

HB 247-FN - AS INTRODUCED

2023 SESSION

23-0503

08/04

HOUSE BILL                    **247-FN**

AN ACT                    relative to protective well radii.

SPONSORS:            Rep. McConkey, Carr. 8; Rep. Jonathan Smith, Carr. 5; Rep. Avellani, Carr. 4

COMMITTEE:        Resources, Recreation and Development

---

ANALYSIS

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

-----

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                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty Three*

AN ACT                      relative to protective well radii.

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

1            1 Protective Well Radii. Amend RSA 485-A:30-b, I to read as follows:

2            I. All lots on which wastewater is or will be disposed on-site and all lots on which a private  
3 well ~~[serving a public water system]~~ exists or will be installed, including lots created prior to August  
4 20, 1989, shall be subject to the following conditions:

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

10            (b)(1) For any private well being installed or utilized to serve one or more new  
11 commercial buildings or a non-community public water system, the entire protective well radius  
12 shall be located on one or more of the following: on-lot, on a recorded easement, on land which is  
13 permanently dedicated to a use which precludes development, or on state or locally mandated  
14 property line setbacks.

15            (2) A private well may be installed without being located as required by  
16 subparagraph (1) only if it is needed to replace a well serving one or more existing commercial  
17 buildings or a public water system, there will be no increase in water use to a level that requires a  
18 larger protective well radius under rules adopted by the department, and the lot is not part of a  
19 larger parcel that is being subdivided. In such cases, the on-lot protective radius shall be maximized  
20 to the extent practicable and the owner of the property shall sign a ~~[standard release]~~ **setback**  
21 **reduction** form prepared by the department, upon which the actual protective radius shall be noted  
22 together with a narrative description **or depiction** of the location of the well, to acknowledge the  
23 potential loss of the protection of any portion of the radius which extends over the property line. The  
24 ~~[owner shall record the release form in the registry of deeds and]~~ **water well contractor** shall file a  
25 copy of the ~~[recorded release]~~ **setback reduction** form with the ~~[department]~~ **record of the well**  
26 **completion submitted to the department pursuant to RSA 482-B:10.**

27            (3) If a private well installed under the provisions of subparagraph (2) is not  
28 regulated as a public water supply well under RSA 485, the department ~~[shall]~~ **may** require such  
29 water quality monitoring, recordkeeping, and reporting as is needed to ensure the water is suitable  
30 for its intended uses.

**HB 247-FN - AS INTRODUCED**  
**- Page 2 -**

1           (4) For the purposes of this section, the term " commercial building " means a  
2 building that houses a commercial use but shall not include a residence which is also used for  
3 commercial purposes unless the total water withdrawal exceeds 600 gallons per day. A new  
4 commercial building means a new structure intended for commercial use, an existing residential  
5 structure being converted to commercial use, or an increase in water use at an existing commercial  
6 building to a level that requires a larger protective well radius under rules adopted by the  
7 department.

8           (c) For private wells serving buildings other than commercial buildings, if the protective  
9 well radius cannot be wholly maintained on an existing lot of record due to the size or other physical  
10 characteristics of the lot, then the on-lot protective radius shall be maximized to the extent  
11 practicable. Subject to the foregoing sentence, the protective well radius shall be maintained on one  
12 or more of the following: on-lot, on a recorded easement, on land which is permanently dedicated to a  
13 use which precludes development, or on state and locally mandated property line setbacks; **and any**  
14 **portion of the protective well radius which is not maintained on-lot, on a recorded**  
15 **easement, on land which is permanently dedicated to a use which precludes development,**  
16 **or on state and locally mandated property line setbacks shall not be considered part of the**  
17 **protective well radius.**

18           (d) Any person submitting plans and specifications for a sewage or waste disposal  
19 system for a property which is or will be served by an on-lot well, shall show the location or proposed  
20 location of the well, or a designated area within which the well will be located, on such plans and  
21 shall show the protective radius as specified in the department's rules.

22           (e) Whenever the department approves a septic plan with an on-lot well radius which is  
23 less than the optimum standard, the department shall notify the applicant of the consequences of  
24 such reduced radius and advise the applicant whether special precautions should be taken relative  
25 to well installation.

