



The State of New Hampshire
Department of Environmental Services

Thomas S. Burack, Commissioner

*Celebrating 25 Years of Protecting
New Hampshire's Environment*



January 26, 2012

The Honorable Chuck Morse, Chairman
Senate Finance Committee
State House, Room 103
Concord, New Hampshire 03301

Re: SB 294, requiring the deposit of dedicated fund revenues into the general fund by the Department of Labor, Department of Environmental Service, Banking Department and the Secretary of State

Dear Chairman Morse:

Thank you for the opportunity to comment on SB 294. This bill would redirect revenues from all dedicated funds established under RSA 6:12, I(b) and administered by the Department of Environmental Services to the general fund, effective July 1, 2013. The Department of Environmental Services (DES) has serious concerns about unintended consequences for businesses, municipalities, and citizens of our state that would result from passage of this bill.

This bill would affect thirty-two (32) programs at the Department of Environmental Services (DES) that provide critical services and resources to municipalities, the business community, and citizens. These programs were established by the Legislature as dedicated funds in order to enable DES to administer them as fee-based programs. These self-funded programs are established so that only the users of the programs bear the costs. Transfer of the revenues to the General Fund would mean that the programs are no longer self-supporting, and would significantly impact their reliability and effectiveness. DES currently closely manages all fee accounts to balance revenues and expenses throughout the year. The direct link between program services and fees has been established as the programs have been developed over time. This important link provides DES with the ability to effectively manage overall staff production and program costs by changing staff resources in response to economic conditions, permit demands, revenues and expenses. This ability would be eliminated by this bill. Examples of the anticipated impacts on several of our dedicated fee programs are outlined below.

Clean Water and Drinking Water State Revolving Loan Funds (CWSRF and DWSRF):

Passage of this bill would cause the US Environmental Protection Agency (USEPA) to terminate the CWSRF and DWSRF programs for New Hampshire because the proposed intermingling of these funds with other state funds would be a violation of federal law. This would result in substantially higher costs for municipalities and public water supplies to finance water and wastewater infrastructure projects to address aging facilities and federal mandates. USEPA would demand a complete refund of all federal funds awarded, plus interest earned on these

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funds since the inception of the SRF programs (1989 for CWSRF and 1996 for DWSRF). DES estimates this amount to be approximately \$445 million. Most of these funds are currently in the form of existing outstanding loans to communities. In order to return these monies to USEPA, DES would have to call the loans. Additionally, past administration expenses would need to be refunded to USEPA. Further, the termination of the CWSRF and DWSRF programs would result in the loss of 64 positions with the layoff costs for these positions assumed to be incurred by the state general fund. The cost to the general fund for the layoffs is assumed to be an average of \$30,000 per staff member or a total of \$1,920,000.

In addition, municipalities would lose up to \$10 million per year in future principal forgiveness (effectively grants) from the CWSRF and DWSRF programs. Municipalities would also lose access to the steeply discounted interest rates provided by SRF loans. Since DES would have to call in all loans, municipalities would be forced to refinance all existing loans on the open bond market, thus incurring higher interest expense and bonding costs. They would also lose the benefit of all principal forgiveness, thus increasing the amount to be borrowed. This additional cost to the municipalities is indeterminate, but would be substantial and likely on the order of many millions of dollars statewide.

Aquatic Resource Mitigation (ARM) Fund: The ARM fund provides an alternative for wetlands permit applicants (state, municipal and private) to cost effectively fulfill the requirements for permits issued under the United States Army Corps of Engineers (ACE) New Hampshire State Programmatic General Permit (NHSPGP) and for individual permits issued by the ACE for larger projects. The collected funds are pooled by watershed for implementation of wetlands restoration and preservation projects by municipalities and other entities selected on a competitive, priority basis. This program has been very successful both for applications and as a mechanism to support major wetlands preservation and mitigation projects. ARM Fund monies must be strictly dedicated to use for wetlands mitigation projects to comply with the NHSPGP requirements. Intermingling of these funds with other funds would violate federal requirements and eliminate the viability of this mitigation compliance option for wetlands permit applicants. Without the ARM Fund option, wetlands permit applicants for projects that require mitigation would be required to perform individual mitigation projects such as creation, rehabilitation, or upland conservation to comply with federal requirements, and such individual projects typically involve higher costs and greater complexity. This would cause direct economic harm to permit applicants and to the NH economy as a whole because economic development projects would be more costly and slower to implement.

