



DEC Perspective on S.24 “An act relating to stormwater management”

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Discussed with House Committee on Environment February 25, 2025



Key Statement

- Three-acre SW retrofit requirements remain a key component of the Lake Champlain and Memphremagog pollution control plans.
- S. 24 contains valuable policy adjustments that can alleviate concerns over the cost of the program by adding time and by creating financial and other levers that will assist owners.
- DEC will review each section of the S. 24, presenting our perspective and proposing options to align the bill with current clean water funding practice.

6 (7) In accordance with the schedule established under subdivision (g)(3)
7 of this section, a person shall not discharge stormwater from impervious
8 surface located within the Lake Champlain watershed or the Lake
9 Memphremagog watershed of three or more acres in size without first

1 ~~(ii) for impervious surface located within all other watersheds of~~
2 ~~the State, no later than October 1, 2033.~~

Limit three-acre requirements to Lake Champlain & Lake Memphremagog

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DEC supports with Suggested Changes

1. Removing the Connecticut and Hudson River watersheds would eliminate costs of three-acre compliance for owners located in these watersheds without any impact to Vermont's ability to achieve requirements of a binding TMDL.
 - a) **Alternative option:** In lieu of removing the requirements for Connecticut River and Hudson River watersheds entirely, the requirement could be stayed until such time as binding TMDL requirements are imposed in those areas of the state which may require nutrient reductions achievable by the three-acre program.
2. **Necessary Change:** Three-acre requirements should remain within stormwater impaired watersheds outside of Champlain/Memphremagog. (i.e., Roaring Brook, Killington)

3 State. When a municipality assumes full legal responsibility for a stormwater
4 system, the municipality may assess municipal impact fees on users of the
5 stormwater system provided that the impact fee assessed is a fair
6 apportionment to the user of the cost of the improvement in accordance with
7 the benefits the user received.

14 by the Secretary, including authority of municipalities to assess municipal
15 impact fees on users of a stormwater system for which the municipal
16 government has assumed full responsibility.

Advance municipal authority to assess impact fees without full town/neighborhood vote

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DEC supports and recommends involving municipalities. Considerations:

1. Agree this would streamline the ability of towns to assist their landowners.
2. Municipally sponsored projects can access greater benefits through the Clean Water State Revolving Fund (SRF) than private sites.
3. ANR is neutral on creation of new utilities/impact fee areas as a revenue raising mechanism for municipalities.
4. Local impact fees for stormwater system users does not spread the costs of the three-acre requirement geographically (town-wide, regionally, or statewide) but could help spread out costs over time.

16 (3). The schedule established by the Secretary shall require an owner of
17 impervious surface subject to permitting under this subdivision to obtain
18 coverage by the following dates:
19 (±) for impervious surface located within the Lake Champlain
20 watershed, the Lake Memphremagog watershed, or the watershed of a
21 stormwater-impaired water on or before October 1, ~~2023~~, and 2028

Extension of deadline to obtain permit coverage from 2023 to 2028

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DEC Supports

1. It would remain feasible to meet the EPA-approved Lake Champlain and Lake Memphremagog phosphorus TMDLs' targets by the 20-year implementation deadlines of 2036 and 2037 respectively under this extended permit coverage deadline.
2. Extension would provide more breathing room for owners to develop engineering, and work through logistical challenges.
3. Extension would allow State to further develop funding options.

16 Sec. I.12. EFFECTIVE DATES
17 (a) Secs. I.1–I.12 shall take effect on July 1, 2017, except that Sec. I.10
18 (allocating clean water surcharge revenue to Vermont Housing and
19 Conservation Trust Fund) shall take effect on July 1, ~~2027~~ 2036.

Delay of Property Transfer Tax Clean Water Surcharge sunset from 2027 to 2036

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DEC Supports

1. Meets statutory charge of “funding the Clean Water Initiative in a manner that ensures the maintenance of effort and that provides an annual appropriation for clean water programs in a range of \$50 million to \$60 million as adjusted for inflation over the duration of the Initiative” (10 V.S.A. § 1387).
2. Administration and the Clean Water Board recommend maintaining existing Clean Water Fund revenue streams by repealing the July 1, 2027 sunset of the Property Transfer Tax Clean Water Surcharge.
3. **Suggested Change:** DEC is working with Leg. Counsel on this, as the language is a little complex. AoA is also engaged.

