

1 H.779

2 Introduced by Committee on Fish, Wildlife and Water Resources

3 Date:

4 Subject: Conservation; water resources; water quality

5 Statement of purpose: This bill proposes to require the secretary of natural  
6 resources to submit a report to the general assembly regarding how to enhance,  
7 implement, and fund programs to improve the water quality of state surface  
8 waters. The bill would also transfer the rulemaking authority of the water  
9 resources panel of the natural resources board to the agency of natural  
10 resources.

11 An act relating to the water quality of state surface waters

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

13 \* \* \* ANR Report on State Water Quality Programs \* \* \*

14 Sec. 1. AGENCY OF NATURAL RESOURCES WATER QUALITY

15 REMEDIATION, IMPLEMENTATION, AND FUNDING REPORT

16 (a) Findings. The general assembly finds and declares that:

17 (1) Clean water is a key factor in Vermont's quality of life.

18 (2) Preserving, protecting, and restoring the water quality of surface

19 waters are necessary for the clean water, recreation, economic opportunity,

20 wildlife habitat, and ecological value that such waters provide.

1           (3) Restoring and maintaining river corridor, floodplain, lakeshore,  
2 wildlife habitat, and wetland functions serve to protect water quality and  
3 reduce the risk of flood hazards.

4           (4) The state and its regulatory agencies currently are subject to multiple  
5 requirements to respond to, remediate, and prevent water quality problems in  
6 the state, including the following:

7           (A) The federal Clean Water Act requires a total maximum daily load  
8 (TMDL) plan for impaired waters. Lake Champlain is impaired due to  
9 phosphorus pollution that exceeds the Vermont water quality standards. The  
10 U.S. Environmental Protection Agency (EPA) recently disapproved the Lake  
11 Champlain phosphorus TMDL. Consequently, the state will be required to  
12 amend the TMDL implementation plan in order to incorporate additional water  
13 quality measures and controls.

14           (B) The EPA likely will require the state to meet certain pollution  
15 control requirements for nitrogen in the Connecticut River as part of the Long  
16 Island Sound TMDL.

17           (C) The state is required to implement federally required TMDLs for  
18 15 stormwater-impaired waters in the state.

19           (D) All waters of the state are at risk of pollution or impairment, and  
20 under state and federal law, the state is required to prevent impairment or  
21 degradation of these waters.

1           (5) Responding to the multiple water quality requirements to which the  
2           state is subject will require significant funding, but the state currently lacks the  
3           funding necessary to respond adequately and in a timely way to the demands  
4           for remediation and water quality protection.

5           (6) The development of a statewide mechanism, such as a statewide  
6           clean water utility, is necessary to address regulatory demands and to prioritize  
7           investment in water quality projects throughout the state so that the protection  
8           and improvement of water quality is achieved in the most cost-effective  
9           manner.

10           (7) In order to identify how the state should respond to existing and  
11           future demands to remediate and protect state surface waters, the secretary of  
12           natural resources should submit to the general assembly recommendations for  
13           addressing and funding the multiple water quality requirements to which the  
14           state is subject.

15           (b) Report requirement. On or before December 15, 2012, the secretary of  
16           natural resources shall report to the house committee on fish, wildlife and  
17           water resources, the house and senate committees on natural resources and  
18           energy, the house and senate committees on agriculture, and the house and  
19           senate committees on transportation with recommendations on how to  
20           remediate or improve the water quality of the state's surface waters, how to

1 implement remediation or improvement of water quality, and how to fund the  
2 remediation or improvement of water quality.

3 (c) Content of report. In the report required by this section, the secretary  
4 shall recommend:

5 (1) Funding. How to fund statewide and localized water quality  
6 remediation and conservation efforts. The secretary shall recommend funding  
7 sources or a funding mechanism or mechanisms for ongoing water quality  
8 efforts in the state. The recommendation shall address whether the state should  
9 implement a statewide assessment or fee, such as a clean water utility fee, an  
10 impervious surface fee, a Clean Water Act § 401 (33 U.S.C. § 1341)  
11 certification fee, impact fees, or other fees or charges.

12 (2) Administration. How to design, implement, and administer water  
13 quality programs in the state, including whether:

14 (A) a statewide clean water utility or similar statewide mechanism  
15 should be established to address water quality in the state;

16 (B) implementation of a statewide clean water utility or similar  
17 statewide mechanism is more suitable for an independent, nongovernmental  
18 entity and, if so:

19 (i) how an independent, nongovernmental entity would be  
20 established and administered; and

1           (ii) whether such an entity would need rulemaking authority in  
2 order to effectively operate and implement a water quality program.

