

Bill as Introduced

HB 1266 - AS INTRODUCED

2010 SESSION

10-2478

06/09

HOUSE BILL **1266**

AN ACT relative to notification requirements for lowering the water level of a lake or pond.

SPONSORS: Rep. Kappler, Rock 2; Rep. Mack, Hills 1; Rep. Hatch, Coos 3

COMMITTEE: Resources, Recreation and Development

ANALYSIS

This bill adds an exception to the notification requirements for lowering the water level of a lake or pond.

This bill is a request of the department of environmental services.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to notification requirements for lowering the water level of a lake or pond.

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

1 1 Public Informational Meeting Required. Amend RSA 482:13, I to read as follows:

2 I. No owner shall breach any dam, lower any water body for the repair of any dam, or cause
3 any significant lowering of the water level in a pond or lake without first notifying the local
4 governing body in the cities or towns where said dam or water body is located at least 30 days prior
5 to any action specified above. The provisions of this section shall not apply to dams impounding
6 bodies of water less than 10 acres or to the normal scheduled lowering of water levels each fall, the
7 normal lowering of a water body by the exercise of water rights, ***the lowering of water levels by***
8 ***the department of environmental services to protect instream flows under RSA 483:9-c***, or
9 the lowering of water levels in any emergency situation.

10 2 Effective Date. This act shall take effect 60 days after its passage.

CHAPTER 128
HB 1266 - FINAL VERSION

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HB 1266 – FINAL VERSION

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10 128:2 Effective Date. This act shall take effect 60 days after its passage.

11 Approved: June 9, 2010

12 Effective Date: August 8, 2010

Committee Minutes

SENATE CALENDAR NOTICE
ENERGY, ENVIRONMENT AND ECONOMIC DEVELOPMENT

Senator Martha Fuller Clark Chairman ✓
Senator Amanda Merrill V Chairman ✓
Senator Jacalyn Cilley
Senator Bette Lasky ✓
Senator Bob Odell ✓
Senator Jeb Bradley ✓

For Use by Senate Clerk's Office ONLY	
<input type="checkbox"/>	Bill Status
<input type="checkbox"/>	Docket
<input type="checkbox"/>	Calendar
Proof: <input type="checkbox"/>	Calendar <input type="checkbox"/>
	Bill Status

Date: April 8, 2010

8:37
open

8:45
close

HEARINGS

Thursday

4/22/2010

ENERGY, ENVIRONMENT AND ECONOMIC DEVELOPMENT LOB 102 8:30 AM

(Name of Committee) (Place) (Time)

EXECUTIVE SESSION MAY FOLLOW

8:30 AM	HB1266	relative to notification requirements for lowering the water level of a lake or pond.
8:50 AM	HB1322	(New Title) establishing the legislative committee on the maintenance of state-owned dams.
9:10 AM	HB1450	relative to the designation of a portion of the Cocheco River as a protected river.
9:30 AM	HB1239	(New Title) relative to processing certain environmental permits and administrative fines for violations of dredge and fill requirements.
9:50 AM	HB1462	(New Title) establishing a shoreland advisory committee.

Sponsors:

HB1266 Rep. L. Mike Kappler	Rep. Ron Mack	Rep. William Hatch
HB1322 Rep. William Hatch	Rep. Susan Almy	Rep. Ron Mack
HB1450 Rep. L. Mike Kappler	Rep. Peter Schmidt	Rep. Sandra Keans
HB1239 Rep. Suzanne Gottling	Rep. Tara Sad	
HB1462 Rep. Nancy Stiles Sen. Martha Fuller Clark	Rep. David Borden Sen. Jeb Bradley	Rep. Laurie Boyce Sen. Margaret Hassan Rep. James O'Neil Sen. Bob Odell

Energy, Environment and Economic Development Committee

Hearing Report

TO: Members of the Senate

FROM: Michael Rollo, *Legislative Aide*

RE: Hearing report on **HB 1266** -An act relative to notification requirements for lowering the water level of a lake or pond.

HEARING DATE: April 22, 2010

MEMBERS OF THE COMMITTEE PRESENT: Senators Fuller Clark, Merrill, Lasky, Odell, and Bradley.

