

1 H.509

2 Introduced by Representative Deen of Westminster

3 Referred to Committee on

4 Date:

5 Subject: Conservation; water resources; Lake Champlain; total maximum
6 daily load plan

7 Statement of purpose: This bill proposes to amend requirements for
8 agricultural water quality and stormwater control in order to aid in the
9 reduction of phosphorus pollution to Lake Champlain. The bill would provide
10 that livestock exclusion fencing is eligible for state financial assistance to
11 farmers. The bill would also authorize alternative manure application as an
12 eligible activity under the state's farm agronomic practice program. The bill
13 would also expand the Vermont agricultural buffer program to apply to
14 intermittent streams. The bill would also direct the Vermont housing and
15 conservation board to maximize state participation in the federal wetlands
16 reserve program when seeking funding to protect and preserve farmland. In
17 addition, the bill would require the agency of transportation to adopt water
18 quality best management practices for highway construction, maintenance, and
19 repair. Implementation of these best management practices by a municipality
20 would be a requirement for receipt of state highway funding.

An act relating to pollution control measures for Lake Champlain and the other waters of the state ~~An act relating to pollution control measures for Lake Champlain~~

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

2 ~~Sec. 1. 6 V.S.A. § 4821(a) is amended to read:~~

3 ~~(a) Program created. A program is created to provide state financial~~
4 ~~assistance to Vermont farmers in support of their voluntary construction of~~
5 ~~on-farm improvements and maintenance of acceptable operating standards~~
6 ~~designed to abate nonpoint source agricultural waste discharges into the waters~~
7 ~~of the state of Vermont, consistent with goals of the federal Water Pollution~~
8 ~~Control Act and with state water quality standards. The program shall be~~
9 ~~conducted in a manner which makes maximum use of federal financial aid for~~
10 ~~the same purpose, as provided by this subchapter, and which seeks to use the~~
11 ~~least costly methods available to accomplish the abatement required. The~~
12 ~~construction of temporary fencing intended to exclude livestock from entering~~
13 ~~surface waters of the state shall be an on-farm improvement eligible for~~
14 ~~assistance under this subchapter when subject to a maintenance agreement~~
15 ~~entered into with the agency of agriculture, food and markets.~~

16 Sec. 2. 6 V.S.A. § 4900 is amended to read:

17 § 4900. VERMONT AGRICULTURAL BUFFER PROGRAM

18 (a) The secretary of agriculture, food and markets is authorized to develop
19 a Vermont agricultural buffer program in addition to the federal conservation
20 ~~reserve enhancement program in order to compensate farmers for establishing~~

1 ~~and maintaining harvestable perennial vegetative buffers and installing~~
2 ~~conservation practices in ditch networks on annual cropland agricultural land~~
3 adjacent to the surface waters of the state.

4 (b) The establishment and annual incentive payments from the agency of
5 agriculture, food and markets under the Vermont agricultural buffer program
6 shall not exceed 40 percent of the combined federal and state payment that the
7 relevant ~~cropland~~ agricultural land or conservation practice would be eligible
8 for under the federal conservation reserve enhancement program or approved
9 conservation practices. The incentive payment shall be made annually at the
10 end of the cropping season for a nonrenewable five-year period.

11 (c) The secretary of agriculture, food and markets may establish by
12 procedure financial and technical criteria for the implementation and operation
13 of the Vermont agricultural buffer program.

14 (d) Land enrolled in the Vermont agricultural buffer program shall be
15 considered to be in "active use" as that term is defined in 32 V.S.A.
16 § 3752(15).

17 (e) As used in this section, "surface waters" means all rivers, streams,
18 ditches, creeks, brooks, reservoirs, ponds, lakes, and springs which are
19 contained within, flow through, or border upon the state or any portion of it.
20 Surface waters shall include intermittent streams, creeks, and brooks that have
21 a defined channel and evidence of water and sediment transport, even if such

1 ~~watercourses do not have surface water flow throughout the year or throughout~~
2 ~~the channel.~~

3 Sec. 3. 6 V.S.A. § 4951 is amended to read:

4 § 4951. FARM AGRONOMIC PRACTICES PROGRAM

5 (a) The farm agronomic practices assistance program is created in the
6 agency of agriculture, food and markets to provide the farms of Vermont with
7 state financial assistance for the implementation of soil-based practices that
8 improve soil quality and nutrient retention, increase crop production, minimize
9 erosion potential, and reduce agricultural waste discharges. The following
10 practices shall be eligible for assistance to farms under the grant program:

- 11 (1) conservation crop rotation;
- 12 (2) cover cropping;
- 13 (3) strip cropping;
- 14 (4) cross-slope tillage;
- 15 (5) zone or no-tillage;
- 16 (6) pre-sidedress nitrate tests;
- 17 (7) annual maintenance of a nutrient management plan that is no longer
18 receiving funding under a state or federal contract, provided the maximum
19 assistance provided to a farmer under this subdivision shall be \$1,000.00 per
20 year; and

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

3 (A) the impact on Vermont waters of agricultural waste discharges;

4 (B) the federal and state requirements for controlling agricultural
5 waste discharges;

6 (9) implementing alternative manure application techniques; and

7 (10) additional soil erosion reduction practices.