3           (C) water quality programs could be effectively implemented through  
4 regional water quality utilities or similar mechanisms currently authorized  
5 under 24 V.S.A. chapters 105 and 121.

6           (3) Priority award. How available water quality funds should be  
7 allocated, including:

8           (A) whether funds should be allocated according to a science-based  
9 system that prioritizes awards to projects or programs in areas of high risk of  
10 pollution in impaired, unimpaired, or high quality waters.

11           (B) whether funds should be available for the development,  
12 accommodation, or planning of municipal or regional water quality utilities or  
13 mechanisms authorized under 24 V.S.A. chapters 105 and 121.

14           (C) how to best achieve regional equity in the distribution of water  
15 quality funds.

16           (D) whether additional priority points should be awarded to certain  
17 water quality projects eligible for funding from the special environmental  
18 revolving fund under 24 V.S.A. chapter 120.

19           (4) Agricultural water quality. After consultation with the secretary of  
20 agriculture, food and markets and the agricultural community, how regulation  
21 of agricultural runoff and application of water quality standards to agricultural

1 operations should be implemented, including whether additional requirements,  
2 standards, technical assistance, or financial assistance is necessary to increase  
3 compliance with AAPs and whether the AAPs should be amended to require  
4 all small farms or a subset of small farms to apply nutrients according to a  
5 nutrient management plan or at a more stringent soil loss tolerance than is  
6 currently required.

7 (5) Urban water quality. How regulation of stormwater runoff should be  
8 managed and enforced in order to meet the Vermont water quality standards  
9 and whether additional requirements, standards, technical assistance, or  
10 financial assistance are necessary to improve the management of stormwater  
11 runoff in the state.

12 (6) Lake shoreland protection. How the state should work toward the  
13 restoration and protection of shorelands of lakes, including how the state  
14 should regulate development in shorelands of lakes, including whether the state  
15 should enact statewide regulation for activities within shorelands of lakes and  
16 whether any regulation of activities within shorelands should be based on  
17 site-specific criteria.

18 (7)(A) Critical source areas. How to respond to and remediate nutrient  
19 pollution from critical source areas. The recommendations shall:

20 (i) address how to define and identify critical source areas  
21 statewide, including the Lake Champlain Basin;

1           (ii) propose a process and provide a cost estimate for developing  
2 site-specific implementation plans to reduce discharges from critical source  
3 areas and shall summarize how tactical basin planning will be utilized in such a  
4 process.

5           (B) As used in this subdivision (7), “critical source area” means an  
6 area in a watershed with high potential for the release, discharge, or runoff of  
7 nutrients or pollutants to the waters of the state.

8           (8) Response plans or mechanism. A plan or mechanism for prioritizing  
9 state response to and remediation of water quality concerns or impairments in  
10 identified waters or watersheds, such as St. Albans Bay, including how to  
11 prioritize available funding or staffing in a manner that allows discrete water  
12 quality issues to be addressed and remediated.

13           (9) Implementation plan. How the recommendations or plans required  
14 under subdivisions (1) through (8) of this subsection will be implemented.

15           (d) Conduct of report; consultation. In developing the recommendations  
16 required by subsection (c) of this section, the secretary of the agency of natural  
17 resources shall consult with interested parties for guidance, including but not  
18 limited to: the secretary of transportation or his or her designee; the secretary  
19 of agriculture, food and markets or his or her designee; the chair of the natural  
20 resources board or his or her designee; legislators and legislative staff;  
21 representatives of environmental groups; representatives of municipalities or

1 municipal interests; representatives of municipalities subject to the federal  
2 Clean Water Act requirements for discharges from municipal separate storm  
3 sewer systems; representatives of the agricultural community; representatives  
4 of the business community; representatives of municipal stormwater utilities or  
5 other municipal stormwater controls; representatives of engineering or  
6 consulting firms; and other interested persons or organizations relevant to  
7 completion of the report. The secretary shall warn any meeting with interested  
8 parties in fulfillment of this section by posting a notice of such a meeting to the  
9 website of the agency of natural resources no later than seven days before the  
10 meeting.

11 (e) Format of report to general assembly. The report to the general  
12 assembly required by this section shall address each of the report requirements  
13 of subsection (c) of this section and may, as part of the report, include  
14 recommended draft legislation.

