

1 S.258

2 Introduced by Senators Pearson and Pollina

3 Referred to Committee on Agriculture

4 Date: January 14, 2022

5 Subject: Agriculture; conservation and development; Required Agricultural
6 Practices; climate resiliency

7 Statement of purpose of bill as introduced: This bill proposes to require the
8 Secretary of Agriculture, Food and Markets to evaluate the sufficiency of the
9 Required Agricultural Practices (RAPs) to determine if the requirements and
10 practices under the RAPs are adequate to address increased and foreseeable
11 climate change-induced precipitation in a manner that protects soil resources
12 and prevents harmful or inefficient runoff of nutrient pollution to State waters.

13 ~~An act relating to amending the Required Agricultural Practices in order to~~
14 ~~address climate resiliency.~~

An act relating to agricultural water quality, enforcement, and dairy farming

15 It is hereby enacted by the General Assembly of the State of Vermont:

16 ~~Sec. 1. EVALUATION OF CLIMATE RESILIENCY UNDER THE~~
17 ~~REQUIRED AGRICULTURAL PRACTICES~~

18 (a) On or before August 1, 2022, the Secretary of Agriculture, Food and
19 markets shall initiate a public process to evaluate the sufficiency of the

1 ~~Required Agricultural Practices (RAPs) to determine if the requirements and~~
2 ~~practices under the RAPs are adequate to address increased and foreseeable~~
3 ~~climate change-induced precipitation in a manner that protects soil resources~~
4 ~~and prevents harmful or inefficient runoff of nutrient pollution to State waters.~~

5 ~~As part of the evaluation of the RAPs, the Secretary shall:~~

6 ~~(1) review RAP Section 3 and the activities and applicability of the~~
7 ~~RAPs, including whether farms that are currently exempt from the RAPs~~
8 ~~should be subject to the RAPs due to heavier and more localized weather~~
9 ~~events;~~

10 ~~(2) examine the requirements for certification of small farms under RAP~~
11 ~~Section 4 and whether the threshold for qualifying as a Certified Small Farm~~
12 ~~should be amended to include a smaller number of livestock;~~

13 ~~(3) evaluate the agricultural water quality training requirements under~~
14 ~~RAP Section 5 and whether the water quality training currently received by~~
15 ~~farmers adequately addresses the process and procedure of manure application~~
16 ~~that focusses on more frequent, intense heavy participation events; and~~

17 ~~(4) review the conditions, restrictions, and operating standards for~~
18 ~~agricultural activities under RAP Section 6 and whether:~~

19 ~~(A) intense precipitation events have resulted in or may result in~~
20 ~~more frequent or a higher volume of agricultural wastewater discharges that~~
21 ~~require additional management on farm fields,~~

1 ~~(B) requirements regarding the storage of manure and other~~
2 ~~agricultural wastes need to be adjusted to address increased climate change-~~
3 ~~induced precipitation;~~

4 ~~(C) standards or requirements for nutrient management planning,~~
5 ~~particularly nutrient application, need to be adjusted to address changes in~~
6 ~~precipitation;~~

7 ~~(D) soil management activities and retention practices should be~~
8 ~~altered to improve the response to heavy precipitation events in order to ensure~~
9 ~~soil health and limit erosion;~~

10 ~~(E) requirements for the use of cover crops are stringent enough to~~
11 ~~protect soils from erosion due to more frequent and intense flooding events;~~

12 ~~(F) standards and restrictions for manure application are adequate,~~
13 ~~particularly focusing on whether:~~

14 ~~(i) the seasonal ban on manure application is adequate or should~~
15 ~~be expanded;~~

16 ~~(ii) more stringent measures should be employed to address~~
17 ~~frequent flooding events from adjacent surface waters;~~

18 ~~(iii) the standards used to prevent nutrient application on lands~~
19 ~~subject to flooding, ponding, and other conditions are adequate; and~~

