



## South Burlington

### Stormwater Services

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Office  
Dept. of Public Works  
104 Landfill Road

January 30, 2014

Members of the Vermont House Fish, Wildlife and Water Resources Committee  
115 State Street  
Montpelier, VT 05633-5301

RE: Comments on H.586

Members of the Committee,

Please accept these comments from the City of South Burlington on bill H.586. In general terms, the City of South Burlington is supportive of efforts to improve water quality in Vermont, especially efforts related to improvements in Lake Champlain and its tributaries. In order to facilitate this important work and demonstrate the City's commitment to the improvement of these waterways, South Burlington created Vermont's first Stormwater Utility in 2003. Since its creation, the Utility has undertaken efforts to educate the public on the impacts of uncontrolled stormwater runoff, promote the thoughtful development of land in South Burlington, and implement capital projects to address existing stormwater runoff issues. We look forward to continuing this work and view the Vermont Agency of Natural Resources (ANR) and many other State agencies as partners in these efforts.

While we support the actions proposed in H.586, there are specific provisions in the bill that we find concerning, and in some cases counterproductive, to our shared goal of improved water quality in the region. Our specific comments are as follows:

1. The bill proposes to lower the threshold for obtaining a State stormwater permit to ½ acre of impervious area. The State's current threshold is 1 acre of impervious area. Similarly, the City of South Burlington is currently revising its Land Development Regulations (LDRs) and is planning to establish a ½ acre impervious threshold be established. In South Burlington, applications for development or redevelopment exceeding this amount would be required to take additional action to manage stormwater runoff generated on the site. We expect that this will result in significantly more projects being required to take action in South Burlington. If this ½ acre threshold were to be established at the State level it would certainly result in increased workload for staff at ANR, specifically those individuals in the Department of Environmental Conservation (DEC) stormwater section. Implementation of this lower threshold without significant increases in DEC staff will have a negative impact on the stormwater section's ability to manage projects and serve the public.

2. The bill proposes to establish a water resources preservation program within the ANR. This program would be tasked with providing technical support and financial assistance to projects or activities that improve the quality of waters in the State. This includes activities and projects related to both stormwater and agricultural operations. In order to pay for this program, the bill proposes to establish a Water Resources Preservation fee on all developed property in the State. This fee would be based on the amount of impervious area located on a property. Due to South Burlington's successful implementation and management of a Stormwater Utility, we have significant experience collecting impervious area based fees and administering the water quality program associated with these fees. There are several topics related to the proposed statewide fee worth additional consideration:
  - a. The proposed fee would be based on impervious area, but allocated to water quality projects and activities that have no connection to impervious area. In order to be successful, stormwater utilities across the nation have established fees based on measureable property features that are directly related to the source of pollution. Since stormwater pollution is directly related to the creation and maintenance of impervious surfaces this is the most common element used for billing. There exists an obvious nexus between the basis of the fee (impervious area) and how the funds collected are then utilized (to address issues related to the stormwater runoff created by these impervious surfaces). We are concerned that there exists no nexus between impervious surface and some of the non-point source runoff issues that the funds collected will be used to address. For example agricultural operations have significant concerns related to non-point source pollution, but tend to have low amounts of impervious surface. Furthermore, we are concerned that property and businesses that have impervious area will be charged a disproportionate share for the proposed water quality programs when compared to the fees charged to agricultural operations. The water quality concerns associated with these some agricultural activities are well documented and are not connected to the amount of impervious area on the property.
    - i. If a parcel based fee system is the State's preferred method for collection of funds to support a water quality program it may be worthwhile to consider other metrics by which to charge the fee. For example, the fee could be charged based on land use (a statewide land use layer for the State of Vermont was previously created, but has not been updated in a number of years). Different land uses have the potential to become sources of non-point source pollution and these pollution potentials could be established between the various land uses. Impervious surfaces (parking lots, roads, etc.) could be assigned a value and agricultural land practices (e.g. corn fields or pasture) could be assigned a proportional value. The metric used to charge the fee would then be directly related to a feature of the property, there would be a clear nexus between why the

fee is being charged and what it is being used for, and no one group of properties or residents would be paying the bulk of the fees.

