

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2015

Bill Number: S.134 Name of Bill: Clean Water Legacy Fund

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

Date of Bill Review: 3/17/2015 Related Bills and Key Players: Senators Lyons, Starr; some relationship to H35

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.** *Describe what the bill is intended to accomplish and why.* The bill proposes to establish a Clean Water Legacy Fund ("Fund") – a special dedicated fund to support water quality remediation. The Fund would be supported by a parcel fee-based "Clean Water Legacy Fee," as well as other potential funding sources, such as private contributions and federal funds passed through to the Fund. The bill authorizes the Department of Taxes to assess a Clean Water Legacy Fee that is graduated based on parcel size. The bill establishes an 11-member Clean Water Legacy Board, which has broad representation.

Here is a list of differences between H35 (as voted out by House FWW Committee) and Bill S134:

Pertaining to Funding Sources, Bill S134:

- a. Does not include revenues from meals, rooms and alcohol taxes (see H35: §1388(a)(A)(i));
- b. Does not include revenues from taxes imposed gasoline tax, 23 VSA §3106(a)(1)(A)(ii) (see H35: §§1388(a)(A)(ii));
- c. Does not specify that gifts or donations submitted shall be deductible (see H35: §1388(a)(B));
- d. Does include a per parcel fee that applies on all parcels in the state (with railroad track right-of-ways the one exemption) and tiered based on size of parcel. (See S134: §10502(a);
- e. Specifies the Department of Taxes to manage the assessment, collection and enforcement of the fees;

Pertaining to Priorities, Bill S134:

- f. Segments out waters that have TMDLs (H35's top priority) and makes projects and programs in Lake Champlain the top priority, followed by all other waters with TMDLs (See S134: §10504(g) and H35: §1388(b));
- g. Identifies state staffing needs as third priority;
- h. Does not include H35's 4th priority to provide funding for innovative technologies, such as nutrient removal technologies and digesters (see H35: §1388(b)(4));
- i. Does not include H25's overarching priority to provide assistance to municipalities in order to help them comply with water quality requirements (see H35: §1388(c));
- j. Includes an option to allow the Clean Water Legacy Board to make financial awards for projects that otherwise would not receive assistance (see S134: §10504(h);

Pertaining to Board Governance, Bill S134:

- k. Does not include Secretary of Administration, Secretary of Commerce and Community Development or a representative for municipal interests;

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I. Includes a representative from the Lake Champlain Basin Program, Attorney General and State Treasurer. Includes two rather than three Legislature-appointed representatives from watershed groups and two House Speaker-appointed representatives from industry or businesses.

Pertaining to Board Functions, S134 and H35 differ significantly. Bill S134:

m. Gives the Clean Water Legacy Board broad authority to authorize expenditures. Tasks include developing a 5-year plan for the disbursement of funds, setting priorities for the use of the Fund, directly managing a grant and loan program; and preparing an annual report to the relevant legislative committees (see H134: §10504 (e)).

n. Instead of having the board exercise planning and grant-making authority directly, Bill H35 authorizes its board to receive proposals from state agencies and make recommendations to the Secretary of Administration to appropriate funds (see H35: §1389(f)(1));

o. Requires an annual reporting of the Fund's performance, beginning January 2016. Bill H35's annual report is more extensive, requiring the Board to report on all water quality-related State expenditures regardless of funding source, describe additional funding needs and make recommendations for additional revenues to meet funding gaps. Bill H35 directs the Board to produce the first annual report in January 2017.

2. **Is there a need for this bill?** *Please explain why or why not.* A positive outcome is the bill's establishment of a Clean Water Legacy Fund that is dedicated to support water quality restoration activities. Assuming that existing state funding programs are maintained at current levels, this Fund will increase state resources for water quality improvement activities. Establishing a board to oversee the management of the Fund creates a highly visible and transparent process surrounding state decisions about the funding of clean water activities. The bill proposes an "all in" structure by applying a Clean Water Legacy Fee to virtually all land uses (railroad right-of-ways are exempt).
3. **What are likely to be the fiscal and programmatic implications of this bill for this Department?**
The bill creates new processes in setting priorities and criteria for funding, managing a clean water grant and loan program, and reporting, all of which are redundant of DEC's existing basin planning efforts and clean water grant and loan programs. Thus, there will be some increase in administrative costs of the Department of Environmental Conservation (DEC or the Department) to ensure coordination between programs. Moreover, a priority-setting function that is outside of the DEC will lead to an unfortunate outcome of discounting the expertise within DEC to target the most critical clean water needs. The inefficiencies of a duplicative clean water grant and loan program may ultimately drive consolidation of the State's clean water grant and loan programs and reporting functions. Such a change will achieve administrative efficiencies, but risks eliminating DEC's Ecosystem Restoration Program's current grant-making functions.
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 requires representation from a number of agencies to the Clean Water Legacy Board (with some compensation). The bill specifies board membership to include the administrator (or designee) from the Attorney General's office, State Treasurer's office, and the agencies of Natural Resources, Agriculture, and Transportation (VTrans). The Department of Taxes is to conduct the parcel fee-based assessment. Although the bill explicitly exempts railroad track right-of-ways, it appears that the bill does not exempt state highway right-of-ways, which may not be viewed favorably by VTrans.

The Agency of Administration is to administer the Fund. There may be some need to increase the capacity at the Agency of Administration to supervise activities that will fall under the jurisdiction of the Board, although the bill does not specify this governance. One solution would be to include a description of an executive director and staff in the bill, and have the salary and expenses paid for by the Fund.

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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The bill applies the fee to agricultural lands, properties currently exempt from property taxes, and developed lands used for rail transport, except for the railroad track right-of-way. Inevitably, there will be some owners of real and personal properties that historically have been exempt from paying a property tax who will not support the fee.

The Board includes representatives from the private sector but does not include representation from municipalities. Municipalities will want representation.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why? No one likes to pay more fees or taxes. With that said, larger municipalities, NGOs and the private sector should welcome the formation of the Fund, a board that includes their interests, and a fee structured in a way in which everyone contributes. Parcel owners that already pay a stormwater fee will support having their Clean Water Legacy Fee reduced by the annual amount of the municipal stormwater fee.

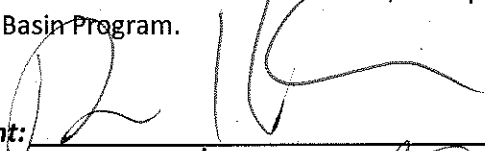
6.2 Who else is likely to oppose the proposal and why? Smaller municipalities, small businesses and farmers may oppose the bill on concerns about affordability. This bill will also be targeted by opponents as a type of property tax increase.

7. Rationale for recommendation: *Justify recommendation stated above.* Because this bill would support the Administration's proposal for a state Clean Water Initiative and the Lake Champlain cleanup, we should not oppose it. At the same time, it is sufficiently different from our Clean Water Fund proposal, particularly as it relates to the structure of the governing board and revenue sources, that we should not support it. We should be open to considering whether elements of this bill could be incorporated into H.35 if the Senate takes up S.134.

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.*

9. Gubernatorial appointments to board or commission? Yes. The Governor would appoint several representatives to a Clean Water Legacy Board including Secretaries of Natural Resources, Transportation and Agriculture, and a representative of the Lake Champlain Basin Program.

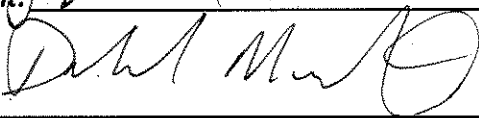
Commissioner has reviewed this document:



Date:

3/30/15

Secretary has reviewed this document:



Date:

3/30/15