26           (f) If the well is not installed prior to the sewage or waste disposal system being  
27 constructed, then the property owner shall provide the water well contractor with a copy of the  
28 approved plan showing the location of the well, and the water well contractor shall ensure, to the  
29 best of ~~his~~ **their** ability that the well is installed in accordance with the approved plan.

30           (g) When, for reasons of the condition of the lot or the placement of buildings thereon,  
31 the well cannot be installed as shown on the approved plan **or a replacement well is necessary,**  
32 the water well contractor shall advise and consult with the property owner, or the property owner's  
33 agent, on the best possible alternative location, considering distance to property boundaries and to  
34 the sewage or waste disposal system. Using a ~~standard release~~ **setback reduction** form prepared  
35 by the department, the water well contractor shall alert the owner to the consequences of the  
36 alternate installation, including the potential loss of the protection of any portion of the radius which  
37 extends over the property line. The owner, or the owner's agent, may defer to the designer of the

sewage or waste disposal system or may allow the water well contractor to proceed in the identified alternative location. Prior to installing the well in the identified alternative location, the well contractor shall, using the ~~[standard release]~~ **setback reduction** form, obtain a written acknowledgment, from the property owner, or the owner's agent, that the consequences are understood **and file the setback reduction form with the record of the well completion submitted to the department pursuant to RSA 482-B:10.** ~~[The designer shall prepare an amended plan showing the actual location of the well. The property owner shall forward the amended plan, together with a copy of the signed release form, to the department and the local code enforcement officer or other appropriate designated local official prior to using the well. If the on-lot protective well radius is less than the optimum prescribed standard, the owner shall record the release form, upon which the actual protective radius shall be noted, together with a narrative description of the location of the well in the registry of deeds, and a copy of the recorded release form shall be filed with the department.]~~

2 Sewage and Waste Disposal Systems; Exemptions. Amend RSA 485-A:33, IV(a)(4) to read as follows:

(4) The system is located 75 feet or more from an abutter's well unless there is a standard well release form ~~[recorded with the registry of deeds in accordance with RSA 485-A:30-b]~~ **with the record of the well completion submitted to the department pursuant to RSA 482-B:10** or there is an existing department waiver to the distance for the abutter's well.

3 Rulemaking; Duties of Commissioner. Amend RSA 485-A:41, IV to read as follows:

IV. Adopt rules, pursuant to RSA 541-A and after public hearing, relative to the implementation of this subdivision. The commissioner shall adopt rules relative to the circumstances under which the commissioner may grant a waiver of any rule, except that no waivers of rules relating to site loading or set-back distances to ground or surface waters shall be allowed for sewage or waste disposal systems on lots in subdivisions created after September 1, 1989. A waiver must be consistent with the intent of this subdivision and have a just result. ~~[In particular, an encroachment waiver shall meet the following criteria:~~

~~(a) The proposed waiver shall not encroach upon the right of the owner of abutting property to fully utilize his land, unless said property owner has granted consent in the form of a signed waiver or deeded easement; and~~

~~(b) Denial of the waiver would result in unnecessary hardship to the owner due to special characteristics of the property.]~~

4 Repeal. The following are repealed:

I. RSA 485-A:2, III-a, relative to the definition of encroachment waiver.

II. RSA 485-A:30-a, relative to notice requirements and encroachment waivers relative to sewage and waste disposal systems.

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

**HB 247-FN- FISCAL NOTE  
AS INTRODUCED**

AN ACT relative to protective well radii.

**FISCAL IMPACT:**    ☐ State            ☒ County            ☐ Local            ☐ None

COUNTY:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
<b>Revenue</b>	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
<b>Expenditures</b>	\$0	\$0	\$0	\$0

**METHODOLOGY:**

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

The Department of Environmental Services assumes the intent of this bill is to remove confusion about the protections that are afforded private drinking water wells when the protective radius around the well extends off the well owner's lot. It also clarifies and streamlines the process well drillers, septic system designers, and the homeowner need to follow to record situations when the protective well radius extends off the lot and when the well cannot be drilled at the location shown on the plans. The bill would remove the requirement that certain documents be recorded with county Registry of Deeds. Since counties charge a fee for recording documents, this change could decrease county revenues. There is no way of knowing how many records would be affected. It is assumed the number of records affected would be negligible when compared to the total number of records filed with the county registries.

It is assumed that any fiscal impact would occur after FY 2023.

**AGENCIES CONTACTED:**

Department of Environmental Services