



Senate

General Assembly

File No. 264

January Session, 2015

Senate Bill No. 940

Senate, March 26, 2015

The Committee on Environment reported through SEN. KENNEDY of the 12th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING THE SUSTAINABILITY OF THE NITROGEN CREDIT EXCHANGE PROGRAM.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22a-524 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) The Commissioner of Energy and Environmental Protection
4 shall establish a nitrogen credit exchange program to assist in the
5 implementation of the total maximum daily load. The nitrogen credit
6 exchange program shall apply to all publicly-owned treatment works
7 included in the general permit issued pursuant to section 22a-522.

8 (b) The commissioner, in consultation with the Nitrogen Credit
9 Advisory Board, shall:

10 (1) Establish a schedule and monitor all nitrogen removal
11 construction projects;

12 (2) Establish an equivalency factor for each publicly-owned

13 treatment works, which may be revised at the commissioner's
14 discretion consistent with the total maximum daily load. The
15 equivalency factor and any proposed revisions shall be made available
16 for public comment at least thirty days prior to being implemented in
17 the nitrogen credit exchange program;

18 (3) Establish the individual waste load allocation for each publicly-
19 owned treatment works utilizing the equivalency factors and taking
20 into consideration the schedule for nitrogen removal construction
21 projects;

22 (4) Monitor annual progress in meeting the fifteen-year
23 implementation schedule in the total maximum daily load;

24 (5) Propose modifications, as may be necessary, to the general
25 permit for nitrogen discharges;

26 (6) Oversee and execute all equivalent nitrogen credit exchanges;

27 (7) Maintain a separate account of state-owned equivalent nitrogen
28 credits;

29 (8) [Purchase all equivalent nitrogen credits created by publicly-
30 owned treatment works at the annually established value;] Not later
31 than August 14, 2015, purchase all equivalent nitrogen credits created
32 through December 31, 2014, by publicly-owned treatment works at the
33 annually established value. Not later than August 14, 2016, purchase
34 all equivalent nitrogen credits created through December 31, 2015, by
35 publicly-owned treatment works at the annually established value. On
36 or after August 15, 2016, purchase the equivalent nitrogen credits
37 created by publicly-owned treatment works that are necessary to meet
38 the nitrogen limits specified in the general permit for nitrogen
39 discharges, issued pursuant to section 22a-522, at the annually
40 established value;

41 (9) Sell available state-owned equivalent nitrogen credits including
42 nitrogen credits purchased from publicly-owned treatment works at
43 the annually established value to enable publicly-owned treatment

44 works to meet nitrogen limits specified in the general permit for
45 nitrogen discharges;

46 (10) Whenever practicable, sell remaining state-owned equivalent
47 nitrogen credits to any other public or private entity;

48 (11) Establish accounts of funds created from the purchase and sale
49 of equivalent nitrogen credits to be used for administration of the
50 nitrogen credit exchange program and which may be used for nitrogen
51 removal projects, habitat restoration projects and research;

52 (12) Establish any other policies or procedures the commissioner
53 may deem necessary to carry out the nitrogen credit exchange
54 program; and

55 (13) Establish a technical assistance program to educate and assist
56 municipalities in implementing the nitrogen credit exchange program.

57 (c) (1) Not later than March thirty-first, annually, the commissioner
58 shall audit the performance of each publicly-owned treatment works
59 operating from January first to December thirty-first of the preceding
60 year and shall (A) determine the number of equivalent nitrogen credits
61 for sale and the number of equivalent nitrogen credits to be purchased,
62 (B) publish the annual value of equivalent nitrogen credits as
63 determined by the procedure established in section 22a-527, and (C)
64 notify each publicly-owned treatment works of its equivalent nitrogen
65 credit balance.

66 (2) Not later than July thirty-first, annually, each publicly-owned
67 treatment works shall purchase equivalent nitrogen credits necessary
68 to meet its nitrogen limits. Such purchase shall be paid by check, or
69 money order or other form of payment acceptable to the Treasurer
70 made payable to the "nitrogen credit exchange program". The check, or
71 money order or other such form of payment shall state on its face
72 "nitrogen credit purchase".

73 (3) Not later than August fourteenth, annually, until August 14,
74 2016, the commissioner shall purchase all available equivalent nitrogen

75 credits. On or after August 15, 2016, annually, the commissioner shall
76 purchase the equivalent nitrogen credits created by publicly-owned
77 treatment works that are necessary to meet the nitrogen limits
78 specified in the general permit for nitrogen discharges, issued
79 pursuant to section 22a-522.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	22a-524

ENV *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 16 \$	FY 17 \$
Treasurer	Clean Water Fund - Potential Cost	See Below	See Below

Municipal Impact:

Municipalities	Effect	FY 16 \$	FY 17 \$
Various Municipalities	Potential Revenue Gain	See Below	See Below

Explanation

The bill phases out, over time, the Department of Energy and Environmental Protection's (DEEP) obligation to purchase all nitrogen credits created by municipal wastewater treatment plants under the Nitrogen Credit Exchange Program.

