

Introduced by Senator Bray

Referred to Committee on

Date:

Subject: Conservation and development; water resources; Clean Water Utility; funding

Statement of purpose of bill as introduced: This bill proposes to establish the Clean Water Utility as a mechanism for remediating pollution in State waters and improving and protecting water quality in the State. The bill also would establish a Clean Water Per Parcel Charge for every parcel in the State. The property transfer tax surcharge and the Clean Water Per Parcel Charge would be deposited into a special fund to pay for the activities of the Clean Water Utility.

An act relating to establishing a statewide clean water utility

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. FINDINGS

The General Assembly finds that:

(1) Within Vermont there are 7,100 miles of rivers and streams and 812 lakes and ponds of at least five acres in size.

(2) Current assessment of State waters or water segments indicates that there are:

(A) 101 waters or water segments that do not meet the State's water quality standards for at least one criteria and require a plan for cleanup;

(B) 114 waters or water segments that do not meet State water quality standards and that do have a current cleanup plan, but which may not be meeting water quality standards;

(C) 114 waters or water segments that are stressed, meaning that there is one or more factors or influences that prohibit the water from maintaining a higher quality; and

(D) at least 56 waters that are altered due to aquatic nuisance species, meaning that one or more of the designated uses of the water are prohibited due to the presence of aquatic nuisance species.

(3) In 2015, the General Assembly enacted 2015 Acts and Resolves No. 64, An Act Relating to Improving the Quality of State Waters (Act 64) for the purpose, among others, of providing mechanisms, staffing, and financing necessary for State waters to achieve and maintain compliance with the water quality standards of the State.

(4) Act 64 directed the State Treasurer to recommend to the General Assembly a long-term mechanism for financing water quality improvement in the State, including proposed revenue sources for water quality improvement programs.

(5) The State Treasurer submitted a Clean Water Report in January 2017 that included:

(A) an estimate that over 20 years it would cost \$2.3 billion to achieve compliance with water quality requirements;

(B) a projection that revenue available for water quality over the 20-year period would be approximately \$1.6 billion, leaving a 20-year total funding gap of \$1.3 billion;

(C) an estimate of annual compliance costs of \$115.6 million, which after accounting for projected revenue, would leave a funding gap of \$48.5 million to pay for the costs of compliance with the first tier of federal and State water quality requirements; and

(D) an estimate of the State share of the funding gap of between \$20 to \$25 million annually.

(6) To ensure that the State has sufficient funds to clean and protect the State's waters so that they will continue to provide their integral and inherent environmental and economic benefits, the State should adopt an equitable and effective long-term funding method to support clean water efforts in Vermont.

(7) The revenue generated by the equitable and effective long-term funding method should be administered by a clean water utility that is free from political influence and structured to have the sole goal of remediating pollution in and improving and protecting the quality of waters of the State in the most effective and expedient manner.

Sec. 2. 10 V.S.A. chapter 47, subchapter 8 is added to read:

Subchapter 8. Clean Water Utility

§ 1389d. PURPOSE

The General Assembly establishes in this subchapter the Clean Water Utility as a mechanism for remediating pollution in and improving and protecting the quality of waters of the State. The Clean Water Utility shall be used to:

(1) assist State agencies, municipalities, private developers, and others in complying with water quality requirements and construction or implementation of water quality projects or programs; and

(2) provide funding to nonprofit organizations, regional associations, and other entities for implementation and administration of community-based water quality programs or projects.

§ 1389e. CLEAN WATER UTILITY; ESTABLISHMENT

(a) Establishment of utility. The Public Utility Commission shall provide for the development, implementation, and administration of a clean water utility to remediate pollution in and to improve and protect the quality of the waters of the State of Vermont. The Commission shall, after notice and opportunity for hearing, enter into a contract with a person to operate the Clean Water Utility. A contract issued under this subsection shall be for a limited duration not to exceed 10 years.

(b) Renewal; appointment. Upon expiration of the initial contract entered into under subsection (a) of this section, the Public Utility Commission may renew the contract, issue a new contract, or appoint a person to implement and administer the Clean Water Utility. The term of any contract or any appointment subsequent to the initial contract shall be of limited duration and shall not exceed 10 years.

(c) Conditions for public good. The Public Utility Commission may include conditions or requirements deemed appropriate for the public good in any contract entered into or appointment

under this section. As used in this subsection, “public good” includes the remediation of and prevention of pollution of the waters of the State.

(d) Monitoring. Prior to entering a contract or issuing an appointment under this section, the Public Utility Commission shall develop programs, metrics, or measures for monitoring the performance of the Clean Water Utility. The Commission shall include the monitoring programs, metrics, or measures as a condition of any contract entered into or appointment under this section.

