

New Hampshire Drinking Water and Groundwater Advisory Commission

RSA 485-F:4 – SB380 – Chapter 11:2 – Laws of 2016

Regular Subcommittee Meeting Minutes

MEETING DATE: 9:00 a.m., Wednesday, October 18, 2017, SH 103

Members of the Committee Present: Richard Russman (State/Regional Land Trust), Rodney Bartlett (Public Member), Paul Sanderson (Fish & Game Designee), Bernard Rousseau (Public Member), Clark Freise (Governor's Designee), David Paris (NH Water Works Association), Tim Vadney (NH Water Pollution Control Association).

Members of the Committee Not Present: Rachel Miller (State Treasurer Designee).

Audience Members Present: Representative Thomas Bucu (Carroll – District 2), Representative Judith Spang (Strafford – District 6), Bill Hounsell (Granite State Rural Water Association), Barbara Reid, Matt Leahy (NH Forest Society), Tom Cronin (UNH).

Meeting Discussion:

1) Welcome – Senator Rick Russman, Chairman

Senator Russman said the subcommittee should decide on the next meeting date first as Commissioner Freise would be leaving early. The committee decided on Friday, November 17th, 2017 at 9:00 a.m. in SH 103.

2) Report out

3) Discussion of the application process

Senator Russman wanted the subcommittee people to discuss the application.

Commissioner Freise said there is a real desire that the advisory commission not go through rulemaking. The commission wants to follow a format similar to LCHIP. The guidelines for the commission can be written outside of the rules and then run through rulemaking at DES. DES will work with the towns and get them to the point of an application. The application comes before the commission, and if approved, goes back to DES for them to monitor contracts and provide technical support on projects.

Commissioner Freise acknowledged that there is a lot to learn from LCHIP. Dijit Taylor, the executive director of LCHIP, said there must be an acknowledgment of “art versus criteria.” DES puts out a point sheet that details the criteria on their applications. LCHIP does the same, but leaves it to their board to make a determination regardless of the score of an application.

Commissioner Freise said there is merit to having the application be criteria based – all parties know what the standards and expectations are. They will know what they need to do to be competitive and there are no surprises when the awards come out. In case of LCHIP, the board has the ability to choose an application, regardless of the score of an application. They also take whatever blame or adulation comes with that decision. It becomes a more qualitative assessment against a more quantitative assessment on the application.

Commissioner Freise said there was a discussion of leverage – the commission needs to decide how strongly to leverage a project versus benefiting towns that cannot possibly take on more load. Getting to a 50-50 criteria may be the best they can do.

Commissioner Freise noted the need to study the process LCHIP follows. They do workshops that introduce applicants to how the process works, what the point scale is, and what is successful and unsuccessful in applications. They have pre-applications, a site visit, and a final application process. It allows the LCHIP community to determine the best possible project. He called for supporting holistic thinking on water systems. Most municipalities need funding to address an immediate problem. There is no long-term thinking about water systems. DES gives asset management grants. Many towns do not budget ahead or manage their assets. The commission should have source protection to ensure that the water drawn stays safe, as well as maintenance dollars to ensure the sustainability of a water system.

Commissioner Freise said he discussed the possibility of LCHIP taking on source protection loans/grants. Ms. Taylor did not think it was a good idea. Getting into water source protection is not something that falls into their jurisdiction. They reviewed the idea of a linkage – an LCHIP project can further protect their land, but Ms. Taylor did not think it was possible to do that.

Commissioner Freise said it was his intention of returning with two straw man application forms – gray vs. green. Gray is pipes in the ground and green is for source protection. A combined application was difficult.

Commissioner Freise stated that some towns will need funds to conduct studies or pre-engineering projects. Some towns know they have a problem, but they do not know how to solve it. They could apply for a grant/loan to access professional help, or the commission can just focus on projects after a study has been conducted.

Senator Russman referenced Senator Morse's intention to have 5% of the commission's funds devoted to studies of projects. That is an avenue where towns can access funding. Funding should also be given on an equal opportunity basis – not just towns, but water companies and agencies. He asked if the funds should just be limited to towns. He acknowledged that pipe construction and source protection are two different topics, but both projects should have equal opportunity to apply in the grant application process. Source protection is needed to get ahead of contaminants. NH should not continually address the problem. There should be prevention built into the projects to get clean water and preserve it.

