



## **CCRPC Clean Water Advisory Committee & Executive Committee – April 2 & 3, 2019**

### **Agenda Items #4 (CWAC) & 6 (Exec. Comm.): S.96 Recommendations**

S.96 proposes to redesign the way in which funding is determined and distributed for clean water projects that are not subject to a permit.

A summary of the bill produced by the Office of Legislative Council is attached. The most recent version of the full bill can be found here:

<https://legislature.vermont.gov/Documents/2020/WorkGroups/Senate%20Appropriations/Bills/S.96/S.96~Senate%20Committee%20on%20Natural%20Resources~Establishing%20a%20Clean%20Water%20Assessment%20to%20Fund%20State%20Water%20Quality%20Programs~3-22-2019.pdf>

As of the morning of March 28<sup>th</sup>, the bill is under debate on the floor of the Senate.

Staff recommends consideration of the attached recommendations regarding S.96. The Clean Water Advisory Committee will consider recommending these comments to the CCRPC Board on April 2<sup>nd</sup>. The Executive Committee will consider recommending these comments to the CCRPC Board on April 3<sup>rd</sup>. The CCRPC Board will consider these recommendations at their April 17<sup>th</sup> Board meeting.

For questions, contact Charlie Baker, 846-4490 ext. \*23 or [cbaker@ccrpcvt.org](mailto:cbaker@ccrpcvt.org)

**S.96. An Act Relating to Establishing a Clean Water Assessment to Fund State Water Quality Programs**  
Section by Section Summary

**Section 1. Adds 10 V.S.A chapter 37, subchapter 5, §§ 921-927 Water Quality Restoration and Improvement**

<p align="center"><b>Sec. 1</b> <b>10 V.S.A. § 921</b> Definitions for the Subchapter</p>	<ul style="list-style-type: none"> <li>• “Basin”: a watershed area designated by ANR for use as a planning unit for required water quality planning.</li> <li>• “Best management practice” or “BMP”: a schedule of activities, prohibitions, practices, maintenance procedures, green infrastructure, or other management practices to prevent or reduce water pollution.</li> <li>• “Clean water project”: a best management practice or other program designed to improve water quality to achieve a target established under 10 V.S.A. § 922 that: <ul style="list-style-type: none"> <li>○ Does not need a permit under 10 V.S.A. ch. 47 (water quality permit), is not subject to 6 V.S.A. ch. 215 (agricultural water quality requirements), exceeds permit requirements of 10 V.S.A. ch. 47, or exceeds requirements of 6 V.S.A ch 215; and</li> <li>○ is within the activities identified in 10 V.S.A. § 924(b)–(developed lands, natural resource protection, forestry, agriculture).</li> </ul> </li> <li>• “Design life” means the period of time that a clean water project is designed to operate according to its intended purpose.</li> <li>• “Maintenance”: ensuring that a clean water project continues to achieve its designed pollution reduction value for its design life.</li> <li>• “Standard cost”: the projected cost of achieving a pollutant load reduction per unit or per best management practice in a basin.</li> </ul>
<p align="center"><b>10 V.S.A. § 922</b> Water Quality Implementation Targets</p>	<ul style="list-style-type: none"> <li>• <u>§ 922(a)</u>: After listing a water as impaired, ANR shall include the following in any plan to implement the TMDL for the water: <ul style="list-style-type: none"> <li>○ An evaluation of whether implementing existing regulatory programs will achieve water quality standards in the water.</li> <li>○ If ANR determines that existing regulatory programs will not achieve water quality standards, ANR shall determine the amount of additional pollutant reduction necessary to achieve water quality standards in that water. <ul style="list-style-type: none"> <li>➤ When making this determination, ANR may express the pollutant reduction in a numeric reduction or through defining a clean water project that must be implemented to achieve water quality standards.</li> </ul> </li> <li>○ An allocation of the pollutant reduction identified by ANR to each basin and the clean water service provider for that basin. <ul style="list-style-type: none"> <li>➤ The allocations shall be expressed in annual pollution reduction goals and five-year pollution reduction targets.</li> </ul> </li> <li>○ A determination of the standard cost per unit of pollutant reduction. <ul style="list-style-type: none"> <li>➤ ANR shall publish a methodology for determining standard cost pollutant reductions.</li> <li>➤ The standard cost shall include the costs of project identification, project design, and project construction.</li> </ul> </li> </ul> </li> </ul>

