

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2014

Bill Number: S.182 Name of Bill: Conservation and development; potable water supply and wastewater
6 system permits; isolation distances

Agency/Dept.: ANR/Environmental Conservation
Christianson, Programs Manager

Author of Bill Review: Ernest

Date of Bill Review: 12-23-13

Status of Bill (check one):

☒ Upon Introduction ☐ As passed by 1st 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 would 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 can prevent the owner of the overshadowed land from installing a ww system or potable water supply on that portion of their property. The overshadowed landowner currently has no ability to appeal the overshadowing.

2. Is there a need for this bill? *Please explain why or why not.* Not at this time. Per Act 145 of the 2009-2010 Legislative Session, the Technical Advisory Committee (TAC) submitted the report "A Review of the "Overshadowing" of Water Supply-Wastewater System Isolation Distances" dated January 15, 2010 which reviewed this complex issue and contained the TAC's recommendations. In consideration of all the pros and cons of changing the current approach to isolation distances, the TAC recommended that DEC continue to allow overshadowing onto adjacent properties while using the first-in-time approach.

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 need to be spent on:

- i. resolving 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. resolving conflicts prior to approving replacement supplies and systems that are needed in order to abate health hazards;
- iii. reviewing alternative designs, including holding tanks, for replacement wastewater systems when the landowner cannot obtain legal control over overshadowed lands.

b. Programmatic implications include:

- 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);

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- 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 which could involve monetary compensation to the land owner. Compliance and Enforcement Division will have additional enforcement actions to do when permittees construct their permitted system or supply in a location other than that indicated in the permit and the new location results in unauthorized overshadowing onto adjacent property.
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 will not be able to develop their land. These will include landowners who need 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 and whose neighbors refuse to give them legal control over the adjacent overshadowed land.

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 be happy that they can stop the proposed project by refusing to give the applicant legal control over the proposed overshadowed land.

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

- a. Licensed designers as they will need to show detailed isolation distances and zones on the project plans rather than using the default isolation zones.
- b. WW permit applicants who will have 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.
- 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 a one lot subdivision who cannot negotiate legal control of overshadowed land will be forced to create 2 - 3 acre lots 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 would 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 small than 3.3 acres in size (the TAC report estimated for a typical three bedroom single family residence, lots will have to be approximately 3.3 acres in size with optimal soils in order 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: 1/9/14

Secretary has reviewed this document: _____

Date: 1-13-14