

CONFIDENTIAL LEGISLATIVE BILL REVIEW FORM: 2016

Bill Number: H. 595 Name of Bill An act relating to potable water supplies from surface waters

Agency of Natural Resources / Dept: ANR/DEC Author of Bill Review: Chapman, Ellis, Christianson

Date of Bill Review: 5/5/2016 Related Bills and Key Players: Deen, Krebs, Bray, Campion, Browning (H.509)

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

Recommended Position: Support

Analysis of Bill

1. **Summary of bill and issue it addresses.** *Describe what the bill is intended to accomplish and why.*

As introduced, this bill consisted only of sections 1 -3. Once in the Senate, this bill became the vehicle for a number of initiatives related to PFOA contamination of drinking water in Bennington County.

- **Requires DEC to adopt rules allowing surface water as a source of drinking water** if the structure is an owner-occupied, single-family residence, and all other conditions promulgated by ANR are met. (sections 1-3)
- **Requires the Technical Advisory Committee to report on testing for contamination when drilling new groundwater wells;** this report must be submitted to the Legislature by January 15, 2017 (section 4).
- **Amends the Environmental Contingency Fund** so that ANR may seek reimbursement from the fund for oversight of voluntary cleanup efforts by a responsible party prior to entering into a written agreement with that responsible party, 10 V.S.A. § 1283(b)(9) (section 5).
- **Authorizes ANR to serve information requests** upon persons whom the agency has reasonable cause to believe are liability for a release of hazardous waste (section 6 & 7).
- **Authorizes ANR to seek natural resource damages** (sections 8-9); ANR must convene a working group by July 1, 2016; submit draft rules to the Legislature by February 1, 2017; commence rulemaking by July 1, 2017; and adopt final rules by March 1, 2018;
- **Establishes a Working Group on Toxic Chemicals** in Vermont, ANR must convene the working group by July 1, 2016; and submit a report to the Legislature by January 15, 2017 (section 10);
- **Extends the date for manufacturers to submit notices under Act 188** (Chemicals of High Concern to Children) from July 1, 2016 to January 1, 2017 (section 11);
- **Requires DEC to consult with the Natural Resources Conservation Council** in the tactical basin planning process; and authorizes DEC to contract with the NRCC for basin planning contingent upon the availability of funds (section 12)
- **Requires recipients of state-funded grants to certify compliance water quality laws and regulations** as part of Bulletin 5, Attachment C (Standard State Provisions for Grants and Contracts). This was formerly H.509. (section 13).

2. Is there a need for this bill? *Please explain why or why not.*

Yes, there is a need for this bill.

1. Requires DEC to adopt rules allowing surface water as a source of drinking water (sections 1-3).

- There are sections of Vermont where bedrock wells either produce poor quality of water or little to no quantity of water. The bill is to address these situations.
- Presently the variance section of the Wastewater System and Potable Water Supply Rules allows landowners with a potable water supply to use surface water as a water source when the existing water supply is failed, or there is no other option to construct a potable water that complies with the Rules. This bill allows an owner-occupied single family residence to have a surface water source without using the variance section of the Rules.
- Surface water requires substantial treatment to reduce or eliminate many contaminants that a groundwater source may not be exposed to such as cyanobacteria, giardia, cryptosporidium, and synthetic organics. When private treatment systems are poorly maintained, the occupants of these single-family residences will have an increased risk of exposure to water-borne contaminants.

2. Requires the Technical Advisory Committee to report on testing for contamination when drilling new groundwater wells (section 4).

- The bill targets single-family residences served by individual groundwater sources since all other water sources require testing prior to use.
- ANR already requires testing of wells that serve a single-family residence when there is evidence the well will be drilled in an area known to have concentrations that exceed one or more primary contaminants.
- Current law already requires well drillers to provide information about testing when installing a new well; and already requires realtors to provide the same information to potential buyers of properties that utilize a groundwater source.