<p><b>10 V.S.A. § 922</b></p> <p>Water Quality Implementation Targets</p>	<ul style="list-style-type: none"> <li>• <u>§ 922(b)</u>: ANR shall conduct the analysis required by § 922(a) for previously listed waters as follows: <ul style="list-style-type: none"> <li>○ For phosphorous in the Lake Champlain watershed, not later than November 1, 2021.</li> <li>○ For phosphorous in the Lake Memphremagog watershed, not later than November 1, 2022.</li> <li>○ For all other waters impaired by phosphorous, nutrients, or sediment, not later than November 1, 2024.</li> </ul> </li> <li>• By not later than November 1, 2020, ANR shall adopt a schedule for implementing the requirements of this section in all other previously listed impaired waters not set forth in subdivision (1) of this subsection.</li> <li>• When implementing this section, the Secretary shall follow the type 3 notice process established in 10 V.S.A. § 7714.</li> </ul>
<p><b>10 V.S.A. § 923</b></p> <p>Quantification of Pollution Reduction; Clean Water Projects</p>	<ul style="list-style-type: none"> <li>• <u>§ 923(a)</u>: After listing a water as impaired, ANR shall publish a methodology for calculating pollution reduction values for a clean water project in that water. Pollution reduction values set by ANR are the exclusive method for determining a value.</li> <li>• <u>§ 923(b)</u>: After listing a water as impaired, ANR shall publish a methodology to establish a design life for a clean water project. <ul style="list-style-type: none"> <li>○ The design life shall be determined based on a review of values in other jurisdictions, values recommended by qualified organizations, actual data on design life of a practice, or a comparison to other similar practices if no other data exists.</li> <li>○ A design life adopted by ANR shall be the exclusive method for determining the design life of a BMP or other control.</li> </ul> </li> <li>• <u>§ 923(c)(1)</u>: If a proposed clean water project has no pollution reduction value or design life for a listed water, ANR shall establish the reduction value or design life for the project within 14 days of a request from the person proposing the project. <ul style="list-style-type: none"> <li>○ A pollution reduction value or design life established under this subdivision shall be based on a review of: pollution reduction values established in the TMDL; pollution reduction values or design lives established by other jurisdictions; pollution reduction values or design lives recommended by qualified organizations; and other applicable data.</li> <li>○ Upon request of a clean water service provider, ANR shall evaluate a proposed clean water project and determine whether the project is eligible to receive funding as a part of a State Water Quality Restoration Grant under 10 V.S.A. § 925.</li> </ul> </li> <li>• <u>§ 923(d)(1)</u>: ANR shall conduct the analysis required by § 923(a) and (b) as follows: <ul style="list-style-type: none"> <li>○ For clean water projects and design lives related to phosphorous, not later than November 1, 2021.</li> <li>○ For clean water projects and design lives related to nutrients or sediment, not later than November 1, 2024.</li> <li>○ By no later than November 1, 2020, ANR shall adopt a schedule for implementing §§ 923(a) and (b) for clean water projects and design lives related to all other impairments.</li> </ul> </li> <li>• <u>§ 923(e)</u>: When implementing §§ 923(a) and (b), ANR shall follow the type 3 notice process under 10 V.S.A. § 7714. When implementing the requirements of § 923(c), ANR shall follow the type 4 notice process in 10 V.S.A. § 7715.</li> </ul>

