

HB 667-FN - AS INTRODUCED

2015 SESSION

15-0751
06/05

HOUSE BILL

667-FN

AN ACT relative to aquatic invasive species and authorizing a program to inspect boats for the presence of aquatic invasive species.

SPONSORS: Rep. Spang, Straf 6; Rep. Grenier, Sull 7; Rep. Kidder, Merr 5

COMMITTEE: Resources, Recreation and Development

ANALYSIS

This bill authorizes the department of environmental services to develop a mechanism for containing an aquatic invasive plants infestation in a waterbody.

This bill also authorizes the department of environmental services to inspect certain boats for the presence of aquatic invasive species.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fifteen

AN ACT relative to aquatic invasive species and authorizing a program to inspect boats for the presence of aquatic invasive species.

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

1 1 New Hampshire Clean Lakes Program; Purpose. Amend RSA 487:15 to read as follows:
2 487:15 Purpose. The general court recognizes that rapidly escalating pressures of shorefront
3 development and recreational uses of public waters have placed increasing strains upon the state's
4 lake resources, thereby accelerating the eutrophication process **and spread of aquatic invasive**
5 **plants** in many of our public [~~lakes~~] **water bodies** through nuisance growths of aquatic
6 macrophyton and phytoplankton (algae) and thus posing a threat to water quality. The general court
7 further recognizes the need to restore, preserve, and maintain the state's [~~lakes and ponds~~] **water**
8 **bodies** in order that these significant environmental, aesthetic, and recreational assets will continue
9 to benefit the social and economic well-being of the state's citizens.

10 2 New Hampshire Clean Lakes Program; Definitions. RSA 487:16 is repealed and reenacted to
11 read as follows:

12 487:16 Definitions. In this subdivision:

13 I. "Aquatic invasive plants" includes only those species of vascular aquatic plants which
14 were not part of New Hampshire's native aquatic flora before 1950 and whose introduction or
15 presence in New Hampshire may cause economic or environmental harm or harm to human health.
16 *Cabomba caroliniana* and *Myriophyllum heterophyllum* are examples of aquatic invasive plants.

17 II. "Commissioner" means the commissioner of the department of environmental services.

18 III. "Conveyance" means a motor vehicle, boat, watercraft, raft, vessel, trailer, equipment, or
19 container that may come in contact with water or is able to transport water, including but not
20 limited to engines and motors, live wells, ballast tanks, bilge areas, water hauling equipment,
21 anchors, and other associated items that could harbor an aquatic invasive plant.

22 IV. "Decontamination" means a process employed to kill, destroy, or remove aquatic invasive
23 plants and all visible organic material from a conveyance, including, but not limited to, chemically,
24 thermally, or otherwise treating a conveyance and allowing it to be cleaned, drained, and dried, in
25 accordance with rules adopted by the department.

26 V. "Department" means the department of environmental services.

27 VI. "Federal program" means the federal Water Pollution Control Act, 33 U.S.C.A. 1324, the
28 federal clean lakes program (P.L. 92-500, section 314), as amended, now known as the Water Quality
29 Act of 1987 (P.L. 100-4), as amended.

30 VII. "Inspection" means the visual or tactile examination, or both, of a conveyance by

HB 667-FN - AS INTRODUCED

- Page 2 -

1 authorized personnel, in accordance with rules adopted by the department, to determine whether the
2 conveyance harbors any organisms or visible organic material that could present a risk of spreading
3 aquatic invasive plants.

4 VIII. "Person" means an individual, partnership, corporation, association, limited
5 partnership, limited liability company, governmental subdivision, agency, or public or private
6 organization of any character.

7 IX. "Quarantine" means emergency restrictions on the use, in waters deemed impacted by
8 aquatic invasive species, by conveyances that have not met department decontamination standards.
9 Quarantine may be achieved through the voluntary actions of a conveyance owner, operator, or
10 transporter adhering to department guidelines or by relinquishing physical control over the
11 conveyance.

12 2 Aquatic Invasive Plants Prohibition; Aquatic Invasive Penalties. Amend RSA 487-16-a and
13 RSA 487-:16-b to read as follows:

14 487:16-a [~~Exotic~~] Aquatic [~~Weed~~] ***Invasive Plants*** Prohibition. No [~~exotic~~] aquatic [~~weeds~~]
15 ***invasive plants*** shall be offered for sale, distributed, sold, imported, ***shipped*** purchased,
16 propagated, transported, or introduced in the state. The commissioner may exempt any [~~exotic~~]
17 aquatic [~~weed~~] ***invasive plants*** from any of the prohibitions of this section consistent with the
18 purpose of this subdivision.