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

10 Sec. 4. 10 V.S.A. § 321(d) is amended to read:

11 (d) On behalf of the state of Vermont, the board shall seek and administer
12 federal farmland protection funds to facilitate the acquisition of interests in
13 land to protect and preserve in perpetuity important farmland for future
14 agricultural use. Such funds shall be used to implement and effectuate the
15 policies and purposes of this chapter. In seeking federal farmland protection
16 funds under this subsection, the board shall seek to maximize state
17 participation in the federal wetlands reserve program in order to allow for
18 increased or additional implementation of conservation practices on farmland
19 protected or preserved under this chapter.

1 ~~Sec. 5. 10 V.S.A. § 1021(a) is amended to read:~~

2 (a) A person shall not change, alter, or modify the course, current, or
3 cross-section of any watercourse ~~with a drainage area greater than ten square~~
4 ~~miles at the location of the proposed change, alteration or modification,~~ or of
5 designated outstanding resource waters, within or along the boundaries of this
6 state either by movement, fill, or by excavation of ten cubic yards or more in
7 any year, unless authorized by the secretary.

8 Sec. 6. 19 V.S.A. § 996 is added to read:

9 § 996. HIGHWAY CONSTRUCTION, MAINTENANCE, AND REPAIR

10 BEST MANAGEMENT PRACTICES

11 The agency of transportation, as approved by the agency of natural
12 resources, shall adopt by rule best management practices to be followed by the
13 agency of transportation and towns in the construction, maintenance, and
14 repair of state and town highways. These best management practices shall
15 address activities which have a potential for causing pollutants to enter the
16 groundwater and waters of the state, including stormwater runoff and direct
17 discharges to state waters. Best management practices shall be practical and
18 cost-effective to implement.

1 ~~Sec. 7. 19 V.S.A. § 308 is amended to read:~~

2 ~~§ 308. COMPLIANCE WITH PROVISIONS~~

3 ~~A town shall not be entitled to receive money from the state under this~~
4 ~~chapter in any year until it has complied with the provisions of this chapter and~~
5 ~~the best management practices adopted by the agency under section 996 of this~~
6 ~~title.~~

7 ~~Sec. 8. EFFECTIVE DATES~~

8 ~~(a) This section and Secs. 1 (livestock fencing; best management practices),~~
9 ~~2 (Vermont agricultural buffer program), 3 (farm agronomic practices~~
10 ~~program) and 4 (VHCB; agricultural land preservation) of this act shall take~~
11 ~~effect upon passage.~~

12 ~~(b) Secs. 5 (stream alteration permits) and 6 (agency of transportation best~~
13 ~~management practices) of this act shall take effect July 1, 2010.~~

14 ~~(c) Sec. 7 (municipal compliance with agency of transportation best~~
15 ~~management practices) of this act shall take effect July 1, 2011.~~

Sec. 1. 6 V.S.A. § 4821(a) is amended to read:

(a) Program created. A program is created to provide state financial assistance to Vermont farmers in support of their voluntary construction of on-farm improvements and maintenance of acceptable operating standards designed to abate nonpoint source agricultural waste discharges into the waters of the state of Vermont, consistent with goals of the federal Water Pollution Control Act and with state water quality standards. The program shall be conducted in a manner which makes maximum use of federal financial aid for the same purpose, as provided by this subchapter, and which seeks to use the least costly methods available to accomplish the abatement required. The construction of temporary fencing intended to exclude livestock from entering surface waters of the state shall be an on-farm improvement eligible

for assistance under this subchapter when subject to a maintenance agreement entered into with the agency of agriculture, food and markets.

Sec. 2. 6 V.S.A. § 4900 is amended to read:

§ 4900. VERMONT AGRICULTURAL BUFFER PROGRAM

(a) The secretary of agriculture, food and markets is authorized to develop a Vermont agricultural buffer program in addition to the federal conservation reserve enhancement program in order to compensate farmers for establishing and maintaining harvestable perennial vegetative buffers and installing conservation practices in ditch networks on ~~annual cropland~~ agricultural land adjacent to the surface waters of the state.

