

**CONFIDENTIAL**  
**LEGISLATIVE BILL REVIEW FORM: 2015**

Bill Number: S.70 Name of Bill: Conservation and development; property; wastewater systems; conveyance

Agency/ Dept: ANR/DEC Author of Bill Review: Christine Thompson

Date of Bill Review: 2/18/15 Related Bills and Key Players: Senators Snelling, Baruth, and Lyons

Status of Bill: (check one): ☒ Upon Introduction ☐ As passed by 1<sup>st</sup> body ☐ As passed by both

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**Recommended Position:**

Support    Oppose    Remain Neutral    ☒ Support with modifications

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**Analysis of Bill**

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1. **Summary of bill and issue it addresses.** *Describe what the bill is intended to accomplish and why.* The bill requires a seller or transferor of real property, prior to the execution of an agreement for the sale or transfer of the property, to provide notice to the buyer of how sewage from the property is managed. The notice must include a statement indicating whether the sewage goes to a wastewater treatment plant through a wastewater system that is a sewerage connection or is disposed of in an "on-site" permitted wastewater system, a permitted holding tank or an unpermitted system. Second, if known by the seller, the notice must identify the compliance status of the wastewater system and whether there is a straight pipe on the property. If the seller has an inspection report for the system, a copy of the report must be included. Third, if the seller has an unpermitted "on-site" wastewater system, the notice must describe the type of system and its location. Finally, if the seller knows of an abandoned wastewater system on the property, the notice must include a map showing its location. Failure by the seller to provide the required notice results in liability for the cost of bringing the wastewater system into compliance with state standards. Any action for the recovery of the costs would have to commence within two years of the agreement for property transfer.
2. **Is there a need for this bill?** *Please explain why or why not.* Currently, there are no mandated requirements regarding disclosure of wastewater system status at the time of a purchase and sales agreement. Despite this fact, many transactions do not occur without this type of information being provided by the seller in response to a requirement by the lender and/or buyer. In some current conveyances, a requirement to determine compliance status prior to transfer is included. Requiring some kind of disclosure prior to the execution of a sales agreement would help those buyers who might not think to ask for the information. In some situations, it will also help the state become aware of failed wastewater systems.
3. **What are likely to be the fiscal and programmatic implications of this bill for this Department?**  
Additional staff time will be allocated to answering questions from sellers, buyers, designers, real estate agents and attorneys regarding existing wastewater systems particularly as the notice must occur prior to the execution of a purchase and sales agreement. Staff will undoubtedly be asked to provide answers as to the acceptability of certain unpermitted wastewater systems so that purchase and sales agreements will not be held up. In addition, additional staff time will be spent on developing the notice form required by the bill. If

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a compliance checklist needs to be developed along with the notice form, based on the Department's past experience in trying to develop a time of sale evaluation requirement, this time could be very significant. The Department should not be directly involved with obtaining or managing the information that a seller or transferor must provide a new owner.

4. **What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?** There could be additional costs to other departments that own existing buildings when they are trying to sell the property.
5. **What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it?** (for example, public, municipalities, organizations, business, regulated entities, etc) Sellers often do not know what type of wastewater system serves the property or where it is located. For unpermitted wastewater systems, there will be increased costs to the seller in order to provide a description and the location of the system. There may also be a delay in the transfer if weather conditions (eg snow cover) prevent the locating of the system. This bill does not require a certain type of professional to locate and identify the wastewater system and it does not require that the system's compliance status be determined. It is quite possible that this notice requirement would result in the market requiring compliance determinations be supplied by a professional prior to sale. There is currently no standard method for determining compliance and the methodology used would vary depending on the type of system involved. Based on anecdotal feedback, the cost of a compliance determination ranges from \$500 to \$2,000.
6. **Other Stakeholders:**
  - 6.1 **Who else is likely to support the proposal and why?** Buyers, lending institutions and some attorneys will support having this information prior to sale.
  - 6.2 **Who else is likely to oppose the proposal and why?** Sellers and some attorneys will be unhappy with the increased cost and the potential delay in the sale. In addition, real estate brokers may be concerned about potential lost or delayed sales.
7. **Rationale for recommendation:** *Justify recommendation stated above.* The bill will enable buyers to be aware of how the property being considered for purchase disposes of its wastewater and whether there may be current/future costs associated with the property's wastewater disposal. The Department may benefit by becoming aware of some failed septic systems/straight pipes. This benefit may well offset the additional staff resource demands as some sellers seek information regarding their property's wastewater system.
8. **Specific modifications that would be needed to recommend support of this bill:** *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.* The Department does have concerns regarding some of the language contained in the bill. Attached is recommended bill changes.

