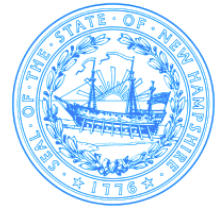




The State of New Hampshire  
**Department of Environmental Services**



**Robert R. Scott, Commissioner**

February 6, 2023

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

**RE: SB 229, An Act relative to administration of certain wetlands permits by the department of environmental services**

Dear Chair Avar and Members of the Committee:

Thank you for the opportunity to testify on SB 229. The New Hampshire Department of Environmental Services (NHDES) supports this bill because it fixes several small issues in the statutes for four land resource permitting programs that create ambiguity or difficulty for applicants during the permitting process.

Parts 1 and 2 of the bill pertain to the Alteration of Terrain Program. This program regulates stormwater management for large development projects. When an applicant needs to make a change to a project that has already been permitted by NHDES, they can file for an amendment. The fee for this amendment should be based on the area of disturbance associated with the amendment only, not the total area of disturbance of the project. The statute is not clear on this fact and the proposed change would affirmatively state that it is the former, which saves money for applicants. Also, the statute does not allow NHDES to give applicants time extensions to add information to the file. The proposed change would make this option available to applicants.

Parts 3 and 4 of the bill pertain to the Shoreland Protection Program. Currently, the language of RSA 483-B:17 empowers the department to adopt rules relative to the size and placement of "small accessory structures" located within 50 feet of protected waters. Traditionally, this has been interpreted as the legislative intent that only small structures should be allowed. Recently, there has been supposition that the language could mean that NHDES only has authority to regulate small accessory structures and not large ones. Given the Legislature created a mandatory 50-foot setback for primary structures and gave the department no authority to authorize a lesser setback, it would seem contrary to the intent of the statute that building larger accessory structures within the 50-foot setback should be a way to avoid the rules on size and placement of these structures. Striking "small" from this part would avoid this confusion in the future.

RSA 483-B:5-b states that NHDES shall accept a permit-by-notification (PBN) if it meets the minimum standards in RSA 483-B:9. RSA 483-B:3 states "State and local permits for work within the protected shorelands shall be issued only when consistent with the policies of this chapter." This change improves consistency and transparency to applicants by making it clear that all activities approved must meet the intent and purpose of all portions of RSA 483-B.

Part 5 of the bill pertains to the Wetlands Program. The reason for this change is that occasionally people submit applications to do work on a parcel of land that straddles the boundary between two towns. The statute currently requires the applicant to file an application with the town clerks of both towns. The proposed

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The Honorable Kevin Avar  
Chair, Energy and Natural Resources Committee  
February 6, 2023  
Page 2

change would make it so that the applicant must only get a signature from the municipality where the actual wetland impacts occur.

Part 6 of the bill pertains to the permitting of septic systems by the Subsurface Systems Bureau. RSA 485-A:33 allows owners of residential properties with state-approved septic systems to replace the system using the original, approved design if the system fails. They do not need to pay for a new design or have the original design reviewed by NHDES, which saves them time and money. They can also start the work immediately upon receipt of the permit from NHDES.

Septic system designers and installers have been encountering problems with the statute as written. First, the statute was intended to apply only to single-family residential systems but the statute says it applies if the "existing system receives only domestic sewage." This ambiguity can lead people to try to use the process for apartment buildings that have much larger systems that should be reviewed by a designer if they fail. Apartment buildings can also have multiple owners which complicates decisions on shared septic systems. The proposed change would clarify the eligibility for this process to be specifically single-family residences with up to one associated accessory dwelling unit if it is included on the state-approved plan. Second, homeowners can run into problems if they use this process to replace the septic system but later find that they do not have the prior state approvals and associated plans. If these documents cannot be produced, NHDES will not be able to approve the new system. In this situation, the homeowner would need to go through the full permitting process with NHDES for a new system. This adds cost and time during which the residence does not have a functioning septic system. This bill would solve this problem by requiring the prior state approvals and approved plan be submitted with the application. The bill also adds some flexibility as to the source of the approved plan. If the approved plan cannot be found in the state or town archives, the designer who prepared the original plan can provide it.

In conclusion, NHDES supports this bill. It will fix multiple small issues in the statutes regarding permitting processes to benefit people seeking permits from NHDES. These fixes are purely administrative. They do not reduce environmental protections, nor will they incur additional costs to the state.

Thank you again for the opportunity to comment on SB 229. Should you have 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 Rene Pelletier, Director of the Water Division (Rene.J.Pelletier@des.nh.gov, 271-0677).

Sincerely,



Robert R. Scott  
Commissioner

ec: Sponsor of SB 229: Senator Bradley