Mr. Paris discussed the opportunity for a third application. A majority of citizens in NH have their own water systems, but have a great deal of apathy. Most people are unaware of a problem until the problem is there. There should be an avenue for a private homeowner. That avenue could be education for them to become aware of their system and the risk contaminants pose. Reaching them has always been a challenge for DES. He would not like to see the source water protection program at DES run in conflict with the source water protection of the commission.

Clark Freise said that if a source water protection plan were to be part of the commission, the DES would simply view it as more money for source protection. There are different goals for the two programs. DES does not take into account factors like economic development and job creation. The commission could. The legislation for the commission, as written, does not identify individual homeowners as applicants. There is a process for any public water systems to be eligible for the program. It could be expanded to include others.

Mr. Paris said public health is a huge issue. There needs to be sustainable water supply for the future and proactive steps should be taken. Radon and arsenic are very pervasive across the state.

Senator Russman said the 5% could be for notifying people and educating them about contaminants.

Mr. Paris noted how apathetic people are toward their water systems. Having people be aware of their systems and to take immediate steps is low hanging fruit in terms of public health. It seems logical to address this root problem with the available funds.

Senator Russman noted that there is not a standard for radon in NH. Mr. Freise said there are a variety of groups with a variety of viewpoints on a standard. DES has been interested in a standard, but has not been able to do so to date. Senator Russman acknowledged it as a problem.

Mr. Freise said that the issue is important. He mentioned the NH Lives on Water group. He is the DES representative on that. They educate people about the value of water in all respects. They could come before the commission for an educational initiative on this issue. There is also an app called "Be Well Informed," which can tell you about your water results and solutions to water problems. It does not get broadly used.

Senator Russman said the application would need to be open to that group. He also noted a lake association. There needs to be a definition about who can make an application.

Mr. Bartlett supported Commissioner Freise's holistic approach. Many applications are there because municipalities are not sustainable – fees are too low, they do not plan ahead, etc. It is a broad issue throughout municipalities. The lack of funding for these utilities is serious. They do not take a proactive approach. Part of the process should be educating them on meeting those standards.

Senator Russman asked if there was a suggestion that the application process should involve an applicant detailing their past management of a water supply.

Mr. Vadney said a possible inclusion could be the applicant's water rates compared to median household income.

Mr. Bartlett noted that some municipalities may have high rates, but their water is contaminated. It is much more complicated when the governing body votes. That vote should support financial sustainability, asset allocation. Money should be managed properly and discourage the need for outside funding. The commission should take a business approach to the applications – compel applicants to be financially stable and make commitments to their water systems.

Senator Russman said someone discussed other parties hooking up to a system. The returns would go back to the fund.

Mr. Vadney noted that Manchester does that. A developer will run a line and others can hook up to that line through a flat charge. The developer then gets reimbursed.

Senator Russman said money should come back to the fund to sustain it. It does not make sense to spend money for a better system and not get a return out of it as others hook up to it.

Commissioner Freise said the Manchester model works as a speculative deployment. If a line is connected to a neighborhood, it is speculated that in the future, someone will hook onto that line and the developer is paid for that hook up. Before the pipe is laid, it is usually determined whether it makes sense to lay pipe to a neighborhood or to set up an individual source. Allowing others to hook up is a way to offset the cost for the developer, whether that be a private company or a municipality.

Mr. Rousseau recalled a discussion with Mike Wimsatt (DES). If the investment was made, who owns the line? If others tap into that line, who do they pay back? Would that go to Durham, where the water originates, or to the commission's fund?

Commissioner Freise suggested following the Manchester model. For example, Manchester lays the pipe and deeds it over to themselves. If the line is tapped by another party, that party pays Manchester. Manchester will then pay the developer who put the pipe in. For example, if a grant is given to UNH Durham or Lee Circle, they will then assume ownership of that pipe. But if anyone taps to it in the future, they pay UNH Durham or Lee Circle, who then pays to the trust fund. That is a way to recover more speculative projects that may engender development.