3. Amends the Environmental Contingency Fund so that ANR may seek reimbursement from the fund for oversight of voluntary cleanup efforts by a responsible party prior to entering into a written agreement with that responsible party (section 5).

- ANR needs this amendment to seek reimbursement from the ECF to pay for administrative oversight of voluntary cleanup and remediation efforts of PFOA in Bennington County.

4. Authorize ANR to serve information requests upon persons whom the agency has reasonable cause to believe are liability for a release of hazardous waste (sections 6-7).

- ANR will benefit from authority to issue and enforce information requests without the cost of serving complaints and issuing discovery requests.

5. Authorize ANR to seek natural resource damages (sections 8-9).

- ANR will benefit from this new authority. This provision will clarify the State of Vermont's ability to recovery natural resource damages in lawsuits brought against persons who have released hazardous waste.

6. Establish a working on group on toxic use of chemicals in Vermont (section 10).

- This section will advance the statewide discussion of toxic chemical use in Vermont.

7. Extends the date for manufacturers to submit notices under Act 188 (Chemicals of High Concern to Children) from July 1, 2016 to January 1, 2017 (section 11).

- Due to VDH delays in setting up an electronic notice system, this filing extension is needed.

8. Requires DEC to consult with the Natural Resources Conservation Council in the tactical basin planning process

- Consultation with the Natural Resources Conservation Council will enhance the tactical basin process.

9. Requires recipients of state-funded grants to certify compliance water quality laws and regulations as part of Bulletin 5, Attachment C (Standard State Provisions for Grants and Contracts). This was formerly H.509. (section 13).

- ANR worked with other agencies to develop a self-certification process for compliance with water quality laws and regulations that will be easy to administer.

3. What are likely to be the fiscal and programmatic implications of this bill for this Department?

ANR strongly supports the bill and, in particular, supports those provisions authorizing ANR to seek natural resource damages; authorizing ANR to serve information requests on persons whom the agency has reasonable cause to believe are liability for a release of hazardous waste; amending the Environmental Contingency Fund to allow reimbursement for oversight of voluntary cleanup efforts prior to entering into a written agreement with the responsible party; and directing ANR to convene a working group on toxic chemicals. This bill will have an overall positive fiscal and programmatic impact on the Agency of Natural Resources and the Department of Environmental Conservation.

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?

1. Allow an individual residential dwelling to use surface water as a potable water supply (§§1-3).	<ul style="list-style-type: none"> • <u>Department of Health</u>: The Department of Health will be required to field additional calls and inquiries. Presently homeowners who test their wells typically contact the Department of Health for treatment suggestions if there is a concern with one or more contaminants. The Department of Health may also need to enforce the Rental Housing Code, which prohibits the use of surface water as a water source in rental properties. DEC cannot control whether a single-family residence is owner-occupied or rented. • <u>Agency of Human Services</u>. The bill prohibits daycares and other home occupations where the public may visit to use surface waters for potable source. AHS will need to enforce this provision with respect to daycares.
2. Requires TAC to report on testing for contamination when drilling new groundwater wells (sections 4).	<ul style="list-style-type: none"> • <u>Technical Advisory Committee</u> will be required to report on an initiative that has little support.
7. Extends the date for manufacturers to submit notices under Act 188	<ul style="list-style-type: none"> • <u>Vermont Department of Health</u>. Will give VDH additional time to implement electronic notice system.
9. Requires recipients of state-funded grants to certify compliance water quality laws and regulations	<ul style="list-style-type: none"> • <u>ACCD, AAFM, ANR and other agencies</u> will need to verify that grant applicants are in compliance with water quality laws and regulations before distributing monies.

