

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2015

Bill Number: S.45

Name of Bill: An Act to exempt the use of bottom barriers from aquatic nuisance permit requirements

Agency/ Department: Department of Environmental Conservation

Author of Bill Review: Matthew Probasco

Date of Bill Review: February 5, 2015

Related Bills and Key Players: None

Status of Bill: (check one): ☒ Upon Introduction

As passed by 1st body

As passed by both

Recommended Position:

Support

☒ Oppose

Remain Neutral

Support with modifications identified in #8 below

Analysis of Bill

1. **Summary of bill and issue it addresses.** The bill proposes to exempt the installation of up to 15 bottom barriers (a.k.a. benthic mats), limited in size to 14 by 14 feet each (i.e., a total maximum surface area of ~2940 square feet) on a lake, which would otherwise require an aquatic nuisance permit in accordance with 10 V.S.A. 1455(i)(1-4), provided that they are managed and controlled by a lake association. Bottom barriers are a common aquatic nuisance plant control technique. When installed properly, they control aquatic plants by reducing, if not eliminating, sunlight and smothering (killing) the covered plant material.
2. **Is there a need for this bill?** No. The legislature has granted general permit authority to the Department for the installation of all nonchemical aquatic nuisance control activities, including bottom barriers (10 V.S.A. 1455(m)). The Department has just begun the process of identifying standards for a bottom barrier general permit. Applications considered under a bottom barrier general permit would be more expeditious than the current individual permit, while being sufficiently protective of the environment and public good.
3. **What are likely to be the fiscal and programmatic implications of this bill for this Department?**
The impact will be significant. The bill will severely inhibit the Department's compliance and enforcement capacity for illicit bottom barrier installations. It would increase demand on the Department to determine which lake associations are managing bottom barriers and if these installations comply with the proposed arbitrary number and size restriction.
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?** Yes, the proposed bill will have significant implications for Department of Fish and Wildlife, especially as it pertains to its responsibility to monitor and manage uncommon, rare, threatened and endangered (non-game) species as well as game fish and fishery management (i.e. fish spawn).
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.)*

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It is likely that lake associations and municipalities support for this bill will be mixed. While it may create some regulatory efficiency for lake associations and municipalities, the proposed exemption may also expose them to liability if a bottom barrier is not installed and/or maintained properly and becomes a hazard. Advocates for recreational fishing will likely be opposed given bottom barriers are a threat to fish during spawn.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why? See 5 above.

6.2 Who else is likely to oppose the proposal and why? See 4 & 5 above.

7. Rationale for recommendation: *Justify recommendation stated above.* In addition to the existing general permit authority already granted to DEC and the current progress to develop a general permit, the proposed changes would eliminate the required findings that now exist for bottom barriers under 10 VSA 1455(f)(1-3) – such that: there is acceptable risk to the nontarget environment; there is negligible risk to public health; and there is benefit to or no undue adverse impact upon the public good. There are significant risks to the environment resulting from installation of a bottom barrier. The greatest of which is to the aquatic biota covered by them. Any aquatic organism trapped under a bottom barrier will die (e.g. aquatic plants, mollusks, turtles, etc.). This is of particular concern for rare, threatened, or endangered species. Furthermore, bottom barriers require routine monitoring and maintenance, without which they can billow or become buried. A billowed bottom barrier can become a significant navigation or swimming hazard, and the resulting entanglement could be fatal. Once buried, bottom barriers are difficult or impossible to remove, and no longer serve a control function as aquatic plants easily root on top of them. Both cases adversely affect the public good. The current regulations require an aquatic nuisance control permit in which conditions are inserted obliging the permittee to conduct a prior assessment of the aquatic community within the area proposed for installation (usually associated with an aquatic invasive plant infestation) as well as conduct routine maintenance, monitoring, reporting, and eventually removal, once it is installed. The proposed legislative change requires none of these findings to be made, posing a risk to the environment, to public health, and to the public good.

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.*
None.

9. Gubernatorial appointments to board or commission? None.

Commissioner has reviewed this document:  Date: 2/9/15

Secretary has reviewed this document:  Date: 2-11-15