

# Bill as Introduced

HB 111 - AS INTRODUCED

2013 SESSION

13-0055  
10/05

HOUSE BILL **111**

AN ACT relative to the acquisition of property at Akers Pond dam in the town of Errol by the fish and game department.

SPONSORS: Rep. Chandler, Carr 1; Rep. Rappaport, Coos 1; Rep. Enman, Coos 1; Sen. Woodburn, Dist 1

COMMITTEE: Resources, Recreation and Development

---

ANALYSIS

The bill allows the fish and game department to acquire property at the Akers Pond dam in Errol for the purpose of improving and controlling the water rights for the benefit of the state.

The bill is a request of the fish and game department.

---

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT                   relative to the acquisition of property at Akers Pond dam in the town of Errol by  
the fish and game department.

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

1           1 New Paragraph; Acquisition by State of Certain Dams and Water Rights; Akers Pond Dam.  
2 Amend RSA 482:48 by inserting after paragraph VII the following new paragraph:

3           VIII. For a consideration of \$1, the fish and game department is authorized to accept  
4 conveyance from the property owners of all water and property rights necessary to repair, maintain,  
5 and operate Akers Pond dam access and dike area in the town of Errol, adjacent to and abutting the  
6 state owned dam known as number 080.20 for the purpose of improving and controlling the water  
7 rights for the benefit of the state. The property rights the fish and game department is authorized to  
8 acquire for the benefit of the state shall be exempt from taxation as long as the properties are held  
9 by the state. The fish and game department may transfer rights in these properties under RSA  
10 482:51 to the department for purposes of repair and maintenance. With the exception of such \$1  
11 consideration, nothing in this paragraph shall mandate or authorize the expenditure of any funds or  
12 capital relative to the provisions of this paragraph.

13           2 Effective Date. This act shall take effect 60 days after its passage.

# Amendments

Amendment to HB 111

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to the acquisition of property rights at Akers Pond dam in the town of  
4 Errol by the fish and game department and the acquisition of property rights at  
5 Northwood Lake dam in the town of Epsom and Hermit Lake dam in the town of  
6 Sanbornton by the department of environmental services.  
7

8 Amend the bill by replacing all after the enacting clause with the following:

9

10 1 New Paragraphs; Acquisition by State of Certain Dams and Water Rights; Akers Pond Dam;  
11 Northwood Lake Dam; Hermit Lake Dam. Amend RSA 482:48 by inserting after paragraph VII the  
12 following new paragraphs:

13 VIII. For a consideration of \$1, the fish and game department may accept an easement from  
14 the property owners of all rights necessary to repair, maintain, and operate Akers Pond dam access  
15 and dike area in the town of Errol, adjacent to and abutting the state owned dam known as number  
16 080.20 for the purpose of improving and controlling the water rights for the benefit of the state. The  
17 easement the fish and game department is authorized to acquire for the benefit of the state shall be  
18 exempt from taxation as long as the easement is held by the state. The fish and game department  
19 may transfer rights in these properties under RSA 482:51 to the department for purposes of repair  
20 and maintenance. With the exception of such \$1 consideration, nothing in this paragraph shall  
21 mandate or authorize the expenditure of any funds or capital relative to the provisions of this  
22 paragraph.

23 IX. For a consideration of \$1 each, the department of environmental services may accept an  
24 easement from the property owners of all rights necessary to access, repair, maintain, and operate  
25 the dike at Northwood Lake in the town of Epsom appurtenant to the state owned dam known as  
26 number 079.01 and the dike at Hermit Lake in the town of Sanbornton appurtenant to the state  
27 owned dam known as number 211.01, for the purpose of improving and controlling the water rights  
28 for the benefit of the state. The easements the department is authorized to acquire for the benefit of  
29 the state shall be exempt from taxation as long as the easements are held by the state. With the  
30 exception of such \$1 consideration for each, nothing in this paragraph shall mandate or authorize  
31 the expenditure of any funds or capital relative to the provisions of this paragraph.