(e) Annual report. Beginning on January 15, 2021 and annually thereafter, the person contracted with or appointed under subsection (a) of this section to administer the Clean Water Utility shall submit to the Senate Committee on Natural Resources and Energy and the House Committee on Natural Resources, Fish and Wildlife a report regarding the progress of the Clean Water Utility in remediating pollution in State waters and improving and protecting the quality of the waters of the State. The report shall include:

(1) an enumeration of the indicators of improved water quality, including any indicators required to be monitored under federal or State law;

(2) an assessment of the water quality of the State, including:

(A) documented progress or shortcomings in meeting established indicators for clean water restoration;

(B) whether the water quality of each river basin in the State is improving, deteriorating, or remains unchanged from the previous year; and 

(3) an accounting of how money from the Clean Water Utility Fund was expended in the previous calendar year, including a summary of the projects or activities funded in each river basin of the State.

(f) As used in this section, “person” means any natural person, corporation, partnership, association, or other legal entity other than the State of Vermont or any department, agency, or subdivision of the State.

§ 1389f. CLEAN WATER UTILITY FUND

(a) There is established the Clean Water Utility Fund pursuant to 32 V.S.A. chapter 7, subchapter 5 to be administered by the Public Utility Commission. The Fund shall consist of:

(1) revenues dedicated for deposit into the Fund by the General Assembly, including the Property Transfer Tax Surcharge established under 32 V.S.A. § 9602a and the Clean Water Per Parcel Charge established under section 1389g of this title; and

(2) other gifts, donations, or impact fees received from any source, public or private, dedicated for deposit into the Fund and approved by the General Assembly, or the Joint Fiscal Committee when the General Assembly is not in session.

(b)(1) Monies in the Fund shall be used solely for the following purposes:

(A) to fund the Clean Water Utility established under section 1389e of this title to remediate pollution in State waters and to improve and protect quality of the waters of the State; and

(B) to pay the administrative and staff costs of the Public Utility Commission in developing, implementing, and administering a clean water utility, provided that no more than two percent of the amounts in the Fund shall be used for this purpose in any fiscal year. 

(2) Monies in the Fund shall not be available to meet the general obligations of the State.

(3) Notwithstanding any contrary provisions of 32 V.S.A. chapter 7, subchapter 5, unexpended balances shall remain in the Fund from year to year.

§ 1389g. CLEAN WATER PER PARCEL CHARGE

(a) Definition. As used in this section, “parcel” means all contiguous land in the same ownership, together with all improvements therein and shall include a parcel exempt from taxation under 32 V.S.A. § 3802.

(b) Clean Water Per Parcel Charge. Except as provided for under subsection (d) of this section, there is established an annual Clean Water Per Parcel Charge for every parcel in the State.

(c) Amount of Per Parcel Charge.

(1) The Public Utility Commission annually by order shall establish the amount of the Clean Water Per Parcel Charge to be collected by the Commissioner of Taxes under subsection (e) of this section.

(2) Annually on or before January 1, the Commission shall establish an annual base charge to be assessed on all parcels in the subsequent fiscal year. 

(3) The Commissioner annually shall review and assess whether separate adjustment charges shall be established for parcels based on the degree of adverse effect a parcel type poses on the waters of the State. The Commission shall establish an adjustment charge on or before January 1 of each year for assessment in the subsequent fiscal year. The Commission may establish adjustment charges according to categories or parcel types, such as commercial, industrial, or agricultural parcels.

(4) The Commission shall establish the annual base charge and adjustment charges to generate the amount needed to fund the costs of complying with the following water quality programs after accounting for other available sources of State and federal revenue:

(A) federal or State required cleanup plans for individual waters or water segments, such as total maximum daily load plans;

(B) the requirements of 2015 Acts and Resolves No. 64; and

(C) the Agency of Natural Resources' Combined Sewer Overflow Rule.

(5) On or before September 15 of each calendar year, the Secretary of Administration shall submit to the Commission information necessary for the Commission to establish the charges authorized under this section. The Secretary of Administration annually shall provide all of the following information:

(A) An accounting of the monies spent by the following State agencies to fund or administer water quality programs in the State, including specific projects or programs funded:

(i) the Agency of Natural Resources;

(ii) the Agency of Agriculture Food and Markets;

(iii) the Agency of Transportation;

(iv) the Agency of Commerce and Community Development, and
(v) any other agency that expended monies for water quality programs in the
previous fiscal year.

(B) The estimated amount of monies to be budgeted to fund or administer water quality
programs in the subsequent fiscal year by State agencies.

(C) The estimated amount of the Property Transfer Tax Surcharge established under 32
V.S.A. § 9602a for deposit in the Clean Water Fund;

(D) The estimated amount of the Clean Water Per Parcel charge to be collect by the
Commissioner of Taxes for deposit to the Clean Water Fund; and

(E) Any other information as the Commission may deem necessary for the calculation
of the annual base charge and adjustment charges.

(d) Rulemaking. The Public Utility Commission may adopt rules governing the calculation of
the annual base charge and adjustment charges authorized under subsection (c) of this section,
including requirements for submission of information by the Secretary of Administration.

§ 1389h. COLLECTION OF CLEAN WATER PER PARCEL CHARGE.

(a) Collection. The Clean Water Per Parcel Charge shall be assessed and collected as part of
the tax bill issued under 32 V.S.A. § 5402(b), provided that the Clean Water Per Parcel Charge
shall be listed on a tax bill as the “Clean Water Per Parcel Charge,” and the Charge shall be listed
separately from the tax collected. 