MEMBERS OF THE COMMITTEE ABSENT: Senator Cilley.

Sponsor(s): Rep. Kappler, Rock 2; Rep. Mack, Hills 1; Rep. Hatch, Coos 3

What the bill does: This bill adds an exception to the notification requirements for lowering the water level of a lake or pond.

This bill is a request of the department of environmental services.

Who supports the bill: Rep. Kappler, Rock. 2, Rep. Mack, Hills. 1, Laura Weit-Marcum, DES

Who opposes the bill: None

Neutral position: None.

Summary of testimony received:

Rep. Kappler, Rock. 2- Prime Sponsor of HB 1266.

- Hearing called to order at 8:30am
- HB 1266 is at the request of the Department of Environmental Services.
- HB 1266 adds an exemption to RSA 482:13 to the requirement for advance public notice for lowering of water level in a pond or lake , if in accordance with the Water Management Plan under the Instream Flow program.

- This change will facilitate the development of the Water Management Plan adopted for the Lamprey River pilot program, as well as subsequent Water Management Plans.

Laura Weit-Marcum, Department of Environmental Services

- In support.
- This change will protect instream flows under the Rivers Management and Protection Act by allowing DES to forgo the notification process to protect water levels. This proposal would allow the release of stored water by dam owners in accordance with Water Management Plans prepared for the watershed and approved by DES.
- Sen. Merrill asked if these changes would be applied in emergency situations. Ms. Weit-Marcum replied that they would and would follow the plans and or criteria being developed.

Hearing was closed at 8:40am.

Funding: *Not applicable.*

Future Action: Senator Merrill moved Ought to Pass on HB 1266. Seconded by Senator Lasky. Motion carried by a vote of 5-0. Senator Merrill for the committee.

MSR

File: HB 1266

Date: April 22, 2010

Date: April 22, 2010
Time: 8:37 a.m.
Room: LOB Room 102

The Senate Committee on Energy, Environment and Economic Development held a hearing on the following:

House Bill 1266 relative to notification requirements for lowering the water level of a lake or pond.

Members of Committee present: Senator Fuller Clark
 Senator Merrill
 Senator Lasky
 Senator Odell
 Senator Bradley

The Chair, Senator Martha Fuller Clark, opened the hearing on House Bill 1266 and invited the prime sponsor, Representative L. Mike Kappler, to introduce the legislation.

Representative L. Mike Kappler: Good morning, Senators. This is a simple bill. Several years ago, or several terms ago now, we put a bill in that put the instream flow program into statute. And what this bill here simply does is add ... At times, they lower the water in that program at the dams, and this simply adds that to an exemption where you can ... where DES can do it without having a public hearing on it. It's just something that was omitted in the statute when they originally put it into effect.

Please Attachment #1 - Representative Kappler's typewritten testimony.

Senator Martha Fuller Clark, D. 24: And from what I can tell, there was no amendment in the House to this bill?

Representative Kappler: No, there was no amendment in the House.

Senator Martha Fuller Clark, D. 24: It was just ... went through?

Representative Kappler: Yes.

Senator Martha Fuller Clark, D. 24: Sounds like, as you said, pretty straightforward.

Representative Kappler: Yeah.

Senator Martha Fuller Clark, D. 24: Are there questions for Representative Kappler?

Senator Amanda Merrill, D. 21: Thank you, Madam Chair.

Senator Martha Fuller Clark, D. 24: Yes.

Senator Amanda Merrill, D. 21: Good morning, Representative. The blurb from the House refers to allowing the withdrawals or releases when there's a water emergency. Is that...?

Representative Kappler: Right. As the water ... As the river goes down, they either need to release it to keep the flow going downstream, so they release some of the water from behind the dam to keep the water level up downstream of it.

Senator Amanda Merrill, D. 21: Okay. And that's ... Follow up?

Senator Martha Fuller Clark, D. 24: Yes, certainly.

Senator Amanda Merrill, D. 21: And so, that's what's referred to in 483:9-C...?

Representative Kappler: Right.

Senator Amanda Merrill, D. 21: ...which is...

Representative Kappler: The actual...

