



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

January 23, 2018

The Honorable John O'Connor
Chair, Environment and Agriculture Committee
Legislative Office Building, Room 303
Concord, NH 03301

RE: HB 1233 *An Act preempting local regulation of seeds and fertilizer.*

Dear Chair O'Connor and Members of the Committee:

Thank you for the opportunity to comment on HB 1233. This bill preempts local authority to regulate seeds and the use of fertilizers. The NH Department of Environmental Services (NHDES) requests two amendments to the bill.

In 2013, the General Court passed and the Governor signed, HB 393 which mandated that household lawn fertilizers contain a certain amount of slow release nitrogen and clarified the phosphorus content. That bill contained a clause which preempted local authority for the "registration, sale, formulation, or transportation of fertilizer" (see RSA 431:4-d). The proposed language in HB 1233 would add the word "use" to that list of preemptions. This issue was discussed thoroughly during deliberations on HB 393 and both the house and senate committees agreed that localities should have the ability to limit the use of fertilizers. This was primarily due to the fact that local waterbodies are often impacted to different degrees by fertilizers.

Turf fertilizer is both a known source of nitrogen pollution to the Great Bay estuary as well as a source of phosphorus pollution to lakes and impoundments. Nutrients (both nitrogen and phosphorus) from turf fertilizer and other sources, such as wastewater and stormwater, need to be addressed in the long term to improve water quality in New Hampshire waters. Recent work by scientists at NHDES has estimated that residential lawn fertilizers are responsible for 10-15% of the nonpoint source nitrogen load to the Great Bay estuary. Phosphorus is a significant issue on many of the lakes in the state. Too much phosphorus leads directly to algal and cyanobacteria blooms which are detrimental to public health, recreation and property values.

Presently, many New Hampshire communities have ordinances which prohibit or restrict household fertilizer use in certain sensitive areas. NHDES believes that this type of regulation is better accomplished at the local level than by the state because the municipalities know which waterbodies are of concern and what types of regulations are best for their community. In addition, a recent survey of NH Lakes Association members found that fertilizer use was their top water quality concern.

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Our research into local regulations also found that communities currently regulate what types of plants (and seeds) that can be used in certain zones, especially related to stormwater and erosion control. In addition, in some sensitive zones, there may be a requirement in some communities to use native species of plants. The bill in current form would prohibit communities from enacting these types of provisions.

Given the above concerns, we suggest two amendments to HB 1233. First, regarding fertilizers, we recommend striking the word "use" from line 24, and adding a clarifying sentence following it. The amendment would read, "... formulation [or] transportation, ~~or use~~ of fertilizer. ***Additionally, no local regulation shall regulate the type of fertilizer when used for agricultural purposes as defined by RSA 21:34-a.***" The second amendment, pertaining to seeds, would add the following sentence to the end of line 18, "***Nothing in this subdivision shall limit the authority of any political subdivision to adopt and enforce planning, zoning and related regulations, including the authority to require native plantings and combat invasive species as part of a planning board's site plan review or subdivision authority.***"

Thank you again for the opportunity to comment on HB 1233. Should you have further questions, or need additional information, please feel free to contact either Ted Diers, Watershed Management Bureau Administrator at 603-271-3289 or Ted.Diers@des.nh.gov, or me at 603-271-3449 or Robert.Scott@des.nh.gov.

Sincerely,



Robert R. Scott
Commissioner

cc: Representative Darrow