(b) The establishment and annual incentive payments from the agency of agriculture, food and markets under the Vermont agricultural buffer program shall not exceed ~~40 percent~~ of the combined federal and state payment that the relevant ~~cropland~~ agricultural land or conservation practice would be eligible for under the federal conservation reserve enhancement program or another approved conservation program. The incentive payment shall be made annually at the end of the cropping season for a nonrenewable five-year period.

(c) The secretary of agriculture, food and markets may establish by procedure financial and technical criteria for the implementation and operation of the Vermont agricultural buffer program.

(d) Land enrolled in the Vermont agricultural buffer program shall be considered to be in "active use" as that term is defined in 32 V.S.A. § 3752(15).

(e) As used in this section, "surface waters" means all rivers, streams, ditches, creeks, brooks, reservoirs, ponds, lakes, and springs which are contained within, flow through, or border upon the state or any portion of it.

Sec. 3. 6 V.S.A. § 4951 is amended to read:

§ 4951. 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 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 shall 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;*

(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 \$1,000.00 per year; ~~and~~*

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

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

(B) *the federal and state requirements for controlling agricultural waste discharges;*

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

(10) *additional soil erosion reduction practices.*

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

Sec. 4. 10 V.S.A. § 321(d) is amended to read:

(d) On behalf of the state of Vermont, the board shall seek and administer federal farmland protection funds to facilitate the acquisition of interests in land to protect and preserve in perpetuity important farmland for future agricultural use. Such funds shall be used to implement and effectuate the policies and purposes of this chapter. In seeking federal farmland protection funds under this subsection, the board shall seek to maximize state participation in the federal wetlands reserve program in order to allow for increased or additional implementation of conservation practices on farmland protected or preserved under this chapter.

Sec. 5. 10 V.S.A. § 1002 is amended to read:

§ 1002. DEFINITIONS

Wherever used or referred to in this chapter, unless a different meaning clearly appears from the context:

* * *

(10) “Watercourse” means any ~~depression two feet or more below the elevation of surrounding land serving to give direction to a current or flow of water having a bed and well-defined bank~~ perennial stream. “Watercourse”

shall not include ditches or other constructed channels primarily associated with land drainage or water conveyance through or around private or public infrastructure.

Sec. 6. 10 V.S.A. § 1021(a) is amended to read:

(a) A person shall not change, alter, or modify the course, current, or cross-section of any watercourse ~~with a drainage area greater than ten square miles at the location of the proposed change, alteration or modification,~~ or of designated outstanding resource waters, within or along the boundaries of this state either by movement, fill, or by excavation of ten cubic yards or more in any year, unless authorized by the secretary.

Sec. 7. 10 V.S.A. § 7501 is amended to read:

§ 7501. GENERAL PERMITS

(a) When the secretary deems it to be appropriate and consistent with the purpose of this chapter, the secretary may issue a general permit under the following chapters of this title: chapter 23 (air pollution control) for stationary source construction permits; chapter 37 (water resources management) for aquatic nuisance control permits authorizing chemical treatment by the agency of natural resources, a department within that agency, or an appropriate federal agency; chapter 56 (public water supply) for construction permits; ~~and~~ chapter 159 (waste management) for solid waste transfer station and recycling certifications and categorical certifications; and chapter 41 (regulation of stream flow) for stream alteration permits.

(b) A general permit issued under this chapter shall contain those terms and conditions necessary to ensure that the category or class subject to the general permit will comply with the provisions of the statutes and the rules adopted under those statutes applicable to the category or class. These terms and conditions may include providing for specific emission or effluent limitations and levels of treatment technology; monitoring, recording, or reporting; the right of access for the secretary; and any additional conditions or requirements the secretary deems necessary to protect human health and the environment.

(c) This chapter is in addition to any other authority granted to the agency or department.

(d) The secretary may adopt rules to implement this chapter.

(e) The secretary may issue a nonreporting general permit for certain specific stream alteration activities under chapter 41 of this title.

*Sec. 8. ANR REPORT ON GENERAL PERMIT PROGRAM FOR STREAM
ALTERATION*

(a) On or before January 15, 2011, the secretary of natural resources shall report to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy regarding a proposed general permit program for stream alteration under chapter 41 of Title 10.

(b) The report required under subsection (a) of this section shall:

(1) Define the thresholds, classes of activities, or other categories of activities that will be regulated under the general permit program.

(2) Summarize the requirements or management practices that stream alteration activities will be subject to under a general permit, including whether any activity or class of activities will be subject to a nonreporting general permit.

