

Senate Energy and Natural Resources Committee

Nikolas Liamos 271-7875

HB 247-FN, relative to protective well radii.

Hearing Date: March 28, 2023

Time Opened: 9:16 a.m.

Time Closed: 9:40 a.m.

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

Members of the Committee Absent : None

Bill Analysis: This bill removes encroachment waivers, requires the use of a setback reduction form, and removes certain requirements for amended septic system plans.

Sponsors:

Rep. McConkey

Rep. Jonathan Smith

Rep. Avellani

Who supports the bill: Chris Albert, Natch Greyes, Phil Trowbridge, Rep. Mark McConkey (Carroll 8), Stephen Roy, Julie Smith, Walter Kirsch, Deborah Glidden, Patrick Doughty, and Jennifer Mercer

Who opposes the bill: None

Who is neutral on the bill: None

Summary of testimony presented:

Representative Mark McConkey

Carroll County 8

- Representative Mark McConkey introduced House Bill 247-FN.
- Rep. McConkey stated that he is a small business owner and a septic designer.
- Rep. McConkey stated that just below North Conway, there are a multitude of small sub-divisions with tiny lots with predated zoning and sub-division regulations.
 - Rep. McConkey noted that many of the lots are less than half an acre.
- Rep. McConkey stated that these small lots have difficulty obtaining septic designs and protective well radii.
- Rep. McConkey posed an example, if a neighbor had placed a well too close to your own property line, then you would have to negotiate with your neighbor for the right to place your own well.

- Rep. McConkey stated that last year, House Bill 1293 was brought to the Senate Energy and Natural Resources Committee, but it did not make it out of the committee.
- Rep. McConkey stated that HB 247-FN allows for New Hampshire landowners with small lots to obtain a septic system design approval without the need to negotiate with their neighbors,
 - Rep. McConkey added that, HB 247-FN also simplifies the process for well drillers who must redrill a well.
- Senator Watters noted on Page 1, Line 3 is stricken out, which stated serving a public water system.
- Senator Watters asked if there was a private well serving a public water system, would that still be regulated under HB 247-FN.
 - Rep. McConkey replied that he would have to refer to the Department of Environmental Services.
- Senator Watters asked if on Page 3, Lines 27-32 were stricken out because the rights of an owner of an abutting property to utilize their land is covered elsewhere.
 - Rep. McConkey believed that it is.
 - Rep. McConkey added that, every time that there is a septic system placed that doesn't have its entirety on the owner's lot, there is a form that must be signed and recorded in the Registry of Deeds.
- Senator Altschiller asked if Rep. McConkey could explain to her the term "depiction" used in HB 247-FN.
 - Rep. McConkey replied that it is the septic design for the property to show where the well will be located.
- Senator Altschiller asked if the narrative in the schematic form would be an alternative to the narrative description.
 - Rep. McConkey replied that he would defer to the Department of Environmental Services who worked with the Attorney General's office to craft this language.

Phil Trowbridge and Stephen Roy

Manager of Land Resource Management Programs and Drinking Water and Ground Water Division, Department of Environmental Services

- Phil Trowbridge provided background for HB 247-FN.
 - Mr. Trowbridge explained that a protected radius is the circle around the well in which water is drawn.
 - Mr. Trowbridge noted that the radius typically 75 ft.
- Mr. Trowbridge stated that HB 247-FN deals with the situation of when a well's radius extends onto another property.
- Mr. Trowbridge stated that the Department of Environmental Services collaborated with Rep. McConkey, the Water Well Board, the Water Well Contractors, and the Septic System Designers and Installers.
- Mr. Trowbridge stated that the current statute is difficult to implement and could be streamlined without increasing risks to public health or the environment.
- Mr. Trowbridge stated that he wanted to focus on three main points in his testimony.
- Mr. Trowbridge stated that it is important to understand that it has been established in statute and in case law, that a portion of a well that crosses into another person's lot is not protected.

