

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2014

Bill Number: H600

Name of Bill: An Act Relating to Water Quality Improvement

Who introduced this bill? Representatives Deen, McCullough, and Webb

Author of Bill Review: Kari Dolan

Agency/Dept. Reviewing Bill: ANR/DEC

Date of Bill Review: January 17, 2014

Status (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 draft bill focuses on funding needs to improve the water quality of the State's surface waters. The bill mirrors the Senate Bill, S 288. The bill establishes a clean water legacy fund-- a special, dedicated fund to support water quality remediation, to be administered by the ANR. The draft bill also establishes a study committee, consisting of an 11-member Working Group to review and recommend revenue sources to support the state's clean water needs. The Working Group is to prepare a report on water quality funding mechanisms, including user fees, per parcel fees, and bonding, and submit the report to the General Assembly by January 15, 2015. The report will recommend whether and how to establish a water quality improvement fee and consider incentives to encourage actions to remediate or prevent water quality degradation. The report will also describe how to prioritize the distribution of funds, and include any recommendations for legislative action.

2. Is there a need for this bill? *Please explain why or why not.* Yes. The bill establishes a new clean water legacy fund that is dedicated for water quality remediation and protection. It specifies possible new revenue sources that could support the fund, such as general appropriations, contributions, and fees. The bill lays the foundation for a program that could enhance the State's capacity to meet its anticipated obligations under Clean Water Act, such as the Total Maximum Daily Load (TMDL) pollution reduction requirements for Lake Champlain, Lake Memphremagog, the Vermont portion of the Connecticut River/Long Island Sound, and stormwater impaired waters. The establishment of a Working Group could be an effective option to create a collaborative process, bringing together interested parties and state legislators from different committees, to review and recommend revenue tools to support clean water actions. The bill is a logical legislative response to the ANR Act 138 Report. That report, released in January, 2013, provides a comprehensive list of programs and funding options. It does not prioritize actions or contain recommendations on how to finance water quality improvements, despite the statutory directive to do so (Act 138 (2012)).

RECOMMENDATION: Support with modifications. (See Section 8 below for a discussion of possible modifications).

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

The bill, if enacted, will require DEC staff time to support the Working Group. The bill assigns the Secretary of ANR or designee to the Working Group and directs ANR to provide staffing support.

The bill establishes a new clean water legacy fund, but does not actually add new resources for DEC to administer. The Fund is to receive "funds that may be appropriated by the General Assembly," (in addition to other potential sources such as contributions and fees, should they become available), which I assume would include the annual allocation of existing state capital construction funds.

DEC already manages state capital construction funds as well as federal clean water funds. Therefore, DEC can administer new funding sources, should they become available for additional clean water actions. The new sources of revenue should generate sufficient funds to cover the additional administrative costs associated with managing the fund, once established.

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? The bill requires staff time from a number of agencies to support the Working Group (with some compensation). The bill specifies the Secretary of Agriculture, Food and Markets or designee, the State Treasurer or designee, and the Commissioner of Taxes or designee to take part in the Working Group. VAAFM will likely be supportive of this role, and interested in seeing water quality funds distributed to remediate agricultural nonpoint source pollution. VTDEC would also be interested in participation of the Vermont Agency of Transportation, which would also require staff time.

The State Treasurer and Commissioner of Taxes would need to know whether a new dedicated fund is necessary as the most cost-effective option to meet the State's Clean Water Act requirements. Once the need is established, the Commissioner of Taxes will likely have an opinion about how to administer and enforce a user fee billing system. For example, the State Treasurer and Commissioner of Taxes may not support assigning a user fee to a property tax bill, to be collected at the municipal level, even though that approach may be the most efficient and effective way to collect the fee. However, the State Treasurer and Commissioner of Taxes may be open to other options.

Although not included as a member to the Working Group, the Agency of Commerce and Community Development (ACCD) should support the portion of the bill that describes priorities for distributing funds, since two of the listed priorities are aligned with ACCD's priorities, namely, support for incentives that promote cluster development (an anti-sprawl initiative) and flood resiliency.

