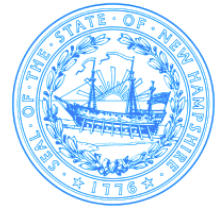




The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

March 23, 2023

The Honorable Kevin Avard
Chair, Senate Energy and Natural Resources Committee
State House, Room 103
Concord, NH 03301

RE: HB 247, An Act relative to protective well radii

Dear Chair Avard and Members of the Committee:

Thank you for the opportunity to testify on HB 247. The New Hampshire Department of Environmental Services (NHDES) supports this bill.

RSA 485-A:30-b is the statute that pertains to protective well radii around private wells. This statute calls for a private drinking water well to be installed such that the protective radius is contained on the owner's lot to the maximum extent practicable. It also has provisions for how to handle situations where the protective radius needs to extend off the lot onto an abutting property. The intent of this bill is to remove confusion about the protections that are afforded to private wells when the protective radius around the well extends off the well owner's lot. It also clarifies the applicability of the statute and streamlines the process well drillers, septic system designers, and the homeowner need to follow to record situations when the protective well radius extends off the lot or when the well cannot be drilled at the location shown on the plans.

NHDES collaborated with water well contractors and septic system designers and installers on this bill because the current statute has complicated reporting requirements that could be streamlined without increasing risks to public health and the environment. When the protective well radius extends off-lot, up to three different documents need to be filed with two different bureaus in NHDES. The bill would cut the requirement to one form, which is already required to be filed with NHDES by the water well contractor. This change simplifies the process and assigns the reporting duty to a professional, not the homeowner. Requirements to record documents with the Registry of Deeds have also been removed because the documents are stored by NHDES in a publicly accessible database.

The protective well radius must be shown on the plan for a septic system approval. The current statute requires that, if the well cannot be installed in the approved location, the owner must get an amended septic system plan and have it approved again by NHDES. This requirement is unnecessary and expensive. With special methods for construction, water well contractors can install a safe well near a septic system without needing an updated septic system plan. Hiring a permitted septic system designer to amend the plan adds over \$1,000 to the cost of the project. This bill would eliminate the requirement to get an amended septic system approval. Instead, the location of the well will be recorded through the document filed with NHDES by the water well contractor.

www.des.nh.gov

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095
(603) 271-3503 • Fax: 271-2867 TDD Access: Relay NH 1-800-735-2964

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Previous legal rulings and the original bill creating RSA 485-A:30-b have established that a landowner cannot encumber abutting land by means of a protective well radius. However, the statute as currently written does not make this point clearly and many property owners think the opposite. To help landowners understand their rights, this bill would add text to affirmatively state that any portion of the protective well radii that is not maintained on-lot does not have any effect on abutting lots.

In 1989, Encroachment Waivers were adopted into RSA 485-A for situations where a waiver was needed which would affect the ability of an owner of abutting property to fully utilize his property. This tool has only been used for cases where a septic system was being installed within the protective radius of a pre-1989 well. The reason why pre-1989 wells were treated differently is that the original bill passed in 1989 applied to "newly created lots". A subsequent bill changed the applicability to "All lots, including lots created prior to the effective date of RSA 485:35-a" [8/20/1989]. Despite this change, the legal interpretation at the time was that NHDES should still require Encroachment Waivers through its administrative rules. Practice has shown that this process adds time and cost but not protection because pre-1989 wells cannot encumber abutting land any more than other wells. This bill proposes to remove Encroachment Waivers from RSA 485-A. Easements can take their place when needed. The NHDES administrative rules will also be updated.

Finally, the first paragraph of RSA 485-A:30-b seems to limit the section to only private wells that serve a public water system. However, portions of the section clearly apply to any private well, not just those serving a public water system. This bill would clarify the first paragraph to remove ambiguity about its applicability to all private wells.

In conclusion, NHDES supports this bill. It will save landowners, developers and NHDES time and money without altering existing property rights or increasing risks. HB247 will not increase expenditures for state, local or county governments.

Thank you again for the opportunity to comment on HB 247. Should you have further questions or need additional information, please feel free to contact either Philip Trowbridge, Administrator of the Land Resources Management Program (Philip.R.Trowbridge@des.nh.gov, 271-4898) or Brandon Kernan, Administrator of the Drinking Water Groundwater Bureau (Brandon.M.Kernen@des.nh.gov, 271-1168).

Sincerely,



Robert R. Scott
Commissioner

ec: Sponsors of HB 247: Representatives McConkey, Smith, Avellani