

LEGISLATIVE COMMITTEE MINUTES

**SB46**

# Bill as Introduced

SB 46-FN - AS INTRODUCED

2013 SESSION

13-0476  
08/09

SENATE BILL

***46-FN***

AN ACT

relative to air quality violations for outdoor fires.

SPONSORS:

Sen. Reagan, Dist 17; Rep. Duarte, Rock 2; Rep. Danais, Rock 2; Rep. M. Mann,  
Rock 32

COMMITTEE:

Energy and Natural Resources

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ANALYSIS

This bill prohibits outdoor fires within 300 feet of an abutting residence.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Thirteen*

AN ACT                   relative to air quality violations for outdoor fires.

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

- 1           1 New Section; Outdoor Fires. Amend RSA 125-C by inserting after section 10-c the following
- 2 new section:
- 3           125-C:10-d Outdoor Fires. No person shall operate any outdoor fire or burning device if an
- 4 abutting residence is located less than 300 feet from the fire or device and the smoke plume from
- 5 such fire or device crosses the property line.
- 6           2 Effective Date. This act shall take effect January 1, 2014.

LBAO  
13-0476  
01/22/13

**SB 46-FN - FISCAL NOTE**

AN ACT            relative to air quality violations for outdoor fires.

**FISCAL IMPACT:**

Due to time constraints, the Office of Legislative Budget Assistant is unable to provide a fiscal note for this bill, as introduced, at this time. When completed, the fiscal note will be forwarded to the Senate Clerk's Office.

# Amendments

Sen. Prescott, Dist. 23  
February 5, 2013  
2013-0204s  
08/04

Amendment to SB 46-FN

1 Amend the bill by replacing section 1 with the following:

2

3 1 New Section; Open Burning Nuisance. Amend RSA 147 by inserting after section 10-c the  
4 following new section:

5 147:16-c Open Burning Nuisance. A health officer may, in writing, order the discontinuance of  
6 any open burning that, upon a determination by the health officer, is causing a nuisance or is  
7 injurious to public health. As used in this section, "open burning" means the burning of any type of  
8 combustible material outside in the ambient air where the products of combustion are discharged  
9 directly into the atmosphere rather than through a stack, chimney, or flue. Recreational  
10 campgrounds and camping parks subject to RSA 216-I and recreation camps subject to RSA 485-A:23  
11 shall be exempt from this section.

2013-0204s

AMENDED ANALYSIS

This bill allows town health officers to order the discontinuance of outdoor open burning under certain circumstances.



Sen. Bradley, Dist. 3  
February 6, 2013  
2013-0227s  
08/04

Amendment to SB 46-FN

1 Amend the bill by replacing section 1 with the following:

2

3 1 New Section; Open Burning Nuisance. Amend RSA 147 by inserting after section 10-c the  
4 following new section:

5 147:16-c Open Burning Nuisance. A health officer may, in writing, order the discontinuance of  
6 any open burning that, upon a determination by the health officer, is causing a nuisance or is  
7 injurious to public health. As used in this section, "open burning" means the burning of any type of  
8 combustible material outside in the ambient air where the products of combustion are discharged  
9 directly into the atmosphere rather than through a stack, chimney, or flue. Recreational  
10 campgrounds and camping parks subject to RSA 216-I, recreation camps subject to RSA 485-A:23,  
11 cooking fires, and small recreational campfires shall be exempt from this section. Any municipality  
12 may adopt stricter regulations regarding the proximity of open burnings to occupied dwellings.

**Amendment to SB 46-FN**  
**- Page 2 -**

2013-0227s

**AMENDED ANALYSIS**

This bill allows town health officers to order the discontinuance of outdoor open burning under certain circumstances.

# 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: January 24, 2013**

**HEARINGS**

**Wednesday**

**1/30/2013**

**ENERGY AND NATURAL RESOURCES**

**LOB 101**

**9:00 AM**

(Name of Committee)

(Place)

(Time)

**EXECUTIVE SESSION MAY FOLLOW**

9:00 AM	SB72	including owls within the definition of raptor for the purposes of falconry.
9:15 AM	SB64	relative to public informational meetings on dams.
9:30 AM	SB74	relative to an exemption for entities that furnish hot water through a district energy system.
9:45 AM	SB46-FN	relative to air quality violations for outdoor fires.