20 ~~(iv) the nutrient application limits of 100 feet from a private water~~
21 ~~supply and 200 feet from a public water supply are adequate to protect~~

1 ~~drinking water and public health from nutrient infiltration due to heavy~~
2 precipitation and more frequent flooding;

3 (G) the criteria and review process for seasonal and emergency
4 spreading exemptions are adequate and being followed rigorously by the
5 Agency of Agriculture, Food and Markets;

6 (H) the required vegetative buffers under the RAPs are adequate to
7 protect waters from increased surface runoff and whether a 25-foot buffer of
8 perennial vegetation that can be harvested provides adequate protection for
9 adjacent surface waters; and

10 (I) standards to stabilize the banks of surface waters are adequate to
11 account for more frequent and higher volume flooding events.

12 (b) During evaluation of the RAPs as directed under subsection (a) of this
13 section, the Secretary of Agriculture, Food and Markets shall conduct public
14 notice and comment and hold at least three public hearings in order to collect
15 public input regarding the sufficiency of the RAPs to address increased climate
16 change-induced precipitation events.

17 (c) On or before January 15, 2023, the Secretary of Agriculture, Food and
18 Markets shall submit to the Senate Committees on Agriculture and on Natural
19 Resources and Energy and the House Committees on Agriculture and Forestry
20 and on Natural Resources, Fish, and Wildlife the results or conclusions of the
21 evaluation required under subsection (a) of this section.

1 ~~(d) If after completion of the evaluation under subsection (a) of this section~~
2 ~~the Secretary of Agriculture, Food and Markets determines that the RAPs~~
3 ~~should be amended to improve application or response to increased climate~~
4 ~~change-induced precipitation, the Secretary shall initiate rulemaking under 3~~
5 ~~V.S.A. chapter 25 to amend the RAPs and protect the surface waters of the~~
6 ~~State. The Secretary shall adopt rules under this subsection not later than~~
7 ~~January 14, 2024.~~

8 Sec. 2. EFFECTIVE DATE

9 ~~This act shall take effect on passage.~~

Sec. 1. 6 V.S.A. § 23 is added to read:

§ 23. GOOD STANDING FOR AGENCY GRANTS

(a) As used in this section, “good standing” means an applicant for a grant exclusively awarded by the Agency:

(1) does not have an active enforcement violation that has reached a final order with the Secretary; and

(2) is in compliance with all terms of a current grant agreement or contract with the Agency.

(b) This section shall not amend, alter, or otherwise modify the “good standing” requirements established for grant programs in chapter 215 of this title.

(c) An applicant shall not be eligible for any grant exclusively awarded by the Agency unless the applicant is in good standing with the Secretary on all grant agreements, contract awards, and enforcement proceedings at the time of the grant award.

(d) In the Secretary’s sole discretion, the Agency may waive the grant prohibition in subsection (c) of this section if the Secretary determines that:

(1) the applicant is working constructively with the Agency in good faith to resolve all issues that prevent good standing, and the applicant agrees in writing to take all necessary measures to comply with good standing requirements within a described time period;

(2) all issues that prevent an applicant's good standing are minor and do not warrant ineligibility for the applicable grant; or

(3) the Secretary determines that waiving the good standing requirement is in the interests of justice.

(e) The good standing requirement only applies to grants exclusively awarded by the Agency. When the Agency is involved in administering other grants, the Agency may raise an applicant's lack of good standing for the awarding entity's consideration and review. The awarding entity may consider the applicant's lack of compliance when determining whether to award a grant.

Sec. 2. 6 V.S.A. § 4802(8) is amended to read:

(8) "Waste" or "agricultural waste" means material originating or emanating from a farm or imported onto a farm that is determined by the Secretary or the Secretary of Natural Resources to be harmful to the waters of the State, including: sediments; minerals, including heavy metals; plant nutrients; pesticides; organic wastes, including livestock waste, animal mortalities, compost, feed, and crop debris; waste oils; pathogenic bacteria and viruses; thermal pollution; silage runoff; untreated milk house waste; and any other farm waste as the term "waste" is defined in 10 V.S.A. § 1251(12).

