

# Vermont Legislative Joint Fiscal Office

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## *FISCAL NOTE*

Date: February 7, 2018  
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### **H.576 An act relating to stormwater management – House Natural Resources, Fish And Wildlife Recommendation Of Amendment – Draft 2.2**

<https://legislature.vermont.gov/assets/Documents/2018/WorkGroups/House%20Natural/Bills/H.576/Drafts%20and%20Amendments/H.576~Michael%20O'Grady~Draft%20No.%202.2,%202018~2-2-2018.pdf>

#### **Bill Summary**

**Sec. 2** – The bill would expand the definitions of “offset” and “stormwater impact fee” in 10 VSA §1264(b) as they both relate to stormwater runoff generally to apply them to all waters of the state. The language would extend several of the deadlines created in Act 64 of 2015, as laid out below:

- 1) Deadline for the Agency of Natural Resources (ANR) to complete stormwater runoff rulemaking. The current deadline in statute is December 31, 2017 for adoption. The new deadline would be April 1, 2018 for pre-filing with the Interagency Committee on Administrative Rules.
- 2) Deadline for ANR to issue a general permit for impervious surfaces of three acres or more. The current deadline is January 1, 2018. The new deadline would be 120 days after stormwater runoff rules are adopted.
- 3) Deadline for an owner of impervious surface of 3 acres or more outside of the Lake Champlain watershed to obtain permit coverage from ANR. The current deadline is October 1, 2028 and the new deadline would be October 1, 2033.

Under current law there are two separate deadlines for when impervious surfaces at or over 3 acres that were either previously un-permitted or permitted prior to 2002 must be permitted under the new rules. For surfaces in the Lake Champlain watershed the deadline is October 1, 2023 and for all other surfaces in the state the deadline is currently October 1, 2028 (October 1, 2033 if this bill passes). The proposed language would move 3-acre permit requirements for impervious surfaces in the Lake Memphremagog watershed and in the watershed of any other stormwater impaired waters<sup>1</sup> into the earlier deadline category.

**Sec. 3-5** – The bill would also require that, on or after July 1, 2022, construction or redevelopment of more than 1/2 acre of impervious surface shall not commence without a permit

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<sup>1</sup> There are only two stormwater impaired waters outside of the Lake Champlain water shed, the Deerfield River-North Branch, Dover and Roaring & East Brooks, Killington.  
<http://dec.vermont.gov/watershed/stormwater/impaired-waters>

from the Secretary of the ANR. Current law requires a permit for one acre or more of impervious surface. The bill also would require that all ANR rules relating to impervious surfaces of one acre or more shall apply to impervious surfaces of 1/2 acre or more and would establish exceptions to the 1/2 acre rule for certain projects that obtain all other necessary permits prior to July 1, 2022.

### **Fiscal Impacts**

Sec. 2 – The bill would reaffirm the statutory rulemaking and permitting requirements imposed on ANR in Act 64 of 2015, while also granting more time to complete the requirements. These requirements have costs to ANR in the form of time and resources that would change very little under this bill. The changes to the definitions of “offset” and “stormwater impact fee” would allow ANR to utilize these stormwater mitigation options over a broader geographical area and not solely around the Lake Champlain watershed or the other two stormwater impaired waters elsewhere in the state, once the stormwater runoff rules and general permits are in place. ANR has stated that the impact fees could be expanded to Lake Memphremagog in the near-term, but would likely not be utilized elsewhere until rules and general permits are in place. Impact fees are not utilized to support the operations of ANR, but are used to provide financial assistance for stormwater runoff mitigation projects.

The proposed shift in the deadline for permit coverage for impervious surfaces at or over 3 acres in the Lake Memphremagog watershed and the watershed of other stormwater impaired waters from 2028 to 2023 would result in the state collecting permit revenue approximately 5 years sooner than under current law but it would not result in any “new” revenue to the state (i.e. revenue that was not already anticipated as a result of the passage of Act 64 of 2015). However, landowners cannot begin acquiring permits until ANR completes its rulemaking and makes a general permit available, which would likely be sometime after FY2019. Owners of impervious surfaces of 3 acres or more will likely not begin applying for coverage under the permit until FY2021 or FY2022.

Sec. 3-5 – *These provisions would not take effect until state FY2023.* ANR estimates that an additional 150-300 projects<sup>2</sup> may fall under the permit requirements if the statute is changed to require a permit for 1/2 acre or more of impervious surface rather than an acre or more, which would result in some additional permit fee revenue to the state. Many of ANR’s stormwater fees are assessed as a price per acre for initial applications and for annual renewals. There are also minimum fees that would presumably apply to all projects that are less than an acre. None of the existing fees would change under this bill but the number of individuals subject to the fees would increase. Based on current fees, average annual revenues resulting from this language change could be \$100k-\$400k, but not until state FY2023. The amount of revenues would be dependent on whether projects take place near Class A or Class B waters, as the fees vary for each.

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<sup>2</sup> Estimates taken from ANR Report on “Regulatory Threshold for Permitting Stormwater Runoff from Impervious Surfaces” dated January 15, 2016. <https://legislature.vermont.gov/assets/Legislative-Reports/2016-Act-64-Report-on-half-acre-stormwater-threshhold-Final.pdf>