Senator Amanda Merrill, D. 21: ...a more general...

Representative Kappler: Right. The actual...

Senator Amanda Merrill, D. 21: ...part of the law.

Representative Kappler: ...addition of it is in 482:13 is where the sentence is. It's just a simple sentence put into that paragraph. 482:13 says, "The lowering of the water levels by DES to protect the instream flows..."

Senator Amanda Merrill, D, 21: Right, but...

Representative Kappler: "...under RSA 483:9."

Senator Amanda Merrill, D, 21: Right.

Representative Kappler: The two RSAs kind of intermingle.

Senator Martha Fuller Clark, D, 24: Any additional questions?

Senator Amanda Merrill, D, 21: No, thank you.

Senator Martha Fuller Clark, D, 24: Thank you. Any additional questions? Thank you very, very much. And I have no one else signed up to speak on this bill. I do have Ron Mack, Representative from Hillsborough; and Laura Wits Moorcam?

Laura Weit-Marcum, New Hampshire Department of Environmental Services: (Speaking from the back of the room) Weit-Marcum.

Senator Martha Fuller Clark, D, 24: Marcum. Thank you. From DES, signed up in support of this bill. Is there anyone else who would like to speak to this bill, who would like to sign up? Yes, if you would like to speak, that would be terrific.

Ms. Weit-Marcum: Thank you, Madam Chair and members of the Committee. My name's Laura Weit-Marcum. I'm the acting Rivers Coordinator at the Department of Environmental Services. I'm here today to speak on behalf of the Department in support of House Bill 1266, which would add an exemption to the notification requirements for lowering the water level of the lake or pond if necessary to protect instream flows under the Rivers Management and Protection Program.

RSA 483:9-C of the Rivers Management Protection Program requires the Department of DES to establish and enforce protected instream flows on designated rivers. We have two pilot projects currently on the Souhegan and the Lamprey Rivers, and those are both nearing completion. Those manage ... And we're in the process of developing management plans to implement those instream flows. So, this bill would just make the necessary changes to RSA to allow us to lower those water levels in accordance with those management plans that are being developed.

I have copies of the letter of testimony.

Senator Martha Fuller Clark, D. 24: Terrific.

Ms. Weit-Marcum: If I could drop those off? The original's on top, and then there's copies underneath. And I'd be happy to answer any questions.

Please see Attachment #2 - Letter from Department of Environmental Services.

Senator Amanda Merrill, D. 21: Can I...?

Senator Martha Fuller Clark, D. 24: Yes, go ahead.

Senator Amanda Merrill, D. 21: Thank you, Madam Chair. Thanks for coming. So, would you agree that the term "emergency" is applicable here; that it's just in emergencies that this would kick in?

Ms. Weit-Marcum: Well, it's in accordance with the management plans that will be developed. So, once the development of the management plans are developed, they'll have, like, criteria set forth in them. So, if the water level drops to a certain extent and something needs to happen, in accordance with those plans, then those water levels can be dropped; so, yes, in the case of an emergency situation.

Senator Martha Fuller Clark, D. 24: I wanted to ask you here. Already in statute, it says are the lowering of water levels in any emergency situation. So, it would be my understanding that what this is actually saying is that this would be in conjunction with the plans that are being put forward, which is a different review standard than for lowering in an emergency. Is that correct?

Ms. Weit-Marcum: Correct. Yes.

Senator Martha Fuller Clark, D. 24: So, does that make it clear?

Senator Amanda Merrill, D. 21: Yeah.

Senator Martha Fuller Clark, D. 24: Okay.

Senator Amanda Merrill, D. 21: It seems like it's broader than just...

Senator Martha Fuller Clark, D. 24: Right, than just an...

Senator Amanda Merrill, D. 21: ...a real emergency.

MK

Senator Martha Fuller Clark, D. 24: ...emergency.

Ms. Weit-Marcum: Right, right.

Senator Martha Fuller Clark, D. 24: It really, I think, is to be in accordance with the plans that are being created.

Senator Bob Odell, D. 8: On two rivers.

Senator Martha Fuller Clark, D. 24: On two rivers.

