

Bill as Introduced

SB 84-FN - AS INTRODUCED

2011 SESSION

11-0933
06/04

SENATE BILL

84-FN

AN ACT

relative to state regulation of the septic system installation process.

SPONSORS:

Sen. Groen, Dist 6; Sen. Sanborn, Dist 7; Sen. Lambert, Dist 13; Sen. Forsythe, Dist 4; Sen. Barnes, Jr., Dist 17; Sen. Carson, Dist 14

COMMITTEE:

Energy and Natural Resources

ANALYSIS

This bill transfers the authority to approve septic system design and installations from the department of environmental services to municipalities.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to state regulation of the septic system installation process.

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

1 1 New Subdivision; Plumbing Inspectors. Amend RSA 41 by inserting after section 46-a the
2 following new subdivision:

3 Plumbing Inspectors

4 41:46-b Plumbing Inspectors; Appointment. The governing body of each municipality shall
5 appoint one or more plumbing inspectors who need not be residents of the municipality for which
6 they are appointed. The governing body shall notify the department of environmental services of the
7 appointment of a plumbing inspector in writing within 30 days of the appointment. Compensation of
8 plumbing inspectors shall be determined by the governing body and paid by the municipality.

9 2 New Section; Sewage Disposal Systems; Definitions. Amend RSA 485-A by inserting after
10 section 29 the following new section:

11 485-A:29-a Definitions. In this subdivision:

12 I. "Major system" means a sewage disposal system that uses 2,500 gallons or more of water
13 per day.

14 II. "Minor system" means a sewage disposal system that uses less than 2,500 gallons of
15 water per day.

16 3 Sewage Disposal Systems; Submission and Approval of Plans and Specifications. Amend
17 RSA 485-A:29 to read as follows:

18 485-A:29 Submission and Approval of Plans and Specifications.

19 I. Any person proposing [either] to subdivide land, except as provided in RSA 485-A:33, [or
20 ~~to construct a sewage or waste disposal system,~~] shall submit 2 copies of such locally approved plans
21 as are required by the local planning board or other local body having authority for the approval of
22 any such subdivision of land, which is subject to department approval, [and 2 copies of plans and
23 ~~specifications for any sewage or waste disposal systems which will be constructed on any subdivision~~
24 ~~or lot~~] for approval in accordance with the requirements of the department as provided in this
25 paragraph. In the event that such subdivision plans which receive final local approval differ from
26 the plans which are reviewed by the department, the person proposing the subdivision shall
27 resubmit those plans to the department for re-approval. The planning board or other local body
28 having final local approval authority shall submit one copy of such plans which receive final local
29 approval to the department for informational purposes within 30 days of granting such final
30 approval. The department shall adopt rules, pursuant to RSA 541-A, relative to the submission of
31 plans and specifications as necessary to effect the purposes of this subdivision. The rules shall

1 specify when and where the plans and specifications are to be submitted, what details, data, and
2 information are to be contained in the plans and specifications, including the location of known
3 burial sites or cemeteries within or adjacent to the property on which the proposed sewage or waste
4 disposal system is to be located, what tests are to be required, what standards, guidelines,
5 procedures, and criteria are to be applied and followed in constructing any sewage or waste disposal
6 system, and other related matters. The rules shall also establish the methodology and review
7 process for approval of innovative/alternative wastewater treatment systems and for approval of a
8 plan for operation, maintenance, and financial responsibility for such operations. For any part or
9 parts of the subdivisions where construction or waste disposal is not contemplated, only the lot lines,
10 property boundaries drawn to scale, and general soil and related data shall be required. The
11 constructed sewage or waste disposal systems shall be in strict accordance with approved plans, and
12 the facilities shall not be covered or placed in operation without final inspection and approval by an
13 authorized agent of the department *in the case of a major system, or by the plumbing inspector*
14 *of the municipality where the system is located in the case of a minor system.* All inspections
15 by the department shall be accomplished within 7 business days *and all inspections by the*
16 *plumbing inspector shall be accomplished within 24 hours* after receipt of written notification
17 from the builder that the system is ready for inspection. Plans and specifications need not be
18 submitted for subdivision approval for subdivisions consisting of the division of a tract or parcel of
19 land exclusively in lots of 5 or more acres in area. The presence of hydric soils on lots of 5 or more
20 acres in area shall be insufficient, without additional supporting data, to classify these lots as
21 wetlands, or to make such lots unsuitable for sewage or waste disposal systems designed for poorly
22 drained soils. This exemption in no way relieves any person from responsibility for obtaining
23 approval under this chapter for construction of individual or other sewage or waste disposal systems
24 or both in any exempted lots. In such cases, it shall be the responsibility of the subdivider to provide
25 to the lot purchasers satisfactory assurance as the purchasers may require at the time of sale that
26 lots sold shall be adequate to support individual sewage or waste disposal systems or both in
27 accordance with rules adopted by the department and the requirements of this subdivision.

28 *I-a Any person proposing to construct a minor sewage or waste disposal system*
29 *shall submit a design request to a permitted septic system designer who meets the*
30 *requirements of RSA 485-A:35. The plans and specifications of any sewage or waste*
31 *disposal system designed by a permitted designer shall be deemed to be approved by the*
32 *department. The department shall adopt rules, pursuant to RSA 541-A, relative to the*
33 *training of permitted designers, and plans and specifications necessary to effect the*
34 *purposes of this subdivision. The rules shall specify what details, data, and information*
35 *are to be contained in the plans and specifications, including the location of known burial*
36 *sites or cemeteries within or adjacent to the property on which the proposed sewage or*
37 *waste disposal system is to be located, what tests are to be required, what standards,*

1 *guidelines, procedures, and criteria are to be applied and followed in constructing any*
2 *sewage or waste disposal system, and other related matters. The constructed sewage or*
3 *waste disposal systems shall be in strict accordance with approved plans, and the facilities*
4 *shall not be covered or placed in operation without final inspection and approval by the*
5 *plumbing inspector of the municipality where the system is located. All inspections of the*
6 *installation shall be accomplished by the plumbing inspector within 24 hours after receipt*
7 *of written notification from the builder that the system is ready for inspection.*

8 II. Permitted designers of subsurface sewage disposal systems shall obtain *and include on*
9 *the plans* the registry of deeds volume and page numbers for each lot that relates to the septic
10 system application [~~and provide them to the department~~]. The department shall develop and
11 approve an outline of brief instructions for the periodic maintenance, care, and proper usage of waste
12 disposal systems, including a warning of the potential public health hazard and pollution of public
13 and private water supplies and surface water of the state from improperly maintained sewage and
14 waste disposal systems.

15 III. [~~The department shall not approve any~~] *No* plan which will cause a violation of the
16 setback requirements in RSA 289:3, III *shall be approved.*

17 4 Fees. Amend RSA 485-A:30 to read as follows:

18 I. Any person submitting plans and specifications for a subdivision of land shall pay to the
19 department a fee of \$300 per lot. Said fee shall be for reviewing such plans and specifications and
20 making site inspections. Any person submitting plans and specifications for *major* sewage or waste
21 disposal systems shall pay to the department a fee of \$290 for each system. Said fee shall be for
22 reviewing such plans and specifications, making site inspections, the administration of sludge and
23 septage management programs, and for establishing a system for electronic permitting for waste disposal
24 systems, subdivision plans, and for permits and approvals under the department's land regulation
25 authority. The fees required by this paragraph shall be paid at the time said plans and specifications are
26 submitted and shall be deposited in the subsurface systems fund established in paragraph I-b. For the
27 purposes of this paragraph, the term "lot" shall not include tent sites or travel trailer sites in recreational
28 parks which are operated on a seasonal basis for not more than 9 months per year.