19 487:16-b [~~Exotic~~] Aquatic [~~Weed~~] ***Invasive Plants*** Penalties. It shall be unlawful to knowingly,
20 recklessly, or purposely offer for sale, distribute, sell, import, purchase, propagate, or introduce
21 [~~exotic~~] aquatic [~~weeds~~] ***invasive plants*** into New Hampshire waterbodies. Notwithstanding
22 RSA 487:7, any person engaging in such an activity shall be guilty of a violation.

23 3 New Section; Containment of Aquatic Invasive Plants Infestation. Amend RSA 487 by
24 inserting after section 16-b the following new section:

25 487:16-c Containment of Aquatic Invasive Plants Infestation.

26 I. In order to prevent, contain, monitor or eradicate the presence of aquatic invasive plants
27 within the state, the department shall:

28 (a) Identify aquatic invasive plants.

29 (b) Identify waters of New Hampshire affected by the presence of aquatic invasive
30 plants.

31 (c) Possess and transport aquatic invasive plants for the purpose of identification,
32 sampling, testing, and disposal.

33 (d) Stop, inspect, and order the decontamination or quarantine, or both, of conveyances.

34 (e) Restrict conveyance usage on waters of the New Hampshire when necessary to
35 prevent, manage, or eradicate aquatic invasive plants within the state.

36 (f) Enter into agreements with other agencies and jurisdictions to facilitate interstate or
37 intrastate reciprocity regarding the inspection and decontamination of conveyances.

HB 667-FN - AS INTRODUCED

- Page 3 -

1 (g) Enter into agreements with other agencies and jurisdictions to address management
2 issues associated with interstate or intrastate waters.

3 II. The department may adopt rules under RSA 541-A to administer and enforce this
4 subdivision.

5 III. The department shall establish:

6 (a) A list of identified aquatic invasive plants.

7 (b) A list of waters or locations affected by aquatic invasive plants.

8 (c) Standards and procedures for regularly monitoring waters to determine whether they
9 are affected by the presence of aquatic invasive plants and whether action is required.

10 (d) Standards and procedures for inspecting conveyances for the presence of organisms
11 and visible organic material, including the suspected presence of aquatic invasive plants.

12 (e) Standards and procedures for decontaminating conveyances and disposing of
13 organisms and visible organic material, including suspected aquatic invasive plants removed from
14 the conveyances.

15 4 Program Established; Project Prioritization. Amend RSA 487:17 and RSA 278:18 to read as
16 follows:

17 487:17 Program Established.

18 I. A program for the preservation and restoration of New Hampshire lakes and ponds
19 eligible under RSA 487:20 shall be established and administered within the department of
20 environmental services. Said program shall function to limit the eutrophication process in
21 New Hampshire lakes by reducing nuisance growths of macrophyton and phytoplankton. It shall
22 reinforce and complement the program authorized by the federal program and shall serve 3 basic
23 purposes:

24 (a) To diagnose degraded lakes and ponds and implement long-term solutions for the
25 purpose of restoring water quality where such solutions are feasible and cost effective.

26 (b) To diagnose lakes and ponds and implement methods for long-term preservation of
27 the water quality when such measures can be shown to be feasible and cost effective.

28 (c) To provide short-term remedial actions which can effectively maintain water quality
29 conditions adequate for public recreation and enjoyment, including, but not limited to, the control or
30 eradication of [~~exotic~~] aquatic [~~weeds~~] ***invasive plants*** pursuant to paragraphs II and III.

31 II. The department is directed to prevent the introduction and further dispersal of [~~exotic~~]
32 aquatic [~~weeds~~] ***invasive plants*** and to manage, control, or eradicate [~~exotic~~] aquatic [~~weed~~]
33 ***invasive plants*** infestations in the surface waters of the state. The department is authorized to:

34 (a) Display and distribute promotional material and engage in educational efforts
35 informing boaters of the problems with [~~exotic~~] aquatic [~~weed~~] ***invasive plants*** control.

36 (b) Control or eradicate infestations of [~~exotic~~] aquatic [~~weeds~~] ***invasive plants***,
37 according to the following criteria:

1 (1) The department shall have determined that the [~~exotic~~] aquatic [~~weed~~] **invasive**
2 **plants** can in fact be controlled or eradicated in the waterbody.

