

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2015

Bill Number: H.18 Name of Bill: An Act Relating to Public Records Act Exemptions

Agency/ Dept: ANR/DEC Author of Bill Review: Gary Gulka

Date of Bill Review: 1/22/15 Related Bills and Key Players ANR, UVM, State Colleges, Finance Regulation, Human Services, Motor Vehicles, State Treasurer

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

Analysis of Bill

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

Requires Office of Legislative Council to periodically compile and update a list of statutory Public Records Act exemptions to be posted on various state web sites. It also amends various Public Record Act exemptions, several of which are under the purview of DEC, including Discharge Permits (10 V.S.A. §1259), Division of Geology and Mineral Resources (10 V.S.A. §101), Toxics Use Reduction and Hazardous Waste Reduction Plans (10 V.S.A. §6628), and Trade Secrets of generators that file Toxics Use and Hazardous Waste Reduction Plans (10 V.S.A. §6632). Below are the specific amendments proposed for DEC programs:

Discharge Permits (10 V.S.A. §1259) - Clarifies language on records or information under this program that are trade secrets , with little or no change in meaning or intent, except that language implying that effluent data is always a public record is stricken [meaning that effluent data could be an exempt record if it met the definition of trade secret in 1 V.S.A. §317(c)(9)]

Geology and Mineral Resources (10 V.S.A. §101) - Removes language that provides records exemption for certain information provided by the mineral industries to DEC that may be held confidential at the industries' request and used in a manner permitted by the industry.

Toxics Use and Hazardous Waste Reduction Plans (10 V.S.A §6628) - minor language changes to this exemption that do not change the intent or meaning

Trade Secrets (10 V.S.A. §6632) language changes that do not change meaning or intent of trade secrets that are contained in Toxics Use and Hazardous Waste Reduction Plans submitted by generators and the authority of the Agency to develop rules to protect this information from

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unauthorized uses. It also removes reference to a statute (Community Right to Know) that has been repealed.

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

Yes. This bill does clarify public record exemption language for certain Agency programs for legal consistency with 1 V.S.A., §317(c). It will also make the general public more aware of public record exemptions.

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

The DEC programs affected by this have had little or no activity in terms of trade secret exemptions. The Geology Division has not had requests for confidentiality from the mineral industry and does not routinely collect mineral industry information. Striking language in §1259(b) that effluent data cannot be a trade secret is problematic and needs to be retained given that discharge permit effluent data is submitted to EPA where it is made publicly accessible.

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?

No attempt was made to analyze public records exemptions provisions in this bill directed at other state agencies and organizations. For DEC programs addressed by this bill, there are no perceived implications for other departments.

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 mineral industry would lose a public record exemption provided in statute, and may be reluctant to share data with the State; however, as stated above, DEC does not routinely collect mineral industry data and this would not be an important issue.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why? For DEC public records addressed in this bill, there will be minimal interest either for or against.

6.2 Who else is likely to oppose the proposal and why? For DEC public records addressed in this bill there will be minimal interest either for or against. The mineral industry may have concerns about losing a public record exemption. Environmental groups may be opposed to effluent data being stricken as a data source that cannot be considered confidential.

7. Rationale for recommendation: *Justify recommendation stated above.* We should support these changes to clarify public records exemptions. These changes are in the spirit of

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providing free and open examination of records while clarifying the limits of what is exempt from public review.

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.*

In Section 16 of the bill, §1259(b) should be modified to retain language that effluent data is not eligible for trade secret protection. Effluent data are currently not protected and effluent data is submitted to EPA where it is made publicly available. Suggested language: *Any records or information obtained under this permit program, other than effluent data, that constitutes trade secrets under 1 V.S.A. §317(c) (9) shall be kept confidential, except such records or information may be disclosed authorized representatives of the State and United States when relevant to any proceedings under this chapter.*

9. **Gubernatorial appointments to board or commission?** No

Commissioner has reviewed this document: 

Date: 1/23/15

Secretary has reviewed this document: 

Date: _____