15 \* \* \* ANR Rulemaking Authority \* \* \*

16 Sec. 2. 10 V.S.A. § 905b is amended to read:

17 § 905b. DUTIES; POWERS

18 The department shall protect and manage the water resources of the state in  
19 accordance with the provisions of this subchapter and shall:

20 \* \* \*



1           (18) study and investigate the wetlands of the state and cooperate with  
2 municipalities, the general public, other agencies, and the board in collecting  
3 and compiling data relating to wetlands, propose to the board specific wetlands  
4 to be designated as Class I wetlands, issue or deny permits pursuant to section  
5 6025 of this title and the rules ~~of the panel~~ authorized by this subdivision, issue  
6 wetland determinations pursuant to section 914 of this title, issue orders  
7 pursuant to section 1272 of this title, and ~~implement the rules adopted by the~~  
8 ~~board governing significant wetlands~~ in accordance with 3 V.S.A. chapter 25,  
9 adopt rules to address the following:

10           (A) the identification of wetlands that are so significant they merit  
11 protection. Any determination that a particular wetland is significant will  
12 result from an evaluation of at least the following functions and values which a  
13 wetland serves:

14           (i) provides temporary water storage for flood water and storm  
15 runoff;

16           (ii) contributes to the quality of surface and groundwater through  
17 chemical action;

18           (iii) naturally controls the effects of erosion and runoff, filtering  
19 silt, and organic matter;

20           (iv) contributes to the viability of fisheries by providing spawning,  
21 feeding, and general habitat for freshwater fish;

1           (v) provides habitat for breeding, feeding, resting, and shelter to  
2 both game and nongame species of wildlife;

3           (vi) provides stopover habitat for migratory birds;

4           (vii) contributes to an exemplary wetland natural community, in  
5 accordance with the rules of the secretary;

6           (viii) provides for threatened and endangered species habitat;

7           (ix) provides valuable resources for education and research in  
8 natural sciences;

9           (x) provides direct and indirect recreational value and substantial  
10 economic benefits; and

11           (xi) contributes to the open-space character and overall beauty of  
12 the landscape;

13           (B) the ability to reclassify wetlands, in general, or on a case-by-case  
14 basis;

15           (C) the protection of wetlands that have been determined under  
16 subdivision (A) or (B) of this subdivision (18) to be significant, including rules  
17 that provide for the issuance or denial of permits and the issuance of wetland  
18 determinations by the department under this chapter; provided, however, that  
19 the rules may only protect the values and functions sought to be preserved by  
20 the designation. The department shall not adopt rules that restrain agricultural  
21 activities without the consent of the secretary of agriculture, food and markets

1 and shall not adopt rules that restrain silvicultural activities without the consent  
2 of the commissioner of forests, parks and recreation;

3 \* \* \*

4 Sec. 3. 10 V.S.A. § 1252 is amended to read:

5 § 1252. CLASSIFICATION OF WATERS; MIXING ZONES

6 \* \* \*

7 (b) The secretary may establish mixing zones or waste management zones  
8 as necessary in the issuance of a permit in accordance with this section and  
9 criteria established by board rule. ~~The board shall adopt these rules by July 1,~~  
10 ~~1994.~~ Those waters authorized under this chapter, as of July 1, 1992, to  
11 receive the direct discharge of wastes which prior to treatment contained  
12 organisms pathogenic to human beings are designated waste management  
13 zones for those discharges. Those waters that as of July 1, 1992 are Class C  
14 waters into which no direct discharge of wastes that prior to treatment  
15 contained organisms pathogenic to human beings is authorized, shall become  
16 waste management zones for any municipality in which the waters are located  
17 that qualifies for a discharge permit under this chapter for those wastes prior to  
18 July 1, 1997.

19 \* \* \*

20 (e) ~~The board~~ secretary shall adopt standards of water quality to achieve the  
21 purposes of the water classifications. Such standards shall be expressed in

1 detailed water quality criteria, taking into account the available data and the  
2 effect of these criteria on existing activities, using as appropriate:  
3 (1) numerical values, (2) biological parameters; and (3) narrative descriptions.  
4 These standards shall establish limits for at least the following: alkalinity,  
5 ammonia, chlorine, fecal coliform, color, nitrates, oil and grease, dissolved  
6 oxygen, pH, phosphorus, temperature, all toxic substances for which the  
7 United States Environmental Protection Agency has established criteria values  
8 and any other water quality parameters deemed necessary by the board.

9 (f) The ~~board~~ secretary may issue declaratory rulings regarding these  
10 standards.

