

## Stormwater Utility Concerns with S.115 as written

Prepared by David Wheeler, City of South Burlington, Deputy Director of Water Resources for the Senate Committee on Finance

I am writing to express my concern with the language in Section 8 of S.115 – An act relating to miscellaneous agricultural subjects:

*Sec. 8. 24 V.S.A. § 4414(9) is amended to read:*

*(9) Stormwater management and control. Any municipality may adopt bylaws to implement stormwater management and control consistent with the program developed by the Secretary of Natural Resources pursuant to 10 V.S.A. § 1264, provided the municipality does not exceed the Secretary's authority, maintains the exemptions in 10 V.S.A. § 1264(d)(1), and does not charge an operating fee related to exempt practices.*

The intention of this bill is to exempt farms from paying municipal stormwater utility fees. The introductory subject of the bill states, “*the bill clarifies the authority of municipalities to adopt stormwater management controls applicable to farms.*” However, it is unclear if the language drafted could have consequences beyond the farm field.

The way that this bill is structured, it is inserting language into 24 V.S.A. §4414(9), which authorizes municipalities to adopt zoning bylaws that regulate stormwater management and control. This is an important local control tool, as municipalities subject to the MS4 permit are required to have and enforce a post-construction stormwater management program that prevents or reduces stormwater pollution in new- and re- development sites. MS4 communities would be at risk of being out of permit compliance if they did not have the authority to adopt bylaws to implement stormwater management and control.

The new language being inserted into 24 V.S.A. §4414(9) states that a municipality may adopt bylaws to implement stormwater management and control, “**provided the municipality does not exceed the Secretary's authority, maintains the exemptions in 10 V.S.A. §1264(d)(1), and does not charge an operating fee related to exempt practices.**” The use of commas and the word “and” suggests that municipalities need to do all three of the items listed in order to be able to adopt municipal bylaws regulating stormwater management. As written, the **bolded section** creates uncertainty for municipalities. What exactly does it mean? Could this language alone be used outside of the arena of agriculture to circumvent other municipal stormwater bylaws and ordinances?

Are municipalities prohibited from adopting zoning bylaws that contain stormwater treatment requirements that are stricter than the State's stormwater treatment requirements? If so, then this language warrants a greater conversation with the impacted municipalities, outside of a miscellaneous agriculture bill. If that is not the intent of the language, then the language should be struck from this bill, as to avoid creating confusion.

As you can imagine, municipalities have other concerns with this section of the bill as well. I have kept my statements brief to respect your time, but I would recommend removing Section 8 from this bill for further discussion and reintroduction in another bill at a later date.

Thank you,



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