



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

January 21, 2022

The Honorable James Gray
Chairman, Election Law and Municipal Affairs Committee
State House, Room 100
Concord, NH 03301

RE: SB 244, AN ACT relative to non-conforming structures and variances.

Dear Chairman Gray and Members of the Committee:

Thank you for the opportunity to comment on SB 244. This bill makes allowances for certain non-conforming structures by amending RSA 674:72 with regard to accessory dwelling units (ADU) and makes changes to the definition of subdivision in RSA 485-A:2, VIII. The New Hampshire Department of Environmental Services (NHDES) supports the portion of the bill regarding ADUs with a suggested amendment discussed below. NHDES has concerns about the portion of the bill relative to changes to the definition of subdivision.

The bill proposes to amend the language in RSA 674:72 regarding ADUs. NHDES supports this proposed change provided that the requirements in RSA 674:72, V, regarding water supply and sewage disposal, continue to apply to the ADU conversion. In addition to the proposed amendment, NHDES suggests modifying the language of RSA 674:73, Detached Accessory Dwelling Units, to read:

"A municipality is not required to but may permit detached accessory dwelling units. Detached accessory dwelling units shall comply with the requirements of, and any municipal ordinances or regulations adopted pursuant to, RSA 674:72, IV through IX **and the primary building setback established in RSA 483-B:9, II, (b) when located within protected shorelands**. If a municipality allows detached accessory dwelling units, it may require an increased lot size."

This change would be beneficial to both homeowners and municipalities by calling attention to existing legal requirements earlier in the planning stages of projects. This will prevent the loss of time and avoid costs by ensuring that owners are informed and investing in design proposals that are not prohibited by overlapping, existing law.

The bill also proposed to amend RSA 485-A:2, XIII regarding the definition of subdivision. NHDES has concerns about this portion of the bill. Currently, the definition of Subdivision in RSA 485-A:2, XIII requires subdivision approval from NHDES be obtained prior to converting an existing single owner property to a condominium. The purpose of the subdivision approval process is, in part, to determine if the lot on which the structure(s) is located can manage and treat all the wastewater generated. It is important to maintain this requirement for NHDES

subdivision approval of condominium conversions in order to protect the interests of the buyer, public health and water quality.

A prime example of why NHDES subdivision approval of condominium conversions is important is with existing, grandfathered (existing prior to applicable regulations) cabin resorts that are owned by one individual or company. Typically, these cabin resorts were built on substandard lots where the wastewater load generated by the cabins exceeds the lot's capacity to adequately manage and treat the wastewater. In addition, many of the sewage or waste disposal systems (septic systems) supporting the cabins also pre-date current regulations and laws promulgated in 1967. A septic system that pre-dates those laws would now be at least 55 years old with the possibility that the system no longer meets current standards and/or adequately treats wastewater.

Septic systems have a finite lifespan and, when these grandfathered systems fail, they often must be replaced with much larger systems to meet current standards. RSA 485-A:33, IV only allows for the replacement of a septic system, "in-kind" if the system being replaced was previously state approved. If a septic system(s) needs to be replaced and/or relocated to meet current standards, and the property is owned by one individual or company, that individual or company can manage the property to take whatever steps are needed to accommodate the new, larger system. This may include the removal of a structure to reduce the wastewater load or to properly locate the system on the lot to meet current standards. Conversely, if the cabins are converted to condominiums and each cabin is owned individually, the individual property rights may make it impossible to find a place to construct a replacement system that accommodates all properties on site. In such a case, it is likely that one or more of the individual properties would not be able to site a septic system to meet their needs. Therefore, requiring subdivision approval for a condominium conversion ensures the purchaser is buying a property that can meet all applicable laws and rules relative to wastewater management.

Having compliant, functioning septic systems is crucial to protecting the groundwater and water quality in lakes, ponds, and streams. Considering the large percentage of private drinking water wells in the State of New Hampshire, protecting the groundwater is critical to the protection of human health. Further, many cabin resorts referenced above are located on lakes, ponds, and rivers throughout the State of New Hampshire. Compliant, functioning septic systems play a significant role in protecting these very important resources.

Thank you again for the opportunity to comment on this legislation. If you have questions or need additional information, please contact Robert Tardif, Subsurface Systems Bureau Administrator at 603-271-2904 or robert.a.tardif@des.nh.gov or Darlene Forst, Wetlands Bureau Administrator at 603-271-4054 or darlene.c.forst@des.nh.gov.

Sincerely,



Robert R. Scott
Commissioner

ec: Sponsor of SB 244: Senator Cavanaugh