

VTrans T Bill Stormwater Utility Credit Proposal Talking Points

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The original statute, authorizing municipalities to charge rates to property owners based upon impervious surface, was enacted in 2002 and the first municipality to utilize the statute was South Burlington shortly thereafter. After that statute was enacted, DEC through their regulatory power from the federally delegated Stormwater Statute, enacted the MS4 program, last year the Legislature enacted the VT Clean Water Act and signed the Phosphorus TMDL agreement for the Lake Champlain watershed with the EPA. Clearly a lot has happened with Stormwater regulation since the enactment of the 2002 statute authorizing municipalities to enact fees based upon impervious surfaces.

The language you have before you, seeks to reconcile our Stormwater management programs and regulations by incorporating the actions that have transpired since 2002. Along with the 12 Vermont municipalities that have been designated by DEC as MS4 municipalities, VTrans is also a MS4 entity and has responsibilities for mitigating highway runoff similar to the designated municipalities. In addition to being an MS4 entity, DEC is developing a new regulatory program called a TS4, which will be applied to VTrans for all other municipalities where VTrans has state infrastructure. To better align all of these regulatory Stormwater programs, this language has three policy goals:

1. VTrans investments in mitigating Stormwater runoff under the MS4 and TS4 programs need to be appropriately recognized in those communities that choose to establish rates in supporting a municipal wide Stormwater program (Stormwater utility). VTrans is required under these two federal Stormwater programs to mitigate all of its impacts to meet federal thresholds. Not giving sufficient credit to VTrans for their investments in municipalities places too much of a burden on the Agency of Transportation and potentially jeopardizes other infrastructure investments at the municipal and state level.
2. The system for providing credit to VTrans needs to be standardized across all municipalities that choose to charge rates for Stormwater mitigation. This ensures that municipal and state taxpayer funds are used in the most efficient manner as possible. Having an application system for a State Agency that has highways in all 251 towns is not an efficient use of taxpayer dollars at the municipal or state level.
3. The State of Vermont should provide incentive funding to municipalities for creating "Stormwater utilities" as it provides a pooled use of funding for the municipality to develop projects in a holistic manner.

The language you have before you accomplishes all of these three policy objectives. It provides a standard credit to the Agency of Transportation of 40%. The Agency requested 50%, some transportation committee members felt the credit should be more, some less and the 40% represents a compromise amongst the committee. The Agency is willing to accept the Committee's compromise proposal. This credit ensures the Agency's investments in Stormwater Utility municipalities are recognized and sets up an efficient way to credit the Agency's investments to protect taxpayer interests.

Municipalities are eligible for Clean Water Fund (CWF) currently and it is within the interest of the State to support these investments within DEC and VTrans, both who have seats on the CWF Board. To that end municipalities that establish and operate a stormwater utility are proposed under the bill language to be added to the list of priorities Clean Water Funds are used for.

VTrans has steadfastly refused to pay the Stormwater Utility fees and has reached an interim settlement with the town of Williston on a lawsuit for one year. Absent any action by the Legislature on this issue, litigation is likely to recommence and the courts will decide this issue which presents an uncertain outcome for the state and the municipalities that may not produce the best result. The Legislature is the best venue to determine this policy outcome as you are charged to represent both municipal and state interests balancing both. This proposal achieves that balance and I encourage your support.

Chris Cole
Secretary, VTrans