

Bill as  
Introduced

## HB 428 – AS INTRODUCED

2013 SESSION

13-0583

08/10

### HOUSE BILL 428

AN ACT relative to funds for dam maintenance, removal and improvement.

SPONSORS: Rep. Suzanne Smith, Graf 8; Rep. Ebel, Merr 5; Rep. Brown, Graf 2

COMMITTEE: Resources, Recreation and Development

### ANALYSIS

This bill allows all dam owners, excluding the state, to receive money from the dam maintenance, removal and improvement revolving loan fund.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

13-0583

08/10

## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Thirteen*

AN ACT relative to funds for dam maintenance, removal and improvement.

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

1 Dam Maintenance, Removal and Improvement; Revolving Loan Fund. Amend RSA 482:55-a, I-II to read as follows:

I. A dam maintenance revolving loan fund shall be established to provide low interest loans to fund the maintenance, repair, [~~or reconstruction~~] **removal or improvement** of [~~privately owned~~] **any dams excluding state owned dams**, when such maintenance, repair, [~~or reconstruction~~] **removal or improvement** is required under this chapter.

This fund shall be nonlapsing and shall be continually appropriated to the department for the purposes of this section. No loans shall be made from this fund until the fund has accrued a balance of at least \$25,000. [Private] Dam owners receiving loans from this fund shall repay the department on a time frame specified in rules established by the department. The commissioner shall collect all loan repayment moneys and deposit them in this fund.

II. The department shall establish rules for the fund including the application process, criteria for award, the procedure for making loans, the interest rate to be applied, the maximum loan amount, the time frame for repayment, and oversight of the administration of the fund. In providing loans, the department shall evaluate the risk posed by the dam, the public benefit of the dam, the private benefit of the dam to lakefront owners, *the ecological benefits of the dam*, and the potential for [~~their contribution~~] *contributions* to needed maintenance, repair, or reconstruction, the financial resources of the applicant, and the relative *financial and environmental* cost of maintaining, repairing, or [~~reconstructing~~] *improving* the dam as compared to removing or breaching the dam.

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

**HB 428 - AS AMENDED BY THE HOUSE**

6Mar2013... 0401h

2013 SESSION

13-0583

08/10

**HOUSE BILL 428**

AN ACT relative to funds for dam maintenance, removal and improvement.

SPONSORS: Rep. Suzanne Smith, Graf 8; Rep. Ebel, Merr 5; Rep. Brown, Graf 2

COMMITTEE: Resources, Recreation and Development

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6Mar2013... 0401h

13-0583

08/10

**STATE OF NEW HAMPSHIRE***In the Year of Our Lord Two Thousand Thirteen*

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**HB 428 – VERSION ADOPTED BY BOTH BODIES**

6Mar2013... 0401h

2013 SESSION

13-0583

08/10

**HOUSE BILL 428**

AN ACT relative to funds for dam maintenance, removal and improvement.

SPONSORS: Rep. Suzanne Smith, Graf 8; Rep. Ebel, Merr 5; Rep. Brown, Graf 2

COMMITTEE: Resources, Recreation and Development

**ANALYSIS**

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6Mar2013... 0401h

13-0583

08/10

**STATE OF NEW HAMPSHIRE***In the Year of Our Lord Two Thousand Thirteen*

AN ACT relative to funds for dam maintenance, removal and improvement.

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

CHAPTER 45

HB 428 – FINAL VERSION

6Mar2013... 0401h

2013 SESSION

13-0583

08/10

HOUSE BILL 428

AN ACT relative to funds for dam maintenance, removal and improvement.

SPONSORS: Rep. Suzanne Smith, Graf 8; Rep. Ebel, Merr 5; Rep. Brown, Graf 2

COMMITTEE: Resources, Recreation and Development

ANALYSIS

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6Mar2013... 0401h

13-0583

08/10

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Thirteen*

AN ACT relative to funds for dam maintenance, removal and improvement.