32 2 Effective Date. This act shall take effect 60 days after its passage.

**Amendment to HB 111**

**- Page 2 -**

2013-0014h

**AMENDED ANALYSIS**

The bill allows the fish and game department to acquire an easement at the Akers Pond dam in Errol for the purpose of improving and controlling the water rights for the benefit of the state. The bill also allows the department of environmental services to acquire easements at the Northwood Lake dam in the town of Epsom and the Hermit Lake dam in the town of Sanbornton for the purpose of improving and controlling the water rights for the benefit of the state.

# Speakers





# Hearing Minutes

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

PUBLIC HEARING ON HB 111

**BILL TITLE:** relative to the acquisition of property at Akers pond dam in the town of Errol by the fish and game department.

**DATE:** January 15, 2013

**LOB ROOM:** 305      **Time Public Hearing Called to Order:** 10:15 a.m.

**Time Adjourned:** 10:32 a.m.

(please circle if present)

**Committee Members:** Reps. Chandler, Suzanne Smith Aguiar, Gottling, Thomas O. Webb, Hubbard, Parkhurst, Beaulieu, Wazlaw, Lovett, Renzullo, Holmes, Cormier, Merroy, Ahlgren, Wright, Mullen, Schroader and Ferrante.

**Bill Sponsors:** Rep. Chandler, Carr 1; Rep. Rappaport, Coos 1; Rep. Enman, Coos 1; Sen. Woodburn, Dist 1

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

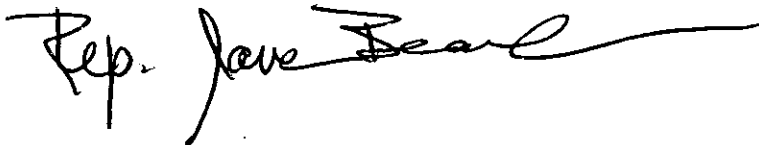
**Rep. Gene Chandler** - Prime sponsor of the bill. Brought in an amendment.

\* **Jim Gallagher, NH Department of Environmental Services (DES)** - Supports the bill. State statute indicates that the Dam Bureau received approval for this acquisition. This dam needs repair at this time. He submitted an amendment for additional dams. The state owns the water rights on Akers Pond, Northwood Lake and Hermit Lake Dam. The state has allocated funds to repair the Akers Pond Dam and the funds for the two remaining dams have been included in the year's Capital Budget. This bill refers to easements only.

\* **Betsey McNaughten, NH Fish and Game** - Supports the bill. Negative impact to Dam and Pond and property owners if bill does not pass. Without this bill state cannot consider doing work on these dams.

Respectfully submitted,

Rep. Jane E. Beaulieu  
Clerk



HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

PUBLIC HEARING ON HB 111

**BILL TITLE:** relative to the acquisition of property at Akers pond dam in the town of Errol by the fish and game department.

**DATE:** January 15, 2013

**LOB ROOM:** 305      **Time Public Hearing Called to Order:** 10:15 a.m.

**Time Adjourned:**

(please circle if present)

**Committee Members:** Reps. Chandley, Suzanne Smith, Aguiar, Gottling, Thomas, N. Webb, Hubbard, Parkhurst, Beaulieu, Wazlaw, Lovett, Renzullo, Holmes, Cormier, Merrow, Ahlgren, Wright, Mullen, Schroader and Ferrante

**Bill Sponsors:** Rep. Chandler, Carr 1; Rep. Rappaport, Coos 1; Rep. Enman, Coos 1; Sen. Woodburn, Dist 1

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

Rep. Gene Chandler in support/Brought in Amendment  
\* DES - Mr. Gallagher - State statute indicates that the Dam Bureau receive approval for this acquisition. This dam needs repair at this time. He submitted an amendment for ~~an~~ additional dams. The state owns the water rights on Akers Pond, Northwood Lake & Hermit Lake dam. The state has allocated funds to repair the Akers Pond Dam & the funds for the two remaining dams have been included in the year's Capital budget. This bills refers to easements only.  
in support (over)