- b. We previously commented on the technical and staff requirements associated with maintaining a statewide database for an impervious area based billing system. In addition, we commented on the additional staff that would be required if a credit system is put in place to reduce these fees. We strongly recommend that these costs be estimated and funding directly provided for the staff needed to manage this portion of the program. If the program is to be successful as proposed it would need to have sufficient staff to respond to the many billing related questions and concerns that Vermont residents will have when the fee is initiated. In addition, the ability to implement such a program by July 1, 2015 should be further evaluated for its reasonableness and chances of success.
- c. The bill indicates that each municipality shall remit the fees collected to the State treasurer. Upon timely remittance, the municipality may retain 0.225 of one percent of the fees collected, or if they have a stormwater utility (or similar program) they may retain 0.450 of one percent of the fees. We are specifically concerned about this feature of the fee collection and remittance program. We believe that communities with established local programs should be exempt from these fees for the following reasons:
  - i. Communities with existing stormwater utility fees have these programs in place because they have taken steps to address an established and documented water quality problem (i.e. stormwater pollution to local streams and Lake Champlain). These communities have decided to deal with these problems at the local level and residents have committed to this goal by supporting local programs via payment of monthly fees. As proposed, H.586 would “double charge” residents in these communities for the same issue. Furthermore, residents in these communities will naturally assume that if the State is charging fees and addressing this issue that the local fees should then be reduced; in fact just the opposite is likely to occur. Funding for water quality would be siphoned from these communities and be placed in a pot of money at the State level. The community would then have to spend its time and resources to compete for this funding at the State level. There is no guarantee that this funding would be returned to the community where it is obviously needed. These communities are under significant regulatory requirements (i.e. MS4 permit, stormwater TMDLs, Lake Champlain Phosphorus TMDL, etc.) to address water quality concerns and have no choice but to move forward with water quality projects and programs. Diverting funds for the same purpose out of the community will hamper these efforts and makes little sense if the goal is to improve water quality.
  - ii. It should also be noted that communities who have established stormwater fee programs, or are likely to start these programs, are some of the more

densely populated areas in the State and therefore also have Wastewater Treatment Facilities (WWTFs). New TMDLs for phosphorus and nitrogen may require expensive upgrades at these WWTFs. The funding for improvements at WWTFs will be coming from the same property owners that will be bearing the largest portion of costs if a Statewide impervious area based fees is established.

- iii. There can be large differences in local stormwater fee programs. Some programs, like the South Burlington stormwater utility, are set up as dedicated enterprise funds, while other communities collect stormwater fees as part of the local general fund and allocate monies to stormwater purposes through normal line item budgeting processes. Funds collected via an enterprise fund may not be returned to the general fund at the end of the fiscal year. We believe that this is an important point to consider when evaluating the appropriateness of a local program.
- d. The bill indicates that priority award of funds shall be allocated in one of fifteen watersheds of the State. These watersheds should be defined or referenced in the bill so that there is no confusion regarding their boundaries.
- e. The bill indicates that nobody shall disturb or clear vegetation in a shoreland area unless a person certified in erosion control practices by the Secretary of ANR is responsible for management or present at the site. No such certification program exists at the State level and this would be another program without staff that would need to be managed by ANR.

Thank you for the opportunity to comment on H.586. If you have any questions on the comments provided in this letter, please do not hesitate to contact me at (802) 658-7961 x108 or [tdipietro@s Burlington.com](mailto:tdipietro@s Burlington.com).

Sincerely,

A handwritten signature in blue ink, appearing to read "Thomas DiPietro". The signature is fluid and cursive, with a long horizontal stroke at the end.

Thomas J. DiPietro Jr.  
Deputy Director of Public Works  
City of South Burlington

CC: Kevin Dorn, City Manager  
Justin Rabidoux, Director of Public Works

Karen Horn, Vermont League of Cities and Towns  
Senator Tim Ashe  
Senator Philip Baruth  
Senator Virginia "Ginny" Lyons  
Senator Diane Snelling  
Senator David Zuckerman  
Representative Michele Kupersmith  
Representative Ann Pugh  
Representative Helen Head  
Representative Maida Townsend