Sec. 3. 6 V.S.A. § 4815 is amended to read:

§ 4815. WASTE STORAGE FACILITY

(a) No person shall construct a new waste storage facility or expand or modify a waste storage facility in existence on July 1, 2006 unless the facility meets the standard established for such facilities by the Natural Resources Conservation Service of the U.S. Department of Agriculture or an equivalent standard. If an equivalent design standard is used, the design and construction shall be certified by the Secretary of Agriculture, Food and Markets or a licensed professional engineer operating within the scope of his or her the engineer's expertise.

(b) The Secretary may require the owner or operator of a waste storage facility in existence on July 1, 2006, to modify the facility to meet the standard set forth in subsection (a) of this section if the facility poses a threat to human health or the environment as established by a violation of the State groundwater protection standards. If the Secretary determines that a facility that meets the standard set forth in subsection (a) of this section poses a threat to human health or the environment, the Secretary may require the owner or operator of the facility to implement additional management measures.

(c) The If the Secretary suspects that a waste storage facility may be

~~contaminating groundwater, the Secretary shall pay the costs of any initial groundwater monitoring conducted to determine if whether a facility poses a threat to human health or the environment shall be paid by the Secretary. Within 21 days of after a determination under this subsection that a facility poses a threat to human health or the environment because of apparent violation of the Groundwater Protection Standards, the Secretary of Agriculture, Food and Markets shall notify the Department of Health and the Secretary of Natural Resources of the location of the facility and the name of its owner or operator.~~

~~(e)(d) As used in this section, “waste storage facility” means an impoundment made for the purpose of storing agricultural waste by constructing an embankment, excavating a pit or dugout, fabricating an inground and aboveground structure, or any combination thereof.~~

~~Sec. 4. 6 V.S.A. § 4817 is amended to read:~~

~~§ 4817. MANAGEMENT OF NON-SEWAGE WASTE~~

~~(a) As used in this section:~~

~~(1) “Non-sewage waste” means any waste other than sewage that may contain organisms pathogenic to human beings but does not mean stormwater runoff.~~

~~(2) “Sewage” means waste containing human fecal coliform and other potential pathogenic organisms from sanitary waste and used water from any building, including carriage water and shower and wash water. “Sewage” shall does not mean stormwater runoff as that term is defined in 10 V.S.A. § 1264.~~

~~(b) The Secretary may require a person transporting or arranging for the transport of non-sewage waste to a farm for deposit in a manure pit or for use as an input in a methane digester to obtain approval from the Secretary prior to transporting the non-sewage waste to the farm. The Secretary may require a person to report to the Secretary at a designated time one or more of the following:~~

~~(1) the composition of the material transported to the farm, including the source of the material; and~~

~~(2) the volume of the material transported to a farm.~~

~~(c) After receipt of a report required under subsection (b) of this section, the Secretary may prohibit the import of non-sewage waste onto a farm upon a determination that the import of the material would violate the nutrient management plan for the farm or otherwise present a threat to water quality.~~

Sec. 5. *6 V.S.A. § 4827 is amended to read:*

§ 4827. NUTRIENT MANAGEMENT PLANNING; INCENTIVE GRANTS

(a) A farm developing or implementing a nutrient management plan under chapter 215 of this title or federal regulations may apply to the Secretary of Agriculture, Food and Markets for financial assistance. The financial assistance shall be in the form of incentive grants. Annually, after consultation with the Natural Resources Conservation Service of the U.S. Department of Agriculture, natural resources conservation districts, the University of Vermont Extension Service and others, the Secretary shall determine the average cost of developing and implementing a nutrient management plan in Vermont. The dollar amount of an incentive grant awarded under this section shall be equal to the average cost of developing a nutrient management plan as determined by the Secretary or the cost of complying with the nutrient management planning requirements of chapter 215 of this title or federal regulations, whichever is less.