S. 24 Financial Assistance Approach

Statute already provides the funding initiative mechanism for ANR to fund municipalities and private citizens in regulatory stormwater permitting and construction, but limited funds require prioritization

Public Schools



Manufactured Housing Communities



Agricultural Fairs



Goal of our S.24 Commentary:

- Prioritize limited funds to high-need three-acre sites.
- Incentivize municipalities taking on responsibility for three-acre sites.
- Achieve intent of S.24 within the existing statutory grant program categories, Clean Water Fund special fund and prioritization scheme, and reporting.

Everyone Else

Permit Obtainment Assistance

Linked Deposit (under development)

4 § 1264c. LOCAL COMMUNITY IMPLEMENTATION SPECIAL FUND
5 (a) There is established the Local Community Implementation Special
6 Fund to be administered by the Secretary of Natural Resources in accordance
7 with 32 V.S.A. chapter 7, subchapter 5 to provide grants to municipalities to
8 assist in the stormwater permitting of residential subdivisions or orphan
9 systems in the State. The Fund shall consist of:

6 (c) The Secretary of Natural Resources shall accept applications for grants
7 from the Fund until September 1 of each fiscal year. Grants shall be awarded
8 on a priority basis for stormwater systems with impending timing constraints
9 or for those projects that will achieve the greatest reduction in pollutant load.

Creation of special fund that would support stormwater permitting of residential subdivisions and orphan systems to incentivize municipalities to assume legal responsibility for these sites

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DEC supports the intent, but in a different form:

1. **Suggested Change:** If intent is to incentivize municipalities to assume responsibility for high-need three-acre sites, this may also be achieved through a direct municipal incentive payment structure. (Municipal perspective would be helpful to inform incentive structure)
2. **Suggested Change:** If intent is to provide enhanced financial and technical assistance for a subset of three-acre sites, that could be achieved **by adjusting how funds are prioritized** within the existing [Municipal Stormwater Implementation Grants \(10 V.S.A. § 928\)](#) and the [Developed Lands Implementation Grants \(10 V.S.A. § 927\)](#) available to support permitting and construction expenses for three-acre sites (municipal and private respectively)
 - a) Of note, as written, incentive for municipalities to assume responsibility through enhanced financial assistance is limited to only residential subdivisions and orphan systems and excludes other high-need sites. **What is the global prioritization of financial assistance for three-acre sites?**

9 systems in the State. The Fund shall consist of:
10 (1) an annual appropriation of at least \$1,000,000.00 from the Clean
11 Water Fund;
12 (2) private gifts, bequests, and donations made to the State for any of the
13 purposes for which the Fund was established; and
14 (3) other funds from any public or private source intended for use for
15 any of the purposes for which the Fund has been established.

Annual Capitalization of Special Fund

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DEC supports idea of annual appropriation, with Suggested Changes

1. **Suggested Change:** The intent of this Bill can be accomplished without creation of a new Special Fund (see prior slide, and this will be covered further in a few slides).
2. Annual minimum/maximum dollar values should be determined based on Bill's final financial intent.

16 (b) The Secretary may issue grants from the funds to:
17 (1) a municipality subject to the permitting requirement under
18 subdivision 1264(c)(3) of this title for its municipal separate storm sewer
19 system when the municipality assumes under its municipal separate storm
20 sewer system permit the permitting requirements of an orphan system or other
21 residential stormwater system under subdivision 1264(d)(2) of this title; or

1 (2) a municipality that is not subject to the permitting requirement under
2 subdivision 1264(c)(3) of this title for its municipal separate storm sewer
3 system when the municipality assumes the full legal responsibility for a
4 stormwater system under subdivision 1264(d)(2) of this title or agrees to be a
5 co-applicant for a permit for an orphan system within the municipality.

6 (c) The Secretary of Natural Resources shall accept applications for grants
7 from the Fund until September 1 of each fiscal year. Grants shall be awarded
8 on a priority basis for stormwater systems with impending timing constraints
9 or for those projects that will achieve the greatest reduction in pollutant load.

Granting Guidance Page 9

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DEC supports using financial tools to incent municipal adoption, and suggests changes

1. **Suggested Change: DEC favors use of existing granting programs created by 10 VSA 927-928.** If maintaining establishment of a separate Local Community Implementation Grant Program, reduce level of specificity in statute on grant program design to maintain flexibility and efficiency of program administration (e.g., eligible entities, application deadlines, and prioritization).
2. Recommend more general language on intended outcome of “financial assistance” to support three-acre projects and/or incentivize municipal adoption.
3. Note: there are other mechanisms to assist towns to adopt sites that may require some additional time to develop, such as regional stormwater utilities.

