

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2015

Bill Number: S.49 Name of Bill: An Act Relating to Improving the Quality of State Waters

Agency/ Dept: DEC/ANR Author of Bill Review: Kari Dolan, Padraic Monks, Neil Kamman, Mike Kline, Kevin Burke, Mary Borg

Date of Bill Review: _____ Related Bills and Key Players: H. 35

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 is almost identical to H.35. This blue sheet only addresses the provisions in S.49 that are different from H.35 (as introduced). Please refer to DEC's blue sheet for H.35 in conjunction with this blue sheet.

Sec. 21. Water Quality Data Integration: The proposed new §1284 looks to facilitate and efficiently implement water quality improvement provisions provided in H.35. Through synthesis of water quality and other data, this provision seeks to identify areas in critical need of water pollution control activities. The goal of the data synthesis is to efficiently identify areas in need of focused attention.

Sec. 22. Clean Water Fund: The bill establishes a dedicated fund – the Clean Water Fund -- and a Clean Water Fund Board to recommend annually funding allocation for the purposes of restoring water quality of the State's surface waters.

Sec. 23. Impervious Surface Assessment: The bill establishes an impervious surface assessment of a flat \$200 per calendar year, applied to commercial and industrial parcels in the Lake Champlain Basin. The assessment does not apply to land used for other non-residential properties, farming or forestry.

Sec. 25. Ecosystem Restoration Program (ERP) Eligibility for Financial Assistance: This bill supports MS4 municipalities' access to ERP funds.

Sec. 26. Voluntary Shoreland Erosion Control: This section establishes a voluntary shoreland erosion control certification program by DEC in consultation with the Associated General Contractors of Vermont (AGCVT) and subsequent reporting requirements back to the legislature on success of the program and any suggested improvements. The bill also redefines terms applicable to lake shorelands.

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Sec. 8-12. Agricultural water quality; Enforcement; Corrective Actions. This section increases the enforcement authority of the Agency of Agriculture, but was not in DEC blue sheet for H.35.

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

Sec. 21. Water Quality Data Integration: Yes. The proposed §1284 outlines an approach that the Watershed Management Division has been moving towards in recent iterations of tactical basin planning. H.35 appears to provide a statutory requirement to conduct integrated data analysis, modeling, and synthesis. The Section as drafted is vague and should be tightened up as recommended below.

Sec. 22. Clean Water Fund: Yes. The State needs a dedicated clean water fund, governance structure and a process for prioritizing and distributing the funds that are dedicated to its intended use of providing for clean water, responsive to public interest, and transparent in its dispersion process.

Sec. 23. Impervious Surface Assessment: Yes. The assessment fee will provide some startup funds, although more funds are necessary to carry out the purpose described in Section 1.

Sec. 25. Ecosystem Restoration Program (ERP) Eligibility for Financial Assistance: No, the Department already has authority to determine eligibility. The MS4 towns have not had the opportunity to access those funds to financially assist them with compliance under the current MS4 permit.

Sec. 26. Voluntary Shoreland Erosion Control: No, there does not appear to be a need for this section of the bill, primarily because it is nearly duplicative of Sec. 4 of the Shoreland Protection Act, which also establishes a Voluntary Shoreland Erosion Control Program and reporting requirements. The language in this bill is slightly different and lacks specific implementation deadlines, but merely establishes time periods for which the program is to be implemented, completed and reported on. There appears to be nothing gained from this bill as currently written in comparison to what is currently in the Shoreland Protection Act.

Sec. 8-12. Agricultural water quality; Enforcement; Corrective Actions. Yes, this section increases the AAFM authority.

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

Sec. 21. Water Quality Data Integration: For the full implementation of §1284 to occur, funding for dedicated staff with sufficient analytical skills to conduct the required analyses is needed. Current staffing in the Watershed Management Division of DEC is insufficient to accomplish the tasks outlined. It is envisioned that two full-time staff would be needed to effectively implement this section. These staff are identified in the Lake Champlain Phase I Implementation Plan. Implications to DEC, assuming authority to create these positions, are the addition of critical analytical modelling capability to direct remediation in support of the Lake Champlain TMDL. The primary skills include dedicated high-level GIS capability, database management and water quality modeling. Additionally, these staff would play

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a major role in BMP tracking and accounting associated with the LC TMDL. Notwithstanding the availability of these positions, the provision of 1284 a.5. is unrealistic.

Sec. 22. Clean Water Fund: There may be more funds available to bolster the Department's grant and loan programs, if the Board disperses funds directly to those programs. This would increase the ability of the Department to implementing the TMDL.

Sec. 23. Impervious Surface Assessment: The assessment will generate some funds (approximately \$2 million annually) to support the Clean Water Fund. There may be more funds available to bolster the Department's grant and loan programs, if the Board disperses funds directly to those programs. Otherwise, there is a risk of having two parallel state financial assistance programs targeting clean water projects. It is unclear whether the Department will be responsible for any of the "liability for payment" before the Tax Department can fully administer the program.