11 \* \* \*

12 Sec. 4. 10 V.S.A. § 1253 is amended to read:

13 § 1253. CLASSIFICATION OF WATERS DESIGNATED,  
14 RECLASSIFICATION

15 \* \* \*

16 (c) On its own motion, or on receipt of a written request that the ~~board~~  
17 secretary adopt, amend, or repeal a reclassification rule, the ~~board~~ secretary  
18 shall comply with 3 V.S.A. § 806 and may initiate a rulemaking proceeding to  
19 reclassify all or any portion of the affected waters in the public interest. In the  
20 course of this proceeding, the ~~board~~ secretary shall comply with the provisions  
21 of 3 V.S.A. chapter 25, and may hold a public hearing convenient to the waters

1 in question. If the ~~board~~ secretary finds that the established classification is  
2 contrary to the public interest and that reclassification is in the public interest,  
3 ~~if he or she~~ shall file a final proposal of reclassification in accordance with  
4 3 V.S.A. § 841. If the ~~board~~ secretary finds that it is in the public interest to  
5 change the classification of any pond, lake or reservoir designated as Class A  
6 waters by subsection (a) of this section, ~~if the secretary~~ shall so advise and  
7 consult with the department of health and shall provide in its reclassification  
8 rule a reasonable period of time before the rule becomes effective. During that  
9 time, any municipalities or persons whose water supply is affected shall  
10 construct filtration and disinfection facilities or convert to a new source of  
11 water supply.

12 (d) The ~~board~~ secretary shall determine what degree of water quality and  
13 classification should be obtained and maintained for those waters not classified  
14 by ~~if the board~~ before 1981 following the procedures in sections 1254 and 1258  
15 of this title. Those waters shall be classified in the public interest. The  
16 secretary shall revise all 17 basin plans by January 1, 2006, and update them  
17 every five years thereafter. On or before January 1 of each year, the secretary  
18 shall report to the house committees on agriculture, on natural resources and  
19 energy, and on fish, wildlife and water resources, and to the senate committees  
20 on agriculture and on natural resources and energy regarding the progress  
21 made and difficulties encountered in revising basin plans. By January 1, 1993,

1 the secretary shall prepare an overall management plan to ensure that the water  
2 quality standards are met in all state waters.

3 (e) In determining the question of public interest, the ~~board~~ secretary shall  
4 give due consideration to, and explain ~~its~~ his or her decision with respect to,  
5 the following:

6 \* \* \*

7 (f) Notwithstanding the provisions of subsection (c) of this section, when  
8 reclassifying waters to Class A, the ~~board~~ the secretary need find only that the  
9 reclassification is in the public interest.

10 (g) The ~~board in its~~ secretary under the reclassification rule may ~~direct the~~  
11 ~~secretary to~~ grant permits for only a portion of the assimilative capacity of the  
12 receiving waters, or ~~to~~ may permit only indirect discharges from on-site  
13 disposal systems, or both.

14 Sec. 5. 10 V.S.A. § 1424 is amended to read:

15 § 1424. USE OF PUBLIC WATERS

16 (a) The ~~board~~ secretary may establish rules to ~~regulate the use of the public~~  
17 ~~waters by~~ implement the provisions of this chapter, including:

18 (1) Rules to regulate the use of public waters of the state by:

19 (A) Defining areas on public waters wherein certain uses may be  
20 conducted;

21 ~~(2)~~(B) Defining the uses which may be conducted in the defined areas;

1           ~~(3)(C)~~ Regulating the conduct in these areas, including ~~but not limited to~~  
2           the size of motors allowed, size of boats allowed, allowable speeds for boats,  
3           and prohibiting the use of motors or houseboats;

4           ~~(4)(D)~~ Regulating the time various uses may be conducted.

5           (2) Rules to govern the surface levels of lakes, ponds, and reservoirs that  
6           are public waters of the state.

7           (b) The ~~board~~ secretary in establishing rules under subdivision (a)(2) of this  
8           section shall consider the size and flow of the navigable waters, the  
9           predominant use of adjacent lands, the depth of the water, the predominant use  
10          of the waters prior to regulation, the uses for which the water is adaptable, the  
11          availability of fishing, boating, and bathing facilities, the scenic beauty, and  
12          recreational uses of the area.

13          (c) The ~~board~~ secretary shall attempt to manage the public waters so that  
14          the various uses may be enjoyed in a reasonable manner, in the best interests of  
15          all the citizens of the state. To the extent possible, the ~~board~~ secretary shall  
16          provide for all normal uses.