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

45:1 Dam Maintenance, Removal and Improvement; Revolving Loan Fund. Amend RSA



482:55-a, I-II to read as follows:

I. A dam maintenance revolving loan fund shall be established to provide low interest loans to fund the maintenance, repair, ~~[or reconstruction]~~ **removal, or improvement** of ~~[privately owned]~~ **any dams excluding state owned dams**, when such maintenance, repair, ~~[or reconstruction]~~ **removal, or improvement** is required under this chapter. This fund shall be nonlapsing and shall be continually appropriated to the department for the purposes of this section. No loans shall be made from this fund until the fund has accrued a balance of at least \$25,000. ~~[Private]~~ Dam owners receiving loans from this fund shall repay the department on a time frame specified in rules established by the department. The commissioner shall collect all loan repayment moneys and deposit them in this fund.

II. The department shall establish rules for the fund including the application process, criteria for award, the procedure for making loans, the interest rate to be applied, the maximum loan amount, the time frame for repayment, **actions to be taken in the event of a default on a loan**, and oversight of the administration of the fund. In providing loans, the department shall evaluate the risk posed by the dam, the public benefit of the dam, the private benefit of the dam to lakefront owners, **the ecological impacts of the dam**, ~~[and]~~ the potential for ~~[their contribution]~~ **contributions** to needed maintenance, repair, or reconstruction, the financial resources of the applicant, and the relative cost of maintaining, repairing, or ~~[reconstructing]~~ **improving** the dam as compared to removing or breaching the dam.

45:2 Effective Date. This act shall take effect 60 days after its passage.

Approved: June 4, 2013

Effective Date: August 3, 2013

# Amendments

Rep. Suzanne Smith, Graf. 8  
February 15, 2013  
2013-0401h  
08/03

Amendment to HB 428

Amend RSA 482:55-a, II as inserted by section 1 of the bill by replacing it with the following:

II. The department shall establish rules for the fund including the application process, criteria for award, the procedure for making loans, the interest rate to be applied, the maximum loan amount, the time frame for repayment, **actions to be taken in the event of a default on a loan**, and oversight of the administration of the fund. In providing loans, the department shall evaluate the risk posed by the dam, the public benefit of the dam, the private benefit of the dam to lakefront owners, **the ecological impacts of the dam**, [and] the potential for [~~their contribution~~] **contributions** to needed maintenance, repair, or reconstruction, the financial resources of the applicant, and the relative cost of maintaining, repairing, or [~~reconstructing~~] **improving** the dam as compared to removing or breaching the dam.

# Committee Minutes

**SENATE CALENDAR NOTICE  
ENERGY AND NATURAL RESOURCES**

Senator Russell Prescott Chairman  
 Senator Bob Odell V Chairman  
 Senator Jeb Bradley  
 Senator Martha Fuller Clark  
 Senator Jeff Woodburn

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: March 21, 2013**

**HEARINGS**

**Wednesday**

**3/27/2013**

**ENERGY AND NATURAL RESOURCES**

**LOB 101**

**9:00 AM**

(Name of Committee)

(Place)

(Time)

**EXECUTIVE SESSION MAY FOLLOW**

- |   |  |
|---|--|
| <p>9:00 AM HB111</p> <p>9:15 AM HB157</p> <p>9:30 AM HB233</p> <p>9:45 AM HB368</p> <p>10:00 AM HB428</p> <p>10:15 AM HB513</p> | <p>(New Title) relative to the acquisition of property rights at Akers Pond dam in the town of Errol by the fish and game department and the acquisition of property rights at Northwood Lake dam in the town of Epsom and Hermit Lake dam in the town of Sanbornton by the department of environmental services.</p> <p>(New Title) renaming Blood Pond in the town of Lancaster as Evans Pond.</p> <p>(New Title) relative to the care of the war memorial in Franconia Notch state park.</p> <p>relative to the telecommunications planning and development initiative.</p> <p>relative to funds for dam maintenance, removal and improvement.</p> <p>relative to the shoreland protection act.</p> |
|---|--|

