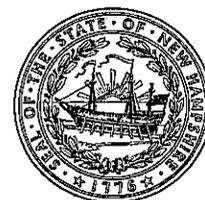




The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

March 25, 2010

The Honorable Martha Fuller Clark, Chairman
Senate Energy, Environment and Economic Development Committee
LOB, Room 102
Concord, New Hampshire 03301

RE: HB 1155, relative to water district contracts

Dear Chairman Fuller Clark:

Thank you for the opportunity to comment on HB 1155.

When the bill was first introduced, it sought to repeal RSA 52:25, which currently authorizes Village Districts to contract with the Department of Environmental Services (DES) for the construction, operation, and maintenance of dams owned by Village Districts. Under this statute, two Village Districts currently contract with DES for the operation and maintenance of their dams. DES has also recently performed major reconstruction on these two dams under separate contracts with these Village Districts. While DES appreciates the effective working relationships we have had with these two Village Districts, DES is concerned that if other Village Districts choose to contract with DES under this statute, it would reduce the ability of DES to properly operate, maintain and repair state-owned dams. DES is also concerned with the liability provisions that exist under RSA 52:25, which are inconsistent with other statutes regarding the liability of the state. For these reasons, DES supports a repeal of RSA 52:25.

In the House, the bill was amended to still repeal RSA 52:25, but allow the two existing contracts to continue unless terminated by the Village District. These two existing contracts each have a term of fifteen years. The contract with the Sunrise Lake Village District in Middleton expires on June 30, 2014, and the contract with the Sawyer Lake Village District in Gilmanon expires on April 6, 2017. Each contract also includes a termination clause which allows the contract to be terminated by either party. Reasons specified in the contract for DES to terminate the contract include failure of the Village District to promptly pay DES for the previous year's operation and maintenance expenses or dissolution of the Village District.

DES is concerned that the language in the bill, as amended, would not allow DES to terminate the contracts for these reasons and could force DES to maintain contracts with these two Village Districts, beyond the terms of the existing contracts, for as long as the Village Districts choose and at the sole discretion of the Village Districts. To address these concerns, DES recommends that the bill be further amended by modifying the first sentence in the New Section 52:26 to read: *"Any contract between a district formed for the purpose of impoundment*

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of water, organized pursuant to this chapter, and the department of environmental services for the construction, operation, and maintenance of any dam located within the district's boundaries that is in effect on the effective date of this act shall continue in effect for the remaining term of the contract unless or until terminated in accordance with the terms of the contract by the district."

To provide some background on the statute that is to be repealed under this bill, in 1975 the Legislature enacted Chapter 13 to amend RSA 52 to authorize the formation of Village Districts for the purpose of impounding water. At that time, bills were being introduced for the state to take ownership of dams in need of repair, with the state assuming the cost of repairs as well as the responsibility for future operation and maintenance. As an alternative to state ownership, the Legislature authorized lake shore owners to form Village Districts, which could then raise money by taxation and appropriate the funds needed to operate, maintain and repair the dams. As part of that law, the Legislature authorized Village Districts to contract with DES for the operation, maintenance and repair of the dams, with the Village Districts paying DES for all expenses incurred in performing this work. Since enactment of that law, thirteen Village Districts have been formed for the purpose of impounding water, but currently only two of them have contracted with DES for the operation, maintenance and reconstruction of their dams.

The State of New Hampshire, through its agencies, owns a total of 274 dams, most of which are well over 100 years old. Given the number of dams the state owns and the normal design life of these structures, the state must perform major repairs or reconstruction on an average of five dams per year. With the existing capacity of DES's Dam Maintenance Crew, the backlog of work is up to 35 dams with known deficiencies in need of repair. If the other eleven Village Districts or new Village Districts choose to contract with DES, the work for these Village Districts would add significantly to the work of DES's Dam Maintenance Crew, and, without additional staff and equipment, would seriously delay much needed repair on these state-owned dams.

Thank you for this opportunity to comment on this bill. Please call either me at 271-2958 or Jim Gallagher at 271-1961, if you have any questions or need additional information.

Very truly yours,


for Thomas S. Burack
Commissioner

cc: Rep. David Bickford
Rep. Chris Christensen
Rep. Peter Bolster