

CHAPTER 236
HB 464 - FINAL VERSION

18Feb2015... 0280h
05/28/2015 1862s
11June2015... 2284EBA

2015 SESSION

15-0361
10/04

HOUSE BILL **464**

AN ACT establishing the traditional commercial and recreational fishing protection act, prohibiting political subdivisions from interfering with commercial and recreational operations, relative to protective well radii for sewage disposal systems of commercial buildings, and relative to rulemaking by the commissioner of environmental services on certain minimal impact projects.

SPONSORS: Rep. Cushing, Rock 21; Rep. Borden, Rock 24; Rep. Sherman, Rock 24; Rep. F. Rice, Rock 21; Rep. Emerick, Rock 21; Rep. Wood, Rock 21; Rep. Pantelakos, Rock 25; Rep. Rogers, Merr 28; Rep. A. Christie, Rock 37; Sen. Stiles, Dist 24; Sen. Fuller Clark, Dist 21; Sen. Watters, Dist 4

COMMITTEE: Municipal and County Government

AMENDED ANALYSIS

This bill establishes the commercial and recreational fishing protection act, which prohibits local governments from adopting ordinances declaring commercial or recreational fishing operations to be nuisances or which unreasonably burden or force the closure of such operations.

The bill establishes criteria and exceptions for protective well radii for sewage disposal systems of commercial buildings. This bill also provides for rulemaking by the commissioner of environmental services to implement permit by notification for certain minimal impact projects.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fifteen

AN ACT establishing the traditional commercial and recreational fishing protection act, prohibiting political subdivisions from interfering with commercial and recreational operations, relative to protective well radii for sewage disposal systems of commercial buildings, and relative to rulemaking by the commissioner of environmental services on certain minimal impact projects.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 236:1 Legislative Findings and Purpose. The general court finds that traditional commercial
2 and recreational fishing conducted by fishers and fishing families are an important activity with
3 historical significance to the state and the region. The continuation of these commercial and
4 recreational fishing operations benefit the health and welfare of the state. The general court further
5 finds that commercial and recreational fishing operations conducted in developing and urbanizing
6 areas are potentially subject to curtailment as a result of local government zoning and nuisance
7 ordinances which may unreasonably burden or force the closure of productive commercial and
8 recreational fishing operations. In accordance with the purposes outlined in RSA 672:1, III-f, it is
9 the purpose of this act to prevent the curtailment or abolishment of commercial and recreational
10 fishing operations solely because the area in which they are located has changed in character or the
11 operations are displeasing to neighboring residents.

12 236:2 New Subdivision; Traditional Commercial and Recreational Fishing Protection Act.
13 Amend RSA 674 by inserting after section 66 the following new subdivision:

14 Traditional Commercial and Recreational Fishing Protection Act

15 674:67 Definitions. In this subdivision:

16 I. "Commercial fishing operation" means any type of activity conducted on land, requiring
17 the location or storage of commercial fishing equipment such as fishing vessels, fishing gear, docks,
18 piers, loading areas, landing areas, and cold storage facilities, including any activity necessary to
19 prepare finfish or shellfish for refrigeration, conducted by any person licensed to take, possess, land,
20 or transport, on the waters of New Hampshire, any marine species by any method for the purpose of
21 sale. Commercial fishing operation shall not include operations with the sole or primary function of
22 processing seafood.

23 II. "Recreational fishing operation" means a party or charter boat that takes paying
24 passengers for recreational fishing in coastal waters.

25 674:68 Protection of Commercial and Recreational Fishing Operations. No commercial or

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1 recreational fishing operation shall be declared a public or private nuisance solely because of a
2 change in ownership or a change in the character of the property in or around the locality of the
3 operation.

4 674:69 Local Ordinances Prohibited. No local legislative body shall adopt any ordinance that
5 declares any commercial or recreational fishing operation to be a nuisance solely because it is a
6 commercial or recreational fishing operation, or any zoning ordinance that unreasonably burdens or
7 forces the closure of any commercial or recreational fishing operation, including any fishing
8 operation conducted as a home occupation. Nothing in this subdivision shall prevent a local
9 government from regulating commercial and recreational fishing operations, including by requiring
10 the use of methods, structures, or appliances where such use will prevent, ameliorate, or remove
11 conditions which create or may create a nuisance.

12 674:70 Construction of Subdivision. This subdivision shall not be construed to permit an
13 existing commercial or recreational fishing operation to change to a larger operation with regard to
14 emitting more noise or odor, where such change violates local ordinances or regulations or creates a
15 nuisance.