Commissioner Freise said that in order to support a holistic approach in an application, there should be a point system. If there is not an asset management plan, a conservation plan, a source management investment, there is a loss of points. At some point, those projects are not competitive.

Senator Russman said the points will convey that these loans/grants are competitive.

Commissioner Freise noted that source management funding from DES is very little. The I-93 expansion had assumed most of the funding. Having the ability to place 10% every year toward source management or education is a good thing.

Senator Russman asked if it would be okay for someone to come in and apply for a grant to both install pipe and source protection. Those are two different applications. Commissioner Freise acknowledged it would be two different criteria and they could not be molded into one application. Towns can apply for both pipe construction and source protection, but they need to understand that it is competitive. DES makes their program very highly structured with points that make it competitive. The other goal people have is land conservation. It is a good source protection.

Mr. Bartlett raised the idea of having LCHIP or commission funds be matching funds for land conservation. Commissioner Freise noted that Taylor was concerned that it could overcomplicate all things.

Mr. Sanderson spoke about the ability to apply for planning grants. Towns will not know what to build until pre-engineering is done. That stage is critical. Having the opportunity to come in for pre-engineering grants is crucial. As to the applicant, some systems are privately or publicly owned. If a system is publicly owned, towns may get funding through the bond market. The commission will have to determine where it stands in the process of repayment. Bonds and banks will require the commission to be subordinate to their payment. This is also true in a private development scenario. The commission will never be ahead of the bondholder.

Commissioner Freise noted that if a town bonds, they tend to bond the whole project. Towns will ask for grants to reduce how much they have to bond. Towns that go in for SRF loans go in all the way because of federal requirements like American Steel. With federal kickers, it makes no sense to bond. The commission funds are very attractive – they have low interest rates, free services from DES, and the support of the contracting. It would be more attractive to do it via loan rather than a bond. Given bond rates have risen, loans are more attractive.

Mr. Rousseau said the conversation started about being all inclusive, but asked how memorialize the ideas into an application.

Senator Russman said the discussion will give Commissioner Freise the opportunity to hear what the committee is saying so it can be incorporated into the application. When the application gets to a more finalized point, it can go to the full commission.

Commissioner Freise acknowledged the topics discussed:

- Education grants are part of the 5-10% of funding offered annually.
- Pre-engineering studies are an important part of the gray side to know what can be proposed.
- Financial sustainability – need to be illustrated by the applicant.
- Education is part of the overall system. There would be an asset management and source protection plan. An education plan was offered and Mr. Sanderson supported it. To the extent we have safe private systems, people will not need a public system. People will also be safer.

Mr. Paris wanted to clarify that the legislation does not allow for a mechanism for the private individual homeowner to apply for any support from the commission. Senator Russman again raised the prospect of DES applying for funds to help address private homeowners. Mr. Freise said he would check the legislative write up to see if lakes associations and private homeowners can apply for funds. In the case of any

speculative investment, Freise will look to see how the commission is paid back if any other parties hook up to the project.

Mr. Rousseau hoped to discuss depreciation schedules of underground systems. He wanted to also note making the application easy to fill out and extending the repayment by 30 to 40 years. If the loan/grant application is easier and the repayment is longer, more applicants will come forward.

Commissioner Freise indicated that he had to leave the subcommittee meeting.

Senator Russman acknowledged he wanted to have a general philosophical discussion of the process application and that would culminate in a straw man application.

Mr. Sanderson noted there was a legislative study committee made by Senator Martha Fuller Clark studying land conservation across state properties. One of the issues raised in the committee was water quality. The state owns a lot of land. Water sources can be found there, but it would require working with conservation groups. Some conservation easements preclude certain types of use. Source protection could be accomplished. The commission would need to look at writing a conservation easement to do that.

Mr. Sanderson said the state properties were purchased with a specific intention. Fish & Game buys land for wildlife habitat management. Different land purchases are for different types of management. But water is underneath that land. That cannot be determined unless action is taken on those sites. They are potential sources of clean water in the future.

Mr. Rousseau agreed with the points on state properties. The ideas introduced are terrific, but is looking forward to what Commissioner Freise brings back to the subcommittee.