Sec. 25. Ecosystem Restoration Program (ERP) Eligibility for Financial Assistance: The Department currently controls water pollution from precipitation-driven runoff and erosion (commonly referred to as nonpoint sources) in two ways. One way is for the Department to provide financial resources in the form of Ecosystem Restoration Program grants and contracts or State Revolving Fund loans. The second way is the Department's regulatory stormwater permit programs, such as the municipal separate storm sewer system (MS4) permit program. Since stormwater pollution controls are required as part of the MS4's stormwater management program (SWMP), the Department uses its limited ERP funds to target priority pollution controls that are not required by state regulation.

It may not make sense to broadly open up the eligibility to MS4 communities. Implementing priority actions will likely occur without state funding eventually anyway, since they likely will be priorities described and required in the MS4's Stormwater Management Plan under the MS4 permit. The change would, in effect, subsidize compliance with a state regulatory permit. The change would also reduce anticipated future demand for low interest loans via the State Revolving Fund, and reduce the incentive of a municipality to seek other revenue sources to comply with a municipal stormwater permit, such as a stormwater utility. However, the benefit of offering some funding is that the Department will build partnerships in addressing impacts from the Lake Champlain Basin's more developed landscape.

Sec. 26. Voluntary Shoreland Erosion Control: It may require that the voluntary program be implemented 6 months sooner than what is currently in the Shoreland Protection Act, which may be an undue burden on staff time to get this program up and running on such short notice (upon passage). Likely no direct fiscal implications.

Sec. 8-12. Agricultural water quality; Enforcement; Corrective Actions. Minimal implications other than ongoing coordination.

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?

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Sec. 22. Clean Water Fund: Clean Water Fund: The bill attaches the Clean Water Fund Board to the Agency of Administration. 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. A possible solution might 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. This will ensure coordination among agencies. There will also be some minor administrative costs associated other State agency secretaries (agencies of administration, agriculture, transportation, and commerce) and participating members of the Clean Water Board and their staff in preparing proposals for consideration by the Board.

Sec. 23. Impervious Surface Assessment: The commercial and industrial sectors targeted for the assessment may raise concerns about the fee to ACCD. We presume that the Tax Department will be responsible for collection and enforcement, (Chapter 103 and 151 or Section 10502).

Sec. 26. Voluntary Shoreland Erosion Control: This section of the bill has no fiscal or programmatic implications on other departments.

Sec. 8-12. Agricultural water quality; Enforcement; Corrective Actions. Will require increased staffing (legal/enforcement) at AAFM. AAFM has proposed this change and supports it.

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)

Sec. 21. Water Quality Data Integration: Other departments may welcome this added DEC capability to efficiently direct funding streams or staff time by identifying critical target areas. The LC TMDL Phase I Implementation Plan articulates that these staff would complement existing but overstretched staff at AAFM and the US NRCS. In addition, an additional layer of accountability could be added to funding programs to justify project identification.

Sec. 25. Ecosystem Restoration Program (ERP) Eligibility for Financial Assistance: MS4 municipalities would welcome the change in ERP grant eligibility. Currently, there are 13 MS4 municipalities and 3 non-traditional entities (the University of Vermont, the Burlington Airport, and the Vermont Agency of Transportation. The remaining 200+ municipalities may not be in support of a broad change in eligibility because it likely would result in less funds available for their priority projects.

Sec. 26. Voluntary Shoreland Erosion Control: Because the program is developed in consultation with the Associated General Contractors of Vermont, a shorter timeframe to implement may be difficult to accommodate, particularly since organizations such as the AGCVT schedule courses and their time well in advance to accommodate their customers, and the act to take effect on July 1, 2015 is likely during contractors busy period and not an appropriate time to implement this new program.

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Sec. 8-12. Agricultural water quality; Enforcement; Corrective Actions. Farmers and the farming community will likely not be in favor of some of the stronger actions such as the authority to decrease the number of animals on a farm for water quality reasons. Ag organizations are already commenting strongly against this.

6. Other Stakeholders:

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

Sec. 21. Water Quality Data Integration: The end result of §1284 would be the targeting of areas that need remediation that could result in significant expenditures across the landscape – including farmers, land developers, municipalities, home owners, etc. Depending on available funding to offset these costs, this could lead to significant outlays. While stakeholders in these sectors may oppose the overall intent, or specific sections of H35, it is unlikely that they would specifically oppose this proposed section.

Sec. 23. Impervious Surface Assessment: Those who support remediation of Lake Champlain will support this assessment, but may be concerned that it does not go far enough.

Sec. 26. Voluntary Shoreland Erosion Control: It is not clear if other stakeholders would support this section of the bill based on what already exists in the Shoreland Protection Act.

Sec. 8-12. Agricultural water quality; Enforcement; Corrective Actions. The environmental community may support this, but many feel all enforcement should be in DEC.

