

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2015

Bill Number: H.29 Name of Bill: An act relating to financing water quality improvement

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

Date of Bill Review: 1/21/15 Related Bills and Key Players Dickenson, Batchelor, Beyor, Branagan, Brennan, Connor, Cupoli, Dame, Fiske, Gamache, Higley, Juskiewicz, Murphy, Myers, Parent, Pearce, Purvis, Savage, and Van Wyck

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.*

This bill attempts to establish a financial mechanism to address the State's legal obligations under the federal Clean Water Act to restore Lake Champlain and deliver clean water statewide. The bill establishes a Water Quality Improvement Fund and sets priorities for the use of the fund.

The bill modifies 10 V.S.A. §1264c to create a special fund in the State Treasury referred to as the "Water Quality Improvement Fund (the Fund)." The fund is to be administered by the Secretary of the Agency of Natural Resources (ANR). The Fund will have two accounts; (a) a "capital account" made up of any legislative appropriations for stormwater management, including state match to the federal state revolving fund and Ecosystem Restoration Program (ERP) capital funds; and (b) an administrative account.

The bill also modifies 32 V.S.A. Chapter 231 to repurpose half of the annual revenues from the property transfer tax that is currently used to support the Vermont Housing and Conservation Trust Fund to support the administration of the Water Quality Improvement Fund.

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

There is a need to establish a dedicated clean water fund for the purposes of financing water quality improvements throughout Vermont. However, this bill has a number of shortcomings that make it difficult to support.

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

A major shortcoming is the repurposing of funds from the Vermont Housing and Conservation Board (VHCB) that normally would be used to support conservation needs. This repurposing of VHCB funds could potentially cause a perverse effect of allowing water quality to degrade over time, which will make the Vermont Department of Conservation's (VDEC or Department) job in safeguarding clean water over time that much more difficult.

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On a per acre basis, a well-managed farm is better for water quality than developed land, such as a parking lot. Farms need support in knowing what and how to take action. Thus, land conservation is a critical strategy for protecting water quality. Most of VHCB funds help farmers conserve lands, and those funds also leverage nearly \$4 million annually in federal funds. Maintaining support for VHCB is part of the solution.

Although the Department has the organizational structure, via ERP, to manage the anticipated \$3.5 million increase in state revenues that the bill envisions, those funds are severely limited. The bill would underfund the Department's capacity needs and implementation dollars necessary to restore Lake Champlain (as described in the Lake Champlain Phosphorus TMDL Phase I Plan (referred to as the TMDL Phase I Plan)) and deliver clean water statewide (as described in the Act 97 Report, "Vermont's Clean Water Initiative").

Limited funds, coupled with the bill's unrealistically short timeframe (the program sunsets in 10 years) are setting the Department up for failure to achieve clean water goals and virtually guaranteeing a disappointed public.

The bill also intends to deposit an annual appropriation of \$6 million to the Vermont Environmental Protection Agency (EPA) Pollution Control Revolving Fund. The issue is that the purpose of awarding those funds as grants is in violation of federal requirements associated with the management of that Fund. The EPA Pollution Control Revolving Fund is structured to provide loans.

Another concern is that the proposal overrides the State's expertise in setting priorities in the awarding of funds. The proposal does not give highest priority to the largest, most significant sources of water quality problems or the most critical needs. Rather, the proposal gives highest priority in awarding funds to those municipalities that already have in place or about to have in place a stormwater district, utility, or other mechanism. Although we appreciate the bill's intent to create an incentive for municipalities to create their own funding mechanisms and water quality control programs, the bill does not provide standards to ensure the adequacy of the local district or utility in generating revenues and managing a program that can target the most critical water quality problems.

The bill focuses on stormwater management, but fails to discuss the other priorities described in the TMDL Phase I Plan and Vermont's Clean Water Initiative pertaining to restoring and protecting natural infrastructure for flood resiliency and water quality improvements, such as river, floodplain, wetland, and forest cover restoration.