<p><b>10 V.S.A. § 924</b> Clean Water Service Provider; Responsibility for Clean Water Projects</p>	<ul style="list-style-type: none"> <li>• <u>§ 924(a)</u> On or before March 1, 2020, ANR shall adopt rules that assign a clean water service provider to each basin to achieve the pollutant reduction values established by ANR for the basin and implement and maintain clean water projects in a basin. <ul style="list-style-type: none"> <li>○ ANR shall assign a RPC as the clean water service provider for a basin unless an alternate entity is designated by rule.</li> </ul> </li> <li>• <u>§ 924(b)</u>: Clean water projects that a provider may fund to meet a pollution reduction value, include, in no order of priority : <ul style="list-style-type: none"> <li>○ developed lands, including MS4s, operational stormwater discharges, municipal roads, and other developed lands discharges;</li> <li>○ natural resource protection, including river corridor protection, wetland protection, and riparian corridor protection;</li> <li>○ forestry; and</li> <li>○ agriculture.</li> </ul> </li> <li>• <u>§ 924(c)</u>: A provider shall be responsible for maintaining a clean water project for the entirety of the design life of that project.</li> <li>• <u>§ 924(d)</u>: If a clean water service provider achieves a greater level of pollutant reduction than a pollution reduction goal or five-year target the provider may carry those reductions forward into a future year. <ul style="list-style-type: none"> <li>○ If a provider achieves its goal and has excess funding, it may use those funds towards other eligible projects, operation and maintenance responsibilities for existing projects, projects within the basin that are required by law, or other work.</li> </ul> </li> <li>• <u>§ 924(e)</u> A clean water service provider shall report annually to ANR regarding clean water projects completed that year; inspections of previously implemented projects; all indirect and administrative costs incurred; all of the subgrants awarded by the provider; and all data necessary for ANR to determine the pollutant reduction achieved by the clean provider in that year.</li> <li>• <u>§ 924(f)</u>: If a clean water service provider fails to meet its allocated reduction goals or its five-year target or fails to maintain previously implemented clean water projects ANR shall take appropriate steps to hold the provider accountable, including: <ul style="list-style-type: none"> <li>○ entering a plan to ensure that the provider meets current and future pollution reduction goals and five-year targets;</li> <li>○ initiating an enforcement action for the failure of a clean water service provider to meet its obligations; or</li> <li>○ initiating rulemaking to designate an alternate entity as accountable for the basin.</li> </ul> </li> </ul>
<p><b>10 V.S.A. § 925</b> Water Quality Grant Programs</p>	<ul style="list-style-type: none"> <li>• <u>§ 925(a)</u>: ANR shall administer a Water Quality Restoration Formula Grant Program to award grants to clean water service providers to meet the pollution reduction requirements under this subchapter <ul style="list-style-type: none"> <li>○ The grant amount shall be based on the annual reduction goal for the provider multiplied by the standard cost for pollutant reduction including the costs of administration and reporting.</li> </ul> </li> <li>• <u>§ 925(b)</u>: ANR shall administer a competitive Water Quality Enhancement Grant Program to fund projects that protect high quality waters, create resilient communities, and promote the public’s use and enjoyment of the State’s water.</li> </ul>