(b) Exemption. Property within the limits of a railroad track right-of-way shall be exempt
from the Clean Water Per Parcel Charge assessed under this section, provided that the 
Commissioner of Taxes shall collect the charge on parcels on which railroad stations, maintenance
buildings, or other developed land used for railroad purposes is located. 

(c) Municipal retention. A municipality may retain up to two percent of the total Clean Water
Per Parcel Charge collected, provided that:  

(1) the municipality timely remits net payment to the State Treasurer; and

(2) the retained charges are used by the municipality to offset the costs of collection or to comply with water quality requirements:

 Remittance. The treasurer of each municipality shall remit the collected Clean Water Per Parcel Charge minus the municipally retained amount to the Commissioner of Taxes in two payments due on December 1 and June 1 of each year for deposit in the Clean Water Utility Fund.

(d) Insufficient payments. In case of insufficient payment of the Clean Water Per Parcel Charge by a taxpayer to a municipality, the municipality shall not be required to remit to the State the amount of full liability for all parcels within the municipality, provided that the municipality submits to the Commissioner of Taxes a list of those taxpayers who are delinquent in the payment of the Clean Water Per Parcel Charge.

(e) Offset. The Commissioner of Taxes may, under chapter 151, subchapter 12 of this title, offset any delinquent Clean Water Per Parcel Charge established under this section against any refund owed the delinquent taxpayer, including, notwithstanding the monetary limit of 32 V.S.A. § 5933(a), an amount of less than \$50.00.

(f) Form or format. The Commissioner of Taxes shall specify the form or format for the remission of the collected Clean Water Per Parcel Charges.

(g) Abatement. A person may seek and a municipality may grant abatement under 24 V.S.A. § 1535 of a Clean Water Per Parcel Charge assessed under this section.

(h) Disposition. The Commissioner of Taxes shall deposit all charges collected under this section in the Clean Water Utility Fund, established under section 1389f of this title, for the authorized uses of the Fund.

§ 1389i. PROGRAM AUDIT OF CLEAN WATER UTILITY

(a) On or before January 15, 2029, the Public Utility Commission shall submit to the House and Senate Committees on Appropriations, the Senate Committee on Finance, the House Committee on Ways and Means, the Senate Committee on Agriculture, the House Committee on Agriculture and Forestry, the Senate Committee on Natural Resources and Energy, and the House

Committee on Natural Resources, Fish and Wildlife a program audit of the Clean Water Utility established under section 1389e of this title.

(b) The audit shall include:

(1) the amount of the Clean Water Per Parcel Charge collected under section 1389g of this title;

(2) the amount of monies expended from the Clean Water Utility Fund for the operation of the Clean Water Utility;

(3) a list or accounting of the projects or activities funded by the Clean Water Utility;

(4) an analysis and summary of the efficacy of the water quality projects and programs funded by the Clean Water Utility, including whether the funded projects and programs are achieving the intended water quality benefits; and

(5) a recommendation of whether the General Assembly should authorize the continuation of the Clean Water Utility and, if so, at what funding level.

(c) The audit required by this section shall be conducted by a qualified, independent environmental consultant or organization with knowledge of the federal Clean Water Act, State water quality requirements and programs, the Lake Champlain Total Maximum Daily Load plan, and the program elements of the State clean water initiative.

(d) Notwithstanding provisions of section 1389g of this title to the contrary, the Public Utility Commission shall pay for the costs of the audit required under this section by the Clean Water Utility Fund, established under section 1389f of this title.

Sec. 3. REPEAL OF CLEAN WATER FUND

10 V.S.A. chapter 47, subchapter 7 (Vermont Clean Water Fund) shall be repealed on January 1, 2020.

Sec. 4. IMPLEMENTATION; TRANSITION

(a) On or before January 1, 2019, the Public Utility Commission shall develop the programs, metrics, or measures required under 10 V.S.A. § 1389e(d) for monitoring the performance of the Clean Water Utility.

(b) On or before July 1, 2019, the Public Utility Commission shall establish the amount of the Clean Water Per Parcel Charge as required under 10 V.S.A. § 1389g.

(c) On or before January 1, 2020, the Public Utility Commission as required under 10 V.S.A. § 1389e shall enter into a contract with a person to operate the Clean Water Utility.

(d) Beginning on July 1, 2021, for State fiscal year 2021, the Clean Water Per Parcel Charge established under 10 V.S.A. § 1389g shall be applied and collected as part of the tax bill issued under 32 V.S.A. § 5402(b).

(e) When establishing the annual Clean Water Per Parcel Charges under 10 V.S.A. § 1389e for fiscal years 2021 and 2022, the Public Utility Commission shall use the 20-year annualized funding gap calculated by the State Treasurer in the Clean Water Report: Required by Act 64 of 2015 as the amount needed under 10 V.S.A. § 1389(c)(3) to fund the costs of complying with the specified water quality programs after accounting for other available sources of State and federal revenue.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2018.