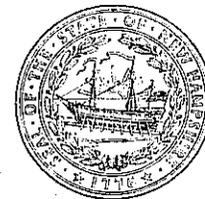




The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

January 28, 2010

The Honorable Betsi L. DeVries, Chairman
Senate Public and Municipal Affairs Committee
Legislative Office Building, Room 302
Concord, NH 03301

Re: Senate Bill 378, Relative to the New Hampshire public works mutual aid program

Dear Chairman DeVries:

Thank you for the opportunity to testify on SB 378, relative to the New Hampshire public works mutual aid program (NHPWMAP). The Department of Environmental Services (DES) supports this bill which clarifies and specifically supports the current public works mutual aid agreements established under NHPWMAP and allows private entities, such as water utilities, to become participating NHPWMAP members if they are providing public services that are commonly provided by public agencies.

The NHPWMAP is a unique, voluntary program that was established in 1998 under the broad authority of RSA 53-A. NHPWMAP was created to support the provision of mutual aid among municipal public works departments. Program benefits include prompt access to specialized resources throughout New Hampshire as well as qualifying members for Federal Emergency Management Act (FEMA) reimbursement during declared disasters. With over 120 members, the program has helped municipalities address emergencies by utilizing the resources provided by other municipalities. NHPWMAP members assisting other members during events, such as the floods of 2005, 2006 and 2007 and the tornado in 2008, demonstrate both the need for and success of this important program. SB 378 seeks to enhance the NHPWMAP by clarifying the existing statute to specifically include current mutual aid agreement provisions, including governance by a board of directors and indemnity.

The other purpose of the bill is to allow certain private entities, such as water utilities, to become members of the NHPWMAP. Originally, the NHPWMAP was largely focused on transportation related emergencies. In the last few years, at the prompting of the U.S. Environmental Protection Agency, DES has been investigating and supporting the establishment of a mutual aid network for drinking water and wastewater systems. Rather than establish a stand-alone network, all parties have agreed it makes more sense to expand the NHPWMAP to fully address the needs of the water sector. Two of the largest drinking water utilities in NH, Pennichuck Water Works which serves Nashua and many other localities and Aquarion Water Company which serves Hampton and surrounding towns, are privately owned and do not currently qualify for membership. This bill would allow utilities, such as these, that provide the same type of public service as is often provided by municipal public works departments to be participating members in NHPWMAP.

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DES suggests one change to the bill as introduced. To clarify that the indemnity provisions do not include the State of New Hampshire, Section IV should be clarified. For instance, the following amended language could be used to achieve this goal.

IV. The agreement may include provisions by which each municipality or private entity party indemnifies the other municipality or private entity parties and their officers, employees, and agents against any liability arising out of the indemnifying municipality's or private entity's party's negligent or otherwise wrongful conduct. The agreement shall not be written or construed to require the State or any State agency to defend or indemnify any other entity.

In summary, we believe that this bill enhances a highly effective program which is critical to local emergency response capabilities. If you have any questions, please call me 271-2958 or Sarah Pillsbury at 271-1168.

Sincerely,


for Thomas S. Burack
Commissioner

cc: Senator Fuller Clark
Senator Odell
Senator Merrill
Representative Patten
Representative Cooney
Cordell Johnston, LGC