

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2014

Bill Number: S.215 Name of Bill: Water Quality Improvement

Agency/Dept.: ANR/DEC Author of Bill Review: Kari Dolan

Date of Bill Review: 2/25/14

Status of Bill (check one):

☐ Upon Introduction ☐ As passed by 1st body ☒ As passed by both bodies ☐ Fiscal

Recommended Position:

☐ Support ☒ Oppose ☐ Remain Neutral ☐ Support with modifications identified in #8 below

Analysis of Bill

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

The draft bill requires ANR to prepare a report by April 15, 2014, containing specific recommendations for administering, implementing, and financing water quality improvements. The bill specifically directs the ANR to: (a) identify five strategic investments (referred to as priority actions) to improve the State's water quality that the State must address in the next 10 years; (b) recommend at least two funding proposals sufficient to fund those actions; (c) summarize how ANR will administer implementation of the five priority actions, including how it will be restructured to assure completion of priority actions; and (d) recommend a process to address and finance other water quality priorities.

The fundamental issue the bill addresses is the current lack of sufficient funding to effectively meet federal Clean Water Act requirements statewide. The bill acknowledges the multiple Clean Water Act requirements to remediate existing and prevent future water quality problems statewide (i.e., Total Maximum Daily Load (TMDL) plans under development or pending for Lake Champlain, Memphremagog, and Vermont portion of the Long Island Sound/Connecticut River, and stormwater-impaired waters).

2. Is there a need for this bill? *Please explain why or why not.* Not at this time. The bill seeks to remedy the State's lack of adequate funding to implement actions to restore and protect clean water, as required under the Clean Water Act's TMDL plans. The bill is a legislative response to the ANR Act 138 Report issued two years ago. That report, released in January 2013, provides a comprehensive list of programs and funding options. Act 138 Report did not prioritize actions or contain recommendations on how to finance water quality improvements, as the law's sponsors apparently wanted. While ANR intends to present this information to the General Assembly, we are not yet ready to do so and cannot meet the deadline in the bill, April 15, 2014, less than two months away. This deadline is unrealistic given the scope of the requested report and is also premature. Only two weeks after the deadline for this report, DEC will provide the Governor with a draft Lake Champlain Phosphorus TMDL Phase I Implementation Plan to present to EPA. EPA will then solicit public comment on the report and will issue a final TMDL this coming summer. Requiring the ANR to produce a report that identifies and prioritizes actions before the final TMDL has been issued will lead to the issuance of a report that may need to be substantially revised in light of EPA's decision.

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

The tight deadline poses significant impacts on ANR. If enacted, the bill gives ANR less than two months to prepare the report. However, ANR is in the midst of completing the draft Lake Champlain Phosphorus TMDL Phase I Implementation Plan, due to EPA by the end of April. While we have some of the information requested for the report, the short time period will not allow ANR to do a meaningful evaluation of potential funding options, including leveraging federal, local, and private funds.

Another significant challenge in preparing the report is its requirement to have ANR describe how the agency could be restructured, including reassigning staff, to complete priority actions (Section 1(c)(3)(A)). The tight deadline will have an impact on ANR's ability to effectively evaluate its organizational and administrative structure.

The same staff required to prepare the report requested in the bill are the same staff that are working on the Lake Champlain TMDL process. Requiring those staff to work on the report will interfere with ANR's ability to participate effectively in the TMDL development, jeopardizing significant economic and environmental interests.

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? The bill assigns ANR the responsibility for producing the report. It is highly likely that the ANR will include in the report the management of stormwater runoff from roads and agricultural areas in the discussion of priority actions. Thus, ANR will need to confer with the Agencies of Transportation (VTrans) and Agriculture, Food and Markets (VAAFM) in the development of the report. VTrans and VAAFM would want to ensure that the report reflect the financial and administrative resource needs to implement priority actions, but will have the same limitation on available staff resources faced by ANR.

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.)*

The bill requires the generation of a report that will contain recommendations on strategic investments and options to finance water quality improvement programs. Those recommendations will undoubtedly affect the pollution source sectors targeted for investment (farmers, municipalities, for example) and the entities targeted to generate revenues. The short time frame for developing the report will prevent ANR from consulting with any of these stakeholders in the development of our recommendations.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why? Clean water advocacy organizations and watershed groups may support the bill but may not appreciate the administrative challenges of producing the report and the impact of diverting staff resources away from the Lake Champlain TMDL work.

6.2 Who else is likely to oppose the proposal and why? Businesses, municipalities and citizens concerned about the regulatory and financial impacts of the state's policy related to water quality may be concerned with the short time frame associated with the generation of a report with far-reaching consequences.

7. Rationale for recommendation: *Justify recommendation stated above.* This bill will interfere with the state's effort to participate in a meaningful way in the Lake Champlain phosphorus TMDL process. The Lake Champlain TMDL is still under development. We are expecting to complete the draft TMDL Phase I Implementation Plan -- which will contain proposed priority actions and revenue needs -- by the end of March. Moreover, the public comment period on a draft TMDL and Phase I Implementation plan is

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scheduled for May/June time frame. A more realistic deadline should follow the public comment period for the Lake Champlain TMDL in order to engage the public further in the process. More time will also enable ANR to work closely with state agency staff, including the State Tax Department, the Legislative Joint Fiscal Office, and the State Treasurer's Office to fully evaluate funding options.

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 bill should provide ANR more time to develop the report, at least until January 2015. Time to complete the draft TMDL and public comment period will help the State to more effectively identify actions and evaluate funding options, including funding options not included in the Act 138 Report. The ANR also needs technical assistance from the Legislative Joint Fiscal Office, the State Treasurer's Office, and the Department of Taxes in the preparation of the section of the report pertaining to funding options. The bill should also direct ANR to consult with VAAFM and VTrans in the preparation of the section of the report pertaining to priority actions.

Section 1(a)(5) indicates that the State lacks a plan to identify and prioritize necessary State action to improve water quality. That statement is not accurate. The DEC Watershed Management Division released a Statewide Surface Water Management Strategy in May, 2011, which is periodically updated. This Strategy is the State's surface water plan. It describes clean water goals and objectives and describes ten stressors that are causing impacts to the waters of the State. The Lake Champlain Phosphorus TMDL focuses on phosphorus reductions from four of the 10 stressors described in the Strategy. The value of this Strategy is that its scope is much more comprehensive than the Lake Champlain phosphorus TMDL. It targets other priority actions for delivering clean water, such as toxics, pathogens, invasive species.

The bill calls for a report on five priority actions that State must address (Section 1(c)(1)). The bill should narrow its focus to five priority actions to reduce nutrient and sediment pollution -- the predominant contributor to water quality degradation. The State would then rely on the DEC Statewide Surface Water Management Strategy for taking action to address the other water quality challenges.

Commissioner has reviewed this document: _____

Date: _____

Secretary has reviewed this document: _____

Date: _____

This is a bill review by David's team. We should discuss whether it makes sense for a veto or for the gov to let it go into law w/out signature and then have us to be not be fully responsive (since we cannot, as a practical matter, do what is asked by us within the required time frame.) Lets chat.

DM

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