

Appendix E – Concept Draft Legislation for Future Work

E1 – Statewide Stormwater Utility

E2 – Municipal Authority to Regulate Stormwater

E1 – Statewide Stormwater Utility Concept Draft

**CHAPTER 489 NEW HAMPSHIRE STATEWIDE STORMWATER UTILITY
SYSTEM**

489:1 Purpose. – The general court finds that:

I. The waters of the state are a vital natural resource and essential to New Hampshire’s ecological health and economic prosperity. The functions and values of the waters of the state should be protected, and impaired waters should be restored.

II. Landscape changes due to human activity and development cause changes in stormwater runoff patterns and increased pollutant discharges that are detrimental to the state’s waters.

III. Stormwater runoff from the developed landscape has become the major cause of impairments to New Hampshire surface waters. Data from the 2008 305(b) report to the General Court show that 83% of the known water quality impairments in New Hampshire, including 1,524 stream miles and 23,778 lake acres, are due in whole or in part to stormwater. Impervious surfaces contribute significantly to these impairments.

IV. A comprehensive, coordinated, statewide process is needed for stormwater management to restore degraded or impaired waters and to protect high quality waters. This can be accomplished by a statewide system of stormwater utilities that ultimately will include all developed properties which are not exempted or have not opted out

V. It is desirable that municipal or inter-municipal utilities assume the responsibility for management of stormwater from the developed landscape, as enabled under RSA 149-I.

489:2 Definitions

I. “305(b) report” means the statewide surface water assessment conducted by the department every 2 years, and submitted to EPA under section 305(b) of the Clean Water Act, and to the General Court under RSA 485-A:4.XIV

II. “BMP” means structural or engineered control devices and systems to treat polluted stormwater and modify stormwater hydrographs, as well as operational or procedural practices to minimize pollutants in stormwater a(e.g. minimizing use of chemical fertilizers and pesticides).

III. “Commissioner” means the Commissioner of the department of environmental services

IV. “Connected impervious surface” means impervious surface that is not disconnected.

V. "Department" means the department of environmental services

VI. "Developed property" means a parcel of land that has been altered by the construction, installation, or other placement of one or more structure(s) or other impervious surfaces on or in the land, such that it no longer absorbs the same volume of stormwater that would have been absorbed had the property been left in an unaltered state.

VII. "Disconnected impervious surface" means impervious surface that does not contribute directly to stormwater runoff from a property, but directs stormwater runoff to on-site pervious areas to infiltrate into the soil or be filtered by overland flow, or an approved low impact development system, so that the net rate and volume of stormwater runoff from the disconnected impervious surface is not greater than the rate and volume from an equal area in an unaltered state. [adapted from Env-Wq 1500 Alteration of Terrain rules]

VIII. "HUC12" means a 12-digit hydrologic unit code watershed as developed by the U. S. Geological Survey

IX. "Local Governing Body" means Local Governing Body as defined in RSA 672:6 In addition to any other appropriate title: I. Board of selectmen in a town; II. City council or board of aldermen in a city; III. Village district Commissioners in a village district; or IV. County Commissioners in a county in which there are located unincorporated towns or unorganized places.

X. "Impervious surface" means any modified surface that cannot effectively absorb or infiltrate water. Examples of impervious surfaces include, but are not limited to, roofs, decks, patios, and paved, gravel, or crushed stone driveways, parking areas, and walkways unless designed to effectively absorb or infiltrate water. [from RSA 483-B Comprehensive Shoreland Protection Act]

XI. "Stormwater" means stormwater as defined in RSA 485-A:2 [water from precipitation that results, directly or indirectly, in stormwater runoff, snowmelt runoff, and surface runoff and drainage, together with debris, chemicals, sediment, or other substances that may be carried along with the water. Stormwater is not regulated as sewage, industrial waste, or other wastes.]

XII. "Unaltered state" means unaltered state as defined in RSA 483-B:4 [native vegetation allowed to grow without cutting, limbing, trimming, pruning, mowing, or other similar activities except as needed to maintain the health of the plant being trimmed, as allowed by rules of the department.]

489:3 Program Established; Intent. – Enable the establishment of a statewide stormwater utility program. It shall be the goal of the program

to implement a comprehensive statewide system of watershed-based stormwater utilities as a means to manage stormwater in order to attain water quality standards including antidegradation. After a phased implementation process, which would include rule making and a pilot program in at least one specific watershed, all developed properties shall either be included in a municipal or inter-municipal stormwater utility under RSA 149:1 or shall be included in a watershed-based statewide utility under this chapter or shall be exempt in accordance with procedures established herein. Stormwater utilities shall complement the programs of RSA 485-A and RSA 483-B, and shall be consistent with the requirements and goals of the federal Water Pollution Control Act (Clean Water Act) as amended from time to time.