	<ul style="list-style-type: none"> <li>• <u>§ 925(c)</u>: ANR shall administer a Stormwater Implementation Grant Program to provide grants to persons who are required to obtain a permit to implement regulatory requirements that are necessary to achieve water quality standards. <ul style="list-style-type: none"> <li>○ The grant is only available in basins where a provider has met annual goals or is making sufficient progress towards the goals.</li> <li>○ This grant program may fund projects related to the permitting of impervious surface of three acres or more.</li> </ul> </li> <li>• <u>§ 925(d)</u>: ANR shall administer a Municipal Stormwater Assistance Grant Program to provide grants to any municipality required to obtain a stormwater permit. <ul style="list-style-type: none"> <li>○ The grant is only available in basins where a provider has met annual goals or is making sufficient progress towards the goals.</li> </ul> </li> <li>• For all of these grant programs, no more than 15% of the total amount awarded to a provider can be used for administrative costs.</li> </ul>
<b>10 V.S.A. § 926</b> Technical Assistance	<ul style="list-style-type: none"> <li>• ANR shall give technical assistance, upon request, to persons who receive a grant or subgrant to implement a clean water project.</li> </ul>
<b>10 V.S.A. § 927</b> Rulemaking	<ul style="list-style-type: none"> <li>• ANR may adopt rules to implement the requirements of this subchapter.</li> </ul>
<b>Sec. 2. 10 V.S.A. § 1253(d)(2): Basin Planning Requirements</b>	
<b>Sec. 2</b> <b>10 V.S.A. § 1253(d)(2)</b> Basin Planning	<ul style="list-style-type: none"> <li>• Sec. 2 amends ANR’s duties when conducting watershed basin planning to require ANR to review and update the pollution evaluations and design life estimates that it conducts for clean water projects under 10 V.S.A. §§ under 922(a)(1) and (2).</li> <li>• Sec. 2 also requires ANR to identify funding needs for projects in the basin that will result in enhancement of resources.</li> </ul>
<b>Sec. 3. 10 V.S.A. § 1387. Findings and Purpose for Clean Water Fund</b>	
<b>Sec. 3</b> <b>10 V.S.A. § 1387</b> Findings for Clean Water Fund and Board	<ul style="list-style-type: none"> <li>• Sec. 3 adds a findings section in the statute that established the Clean Water Fund to provide that success in implementing the Clean Water Initiative will depend on providing sustained and adequate funding to support implementation of the following: <ul style="list-style-type: none"> <li>○ the requirements of Ac 64; TMDLs or other cleanup plans; ANR’s CSO rule; and operations of clean water service providers.</li> </ul> </li> <li>• The findings also note that to ensure success in implementing the Clean Water Initiative, the State should commit to an annual appropriation of not less than \$57,811,342.00, beginning in FY 2020 and adjusted thereafter to ensure maintenance of effort.</li> <li>• Sec. 3 provides that the Fund shall be used to implement the Initiative, including funding clean water service providers.</li> </ul>

**Sec. 4. 10 V.S.A. § 1389. Clean Water Board**

**Sec. 4**  
**10 V.S.A. §1389**  
Clean Water Board

- Sec. 4 amends the authority of the Clean Water Board to add to the Board’s authority a requirement that if there are insufficient funds in the Clean Water Fund to issue all grants required to clean water service providers, the Board shall:
  - Direct ANR to prioritize work for basins, adjust pollution allocations to providers, and issue grants based on available funds;
  - Make recommendations to the Governor and General Assembly on additional revenue to address unmet needs.
  - Notify ANR of the insufficient funds so that ANR can consider additional regulatory controls to address water quality.
- Sec. 4 also amends what the Clean Water Board shall recommend funding for, including funding for:
  - grants to clean water service providers to fund costs associated with the monitoring, operation, and maintenance of projects;
  - the Water Quality Enhancement Grant Program;
  - the Agency of Agriculture’s CREP Program, Farm Agronomic Practice Program, and Clean Water Initiative Grant Program;
  - the Water Quality Restoration Grants, provided funding shall be at least \$1,500,000.00;
- Sec. 4 provides that after recommending funding for water quality grants and programs, the Board shall recommend funding:
  - investment in watershed planning;
  - assistance required for State and municipal compliance with stormwater requirements for highways and roads;
  - funding for education, outreach, demonstration, and implementation for RAPs and any required agricultural BMP;
  - funding for the Municipal Stormwater Assistance Grant as provided in subsection 925(d) of this title;
  - funding for education and outreach regarding implementation of water quality requirements; and
  - funding for the Stormwater Implementation Grant Program as provided in subsection 925(c) of this title

**Sec. 5. 10 V.S.A. § 8003. ANR Enforcement**

**Sec. 5**  
**10 V.S.A. § 8003**  
ANR Enforcement

- Sec. 5 provides that ANR may use its default enforcement authority to enforce the water restoration goals and targets assigned to clean water service providers under 10 V.S.A § 923 and 924.