(b) Application for a State assistance grant shall be made in a manner prescribed by the Secretary and shall include, at a minimum:

(1) an estimated cost of developing and implementing a nutrient management plan for the applicant;

(2) the amount of incentive grant requested; and

(3) a schedule for development and implementation of the nutrient management plan.

(c) The Secretary annually shall prepare a list of farms ranked, regardless of size, in priority order that have applied for an incentive grant under this section. The priority list shall be established according to factors that the Secretary determines are relevant to protect the quality of waters of the State, including:

(1) the proximity of a farm to a water listed as impaired for agricultural runoff, pathogens, phosphorus, or sediment by the Agency of Natural Resources;

(2) the proximity of a farm to an unimpaired water of the State;

(3) the proximity of a drinking water well to land where a farm applies manure; and

(4) the risk of discharge to waters of the State from the land application of manure by a farm.

(d) Assistance in accordance with this section shall be provided from State funds appropriated to the Agency of Agriculture, Food and Markets for

integrated crop management.

~~(e) If the Secretary or the applicable U.S. Department of Agriculture conservation programs lack adequate funds necessary for the financial assistance required by subsection (a) of this section, the requirement to develop and implement a nutrient management plan under State statute or State regulation shall be suspended until adequate funding becomes available. Suspension of a State-required nutrient management plan does not relieve an owner or operator of a farm permitted under section 4858 or 4851 of this title of the remaining requirements of a State permit, including discharge standards, groundwater protection, and land application of manure. This subsection does not apply to farms permitted under 10 V.S.A. § 1263.~~

~~(f) The Secretary may enter into grants with natural resources conservation districts, the University of Vermont Extension Service, and other persons and organizations to aid in the implementation of the incentive grants program under subsection (a) of this section and to assist farmers in the development and implementation of nutrient management plans. [Repealed.]~~

Sec. 6. 6 V.S.A. § 4828 is amended to read:

§ 4828. CAPITAL EQUIPMENT ASSISTANCE PROGRAM

(a) It is the purpose of this section to provide assistance to purchase or use innovative equipment that will aid in the reduction of surface runoff of agricultural wastes to State waters, improve water quality of State waters, reduce odors from manure application, separate phosphorus from manure, decrease greenhouse gas emissions, and reduce costs to farmers.

(b) The capital equipment assistance program is created in the Agency of Agriculture, Food and Markets to provide State financial assistance for the purchase of new or innovative equipment to ~~improve manure application, separation of phosphorus from manure, or nutrient management plan implementation~~ achieve the purposes of this section.

(c) Assistance under this section shall in each fiscal year be allocated according to the following priorities and as further defined by the Secretary. Priority shall be given to capital equipment to be used on multiple farms; equipment to be used for phosphorus reduction, separation, or treatment; equipment to be used to achieve the most significant or cost-effective benefits that advance the purposes of this section, including by reducing nitrogen runoff; and projects managed by nonprofit organizations that are located in descending order within the boundaries of:

- (1) the Lake Champlain Basin;
- (2) the Lake Memphremagog Basin;

(3) *the Connecticut River Basin; and*

(4) *the Hudson River Basin.*

(d) An applicant for a State grant under this section to purchase or implement phosphorus reduction, separation, or treatment technology or equipment shall pay 10 percent of the total eligible project cost. The dollar amount of a State grant to purchase or implement phosphorus reduction, separation, or treatment technology or equipment shall be equal to the total eligible project cost, less 10 percent of the total as paid by the applicant, and shall not exceed \$300,000.00.