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 bill also specifies a representative from the Vermont League of Cities and Towns (appointed by the Governor), a representative from an environmental organization (appointed by the Speaker of the House), and a representative of a regulated business or industry (appointed by the Committee on Committees, or as suggested in suggested modifications described below in #8, a municipality in lieu of a business or industry representative) to take part in the Working Group. Since the first task of the Working Group is to determine whether to even establish a water quality improvement fee in the first place, these entities, at the very least, should be interested in participating to evaluate alternatives. These entities may support the initiative if made aware of: (a) the need for new revenues; and, (b) how new revenues will enable the State to offer greater financial and technical assistance to municipalities and other entities. These entities may also be interested in evaluating alternatives revenue sources, should this task be added to the list of

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powers and duties (Section 2(c)). These entities should also be interested in how to best apply a water quality improvement fee equitably among all users that contribute to the degradation of water quality to assure an equitable outcome. I anticipate much interest in such organizations, due to the anticipated cost associated with implementing the Lake Champlain phosphorus TMDL and other similar Clean Water Act initiatives.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why? Larger, currently regulated municipalities (i.e., MS4 communities) should support this bill and the establishment of a water quality improvement fee, although I suspect that they would want a representative in the Working Group and would want to insure that MS4 communities would be eligible to receive funding. These entities should recognize this approach as an equitable strategy for raising funds to implement clean water activities statewide. Environmental organizations and watershed groups should also support this bill's intent of enhancing the capacity of the State to address its clean water needs.

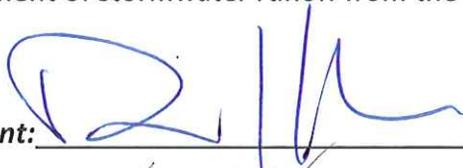
6.2 Who else is likely to oppose the proposal and why? There is general concern among municipalities and farmers about the cost of cleaning up Lake Champlain and other impaired waters. Lake Champlain Chamber of Commerce is supportive of improving water quality to Lake Champlain and its tributaries. However, the Chamber has stated in the past that it is less supportive of new fee-based revenue sources and more interested in finding additional water quality funding within the State budget. Having a better understanding about whether a new dedicated fund is the most cost-effective option to meet the State's Clean Water Act requirements will help garner support for the bill. The Vermont League of Cities and Towns is very concerned about the costs associated with: (a) implementation of water quality controls as part of the Clean Water Act's TMDL initiatives, particularly the high cost of nutrient pollution controls at wastewater treatment plants for limited water quality improvements; (b) stormwater permitting and compliance; and (c) municipal compliance with a state general permit to address runoff from town roads. The League may become more supportive, if we can demonstrate that an adequately supported clean water legacy fund is a more cost-effective alternative than wastewater treatment upgrades.

7. Rationale for recommendation: *Justify recommendation stated above.* The bill establishes a new clean water legacy fund that is dedicated for water quality remediation and protection. The bill lays the foundation for a program that could enhance the State's capacity to meet its anticipated obligations under the Clean Water Act. Establishing a Working Group with representatives from other state agencies and stakeholders could be an effective way to expanding the understanding of the need for a dedicated clean water fund and securing broad support for the initiative.

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.* Modifications to the bill include adding findings to the bill, as described in S0215, in order to help describe the reasoning behind this bill. Proposed bill, S0215, specifically mentions the anticipated obligations facing the State pertaining to the implementation of the Lake Champlain phosphorus TMDL and other similar clean water initiatives. I also recommend modifications to Section 2(c) – the section that describes powers and duties. In addition to adding a section on finding, modifications could include: (a) Having the report to the General Assembly contain recommendations on sources of financing to support the Clean Water Legacy Fund (as described on Line #10 in the bill's Statement of Purpose but missing from Section 2(c)); (b) Specifying that the recommendations are to include more than one revenue source. For example, S0215 requests a report that contains a minimum of two funding proposals sufficient to fund priority

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investments; (c) adding "stormwater nonpoint source pollution" (which includes road-related runoff) to the Section 2(c)(1)(D), to acknowledge that road runoff is the another significant source of water pollution; (d) Specifying that the assistance from the Agency of Natural Resources is to help address (c)(1) (D) and (E). It may be much more effective if the Working Group recruit assistance in financial analysis from the Joint Fiscal Office and the Tax Department; and (e) Adding the Secretary of Transportation or designee to the Working Group, since this agency manages a water quality grant program for municipalities and is an important stakeholder in the management of stormwater runoff from the road networks.

Commissioner has reviewed this document:  _____ Date: 1/21/14

Secretary has reviewed this document:  _____ Date: 1/27/2014