**Sponsors:**

**HB111**

Rep. Gene Chandler

Rep. Laurence Rappaport

Rep. Larry Enman

Sen. Jeff Woodburn

**HB157**

Rep. Herbert Richardson

Rep. Leon Rideout

**HB233**

Rep. Alfred Baldasaro

Rep. Robert Theberge

Rep. Stephen Shurtleff

Rep. Daniel Tamburello

Rep. Kenneth Weyler

Rep. Lawrence Kappler

Rep. Mary Griffin

Rep. Russell Ober

Rep. John Graham

Rep. Donald LeBrun

**HB368**

Rep. Laurence Rappaport

**HB428**

Rep. Suzanne Smith

Rep. Karen Ebel

Rep. Rebecca Brown

**HB513**

Rep. Judith Spang

Rep. Sid Lovett

Rep. Jane Beaulieu

Rep. Andrew Renzullo

Sen. Jeb Bradley

Sen. Martha Fuller Clark

Sen. Bob Odell

Rep. David Borden

# SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

*Chris Cote, Legislative Aide*

**HB 428 – relative to funds for dam maintenance, removal and improvement.**

Hearing Date: 3.27.13

Time Opened: 10:05AM

Time Closed: 10:15AM

**Members of the Committee Present:** Senators Bradley, Fuller Clark, Odell, Prescott, and Woodburn

**Members of the Committee Absent:** none

### **Bill Analysis:**

This bill allows all dam owners, excluding the state, to receive money from the dam maintenance, removal and improvement revolving loan fund.

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**Sponsors:** Rep. Suzanne Smith, Graf 8; Rep. Ebel, Merr 5; Rep. Brown, Graf 2

**Who supports the bill:** Rep. Suzanne Smith, Rep. Karen Ebel, Jim Gallagher NHDES, Nancy Johnson NH Planners Association, Rep. Shannon Chandley, Tom O'Brien NH Lake Association, Douglass Bechtel Nature Conservancy, Heidi Kroll Granite State Hydro Power,

**Who opposes the bill:** None

### **Summary of testimony presented in support:**

- Rep. Suzanne Smith, the dam loan fund would be expanded for municipality owned dams, allow for repair, removal, and improvement, DES would be looking at ecological impact of dam, and looks to rule making on default of the loan,
- Jim Gallagher, in support of the bill, this loan fund is distinguished from other funds within the state, this was created in 2008 when DES was given fine powers, and want to put these fine funds put into fund to address maintenance concerns, this would allow municipalities to get some additional funding for any repairs they need,
- Nancy Johnson, Association of Planners, support this bill, this act is a necessary clarification and in full support,
- Douglass Pecktel, Director of Conservation Science for NH chapter of Nature Conservancy, support the bill, this bill would help protect the lands and

waters of the state, would like dam owners to have more options about their dams and would like to see more removed, agree with previous testimony that municipalities should have options,

**Summary of testimony presented in opposition:** none

**Fiscal Note:**

See Fiscal Note

**Future Action:**

CSC

Date hearing report completed: 3.27.13

[file: HB0428 report]

# Speakers

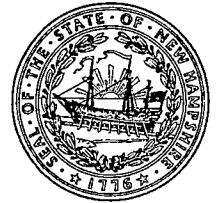




# Testimony



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



**Thomas S. Burack, Commissioner**

March 27, 2013

The Honorable Russell Prescott, Chairman  
Energy and Natural Resources Committee  
Legislative Office Building, Room 101  
Concord, NH 03301

**RE: HB 428, relative to funds for dam maintenance, removal and improvement**

Dear Chairman Prescott:

Thank you for the opportunity to testify in support of HB 428, which would amend RSA 482:55-a to allow use of the Dam Maintenance Revolving Loan Fund by municipalities, as well as private dam owners, to fund the repair, removal or improvement of their dams.

The Dam Maintenance Revolving Loan Fund was established with enactment of Chapter 272:5 of the Laws of 2008 (SB 519). The primary purpose of that law was to establish a per diem fine on dam owners and operators for failure to comply with New Hampshire's Dam Safety statutes and regulations or failure to perform required maintenance work on their dams. During the debate on the bill, the legislature determined that any fines collected under this new authority should be dedicated to a revolving fund which could provide low-interest loans to dam owners to help fund the necessary repairs, and it modified the bill accordingly. The statute was amended in 2009 with the enactment of Chapter 110 of the Laws of 2009 to authorize the Dam Maintenance Revolving Loan Fund to accept revenue from other sources including the general fund, principal and interest from the repayment of loans, grants and awards from the federal government, interest earned from the investment of fund balances, and private gifts.

