

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2015

Bill Number: H.217 Name of Bill: Potable water or wastewater system permits for a change in use of a building

Agency/ Dept: DEC Author of Bill Review: Christine Thompson/Anne Whiteley

Date of Bill Review: 2/20/2015 Related Bills and Key Players: _____

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.* The bill specifically authorizes partial delegation of the state's wastewater system and potable water supply permit program to municipalities for permitting certain water and sewer service connections to water or sewer mains. The following conditions would have to be met in order to qualify for ~~partial~~ ^{partial} delegation:
 - the municipality owns both the water main and the sewer main that the lines are connecting to;
 - the municipality notifies the Secretary when permits are issued;
 - the municipality retains a state licenced designer; and
 - the municipality assumes liability for the designs of the connections and certifies those designs.
2. **Is there a need for this bill?** *Please explain why or why not.* Some municipalities would like to have partial delegation in order to permit those projects that connect to municipal water and sewer.
3. **What are likely to be the fiscal and programmatic implications of this bill for this Department?**

Partial delegation ^{presents} certain challenges. Since it is only partial delegation, the municipality will not be issuing all of the wastewater system and potable water supply permits (WW permits) in the town; therefore, any project that is not connected to both municipal sewer and water will still need a state permit. This may cause confusion in some circumstances where there is both a sewer and water connection but the town does not own both the water and sewer main (ex: the water main may be owned by a fire district).

In addition, the statute as drafted does not include all of the permit triggers. For example, the statute is silent on the subdivision of land. If permit for subdivision are not delegated, a landowner would need both the Town permit and a state permit for the same connections if the project involved a subdivision of land in addition to connections. Confusion in the regulated community will result in more time spent by the program explaining how the partial delegation works to avoid clouding of the title to the property due to the failure to obtain all required permits. Confusion is not the only issue however. The Agency has had some recent problems with municipalities writing letters indicating that they had capacity in their water or wastewater system when they in fact do not. These problems were caught through the review of the required state permit. Partial delegation would eliminate this review and could lead to towns over allocating sewer and water capacity of their facilities. The statute is silent on this problem. There will be lost fee revenue if there is partial delegation but it is impossible to quantify the amount as the number of municipalities that would apply is unknown.

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In addition to these concerns, the bill as drafted specifically excludes some of the WW Program's existing requirements for full program delegation. As written, the bill:

- does not require the municipality to follow state standards when issuing permits;
- does not require the municipality to take timely and appropriate enforcement actions;
- is silent on who reviews designs in permit applications although the language implies that the designer who prepared and certified a design is also the person who reviews the design for compliance with whatever standards are adopted.

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?** There may be some effect on the Department of Health as it currently coordinates its Food and Lodging licenses solely with the state. There will be an effect when a state agency needs a permit for a building or structure and has to go to the Town instead of the state as certain state permit exemptions may not apply and the fee exemption for permits issued by the state would not apply. It appears that the bill would require the state agencies to accept the designs prepared by the municipality.
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) Some municipalities want this bill and some property owners would support just working with the municipality as opposed to the state.
6. **Other Stakeholders:**
- 6.1 **Who else is likely to support the proposal and why?** VLCT – on behalf of some communities who believe that the current delegation process is too difficult.
- 6.2 **Who else is likely to oppose the proposal and why?** Potentially attorneys, realtors and banks if they believe partial delegation will lead to more title defects in the future.
7. **Rationale for recommendation:** *Justify recommendation stated above.* The Agency has been working on a rule revision that would allow partial delegation under certain circumstances and with certain safeguards to try and minimize or eliminate the problems identified above. Therefore, the concept is supportable, just not as drafted.
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.* There is no simple modification that could fix the bill as drafted – a significant rewrite would need to occur. At a minimum, partial delegation would need to include: subdivision jurisdiction, specify that state design standards are used when issuing permits, prohibit permit issuance when adequate capacity does not exist in both the water and sewer systems, require timely and appropriate enforcement and clarify that the same individual who designs a connection cannot also review and approve the connection.

9. **Gubernatorial appointments to board or commission?**

Commissioner has reviewed this document:

Date:

2/20/15

Secretary has reviewed this document:

Date:

2-23-15

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