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?

VHCB currently has a significant backlog of landowners interested in conserving farmland. VHCB receives approximately 50% of the total property transfer tax revenue each year, which was about \$7 million in FY2013. Those state dollars leverage about \$3 million of federal funds under the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) federal farm preservation program. Redirecting VHCB funds will dramatically reduce available state and federal funds for farmland conservation, making those lands vulnerable to development.

VHCB has committed all of its state agricultural conservation easement funds to be used as match under the USDA NRCS Resource Conservation Performance Partnership (RCP) grant – a \$16 million federal clean water

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grant that was recently awarded to Vermont. Repurposing those revenues will disrupt water quality activities anticipated under the RCPP grant.

The bill is silent on how to support clean water needs specific to the agricultural sector.

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)

Municipalities currently under an MS4 permit, within the Lake Champlain Basin, and/or that have a stormwater utility in place will welcome any additional financial support to address their stormwater management needs. Municipalities that will need to comply with an MS4 permit or equivalent municipal permit as part of the Lake Champlain TMDL will also welcome the financial support. All other municipalities will be concerned that their needs are a lower priority and that they will lose funding to conserve farms in their communities. The erosion of the State's ability to conserve farms over time, due to a reduction in funding, can be detrimental to farm-based local economies, farm-based tourism, as well as Vermont's quality of life.

6. Other Stakeholders:

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

Opponents of land conservation in Vermont may be interested in this proposal. Supporters of Scott Milne's plan entitled, "Plan to Get to Work on Lake Champlain" which proposed redirecting about \$7 million of VHCB funding for Lake Cleanup efforts may support this bill. Municipalities that are primarily focused on stormwater controls that already have in place a stormwater utility or district will likely support the priorities described in the bill.

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

VHCB, advocates for affordable housing, land conservation, and protection of working farms and forests are likely to oppose this bill. The funding for the administration of the bill repurposes half of the funds that normally would support the Vermont Housing and Conservation Trust Fund. Advocates for the restoration of Lake Champlain would support, in principle, the establishment of a Water Quality Improvement Fund, but would not support the timeframe. The Lake Champlain Phosphorus TMDL and the State's Phase 1 Implementation Plan are based on a 20 year implementation table. The ten year time period is much too short to restore Lake Champlain and the other surface waters across the state in need of restoration. Sustaining and enhancing these water resources is not a short-term proposition. Vermont needs a long-term and sustained commitment to deliver clean water. Municipalities outside of the Lake Champlain Basin, that do not or will not have a stormwater utility, district, or bylaw, will be concerned that their clean water funding needs will not be competitive.

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

Redirecting property transfer tax away from farmland conservation is ultimately not beneficial to achieving and maintaining water quality over the long term.

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.*

We recommend the following modifications: Do not redirect funds from the property transfer tax that normally would support the VHCB Trust Fund. Rather, consider repurposing an *additional* 25% of the property transfer tax (above the VHCB allocation) to a water quality improvement fund. Also leverage existing state investments

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by ensuring that the VHCb's funds are compliant with the priorities described in the Act 97 Report and the Lake Champlain TMDL Phase 1 Plan. Increase funding to an adequate level. Add the \$6 million in capital construction to the Water Quality Improvement Fund, but not to the Vermont EPA Pollution Control Revolving Fund. Drop the first priority in awarding funds from the capital account and the first two priorities in awarding funds from the administration account. Expand the focus to include restoration of natural infrastructure. Require a 20 year timeframe with milestones to report back on the effectiveness of the fund. Remove the award priorities that favor municipalities with stormwater utilities or districts but offer other ways to encourage municipalities to develop their own stormwater utility or district.

9. Gubernatorial appointments to board or commission?

Commissioner has reviewed this document:

Date:

1/23/15

Secretary has reviewed this document:

Date:

1-28-15