\* Fish & Game representative Betsy McNaughton  
in support

Negative impact to Dam & Pond & property owners  
if bill does not pass.  
Without this bill state cannot consider  
doing work on these dams

closed hearing on HB 111 9:32 am

Rep. Jane Beaulieu, clerk

# Testimony



The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**

January 15, 2012

The Honorable Shannon Chandley, Chairman  
Resources, Recreation and Development Committee  
Legislative Office Building, Room 305  
Concord, NH 03301

**RE: HB 111, relative to the acquisition of property at Akers Pond Dam in the Town of Errol by the Fish and Game Department**

Dear Chairman Chandley:

Thank you for the opportunity to testify in support of HB 111, which would authorize the acquisition of an easement at the state-owned Akers Pond Dam in Errol that is needed to maintain the safety of the dam.

Akers Pond Dam is owned by the New Hampshire Fish and Game Department (NHFG). The main dam is a concrete spillway and outlet structure, which impounds Akers Pond. This main dam is on property that is owned by NHFG at the outlet of Akers Pond. The main dam was recently repaired by the Department of Environmental Services Dam Bureau (DES), which performs all major repair and reconstruction needed on any state-owned dams, as well as the daily operation and maintenance of dams owned by DES and NHFG.

Akers Pond Dam also includes an appurtenant structure, which consists of an earthen embankment, located on the east shoreline of Akers Pond just upstream of the main dam. This earthen embankment is overgrown with trees, which must be removed to prevent failure of the embankment and loss of the pond. The earthen embankment is located beyond the property that is owned by NHFG, and an easement is needed for the state to access this area and maintain the safety of the earthen embankment. The owner of the property, on which the earthen embankment is located, is willing to provide the necessary easement to NHFG. However, under RSA 482:44, no dam or any real property appurtenant to a dam or any rights and easements in either may be acquired without an act of the legislature which authorizes the acquisition of a particular dam, real property, or right or easement. For this reason, passage of this bill is required for NHFG to acquire the easement needed to maintain the earthen embankment at Akers Pond Dam in a safe condition.

In addition to Akers Pond Dam, DES has recently identified two other state-owned dams that also require the acquisition of additional easements to perform the necessary maintenance and repairs needed on their appurtenant structures. These dams are Northwood Lake Dam in Epsom and Hermit Lake Dam in Sanbornton. At both of these dams, easements are needed to repair and maintain earthen dikes associated with the dams. Both of these repair projects are scheduled to be performed in the next biennium. In order to allow for the repairs, DES requests that the bill be amended to provide DES the

The Honorable Shannon Chandley, Chairman  
January 15, 2013  
Page 2 of 2

legislative authorization needed to acquire the easements necessary to perform the required work. The proposed amended bill is attached.

Thank you for the opportunity to comment in support of this bill. Please contact Jim Gallagher, Dam Bureau Administrator, at 271-1961 or [james.gallagher@des.nh.gov](mailto:james.gallagher@des.nh.gov), or me at 271-2958 or [thomas.burack@des.nh.gov](mailto:thomas.burack@des.nh.gov) if you have any questions or need additional information.

Sincerely,



Thomas S. Burack  
Commissioner

Attachment

cc: Representative Gene G. Chandler  
Representative Laurence M. Rappaport  
Representative Larry S. Enman  
Senator Jeff Woodburn

DEPARTMENT OF ENVIRONMENTAL SERVICES

PROPOSED AMENDMENT TO HB 111

Proposed added language in **bold**

AN ACT relative to the acquisition of property at Akers Pond dam in the town of Errol by the fish and game department **and the acquisition by the department of environmental services of property at Northwood Lake dam in Epsom and Hermit Lake dam in Sanbornton.**

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

1 New Paragraphs; Acquisition by State of Certain Dams and Water Rights; Akers Pond Dam, **Northwood Lake, and Hermit Lake.** Amend RSA 482:48 by inserting after paragraph VII the following new paragraphs:

VIII. For a consideration of \$1, the fish and game department is authorized to accept conveyance from the property owners of all water and property rights necessary to repair, maintain, and operate Akers Pond dam access and dike area in the town of Errol, adjacent to and abutting the state owned dam known as number 080.20 for the purpose of improving and controlling the water rights for the benefit of the state. The property rights the fish and game department is authorized to acquire for the benefit of the state shall be exempt from taxation as long as the properties are held by the state. The fish and game department may transfer rights in these properties under RSA 482:51 to the department for purposes of repair and maintenance. With the exception of such \$1 consideration, nothing in this paragraph shall mandate or authorize the expenditure of any funds or capital relative to the provisions of this paragraph.

**IX. For consideration of \$1, the department of environmental services is authorized to accept conveyance from the property owners of all water and property rights necessary to access, repair, maintain, and operate the dike at Northwood Lake in Epsom, appurtenant to the state owned dam known as number 079.01, and the dike at Hermit Lake in Sanbornton, appurtenant to the state owned dam known as number 211.01, for the purpose of improving and controlling the water rights for the benefit of the state. The property rights the department of environmental services is authorized to acquire for the benefit of the state shall be exempt from taxation as long as the properties are held by the state. With the exception of such \$1 consideration, nothing in this paragraph shall mandate or authorize the expenditure of any funds or capital relative to the provisions of this paragraph.**

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





# New Hampshire Fish and Game Department

11 Hazen Drive, Concord, NH 03301-6500  
Headquarters: (603) 271-3421  
Web site: [www.WildNH.com](http://www.WildNH.com)

TDD Access: Relay NH 1-800-735-2964  
FAX (603) 271-1438  
E-mail: [info@wildlife.nh.gov](mailto:info@wildlife.nh.gov)

## **New Hampshire Fish and Game Department**

Testimony in support of HB 111 An Act relative to the acquisition of property at Akers Pond dam in the town of Errol by the fish and game department.

### **House Resource, Recreation and Development Committee**

January 15, 2013

Madam Chair and members of the Committee, for the record my name is Betsey McNaughten, I am a Land Agent for the New Hampshire Fish and Game Department. I'm representing the Department in support of HB 111, an act relative to the acquisition of property at Akers Pond dam in the town of Errol. The Fish and Game Commission voted unanimously to support this bill.

Akers Pond is a 276 acre great pond in the town of Errol, which has been raised by damming. The dam structure is made up of a concrete spillway structure, and a 400' dike embankment. In 1952, NHFG acquired a ½ acre parcel that included the concrete spillway, but did not include the 400' dike embankment.

The dam is classified as a low-hazard dam by the Department of Environmental Services Dam Safety Bureau, failure would cause major damage to a town road. The dike is part of the dam appurtenant works, and Akers Pond cannot be safely be impounded without it.

Under a 2011 Dam Safety Memorandum of Deficiency the Dam Bureau refaced the concrete spillway, abutments, reconstructed of the down stream bouldering & retaining wall and tree removed. The dike embankment still requires extensive reshaping, stump removal and rip-rap armoring on the upstream slope.

However, the dike is on private land owned by Clifford and Sharon Lane, and the state currently has no legal right to access the embankment on the Lane's property to complete the work. The Lanes have approved an Easement Deed for the maintenance and access rights to the dike in perpetuity.

"RSA 4:29 - ...No dam or any real property appurtenant thereto or any rights and easements in either may be acquired pursuant to the authority of this section or any other provision of law except an act of the legislature which authorizes the acquisition of a particular dam, real property, or right of easement."

In April 2012, NHDES received G&C approval to amend the completion date of the MOA with NHFG for the repairs at Ackers Pond Dam to June 30, 2015 so that the acquisition of the dike can work through the legislative process, and to allow time for permits if applicable.

The Fish and Game Department urges you to vote HB 111 "Out to Pass".

# Voting Sheets

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

EXECUTIVE SESSION on HB 111

**BILL TITLE:** relative to the acquisition of property at Akers pond dam in the town of Errol by the fish and game department.