- Mr. Trowbridge added that this cannot be a reason to stop development on the abutting lot or used to control what the other landowner does on their property.
 - Mr. Trowbridge noted that to understand this law, one would have to read between the lines of the current statute and familiarize themselves with the relevant caselaw.
 - Mr. Trowbridge concluded his point by stating that HB 247-FN seeks to create some affirmative statements so that property owners know their rights.
- Mr. Trowbridge stated that the second goal of the bill is to reduce redundant reporting requirements.
 - Mr. Trowbridge noted that, currently up to three different forms and reports need to be filled in cases when a well's radius crosses into another lot.
 - Mr. Trowbridge stated that these reports could be simplified into one report.
- Mr. Trowbridge stated that the third goal of HB 247-FN is to remove the requirement that one must obtain an amended septic plan if the well location needs to be moved.
 - Mr. Trowbridge noted that well drillers have the option to move the location of the well if they are unable to drill the well due to environmental or other factors surrounding the site.
 - Mr. Trowbridge added that the current statute states that if you move the well, then you must come back and hire a septic system designer a second time to move the location on the plan.
 - Mr. Trowbridge stated that this is unnecessary because the well has been installed safely with the special methods of construction, so this is another cost to the homeowner.
 - Mr. Trowbridge stated that they want to remove this requirement and replace it, so that a homeowner can come in and amend the plan if they have to relocate the well.
- Mr. Trowbridge reiterated that the Department of Environmental Services is supportive of HB 247-FN, and that this bill removes confusion for protections when a well radius goes off a lot, streamlines the reporting process, and eliminates the requirement of getting a septic plan amended.
 - Mr. Trowbridge added that HB 247-FN saves homeowners money.
- Senator Altschiller stated that she appreciates that there is a move to simplify the well process.
- Senator Altschiller asked for clarification on if a well crosses onto an abutters property, then if HB 247-FN states that the neighbor could not in the future claim that the septic system affects their own well.
 - Mr. Trowbridge confirmed that it does, and that courts have ruled that a neighbor cannot control what happens on their neighbor's land.
 - Mr. Trowbridge added that there used to be the expectation that if you put a well next to your property line, known as a "spite well", that you could stop development of your neighbor's property.
- Senator Altschiller asked if an established landowner does not have the right to ask a new neighbor who is building a well, to not place a well on top of the existing well.
 - Mr. Trowbridge confirmed that the landowner does not have that right, and that there is a process called an encroachment waiver.

- Mr. Trowbridge added that it is not a requirement for a neighbor to agree to an encroachment waiver because they cannot infringe on the liberties on the person developing.
- Senator Altschiller asked if HB 247-FN creates an alternative system of spite wells.
 - Mr. Trowbridge stated that he does not believe so.
- Senator Altschiller asked if HB 247-FN basically eliminates the need to negotiate with your neighbor.
 - Mr. Trowbridge confirmed that it does.
- Senator Birdsell stated that it is her understanding that HB 247-FN concerns lots that are close in proximity and basically overlap each other.
 - Mr. Trowbridge confirmed that her understanding of HB 247-FN is correct.
- Senator Watters stated that he now understands that on Page 1, Line 3, that whether a private well serves a public water system is now irrelevant in HB 247-FN.
 - Stephen Roy added that public water systems have their own specific statutes and rules governing them.
- Senator Watters asked if it's a private well serving a public water system, would it still be defined as a public water system.
 - Mr. Roy confirmed that it would.
- Senator Altschiller asked to have the term "setback reduction" explained.
 - Mr. Roy explained that rules require developers to submit a well construction record and when a plan does not meet the setbacks, then the developer has to fill out a setback reduction form and attach it to the well construction record.
 - Mr. Roy added that the well construction record is submitted to the state and entered into a searchable database.
- Mr. Roy stated that the second page of a setback reduction form allows for licensed drillers to either provide a written narrative of the plan or a sketch of the proposed plan.
 - Mr. Roy noted that many drillers prefer the sketch choice, which is why they added the "as depicted" language to HB 247-FN.
- Senator Avard asked if what would stop a neighbor from placing a well right on a property line where another well is located.
 - Mr. Roy replied that the Water Well Board states that a well can never be closer than 25ft to another well.
 - Mr. Roy noted that drillers tend to honor that rule.
 - Mr. Roy added that many towns have structural setbacks to property lines, and wells are frequently considered a structure.

Christopher Albert

Chairman of Granite State Onsite Water Association

- Christopher Albert stated HB 247-FN is long overdue.
- Mr. Albert stated that he is a licensed septic designer.
- Mr. Albert recounted a personal example of when a septic system was in the process of being installed, and it was less than 75ft from the radius, so the installer had to pick the well up and move it about 50ft.
- Mr. Albert stated that the unnecessary encroachment forms were a nuisance.
- Mr. Albert stated that HB 247-FN does not impact water quality or the environment.

NPL

Date Hearing Report completed: April 3, 2023