29 I-a. In addition to fees required under paragraph:

30 (a) Any person [~~submitting~~] *requesting* plans and specifications for *major* sewage or
31 waste disposal systems shall pay to the department a fee of \$10 for each system for use in the
32 septage handling and treatment facilities grant program to municipalities under RSA 486:3, III.
33 Until July 1, 2010, the fees required by this paragraph shall be paid at the time said plans and
34 specifications are [~~submitted~~] *requested* and shall be deposited in the subsurface systems fund
35 established in paragraph I-b. After July 1, 2010, the fees required by this paragraph shall be paid at
36 the time said plans and specifications are [~~submitted~~] *requested* and shall be deposited in the
37 septage management fund established in paragraph I-c.

1 **(b) Any person requesting final inspection and approval by the plumbing**
2 **inspector of a minor sewage or waste disposal system shall pay \$100 to the municipality,**
3 **\$25 of which shall be transferred to the department.**

4 I-b. There is hereby established the subsurface systems fund into which the fees collected
5 under paragraph I shall be deposited. The fund shall be a separate, nonlapsing fund, continually
6 appropriated to the department for the purpose of paying all costs and salaries associated with the
7 subsurface systems program.

8 I-c. There is hereby established the septage management fund into which the fees [collected]
9 **received by the state** under paragraph I-a shall be deposited. The fund shall be a separate,
10 nonlapsing fund, continually appropriated to the department for the purpose of paying costs
11 associated with the septage handling and treatment facilities grant program or for research,
12 engineering analysis, or septage sampling and analysis by the department to advance septage
13 management in the state of New Hampshire.

14 II. [Repealed].

15 III. Any person submitting plans and specifications as a resubmission for reapproval of such
16 shall not be required to pay any additional fee under RSA 485-A:30, I or I-a if changes to such plans
17 and specifications would not constitute a new subdivision under the provisions of RSA 485-A:2, XIII.

18 5 Notice Requirements; Encroachment Waivers. Amend RSA 485-A:30-a to read as follows:

19 485-A:30-a Notice Requirements; Encroachment Waivers.

20 I.(a) Any person [~~intending to submit an application for approval of a sewage or waste~~
21 ~~disposal system, which application will include a request for an encroachment waiver,] **who**
22 **requires an encroachment waiver for a sewage or waste disposal system** shall notify the local
23 code enforcement officer or other appropriate designated authority and all abutters as defined in
24 RSA 672:3 that the person intends to file the application. Such notification shall include:~~

25 (1) The name and address of the property owner.

26 (2) Identification of the property for which an encroachment waiver is being
27 requested, including tax map and lot numbers.

28 (3) Names of abutters, together with applicable tax map and lot numbers.

29 (4) A description of the specific waivers being requested.

30 (5) A reasonable facsimile of the plan.

31 (6) Identification of any local code or ordinance for which a waiver, variance or
32 exception is required, and whether such waiver, variance or exception has been obtained.

33 (7) Notice that the department is required by law to act on the application within 15
34 working days of receipt of the application, and that objections to the proposed encroachment waiver
35 may be submitted to the department during the review process or by filing a motion for
36 reconsideration of the decision with the department within 20 days of the department's decision on
37 the application.

1 (b) Encroachment waiver requests shall appear on the plans. No ~~[application]~~ *plan*
2 which includes any request for an encroachment waiver shall be accepted by the department *in the*
3 *case of a major system or by the plumbing inspector in the case of a minor system* unless the
4 ~~[application]~~ *plan* includes a copy of the notice, a list of the names and addresses of the abutters to
5 whom the notice was mailed, and a statement signed by the applicant or property owner certifying
6 that the notices were sent by certified mail to the abutters listed.

7 II. No construction permit shall be issued for a septic system until the department has
8 received a copy of the recorded notice showing that all easements and encroachment waivers
9 associated with the application have been recorded by the property owner in the registry of deeds.

10 6 Protective Well Radii. Amend RSA 485-A:30-b, I(d) and (e) to read as follows:

11 (d) Any ~~[person submitting plans and specifications for]~~ *permitted designer who*
12 *designs* a sewage or waste disposal system for a property which is or will be served by an on-lot
13 well, shall show the location or proposed location of the well, or a designated area within which the
14 well will be located, on such plans and shall show the protective radius as specified in the
15 department's rules.

16 (e) Whenever the department approves *a septic plan, or a permitted designer*
17 *designs* a septic plan with an on-lot well radius which is less than the optimum standard, the
18 department *or such designer* shall notify the applicant of the consequences of such reduced radius
19 and advise the applicant whether special precautions should be taken relative to well installation.

20 7 Action on Applications. Amend RSA 485-A:31, I to read as follows:

21 485-A:31 Action on Applications.

22 I. Subject to paragraphs II and III, the department shall give notice in writing to the person
23 submitting the plans and specifications for subdivision of land of its approval or disapproval of such
24 plans and specifications within 30 days of the date such plans and specifications and the required
25 fees are received by the department and shall give notice in writing to the person submitting plans
26 and specifications for *major* sewage or waste disposal systems of its approval or disapproval of such
27 plans and specifications within 15 working days of the date such plans and specifications and the
28 required fees are received by the department. Unless such written disapproval shall be mailed to the
29 person submitting plans and specifications within 30 days in the case of plans and specifications for
30 subdivision of land and 15 working days in the case of plans and specifications for *major* sewage or
31 waste disposal systems from the date of receipt with the required fees by the department, the plans
32 and specifications shall be deemed to have been approved. The department shall send a copy of the
33 approval or disapproval of such plans and specifications to the planning board or board of selectmen
34 of the affected municipality.

35 8 Prior Approval; Permits. Amend RSA 485-A:32 to read as follows:

36 I. No person shall construct any building from which sewage or other wastes will discharge
37 or construct a sewage or waste disposal system without prior approval of the plans and specifications

1 of the sewage or waste disposal system by the department *in the case of major systems, or the*
2 *plumbing inspector of the affected municipality in the case of minor systems.* Nothing
3 herein shall be construed to modify or lessen the powers conferred upon local authorities by other
4 statutes; provided, however, that in all instances the requirements contained in this chapter shall be
5 considered as minimum.

6 II. Any person submitting an application and plans for construction approval *to the*
7 *department* shall also certify in writing that he *or she* has complied with all local government
8 requirements as relate to water supply and sewage disposal which must be complied with prior to
9 application to the department of environmental services in those municipalities where regulations
10 require prior local approval; and, at the same time, a copy of the certification shall be sent to the
11 board of selectmen of the town or the city council of the city.

12 III. No person required to submit subdivision plans pursuant to paragraph I shall commence
13 the construction of roads within the lot, tract, or parcel proposed to be subdivided, by clearing the
14 land thereof of natural vegetation, placing any artificial fill thereon, or otherwise altering the land,
15 nor shall he *or she* do any other act or acts which will alter the natural state of the land or
16 environment, unless the subdivision plan relating thereto has been submitted and approved in
17 accordance with the requirements of this chapter. Nothing in this paragraph shall be construed to
18 prevent the taking of test borings, the digging of test pits, or any other preliminary testing and
19 inspection necessary to comply with the requirements of the department of environmental services
20 relative to information necessary for review and approval of the subdivision plans.

