

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2015-2016

Bill Number: H. 517 Name of Bill: An Act Relating to the Classification of Waters

Agency/ Dept: ANR/DEC Author of Bill Review: Neil Kamman

Date of Bill Review: 4/12/16 Related Bills and Key Players: David Deen

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 Federal Clean Water Act requires that States establish classification for the management of surface water uses. 10VSA§§1252-1253 provides Vermont's statutory fulfillment of that requirement. H. 517 revises the classification system for Vermont's surface waters by establishing a new water quality classification that is intermediary between the existing Class B (to be renamed B2), and Class A levels. The bill further clarifies in 10VSA§1252 that it is the individual uses of streams and lakes, not the waterbody itself, that may be classified from the Class B2 level of protection, to the B1 or even A1 level of protection. The bill also clarifies the process for reclassification of specific uses waters. Waters are identified for upward reclassification thru the tactical basin planning process, though the actual designation occurs as a rulemaking amendment to the Water Quality Standards rule (Env. Protection Rule 29A).

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

Yes. This bill accomplishes three important things:

- 1) Sets forth in statute the expectation that waters which exhibit high levels of quality for a specific use are to be designated as Class B1 or even A1, depending on the level of use existing, to ensure continued support of that use.
- 2) Allows the Agency to address in rulemaking a longstanding deficiency in the Water Quality Standards known as "water management typing," and to clarify and make more transparent the current Water Quality Standards Rule.
- 3) Sets forth a transparent classification system to be relied upon in the promulgation of an Antidegradation Rule, as is required of the Agency by Act 64.

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

The programmatic and fiscal implications of this are minimal to the Department. The processes envisioned in the revised statutory language are already in place within DEC to implement the statute. The fiscal ramifications are limited to the costs associated with amendments to the Water Quality Standards Rule when particular water uses are reclassified, pursuant to APA, and subsequently to administering permit programs where any new protections would be ensured. Such permit provisions would be designed to maintain surface waters within criteria limits established in the Water Quality Standards rule, specific to the classification and designated use.

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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 programmatic and fiscal implications of this are likely minimal to other DEC Departments. The fiscal ramifications are limited to the costs associated with protecting the specific uses that would be protected to higher classification tiers once designated. This may mean that lands immediately adjacent to surface waters may be afforded greater levels of erosion control or riverbank protection during state-led development or forest harvesting activities. There has been outreach to ACCD, VTRANS, ANR-FPR, and ANR-F+W, and there exists support.

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)

Insofar as the uses to be reclassified pursuant to H517 are documented, then representatives of municipalities, businesses, and regulated entities have all indicated their general support for the bill. DEC conducts a comprehensive tactical basin planning process that ensures the availability of that documentation. The fiscal ramifications are limited to those incremental costs relating to compliance with permit conditions associated with development or surface water discharges that would be in place to maintain a higher-level classification of a use. This does not really constitute a change to current business practices, insofar as DEC and other permits are designed to acknowledge the level of support of surface water uses, and maintain that level.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why?

In testimony, the following organizations expressed support, citing their support for the intent of the bill:

- Conservation Law Foundation
- Vermont Natural Resources Council
- Vermont Association of Planning and Development Agencies
- Lake Champlain International
- MMRVT on behalf of their clients
- VLCT

Outside of testimony, Green Mountain Power, the City of Burlington, and certain independent hydroelectricity facility operators expressed concerns over the bill. These concerns were addressed by the addition of language in the bill in the Senate to indicate that uses would be subject to reclassification when shown to be “demonstrably and consistently” of higher quality than Class B. This language also addressed general concerns voiced by VLCT during their testimony. Thus, all of these stakeholders would either be in full support, or at least not oppose further action. Outside of formal testimony, the United States Environmental Protection Agency has also expressed strong support of this bill.

6.2 Who else is likely to oppose the proposal and why?

The Vermont Traditions Coalition expressed opposition to the bill. They were generally concerned over the ramifications for landowners; particularly in agricultural and forest lands.

7. Rationale for recommendation: Justify recommendation stated above

This bill presents a modernization of the 30-year old statute putting in place the basic water quality protection policy for the State of Vermont. The statutory language capitalizes upon the momentum

conferred by Act 64 to recognize and protect uses of surface waters that exhibit significantly higher quality than the basic Class B.

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?**

Commissioner has reviewed this document:



Date:

4/12/2016

Secretary has reviewed this document:



Date:

4-12-16