17          ~~(d) If another agency has jurisdiction over the waters otherwise controlled~~  
18          ~~by this section, that other agency's rules shall apply, if inconsistent with the~~  
19          ~~rules promulgated under this section. The board may not remove the~~  
20          ~~restrictions set forth in 25 V.S.A. §§ 320 and 321.~~

1 (e) On receipt of a written request that the ~~board~~ secretary adopt, amend, or  
2 repeal a rule with respect to the use of public waters signed by not less than  
3 one person, the ~~board~~ secretary shall consider the adoption of rules authorized  
4 under this section and take appropriate action as required under 3 V.S.A.  
5 § 806.

6 (f) By rule, the ~~board~~ secretary may delegate authority under this section  
7 for the regulation of public waters where:

8 (1) the delegation is to a municipality which is adjacent to or which  
9 contains the water; and

10 (2) the municipality accepts the delegation by creating or amending a  
11 bylaw or ordinance for regulation of the water. Appeals from a final act of the  
12 municipality under the bylaw or ordinance shall be taken to the environmental  
13 division. The ~~board~~ secretary may terminate a delegation for cause or without  
14 cause upon six months' notice to the municipality.

15 Sec. 6. 10 V.S.A. § 6025 is amended to read:

16 § 6025. RULES

17 \* \* \*

18 ~~(d) The water resources panel may adopt rules, in accordance with the~~  
19 ~~provisions of chapter 25 of Title 3, in the following areas:~~

20 ~~(1) Rules governing surface levels of lakes, ponds, and reservoirs that~~  
21 ~~are public waters of Vermont.~~



1           ~~(2) Rules regarding classification of the waters of the state, in~~  
2           ~~accordance with chapter 47 of this title.~~

3           ~~(3) Rules regarding the establishment of water quality standards, in~~  
4           ~~accordance with chapter 47 of this title.~~

5           ~~(4) Rules regulating the surface use of public waters, and rules~~  
6           ~~pertaining to the designation of outstanding resource waters, in accordance~~  
7           ~~with chapter 49 of this title.~~

8           ~~(5) Rules regarding the identification of wetlands that are so significant~~  
9           ~~that they merit protection. Any determination that a particular wetland is~~  
10          ~~significant will result from an evaluation of at least the following functions and~~  
11          ~~values which a wetland serves:~~

12                 ~~(A) provides temporary water storage for flood water and storm~~  
13                 ~~runoff;~~

14                 ~~(B) contributes to the quality of surface and groundwater through~~  
15                 ~~chemical action;~~

16                 ~~(C) naturally controls the effects of erosion and runoff, filtering silt~~  
17                 ~~and organic matter;~~

18                 ~~(D) contributes to the viability of fisheries by providing spawning,~~  
19                 ~~feeding, and general habitat for freshwater fish;~~

20                 ~~(E) provides habitat for breeding, feeding, resting, and shelter to both~~  
21                 ~~game and nongame species of wildlife;~~

1           ~~(F) provides stopover habitat for migratory birds;~~

2           ~~(G) contributes to an exemplary wetland natural community, in~~

3 ~~accordance with the rules of the panel;~~

4           ~~(H) provides for threatened and endangered species habitat;~~

5           ~~(I) provides valuable resources for education and research in natural~~  
6 ~~sciences;~~

7           ~~(J) provides direct and indirect recreational value and substantial~~  
8 ~~economic benefits; and~~

9           ~~(K) contributes to the open space character and overall beauty of the~~  
10 ~~landscape.~~

11           ~~(6) Rules regarding the ability to reclassify wetlands, in general, or on a~~  
12 ~~case by case basis.~~

13           ~~(7) Rules protecting wetlands that have been determined under~~  
14 ~~subdivision (5) or (6) of this subsection to be significant, including rules that~~  
15 ~~provide for the issuance or denial of permits and the issuance of wetland~~  
16 ~~determinations under chapter 37 of this title by the department of~~  
17 ~~environmental conservation; provided, however, that the rules may only~~  
18 ~~protect the values and functions sought to be preserved by the designation.~~

19           ~~The panel shall not adopt rules that restrain agricultural activities without the~~  
20 ~~consent of the secretary of the agency of agriculture, food and markets and~~

1 ~~shall not adopt rules that restrain silvicultural activities without the consent of~~  
2 ~~the commissioner of the department of forests, parks and recreation.~~