(3) Summarize the scientific basis for the thresholds, classes of activities, or categories of activities regulated under the proposed general permit program.

Sec. 9. 19 V.S.A. § 996 is added to read:

§ 996. HIGHWAY CONSTRUCTION, MAINTENANCE, AND REPAIR
BEST MANAGEMENT PRACTICES

(a) The agency of transportation shall work with municipal representatives to revise the agency of transportation's town and bridge standards in order to incorporate a suite of practical and cost-effective best management practices, as approved by the agency of natural resources, for the construction, maintenance, and repair of all existing and future state and town highways. These best management practices shall address activities which have a potential for causing pollutants to enter the groundwater and waters of the state, including stormwater runoff and direct discharges to state waters. The best management practices shall not supersede any requirements for stormwater management already set forth in 10 V.S.A. §§ 1264 and 1264a that apply to state and town highways. The agency of transportation shall report to the house and senate committees on transportation, the house committee on fish, wildlife and water resources, and the senate committee on natural resources and energy by January 15, 2011, the best management practices to be incorporated into the agency of transportation's town and bridge standards.

(b) Beginning January 15, 2013, and every four years thereafter, the secretary in consultation with municipal representatives and with approval from the agency of natural resources, shall review and revise, as appropriate,

town road and bridge standards in order to ensure the standards are protective of water quality.

Sec. 10. 19 V.S.A. § 309b is amended to read:

§ 309b. LOCAL MATCH; CERTAIN TOWN HIGHWAY PROGRAMS

(a) Notwithstanding subsection 309a(a) of this title, grants provided to towns under the town highway structures program shall be matched by local funds sufficient to cover 20 percent of the project costs, unless the town has adopted road and bridge standards ~~and~~ has completed a network inventory, and has submitted an annual certification of compliance for town road and bridge standards to the secretary, in which event, the local match shall be sufficient to cover 10 percent of the project costs. The secretary may adopt rules to implement the town highway structures program. Town highway structures projects receiving funds pursuant to this subsection shall be the responsibility of the applicant municipality.

(b) Notwithstanding subsection 309a(a) of this title, grants provided to towns under the class 2 town highway roadway program shall be matched by local funds sufficient to cover 30 percent of the project costs, unless the town has adopted road and bridge standards ~~and~~ has completed a network inventory, and has submitted an annual certification of compliance for town road and bridge standards to the secretary, in which event, the local match shall be sufficient to cover 20 percent of the project costs. The secretary may adopt rules to implement the class 2 town highway roadway program. Class 2 town highway roadway projects receiving funds pursuant to this subsection shall be the responsibility of the applicant municipality, and a municipality shall not receive a grant in excess of \$175,000.00.

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**Sec. 11. REPEAL OF SUNSET OF VERMONT AGRICULTURAL
BUFFER PROGRAM**

Sec. 56 of No. 147 of the Acts of the 2005 Adj. Sess. (2006) (sunset on Vermont agricultural buffer program) is repealed.

Sec. 12. Sec. 14 of No. 31 of the Acts of 2009 is amended to read:

Sec. 14. EFFECTIVE DATE

(a) This section and Secs. 1 (findings), 12 (ANR wetlands report), and 13 (Bristol Pond) of this act shall take effect July 1, 2009.

(b) Secs. 2 (retitling 10 V.S.A. chapter 37), 3 (wetlands definitions), 4 (ANR wetlands authority), 5 (wetlands permitting), 6 (recodification of aquatic nuisance control authority), 7 (water resources panel rulemaking authority), 8

(ANR enforcement authority), 9 (appeals), and 10 (marketability of title), ~~and 11 (transition)~~ of this act shall take effect 45 days after such time as the water resources panel has issued both a rule updating the Vermont significant wetlands inventory maps and a rule updating the Vermont wetland rules.

(c) Sec. 11 (transition) of this act shall take effect January 1, 2010.

Sec. 13. EFFECTIVE DATES

(a) This section and Secs. 1 (livestock fencing; best management practices), 2 (Vermont agricultural buffer program), 3 (farm agronomic practices program), 4 (VHCB; agricultural land preservation), 8 (ANR report on general permit program), 9 (agency of transportation best management practices), 11 (repeal of sunset on Vermont agricultural buffer program), and 12 (effective date of wetlands transition) of this act shall take effect upon passage.

(b) Secs. 5 (definition of watercourse) and 6 (stream alteration permits) of this act shall take effect March 31, 2011.

(c) Sec. 7 (ANR general permit authority) of this act shall take effect February 15, 2011.

(d) Sec. 10 (local match town highway programs) of this act shall take effect July 1, 2011.