



The State of New Hampshire  
**Department of Environmental Services**



**Robert R. Scott, Commissioner**

February 6, 2018

The Honorable Gary Daniels  
Chair, Senate Finance Committee  
State House, Room 103  
Concord, NH 03301

**RE: SB 468-FN-A, An Act relative to fines and penalties collected by the department of environmental services.**

Dear Chair Daniels and Members of the Committee:

Thank you for the opportunity to testify on SB 468-FN-A. The bill would amend several statutes to require that the proceeds of fines and penalties imposed by the Department of Environmental Services (NHDES) be deposited into the General Fund rather than into dedicated accounts. NHDES cannot support SB 468-FN-A because we believe it would have significant unintended consequences.

Currently, the majority of NHDES programs having fine or penalty authority are already required to deposit proceeds from enforcement actions into the General Fund. The programs that would be impacted by the bill have been identified by the General Court as having a particularized need for funding through dedicated accounts. For those programs, fine proceeds support cleanup and mitigation efforts necessary to protect public health, safety, and welfare. For example, funds deposited into the hazardous waste cleanup fund are used to provide for the proper, adequate, and safe cleanup of sites at which wastes or hazardous materials have been improperly discharged. The dam maintenance revolving loan fund is used to provide low interest loans to fund the maintenance, repair, removal, or improvement of dams that may pose a hazard if left in disrepair. Fines deposited into that account help fulfill that objective and benefit both dam owners and the general public, who may otherwise be at risk if such maintenance is deferred. Similar considerations apply to other programs that would be impacted by the bill.

The proposed repeal of RSA 482-A:29, II, and amendments to RSA 482-A:30, III and RSA 482-A:30-a, relative to the Aquatic Resource Compensatory Mitigation (ARM) Fund, raise different concerns. The ARM fund was created to allow an applicant to proceed with certain wetlands projects conditioned upon payment of compensation into the fund in lieu of direct mitigation. Proceeds paid into the fund are not fines or penalties but voluntary payments by applicants that allow compensatory mitigation to occur. Thus, the fund provides alternatives to developers where direct mitigation may not be possible. If the administrative assessment used to implement the program is eliminated, NHDES will be unable to fund and administer the program. Without the option of compensatory mitigation many projects that would cause unavoidable loss of aquatic resource functions could not be approved.

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The amendments proposed to RSA 485-A:54, V, the Winnepesaukee River Basin Control and Replacement Fund, would require proceeds of fines for violation of Winnepesaukee River Basin Program (WRBP) requirements to be deposited into the General Fund. However, as noted by the WRBP Advisory Board in its letter to the Committee dated January 26, 2018, the WRBP is funded entirely by the ratepayers of its member communities who, thus, bear the cost of any enforcement proceedings associated with such violations. NHDES concurs with the WRBP Advisory Board that the proceeds of such actions should remain with the WRBP for the benefit of its member communities.

NHDES does not rely upon fine/penalty proceeds to fund its programs. As noted, most programs are already required to deposit such proceeds into the General Fund. Furthermore, NHDES' approach to enforcement is entirely independent of the account into which proceeds may be deposited and is spelled out in the NHDES Compliance Assurance Response Policy (CARP), which can be found on the NHDES website at the following link:

<https://www.des.nh.gov/organization/commissioner/legal/carp/index.htm>

As noted therein, NHDES' goal is to achieve compliance, first through education and outreach, then through assistance, and finally through enforcement action if appropriate.

In summary, NHDES opposes the bill because it would undermine efforts to protect public health, safety, and welfare, would eliminate an important alternative means of compensatory mitigation to the detriment of New Hampshire businesses, and would inappropriately divert funds from political subdivisions served by the WRBP.

Thank you again for the opportunity to comment on this proposed legislation. If you have questions or need additional information, please contact Clark Freise at (603) 271-8806 or [clark.freise@des.nh.gov](mailto:clark.freise@des.nh.gov).

Sincerely,



Robert R. Scott  
Commissioner

cc: Members of the Senate Finance Committee