3 ~~(8) Rules implementing 29 V.S.A. chapter 11, relating to management~~  
4 ~~of lakes and ponds.~~

5 ~~(e) Except for subsection (a) of this section, references to rules adopted by~~  
6 ~~the board shall be construed to mean rules adopted by the appropriate panel of~~  
7 ~~the board, as established by this section.~~

8 Sec. 7. 29 V.S.A. § 410 is added to read:

9 § 410. RULEMAKING; ENCROACHMENTS ON PUBLIC WATERS

10 The department may adopt rules to implement the requirements of this  
11 chapter.

12 Sec. 8. FORMER WATER RESOURCES PANEL RULES

13 Rules of the water resources panel of the natural resources board issued  
14 pursuant to 10 V.S.A. § 6025(d), as that statute and those rules existed  
15 immediately prior to the effective date of this act, shall be deemed rules of the  
16 secretary of natural resources, and the secretary may amend those rules in  
17 accordance with 3 V.S.A. chapter 25.

18 Sec. 9. STATUTORY REVISION

19 To effect the purpose of this act of transferring the rulemaking authority of  
20 the water resources panel to the secretary of natural resources, the office of  
21 legislative council is directed to revise the existing Vermont Statutes

1 Annotated and, where applicable, replace the terms “natural resources board,”  
2 “water resources panel of the natural resources board,” “water resources  
3 panel,” “water resources board,” and similar terms with the term “secretary of  
4 natural resources,” “secretary,” “agency of natural resources,” “agency,”  
5 “department of environmental conservation,” or “department” as appropriate,  
6 including the following revisions:

7 (1) in 10 V.S.A. §§ 913 and 915, by replacing “panel” with  
8 “department”;

9 (2) in 10 V.S.A. chapter 47, by replacing “board” with “secretary”  
10 where appropriate;

11 (3) in 10 V.S.A. §§ 1422 and 1424, by replacing “board” with  
12 “secretary” where appropriate; and

13 (4) in 29 V.S.A. §§ 401, 402, and 403, by replacing “board” with  
14 “department” where appropriate.

15 Sec. 10. PURPOSE AND INTENT; PUBLIC PARTICIPATION IN

16 DEPARTMENT OF ENVIRONMENTAL CONSERVATION

17 RULEMAKING

18 It is the purpose and intent of the general assembly that, in addition to the  
19 public participation requirements of 3 V.S.A. chapter 25 and prior to  
20 submitting a proposed rule to the secretary of state under 3 V.S.A § 838, the  
21 department of environmental conservation shall engage in an expanded public

1 participation process with affected stakeholders and other interested persons in  
2 a dialogue about intent, method, and outcomes of a proposed rule for the  
3 purpose of resolving concerns and differences regarding proposed rules. The  
4 department of environmental conservation is encouraged to use workshops,  
5 focused work groups, dockets, meetings, or other forms of communication to  
6 meet the participation requirements of this section.

7 \* \* \* Agricultural Water Quality \* \* \*

8 Sec. 11. 10 V.S.A. § 303 is amended to read:

9 § 303. DEFINITIONS

10 As used in this chapter:

11 (1) "Board" means the Vermont housing and conservation board  
12 established by this chapter.

13 (2) "Fund" means the Vermont housing and conservation trust fund  
14 established by this chapter.

15 (3) "Eligible activity" means any activity which will carry out either or  
16 both of the dual purposes of creating affordable housing and conserving and  
17 protecting important Vermont lands, including activities which will encourage  
18 or assist:

19 (A) the preservation, rehabilitation or development of residential  
20 dwelling units which are affordable to lower income Vermonters;

21 (B) the retention of agricultural land for agricultural use;

1 (C) the protection of important wildlife habitat and important natural  
2 areas;

3 (D) the preservation of historic properties or resources;

4 (E) the protection of areas suited for outdoor public recreational  
5 activity;

6 (F) the protection of lands for multiple conservation purposes,  
7 including the protection of surface waters and associated natural resources;

8 (G) the development of capacity on the part of an eligible applicant to  
9 engage in an eligible activity.

10 (4) "Eligible applicant" means any:

11 (A) municipality;

12 (B) ~~department of state government~~ state agency as defined in  
13 ~~subsection 6302(a)~~ section 6301a of this title;

14 (C) nonprofit organization qualifying under Section 501(c)(3) of the  
15 Internal Revenue Code; or

16 (D) cooperative housing organization, the purpose of which is the  
17 creation or retention of affordable housing for lower income Vermonters and  
18 the bylaws of which require that such housing be maintained as affordable  
19 housing for lower income Vermonters on a perpetual basis.

