

**Final Report of the
Committee to Study Temporary Seasonal Docks**

(HB 195, Chapter 161, Laws of 2017)

November 1, 2017

I. Committee Charge

The committee's charge was to explore:

- A. The impact of seasonal temporary dock regulations, and
- B. Issues surrounding:
 - i. Required setbacks, including safety concerns;
 - ii. Protecting individual property rights;
 - iii. How setbacks and permitting of seasonal docks affects state agencies involved in enforcement of regulations, and;
 - iv. The long term effect of such regulations on property owners' rights.

II. Members

Rep. John Mullen (Chair)	NH House of Representatives
Rep. John Klose	NH House of Representatives
Rep. George Sykes (resigned)	NH House of Representatives
Rep. Timothy Soucy	NH House of Representatives
Sen. William Gannon	NH Senate

III. Meetings

The first successful organizational meeting of the committee was conducted on September 14, 2017 with a quorum of four members present and a chair was chosen. Subsequently, regular meetings were conducted weekly through September and October. Attendance at each meeting was sufficient to conduct business. However, one House member had to resign due to personal commitments and another was appointed who, consequently, was only able to attend two meetings. Personnel from the Department of Environmental Services and the Department of Safety, Marine Patrol attended almost every meeting. One private citizen gave insight to the permitting process. NH Lakes Association attended every meeting and provided the lake owners point of view on the issue.

IV. Background

Temporary seasonal docks have been an evolving issue since 1978 when the state first started permitting them, with the required standards set by rule. Initially, the Special Board (related to the Water Resources Board) was given jurisdiction, which was later transferred to the Wetlands Board, and then finally to the Department of Environmental Services (DES) where it resides today. The required abutter setback distance was first set in rules at 10 feet in 1979, which was later increased to 20 feet for all docks in 1997. This distance was codified in statute by the Legislature in 1998. These property line setbacks revolved

around safety concerns by state agencies and the Legislature. During this time and up until today, regulation has increased, permits were added along with fees, and then deleted.

RSA 482-A:3, IV-a requires a 20 foot setback and at least 75 feet of frontage, plus some other minimum standards, in order to be able to install a seasonal dock easily through a simply notification process to DES. In 2016, HB 1517 was introduced to reduce the setback from 20 feet to 10 feet to allow easier installation of seasonal docks for smaller water frontage lots. DES has a process for providing relief for those property owners with smaller frontage, but accommodating a 20 foot setback is difficult on lots smaller than 50 feet. Installation on smaller lots requires the submittal of a wetlands permit application which can be cumbersome, time consuming, and expensive for some home owners. Also, documentation on permits and approvals kept by the state are not accurate or complete and difficult to obtain. Seasonal docks that were in place prior to 1978 are allowed as a pre-existing condition or "grandfathered". There is very little data on how many seasonal docks there are in the state and records for new docks is limited at best.

The main issue on seasonal docks is one of a property owner's right to have access to a water body (riparian rights) without detrimentally affecting safety, the environment, or the quality of life of neighbors. When disputes arise between neighbors, oftentimes it involves smaller frontage lots or lots confined within a cove.

V. Findings

The committee had input from DES, Marine Patrol, NH Lakes Association, and residents. The issue of temporary docks is more complex than this committee can fully explore in the couple of months afforded to this study. The range of solutions considered, for a problem that seems to spring forth from an isolated number of cases, ranged from no action (the status quo) to a complete regulatory repeal (several states have no regulations or permit process for seasonal docks, including Texas, Minnesota and Wisconsin.) The committee heard from DES on the complexity of issues surrounding seasonal docks and their relationship with permitted docks, and the need for a more in-depth study on the issue. Another solution heard was to remove state regulation of seasonal docks and pass enabling legislation to allow municipalities to manage docks through the zoning ordinance process. This, however, raises legal questions relative to private use on state property, such as to what extent is it legal to place your private dock into state owned waters without any or limited oversight?

The real problem with seasonal docks is that disputes are property rights issues being inserted into rights to use state property. DES has complained about spending a tremendous amount of resources to address a handful of complaints (5 or so) involving almost exclusively small lots. The department could not definitively put a cost on such actions. They also did not have accurate or reliable data on how many seasonal docks were actually in the state and how many were permitted. DES expressed concerns about safety of dock placement and setbacks even though this should not be their responsibility. The safety of a floating platform or a mooring is the responsibility of the Department of Safety, Marine Patrol. In that agency's view, if the structure is safe and not a navigational hazard, then you can place it in state waters for private use without any permit.

Some states, such as Minnesota and Texas, have no requirements for temporary docks. If property owners have a dispute, those states refer them to the courts.

VI. Possible Remedies

The committee struggled with being able to effectively modify the current statute at this time due to the complexity of the issue. The idea of repealing the statute or else reducing rules on permitting seemed to present new problems relative to safety, property rights, and the general use of the state-owned waterways. Some of the remedies considered included:

- Keep requirements as per existing law including permits and turn over the responsibility of managing the safe use of docks to Marine Patrol. Repeal RSA 482-A:3, IV-a and remove DES from all responsibility.
 - This would shift management of seasonal docks to another department, in particular, Marine Patrol.
- Keep current requirements, including setbacks, but make a permit voluntary for a period of 5 or 10 years and kept in a database within DES. Then the status of a dock that meets state requirements is in a database proving to future property owners that their seasonal dock is legal. No fee for the permit and voluntary only. If no such permit is submitted, then the proof of legality lies with the owner to prove his/her dock is proper. The state would have no responsibility to mediate disputes between the parties.
 - This voluntary permit may compel property owners, who can legally install their docks without a permit via a pre-existing condition, into an unnecessary permitting process in order to protect their dock rights.
- Take the management and enforcement of boat docks out of the state's realm of responsibility and provide enabling legislation that allows political subdivisions to set their own rules through the use of ordinances. This would be a down shift to municipalities, but fall under the use of personal property.
 - Some municipalities have no planning boards and are not even incorporated, thus possibly leading to disregard for other property rights.
 - Informally, the Attorney General's office saw no obvious constitutional or public trust problems with this concept, in theory. However, it cautioned that municipalities should be cognizant of and exercise any new authority within the bounds of the public trust doctrine. Also, the federal Army Corps of Engineers has delegated to the state jurisdiction over most wetlands issues through the Corp's issuance of a programmatic general permit to DES. The Legislature would need to be careful in how it delegates regulatory authority over temporary seasonal docks to municipalities so as not to jeopardize this advantageous arrangement with the federal government.
- Because the issue is complex and has over the years morphed into a maze of rules and statutes that intertwine state agencies, a commission to study the management of all docks could be formed. This study committee has not had sufficient time to

fully understand the issues and how they affect many individuals and political entities.

VII. Recommendation

It is the committee's belief that much more study is needed concerning temporary seasonal docks than could be accomplished in the limited time afforded this committee. The issue is complex and affects multiple parties. Instituting changes now without fully understanding the issue may cause more confusion and chaos. Legislative action that reduces regulation is certainly beneficial as a general principle, but not if it is done in haste without knowing all of the ramifications, especially if it inadvertently inhibits the ability of individual property owners to access public waters.

Therefore, the committee recommends that legislation be introduced to form a Dock Commission to fully study not only temporary seasonal docks, but also other docks and water-related structures, in order to come up with an effective, efficient, and fair method of regulating these structures, to the extent needed. Extensive input from stakeholders including property owners, state agencies, businesses, municipalities, environmental interests, and the public is needed and should be part of the process. The commission should have at least one year to investigate and recommend solutions and changes.