Gubernatorial appointments to board or commission?

Commissioner has reviewed this document:

Date: 2/27/15

Secretary has reviewed this document:

Date: \_\_\_\_\_

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For the purposes of As used in this chapter:

(2) "Building or structure" means a building or structure whose use or useful occupancy requires the construction or modification of a potable water supply or wastewater system.

\* \* \*

(i) that allows wastewater to be exposed to the open air, pool on the surface of the ground, discharge directly to surface water, or back up into a

1 building or structure, unless, in any of these instances, the approved design of  
2 the system specifically requires the system to function in such a manner; or

3 (ii) that results in a potable water supply being affirmatively  
4 determined by the ~~secretary~~ Secretary to be a failed supply, and that  
5 information has been posted on the ~~agency of natural resources'~~ Agency of  
6 Natural Resources' website.

7 (B) Notwithstanding the provisions of subdivision (A) of this  
8 subdivision (5), a system shall not be a failed system if:

9 (i) ~~these~~ These effects can be and are remedied solely by minor  
10 repairs, including the repair of a broken pipe leading from a building or  
11 structure to the septic tank, replacement of a cracked or broken septic tank, or  
12 replacement of a broken pump or associated valves, switches and controls; ~~or,~~

13 (ii) ~~these~~ These effects have lasted for only a brief period of time,  
14 the cause of the failure has been determined to be an unusual and nonrecurring  
15 event, and the system has recovered from the state of failure. Systems which  
16 have recurring, continuing, or seasonal failures shall be considered to be failed  
17 systems.

18 (C) If a project is served by multiple wastewater systems, the failure  
19 of one system will not require the issuance of a permit or permit amendment  
20 for any other system that is not in a state of failure.



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1 (D) A wastewater system may be determined to be a failed system by  
2 the completion of a site visit that identifies one or more of the conditions set  
3 forth in subdivision (A)(i) of this subdivision (5).

4 \* \* \*

5 (7) "Professional engineer" means an engineer licensed and in good  
6 standing by the ~~board of professional engineering~~ Board of Professional  
7 Engineering under 26 V.S.A. chapter 20 of Title 26.

8 (8) "Secretary" means the ~~secretary of the agency of natural resources~~  
9 Secretary of Natural Resources or a duly authorized representative of the  
10 ~~secretary~~ Secretary. A duly authorized representative of the ~~secretary~~  
11 Secretary includes a municipality that has requested delegation, in writing, and  
12 has been delegated the authority to implement provisions of this chapter in lieu  
13 of the ~~secretary~~ Secretary.

14 \* \* \*

15 (10) "Wastewater system" means any piping, pumping, treatment, or  
16 disposal system used for the conveyance and treatment of ~~sanitary waste or~~  
17 ~~used water, including, but not limited to, carriage water, shower and wash~~  
18 ~~water, sewage~~ and process wastewater. This definition does not include any  
19 internal piping or plumbing, except for mechanical systems, such as pump  
20 stations and storage tanks or toilets, that are located inside a building or  
21 structure and that are integral to the operation of a wastewater system. This  
22 definition also does not include wastewater systems that are used exclusively

1 for the treatment and disposal of animal manure. In this chapter, “wastewater  
2 system” refers to a soil-based disposal system of less than 6,500 gallons per  
3 day, or a sewerage connection of any size.