20 \* \* \*

1                   \* \* \* State Revolving Loan Fund; Stormwater Projects \* \* \*

2           Sec. 12. 24 V.S.A. § 4752(3) is amended to read:

3                   (3) "Municipality" means any city, town, village, town school district,  
4           incorporated school district, union school district or other school district, fire  
5           district, consolidated sewer district, consolidated water district ~~or~~ solid waste  
6           district, or statewide or regional water quality utility or mechanism organized  
7           under laws of the state.

8                   \* \* \* Land Application of Septage \* \* \*

9           Sec. 13. 10 V.S.A. § 6605(g) is amended to read:

10                   (g)(1) Emergency sludge and septage disposal approval. Notwithstanding  
11           any other provision of this section, the secretary may authorize the land  
12           disposal or management of sludge or septage by an applicant at any certified  
13           site or facility with available capacity, provided the secretary finds:

14                   (A) that the applicant needs to dispose of accumulated sludge or  
15           septage promptly, and that delay would likely cause public health, or  
16           environmental damage, or nuisance conditions, or would result in excessive  
17           and unnecessary cost to the public, and that the applicant has lost authority to  
18           use previously certified sites through no act or omission of the applicant; and

19                   (B) that at the certified site or facility to be used:

20                   (i) the certificate holder agrees in writing to allow use of the site  
21           or facility by the applicant;

1 (ii) management of the applicant's sludge or septage is compatible  
2 with the site or facility certificate;

3 (iii) all terms and conditions of the original certification will  
4 continue to be met with addition of the applicant's sludge or septage; and

5 (iv) beginning January 1, 2013, any sludge or septage applied to  
6 land shall be applied according to a nutrient management plan approved by the  
7 secretary.

8 (2) The secretary shall, following his or her issuance of approval of  
9 emergency sludge or septage disposal under this subsection, provide public  
10 notice of that action.

11 Sec. 14. 10 V.S.A. § 1386 is amended to read:

12 § 1386. IMPLEMENTATION PLAN FOR THE LAKE CHAMPLAIN

13 TOTAL MAXIMUM DAILY LOAD PLAN

14 (a) ~~On or before January 15, 2010,~~ Within 12 months after the issuance of a  
15 phosphorus total maximum daily load plan (TMDL) for Lake Champlain by  
16 the U.S. Environmental Protection Agency, the secretary of natural resources  
17 shall issue a ~~revised~~ Vermont-specific implementation plan for the Lake  
18 Champlain TMDL. ~~Beginning January 15, 2013, and every~~ Every four years  
19 ~~thereafter~~ after issuance of the Lake Champlain TMDL by the U.S.  
20 Environmental Protection Agency, the secretary of natural resources shall  
21 amend and update the Vermont-specific implementation plan for the Lake



1 Champlain TMDL. Prior to issuing, amending, or updating the  
2 implementation plan, the secretary shall consult with the agency of agriculture,  
3 food and markets, all statewide environmental organizations that express an  
4 interest in the plan, the Vermont League of Cities and Towns, all business  
5 organizations that express an interest in the plan, the University of Vermont  
6 Rubenstein ecosystem science laboratory, and other interested parties. The  
7 implementation plan shall include a comprehensive strategy for implementing  
8 the Lake Champlain ~~total maximum daily load (TMDL)~~ TMDL plan and for  
9 the remediation of Lake Champlain. The implementation plan shall be issued  
10 as a document separate from the Lake Champlain TMDL. The implementation  
11 plan shall:

12 (1) Include or reference the elements set forth in 40 C.F.R. § 130.6(c)  
13 for water quality management plans;

14 (2) Comply with the requirements of section 1258 of this title and  
15 administer a permit program to manage discharges to Lake Champlain  
16 consistent with the federal Clean Water Act;

17 (3) Develop a process for identifying critical source areas for non-point  
18 source pollution in each subwatershed. As used in this subdivision, “critical  
19 source area” means an area in a watershed with high potential for the release,  
20 discharge, or runoff of phosphorus to the waters of the state;

1           (4) Develop site-specific plans to reduce point source and non-point  
2 source load discharges in critical source areas identified under subdivision (3)  
3 of this subsection;

4           (5) Develop a method for identifying and prioritizing on public and  
5 private land pollution control projects with the potential to provide the greatest  
6 water quality benefits to Lake Champlain;

