

## **Comments on S.96 – *updated after testimony***

**Prepared for the Senate Committee on Natural Resources and Energy  
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Thank you for the opportunity to testify this morning on S.96. These comments are my own, but represent thoughts and perspectives of some of my peers, and are based upon my roles as the Chair of the Natural Resources Committee of the Vermont Association of Planning and Development Agencies (the state association for RPCs) and as the Executive Director of the Chittenden County Regional Planning Commission.

As we have testified previously, the RPCs support the broad purpose of this bill to allocate grant funding regionally based upon need. We also support formalizing a process for all of the partners in a basin to work together in deciding upon priority clean water projects and having the funds to develop and implement those priority projects.

This bill sets up a system by which a clean water service provider, defaulting to an RPC, would facilitate a Basin Water Quality Advisory Council. This BWQAC would include all of the partners in a basin and would be responsible for identifying and prioritizing clean water projects. (p. 23, Sec. 7.)

The bill also directs the Secretary of ANR to administer a Water Quality Restoration Formula Grant to address annual pollution reduction targets in impaired watersheds. (p. 10, §925) We are supportive of this more analytical basis for making water quality investments.

The new duties proposed by S.96 are, for the most part, compatible with our strengths and abilities. We are supportive of serving a role in helping the state provide sub-state prioritization, grant making, and implementation of the most cost-effective clean water projects by our local partners.

However, there is one significant issue of concern for us and a number of additional concerns or questions that we would like to see addressed before this bill becomes law.

1. The significant concern is the potential for enforcement actions against an RPC (p.10, §924(f)(2)). We are happy to have accountability requirements in place to make sure that the state investment is being used appropriately and to achieve clean water goals. However, if the issue is achieving the targeted pollution reduction goal, and there is not enough grant funding to achieve that goal, the answer is increased or improved investment, not penalties. We will get no closer to our clean water goals if the RPCs are fined, we will just end up having RPCs step away from this work out of a concern about the liability. It would be preferable to see ANR remain a partner in this work and not treat the clean water service provider as a regulated entity. We would like to see lines 5-6 deleted on page 10.
2. The Basin Water Quality Advisory Council should have a role in the assignment of the clean water service provider. I suggest the following language to replace lines 9-10 on p.7: The rulemaking shall be based upon the recommendation of the Basin Water Quality Advisory Council for each basin. If the Secretary proposes a clean water service provider other than that

recommended by the Basin Water Quality Advisory Council, the Secretary shall provide reasons as part of the proposed rulemaking.

3. The system for deciding upon projects and partners to fund in each basin should be more clearly explained.
  - a. On page 22, lines 8-10, recommend replacing (B) with the following: “Fund projects with available Water Quality Restoration Formula Grant funds based upon the priorities decided upon by the Basin Water Quality Advisory Council to meet the pollution targets provided by the Secretary and consistent with the applicable basin plan.”
  - b. On page 23, lines 6-7, recommend the following edit: “The purpose of the council is to make decisions ~~recommendations to the regional planning commission~~ on identifying the most significant water quality impairments that exist in the basin and prioritizing the projects and partners to be funded by the clean water service provider that will address those impairments.”
4. We are concerned about the implications on other funding programs. Will this new grant program take away from the grant assistance that the State has been providing municipalities, farmers, conservation districts, and watershed associations? Will a shift reduce or improve the State’s ability to achieve our clean water goals?
5. We want to make sure we understand the intent of §924(c) on page 8 regarding being responsible for maintenance. Any implementation projects will be undertaken by our partners and property owners in the basin. We agree that it makes sense for the clean water service provider to monitor the maintenance of implemented projects, but not for RPCs to directly maintain such projects. DEC should be a partner in the any agreements that RPCs would execute with property owners in case any enforcement action is needed.
6. Any entity that takes on the role of a clean water service provider needs to have their costs covered. On page 10, line 18, §925(a) provides for that funding and allows for up to 15% for indirect and administrative costs. “Indirect and” should be removed from that section (line 18) as those would not be administrative costs of implementing this program.
7. We would hope that DEC would remain a partner in this effort and provide not just technical assistance, but also legal assistance by providing assistance with model partner and property agreements (p.11, §926).
8. We are concerned to see that investment in watershed basin planning is the last priority for funding (p.20, line 6). This is a critical part of the clean water improvement process and should be moved up in priority.
9. Technical edit comments:
  - a. P.2, line 3 – should that reference be to 924(c) or to 924(b)?
  - b. P.3, line 2 – should it be “a clean water project or projects?”
  - c. P.4-5, §925(a) and (b) – the method for calculating pollution reduction values in (a) should be the same as described in (b) for determining the design life.
  - d. P.8, line 3 – add “in no particular order” after “projects”

- e. P.8, line 6 – add roads to the list.
- f. P.9, lines 5-6 – delete “on its progress”
- g. P.10 line 18 – delete “indirect and”
- h. P.10 to 11, §925 – edit so that the 15% administrative costs applies to all three grant programs.
- i. P.14, lines 3-4 – add “and related grants” or add the grant programs identified in §925.
- j. P.15, line 1 – replace “regional planning commissions” with “clean water service providers” and delete “district” in line 2
- k. P.18, line 12 - replace “regional planning commissions” with “clean water service providers”

We are happy to help the State and ANR work to achieve our clean water goals, but want to make sure that ANR continues to provide assistance while maintaining their regulatory and enforcement role.