reduction
14 efforts and develop a standard cost based on this survey and the sources of the
15 pollutants. The standard cost shall include the costs of project identification,
16 project design, and project construction.

17 (b) The Secretary shall conduct the analysis required by subsection (a) for
18 previously listed waters as follows:

19 (1) For phosphorous in the Lake Champlain watershed, no later than
20 November 1, 2021.

1 (2) For phosphorous in the Lake Memphremagog watershed, no later
2 than November 1, 2022.

3 (3) For all other waters impaired by phosphorous, nutrients, or sediment,
4 no later than November 1, 2024.

5 (4) For all other impaired waters, by no later than November 1, 2020
6 adopt a schedule for implementing the requirements of this chapter in all other
7 previously listed impaired waters.

8 (c) When making a decision under this section, the Secretary shall follow
9 the process established in 10 V.S.A. § 7714 (type 3 notice process).

10 § 922. QUANTIFICATION OF NONREGULATORY POLLUTION

11 REDUCTION

12 (a) After listing a water as impaired on the list of waters established by 33
13 U.S.C. § 1313(d), the Secretary shall adopt rules that establish how the
14 Secretary will calculate pollution reduction values associated with best
15 management practices and other controls. The rules may establish pollution
16 reduction values by rule or adopt a methodology or tool that will calculate
17 pollution reduction values. If a person is undertaking a best management
18 practice or other control for which no pollution reduction value exists, the
19 Secretary shall establish a value for that specific practice within a reasonable
20 period of time. These estimates shall be established based on a review of
21 values established in the TMDL, values established by other jurisdictions,

1 values recommended by organizations that develop pollutant reduction values
2 for a practice, applicable monitored data with respect to a practice, if available,
3 modeled data, or a comparison to other similar practices if no other reduction
4 value or data exists. Any estimate developed by the Secretary shall be posted
5 on the Agency website. Pollution reduction values established by the
6 Secretary shall be the exclusive method for determining the pollutant reduction
7 value of a best management practice or other control.

8 (b) After listing a water as impaired on the list of waters established by 33
9 U.S.C. § 1313(d), the Secretary shall adopt rules that establish a design life
10 value associated with best management practices and other controls. Design
11 life shall be determined based on a review of values established in other
12 jurisdictions, values recommended by organizations that regularly estimate the
13 design life of best management practices or other controls, actual data
14 documenting the design life of a practice, or a comparison to other similar
15 practices if no other or data exists. If a person is undertaking a best
16 management practice or other control for which no design life value exists, the
17 Secretary shall establish a value for that specific practice within 90 days. Any
18 value developed by the Secretary shall be posted on the Agency website.
19 Values adopted by the Secretary shall be the exclusive method for determining
20 the design life of a best management practice or other control.

1 (c) Upon the request of a regional planning commission, the Secretary shall
2 evaluate a proposed project and issue a determination as to whether the
3 proposed project is eligible to receive funding as a part of a Water Quality
4 Restoration Grant awarded by the State pursuant to subsection 924(a) of this
5 title. This determination shall be made within 10 business days of the request.

6 (d) The Secretary shall adopt the rules required by subsections (a) and (b)
7 of this section as follows:

8 (1) For best management practices and design lives related to
9 phosphorous no later than November 1, 2021.

10 (2) For best management practices and design lives related to nutrients
11 or sediment no later than November 1, 2024.

12 (3) For best management practices and design lives related to all other
13 impairments, by no later than November 1, 2020 adopt a schedule for
14 implementing the requirements of subsections (a) and (b) of this section.

15 § 923. RESPONSIBILITY FOR NONREGULATORY POLLUTION

16 REDUCTION ALLOCATIONS

17 (a) Regional planning commission participation. Regional planning
18 commissions shall be accountable for the nonregulatory pollution reduction
19 goals and targets established pursuant to section 921 of this title. On or before
20 March 1, 2020, the Secretary shall adopt rules that assign a regional planning
21 commission to each basin for purposes of being accountable for the

1 requirements of this chapter. The rulemaking shall be done in consultation
2 with regional planning commissions, natural resource conservation districts,
3 watershed organizations, and municipalities located within that basin. The
4 Secretary may assign an alternate entity to be accountable for a basin in lieu of
5 a regional planning commission based upon the rulemaking process.

6 (b) Purpose. Regional planning commissions are responsible for ensuring
7 the identification, design, construction, operation, and maintenance of water
8 pollution reduction projects and practices within the basin assigned to that
9 regional planning commission in subsection (a) of this section and in
10 accordance with pollution reduction targets established by section 921 of this
11 title.

12 (c) Project identification, prioritization, selection. When identifying,
13 prioritizing, and selecting an activity to meet the pollution reduction targets the
14 regional planning commission may consider funding the following activities,
15 provided that the activity is not subject to regulation by the State or exceeds
16 that which is required by regulation:

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

19 (2) Natural resource protection and restoration, including river corridor
20 protection, wetland protection and restoration, and riparian corridor protection
21 and restoration;

1 (3) Forestry; and

2 (4) Agriculture.