**DATE:** January 22, 2013

**LOB ROOM:** 305

**Amendments:**

Sponsor: Rep. Chandler OLS Document #: 2013 0014h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

**Motions:** OTP, OTP/AITL, Retained (Please circle one.)

Moved by Rep. S. Smith

Seconded by Rep. Aguiar

Vote: 18-0 (Please attach record of roll call vote.)

**Motions:** OTP, OTP/AITL, Retained (Please circle one.)

Moved by Rep. Gottling

Seconded by Rep. Ferrante

Vote: 18-0 (Please attach record of roll call vote.)

**CONSENT CALENDAR VOTE: YES**

(Vote to place on Consent Calendar must be unanimous.)

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep. Jane E. Beaulieu, Clerk

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

EXECUTIVE SESSION on HB 111

**BILL TITLE:** relative to the acquisition of property at Akers pond dam in the town of Errol by the fish and game department.

**DATE:**

**LOB ROOM:** 305

**Amendments:**

Sponsor: Rep. *Chandler* OLS Document #: 2013-0014h  
Sponsor: Rep. OLS Document #:  
Sponsor: Rep. OLS Document #:

**Motions:** OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. *Suzanne Smith*  
Seconded by Rep. *Jim Aguirre*  
Vote: (Please attach record of roll call vote.)

**Motions:** OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. *Suzanne Smith*  
Seconded by Rep. *Ferrante*  
Vote: (Please attach record of roll call vote.)

**CONSENT CALENDAR VOTE:**

(Vote to place on Consent Calendar must be unanimous.) *yes*

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,  
Rep. Jane E. Beaulieu, Clerk  
*Rep. Jane Beaulieu*



2013 SESSION

RESOURCES, RECREATION AND DEVELOPMENT

Bill #: 111 Title: relative to the acquisition of property rights @ Keys Pond  
PH Date: 1, 15, 13 Exec Session Date: \_\_\_\_\_  
Motion: OTP Amendment #: 2013-0014h

MEMBER	YEAS	NAYS
Chandley, Shannon E, Chairman	✓	
Smith, Suzanne J, V Chairman	✓	
Parkhurst, Henry A. L.	✓	
Lovett, Sid	✓	
Aguiar, James D	✓	
Thomas, Yvonne D	✓	
Gottling, Suzanne H	✓	
Hubbard, Pamela J <i>absent</i>		
Beaulieu, Jane E, Clerk	✓	
Webb, Leigh A	✓	
Wazlaw, Brian	✓	
Renzullo, Andrew ,	✓	
Ahlgren, Christopher J	✓	
Merrow, Harry C	✓	
Schroadter, Adam R	✓	
Ferrante, Beverly A	✓	
Cormier, Jane <i>absent</i>		
Holmes, Stephen	✓	
Mullen, John A	✓	
Wright, Donald S	✓	
<b>TOTAL VOTE:</b>	<b>18</b>	<b>0</b>



2013 SESSION

RESOURCES, RECREATION AND DEVELOPMENT

Bill #: 111 Title: relative to the acquisition of property rights @ Akers Pond  
PH Date: 1/15/13 Exec Session Date: 1/22/13  
Motion: OTP/A Amendment #: 2013-0014h

MEMBER	YEAS	NAYS
Chandley, Shannon E, Chairman	✓	
Smith, Suzanne J, V Chairman	✓	
Parkhurst, Henry A. L.	✓	
Lovett, Sid	✓	
Aguiar, James D	✓	
Thomas, Yvonne D	✓	
Gottling, Suzanne H	✓	
Hubbard, Pamela J <i>absent</i>		
Beaulieu, Jane E, Clerk	✓	
Webb, Leigh A	✓	
Wazlaw, Brian	✓	
Renzullo, Andrew ,	✓	
Ahlgren, Christopher J	✓	
Merrow, Harry C	✓	
Schroadter, Adam R	✓	
Ferrante, Beverly A	✓	
Cormier, Jane <i>absent</i>		
Holmes, Stephen	✓	
Mullen, John A	✓	
Wright, Donald S	✓	
TOTAL VOTE:	18	0