4 (11) “Sewage” means sanitary waste or used water, including carriage  
5 water and shower and wash water, from any building or structure or  
6 campground. “Sewage” shall not mean process wastewater or stormwater.

7 Sec. 2. 10 V.S.A. § 1981 is added to read:

8 § 1981. NOTICE OF WASTEWATER SYSTEM TO BUYER

9 (a) Prior to execution of an agreement for the transfer of real property on  
10 which a building or structure or campground is located, the seller or transferor  
11 of the real property shall provide the buyer or transferee with a notice  
12 regarding how sewage generated on the property is managed. The notice shall  
13 include:

14 (1) a statement that the sewage from the property is conveyed by a  
15 sewerage connection wastewater system to a wastewater treatment plant or  
16 indirect discharge system; or

17 (2) a statement that the sewage from the property is not conveyed via a  
18 sewerage connection but is conveyed to:

19 ~~(A) is not conveyed to a wastewater treatment plant; and~~

20 ~~(B) is conveyed to:~~

21 ~~(iA) a permitted-soil-based wastewater system or holding tank~~  
22 wastewater system permitted after January 1, 2007;

1 (iiB) a permitted holding tank an exempt soil-based wastewater  
2 system or holding tank wastewater system, including all systems permitted  
3 before January 1, 2007; or

4 (iiiC) an unpermitted wastewater system ~~or other form of disposition~~;

5 (3) a description of the type of wastewater system if the system is  
6 exempt or unpermitted;

7 (4) a sketch that shows the approximate location of the soil-based  
8 wastewater system or holding tank wastewater system if the system is exempt  
9 or unpermitted;

10 (35) the permit compliance status of the wastewater treatment system, if  
11 known to the seller or transferor;

12 (46) ~~whether a~~ the existence and location of any straight-pipe  
13 wastewater system ~~exists on the property~~ connected to a building or structure  
14 or campground on the property, if known to the seller or transferor; and

15 (57) ~~if possessed by the seller or transferor, a previous~~ the most recent  
16 pumping records and inspection report for the soil-based wastewater system or  
17 holding tank wastewater system if possessed by the seller or transferor.

18 (b) If a seller or transferor subject to the requirements of subsection (a) of  
19 this section notifies a buyer or transferee under subdivision (a)(2)(B)(iii) that  
20 sewage from the property is conveyed to an unpermitted wastewater system or  
21 other form of disposition, the seller or transferor shall provide in the notice a



1 description of the system in use, including the location of the system on  
2 the property.

3 (eb) If a seller or transferor subject to the requirements of subsection (a) of  
4 this section knows that an abandoned soil-based wastewater system or holding  
5 tank wastewater system is located on the property, the seller or transferor shall  
6 include in the notice required by subsection (a) a map sketch showing the  
7 approximate location of the abandoned wastewater system.

8 (dc) Except where the buyer or transferee and seller or transferor agree to  
9 the contrary in writing before execution of the agreement for the transfer of the  
10 property, a seller or transferor who fails to disclose the existence or known  
11 status of a wastewater treatment system- provide the required notice under this  
12 section at the time of sale or transfer shall be liable to the buyer or transferee  
13 for the cost to bring the wastewater treatment system into compliance with the  
14 requirements of this chapter and the rules adopted under this chapter. If  
15 compliance is not possible, the seller or transferor shall be liable to the buyer  
16 for the cost of the purchase of the property. A buyer or transferee shall  
17 commence an action for cost recovery under this section within two years of  
18 the date on which the buyer or transferee executed the agreement for transfer  
19 of the property on which the wastewater treatment system is located.

20 (ed) The Secretary shall develop and make available on the Agency of  
21 Natural Resources' website a notice form for use in complying with the  
22 requirements of this section.



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1      Sec. 3. EFFECTIVE DATE

2      This act shall take effect on July 1, 2015.