Ms. Weit-Marcum: Well, the two rivers are pilot...

Senator Bob Odell, D. 8: Right.

Ms. Weit-Marcum: ...projects right now. So, those management plans are being developed for those two rivers. And then, we have sixteen designated rivers total across the state. So, once those pilot programs are wrapped up, then we'll be applying instream flows on the rest of those rivers.

Senator Martha Fuller Clark, D. 24: So, this has immediate implications for those two rivers but will, once this bill is signed and passed into law - as other management plans are developed - this legislation would apply to them.

Ms. Weit-Marcum: Correct.

Senator Martha Fuller Clark, D. 24: Okay. Any additional questions? Thank you very much.

Ms. Weit-Marcum: Welcome.

Senator Martha Fuller Clark, D. 24: Thank you for your testimony. And is there anyone else here who would like to speak to this bill or sign up in support or in opposition? Seeing none, I'll close.

Respectfully submitted,



Marty Cote
Senate Secretary
9/13/10

2 Attachments

**New Hampshire State Representative
Resources, Recreation, & Development Committee
L. Mike Kappler**

April 22, 2010

Good Morning Senators,

I agreed to sponsor HB-1266 as it would simply add an exemption to the requirement for advance public notice for lowering of the water level in a pond or lake, if the lowering is in accordance with a Water Management Plan adopted by DES under the Instream Flow Program. This will facilitate the development of the Water Management Plan for the Lamprey River under the current pilot program, as well as subsequent Water Management Plans.

The bill was asked for by the NH DES Water Division and the Rivers Coordinator, and being on the Instream Flow Commission, I understand it's a worthy need.

Please vote HB-1266 as OTP, and send it to the full Senate for passage.

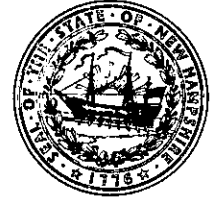
Thank you.


State Rep. L. Mike Kappler



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

Attachment #2



Thomas S. Burack, Commissioner

April 22, 2010

The Honorable Martha Fuller Clark, Chairman
Energy, Environment and Economic Development Committee
Legislative Office Building, Room 102
Concord, NH 03301

Re: HB 1266, an act relative to notification requirements for lowering the water level of a lake or pond

Dear Chairman Fuller Clark:

Thank you for the opportunity to comment on HB 1266 which would add an exception to the notification requirements for lowering the water level of a lake or pond, if necessary to protect instream flows under the Rivers Management and Protection Act (RMPP). This bill was requested by the Department of Environmental Services (DES).

RSA 483:9-c of the RMPP requires the Commissioner of DES to establish and enforce protected instream flows on designated rivers. Two pilot projects, on the Souhegan and Lamprey Rivers, are nearing completion. There are two management mechanisms that may be used to attain protected instream flows, once such protected flows have been established by the Commissioner. One is cessation of withdrawals by water users, and the other is release of stored water by dam owners. The proposed legislation would allow the release of stored water by dam owners in accordance with a Water Management Plan prepared for the watershed, and adopted by DES. This legislative change is needed in order to effectively implement instream flow protection as directed by the RMPP.

Thank you for the opportunity to comment on this bill. Please feel free to call me at 271-2958, or Paul Currier at 271-3289, if you have any questions or need additional information.

Very truly yours,

Michael Wallis, Ass't. Comm.
for Thomas S. Burack
Commissioner

cc: Representatives Kappler, Mack and Hatch

Speakers

Voting Sheets

Senate Energy, Environment & Economic Development Committee EXECUTIVE SESSION

Bill # HB 1216

Hearing date: April 22, 2010

Executive session date: April 22, 2010

Motion of: OTP

VOTE: S-O

<u>Made by</u>	Fuller Clark <input type="checkbox"/>	<u>Seconded</u>	Fuller Clark <input type="checkbox"/>	<u>Reported</u>	Fuller Clark <input type="checkbox"/>
<u>Senator:</u>	Merrill <input checked="" type="checkbox"/>	<u>by Senator:</u>	Merrill <input type="checkbox"/>	<u>by Senator:</u>	Merrill <input checked="" type="checkbox"/>
	Lasky <input type="checkbox"/>		Lasky <input checked="" type="checkbox"/>		Lasky <input type="checkbox"/>
	Cilley <input type="checkbox"/>		Cilley <input type="checkbox"/>		Cilley <input type="checkbox"/>
	Odell <input type="checkbox"/>		Odell <input type="checkbox"/>		Odell <input type="checkbox"/>
	Bradley <input type="checkbox"/>		Bradley <input type="checkbox"/>		Bradley <input type="checkbox"/>