21 9 Soil Testing; Inspections. Amend RSA 485-A:34, III and IV to read as follows:

22 III. In all cases involving inspection of *minor* sewage or waste disposal systems [~~in cities or~~
23 ~~towns which employ a full time health officer and/or building inspector, the department may~~
24 ~~delegate to such officer or inspector the responsibility for inspecting] *the plumbing inspector of*
25 *the affected municipality shall inspect* the proposed system as required under paragraph I of
26 this section. [~~In cities and towns which do not maintain full time health officers and/or building~~
27 ~~inspectors, the department may delegate the responsibility for such inspections to any local official~~
28 ~~deemed qualified by the department to fulfill the requirements of paragraph I of this section.] All
29 inspections [~~delegated by the department~~] under this paragraph [~~to health officers, building~~
30 ~~inspectors or any other local officials~~] shall be accomplished within [~~2 business days~~] *24 hours* after
31 receipt of written notification from the builder that such system is ready for inspection.~~~~

32 IV. The department *or plumbing inspector* may reject applications for septic tank disposal
33 systems in those areas where there is already a high concentration of septic tanks on adjacent,
34 contiguous, or nearby areas or if the application is an obvious expansion, addition, or annexation to
35 an area which has already reached the maximum allowable concentration of sewage disposal
36 through septic tanks and leaching systems.

37 10 Permit Eligibility. Amend RSA 485-A:35, I(a) to read as follows:

1 (a) ~~[All applications, plans, and specifications submitted in accordance with this chapter~~
2 ~~for subsurface sewage or waste disposal systems shall be prepared and signed by the individual who~~
3 ~~is directly responsible for them and who has a permit issued by the department to perform the work.]~~
4 The department shall issue a permit to any ~~[individual]~~ **designer** who applies to the department,
5 pays a fee of \$80, and demonstrates a sound working knowledge of the procedures and practices
6 required in the site evaluation, design, and operation of subsurface sewage or waste disposal
7 systems. The department shall require an oral or written examination or both to determine who
8 may qualify for a permit. Permits shall be issued from January 1 and shall expire December 31 of
9 every other year, subject to the grace periods specified in subparagraphs (c) and (d). Permits shall be
10 renewable upon proper application, payment of a biennial permit fee of \$80, and documentation of
11 compliance with the continuing education requirement of subparagraph (b). A permit issued to any
12 ~~[individual]~~ **designer** may be suspended, revoked, or not renewed only for just cause and after the
13 permit holder has had a full opportunity to be heard by the department. An appeal from a decision
14 to revoke, suspend, or not renew a permit may be taken pursuant to RSA 541. All fees shall be
15 deposited in the subsurface systems fund established in RSA 485-A:30, I-b.

16 11 Permit Eligibility. Amend RSA 485-A:35, I(e) to read as follows:

17 (e) No ~~[individual]~~ **designer** whose permit has been suspended or voided pursuant to
18 subparagraph (d) shall ~~[submit any]~~ design ~~[to the department for a]~~ **any** subsurface sewage or
19 waste disposal system **for any person proposing to construct a sewage or waste disposal**
20 **system under this subdivision.** ~~[Submittal of such a design after the designer's permit has been~~
21 ~~suspended or voided pursuant to subparagraph (d) shall constitute]~~ A violation of the provisions of
22 this ~~[subdivision that]~~ **paragraph** is subject to the penalties specified in RSA 485-A:43.

23 12 Conveyances of Realty; Notification Required; Subsurface Disposal Systems. Amend
24 RSA 477:4-b to read as follows:

25 477:4-b Notification Required; Subsurface Disposal Systems. Any person seeking to ~~[obtain~~
26 ~~approval for]~~ **install** a subsurface sewage disposal system shall meet the requirements set forth in
27 RSA 485-A:29 and 30.

28 13 New Section; Reconsideration and Appeal Procedure. Amend RSA 485-A by inserting after
29 section 50 the following new section:

30 485-A:50-a Reconsideration and Appeal Procedure. Any municipality aggrieved or dissatisfied
31 with any annual assessment levied against it under the provisions of this section may file a motion
32 for reconsideration by the department and shall have a right of appeal from the decision of the
33 department in the following manner:

34 I. Within 20 days after any decision of the department, such may apply to the department
35 for reconsideration by the department of its decision, specifying in the motion for reconsideration the
36 grounds therefor, and the department may reconsider and revise its decision if in the opinion of the
37 department good reason therefor is stated in said motion.

1 II. Such motion shall set forth fully every ground upon which it is claimed that the decision
2 of the department is unlawful or unreasonable. No appeal from any decision of the department shall
3 be taken unless the appellant shall have made application for reconsideration as provided in this
4 section, and when such application shall have been made, no ground not set forth in such application
5 shall be urged, relied on, or given any consideration by the court, unless the court for good cause
6 shown shall allow the appellant to specify additional grounds.

7 III. Upon the filing of a motion for reconsideration, the department shall within 30 days
8 either grant or deny the motion, and, at the same time, shall affirm, modify, or reverse its decision.

9 IV. Within 30 days after the application for reconsideration is denied, or if the application is
10 granted, then within 30 days after the decision on such reconsideration, the applicant may appeal by
11 petition to the superior court.

12 V. Upon the hearing, the burden of proof shall be upon the municipality seeking to set aside
13 the decision of the department to show that the same is unreasonable or unlawful, and all findings of
14 the department upon all questions of fact properly before it shall be deemed to be prima facie lawful
15 and reasonable; and the order or decision appealed from shall not be set aside or vacated, except for
16 errors of law, unless the court is persuaded by the balance of probabilities, on the evidence before it,
17 that the decision is unjust or unreasonable.

18 VI. Any person whose rights may be directly affected by said appeal may appear and become
19 a party, or the court may order such persons to be joined as parties as justice may require.

20 VII. Upon the filing of an appeal, the clerk of court shall issue an order of notice requiring a
21 certified copy of the record appealed from to be filed with the court. The filing of an appeal shall not
22 suspend the decision appealed from, unless the court, on application and for good cause shown, shall
23 grant a restraining order.

24 VIII. All evidence transferred by the department shall be, and all additional evidence
25 received may be, considered by the court regardless of any technical rules which might have
26 rendered the same inadmissible if originally offered in the trial of an action at law.

27 IX. The final judgment upon every appeal shall be a decree dismissing the appeal, or
28 vacating the decision complained of in whole or in part, as the case may be; but in case such decision
29 is wholly or partly vacated the court may also, in its discretion, remand the matter to the
30 department for such further proceedings, not inconsistent with the decree, as justice may require.

31 X. An order of the court to send up the record may be complied with by filing either the
32 original papers or duly certified copies, or of such portions of such papers, as the order may specify,
33 together with a certified statement of such other facts as show the grounds of the action appealed
34 from.

35 XI. The court may take evidence or appoint a referee to take such evidence as it may direct
36 and report the same with his findings of fact and conclusions of law.

1 XII. Costs shall not be allowed against the department unless it shall appear to the court
2 that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed
3 from.

4 XIII. All proceedings under this section shall be entitled to a speedy hearing. If such
5 hearing cannot be had within 30 days after the filing of the appeal, upon request of the appellant the
6 matter shall be referred to a master.

7 14 Repeal. The following are repealed:

8 I. RSA 485-A:40, relative to reconsideration and appeal procedure.

9 II. RSA 485-A:50, VII relative to reconsideration and appeal.

10 15 Effective Date. This act shall take effect January 1, 2012.

LBAO
11-0933
02/10/11

SB 84-FN - FISCAL NOTE

AN ACT relative to state regulation of the septic system installation process.

FISCAL IMPACT:

The Office of Legislative Budget Assistant is unable to complete a fiscal note for this bill as it is awaiting information from the Judicial Branch. When completed, the fiscal note will be forwarded to the Senate Clerk's Office.

SB 84 FISCAL NOTE

AN ACT relative to state regulation of the septic system installation process.