HB 428 would amend the statute further to allow municipalities, in addition to private dam owners, access to the Dam Maintenance Loan Fund, and would allow the fund to be used for removal or improvement to the dams, instead of only repair. DES supports these changes.

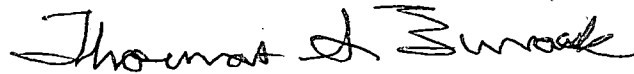
Of the 829 dams in New Hampshire that could cause loss of life or property damage if they were to fail, approximately half of them are privately-owned and 25% of them are owned by municipalities. Of these, approximately 70 privately-owned dams and 50 municipally-owned dams have outstanding Letters of Deficiency requiring some maintenance, repair or either reconstruction or removal to be performed so that the dams do not pose a threat of actual failure. The costs to address these deficiencies can range from thousands to millions of dollars, and the private or municipal owners are responsible for these expenses. In some cases, a dam may no longer serve any useful purpose, and the private or municipal dam owner may prefer to remove rather than repair the dam to eliminate the safety hazard as well as the long-term maintenance costs.

The Honorable Russell Prescott, Chairman  
March 27, 2013  
Page 2 of 2

The current balance of the Dam Maintenance Revolving Fund from fines collected to date is approximately \$49,000, which is much less than the costs of a typical repair, improvement or removal project, and currently funding is not available from any of the other revenue sources identified in the statute. However, if funding from these sources were ever to become available, the Dam Maintenance Revolving Fund, authorized under RSA 482:55-a as amended by HB 428, provides a framework to help municipal and private dams owners improve the safety of their dams.

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

cc: Representative Suzanne Smith  
Representative Karen Ebel  
Representative Rebecca Brown

March 27, 2013

Senator Russell Prescott  
Chairman, Energy and Natural Resources Committee  
Legislative Office Building  
Concord, NH 03301

**RE: HB 428, relative to funds for dam maintenance, removal and improvement.**

Dear Senator Prescott and Member of the Committee:

Thank you for the opportunity to offer this letter in support of HB 428, legislation that will greatly expand access to, and the usefulness of, the existing Dam Maintenance Revolving Loan Fund (RSA 482:55-a). This change will benefit public safety, as well as the ecological health of the state's many rivers, streams and waterways by allowing the loan funds to be used for removal or improvements to private and municipal owned dams, instead of only repair.

According to a recent Nature Conservancy assessment of 13 states in the Northeast (Virginia to Maine), our region is home to more than 14,000 dams – the highest density of dams in the country. This accounts for 7 dams (and 106 road-stream crossings) per 100 miles of river on average. The result of are extremely fragmented river systems that eliminate the natural flow of our waterways.

Here in New Hampshire, our rivers and streams are home to more than 4,800 active and inactive dams. While many of these structures are vital for flood control, community recreation and have historical meaning, a significant percentage no longer serve the useful purpose for which they were originally constructed. These dams may be unsafe and uneconomical, serve as impediments to naturally flowing river ecosystems and could potentially be good candidates to consider for removal.

In addition to being a public safety concern, some dams may be harmful to the ecology of river systems. According to a Department of Environmental Services Dam Bureau publication, dams "can block fish and other aquatic species from moving throughout a river system to access spawning sites and other critical habitats. Dams can hold back and cause the build-up of sediment, woody debris and other materials that would have naturally been distributed throughout the river, playing important roles in providing nutrients and habitat for plants and animals downstream. Dams can increase water temperatures and decrease dissolved oxygen availability in impoundments, forcing many native river species out because they can't live under those conditions. Dams can also flood wetlands, floodplain forests and other ecosystems that naturally occur along the river's edge and serve valuable purposes."