In both FY 16 and FY 17, all credits created by municipalities must be purchased by DEEP, continuing current practice. Therefore, the state costs, incurred to the Clean Water Fund (CWF),¹ associated with

¹ The CWF Program provides both grants-in-aid (financed with GO bonds) and loans at a 2% interest rate (financed with CWF revenue bonds) to municipalities to fund nutrient (nitrogen and phosphorus) projects (and other projects) to protect the Long Island Sound. Towns receive a 20% grant on total eligible sewer project costs, except for combined sewer projects, which receive a 50% grant. Nutrient removal projects receive a 30% reimbursement. Municipalities receive a loan for the remainder of the eligible costs. A 55% grant is available for planning projects in lieu of the grant and loan, at the discretion of the municipalities. As an incentive to create regional water authorities where possible, the grant-in-aid portion increases from 20% to 25% for most projects. The debt service on CWF General Obligation (GO) bonds and revenue bonds is paid from the General Fund.

purchasing certain nitrogen credits, and the revenue flowing to municipalities from the sale of those credits to the state, would remain relatively constant. These state costs and municipal revenues would only fluctuate depending on weather (rainfall amounts and water temperature), as is currently the case.

In FY 17, it is expected that three large nitrogen reduction upgrade projects will come online creating an increased number of nitrogen credits. These three additional projects are anticipated to result in increased costs to the state, while generating increased revenues to municipalities.

The Out Years

In FY 18 it is anticipated that municipalities, collectively, would realize a reduction in their revenue stream by approximately \$2 million annually, while state costs decrease by this amount (since the state would no longer have to purchase excess credits). By FY 20 this figure would be approximately \$5 million annually. This results from the state's requirement to purchase only those nitrogen credits (from municipalities) in an amount² required to meet the municipalities need (of TMDL) under their permit.³

² The DEEP general permit for nitrogen discharge, the cost of which is altered annually but is currently \$6.47 per pound of nitrogen

³ The DEEP general permit for nitrogen discharge is currently \$6.47 per pound of nitrogen.

OLR Bill Analysis**SB 940*****AN ACT CONCERNING THE SUSTAINABILITY OF THE NITROGEN CREDIT EXCHANGE PROGRAM.*****SUMMARY:**

This bill phases out the Department of Energy and Environmental Protection's (DEEP) obligation to purchase all equivalent nitrogen credits created by municipally owned wastewater treatment facilities under the Nitrogen Credit Exchange Program. The program, overseen and managed by DEEP, was created to help these facilities comply with required nitrogen discharge limits and reduce the amount of nitrogen entering Long Island Sound (see BACKGROUND).

By law, DEEP's General Permit for Nitrogen Discharges limits the total amount of nitrogen discharged into Long Island Sound by these treatment facilities. The permit sets individual limits for each facility. Facilities comply with their discharge limits by (1) reducing nitrogen discharge or (2) purchasing credits, through DEEP, from facilities that have reduced their discharges below their permit levels.

Under current law, the DEEP commissioner annually purchases all available nitrogen credits. Under the bill, he must instead purchase:

1. by August 14, 2015, all credits created through December 31, 2014;
2. by August 14, 2016, all credits created through December 31, 2015; and
3. beginning August 15, 2016, only the credits necessary to meet the nitrogen limits in the general permit.

The bill thus reduces the amount of credits the commissioner must

purchase each year to only those needed to meet the purchasing facilities' requirements.

EFFECTIVE DATE: Upon passage

BACKGROUND

Nitrogen in Long Island Sound

The federal Clean Water Act requires states with water bodies that do not meet water quality standards to develop a plan to bring them into compliance. As part of the process, states must determine the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards (total maximum daily load or TMDL). In 2001, the U.S. Environmental Protection Agency approved the TMDL for Long Island Sound, setting a nitrogen reduction goal to be reached by 2014. Connecticut has met its goal.

Nitrogen Credits

Nitrogen credits are created when a facility reduces its nitrogen discharges below the maximum level allowed by DEEP's general permit. DEEP adjusts these credits to account for the relatively greater harm to Long Island Sound caused by nitrogen discharged from plants that are closer to the shoreline. The resulting credits are called equivalent nitrogen credits. DEEP annually sets the cost of a credit.

COMMITTEE ACTION

Environment Committee

Joint Favorable

Yea 29 Nay 0 (03/11/2015)