

**Town of Williston Stormwater Program Testimony to the Senate Committee on Natural Resources and Energy on
S.96 (Draft No. 1.1)- An act relating to establishing a Clean Water Assessment to fund State water quality
programs**

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A general background of the EPA approved long-term water quality funding plan helps put into perspective the subsequent comments regarding S.96. The EPA has preliminarily approved a plan from the Governor which includes non-nexus/inconsistent funding mechanisms¹ (e.g. property transfer tax, estate tax, and unclaimed beverage tax) and draft legislation² addressing non-regulatory pollution reductions. The core premise of this draft legislation is the state-wide mandate that every municipality join a Clean Water Utility (CWU) and provide the CWU with the legal authority to acquire and hold real property, raise revenue (which the municipality would be responsible to collect), and enter into contracts to operate and maintain water treatment practices.

S.96 as introduced provided a similar path forward with the implementation of a Clean Water Assessment which requires municipalities to collect per parcel fees. Legislation such as the original form of S.96 would likely have remained acceptable by the EPA as it created a method of funding generation with a direct nexus to the water quality issues affecting Vermont.

With the update of S.96 Version 1.1 (2/21/19) there is no longer any funding mechanism. Instead, the onus falls on the backs of Regional Planning Commissions (RPCs) to address non-regulatory pollution reductions through the management of various state grant funds. It is important to note here that, if RPCs fail in their effort to adequately reduce pollution from these sources, then an “alternative entity” (likely municipalities) will be charged with meeting these goals. While this legislation does state that roughly \$58 million dollars is required annually, without a funding source proposed we will remain roughly \$10 million short annually relying on the non-nexus funds proposed in H.273 and referenced in the Governors White Paper.

As a final reminder, the estimated annual dollars needed of \$58 million do not address nor consider the long-term costs of operation and maintenance. A cost which is likely to exceed the costs of construction during the life of the system. A cost which is born largely by municipalities.

If Vermont doesn't pass legislation which provides the same assurances as the EPA approved draft legislation we are likely to be found negligent in our responsibility to meet the long-term water quality funding milestone put forth in the Lake Champlain TMDL³.

Specific Comments on S.96 Version 1.1

- It appears this legislation is creating a new level of bureaucracy to implement a de-facto permitting program.
- This legislation appears to divert funding from required projects covered underneath existing permits (e.g. MS4 communities) to non-regulatory projects.
- There is no discussion on how this legislation affects existing SW utilities. It is suggested that existing Stormwater Utilities are exempt.
- While ANR is required to determine the average cost of pollutant reduction. There is no mention of what sort of data they need to use to prepare this information. It is suggested that data from local municipalities and the State's ERP grant be a required component of this determination.
- Per the previous comment, the legislation requires that ANR must include the costs of planning identification, project design, and construction in their estimate. However no consideration of O&M is required. It is suggested that the state provide 100% cost support for projects.
- The legislation mentions RPC's ability to request a determination of a projects funding eligibility. It is suggested that the language allow for municipalities to request this determination as well.
- RPC's Responsibility of Non-Regulatory Projects
 - There is no discussion of how these new powers assigned to RPC's overlap with existing municipal requirements (MS4's specifically).

¹ White Paper from Governor Scott, January 24th, 2019

² Document Titled Agency of Natural Resources Draft, Version 7.2, Last Updated: January 7, 2019

³ Pg. 56 of the Lake Champlain TMDL, https://ofmpub.epa.gov/waters10/attains_impaired_waters.show_tmdl_document?p_tmdl_doc_blobs_id=79000

- There is no substantive discussion on how RPC's can regulate and enforce O&M for the projects they implement.
- The legislation requires that, when distributing grants and prioritizing projects ANR consider geographic distribution. This requirement runs contrary to focusing on where we can reduce the most phosphorus/\$ spent. It is suggested that this geographic requirement be removed from the legislation.
- It appears that new development greater than 3 acres is eligible for funding allowing development such as box stores to be eligible for these funds. It is suggested that the legislation consider limiting grant funds to municipalities, non-profit groups, and private organizations that are going above and beyond in their permitting requirements.
- The legislation currently has the Clean Water Fund Board comprised of 9 Governor Appointees. Given the hyper local nature of non-regulatory improvements it is suggested that the composition of the Board consist of 4 Secretaries, and 5 members of the public with 3 of those required to be members of a municipality.