489:4 Municipal and Inter-municipal Stormwater Utilities.

I. Municipalities and groups of municipalities forming inter-municipal organizations established under RSA 53-A are encouraged to establish stormwater utilities under RSA 149:1 that meet the requirements of this chapter.

II. Watershed areas included in municipal and inter-municipal stormwater utilities that meet the requirements of this chapter shall not also be included in a state watershed-based stormwater utility.

III. Watershed areas exempted in accordance with RSA 489:x shall not be included in a state watershed-based utility.

489:5 Creation of State Watershed-based Stormwater Utilities

I. State watershed-based utilities shall be created for HUC12 watersheds, by a phased process in which watersheds are prioritized by the watershed area tributary to waters that are listed in the most recent 305(b) report as impaired due to stormwater-related causes.

II. Phased process for utility creation

a. Beginning with the 2012 305(b) report, the department shall publish a list of waters impaired due to stormwater-related causes, together with tables of the tributary watershed area for each impaired water. Further, the department shall publish a list of HUC12s with the total impaired tributary watershed area within each, the total urbanized area subject to an NPDES general permit for small municipal separate storm sewers within each, and the total watershed area. The list shall be sorted by proportion of HUC12 area that is either tributary to an impaired water or within an urbanized area subject to an NPDES general stormwater permit.

b. Beginning in 2012, the municipalities within the geographic area of the Southeast Watershed Alliance and included in the list referenced in the previous section shall participate in a pilot program to form a watershed based stormwater utility. The department shall engage the Southeast Watershed Alliance and work with these municipalities through a public process to develop and implement a stormwater utility that would function on a watershed scale.

c. Beginning with the 2014 305(b) report, and for each report thereafter, the department shall notify the ten municipalities that do not have a stormwater utility and have the greatest watershed area on the list prepared in accordance with a. above. Each municipality so notified shall submit to the department within 1 year of such notice a statement as to whether the municipality intends to form its own utility, to join an inter-municipal utility, or to do nothing and be joined in the larger watershed based utility.

d. For municipalities that do not intend to create either a municipal or inter-municipal stormwater utility, the department shall create a state watershed-based stormwater utility within 2 years of the receipt of the statement submitted to the department under b. or c. above.

e. Municipalities that have notified the department of the intent to create a municipal or inter-municipal stormwater utility shall have so created a utility within 2 years of the date of such notice. Any municipality failing to create or join a utility within the specified time shall be joined to the applicable state watershed-based stormwater utility within 1 year of the end of the 2 year period.

489:6 Exemptions

I. At any time, a local governing body may request the department to exempt any watershed area within its jurisdiction from participation in a stormwater utility

II. Grounds for an exemption shall include, but not be limited to:

a. There is little or no developed property within the watershed area

b. Local land use and stormwater management regulations have been adopted that are equivalent to the criteria for stormwater utilities

III. The department shall review exemptions every ten years, and shall reissue them if the reasons for granting an exemption continue to pertain.

IV. If at any time during the exemption period the reasons for the exemption no longer pertain, an exempted municipality shall advise the department within 120 days.

489:7 Criteria for stormwater utilities

I. All developed properties within the boundaries of the utility shall be included.

II. Except as provided in VII below, each developed property shall be assessed a stormwater utility fee in proportion to the property's [discharge of stormwater] area of impervious surface. Land area in an unaltered state shall not be assessed a stormwater utility fee. Areas of disconnected impervious surface shall be assessed a reduced fee, or no fee depending on the adopted rate structure.

III. Except as provided in IV below, fees shall be sufficient to fund construction and operation by the utility of stormwater BMPs within the boundaries of the utility that will result in attainment of water quality standards for impaired waters, and attainment of antidegradation requirements for waters that are not impaired. For purposes of planning, estimating, and establishing fee schedules, the useful life for constructed BMPs shall be no greater than 50 years.

IV. If the utility adopts binding regulations and mandatory implementation schedules for BMPs on developed property, fees shall be sufficient to fund construction and operation by the utility of utility-owned BMPs and other infrastructure which, in combination with the BMPs required on developed property, will result in attainment of water quality standards for impaired waters, and attainment of antidegradation requirements for waters that are not impaired.

