

Senate Energy and Natural Resources Committee

Griffin Roberge 271-2878

SB 127, relative to dissolved oxygen concentration water quality standards.

Hearing Date: February 2, 2017.

Time Opened: 2:32 p.m.

Time Closed: 2:49 p.m.

Members of the Committee Present: Senators Avar, Bradley, Innis, Fuller Clark and Feltes.

Members of the Committee Absent: None.

Bill Analysis: This bill defines 7Q10 flows for the purpose of classification of waters.

This bill also authorizes the department of environmental services to make rules regarding dissolved oxygen concentration water quality standards.

Sponsors:

Sen. Gray

Sen. Watters

Who supports the bill: Catherine Corkery (NH Sierra Club), Rick Van de Poll (Ecosystem Management Consultants, LLC), John Storer (Rochester), Clark Freise & Ted Diers (NHDES), Senator David Watters (District 4).

Who opposes the bill: Ashley Elinor (NH Audubon), Jim O'Brien (The Nature Conservancy).

Who is neutral on the bill: N/A.

Summary of testimony presented in support:

Senator James Gray

Senate District 6

- SB 127 addresses what the state requires and what the federal government requires in terms of measuring water quality standards.
- Senator Gray has worked closely with the NHDES to address their concerns.
- Senator Gray introduced an amendment. It takes out a word, "concentration," and adds one word, "oxygen," in line 20-22 on page one. Similar changes in made on page two.
- Deferred to the NHDES to address technical questions.

John Storer

Director of City Services, Rochester, NH

- Provided written testimony.
- On behalf of the City of Rochester, Mr. Storer supports SB 127.
- The city is not trying to be a polluter, but the city faces multi-million dollar impacts in permits coming from the EPA. Rochester is asking to use current and updated standards on water quality. These standards would be updated and scientifically defensible.
- The city needs to ensure they are maintaining good dissolved oxygen in their water to protect aquatic life. The saturation portion is outdated at this time.
- In regards to 7Q10, it is the seven days of the lowest flow in a ten year period. That statistic was used in the application of toxic discharges like copper. If copper was released into stagnant water, 7Q10 would have it as a drought condition. There would be an immediate toxic effect.
- Substances like phosphorous and nitrogen take a long time to manifest itself in water. Other experts use different flow scenarios.
- Mr. Storer stated it is wrong to use 7Q10 to evaluate nutrient impacts in their waste water plants.
- Senator Innis asked if SB 127 would compel NH to follow EPA standards. Mr. Storer said it does. There are more standards out there from the EPA that NH can draw upon and apply in NH.

Ted Diers & Clark Freise

Administrator, Watershed Management Bureau, NHDES

Assistant Commissioner, NHDES

- Submitted written testimony on behalf of the NHDES and the NHFGD.
- Dissolved oxygen is one of the top two criteria to protect aquatic life in NH's waterways. Dissolved oxygen is just that amount of oxygen found in the water. Aquatic life need it.
- There are issues with low levels of dissolved oxygen around the country. Low levels of dissolved oxygen can impact growth of species. NH does not have those problems.
- There are two ways to measure dissolved oxygen: measuring concentration, which is that amount of oxygen per volume of water, or saturation, which is measured as a percentage of the oxygen in the water. NHDES has used both over the years.
- SB 127 would, instead of having those numbers in statute, put those two ways of measurement into rule. It tells NHDES to reexamine its rules and use the latest in terms of EPA guidance and criteria, as well as what is out there for available science today.
- NHDES supports the bill, especially the change in the amendment introduced by Senator Gray.
- Water Quality Standards Advisory Committee, which helps the NHDES address these issues, recently formed a Dissolved Oxygen Work Group. The

NHDES is well underway to begin the work SB 127 would require the department to do.

- 7Q10 is outdated – NHDES would be open to exploring other standards and picking one that is more appropriate.
- Senator Feltes said the amendment takes care of the issue of concentration and saturation. SB 127 says NHDES can use other measurements besides 7Q10. Senator Feltes asked what the problem is with 7Q10 and the other ways to measure water quality. Mr. Freise said 7Q10 is a restrictive setting. Other states take an average flow, eliminating the inclusion of drought flows. The EPA uses whatever standards the states use. There is other criteria out there and the NHDES would like to see if something else would better fit NH's needs.
- Senator Feltes said there are three standards: what the department can look at, what the standard is, and the time frame by which the department can look at it. Is the current standard used in accordance with EPA guidance? Mr. Diers referenced the letter from NHDES in detailing that criteria. The criteria used by the department aligned with the EPA at the time of adoption. Saturation is a very outdated standard. There is less guidance on that. NHDES wants the opportunity to examine saturation in a modern application. There is not just one number to use. There are a whole bunch of numbers to be used by the state.
- Senator Feltes asked what the EPA uses. EPA uses whatever NHDES tells them to use. Mr. Diers said that NHDES rules compel the department to use 7Q10. SB 127 would alter that, saying 7Q10 can be used for toxins, but not for nutrients.
- Senator Feltes asked if the EPA looks to the states to use what criteria or guidance they use. Mr. Freise said the EPA is allowing NH to change its standards and they will take an appropriate action to allow for that change.
- Senator Feltes asked if EPA provides any guidance. Mr. Freise said that if the EPA felt NH was not using appropriate criteria, the EPA would tell them. Mr. Freise said he is not aware of an instance where a state was denied by the EPA because the EPA did not like a state's water quality standards.

Summary of testimony presented in opposition: N/A.

Neutral Information Presented: N/A.

Future Action: Ought to Pass with Amendment.

GJR

Date Hearing Report completed: February 3, 2017