3 (2) The most environmentally sound treatment technique relative to the specific
4 infestation will be used, which also meets the requirements of state rules, including rules adopted
5 under RSA 430. Notwithstanding any law or interagency agreement to the contrary, the
6 department's recommendation to use herbicide applications shall be made in consultation with the
7 fish and game department and shall be implemented only if the department of agriculture, markets,
8 and food issues the permit pursuant to RSA 430:33, with or without the concurrence of the
9 department of fish and game.

10 (c) Develop an emergency response protocol to control or eradicate small new
11 infestations. The protocol may include contractual agreements with one or more licensed pesticide
12 applicators that would enable the prompt treatment of [~~exotic~~] aquatic [~~weeds~~] **invasive plants** with
13 herbicides consistent with the criteria provided in subparagraph (b).

14 (d) Designate, in consultation with the department of fish and game and the division of
15 state police, department of safety, restricted use of [~~exotic~~] aquatic [~~weed~~] **invasive plants** control
16 areas.

17 (e) **Mandate the inspection by authorized personnel of all conveyances entering**
18 **a water body at the primary launching site for an event requiring a permit from the**
19 **department of safety under RSA 270-D:4, or the fish and game department under**
20 **RSA 211:16-b.**

21 III. After notice and opportunity for hearing and comment, the department may make
22 financial grants to lakefront associations, private businesses, citizens, and local governmental
23 agencies for the management of [~~exotic~~] aquatic [~~weeds~~] **invasive plants**. All applications for grants
24 by such groups shall be approved by the department, in consultation with the fish and game
25 department, and shall meet state rule requirements.

26 487:18 Project Prioritization. Project approval shall be based upon prioritization factors to be
27 established by rules adopted under RSA 541-A. Such rules shall give first priority for expenditure of
28 available funds to the control or eradication of new infestations of [~~exotic~~] aquatic [~~weeds~~] **invasive**
29 **plants** pursuant to RSA 487:17, II(b). Otherwise, preference shall be given to lakes that have public
30 access or that serve as a public drinking water supply. Implementation measures shall be based
31 upon an assessment of potential success, technical feasibility, practicability, and cost effectiveness.
32 Restoration and preservation projects shall include watershed management plans to control and
33 reduce incoming nutrients wherever possible through best management practices. Repeated short-
34 term solutions shall be discouraged where long-term solutions are feasible and cost effective.
35 Treatments shall be designed to minimize any adverse effect upon fish and wildlife, their habitats,
36 and the environment.

37 5 Cost Sharing. Amend RSA 487:21 to read as follows:

1 487:21 Cost Sharing.

2 I. For diagnostic and feasibility studies where the federal government has made financial
3 assistance available in the amount of 70 percent of the cost, the department may provide an amount
4 not exceeding 30 percent of the total eligible costs as determined by the department. Where no
5 federal funding is available, the department may provide an amount not exceeding 80 percent of the
6 total eligible costs.

7 II. For implementation of restoration or preservation projects where the federal government
8 has made financial assistance available in the amount of 50 percent of the costs, the department may
9 provide an amount not exceeding 35 percent of the total eligible costs, as determined by the
10 department. Where no federal funding is available, the department may provide an amount not
11 exceeding 80 percent of the total eligible costs.

12 III. For water quality maintenance programs, the department may provide an amount of
13 funding not to exceed 80 percent of the total eligible costs, as determined by the department, except
14 that for the control of new infestations of [~~exotic~~] aquatic [~~weeds~~] **invasive plants** the state may
15 assume 100 percent of the cost.

16 IV. The local cost share shall be the cost of a project remaining after taking into account any
17 state and federal funding.

18 V. An amount up to 10 percent of the total available funding may be expended on research
19 that addresses the problems of lake eutrophication and [~~exotic~~] aquatic [~~weeds~~] **invasive plants**.

20 6 Rulemaking; Lake Restoration and Preservation Fund. Amend RSA 487:24 and RSA 487:25 to
21 read as follows:

22 487:24 Rulemaking. The commissioner shall adopt rules, under RSA 541-A, relative to:

23 I. The criteria to be used in the prioritization of grants for diagnostic or feasibility studies.

24 II. The criteria used to determine the priority of implementation projects and maintenance
25 projects.

26 III. Contracting procedures with local governments or private businesses.

27 IV. Application procedures to participate in the program.

28 V. Criteria for the determination of project eligibility.

29 VI. Criteria governing the conduct of and reporting requirements on diagnostic and
30 feasibility studies, implementation projects and maintenance projects.