Sec. 7. 6 V.S.A. § 4832 is amended to read:

§ 4832. FARM AGRONOMIC PRACTICES PROGRAM

~~(a)~~ The Farm Agronomic Practices Assistance Program is created in the Agency of Agriculture, Food and Markets to provide the farms of Vermont with State financial assistance for the implementation, including through education, training, or instruction, of soil-based practices that improve soil quality and nutrient retention, increase crop production, minimize erosion potential, and reduce agricultural waste discharges. The following practices may be eligible for assistance to farms under the grant program:

(1) conservation crop rotation;

(2) cover cropping;

(3) strip cropping;

(4) cross-slope tillage;

(5) zone or no-tillage;

(6) pre-sidedress nitrate tests; and

~~(7) annual maintenance of a nutrient management plan that is no longer receiving funding under a State or federal contract, provided the maximum assistance provided to a farmer under this subdivision shall be \$2,000.00 per year;~~

~~(8) educational and instructional activities to inform the farmers and citizens of Vermont of:~~

*~~(A) the impact on Vermont waters of agricultural waste discharges;~~
~~and~~*

~~(B) the federal and State requirements for controlling agricultural waste discharges;~~

~~(9) implementing alternative manure application techniques; and~~

~~(10) additional soil erosion reduction practices soil-based practices that improve soil quality and nutrient retention, increase crop production, minimize erosion potential, and reduce agricultural waste discharges.~~

~~(b) Funding available under section 4827 of this title for nutrient management planning may be used to fund practices under this section.~~

Sec. 8. 6 V.S.A. § 4852 is amended to read:

§ 4852. RULES

The Secretary may adopt rules pursuant to 3 V.S.A. chapter 25 concerning program administration, program enforcement, appeals and standards for waste management and waste storage, setbacks or siting criteria for new construction or expansion, groundwater contamination, odor, noise, traffic, insects, flies, and other pests in order to implement this subchapter. The siting criteria adopted by the Secretary by rule shall be consistent with the standards for the quality of State waters and standards for ~~acceptable~~ required agricultural practices pursuant to subchapter 2 of this chapter. The groundwater contamination rules adopted by the Secretary shall include a process under which the agency shall receive, investigate, and respond to a complaint that a farm has contaminated the drinking water or groundwater of a property owner.

~~§ 9. EXTENSION OF TASK FORCE TO REVITALIZE THE VERMONT DAIRY INDUSTRY~~

~~(a) Notwithstanding 2020 Acts and Resolves No. 129, Sec. 31(c)(6), the Task Force to Revitalize the Vermont Dairy Industry shall continue to exist and retain the authority granted to it in 2020 Acts and Resolves No. 129, Sec. 31 until February 1, 2023.~~

~~(b)(1) For attendance of a meeting of the Task Force to Revitalize the Vermont Dairy Industry during adjournment of the General Assembly between the effective date of this act and February 1, 2023, a legislative member of the Task Force shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for not more than 10 meetings. These payments shall be made from monies appropriated to the General Assembly.~~

~~(2) Other members of the Task Force that are not legislative members shall be entitled to both per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not more than 10 meetings. These payments shall be made from monies appropriated to the General Assembly.~~

*Sec. 9. EXTENSION OF TASK FORCE TO REVITALIZE THE
VERMONT DAIRY INDUSTRY*

(a)(1) Notwithstanding 2020 Acts and Resolves No. 129, Sec. 31(c)(6), the Task Force to Revitalize the Vermont Dairy Industry shall continue to exist and retain the authority granted to it in 2020 Acts and Resolves No. 129, Sec. 31 until February 1, 2023.

(2) The Task Force shall consist of:

(A) two members of the House of Representatives, appointed by the Speaker of the House;

(B) two members of the Senate, appointed by the Committee on Committees; and

(C) four nonlegislators with experience or knowledge of the Vermont dairy industry, two of whom shall be appointed by the Speaker of the House and two of whom shall be appointed by the Committee on Committees.