**Sec. 6. 24 V.S.A. § 4345a. Regional Planning Commission Authority**

<p align="center"><b>Sec. 6</b> <b>24 V.S.A. § 4345a</b> Regional Planning Commission Authority Clean Water Projects</p>	<ul style="list-style-type: none"> <li>• Sec. 6 amends the enabling statute for regional planning commissions to provide that RPCs shall have the authority, if designated as a clean water service provider under 10 V.S.A. § 924, to provide for the identification, prioritization, development, construction, monitoring, operation, and maintenance of clean water projects in an assigned watershed basin.</li> <li>• In carrying out these duties, RPCs shall adopt a policy for how the RPC will issue subgrants to other organizations in the basin giving due consideration to the expertise of those organizations.</li> <li>• When selecting clean water projects, RPCs shall prioritize projects identified in the basin plan and shall consider the pollutant targets provided by ANR and the recommendations of the basin water quality advisory council.</li> </ul>
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**Sec. 7. 24 V.S.A. § 4353. Basin Water Quality Council**

<p align="center"><b>Sec. 7</b> <b>24 V.S.A. § 4353</b> Basin Water Quality Advisory Council</p>	<ul style="list-style-type: none"> <li>• A RPC designated as a clean water service provider shall establish a basin water quality advisory council for the basin.</li> <li>• The purpose of basin water quality advisory council is to make recommendations to the RPC on identifying the most significant water quality impairments that exist in the basin and prioritizing the projects that will address those impairments.</li> <li>• A basin water quality advisory council shall include, at a minimum, the following: <ul style="list-style-type: none"> <li>○ representatives from each natural resource conservation district in that basin;</li> <li>○ representatives from each local watershed protection organization operating in that basin,;</li> <li>○ representatives from applicable local or statewide land conservation organizations; and</li> <li>○ representatives from each municipality within the basin.</li> </ul> </li> <li>• The RPC and the basin planner from the ANR shall provide staff support to the council. The RPC may invite support from persons with specialized expertise, including UVM Extension, ANR staff, and Agency of Agriculture staff.</li> </ul>
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**Sec. 8. Recommendations on Nutrient Credit Trading**

<p align="center"><b>Sec. 8</b> Recommendations on Nutrient Credit Trading</p>	<ul style="list-style-type: none"> <li>• On or before July 1, 2022, ANR shall submit to the General Assembly recommendations regarding implementation of a market-based mechanism that allows the purchase of water quality credits by water quality and other entities.</li> </ul>
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**Sec. 9. Effective Date**

This act shall take effect on July 1, 2019

## DRAFT

### Recommendations on S.96

Prepared for the House Committee on Natural Resources, Fish & Wildlife  
by Charlie Baker, Executive Director, Chittenden County Regional Planning Commission  
\_\_\_\_\_, 2019

Thank you for the opportunity to testify regarding S.96. These comments and recommendations have been developed by Clean Water Advisory Committee, Executive Committee, and Board and approved by the Board of the Chittenden County Regional Planning Commission at their April 17<sup>th</sup> meeting.

Sec. 3, 10 V.S.A. § 1387. FINDINGS, PURPOSE, CLEAN WATER INITIATIVE - The bill includes language that the State should commit to annually appropriate \$50-60 million to ensure the maintenance of effort. As we have testified previously, *CCRPC supports the State investing adequately in the efforts to achieve clean water.*

Sec. 1, 10 V.S.A. §922. WATER QUALITY IMPLEMENTATION PLANNING AND TARGETS - The Secretary of ANR shall determine any additional pollutant reduction needed beyond what can be expected to be achieved from the existing regulatory programs. If there are additional pollutant reductions required, the Secretary shall make an allocation of the pollutant reductions to each basin and clean water service provider in annual and five-year pollution reduction targets. The Secretary shall also determine the standard cost per unit of pollutant reduction starting with Lake Champlain by November 1, 2021. *CCRPC supports allocating grant funding by basin based upon need.*

Sec. 1, 10 V.S.A. §923. QUANTIFICATION OF POLLUTION REDUCTION; CLEAN WATER PROJECTS – The Secretary shall publish methodologies for calculating pollution reduction values and design life associated with clean water projects. *CCRPC supports this effort, but would like to see the same language to determine pollution reduction values in (a) that is in (b) to determine design life: “...shall be determined based on a review of values established in other jurisdictions, values recommended by organizations that regularly estimate the [pollution reduction] of clean water projects, actual data documenting the [pollution reduction] of a practice, or a comparison to other similar practices if no other data exists.”*

