

**House Fish Wildlife and Water
H. 586
Various Sections
Vermont League of Cities and Towns Testimony**

Thursday, January 23, 2014

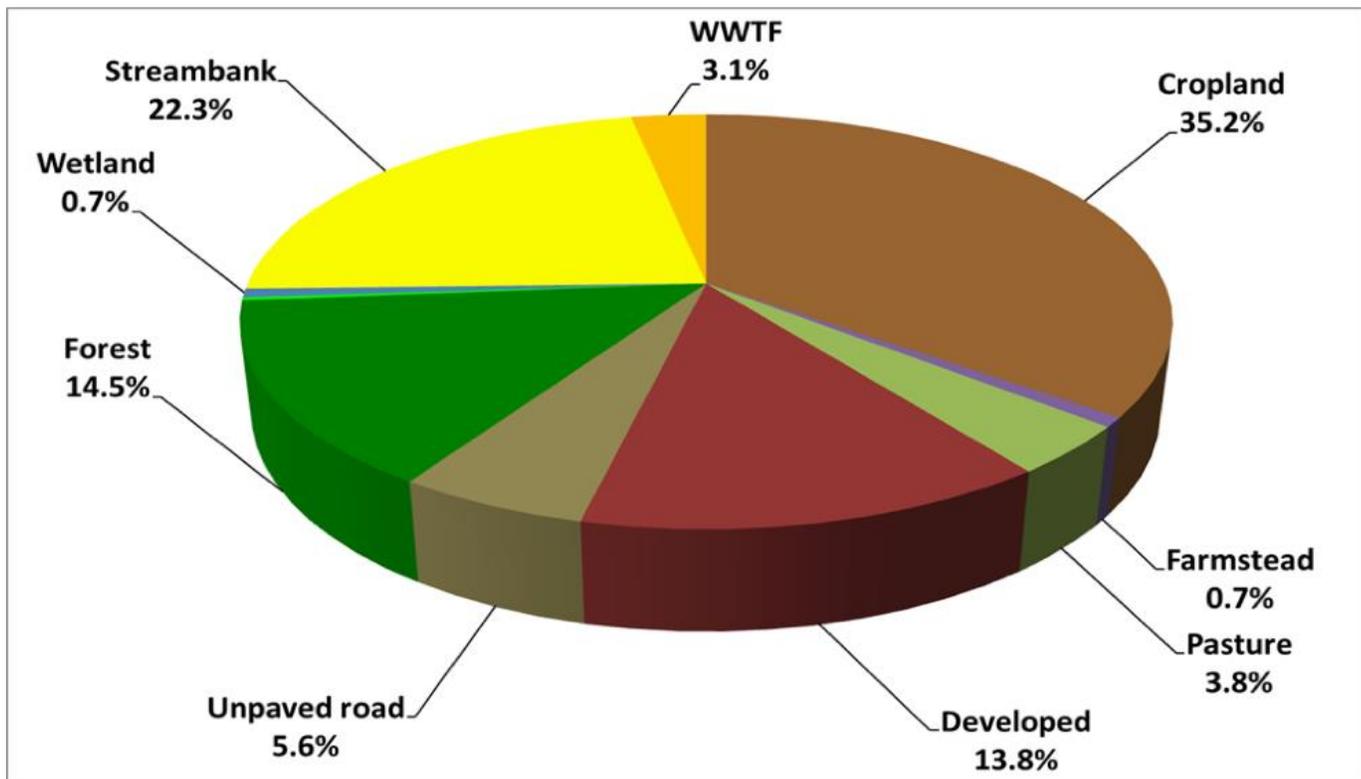
Thank you for the opportunity to comment on the sections of H. 586 other than the transportation sections.

Lake Champlain is one of three major water bodies in Vermont for which EPA requires Total Maximum Daily Load Plans (TMDLs). (The others are Lake Memphramagog and the Connecticut River, where nitrogen is the major issue.)

Because they revoked the Lake Champlain TMDL, EPA is responsible under the Clean Water Act for adopting a new TMDL. EPA Region 1 has decided to work with the Vermont Agency of Natural Resources to write the new Lake Champlain TMDL and made the determination that it will approve the plan Vermont develops and negotiates with EPA. EPA and the Agency are now working on a new TMDL for Lake Champlain. Together, they took a draft cleanup plan on a tour around the state in December and January.

The following two tables are from the presentations made at the December 2013 and January 2014 meetings. The first table indicates the portion of phosphorus loading from each contributing sector. The second indicates the timeline that EPA and the Agency of Natural Resources have developed to develop, review, adopt and begin implementation of the Lake Champlain TMDL. This process is moving ahead independently of legislation at this point although the agency is incorporating programs that are the result of legislation you have passed in prior years.