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)

1. Allows an individual residential dwelling to use surface water as a potable water supply (§§1-3).	Colchester and Charlotte, the two municipalities delegated to run the onsite septic and drinking water program, would be required to meet these same requirements which may be difficult for them to do with their current staffing. It is anticipated both municipalities will request the Department's assistance to initially review water treatment designs to be certain the design complies with the State Rules.
2. Requires TAC to report on testing for contamination when drilling new groundwater wells (sections 4).	
3. Amends the Environmental Contingency Fund so that ANR may seek reimbursement from the fund	

for oversight of voluntary cleanup efforts by a responsible party prior to entering into a written agreement with that responsible party (section 5).	
4. Authorizes ANR to serve information requests upon persons whom the agency has reasonable cause to believe are liability for a release of hazardous waste (section 6-7).	Business owners may be required to comply with information requests if the Agency has reasonable cause to believe the business is liable for a release of hazardous waste.
5. Authorize ANR to seek natural resource damages (sections 8-9).	Business owners may be required to pay natural resource damages.
6. Establish a working on group on toxic use of chemicals in Vermont (section 10).	Environmental groups strongly support this provision.
7. Extends the date for manufacturers to submit notices under Act 188 (section 11)	Businesses support this extension. Environmental groups wish that the online notice system were already in place, but understand the need for an extension.
8. Requires DEC to consult with the Natural Resources Conservation Council in the tactical basin planning process (section 12)	Natural Resources Conservation Council strongly supports this section.
9. Requires recipients of state-funded grants to certify compliance water quality laws and regulations as part of Bulletin 5, Attachment C	Grant applicants (municipalities, farmers, businesses) may find that this requirement adds step to the grant application process.

6. Other Stakeholders:

	6.1 Who else is likely to support the proposal and why?	6.2 Who else is likely to oppose the proposal and why?
1. Allow an individual residential dwelling to use surface water as a potable water supply (§§1-3).	Landowners who have ready access to surface water; some designers; some plumbers.	Delegated municipalities (see #5 above).
2. Requires TAC to report on testing for contamination when drilling new groundwater wells (sections 4).	VNRC, League of Conservation Voters	
3. Amends the Environmental Contingency Fund so that ANR may seek reimbursement from the fund for oversight of voluntary cleanup efforts		

by a responsible party prior to entering into a written agreement with that responsible party (section 5).		
4. Authorizes ANR to serve information requests upon persons whom the agency has reasonable cause to believe are liability for a release of hazardous waste (section 6-7).	VNRC; League of Conservation Voters; CLF	Businesses and manufacturers worked with ANR to develop mutually satisfactory legislative language.
5. Authorize ANR to seek natural resource damages (sections 8-9).	VNRC; League of Conservation Voters	Businesses and manufacturers worked with ANR to develop mutually satisfactory legislative language.
6. Establish a working on group on toxic use of chemicals in Vermont (section 10).	VNRC; CLF	
7. Extends the date for manufacturers to submit notices under Act 188 (section 11)	Businesses and manufacturers will support	Environmental groups will be neutral
8. Requires DEC to consult with the Natural Resources Conservation Council in the tactical basin planning process (section 12)	NRCC will support	
9. Requires recipients of state-funded grants to certify compliance water quality laws and regulations as part of Bulletin 5, Attachment C	Environmental groups will probably support	

10. Rationale for recommendation: *Justify recommendation stated above.*


Although ANR initially expressed reservations about the bill as introduced, allowing surface waters to be used as a potable source, other parts of the bill will strengthen ANR's ability to investigate hazardous waste releases, collect natural resource damages, and obtain reimbursement from the Environmental Contingency Fund (ECF). On the whole, the advantages of the bill outweigh the costs and risks.

11. 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.*

Not applicable.

12. Will this bill create a new board or commission AND/OR add or remove appointees to an existing one? If so, which one and how many?

This bill would create a stakeholder group, convened by ANR, on use of toxic chemicals in Vermont. The members of the stakeholder group are not specified in the bill.

Commissioner has reviewed this document:  Date: 5/8/2016

Secretary has reviewed this document:  Date: 5/10/16