FISCAL IMPACT:

The Department of Environmental Services states state general fund expenditures will increase by \$348,520 in FY 2012, state restricted revenue and expenditures will decrease by \$512,113 in FY 2012 and by \$1,024,225 in FY 2013 and each year thereafter, local revenue will increase by \$142,763 in FY 2012 and \$285,525 in FY 2013 and each year thereafter, and local expenditures will increase by an indeterminable amount in FY 2012 and each year thereafter. The New Hampshire Municipal Association states this bill may increase local revenue and expenditures by an indeterminable amount in FY 2012 and each year thereafter. There is no fiscal impact on county expenditures or revenue.

The Office of Legislative Budget Assistant is awaiting information from the Judicial Branch relative to the potential fiscal impact of this bill. The Branch was initially contacted on 01/22/11 and most recently contacted on 06/12/11.

METHODOLOGY:

The Department of Environmental Services states this bill will transfer the authority to approve septic system design and installations of sewage disposal systems using less than 2,500 gallons of water per day from the Department to municipalities. The Department assumes this bill will take effect January 1, 2012. The Department estimates the reduction in application fees will result in the need to lay off 10 full time employees paid by the subsurface fund. The Department states the subsurface fund will not have sufficient funds to cover the costs associated with payouts for the 10 lay offs and assumes the general fund would cover these costs (\$314,285) in FY 2012. The Department also assumes the general fund would cover costs associated with payments to the department of information technology (\$20,915) and the department of administrative services for general services (\$13,320) in FY 2012. The Department estimates the total general fund expenditure increase to be \$348,520 in FY 2012. The Department estimates this bill will decrease state restricted revenue and expenditures from \$1,744,890 to \$720,665, a decrease of \$1,024,225 annually. This is based on the assumption that activity level FY 2012 through FY 2015 will be consistent with activity level of FY 2010: 3,807 inspections, 1,504 subdivision lots, and 58 inspections of major systems (flows greater than 2,500 gallons per day) as well as 50% of the designer/installer certification fees. This bill directs inspections will be a fee of \$100, with \$75 going to a municipality and \$25 to

the state. Local revenue will increase by \$285,525 ($\$75 * 3,807$) annually. The Department states county expenditures may be impacted to the extent they are charged fees associated with permit application for new system design and installation. The Department states the counties do not have any of these charges in a typical year.

The New Hampshire Municipal Association states this legislation not only transfers the responsibility of approving system design and installation of sewage disposal systems to municipalities and requires the appointing of a plumbing inspector but also establishes a reconsideration and appeal procedure for any municipality within the Winnepesaukee River Basin Program that disputes the annual assessment for its proportionate share of the costs of the program. The Association states local expenditures and revenue may increase by an indeterminable amount in FY 2012 and each year thereafter as result of the transferring the inspection functions from the Department to the municipalities. The Association indicates there are already processes in law to address reconsideration and appeal concerns, thus there is no fiscal impact anticipated on revenue and expenditures.

Committee Minutes

**SENATE CALENDAR NOTICE
ENERGY AND NATURAL RESOURCES**

- ✓ Senator Bob Odell Chairman
- ✓ Senator John Gallus V Chairman
- ✓ Senator Jeb Bradley
- ✓ Senator Gary Lambert
- ✓ Senator Amanda Merrill

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: February 16, 2011

HEARINGS

Thursday

2/24/2011

ENERGY AND NATURAL RESOURCES

LOB 102

9:00 AM

(Name of Committee)

(Place)

(Time)

EXECUTIVE SESSION MAY FOLLOW

9:00 AM	SB47	extending the commission to study water infrastructure sustainability funding.
9:15 AM	SB184	extending the commission to study water infrastructure sustainability funding.
✓ 9:30 AM	SB84-FN	relative to state regulation of the septic system installation process.
9:45 AM	SB35-FN-A	relative to exemption from the definition of utility property for purposes of the utility property tax.
10:00 AM	SB100	relative to the size limitations on OHRVs, and the operation of OHRVs on state-owned trails.
10:15 AM	SB105	excepting department of transportation property from evaluation requirements for certain all terrain and trail bike trails.

Sponsors:

SB47

Sen. John Gallus
Sen. John Barnes, Jr.
Rep. Gene Chandler

Sen. Molly Kelly
Rep. Karen Umberger
Rep. Lawrence Kappler

Sen. Bob Odell
Rep. Jeffrey St. Cyr

Sen. Amanda Merrill
Rep. Judith Spang

SB184

Sen. Molly Kelly
Sen. Lou D'Allesandro

Sen. Amanda Merrill
Sen. Bob Odell

Sen. Matthew Houde

Sen. Sylvia Larsen

SB84-FN

Sen. Fenton Groen
Sen. John Barnes, Jr.

Sen. Andy Sanborn
Sen. Sharon Carson

Sen. Gary Lambert

Sen. James Forsythe

SB35-FN-A

Sen. Bob Odell

SB100

Sen. Sharon Carson

Sen. John Gallus

Rep. Lyle Bulis

SB105

Sen. John Gallus
Rep. Dennis Fields

Sen. Nancy Stiles

Rep. Marc Tremblay

Rep. Yvonne Thomas

*START: 9:30 AM
END: 10:11 AM*

Richard Parsons 271-3076

Sen. Bob Odell

Chairman

Energy and Natural Resources Committee

Hearing Report

TO: Members of the Senate

FROM: Richard Parsons, Legislative Aide

RE: Hearing report on SB 84-FN – relative to state regulation of the septic system installation process.

HEARING DATE: 02/24/2011

MEMBERS OF THE COMMITTEE PRESENT: Senators Odell, Gallus, Bradley, Lambert, Merrill

MEMBERS OF THE COMMITTEE ABSENT: No one

Sponsor(s): Sen. Groen, Dist 6; Sen. Sanborn, Dist 7; Sen. Lambert, Dist 13; Sen. Forsythe, Dist 4; Sen. Barnes, Jr., Dist 17; Sen. Carson, Dist 14

What the bill does: This bill transfers the authority to approve septic system design and installations from the department of environmental services to municipalities.

Who supports the bill: Senator Sharon Carson, Dist. 14; David Bernier, North Conway Water; Senator Fenton Groen, Dist. 6; Rep. Colette Worsman, Belk. 3; Jonathan Ohler;

Who opposes the bill: Tricia Grahame, Home Builders; Michael Williams, NH Municipal Association; Kurt Blomquist, City of Keene Public Water Department, NH Public Works Association; Gerald Miller, Granite State Designers & Installers Association; Nancy Johnson, NH Regional Planning Committee; Chris Albert; Rene Pelletier, DES; Gary Spaulding;

Summary of testimony received:

Senator Fenton Groen, District – prime sponsor

- Hearing opened at 9:30 am
- Senator Groen disclosed position as a general contractor and that in the course of business is involved in the design and installation of septic systems in both New Hampshire and Maine.
- Wish this bill be re-referred to the next session.

- DES has a solid system that is working.
 - Proposing to change the system to make it better, more efficient, more cost effective and more streamlined.
- This essential system being proposed has been functioning in Maine for over 25 years.
 - This is not high risk.
 - Outcome of these changes include:
 - Can save NH homebuyers and homeowners an average of \$1500 per system.
 - While maintaining quality of the systems and the protections of our groundwater.
 - While maintaining the exact design standards, we can shorten the design time and design approval time by 7-10 days with corresponding cost reductions.
 - Can reduce both the cost and the waiting time of the inspection of installed systems.
 - Can streamline and reduce the cost of state oversight.
- Objections that have heard on bill:
 - This will not diminish the quality of the ground water.
 - Systems are currently approved by site evaluators.
 - This will not downshift costs down to towns.
 - This does not happen in Maine.
 - The intent is to streamline the process not how we treat wastewater.
- Brother proposed identical bill in the House.
- Will work to bring a strong bill next year.
- Example from private industry:
 - Private airlines now can give electronic tickets and other things to bypass the ticket counter.
 - Now, during the busy times you don't see much waiting as many airline customers are able to bypass the ticket counters altogether.
 - Result is lower ticket prices, less waiting and higher customer satisfaction.
 - Pan Am and TWA didn't adapt to the changes and failed.
- Question from Senator Merrill: Could you give examples to help understand? Does it apply to residential?
 - It applies to residential and some light commercial.
 - The difference is over 2,500 gallons and over 2,500 gallons.
 - Put it in perspective:
 - A 4-bedroom house would typically be 600 gallons
 - A 3-bedroom duplex would be about 900 gallons
- Question from Senator Merrill: So the proposal is that the use of the plumbing inspectors would be for minor systems?
 - Correct.