# Committee Report

**CONSENT CALENDAR**

**January 24, 2013**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on RESOURCES, RECREATION AND DEVELOPMENT to which was referred HB111,**

**AN ACT relative to the acquisition of property at Akers pond dam in the town of Errol by the fish and game department. Having considered the same, report the same with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.**

**Rep. Suzanne H Gottling**

**FOR THE COMMITTEE**



## COMMITTEE REPORT

Committee:	<b>RESOURCES, RECREATION AND DEVELOPMENT</b>
Bill Number:	<b>HB111</b>
Title:	<b>relative to the acquisition of property at Akers pond dam in the town of Errol by the fish and game department.</b>
Date:	<b>January 24, 2013</b>
Consent Calendar:	<b>YES</b>
Recommendation:	<b>OUGHT TO PASS WITH AMENDMENT</b>

### STATEMENT OF INTENT

Some state-owned dams have privately owned access areas and/or dikes adjacent to or abutting the dams. Access to these areas by the state is necessary for efficient repair, maintenance and operation of these dams and dikes. HB 111 allows the Fish and Game Department to expend \$1 to acquire an easement for these purposes at Akers Pond dam in Errol. The amendment allows the Department of Environmental Services to acquire similar easements for the dikes at Northwood Lake in Epsom and Hermit Lake in Sanbornton.

Vote 18-0.

Rep. Suzanne H Gottling  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## CONSENT CALENDAR

### RESOURCES, RECREATION AND DEVELOPMENT

**HB111**, relative to the acquisition of property at Akers pond dam in the town of Errol by the fish and game department. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Suzanne H Gottling for RESOURCES, RECREATION AND DEVELOPMENT. Some state-owned dams have privately owned access areas and/or dikes adjacent to or abutting the dams. Access to these areas by the state is necessary for efficient repair, maintenance and operation of these dams and dikes. HB 111 allows the Fish and Game Department to expend \$1 to acquire an easement for these purposes at Akers Pond dam in Errol. The amendment allows the Department of Environmental Services to acquire similar easements for the dikes at Northwood Lake in Epsom and Hermit Lake in Sanbornton. **Vote 18-0.**

COMMITTEE REPORT

COMMITTEE: RR & D

BILL NUMBER: HB 111

TITLE: relative to the acquisition of property at Akers Pond dam in the town of Errol by the fish and game department.

DATE: Jan 22, 2013 CONSENT CALENDAR: YES  NO

OUGHT TO PASS

OUGHT TO PASS W/ AMENDMENT

INEXPEDIENT TO LEGISLATE

INTERIM STUDY (Available only 2<sup>nd</sup> year of biennium)

Amendment No.  
2013-0014h

STATEMENT OF INTENT:

~~A number~~ <sup>Some</sup> of state-owned dams have privately owned access areas and/or dikes adjacent to or abutting the dams. Access to these areas ~~and dikes~~ <sup>see</sup> by the state is necessary for efficient repair, maintenance and operation of these dams, and dikes. <sup>see</sup>

HB 111 allows the Fish and Game Department to expend \$/ to acquire an easement for these purposes at Akers Pond dam in Errol. The amendment allows the Department of Environmental Services to acquire similar easements for the dikes at Northwood Lake in Epsom and Hermit Lake in Sanbornton.

COMMITTEE VOTE: 18-0

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. SUZANNE H. Gottling  
For the Committee

HB 111

OTP/A

Some state-owned dams have privately owned access areas and/or dikes adjacent to or abutting the dams. Access to these areas by the state is necessary for efficient repair, maintenance and operation of these dams and dikes. HB 111 allows the Fish and Game Department to expend \$1 to acquire an easement for these purposes at Akers Pond dam in Errol. The amendment allows the Department of Environmental Services to acquire similar easements for the dikes at Northwood Lake in Epsom and Hermit Lake in Sanbornton.

Suzanne H. Gottling