*Sources of phosphorus in the Vermont portion of the
Lake Champlain Basin (from EPA – Tetra Tech, 2013
Lake Champlain Draft Cleanup Plan*



Timeline	Lake Champlain Restoration Plan (Phosphorus TMDL)
November 21, 2013	State releases Draft Proposal for Restoring Lake Champlain
December 2-11, 2013	EPA & State hold 6 public meetings to discuss Draft Proposal
by January 17, 2014	State receives comments from public & EPA on Draft Proposal
Winter, 2014	EPA prepares the pollution load allocations (i.e., TMDL's load and wasteload allocations) , other components
Spring, 2014	State submits to EPA final Policy Commitments to meet the TMDL's reasonable assurances provision
Spring, 2014	State provides EPA a letter from the Governor & leadership of the General Assembly, supporting the Policy Commitments
Late Spring, 2014	EPA issues Draft TMDL and opens public comment period
Summer, 2014	EPA issues final TMDL; State begins implementation

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In separate action, this committee is considering H. 586. This comprehensive bill includes sections that propose solutions to the same issues that EPA and ANR are addressing in the context of the Lake Champlain TMDL. However, as was pointed out to me yesterday, H. 586 would apply statewide and not just to the 136 cities and towns in the Lake Champlain Basin.

H. 586 would:

- certify small farms, conduct inspections, prohibit manure spreading within 25 feet of a surface water or ten feet of a ditch and require annual training of farmers (medium and large farms are already regulated);
- exclude livestock from waters of the state;
- allow manure spreading between Dec. 15 and April 1 in certain circumstances.

We believe that there are situations in which municipalities may assist with implementing mitigation measures on farms because that is the best bang for the buck, if the municipality were given credit for reducing the phosphorus discharges. This could be a win-win for the municipality, the farmer and the lake. We believe the ANR is considering whether such a program would in its estimation work in the Lake Champlain basin.

H. 586 would prohibit all extraction of gravel from watercourses except to protect dams, highways and bridges. There must be authority to remove gravel in order to

protect infrastructure and municipalities must be able to do that in short order in emergency situations, which was addressed in sections 3, 4 and 5 of Act 138.

H. 586 would direct the Secretary of the Agency of Natural Resources to create and make available a model stormwater bylaw or ordinance. VLCT has a model low impact stormwater management bylaw, a model shoreland protection district bylaw, a model riparian buffer ordinance and model environmental resource protection standards for subdivisions. All were developed by the VLCT water Specialist in conjunction with ANR staff.

H. 586 would require stormwater permits for development of impervious surfaces greater than one half acre (current law says one acre) by January 1, 2015. This would be an enormous increase in jurisdiction, increase workloads for the agency and be difficult to implement for both regulators and the regulated community including municipalities. Explaining why that is necessary, particularly in places where the waters are not impaired by stormwater will be very difficult.

H. 586 would establish a Water Resources Preservation Program to provide technical support and grants or loans to projects that improve water quality, and address past or prospective flood damage to river corridors and infrastructure. We believe that the agency can build on programs it has already and if additional funding were available, much more could be accomplished. Vermont tends to have a confusing array of programs to address problems. We believe less can be more.

H. 586 would establish a "Water Resources Preservation Fee", assessed in proportion to a property's area of impervious surface, with a default fee up to \$50 assessed against all residential property.

Municipalities would bill and collect the fee and remit it to the State Treasurer, minus 0.225 of one percent of total fees collected for the city's or town's trouble. A municipality could retain 0.450 percent if it was a member of a stormwater utility or has zoning bylaws or an ordinance equivalent to a utility or system. The Water Resources Preservation Fee proceeds would be set aside in a Water Resource Preservation Fund along with proceeds of excise taxes to be imposed on "flushable products" and bottled water. Grants and loans would be awarded amongst watersheds in proportion to the amount of fees collected from each watershed.

This looks very much like a property tax. Municipalities are not at all interested in collecting state fees or new property taxes. We understand that this proposal is being made because the Governor is committed to not raising "broad based taxes". To date we have failed to convince him that a property tax is a broad based tax.

The agency would be required to coordinate and assess all available data and science regarding the quality of the waters of the state including Light detection and

ranging information (LIDAR) mapping information; stream gauge data, stream mapping and water quality sampling data.

H 586 would require certification in erosion control of “shoreland contractors” who would supervise any project that disturbs more than 500 square feet of soil or vegetation in a shoreland area. In most municipalities the zoning administrator would do this work and could be trained in the method for evaluating disturbances along shorelands. Or under a state law, agency staff would conduct those evaluations. This is not in any version of the shoreland zoning bill that we can recall and we do not believe that such a certification is necessary

We urge the committee to wait to see the results of the ANR and EPA collaboration on the Lake Champlain TMDL or at least to line up this bill with the proposal from ANR for cleaning up the lake. The legislature has passed significant water quality legislation in Act 110 and Act 138 and shortly the shorelands bill. When combined with edicts from EPA and existing programs at the agency, the laws around water quality are about as complex as any set of laws in the state.

Thank you.

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