Senator Russman said he hoped to have the application finalized before bringing it to the full commission.

Mr. Rousseau noted the questions that need to be addressed: Does the commission offer a grant? A loan? What are the repayment terms? What is the interest rate? Some larger towns are better suits to get matching funds versus smaller towns. This will be a vast discussion.

Mr. Paris focused on incentives for municipalities to invest in their water systems. Communities that are vulnerable would be happy with an incentive of 50%.

Senator Russman said some communities have poor water system management. The incentive could be for asset management or source protection to ensure municipalities make investments in their water systems.

Mr. Bartlett acknowledged the need to leverage money. The commission could work with the Granite State Rural Water Association to promote educational programs.

Mr. Paris said there are a number of professional organizations in the state to address educational opportunities, but they also address certain subcategories – NH Water Works focuses on large communities, whereas Granite State Rural Water Association focuses on smaller communities.

Jennifer Palmiotto (Executive Director, Granite State Rural Water Association) mentioned her organization works with many rural communities around the state. They work with communities to apply for loans and grants, as well as creating asset management plans. She hoped the commission would bring rural systems on par with other water systems in the state.

Mr. Rousseau said the subcommittee should, before the next meeting, get an understanding of the SRF and LCHIP applications as they will serve as a basis for the commission's application. Senator Russman hoped each member would do so.

Mr. Vadney acknowledged that the commission is subject to rulemaking. The subcommittee is to act as though as LCHIP and DES takes care of the rules. Senator Russman hoped for some process outside rulemaking.

Mr. Sanderson noted that existing SRF rules show structural issues on an application. The actual application process will look largely like the one from SRF. He made note that there has been no discussion of an appeal process. He asked if there is such a process and who can overturn it. He believed there is no appeal and the only way to reverse it is by court order.

Mr. Vadney noted that the last people who make the decision is the governor and executive council.

Mr. Bartlett said LCHIP has an appeal process. If someone is turned down, LCHIP invites the applicant in to review their application and illustrate where mistakes were made and how they can make it stronger.

Senator Russman acknowledged that everyone who applies has a reasonable project. It is a good idea to have someone from the commission who can sit down and explain the reasons for denial.

Mr. Rousseau said he has received calls from people with ideas. He asked how the committee can handle calls. Should they be brought before the commission for consideration? Is there a procedure? Josh Elliot (Senate Majority Policy Director) said it best to have those people put their ideas and submit them to the Senate President's Office. That would provide a good understanding of the projects that exist out there.

Senator Russman asked if anyone in the audience had anything to say.

Representative Thomas Buco (Carroll – District 2) said he worked on the Joint Committee to Study Water Infrastructure Sustainability Funding in 2013. That commission acknowledged \$2 billion just to maintain water systems where they were. He hopes the money from the commission goes out with matching grants and revolving loans. Senator Russman asked if he had access to the report and to have it sent to members of the subcommittee.

Bill Hounsell (Granite State Rural Water Association) said it may be prudent to look at municipal systems on the wastewater side to protect the aquifers. A clear example is in North Conway. He also said he has heard the House Finance Committee debate about the commission being an advisory commission. Some representatives were curious to know why they cannot weigh in on these projects. There should be a process, once the projects are prioritized, that where the Joint Fiscal Committee provides input. Senator Russman said he does not believe that to be the case. Mr. Vadney noted that the projects go for final approval before the governor and executive council. Mr. Hounsell said these projects require money and it may be suitable to go before the Joint Fiscal Committee to approve it. Mr. Elliot referenced the legislation that states "all disbursements or grants shall require approval of the governor and council." There was no mention of the Joint Fiscal Committee. Mr. Hounsell asked if it was in a draft version. Mr. Elliot said he was not sure. Mr. Hounsell said there is some concern amongst those in the legislature that they do not have any input on these decisions.

Ms. Palmiotto said that it is important for board training for selectmen and operators. There is some discussion in some states that funding sources require training to know that the funds are not wasted. Senator Russman acknowledged that a certain percentage every year, between 5-10%, would be focused on educational efforts.

4) Discussion of rules

5) Adjourn.

Next Meeting(s): Friday, November 17th, 2017 at 9:00 a.m. in SH 103.

GJR