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

Sec. 21. Water Quality Data Integration: Responsible parties for whom actions, and costs, may be required. This would be generalized opposition targeted to other bill Sections. Further, property rights advocates may not wish to have the level of information envisioned by this Section available for public scrutiny.

Sec. 23. Impervious Surface Assessment: Those who support remediation of Lake Champlain will support this assessment, but may be concerned that it does not go far enough in generating revenues needed for implementing the Lake Champlain Phosphorus TMDL Phase I Implementation Plan. The commercial and industrial sectors will likely not support being singled out for the assessment.

Sec. 26. Voluntary Shoreland Erosion Control: The AGCVT may oppose due to the timeframe change for implementation.

Sec. 8-12. Agricultural water quality; Enforcement; Corrective Actions. VT Farm Bureau, Green Mtn. dairy and agriculture organizations are likely to oppose some of the stronger restrictions.

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

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Sec 21. If the necessary staffing can be secured to conduct the necessary actions required of this section, additional levels of transparency, accountability and confidence will be gained for funding sources.

Sec. 22. Clean Water Fund: Without added funding, the State will not meet its legal obligations under the federal Clean Water Act, triggering potentially more costly consequences. Establishing a Clean Water Fund and board structure continues to support a broad coalition of organizations, businesses, and the public to achieve clean water. Investments made by the Clean Water Fund are for implementing actions that have many co-benefits, such as flood resilience and reductions in long-term maintenance costs of transportation infrastructure.

Sec. 25. Ecosystem Restoration Program (ERP) Eligibility for Financial Assistance: It would create a closer partnership with the Basin's larger municipalities and help the State address larger priority projects in the Basin's more developed communities.

Sec. 26. Voluntary Shoreland Erosion Control: Oppose. This section is duplicative, unnecessary and would create an added burden on the Department and other stakeholders.

Sec. 8-12. Agricultural water quality; Enforcement; Corrective Actions. Support.

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.*

Sec 21. Recommend the following changes:

a. §1284(a)(5) documentable cumulative stressors on a watershed, such as ~~the frequency an activity is conducted within a watershed~~ or the number of stormwater or other permits issued in a watershed;

b. §1284(b)(2) should be changed to include the idea that the mapped areas based on the data analysis would need a second step of "ground-truthing" before the area could be verified as in "critical need." While the mapping/modeling tools are indeed powerful, ultimately professional staff would need to verify the situation on the ground.

c. §1284(c) should be changed to require the posting of "all assessment products (maps, tables, etc.)" rather than "all data compiled under this section". The most useful aspect of this section is the development of maps and assessments that direct the necessary action, not the raw data, which would be of little use to most parties, and of concern to certain advocates.

Sec. 22. Clean Water Fund: Add another priority to §1387(b) to support projects that face a high risk of pollution loading in an unimpaired water body. This same section uses the term "critical need," which should be defined. That definition should give deference to the Agencies of Natural Resources, Agriculture and Transportation's planning processes. The structure of the Board needs to consider

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how to enhance coordination among all agencies. Transform the Ecosystem Restoration Program into the Clean Water Fund to eliminate redundancy of roles and administrative costs. Establish governance, such as an executive director, to supervise all activities under the jurisdiction of the Clean Water Fund Board, to be appointed by the Secretary of the Agency of Natural Resources. Those activities include the development and implementation of a communications strategy, and, equally important, the development of a monitoring strategy to track progress over time. Consider housing the Clean Water Fund Board at the Department to ensure that the science-based planning processes are driving decision-making on how to best target funds to address the most critical water quality problems. In lieu of an expansive and potentially unwieldy board made up of a mix of state agency secretaries and political appointments, consider separating the two sets of memberships into a Board and an advisory council. One would be made up of appointments by the Governor and general assembly and the other made up of state secretaries. If the concern is to maximize transparency in the management of the funds, consider having the advisory council made up of state agency secretaries. Consider ways to strengthen the priorities to safeguard against funding projects that may not result in a net benefit for water quality improvements or may have only a minor association with water quality restoration and protection, such as sewer line extensions and other potential actions that incentivizes land development.

Sec. 23. Impervious Surface Assessment: The assessment is a first step towards raising funds to meet the purpose described in Section 1. However, finding additional resources will be necessary to implement the stages described in the "Vermont's Clean Water Initiative Report, released to the Legislature on November 17, 2014. Using the Tax Department information on the number of commercial and industrial parcels in the Lake Champlain Basin, the flat fee only raises approximately \$2.38 million annually, far short of the funds necessary to conduct Stage 1 or a three-stage implementation strategy of the TMDL Phase I plan (as described in the Act 97 Report).

Sec. 26. Voluntary Shoreland Erosion Control: None

9. Gubernatorial appointments to board of commission?

Commissioner has reviewed this document:

Date: 2/9/15

Secretary has reviewed this document:

Date: 2-11-15