3 (c) Operation and maintenance responsibility. A regional planning
4 commission shall be responsible for maintaining a best management practice
5 or ensuring the maintenance for the entirety of the design or useful life of that
6 project.

7 (d) Reductions from local regulatory programs. A regional planning
8 commission may request that the Secretary determine the pollutant reduction
9 that may be counted towards the annual pollution reduction goals established
10 in subdivision 921(a)(2) for a municipal ordinances that reduce a pollutant that
11 is otherwise not required by State law, including ordinances that protect river
12 corridors beyond the State’s requirements or regulate stormwater below the
13 State’s jurisdictional threshold.

14 (e) Water quality improvement work. If a regional planning commission
15 achieves a greater level of pollutant reduction than the goal or target
16 established by the Secretary, the regional planning commission may carry
17 those reductions forward into a future year. If a regional planning commission
18 achieves its pollutant reduction goal or target and has excess grant funding
19 available a regional planning commission may use those funds towards other
20 eligible projects, operation and maintenance responsibilities for existing
21 constructed projects, projects within the basin that are required by State rule, or

1 other work that improves water quality within the geographic area of the
2 district, including protecting river corridors, aquatic species passage, and other
3 similar projects.

4 (f) Reporting. A regional planning commission shall report on its progress
5 annually to the Secretary. The report shall contain a summary of all projects
6 completed that year, a summary of any inspections projects previously
7 constructed and whether those projects continue to operate in accordance with
8 their design, and the pollutant reduction achieved during the prior year.

9 (g) Accountability for pollution reduction targets. If a regional planning
10 commission fails to meet its allocated pollution reduction goals the Secretary
11 shall take appropriate steps to hold the regional planning commission
12 accountable for the failure to meet pollution reduction goals or targets. The
13 Secretary may take the following steps:

14 (1) Enter a plan to ensure that the regional planning commission meets
15 current and future year goals and targets;

16 (2) Initiate an enforcement action pursuant to chapter 201 or 211 of this
17 title for the regional planning commission's failure to meet its obligations; or

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

20 § 924. WATER QUALITY RESTORATION FORMULA GRANT
21 PROGRAM

1 (a) The Secretary shall administer a Water Quality Restoration Formula
2 Grant to regional planning commissions to meet their requirements under this
3 subchapter. The grant amount shall be based on the annual pollutant reduction
4 goal established for the regional planning commission multiplied by the
5 standard cost for pollutant reduction including the costs of administration and
6 reporting.

7 (b) The Secretary shall administer an Ecosystem Restoration Grant
8 program. This program shall be a competitive grant program to fund projects
9 that protect high quality waters, create resilient communities, and promote the
10 public's use and enjoyment of the State's waters. When making awards under
11 this program, the Secretary shall consider the geographic distribution of these
12 funds.

13 (c) The Secretary shall administer a stormwater implementation grant
14 program to provide grants to persons who are required to obtain a permit to
15 implement regulatory requirements that are necessary to achieve water quality
16 standards. The grant program shall only be available in basins where a
17 regional planning commission has met its annual goals or is making sufficient
18 progress, as determined by the Secretary, towards those goals. This grant
19 program may fund projects related to the permitting of impervious surface of
20 three acres or more under subdivision 1264(g)(3) of this title or any municipal
21 stormwater practice required under section 1264 of this title.

1 § 925. CLEAN WATER PROJECT TECHNICAL ASSISTANCE

2 The Secretary shall provide technical assistance upon the request of any
3 person who receives a grant or is a subgrantee of a program established under
4 924 of this title.

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

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

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

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

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

13 (D) review the evaluations performed by the Secretary under
14 subdivisions 921(a)(1) and (2) of this title and update those findings based on
15 any new data collected as part of a basin plan;

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

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

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

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

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

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

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

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

15 § 1387. FINDINGS; PURPOSE; CLEAN WATER INITIATIVE

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

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

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

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

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

9 (3) To ensure success in implementing the Clean Water Initiative, the
10 State should commit to an annual appropriation over the duration of the
11 Initiative of no less than \$57,811,342, beginning in fiscal year 2020 and
12 adjusted thereafter to ensure maintenance of effort.

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

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

19 (2) fund staff positions at the Agency of Natural Resources, Agency of
20 Agriculture, Food and Markets, or Agency of Transportation when the
21 positions are necessary to achieve or maintain compliance with water quality

1 requirements and existing revenue sources are inadequate to fund the necessary
2 positions; and

3 (3) provide funding to ~~nonprofit organizations, regional associations,~~
4 ~~and other entities for implementation and administration of community-based~~
5 ~~water quality programs or projects~~ regional planning commissions to meet
6 district obligations under chapter 37, subchapter 5 of this title .

