



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

February 26, 2019

The Honorable Suzanne Smith
Chair, House Resources, Recreation and Development Committee
Legislative Office Building, Room 305
Concord, NH 03301

RE: HB 707, An Act relative to settlement money from actions pertaining to the contamination of groundwater or drinking water

Dear Chair Smith and Members of the Committee:

Thank you for the opportunity to testify on HB 707. This bill would require that Drinking Water and Groundwater Trust Fund (Trust Fund) expenditures that are recovered from parties liable for hazardous waste contamination under RSA 147-B:10 be deposited to the Trust Fund, and that damages awarded for drinking water or groundwater pollution be deposited to the Trust Fund. The bill also would grant authority to the Trust Fund Advisory Commission to recover costs from liable third parties. The New Hampshire Department of Environmental Services (NHDES) supports this bill, although we note that section 2 of the bill may not fully accomplish the sponsor's intent. SB 169 is a nearly identical bill, and its prime sponsor, Senator Morse, has proposed an amendment to correct the same deficiency. We recommend that a similar amendment be considered for this bill.

Since its inception in 2016, the Trust Fund, established under RSA 6-D:1 and initially capitalized with funds from the State's MtBE lawsuit against ExxonMobil, has played a significant and vital role in ensuring that NH citizens have access to clean, safe drinking water. Under the leadership of the 19-member Trust Fund Advisory Commission, over \$90 million in grant and loan funding has been allocated to critical drinking water infrastructure, source development, and source water protection projects statewide. This bill, under section 1, would ensure that whenever costs incurred by the Trust Fund are recovered under the authority of RSA 147-B:10 from parties liable for hazardous waste contamination, those funds will be deposited to the Trust Fund. Under section 3 of the bill, the Trust Fund Advisory Commission is subrogated, or granted authority to recover Trust Fund expenditures from third parties that would otherwise be liable for those costs. NHDES believes that these provisions are vital to ensuring the long term viability and effectiveness of the Trust Fund.

It is NHDES's understanding that the intent of section 2 of the bill is to ensure that any money received by the State related to the contamination of drinking water and groundwater will be deposited to the Trust Fund. For example, if the State were to receive monies through settlement or judgment in a lawsuit similar to the MtBE lawsuit, those monies would be deposited to the Trust Fund. However, the current language in section 2 of the bill does not have this effect. Section 2 refers only to cost recovered funds received by the State as a result of actions taken under RSA 147-B:10. This language is rather narrow, and would not apply to the proceeds of lawsuits like the MtBE

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lawsuit. We recommend that an amendment similar in form to the amendment offered for SB 169, a nearly identical bill, be considered for this bill. We would fully support such an amendment.

Thank you again for the opportunity to testify in support of HB 707. We believe this bill will help to ensure that the Drinking Water and Groundwater Trust Fund will achieve its mission to provide for the protection, preservation, and enhancement of the drinking water and groundwater resources of the state for many years to come.

Should you have further questions or need additional information, please feel free to contact either Mike Wimsatt, Waste Management Division Director (Michael.wimsatt@des.nh.gov, 271-1997) or me (Robert.scott@des.nh.gov, 271-3449).

Sincerely,



Robert R. Scott
Commissioner

cc: Sponsor of HB 707: Representative Notter