10 (d) Annually, on or before January 31, the Department shall report to the
11 House Committee on Environment and the Senate Committee on Natural
12 Resources and Energy regarding operation and administration of the Local
13 Community Implementation Special Fund. The report shall include a
14 description of each grant awarded from the Fund in the previous calendar year.

Reporting

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Not needed unless special fund is retained

1. **Suggested Change:** Remove special reporting requirement associated with the proposed Local Community Implementation Special Fund.
2. The Clean Water Initiative already reports on operational stormwater permits and financial assistance via the Annual Clean Water Performance Report. (10 V.S.A. § 1389a).

15 (e) As used in this section, "orphan stormwater system" means a
16 stormwater system:
17 (1) that serves a residential subdivision;
18 (2) that operates under an expired stormwater discharge permit or was
19 never issued a stormwater discharge permit; and
20 (3) for which the original permittee, in the discretion of the Secretary of
21 Natural Resources, is no longer associated with the system.

Definition of Orphan System

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DEC is neutral on the addition of "Orphan System" definition

1. The definition of "Orphan System" may be added to 10 VSA 1264 if supported by the Committee. This may provide a reference to the term that has been used more frequently to describe certain 3-acre sites that participated in the former orphan program.
2. **Suggested Change:** DEC suggests that the historical definition of this term (repealed by a prior session of the GA) be used and will provide language.

4 Fund, the Board shall prioritize as follows:
5 (1) As a first priority, make recommendations regarding funding for the
6 following grants and programs, which shall each be given equal priority:
7 (A) grants to clean water service providers to fund the reasonable
8 costs associated with the inspection, verification, operation, and maintenance
9 of clean water projects in a basin;
10 (B) grants to municipalities or property owners to assist with the
11 costs of complying with permitting requirements under subdivisions
12 1264(c)(1) and (7) of this title;

Movement of regulatory stormwater compliance financial assistance to a Tier 1 priority for the Clean Water Board

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DEC does not support this but suggests changes

1. Generally, the intent of the Clean Water Fund statutory priority tiers are:
 - i. Tier 1: incentivize non-regulatory actions necessary to achieve water quality goals.
 - ii. Tier 2: offset costs of stormwater regulatory compliance on public lands and with public infrastructure.
 - iii. Tier 3: offset costs of stormwater regulatory compliance for private entities.
2. **Suggested Change:** Strike underlined language in this section of the Bill.
 1. If launching incentive payment structure, aligns with Tier 2.
 2. If intent is to prioritize permitting and construction funds for high-need three-acre sites with municipal sponsorship, these cases may fall under the existing [Municipal Stormwater Implementation Grants \(10 V.S.A. § 928\)](#) and refined prioritization language for that grant program may suffice.

7 Sec. 6. APPROPRIATION
8 Notwithstanding any other provision of law, \$5,000,000.00 is transferred
9 from the Clean Water Fund to the Local Community Implementation Special
10 Fund in fiscal year 2025.

Initial Capitalization of Special Fund

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DEC does not support as envisioned and recommends changes to meet the intent.

Suggested Change: Delay special allocations from the Clean Water Fund until the SFY 2027 Clean Water Budget.

- a. Agencies are already implementing programs under the current SFY 2025 Clean Water Budget. Reallocation will impose significant program impacts that affect organizations doing their work.
- b. An adjustment to the State Fiscal Year 2026 budget currently under legislative review would also re-direct staff capacity away from developing 3-acre financial assistance programs to administering a SFY 2026 Clean Water Board budget revision. Those organizations are already staging their efforts for the SFY26 budget based on Board actions.
- c. The time extensions provide breathing room so that an immediate direction of \$5M is not needed. We recommend using the SFY27 budget process to further capitalize.

Additional Opportunities – Municipal Adoption and Utilities

Financial incentive is one tool, but some municipalities will still lack incentive/capacity.

- Explore options to alleviate liability concerns between towns and system users/owners.
- Include within financial mechanisms “O+M” support within the funding programs.
- Explore how regional utilities might support owners in towns that lack capacity.
- Impact fees. DEC would reconsider applicability for three-acre retrofits.

Recommended Next Steps

Stakeholder engagement to date:

- Env. Advocacy
- Green Mtn Water Environment
- MS4 Communities
- VT League of Cities and Towns

DEC Recommended Phased Approach

- Move S24 with policy adjustments outlined in this presentation.
- DEC ready to work with Leg. Counsel on language based on Committee's input.
- Time may be short to contemplate regional utilities – this may be a space for a study committee to frame how that would work. RPCs or NRCDs may be key stakeholders.