V. Within two years of creation, a utility shall prepare and receive public comment on a watershed plan that includes all developed properties within the utility boundaries: private; municipal; state. The plan shall include a map and description of surface waters and wetlands within the utility boundaries, a map and summary description of existing stormwater infrastructure, and a facilities plan for needed stormwater infrastructure to accomplish the purposes of III or IV above. The plan shall have sufficient detail and cost estimation to determine required revenues and set utility fees.

VI. Within three years of creation, a utility shall publish, receive public comment on, adopt, and implement utility fees based on the facilities plan of V. above.

VII. Immediately upon creation, a utility may publish, receive public comment on, adopt, and implement an interim rate structure.

489:8 Governance of Stormwater Utilities

I. Municipal and inter-municipal utilities shall be governed under RSA 149-I

II. Village Districts formed for stormwater management shall be governed under RSA Chapter 52

III. State watershed stormwater utilities created by the department under RSA 489:4 shall be administered by the department. The department shall not own or operate stormwater facilities within the utility boundaries.

489:9 Water Council Duties relative to the Statewide Stormwater Utility System

I. The Water Council established under RSA 21-O:7 shall, in addition to the duties listed there:

a. Consult with and advise the director of the division of water with respect to the policy, programs, goals, and operations of state watershed stormwater utilities.

b. Provide a forum for municipal, inter-municipal, and village district stormwater utilities to advise the director and to present concerns to the committee and director.

c. Hear and decide all appeals from department decisions relative to the operation of specific statewide stormwater utilities.

d. Hear and decide appeals of property owners relative to fees and rates for specific statewide stormwater utilities

e. If agreed by the utility and property owner, hear and decide appeals of property owners relative to fees and rates for specific municipal, inter-municipal, and village district stormwater utilities

489:10 Watershed Stormwater Utility Advisory Board

For each State watershed stormwater utility created by the department under RSA 489:4 there shall be established a watershed stormwater utility advisory board consisting of at least one member from each municipality having land area within the utility boundaries, appointed by the board of selectmen of a town or the city council of a city involved. Representation from each municipality shall be proportional to the land area of the municipality within the utility boundaries. The minimum number of members shall be three, and the maximum number of members shall be twenty one. The term of office of each member shall be three years and each member shall serve until his successor shall have been appointed. The advisory board shall annually elect a chairman by majority vote of its

members, and the board shall meet at least annually upon the call of the chairman or at least 3 members of the board in order to consider matters properly coming before it for attention. The advisory board shall meet with the department at suitable intervals to review matters of mutual concern. An annual budget and estimate of associated utility fees for developed properties within the utility boundaries shall be submitted to the advisory board by the department, for review and comment, 90 days prior to the beginning of the new fiscal year. Members of the advisory board shall receive no per diem but shall be entitled to reimbursement for expenses including mileage when in the performance of duties required under this subdivision. Each municipality [the utility] shall provide funds necessary to reimburse its members to the advisory board.

489:11 Rulemaking. – The department, with the advice of the Water Council, shall adopt rules, pursuant to RSA 541-A, relative to the following:

- I. Administration and implementation;***
- II. Development of a pilot program in a watershed or watersheds of priority;***
- III. Determination of utility rate schedules;***
- IV. Developing and maintaining a priority list of capital improvements;***
- V. Calculation of credits for disconnecting impervious surfaces;***
- VI. Operation and maintenance of stormwater infrastructure;***
- VII. Hearing appeals of decisions made under this section;***
- VIII. Criteria and procedures for exemptions under RSA 489:5***

Any other issues deemed necessary for proper and efficient operation of a statewide stormwater utility.

Amend RSA 21-O:7, VI as follows:

VI. The Water Council shall hear and decide all appeals from department decisions relative to the functions and responsibilities of the division of water other than department decisions made under RSA 482-A relative to wetlands, ~~and~~ RSA 483-B relative to shoreland protection, and RSA 489 relative to stormwater utilities, in accordance with RSA 21-O:14.

E2 – Municipal Authority to Regulate Stormwater Concept Draft

31:41-f Stormwater.

I. Municipalities shall have the power to make bylaws relating to the regulation of stormwater originating from properties within the limits of the municipality. Such bylaws may apply whether or not stormwater passes through a municipally-owned drain, conveyance or treatment.

II. The definition of stormwater shall be the same as the definition in RSA 485-A.

III. Municipal bylaws relative to stormwater shall be consistent with the model municipal stormwater ordinance by the department, the current version of the New Hampshire Stormwater Manual, and any limitations on discharges to surface waters or wetlands resulting from application of water quality standards.

V. Prior to determining the final form of the stormwater ordinance or amendment the municipality shall submit the proposed ordinance to the department. The department shall review the ordinance and advise the municipality within 30 days whether it is consistent with department rules.