<u>Committee Member</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Reported out by</u>
Senator Fuller Clark, Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Merrill, Vice-Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Lasky	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Cilley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Odell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Bradley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Amendments: _____

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Date: April 22, 2010

THE COMMITTEE ON Energy, Environment and Economic Development
to which was referred House Bill 1266

AN ACT relative to notification requirements for lowering the
water level of a lake or pond.

Having considered the same, the committee recommends that the Bill:

OUGHT TO PASS

BY A VOTE OF: 5-0

AMENDMENT # s

Senator Amanda Merrill
For the Committee

Marty Cote 271-3045

New Hampshire General Court - Bill Status System

Docket of HB1266

Docket Abbreviations

Bill Title: relative to notification requirements for lowering the water level of a lake or pond.*Official Docket of HB1266:*

Date	Body	Description
12/10/2009	H	Introduced 1/6/2010 and Referred to Resources, Recreation and Development; HJ 6 , PG.234
02/02/2010	H	Public Hearing: 2/9/2010 12:30 PM LOB 305
02/03/2010	H	Executive Session: 2/11/2010 9:30 AM LOB 305
02/11/2010	H	Committee Report: Ought to Pass for Mar 3 CC (Vote 17-0); HC 17 , PG.812
03/03/2010	H	Ought to Pass: MA VV; HJ 20 , PG.1156
03/24/2010	S	Introduced and Referred to Energy, Environment and Economic Development; SJ 11 , Pg.261
04/09/2010	S	Hearing: April 22, 2010, Room 102, LOB, 8:30 a.m.; SC15
04/22/2010	S	Committee Report: Ought to Pass 4/28/10; SC17
04/28/2010	S	Ought to Pass, MA, VV; OT3rdg; SJ 16 , Pg.346
04/28/2010	S	Passed by Third Reading Resolution; SJ 16 , Pg.353
05/12/2010	H	Enrolled; HJ 41 , PG.2097
05/12/2010	S	Enrolled; SJ 18 , Pg.504
06/15/2010	H	Signed by the Governor 06/09/2010; Effective 08/08/2010; Chapter 0128

NH House

NH Senate

Contact Us

New Hampshire General Court Information Systems
 107 North Main Street - State House Room 31, Concord NH 03301

Other Referrals

COMMITTEE REPORT FILE INVENTORY

HB 1266 ORIGINAL REFERRAL

RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE SECRETARY AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

X DOCKET (Submit only the latest docket found in Bill Status)

X COMMITTEE REPORT

X CALENDAR NOTICE on which you have taken attendance

X HEARING REPORT (written summary of hearing testimony)

X HEARING TRANSCRIPT (verbatim transcript of hearing)

List attachments (testimony and submissions which are part of the transcript) by number [1 thru 4 or 1, 2, 3, 4] here: Attachments 1-2

X SIGN-UP SHEET

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

____ - AMENDMENT # _____ - AMENDMENT # _____
____ - AMENDMENT # _____ - AMENDMENT # _____

ALL AVAILABLE VERSIONS OF THE BILL:

X AS INTRODUCED _____ AS AMENDED BY THE HOUSE
X FINAL VERSION _____ AS AMENDED BY THE SENATE

____ PREPARED TESTIMONY AND OTHER SUBMISSIONS (Which are not part of the transcript)

List by letter [a thru g or a, b, c, d] here: _____

X EXECUTIVE SESSION REPORT

____ OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):

IF YOU HAVE A RE-REFERRED BILL, YOU ARE GOING TO MAKE UP A DUPLICATE FILE FOLDER

DATE DELIVERED TO SENATE CLERK

9/14/10

Mandy Cole
COMMITTEE SECRETARY