For these reasons, The Nature Conservancy supports expanding the use of the existing revolving loan fund to include both dam removal and dam improvements such as fish passage - in addition to maintenance and repair of structures. The fund should be leveraged to assist dam owners in making the best decision on how to deal with a structure in need of investment and attention. In some instances –

because of economics, safety or for ecological reasons – a dam owner may decide that the best option is to invest in the removal of the dam. The state should support dam owners in these decisions by making these revolving loan funds accessible, and help support viable projects. Selective dam removal can eliminate a public safety hazard, relieve a dam owner's financial and legal burdens and restore a river to a healthier, free-flowing condition.

The Nature Conservancy also supports expanding the use of the fund to be inclusive of all dam owners, including municipal dams. While a vast majority of the state's dams are owned by private interests (78%), municipalities also account for a large percentage of structures (12% of the total). Like private dam owners, municipalities may not have the ability to fund needed repair, maintenance or removal in a timely manner, and could postpone or defer improvements creating a safety hazard. It seems that enabling more users accessing these funds to improve or remove underperforming dams is in the best interests of the state.

We support removing "reconstruction" as a use of the fund. Private owners should have sufficient insurance to cover the rebuilding of a structure following a breach of a dam, and should not be looking to a revolving loan fund to assist in the rebuilding. Further, the state should also not be providing loan funds to build essentially new structures when there is such a need for these funds to support repair and removal of old structures.

Thank you for this opportunity to provide written testimony in support of HB 428.

Sincerely,

Jim O'Brien  
Director of External Affairs  
22 Bridge Street, 4<sup>th</sup> Floor  
Concord, NH 03301  
603.224.5853 X 28  
Jim\_obrien@tnc.org

# Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date: 3.28.2013

THE COMMITTEE ON Energy and Natural Resources

to which was referred House Bill 428

AN ACT                      relative to funds for dam maintenance, removal and  
improvement.

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

**OUGHT TO PASS**

BY A VOTE OF:    4-0

Senator Russell Prescott  
For the Committee

Chris Cote 271-3067



## New Hampshire General Court - Bill Status System

**Docket of HB428**

Docket Abbreviations

**Bill Title:** relative to funds for dam maintenance, removal and improvement.**Official Docket of HB428:**

<b>Date</b>	<b>Body</b>	<b>Description</b>
1/3/2013	H	<b>Introduced</b> 1/3/2013 and Referred to Resources, Recreation and Development; <b>HJ 12</b> , PG.195
1/23/2013	H	Public Hearing: 1/30/2013 10:15 AM LOB 303
2/6/2013	H	Executive Session: 2/19/2013 10:15 AM LOB 305
2/21/2013	H	Committee Report: Ought to Pass with Amendment #0401h for Mar 6 (Vote 19-1; CC); <b>HC 20</b> , PG.413
2/21/2013	H	Proposed Committee Amendment <b>#2013-0401h</b> ; <b>HC 20</b> , PG.452
3/6/2013	H	Amendment #0401h: AA VV; <b>HJ 24</b> , PG.661
3/6/2013	H	<b>Ought to Pass with Amendment</b> #0401h: MA VV; <b>HJ 24</b> , PG.661
3/7/2013	S	Introduced and Referred to Energy & Natural Resources
3/21/2013	S	Hearing: 3/27/13, Room 101, LOB, 10:00 a.m.; <b>SC13</b>
4/8/2013	S	Committee Report: Ought to Pass, 4/18/13; <b>SC16</b>
4/18/2013	S	<b>Ought to Pass:</b> MA, VV; OT3rdg;
4/18/2013	S	Enrolled
4/24/2013	H	Enrolled; <b>HJ38</b> , PG.1257
6/6/2013	H	Signed by Governor 06/04/2013; Effective 08/03/2013; Chapter 0045

NH House

NH Senate

# Other Referrals

HB 428

# COMMITTEE REPORT FILE INVENTORY

\_\_\_\_\_ ORIGINAL REFERRAL

\_\_\_\_\_ 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:

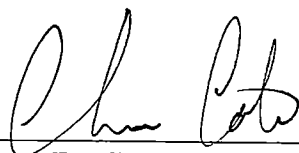
- AMENDMENT # 0401h      \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_  
 \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_      \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_

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): \_\_\_\_\_

DATE DELIVERED TO SENATE CLERK 8.13.13



BY COMMITTEE AIDE