- Question from Senator Merrill: In terms of potential costs for the municipality, how would you foresee funding so it didn't become an unfunded mandate for the town?
 - It would establish a \$100 fee with \$75 kept by the municipality which goes toward this function.
 - Don't have a separate plumbing inspector.
 - Inspector reviews plans and inspects final system.
 - Does not add significantly to the costs but may be an enhancement to local revenue.

Rep. Colette Worsman, Belknap 3

- Member of Granite State Designers and Installers
- In support of re-referring this bill:
- Couple of reasons:
 - The goal is to become efficient
 - Maintaining groundwater is paramount
- Pieces that have a lot of merit:
 - Things like:
 - Instead of plumbing inspector use building inspector.
 - Reducing the volume of the tanks to what a normal homeowner would have.
- As House Finance Committee member, we might be able to relieve some positions from DES for other purposes.

Tricia Grahame, NH Homebuilders and Remodelers Association

- In opposition as it stands now.
- Would be very interested in being of assistance if this bill were to be re-referred.
- In 20 years have not had problems with the subsurface department within DES.

Gerald Miller, Granite State Designers and Installers

- In opposition.
- Would like to see this inexpedient to legislate.
- Experience and continual practice is extremely important when it comes to reviewing and inspecting septic systems.
 - Smaller towns with less frequent reviewing and inspecting would increase the chances of inconsistency and missed problem areas.
 - With 257 towns, there would be many different interpretations of the state rules.
- Septic designs are currently reviewed in a timely manner, while still providing a high level of experience and oversight.
- At the state level, if there's a question or problem they can talk to the other reviewers.
 - Septic inspections are also performed within a timely manner, while continuing to provide the same high level of experience.
 - The interpretation of the rules should be unbiased and based on experience, knowledge, and facts.
- Septic designer since 1979.

- One of the first in the state to be a septic designer.
- Personally, believed this would be a step back from a water quality point of view.
- Questions from Senator Gallus: Have you done work in Maine?
 - Am not licensed, but have seen what they do.
 - Had friends who built on lakes in Maine and reviewed their designs.
 - The major difference is that the level of investigation.
 - The level of documentation is much less in Maine thereby reducing certain costs associated with the amount of information.
 - At the same time, found it was left up to interpretation a lot.
 - Didn't see the same level of information in terms of identifying some of the key factors that go towards protecting the waters.
 - Certain setbacks, adjacent items that are pertinent, such as wetlands.
 - Believe NH protection is why we have our level of quality.
- Comment from Senator Gallus: From own perspective, haven't really found that to be the case. Found Maine to be very good, and have seen installers putting the same quality work whether in Maine or NH. Not sure if it is less sustainable as a system. Would like more investigation as to what is going on.

Chris Albert, Jones & Beech Engineering, Inc.

- In opposition.
- Problem is water quality.
- Right now, Great Bay is impaired from total nitrogen with 75% of that coming from systems such as septic systems.
- Not a licensed designer in Maine, but the separations are different.
 - In Maine, the depth separation between the seasonal water level is 10-18 inches depending on the soil and NH is 4 foot.
 - The separation of the bedrock ledge is 2 feet in Maine; in NH it is 4 feet.
- NH is looking at detailed plans, house locations, well radiances, setbacks.

Rene Pelletier, DES

- In opposition.
- Difference between Maine and NH is the level of detail in evaluating a site before the septic system is to go in.
- The key to subsurface systems in this state are soil and slopes.
 - It is imperative that someone has the knowledge.
- The thing that may be different is where the bed is located in the soil profile.
- This program is not only a financial protection for homeowners but it also is a water quality issue.

- DES has statutory time limits for inspections.
 - 7 days for inspection by law: current turnaround is 3 days.
 - Statutory requirements have a 15 day requirement on septic designs: turnaround is maybe 2 days right now.
 - Some divisions' requirement has a 30 day requirement and those have historical gone out in 10-15 days.
 - The issue of local control:
 - Right now, there is a state statute where municipalities come to DES and request to be an agent of DES and carry on site inspections.
 - Currently, just Manchester does it.
 - RSA 485-A:34: gives municipalities ability to request to be an agent of the state.
 - One problem with that is consistency.
 - It breeds inconsistency for this.
 - Currently, when DES reviews plans they return about 30% of the initial review because of inconsistencies.
 - Currently, DES has a 20% return rate on inspections.
 - i.e. - Beds weren't installed as planned.
 - The system does work well.
 - These are expensive systems and paying for a consistent installers that is financially important.
- Gary Spalding, Septic Designer
- In opposition.
 - President of Waste Water Alternatives.
 - Highlight two recent projects:
 - One was in Laconia: Design flow of 200,000 a day.
 - Required a ground water discharge permit because it was a commercial property and what was in the waste water stream.
 - A local inspector would have likely missed that.
 - On a residential project submitted design on February 4th, which was a Friday.
 - Got approval for the design by Monday.
 - Was able to go online, look it up, call the client and let them know they could go get their building permit.
 - Local officials often only meet a few times a week.
 - State inspector system is efficient.
 - A local inspector probably wouldn't make this more efficient.
 - The other option with up to 2,500 gallons a day, you can get into high strength waste water.

- Even down to 600 gallons a day you could be talking about gas stations, beauty salons, dog kennels, everything that is a high strength waste water site.
 - When you site these high strength areas you need to focus on them for nitric setbacks, seasonal high water tables, and surface waters.
 - Right now, the tracking system allows you to look back at the records and those may be lost if they are kept on the local level.
- The current system offers a check and balance.
 - We submit an application; DES checks all different types of permits, whereas a local inspector may not know that those other permits are needed.
- Presented as a bill that will save consumers a \$1,000, but on a \$200,000 house that isn't much and the builder may not drop the price to \$199,000 because he saved a \$1,000 on the permitting process.

Jonathan Ohler

- In opposition.
- The process is very subjective and there is nothing really cut and dry.
- In experience as an excavating contractor have learned most from being corrected on the sites by DES site inspectors.
- Strive to sell the best septic system capable of providing and the current system allows for that.
- The drainage field portion of a septic system is only a dozen or so layers of soil and current inspections just look at the first 4 layers and there is no inspection on what happens after the state leaves.
- Don't see it as a broken system.

Hearing closed at 10:11 am

Funding:

The Office of Legislative Budget Assistant is unable to complete a fiscal note for this bill as it is awaiting information from the Judicial Branch. When completed, the fiscal note will be forwarded to the Senate Clerk's Office.

Future Action: Pending.