31 VII. Designation of plants as [~~exotic~~] aquatic [~~weeds~~] **invasive plants** as defined in
32 RSA 487:16, II.

33 VII-a. Administration and enforcement of, and exemptions to, the [~~exotic~~] aquatic [~~weed~~]
34 **invasive plants** prohibition under RSA 487:16-a.

35 VII-b. Criteria governing the emergency response protocol under RSA 487:17, II(c).

36 VII-c. Designation of restricted use [~~exotic~~] aquatic [~~weed~~] **invasive plants** control areas
37 under RSA 487:17, II(d).

HB 667-FN - AS INTRODUCED
- Page 6 -

1 VIII. Any other matters that are necessary to implement the provisions of this subdivision.
2 487:25 Lake Restoration and Preservation Fund; Addition to Boat Fee.

3 I. The fee of \$9.50 collected under the provisions of RSA 270-E:5, II(a) shall be paid to the
4 director of the division of motor vehicles. The director of the division of motor vehicles shall pay over
5 said fee to the state treasurer who shall keep the fee in a special fund to be expended by the
6 department of environmental services. The department shall use \$.50 of the fee for lake restoration
7 and preservation measures, exclusive of [~~exotic~~] aquatic [~~weed~~] **invasive plants** control, \$5 of the fee
8 for the control of [~~exotic~~] aquatic [~~weeds~~] **invasive plants**, and \$4 of the fee for the milfoil and other
9 [~~exotic~~] aquatic **invasive** plants prevention program. The department shall deposit the \$4 into a
10 special account within the lake restoration and preservation fund which shall be used to administer
11 the milfoil and other [~~exotic~~] aquatic **invasive** plants prevention program. The special fund shall be
12 nonlapsing. All funds received under this section are continually appropriated to the department for
13 the purposes of this subdivision.

14 II. The department is authorized to utilize such methods of control and to employ such
15 personnel, consultant services, and equipment as, in its judgment, will control aquatic nuisances in
16 the surface waters of the state as defined in RSA 485-A:2.

17 III. The department shall be the agency to receive and utilize federal funds, gifts, or grants
18 from any person or association, which may be made available for the purposes of this subdivision.

19 7 Effective Date. This act shall take effect 60 days after its passage.

HB 667-FN FISCAL NOTE

AN ACT relative to aquatic invasive species and authorizing a program to inspect boats for the presence of aquatic invasive species.

FISCAL IMPACT:

The Department of Environmental Services states this bill, **as introduced**, may increase state, county and local expenditures, and have an indeterminable impact on state, county and local revenue in FY 2015 and each year thereafter. The New Hampshire Municipal Association states this bill will have an indeterminable fiscal impact on local revenue and expenditures in FY 2015 and each year thereafter.

METHODOLOGY:

The Department of Environmental Services states this bill significantly amends RSA 487:15-25, the clean lakes program, by adding several new activities and programs that would require the Department to expand or develop program functions to:

- Restore, preserve, and maintain the state's water bodies (as opposed to just lakes and ponds which are currently listed in statute), which could expand program jurisdiction to coastal and marine environments;
- Regulate shipping of invasive aquatic species;
- Stop, inspect, and order the decontamination or quarantine, or both of conveyances;
- Enter into agreements with other agencies and jurisdictions to address management issues associated with interstate or intrastate waters;
- Enter into agreements with other agencies or jurisdictions to facilitate interstate or intrastate reciprocity regarding the inspection and decontamination of conveyances;
- Establish standards and procedures for inspecting conveyances for the presence of organisms and visible organic material, including the suspected presence of aquatic invasive;
- Establish standards and procedures for decontaminating conveyances and disposing of organisms and visible organic material, including suspected aquatic invasive plants removed from the conveyances; and,
- Mandate the inspection by authorized personnel of all conveyances entering a water body at the primary launching site for an event requiring a permit from the Department of Safety under RSA 270-D:4, or the Fish and Game Department under RSA 211:16-b.

The Department states the program expansions may require increases in staff, development of infrastructure, and development of partnerships with other agencies for enforcement capabilities. The Department has no data to determine any increased state, county or local expenditures that may result due to this bill or any revenue impact of this bill.

The New Hampshire Municipal Association states this bill will have an indeterminable fiscal impact on local revenue and expenditures; however the Association has no data to determine the impact of this bill. The Association states localities may be have some cost sharing associated with the any new or expanded programs but has no data to determine the impact.