Sec. 1, 10 V.S.A. §924. CLEAN WATER SERVICE PROVIDER; RESPONSIBILITY FOR CLEAN WATER PROJECTS – The Secretary shall assign clean water service providers through rule making, defaulting to an RPC. This section describes responsibilities of a CWSP including funding clean water projects, maintaining clean water projects, reporting on progress, and measures the Secretary may take to hold a CWSP accountable. *CCRPC supports holding a CWSP accountable, however, would like to see the following changes made to reduce the risk to a CWSP and share more responsibility with ANR, a basin water quality advisory council, and property owners. We are concerned that no regional planning commission or other entity will agree to take on this work with these risks.*

- In (c) Maintenance responsibility. A clean water service provider shall be responsible for maintaining reporting on the maintenance of a clean water project by the property owner or other responsible party or ensuring the maintenance for the entirety of the design life of that clean water project. The Secretary and clean water service providers shall develop mutually agreeable language to be used in grant agreements between the clean water service provider, ANR, and a property owner clearly defining the maintenance responsibilities and consequences for failing to maintain the project.
- In (e) Reporting. A clean water service provider shall report annually, with the approval of the basin water quality advisory council, to the Secretary.
- In (f) Accountability for pollution reduction goals. ...The Secretary may take the following steps:
  - (1) Enter a plan to ensure that clean water service provider meets current and future year pollution;



- ~~(2) Initiate an enforcement action pursuant to chapter 201 or 211 of this title for the failure of a clean water service provider to meet its obligations;~~ or
- (3) Initiate rulemaking to designate an alternative entity as accountable for the basin.

Sec. 1, 10 V.S.A. §925. WATER QUALITY GRANT PROGRAMS - The Secretary shall administer four grant programs: 1) a Water Quality Restoration Formula Grant to address annual pollution reduction targets in impaired watersheds, 2) a Water Quality Enhancement Grant of at least \$1.5 million to protect high quality waters, 3) a Stormwater Implementation Grant for persons who are required to obtain a permit, and 4) a Municipal Stormwater Assistance Grant for municipalities required to obtain a permit. *CCRPC is supportive of these grant programs, but are concerned about the implications on other funding programs such as for municipal roads. Will this new grant program take away from the grant assistance that the State has been providing municipalities, farmers, conservation districts, and watershed associations? Will a shift reduce or improve the State's ability to achieve our clean water goals?*

Sec. 1, 10 V.S.A. §926. CLEAN WATER PROJECT TECHNICAL ASSISTANCE – CCRPC appreciates the Secretary providing technical assistance and also requests legal assistance for clean water service providers as follows:

- The Secretary shall provide technical assistance upon the request of any person who, under this chapter, receives a grant or is a subgrantee of funds to implement a clean water project. *The Secretary shall provide legal assistance to clean water service providers in developing model partner and maintenance agreements.*

Sec. 6, 24 V.S.A. § 4345a. DUTIES OF REGIONAL PLANNING COMMISSIONS – Provides duties of an RPC serving as a clean water service provider. *CCRPC recommends that paragraph (20)(B) be revised to make it clear that the basin water quality advisory council will be the entity prioritizing the projects:*

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

Sec. 7, 24 V.S.A. § 4353. BASIN WATER QUALITY ADVISORY COUNCIL - This basin water quality advisory council would include all the partners in a basin and would be responsible for identifying and prioritizing clean water projects. *CCRPC supports formalizing a process for all the partners in a basin to work together in deciding upon priority clean water projects and recommends the following clarification:*

- (a) ...The purpose of the council is to make ~~decisions recommendations to the regional planning commission on~~ identifying the most significant water quality impairments that exist in the basin and prioritizing the projects *and partners to be funded by the clean water service provider* that will address those impairments.

Thank you for your consideration of these comments and recommendations.