RMP

{file: SB 0084 report}

Date: 2/28/11

**SENATE CALENDAR NOTICE
ENERGY AND NATURAL RESOURCES**

Senator Bob Odell Chairman
 Senator John Gallus V Chairman
 Senator Jeb Bradley
 Senator Gary Lambert
 Senator Amanda Merrill

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: August 15, 2011

EXECUTIVE SESSIONS

Thursday

9/15/2011

ENERGY AND NATURAL RESOURCES

LOB 102

10:00 AM

(Name of Committee)

(Place)

(Time)

EXECUTIVE SESSION ON PENDING LEGISLATION

HB387	requiring providers of prepaid cellular telephone service to provide subscriber information to the enhanced 911 system.
HB439-FN-L	relative to claiming an invasive species as a habitat.
SB48	relative to filing of rates for certain telephone services.
SB84-FN	relative to state regulation of the septic system installation process.
SB142-FN	relative to reorganizing the permitting process within the department of environmental services.

Sponsors:

HB387

Rep. Robin Read

Rep. Beatriz Pastor

Rep. Charles Townsend

HB439-FN-L

Rep. Richard Drisko

Rep. D.L. Chris Christensen

Rep. David Russell

SB48

Sen. Bob Odell

Sen. Gary Lambert

Sen. Jim Luther

SB84-FN

Sen. Fenton Groen

Sen. Andy Sanborn

Sen. Gary Lambert

Sen. James Forsythe

Sen. John Barnes, Jr.

Sen. Sharon Carson

SB142-FN

Sen. Bob Odell

Sen. Jim Luther

Richard Parsons 271-3076

Sen. Bob Odell

Chairman

Speakers

Testimony

Testimony for SB84-FN
Fenton Groen, Prime sponsor
Energy & Natural Resources Committee
Senator Bob Odell, Chair

Thank you, Mr. Chairman and members of the committee.

For the record, my name is Fenton Groen. I am proud to represent District 6, which includes Somersworth, Rochester, Barrington, Madbury and Nottingham.

I wish to disclose up front that I am a General Contractor and that in the course of our business I am involved in the design and installation of septic systems in both New Hampshire and Maine.

I also wish to state at the beginning that I wish to re-refer this bill to the next session.

Let me start by thanking the Department of Environmental Services for their hard work in protecting our ground and drinking water. We all know the importance of this function and this bill is not intended to denigrate or diminish that function. DES has a solid system that is working. The logical question then, is why we are proposing to change a system that is working?

The short answer is, because we can make it better – more efficient, more cost effective and more streamlined. How can I say that with such confidence? Because the essential system we are proposing has been functioning effectively and safely in Maine for over 25 years. This is not a high risk. We are simply proposing that we adapt Best Practices that are already proven in our neighboring state and use them to save time and money for our NH citizens.

What will be the outcome of these changes?

1. While maintaining quality of the systems and the protection of our groundwater, **we can save NH homebuyers and homeowners an average of \$1500 per system**
2. While maintaining the exact design standards, **we can shorten the design time and design approval time** by 7-10 days with corresponding cost reductions.
3. **We can reduce both the cost and the waiting time of the inspection of installed systems**
4. We can streamline and reduce the cost of state oversight.

Let me deal briefly with a few of the primary objections that I have heard to this bill.

First, I want to assure you that this approach will not diminish the quality of our ground or drinking water. The systems will still be designed by DES approved, permitted Site Evaluators. Adequate controls can and will be in place to check and assure their performance.

Second, this proposal will not downshift costs to cities and towns. This is not the case in Maine and we are confident that we can adapt their time tested practices to NH. We will work closely with cities and towns assure that the final bill does not downshift.

Third, the intent of this bill is to streamline the process, not change the way we treat wastewater. This goal can be met. We have installed systems in both Maine and New Hampshire. They are virtually identical.

My brother, who has proposed an identical bill in the House, and I, have heard and are evaluating the valuable input that we have received personally and at the house hearing from many different stakeholders. With your indulgence, we will work with these stakeholders to bring you a strong bill next year.

Let me close with an example from private industry that illustrates the concept of what we expect to do with this bill.

I am sure most of you fly commercial airlines. Like me, you have seen striking changes in the last 15 years in the way the ticketing and boarding passes are processed. What once happened exclusively through travel agents or at ticket counters at the airport, you can now do online or at airport kiosks.

10 years ago, if you went to American Airlines in Boston during any busy hours, you would have seen 30-35 ticket counters manned and lines out the door. Now, during peak times, you see 4-6 counters manned and much shorter lines. Many airline customers are able to bypass the ticket counters altogether.

The result is lower ticket prices, less waiting and higher customer satisfaction. In the private sector, competition drove these successful changes. Companies like Pan Am and TWA who could not adapt to new and better ways of providing a service failed or were merged into companies who could adapt.

In the public sector, competition is not available to drive change and efficiency. That is why the voters sent us to Concord – to take successful best practices of other entities and adapt them to drive change and efficiency in our state services.

I ask you, Mr. Chairman and committee members to re-refer this bill and give us the opportunity to help improve and streamline a good working system.

Thank you. I would be happy to take any questions.



Granite State Designers and Installers Association

53 Regional Drive, Suite 1, Concord, NH 03301

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e-mail: info@gsdia.org

February 22, 2011

Chairman Robert Odell
Senate Energy and Natural Resources Committee
NH Senate
107 North Main Street
Concord, NH 03301

Re: SB 84

Dear Chairman Odell,

Granite State Designers and Installers Association is a professional trade association consisting of more than 400 individuals including septic system designers, installers, pumpers, evaluators and other land use professionals. Based on a consensus of our membership, we are strongly opposed to SB 84 relative to state regulation of the septic system installation process.

Experience and continual practice is extremely important when it comes to reviewing and inspecting septic systems. The NH Department of Environmental Services reviews and inspects more systems than any town would in a given year, increasing the consistency of those practices. Smaller towns with less frequent reviewing and inspecting would increase the chances of inconsistency, and missed problem areas. With approximately 257 towns, there would be many different interpretations of the state rules. Municipal staff would not have the wide range of field experience to draw on when dealing with unusual or difficult sites.

Septic designs are currently reviewed in a timely manner, while still providing a high level of experience and oversight. At the state level, if there is a question or problem they can talk to the other reviewers. Septic inspections are also performed within a timely manner, while continuing to provide the same high level of experience. If there are problems with these reviews or inspections a designer/installer can check with another reviewer/inspector for their viewpoint. The interpretation of the rules should be unbiased and based on experience, knowledge and facts.

There are complexities with septic reviews and inspections. Oversight is always a good thing that provides an increased protection for the homeowner. Town waivers would go before the Zoning Board of Adjustment, where waivers to state regulations would go before the Subsurface Bureau.

The financial impact of the town fee of \$100 down from the state fee of \$300 does not include the additional costs per town for reviewing the designs.

In closing we respectfully urge committee members to recommend this bill be Inexpedient to Legislate.

Regards,

Scott Hagstrom
President

Visit our website: www.gsdia.org

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February 24, 2011

Senator Robert Odell, Chair
Committee on Energy and Natural Resources
107 N. Main Street, Room 102 - LOB
Concord, NH 03301

RE: SB 84, AN ACT relative to state regulation of the septic system installation process

Dear Senator Odell and Members of the Committee:

I come to you today as a licensed septic designer and former building inspector for the Town of Nottingham. I have reviewed SB 84-FN, and wish to offer the following comments in opposition to the bill.

SB 84-FN proposes to transfer the review process for individual septic designs under 2500 GPD and the construction inspections from the State to individual Towns. There will be discussions that this bill imposes an unfunded mandate to Town's.