16 236:3 Department of Environmental Services; Protective Well Radii; Commercial Buildings.
17 Amend the introductory paragraph of RSA 485-A:30-b, I and RSA 485-A:30-b, I(a) and (b) to read as
18 follows:

19 I. All lots ***on which wastewater is or will be disposed on-site and all lots on which a***
20 ***private well serving a public water system exists or will be installed***, including lots created
21 prior to August 20, 1989, shall be subject to the following conditions:

22 (a) Rules adopted under this section concerning such lots shall include provisions
23 allowing abutting lot owners to overlap their respective well radii for their mutual benefit and
24 provisions allowing well radii to extend over property lines onto state and locally-mandated property
25 line setbacks, recorded easements, or land which is permanently dedicated to a use which precludes
26 development.

27 (b)(1) For ***any*** private [~~wells serving~~] ***well being installed or utilized to serve one or***
28 ***more new*** commercial buildings ***or a non-community public water system***, the entire protective
29 well radius shall be [~~maintained~~] ***located*** on one or more of the following: [~~on lot~~] ***on-lot***, on a
30 recorded easement, on land which is permanently dedicated to a use which precludes development,
31 or on state [~~and~~] ***or*** locally mandated property line setbacks.

32 (2) ***A private well may be installed without being located as required by***
33 ***subparagraph (1) only if it is needed to replace a well serving one or more existing***
34 ***commercial buildings or a public water system, there will be no increase in water use to a***
35 ***level that requires a larger protective well radius under rules adopted by the department,***
36 ***and the lot is not part of a larger parcel that is being subdivided. In such cases, the on-lot***

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1 *protective radius shall be maximized to the extent practicable and the owner of the*
2 *property shall sign a standard release form prepared by the department, upon which the*
3 *actual protective radius shall be noted together with a narrative description of the*
4 *location of the well, to acknowledge the potential loss of the protection of any portion of the*
5 *radius which extends over the property line. The owner shall record the release form in the*
6 *registry of deeds and shall file a copy of the recorded release form with the department.*

7 (3) *If a private well installed under the provisions of subparagraph (2) is*
8 *not regulated as a public water supply well under RSA 485, the department shall require*
9 *such water quality monitoring, recordkeeping, and reporting as is needed to ensure the*
10 *water is suitable for its intended uses.*

11 (4) For the purposes of this section, the term “commercial building” *means a*
12 *building that houses a commercial use but* shall not include a residence which is also used for
13 commercial purposes unless the total water withdrawal exceeds 600 gallons per day. *A new*
14 *commercial building means a new structure intended for commercial use, an existing*
15 *residential structure being converted to commercial use, or an increase in water use at an*
16 *existing commercial building to a level that requires a larger protective well radius under*
17 *rules adopted by the department.*

18 236:4 Department of Environmental Services; Permits; Rulemaking; Culverts and Stream
19 Crossings. Amend the introductory paragraph of RSA 482-A:3, XVI(b) to read as follows:

20 (b) Appropriate notice to the department shall include a completed routine roadway
21 notification form as outlined in ~~[Env-Wt-303-05]~~ *rules adopted by the commissioner pursuant to*
22 *RSA 541-A* including, at a minimum, the following information:

23 236:5 Department of Environmental Services; Administrative Provisions. Amend the
24 introductory paragraph of RSA 482-A:11, III(b) to read as follows:

25 (b) Relative to any *expedited* permit ~~[by notification]~~ under paragraph VI, the
26 provisions of subparagraph (a) shall be modified as follows:

27 236:6 Department of Environmental Services; Administrative Provisions; Rulemaking; Permit
28 by Notification. Amend RSA 482-A:11, VI–VII to read as follows:

29 VI. The commissioner shall adopt rules pursuant to RSA 541-A establishing an expedited
30 application and permitting process ~~[or permit by notification process]~~ for certain minimum impact
31 projects. The provisions of RSA 482-A:3, I and paragraph III of this section shall apply.

32 *VI-a. The commissioner shall adopt rules pursuant to RSA 541-A establishing a*
33 *permit by notification process for certain minimum impact projects. The provisions of*
34 *RSA 482-A:3, I(a) and (c) shall apply.*

35 VII. The commissioner shall adopt rules, pursuant to RSA 541-A, identifying those activities
36 within the jurisdiction of RSA 482-A that may be conducted without obtaining a permit *and those*

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1 *that may be conducted without a permit if the project is registered with the department,*
2 consistent with the provisions of this chapter.

3 236:7 Effective Date. This act shall take effect 60 days after its passage.

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5 Approved: July 13, 2015

6 Effective Date: September 11, 2015