7 * * *

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

9 § 1389. CLEAN WATER BOARD

10 (a) Creation.

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

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

15 (B) recommend to the Secretary of Administration expenditures:

16 (i) appropriations from the Clean Water Fund; and

17 (ii) clean water projects to be funded by capital appropriations.

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

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

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

12 * * *

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

15 * * *

16 (3) The Clean Water Board shall:

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

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

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

3 (C) If the Board determines that there are insufficient funds in the
4 Clean Water Fund to issue all grants required by section 924(a) of this title,
5 conduct all of the following:

6 (i) Direct the Secretary of Natural Resources to prioritize the work
7 needed in each basin and issue grants based on available funding.

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

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

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

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

20 ~~(F) establish a process under which a watershed organization, State~~
21 ~~agency, or other interested party may propose that a water quality project or~~

1 ~~program identified in a watershed basin plan receive funding from the Clean~~
2 ~~Water Fund~~ review and approve the cost-share for grant programs
3 administered by State agencies that fund work required by a permit.

4 (e) Priorities.

5 (4) In making recommendations under subsection (d) of this section
6 regarding the appropriate allocation of funds from the Clean Water Fund, the
7 Board shall prioritize in the following order:

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

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

14 (1) Funding the following grants and programs:

15 (A) grants to regional planning commissions to fund the reasonable
16 costs associated with the monitoring, operation, and maintenance of clean
17 water projects in their basin;

18 (B) funding to the Water Quality Remediation Formula Grant
19 Program as provided under subsection 924(a) of this title;

1 (C) funding to the Agency of Agriculture, Food, and Markets to
2 administer the Conservation Reserve Enhancement Program, Farm Agronomic
3 Practice Program, and Clean Water Initiative Partner Grant Program; and

4 (D) funding, not to exceed \$1,500,000.00, to implement Ecosystem
5 Restoration Grants as provided in subsection 924(b) of this title;

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

8 (A) fund State agency programs that are legally required by a permit;

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

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

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

19 ~~(F)~~(D) funding for innovative or alternative technologies or practices
20 designed to improve water quality or reduce sources of pollution to surface
21 waters, including funding for innovative nutrient removal technologies and

1 community-based methane digesters that utilize manure, wastewater, and food
2 residuals to produce energy;

3 (E) additional funding to implement the Ecosystem Restoration
4 Grants as provided in subsection 924(b) of this title; and

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

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

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

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

20 ~~(3) In developing its recommendations under subsection (d) of this~~
21 ~~section regarding the appropriate allocation of funds from the Clean Water~~

1 ~~Fund, the Board shall, after satisfaction of the priorities established under~~
2 ~~subdivision (1) of this subsection (e), attempt to provide investment in all~~
3 ~~watersheds of the State based on the needs identified in watershed basin plans.~~

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

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

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

16 * * *

17 (5) 10 V.S.A. chapter 37, relating to wetlands protection, water
18 restoration goals and targets, and water resources management;

19 * * *

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

21 § 4345a. DUTIES OF REGIONAL PLANNING COMMISSIONS

1 A regional planning commission created under this chapter shall:

2 * * *

3 (20)(A) Provide for the identification, prioritization, development,
4 construction, monitoring, operation, and maintenance of clean water projects in
5 the basin assigned to the regional planning commission in accordance with the
6 requirements of 10 V.S.A. chapter 37, subchapter 5 and in consultation with
7 the basin water quality advisory council established under section 4353 of this
8 title.

9 (B) When selecting projects, a regional planning commission shall
10 consider the pollutant targets provided by the Secretary and the basin plan for
11 the area where the project is located.

12 (C) For purposes of this section “clean water project” shall mean a
13 project designed to improve water quality to achieve a target established under
14 10 V.S.A. § 922, that is either not subject to a permit under 10 V.S.A. chapter
15 47 or subject to 6 V.S.A. chapter 215 or exceeds the requirements of a permit
16 issued under one of these chapter, and that is within the activities identified 10
17 V.S.A. § 923(e).

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

19 § 4353. BASIN WATER QUALITY ADVISORY COUNCIL

20 (a) A regional planning commission shall establish a basin water quality
21 advisory council for each basin assigned to it pursuant to 10 V.S.A. § 923(a).

1 The purpose of this council is to make recommendations to the regional
2 planning commission on identifying the most significant water quality
3 impairments that exist in the basin and prioritizing the projects that will
4 address those impairments.

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

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

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

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

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

17 (c) The regional planning commission and the basin planner from the
18 Agency of Natural Resources shall provide staff support to the council.

19 Sec. 8. EFFECTIVE DATE

20 This act shall take effect on July 1, 2019.

21

1

2 (Committee vote: _____)

3

4

Senator _____

5

FOR THE COMMITTEE