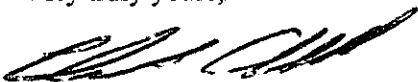
My concern about the design review process and construction inspections are relative to Water Quality. I am the Town of Epping's representative to the Southeast Watershed Alliance (SWA). It has been reported to us that 75% of the total nitrogen pollutant loading to Great Bay is from non-point source contaminants, such as individual septic systems. By removing the State's ability to regulate septic systems I believe total nitrogen pollutant loading would only increase. The current reviewers and inspectors at the State understand this problem. There is research being conducted at the University of New Hampshire looking at total nitrogen and septic systems. The State is aware of the studies and will be working with the University and interested parties in the future to address total nitrogen relevant to septic systems.

I believe the Town's would be unable to staff the position for Plumbing Inspector with trained personnel. The bill addresses no training requirements, only an appointment. The State of Maine and New Hampshire have had 30 years to evolve their programs. The Plumbing Inspector in Maine is licensed and has completed training courses. The local review by the Plumbing Inspector along with the plan design requirements in Maine are cursory and do not address Water Quality issues. I believe if this bill passes the Public would be poorly served and the Water Quality of New Hampshire would be further jeopardized.

If the bill is to move forward, I would suggest a Study Committee be created with the bill's sponsors, DES, and interested stakeholders.

I want to thank the Committee for your time and consideration in hearing my comments.

Very truly yours,



Christopher Albert, LSD, CWS, CPESC, CPSWQ



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

February 24, 2011

The Honorable Bob Odell
Energy and Natural Resources Committee
Legislative Office Building, Room 102
Concord, NH 03301

RE: SB 84-FN relative to state regulation of the septic system installation process

Dear Senator Odell:

Thank you for the opportunity to comment on SB 84-FN, an act relative to state regulation of septic system installation process. The Department of Environmental Services (DES) strongly opposes SB 84 for the reasons described below.

SB 84 would in part eliminate the statutory requirements for applicants to receive approval of septic system plans and inspections by the DES Subsurface Systems Bureau for most septic systems installed in New Hampshire. Septic system plans by DES-certified designers for smaller systems (those that serve single family homes and other structures with design flows of less than 2,500 gallons per day) would be "deemed approved," and thus no review and formal state permit would be required. Inspections of constructed systems, which DES now performs, would be shifted to municipalities by requiring that all municipalities take on this part of the program by appointing or hiring one or more plumbing inspectors by January 1, 2012. The bill also specifies the fees that municipalities could charge for inspections (See Section 4). SB 84 would also cause the layoff of 10 of 17 filled positions in the DES Subsurface Systems Bureau due to the reduction in fee revenues. DES estimates that these layoffs would cost the state general fund approximately \$348,000 in FY 2012 because the Subsurface Systems Fund, the dedicated non lapsing fund that supports this program, has inadequate resources to pay for these layoffs at this time. Furthermore, because the Subsurface Systems Bureau provides match for federal grants, these reductions would cause a reduction of over \$1 million in federal grants from the Environmental Protection Agency, resulting in additional reductions in DES staff supported by these grants and to pass through grants to New Hampshire communities.

The DES Subsurface Systems Program was created in 1967 by the enactment of RSA 149-E (now RSA 485-A), which authorized the regulation of septic systems by the Water Supply and Pollution Control Commission, now part of the DES Water Division. The purpose of this program was, and continues to be, to ensure that septic system installations occur in a consistent and technically sound manner across the state to prevent pollution and public health hazards from occurring due to poorly installed and failed systems. System failures can cause significant public health risks from human exposure to raw sewage on the land near failed systems, contamination of drinking water wells, and contamination of surface waters used for swimming, fishing and drinking. This program also provides assurance to prospective buyers of new or existing homes and other small commercial operations that septic systems meet New Hampshire state standards and, therefore, are likely to operate properly.

DES Web site: www.des.nh.gov

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-3503 • Fax: (603) 271-2867 • TDD Access: Relay NH 1-800-735-2964

The DES Subsurface Systems Bureau accomplishes its purpose by implementation of a number of program functions. The Bureau reviews applications for the subdivision of land and the design of individual septic systems; performs on-site inspections of all septic systems prior to their being backfilled (i.e., covered with soil) in order to ensure compliance with approved plans; implements and administers the program for licensing designers and installers of septic systems; and investigates complaints of possible failed septic systems and then ensures correction of failed systems that are discovered. This is a well-integrated program that is considered to be highly successful and responsive to the needs of New Hampshire's citizens by many people, including municipal officials and the regulated community. This is clearly one of the top programs of its kind in the country.

The Subsurface Systems Bureau is responsible for the review and issuance of permits for approximately 80% of all development that occurs in New Hampshire. Over the last ten years, depending on construction activity and the health of the economy, the Bureau has performed plan reviews and inspections for between 3,800 to almost 10,000 septic systems annually across the state. These plan reviews and inspections have consistently occurred in a timely and effective manner in accordance with statutory requirements. Currently, applications for septic systems are being reviewed within 1 to 3 business days of submission, as compared with a statutory requirement of 15 days. And, system installation inspections are occurring within 3 days of "ready to backfill" calls, as compared with a statutory requirement of 7 business days.

However, it is important to understand that not all plans are acceptable upon initial submission. In fact, approximately 30 percent of the plans received by DES are not acceptable after the initial submission and must be revised to receive approval. If SB 84 were enacted, given that 3,800 to 10,000 plans per year would be deemed approved, DES estimates that 1,000 to 3,400 noncompliant plans per year would pass without regulatory review, and thus would be defective at the time of construction. DES has also historically observed that about 20 percent (or 750 to 2,000 septic systems/year, depending on the economy) of septic system installations are unacceptable upon initial inspection and require re-work by the contractor before the system can be approved to be backfilled. It is unreasonable to expect that plumbing inspectors (with, as described below, no required training) for over 200 municipalities would catch all the deficiencies that DES does now. Therefore, if SB 84 were enacted, we believe that the quality and integrity of septic systems installations would deteriorate across New Hampshire. This would result in greater risk of septic system failure, thus increasing the risk to public health and the environment as well as the potential for unnecessary future costs for new home owners and other building owners to repair preventable system defects.

In addition to our overall concerns, DES also has the following comments on specific sections of SB 84:

- In Section 1, there are no qualifications required for plumbing inspectors. We would expect that they would be required to achieve some level of certification, for example, as designers and installers of septic systems or to have demonstrated expertise in the areas of soil science and hydrogeology which are necessary to understand how to properly

design and install septic systems. We believe that this is a fundamental flaw that would need to be corrected to ensure high quality inspections by all municipalities if SB 84 were to be enacted into law.

- In Section 1, compensation for plumbing inspectors “*shall be determined by the governing body and paid by the municipality.*” There is no relationship between the actual cost to the municipality and the fee set in Section 4 (\$100, with \$25 of the \$100 passed through to DES). In our opinion, municipal costs are likely to exceed the revenues collected under this proposal.
- In Section 5, the approval mechanism for encroachment waivers is ambiguous. Our interpretation is that encroachment waivers for “deemed approved” designs would be automatic, with no regulatory review, if notification of the local code enforcement officer and abutters has occurred. This leaves too much independent discretion to designers for waivers that now are reviewed by DES.
- Section 6 allows any designer to, in effect, unilaterally waive the protective well radius requirement for any lot upon notice to the applicant of “*the consequences of such reduced radius and ...whether special precautions should be taken relative to well installation.*” We believe that this also provides too much discretion for the designer for “deemed approved” plans and should not be allowed.
- In Section 13, the proposed RSA 485-A:50-a, Reconsideration and Appeal Procedure, describes an appeal procedure for an “annual assessment” by DES levied against municipalities. However, the referenced annual assessment does not appear in the bill. The intent of this section needs to be clarified or the section deleted.

In summary, DES strongly opposes SB 84 because we believe that the result would ultimately be more failed septic systems. And, these failed systems would both increase risk to public health and the environment and costs to homeowners and other property owners due to failed systems that would require replacement or repair. This bill would also result in higher costs to municipalities with no net benefit over the existing state regulatory system which has worked very well for over 40 years and does not merit the proposed major overhaul.

