

Senate Energy and Natural Resources Committee

Philip Tatro 271-1403

HB 1103-FN, relative to revising the penalties of the shoreland protection act.

Hearing Date: April 23, 2024

Time Opened: 9:34 a.m.

Time Closed: 9:54 a.m.

Members of the Committee Present: Senators Avard, Pearl, Birdsell, Watters and Altschiller

Members of the Committee Absent : None

Bill Analysis: This bill revises the penalties of the shoreland protection act.

Sponsors:

Rep. Rung

Rep. J. MacDonald

Rep. Crawford

Rep. Coker

Rep. Tanner

Rep. Ebel

Rep. Wolf

Sen. Watters

Who supports the bill: Rep. Rosemarie Rung (Hillsborough – District 12), Andrea LaMoreaux (NH Lakes), Darlene Forst (NH Department of Environmental Services), Steve Wingate (Lakes Management Advisory Committee), Michele Tremblay (Rivers Management Advisory Committee), Mary Raven, Louise Spencer, Andrew Jones, Gary Devore, Allison Tanner, Stephanie Thornton, Janet Lucas, Lois Cote, Susan Moore, David Holt, Richard DeMark, Ruth Perencevich, and Virginia Riege-Blackman.

Who opposes the bill: Julie Smith and Curtis Howland.

Who is neutral on the bill: Bob Quinn (NH Association of Realtors)

Summary of testimony presented in support:

Rep. Rosemarie Rung

Hillsborough – District 12

- Representative Rosemarie Rung introduced herself as a representative of Hillsborough 12, representing the town of Merrimack.
- Rep. Rung explained that the bill aims to address concerns raised by many people in the lakes area regarding the enforcement of the Shoreland Protection Act by the Department of Environmental Services (DES).

- Rep. Rung shared insights gained from conversations with Mr. Diers from DES, highlighting one of the obstacles in enforcement related to current statute requirements.
- Rep. Rung noted that existing statute mandates clear damage to the public waterway and an assessment of the offender's good faith effort before DES can enforce, which can be challenging to determine.
- Rep. Rung emphasized that damage to waterways is often cumulative over time, making it difficult to attribute to a single event.
- Rep. Rung proposed striking the language requiring assessment of good faith effort and allowing a simple violation to constitute an enforcement action, which would clarify the statute and facilitate DES's ability to protect state-regulated waterways.

Darlene Forst
NH Department of Environmental Services

- Darlene Forst introduced herself as the current Wetlands Bureau Administrator at the New Hampshire Department of Environmental Services (DES), which also oversees the Shoreline Protection Program.
- Ms. Forst mentioned that written testimony has been distributed, both from the Department of Environmental Services and the New Hampshire Lakes Association.
- Ms. Forst clarified that she would only speak to the department's recommendations and summarized the key points.
- Ms. Forst highlighted changes made to the penalty paragraph of the Shoreland Protection Act around 2013, which introduced requirements to prove that damage occurred to public water and that offenders did not make a good faith effort.
- Ms. Forst pointed out the difficulty of proving good faith effort and the impracticality of attributing single violations to water quality damage in large bodies of water like Lake Winnepesaukee.
- Ms. Forst emphasized that the department's intent is not to issue fines indiscriminately, as fines go to the general fund and do not directly benefit the environment.
- Ms. Forst explained that fines serve as a tool to incentivize restoration and compliance, particularly for individuals who are uncooperative, with most fines being held in abeyance pending restoration.
- Ms. Forst stressed the importance of having such tools to ensure compliance and restoration efforts.
 - Sen. Avard inquired about the language within the amendment.
- Ms. Forst stated the language within the amendment is a result of compromise and that the department is content with the amendment.

Andrea LaMoreaux
NH Lakes

- Andrea LaMoreaux introduced herself as the President of New Hampshire Lakes, representing approximately 250 local lake associations across the state.
- Ms. LaMoreaux urged support for the bill, echoing the sentiments expressed by Representative Rung and Darlene Forst.
- Ms. LaMoreaux highlighted the discouragement felt by local lake associations when violations occur without adequate enforcement.
- Ms. LaMoreaux emphasized the efforts of volunteers in lake associations to protect shorelands and lake health, and the frustration caused by non-cooperation and violations.

Summary of testimony presented in opposition: None.

Neutral Information Presented:

Bob Quinn
NH Association of Realtors

- Mr. Quinn mentioned that the association neither supports nor opposes the legislation but supports its intent.
- Mr. Quinn requested a small tweak to the bill to restore a requirement for notification from the Department of Environmental Services (DES) to the property owner.
- Mr. Quinn noted that the amendment being circulated removes language regarding damaging public waterways and the requirement of making good faith efforts of remediation and restoration.
- Mr. Quinn explained that the amendment replaces these with a provision where if the property owner fails to restore the site to the pre-violation condition, DES has the opportunity to petition the attorney general's office for action.
- Mr. Quinn stated that the association has been in communication with DES about the bill and urged consideration of the amendment.
 - Sen. Pearl inquired if there are no other sections within the Shoreland Protection Act that address property owner notification.
- Mr. Quinn referred to Section 483-B:18 of the Shoreland Protection Act regarding penalties.
- Mr. Quinn mentioned that under this section, a petition is made to the attorney general's office, and property owners are notified during a hearing.
- Mr. Quinn proposed that the bill would provide property owners with notification prior to such hearings, giving them an opportunity to rectify violations.
- Mr. Quinn emphasized that failure to comply would still lead to a hearing where the property owner would have the opportunity to address the issue.

- Sen. Birdsell raised a concern based on the testimony provided, suggesting that if notification is indeed given are fines are held off until the property owner starts correcting the issue.
 - Sen. Birdsell questioned whether the bill, as presented, is essentially repealing what it aims to achieve.
- Mr. Quinn clarified that the bill provides an initial notification to property owners regarding a potential violation.
- Mr. Quinn emphasized that this notification requires or provides the opportunity for the property owner to restore the property to its pre-violation condition.
- Mr. Quinn explained that the second step involves scheduling a hearing to address the issue.
- Mr. Quinn acknowledged the likelihood that the Department of Environmental Services (DES) already works with property owners before issuing fines, but emphasized the importance of enshrining this process in statute.
 - Sen. Pearl raised concerns about the potential environmental impact of restoring a site to its original condition, suggesting that mitigating the issue in a different direction might be more appropriate.
- Mr. Quinn expressed uncertainty about fully answering the question.
- Mr. Quinn emphasized the intent behind the proposed legislation, which is to provide property owners with the opportunity to restore their property to its original condition.
- Mr. Quinn acknowledged that while some violations may be intentional, others may be unintentional due to property owners' lack of awareness.
- Mr. Quinn stated that their intent is to offer property owners the chance to rectify any violations and mentioned collaboration with DES on the language of the bill.

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Date Hearing Report completed: April 25, 2024