(b)(1) For attendance of a meeting of the Task Force to Revitalize the Vermont Dairy Industry during adjournment of the General Assembly between the effective date of this act and February 1, 2023, a legislative member of the Task Force shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for not more than 10 meetings. These payments shall be made from monies appropriated to the General Assembly.

(2) Other members of the Task Force that are not legislative members shall be entitled to both per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not more than 10 meetings. These payments shall be made from monies appropriated to the Agency of Agriculture, Food and Markets.

~~Sec. 10. *DEFINITIONS*~~

~~*This act shall take effect on passage.*~~

Sec. 10. 6 V.S.A. § 4802 is amended to read:

§ 4802. DEFINITIONS

As used in this chapter:

** * **

(2) "Farming" has the same meaning as used in 10 V.S.A. § 6001(22).

(3) "Good standing" means a participant in a program administered under this chapter:

(A) does not have an active enforcement violation that has reached a final order with the Secretary; and

(B) is in compliance with all terms of a current grant agreement or contract with the Agency.

* * *

(10) “Agricultural activities” means the operation and management of an entity engaged in farming, including all those activities defined as “farming” in this chapter, “agricultural activity” in 12 V.S.A. § 5752, and all of the following:

(A) selling agricultural products at roadside stands or farm markets;

(B) the generation of noise, odors, dust, fumes, and other associated conditions;

(C) the composting of material principally produced by the farm or to be used at least in part on the farm;

(D) the ditching and subsurface drainage of farm fields and the construction of farm ponds;

(E) the handling of livestock wastes and by-products;

(F) the operation of farm machinery and equipment, including irrigation and drainage systems, pumps, and on-farm grain dryers;

(G) the movement of farm vehicles, machinery, equipment, and products and associated inputs on the roadway;

(H) field preparation, crop protection, and ground and aerial seeding and spraying;

(I) the on-site storage and application of agricultural inputs, including lime, fertilizer, organic materials, conditioners, and pesticides;

(J) the use of alternative pest management techniques;

(K) the management, storage, transport, utilization, and application of farm by-products, including manure or agricultural wastes;

(L) the expansion of farming practices or agricultural activities on a farm, or the change or conversion of farming practices of agricultural activities to other farming practices of agricultural activities on a farm; and

(M) the employment, use, and housing of farm labor.

Sec. 11. 6 V.S.A. § 4818 is added to read:

§ 4818. FARMING; SCOPE OF ACTIVITIES

(a) As used to determine the scope of nuisance protection in 12 V.S.A. chapter 195, “agricultural activities” shall include “farming” as defined in this title.

(b) For purposes of the application of 12 V.S.A. § 5753, all “agricultural activities” defined in this chapter, subject to the limitations and requirements set forth in 12 V.S.A. § 5753, are entitled to the rebuttable presumption that they do not constitute a nuisance.

Sec. 12. 12 V.S.A. § 5752 is amended to read:

§ 5752. DEFINITIONS

For the purpose of this chapter, “agricultural activity” means, but is not limited to:

(1) the cultivation or other use of land for producing food, fiber, Christmas trees, maple sap, or horticultural and orchard crops; the raising, feeding, or management of domestic animals as defined in 6 V.S.A. § 1151 or bees; the operation of greenhouses; the production of maple syrup; the on-site storage, preparation, and sale of agricultural products principally produced on the farm; and the on-site production of fuel or power from agricultural products or wastes principally produced on the farm;

(2) the preparation, tilling, fertilization, planting, protection, irrigation, and harvesting of crops; the composting of material principally produced by the farm or to be used at least in part on the farm; the ditching and subsurface drainage of farm fields and the construction of farm ponds; the handling of livestock wastes and by-products; and the on-site storage and application of agricultural inputs, including lime, fertilizer, and pesticides;

(3) “farming” as defined in 10 V.S.A. § 6001; and

(4) “agricultural” activities as defined in 6 V.S.A. § 4802.

Sec. 13. EFFECTIVE DATE

This act shall take effect on passage.