Oil Discharge and Disposal Cleanup (ODD) Fund and 3 Related Funds; Oil Pollution Control Fund; Hazardous Waste Cleanup Fund: The "ODD Fund" and 3 similar funds support on-going cleanups at nearly 1,000 petroleum contaminated properties throughout the State, including those owned by counties, municipalities, businesses, churches, schools, individual homeowners and State agencies. The four funds protect property owners against potential financial ruin as a result of cleanup costs, they leverage significant development dollars to restore blighted and underused land to productive use, and they provide potable water to innocent landowners when their supply wells are contaminated. The ODD Fund also provides liability insurance for future cleanups, as required under federal regulations for motor fuel storage tanks. The Oil Pollution Control fund supports protection of Great Bay and the NH

seacoast from catastrophic oil spills, and supports inland spill response work throughout the State, often during emergencies. The Hazardous Waste Cleanup Fund supports a variety of training, education, cleanup, and community grant activities to ensure proper management of hazardous wastes, as required under federal regulations. If appropriations are delayed or reduced for these programs, the public and private stakeholders identified above would incur significant costs proceeding with cleanups and managing wastes. As strictly liable parties under state and federal law, they are obligated to perform work regardless of State funding. Further, lack of reliable funding for these programs would lead to increased risks to the environment and public health. These ‘quality of life’ factors are significant in keeping the State attractive for new and expanding businesses and residential development.

Winnepesaukee River Basin (WRB) Equipment Replacement Fund: These funds are collected as a portion of sewer user fees from the 10 municipalities that discharge wastewater to the state-owned WRB wastewater interceptor system and treatment plant. These funds are used with the oversight and concurrence of the Winnepesaukee River Basin Advisory Board which has representation from the 10 municipalities that contribute to the fund. Under this bill, funds in this account would lapse into the state general fund rather than accrue for use, as needed, to the benefit of these communities for replacement of worn out equipment or to respond to emergencies, such as sewer leaks. This would defeat the purpose of this fund and substantially decrease the ability and flexibility of DES and the communities to manage these funds to cover long-term equipment replacement costs and, most significantly, for emergency response.

Title V – Air Permit Funds: The federal Clean Air Act requires implementation of the Title V statewide permit system to achieve and maintain compliance with federal Ambient Air Quality Standards and other federal requirements. These permits are for the construction, operation or modification of any new or existing major air pollution control sources. Under federal requirements, these fee revenues must only be used for the support of the Title V program and cannot be intermingled with state general funds. The failure to maintain an approved program would result in federal sanctions on NH that could include increased offset ratios for new or modified sources (a significant barrier to economic development) and reductions in federal Clean Air Act grants or Federal Highway Funds. Offset ratios are the requirement to reduce emissions either through the purchase of emission reduction credits from other sources or by installing additional air pollution controls at another site owned by the company or another source. Raising the offset ratio would result in increased costs to businesses.

In summary, DES is concerned that transfer of dedicated funds for vital programs to the general fund would have significant and lasting detrimental effects on municipalities, businesses and all citizens of New Hampshire. While periodic evaluation of programs and funds is essential to ensuring effective and efficient government, the approach of this bill would impose severe unintended consequences on our stakeholders and on New Hampshire’s environmental quality and public health. For these reasons, we respectfully request that the Senate Finance Committee find this bill inexpedient to legislate.

January 26, 2012

Thank you for the opportunity to provide comment on this proposed legislation. If you have any questions or require additional information, please contact me at 271-2958.

Sincerely,

A handwritten signature in black ink that reads "Thomas S. Burack". The signature is written in a cursive style with a large, stylized initial 'T'.

Thomas S. Burack
Commissioner

cc: Senator Andy Sanborn
Senator Tom DeBlois
Senator James Russell Forsythe
Senator John T. Gallus
Senator Fenton Groen
Senator Gary Ervery Lambert
Senator James H. Luther
Senator Raymond White
Representative William O'Brien
Representative David J. Bettencourt