Thank you for this opportunity to comment on this bill. Please feel free to call Rene Pelletier, Assistant Water Division Director at 271-2951 or me at 271-2958, if you have any questions or need additional information.

Very truly yours,



Thomas S. Burack
Commissioner

cc: Senators Groen, Sanborn, Lambert, Forsythe, Barnes and Carson

GERALD H. MILLER

Licensed Land Surveyor
Certified Wetland Scientist
Septic System Designer

31 Ashbrook Drive
Hampton, NH 03842-1002

Phone (603) 926-8570
ghmiller@rcn.com

SB84 -FN Title: relative to state regulation of the septic system installation process.

SENATE ENERGY AND NATURAL RESOURCES
02/24/2011 at 09:30 AM LOB 102

Dear Senator Bob Odell, Chairman
And Committee Members

I wanted to submit my written testimony as a follow up to my oral testimony to today.

This bill transfers the authority to approve septic system design and installations from the department of environmental services to municipalities.

This bill was presented to you by Senator Groen as being for the good of the public by a cost savings to the clients by streamlining of building construction , but as was pointed out at the hearing on Feb. 22nd by a Representative on the House Municipal and County Government Committee for the same exactly worded House Bill 530, it has all the appearances of being self serving for the benefit of his business enterprises and raises some ethical questions. The only benefit in the bill relating to costs to the public is a reduction in the fee currently required by the State DES from \$300 to \$100, \$75 going to the Town and \$25 going to the State without any indication what it was for, other than the \$75 being sufficient enough that the Towns shall hire someone to be classified as a Plumbing Inspector to do all of the reviews and inspections for minor septic system designs and installments in their town. What happens when the Plumbing Inspector fails an installation? How would a design that was wrong be treated when according to this bill it would be automatically be approved if done by a permitted designer? Will installers continue to need to be permitted? And where does that leave the currently accepted status of homeowner design and installation?

This person to be identified as a Plumbing Inspector to perform certain reviews and inspections of septic systems comes without any qualifications or certifications listed for the person filling that position. And it takes the checks and balances as well overview of designs and designers away from the regulatory arm of the State, leaving the door wide open for abuse and fraud of the public.

Senator Groen infers that installation costs would be down by thousands of dollars by streamlining the inspection process and forcing the Plumbing Inspector to inspect a system within 24 hours of receiving a written request. This being the savings from having to pay a contractor, as currently is done, from having to leave his equipment idle on the site or bringing it back to complete the backfilling and finish work. Unless a town hires a Plumbing Inspector on as a full time position and somehow finds some other means of compensation for that time while waiting for a request at \$75 to come in for and inspection, there will most likely be a system set

up, like most towns do that have a Building Inspector, where only one or two days a week or month they would be available to be contacted. I see this as a basic flaw in the concept of this bill and for most of the state, would not change the way contractors would have to operate, thereby seeing little savings of time or money as presented it would do.

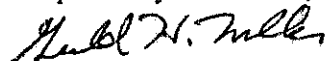
Senator Groen makes the statement that this bill will cut the design costs down from what he claims to be normally between \$800 to \$1500, but no where in this bill does it say how that is supposed to happen. It currently says that the design will still have to meet state standards without any mention of changing state standards, so there should be no difference in costs seen there. He refers in his presentation that designs would be cheaper as they are in the State of Maine, but the standards for designs in Maine are completely different than that in New Hampshire and can not be used comparatively. There is nothing in this bill that indicates the intent is to adopt the Maine standards. To do that, many of the state laws in New Hampshire would have to be changed also.

It was suggested that the Plumbing Inspector might be linked to the duties performed by the Building Inspector/Code Enforcement Officer or Health Officer so as not to have to hire another Town employee. In many towns of this state those duties are the responsibility of the Selectmen who would normally have no experience or understanding of interpreting a septic design or know the laws and regulations of the state regarding wetlands, soil interpretations, and required setbacks and separation from ground water to be able to protect these resources which is the key main reason why we have the people in the state Subsurface Bureau to begin with. In other towns that do have a Building Inspector, many that I have had a conversation with in regards to septic system installation and environmental regulations say that their area of expertise only goes as far as the footprint of the building, interior plumbing, electrical, and structural integrity, and want nothing to do with anything beyond that because there is too much science and laws to understand or recognize. Health Officers have generally only been willing to get involved if there is a system failure where they can smell and see sewerage oozing on the surface.

There are too many unanswered questions as to how this bill would work as far as documentation and retaining a record of what was done, which is key to other areas of interest such as the state requirement for lake front site evaluations requiring documentation of approved designs when these lots are resold, and also documentation of approvals for mortgages or refinancing. Most towns don't have the budget or space now to do this. This would become another unfunded mandate to the towns.

This bill should be deemed Inexpedient to Regulate and be Killed.

Respectfully submitted,



Gerald H. Miller, LLS, CWS
Permitted Designer #90

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Date: March 10, 2011

THE COMMITTEE ON Energy and Natural Resources

to which was referred Senate Bill 84-FN

AN ACT relative to state regulation of the septic system
 installation process.

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

BE RE-REFERRED TO COMMITTEE

BY A VOTE OF: 5-0

AMENDMENT # s

Senator Gary E. Lambert
For the Committee

Richard Parsons 271-3076

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Date: September 15, 2011

THE COMMITTEE ON Energy and Natural Resources

to which was referred Senate Bill 84

AN ACT relative to state regulation of the septic system
 installation process.

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

IS INEXPEDIENT TO LEGISLATE

BY A VOTE OF: 4-0

AMENDMENT # s

Senator Gary E. Lambert
For the Committee

Richard Parsons 271-3076

New Hampshire General Court - Bill Status System

Docket of SB84

Docket Abbreviations

Bill Title: relative to state regulation of the septic system installation process.*Official Docket of SB84:*

Date	Body	Description
2/3/2011	S	Introduced and Referred to Energy and Natural Resources, SJ 5 , Pg.45
2/17/2011	S	Hearing: 2/24/11, Room 102, LOB, 9:30 a.m.; SC12
3/10/2011	S	Committee Report: Rereferred to Committee, 3/16/11; SC15
3/16/2011	S	Rereferred to Committee, MA, VV; SJ 9 , Pg.116
1/12/2012	S	Committee Report: Inexpedient to Legislate; 1/18/12; SC3
1/18/2012	S	Inexpedient to Legislate, MA, VV === BILL KILLED ===; SJ 2 , Pg.41

NH House

NH Senate

Other Referrals

COMMITTEE REPORT FILE INVENTORY

ORIGINAL REFERRAL 5384-FN RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE AIDE 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.

- DOCKET (Submit only the latest docket found in Bill Status)
- COMMITTEE REPORT
- CALENDAR NOTICE
- HEARING REPORT
- HANDOUTS FROM THE PUBLIC HEARING
- PREPARED TESTIMONY AND OTHER SUBMISSIONS
- SIGN-UP SHEET(S)

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

___ - AMENDMENT # ___ ___ - AMENDMENT # ___
___ - AMENDMENT # ___ ___ - AMENDMENT # ___

ALL AVAILABLE VERSIONS OF THE BILL:

AS INTRODUCED ___ AS AMENDED BY THE HOUSE
___ FINAL VERSION ___ AS AMENDED BY THE SENATE

- OTHER (Anything else deemed important but not listed above, such as amended fiscal notes): AMENDED FISCAL NOTE 11-0933

DATE DELIVERED TO SENATE CLERK

6/21/12


BY COMMITTEE AIDE