7           (6) Develop a method of accounting for changes in phosphorus loading  
8 to Lake Champlain due to implementation of the TMDL and other factors;

9           (7) Develop phosphorus reduction targets related to phosphorus  
10 reduction for each water quality program and for each segment of Lake  
11 Champlain, including benchmarks for phosphorus reduction that shall be  
12 achieved. The implementation plan shall explain the methodology used to  
13 develop phosphorus reduction targets under this subdivision;

14           (8) Establish a method for the coordination and collaboration of water  
15 quality programs within the state;

16           (9) Develop a method for offering incentives or disincentives to  
17 wastewater treatment plants for maintaining the 2006 levels of phosphorus  
18 discharge to Lake Champlain;

19           (10) Develop a method of offering incentives or disincentives for  
20 reducing the phosphorus contribution of stormwater discharges within the Lake  
21 Champlain basin.

1 (b) In amending the Vermont-specific implementation plan of the Lake  
2 Champlain TMDL under this section, the secretary of natural resources shall  
3 comply with the public participation requirements of 40 C.F.R.  
4 § 130.7(c)(1)(ii).

5 (c) ~~On or before January 15, 2010, the secretary of natural resources shall~~  
6 ~~report to the house committee on fish, wildlife and water resources, the senate~~  
7 ~~committee on natural resources, and the house and senate committees on~~  
8 ~~agriculture with a summary of the contents of and the process leading to the~~  
9 ~~adoption under subsection (a) of this section of the implementation plan for the~~  
10 ~~Lake Champlain TMDL. On or before January 15, 2013, and 15 in the year~~  
11 ~~following issuance of the implementation plan under subsection (a) of this~~  
12 ~~section and~~ every four years thereafter, the secretary shall report to the house  
13 committee on fish, wildlife and water resources, the senate committee on  
14 natural resources, and the house and senate committees on agriculture  
15 regarding the execution of the implementation plan. The report shall include:

16 (1) ~~with the~~ The amendments or revisions to the implementation plan for  
17 the Lake Champlain TMDL required by subsection (a) of this section. Prior to  
18 ~~issuing~~ submitting a report required by this subsection that includes  
19 amendments to revisions to the implementation plan, the secretary shall hold at  
20 least three public hearings in the Lake Champlain watershed to describe the  
21 amendments and revisions to the implementation plan for the Lake Champlain

1 TMDL. The secretary shall prepare a responsiveness summary for each public  
2 hearing. ~~Beginning January 15, 2013, a report required by this subsection shall~~  
3 ~~include:~~

4 ~~(1)(2)~~ An assessment of the implementation plan for the Lake  
5 Champlain TMDL based on available data, including an evaluation of the  
6 efficacy of the implementation plan;

7 ~~(2)(3)~~ ~~An assessment of the hydrologic base period used to determine~~  
8 ~~the phosphorus loading capacities for the Lake Champlain TMDL based on~~  
9 ~~available data, including an evaluation of the adequacy of the hydrologic base~~  
10 ~~period for the TMDL;~~ Recommendations, if any, for amending the  
11 implementation plan or for reopening the Lake Champlain TMDL.

12 ~~(3)~~ ~~Recommendations, if any, for amending the implementation plan or~~  
13 ~~reopening the Lake Champlain TMDL.~~

14 (d) Beginning February 1, ~~2009~~ 2014 and annually thereafter, the secretary,  
15 after consultation with the secretary of agriculture, food and markets, shall  
16 submit to the house committee on fish, wildlife and water resources, the senate  
17 committee on natural resources and energy, and the house and senate  
18 committees on agriculture a ~~clean and clear program~~ summary reporting on of  
19 activities and measures of progress for each program supported by funding  
20 under the Clean and Clear Action Plan of water quality ecosystem restoration  
21 programs.

1       Sec. 15. REPEAL

2             10 V.S.A. § 1385 (Lake Champlain TMDL plan) is repealed.

3       Sec. 16. EFFECTIVE DATE

4             (a) This section and Secs. 1 (ANR water quality report), 2 through 9 (ANR  
5 rulemaking authority; repeal of water resources panel rulemaking), 10 (ANR;  
6 public participation in rulemaking), 12 (state revolving loan fund; definition of  
7 municipality), 13 (land application of septage), 14 (Lake Champlain TMDL  
8 implementation plan), and 15 (repeal of reopening of Lake Champlain TMDL)  
9 of this act shall take effect on passage.

10            (b) Sec. 11 (VHCB; conservation easements) of this act shall take effect on  
11 July 1, 2012.