

**CONFIDENTIAL**  
**LEGISLATIVE BILL REVIEW FORM: 2014**

Bill Number: H.649 Name of Bill: Conservation and development; potable water supply and wastewater permits; isolation distances

Who introduced this bill? Representative David Deen

Author of Bill Review: Ernest Christianson, Programs Manager

Agency/Dept. Reviewing Bill: ANR/Environmental Conservation

Date of Bill Review: 1-21-14

Status (check one): ☒ Upon Introduction ☐ As passed by 1<sup>st</sup> 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 bill will require applicants for Water/Wastewater (WW) permits to either own or legally control through a permanent easement any land needed to meet the required isolation distances. Currently, permit applicants do not need to own or legally control the land encompassed by the isolation distances; if the isolation distance extends beyond their property line, they only need to notify the land owner that this "overshadowing" is being proposed and will be included in the WW permit if it is issued. This overshadowing may prevent the owner of the overshadowed land from installing a ww system or potable water supply on that portion of their property.

**2. Is there a need for this bill?** *Please explain why or why not.* Not at this time. Per Act 145 of the 2010 Legislative Session, a report dated January 15, 2011, titled "A Review of the "Overshadowing" of Water Supply-Wastewater System Isolation Distances" was submitted to the legislature. That report evaluated the options of requiring easements for all off lot isolation distances or keeping the isolation distances all on land owned by the permittee. Neither option was recommended. Off lot easements would create a greater potential for people being unable to develop their property. Keeping the isolation distances within a lot boundary would require lots to be at least 3.3 acres in size creating a de facto statewide minimum lot size and precluding infill in some growth centers, downtowns, etc.

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

a. Fiscal implications include additional staff time that will be needed to:

- i. resolve conflicts when the location of a permitted system/supply is moved during construction and the relocation results in overshadowing (these may result in enforcement actions as the bill offers no recourse for resolution);
- ii. resolve conflicts prior to approving replacement supplies and systems that are needed in order to abate health hazards;
- iii. review alternative designs, including holding tanks, for replacement wastewater systems when the landowner cannot obtain legal control over overshadowed lands.

b. Programmatic implications include:

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- i. increased permitting time for replacement of failed water supplies and wastewater systems if the permittee has to obtain legal control of overshadowed land(s);
- ii. increased number of projects denied a permit due to applicant's inability to obtain legal control of overshadowed land;
- iii. increased enforcement actions against landowners when permitted WW projects are moved during construction and the re-location causes overshadowing onto neighboring property without first obtaining a legal easement.

**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?** BGS, F,P,&R, F&W, AOT, and other Agencies proposing construction of a water supply or wastewater system that will overshadow adjacent properties will be required to obtain legal control of the overshadowed lands that will involve monetary compensation to the land owner.

**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.)*  
If passed, some landowners - individuals, small businesses, municipalities - will not be able to proceed with planned or desired development. For example, a person who needs a WW permit in order to construct a single family residence but who do not have a large enough lot to contain the required isolation distances will be unable to develop if the neighbors refuse to give them an easement onto their property. Municipalities with designated growth areas with no comprehensive water and sewer infrastructure may be precluded from pursuing the planned development.

#### **6. Other Stakeholders:**

**6.1 Who else is likely to support the proposal and why?** Landowners who want to prevent neighboring property from being developed or who are concerned about possible impacts of having some of their property overshadowed will support the bill as they can stop the proposed project by refusing to give easements to a permit applicant.

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

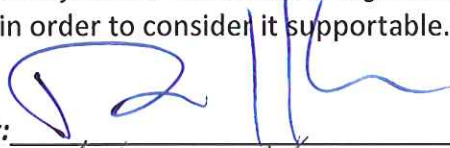
- a. Land owners who have increased costs for development because they have asked their designers to perform additional calculations to reduce the size of the isolation zone such as adding contours to plans or performing a hydrogeological assessment;
- b. WW permit applicants who will need to invest more money and time on their project if they must get legal access to overshadowed property;
- c. Landowners with failed systems or supplies who need to obtain legal control of overshadowed lands for their new system/supply even though the existing failed system or supply currently overshadows neighboring property. The alternative will be holding tanks that are costly to maintain;
- d. Landowners who want to expand the use of an existing building but who cannot obtain legal control of neighboring overshadowed lands;
- e. Landowners who are forced to construct a more expensive wastewater system because the neighboring land owner refused to give them legal control over land which would have been overshadowed by a less expensive WW design;
- f. Landowners proposing to subdivide and then develop one lot of land for residential purposes who cannot negotiate legal control of overshadowed land will be forced to create lots that are at least 3.3 acres in size in order to contain all required isolation distances on their own property;

- g. Landowners with existing permitted lots who want to move an existing water supply or wastewater system but who are denied legal control of overshadowed land even though the new location would reduce the area currently being overshadowed by the existing supply/system; and
- h. Realtors/land sellers who will need to divulge to prospective land purchasers of the need to obtain legal control of overshadowed land in order to: develop the land; construct a needed replacement supply or system; or to expand the use of existing buildings.

**7. Rationale for recommendation:** *Justify recommendation stated above.* The bill would adversely affect many landowners: increased costs and additional time for many proposed projects which could result either in a delay or an abandonment of the project; landowners with lots smaller than 3.3 acres in size (the TAC report estimated a lot with optimal site conditions will need to be 3.3 acres for a typical three bedroom single family residence to avoid overshadowing) would not be able to develop their land if their neighbor refused to give legal control of their overshadowed property; there may be increased retaliatory actions by landowners who are either refused legal control or are forced to pay a high price for the legal control of overshadowed property. It seems unfair that, even though the proposed overshadowed land can't be used for a water supply or wastewater system (due to shallow soils to bedrock, wetlands, etc), the bill still requires the applicant to get legal control of the overshadowed land from the adjacent landowner.

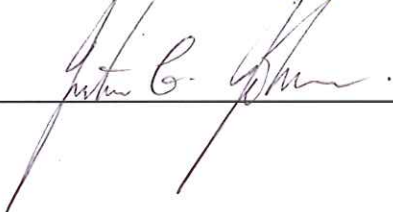
**8. Specific modifications that would be needed to recommend support of this bill:** *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*  
The bill would require extensive rewrite in order to consider it supportable.

Commissioner has reviewed this document:



Date: 1/21/14

Secretary has reviewed this document:



Date: 1/27/2014