**Sponsors:**

**SB72**

Sen. Peter Bragdon  
 Rep. Peter Leishman

Sen. Andy Sanborn

Rep. James Parison

Rep. James Coffey

**SB64**

Sen. Jeff Woodburn

**SB74**

Sen. Bob Odell

Rep. Beatriz Pastor

Sen. David Pierce

**SB46-FN**

Sen. John Reagan

Rep. Joe Duarte

Rep. Romeo Danais

Rep. Maureen Mann

# SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

*Chris Cote, Legislative Aide*

**SB 46-FN – relative to air quality violations for outdoor fires.**

Hearing Date: 1.30.13

Time Opened: 10:43am Time Closed: 11:40am

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

**Members of the Committee Absent:** No one

**Bill Analysis:** This bill prohibits outdoor fires within 300 feet of an abutting residence.

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**Sponsors:** Sen. Reagan, Dist 17; Rep. Duarte, Rock 2; Rep. Danais, Rock 2; Rep. M. Mann, Rock 32

**Who supports the bill:** Erin Douglass-Fish, Nancy Johnson American Lung Association, Rep. Maureen Mann Rockingham 32,

**Who opposes the bill:** Rep. John Burt Goffstown, Jason Stock NH Timberland Association, Bob Clegg NH Builders Association, Doug Patch NH Association of Fire Chiefs, Lawrence Artz of Nashua, Ed White Greenville Fire, Andrew Stonberg Grow Nest CG, Sylvia Leggett Roberts Knoll Campground Association, Gregg Pitman NH Campground Owners Association, Steve Jesseman Littleton.Lisbon KOA,

**Did not take a position:** Pam Monroe NH DES, Brad Simpkins DRED,

**Summary of testimony presented in support:**

- Senator Jon Reagan introduces this, SD 17, proposed an amendment but wants to withdraw this bill because enforcement issues create a problem. He has since changed his mind
- Sen. Bradley Q: nuisance laws? A: Used to be authority of local chief, change of regulation stopped this and in amendment he proposes this become a local issue
- Erin Douglass-Fish of Keen NH, in favor of bill, here with daughter, she believes that her rights are in question because of pollution and smoke, DES defines wood smoke as a source of pollution, according to EPA wood smoke is

an issue, in 2011 DES assumed control of nuisance fires, stopping the local fire departments from stopping a nuisance, she feels that local fire departments need to address problems with outdoor burning, in 2005 supreme court case regarding industry and it preempted the local municipalities from regulating burning, her family lives in a neighborhood in Keene and because of a neighbor, this is the home she's owned for 20 years, the smoke is negatively impacting their lives. Smell and ash are everywhere, personal injuries, and irritations were abound because of this neighbor, went to local authorities were powerless to help. According to the EPA the state implementation plan still holds local nuisance laws are still part of the state plan. Breathing clean air is not a privilege, safety issue, DES came out and decided incinerator was an issue and open burning then occurred making the problem worse. She felt the neighbor was malicious and intentionally burning, toxic smoke was produced, Pam Monroe from DES was not addressing their issue, rules are meant to protect, but the authorities would not address her issue, Keene code enforcement went to the home was because ash and smoke was everywhere at the property, elderly next-door neighbor was a concern. Alberta was in poor health, and in her 80's, she had a heart attack, Erin is linking this attack to the smoke and ash, toxic health hazard, Alberta's attic is covered with soot and smoke, and this is still an issue, and city and state have not done anything to protect them. The law is in place to protect against this occurrence.

- Nancy Johnson, American Lung Association, support SB46, very serious issue, common pollutant, ask for 3 things, not talking about camp grounds, would like the bill to clearly define wood smoke as a public health nuisance if crosses property lines for 12 min, violation process would require neighbor to file a complaint and pursue a legal resolution through the courts, prior policy actions were contributors to this problem, after the court ruling DES revised their laws and took the control away from local powers, smoke is dangerous and should be regulated by local powers, health officers should have this power
- Rep. Maureen Mann stated for the record that she is in favor of the this bill
- 

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

- State Rep. Jon Burt, main reason for opposition, enforcement issues, basic issue of freedom, lots 125 ft in Goffstown and he enjoys campfires, few individuals in state abusing this issue, some nut is burning and somehow it's the other people who are problems,
- Bob Clegg, believes this should be determined by DES, communities do not have the expertise to address this issue, make it state's responsibility, determining hazard

- Lawrence Arts, against bill, Nashua, does not want to stop outdoor burning, smoke is not an issue, concerned that freedoms are regulated away, worried about cook fires,
- Sen. Odell Q: what do you burn? A: logs and pallets, excess dry wood. Sen. Odell Q: any complains? A: none, only dry wood
- Sen. Bradley Q: understands the freedom aspect and having a stove or pit, but is there a balance to reach? A: there are different classes of fires, sizes, scope of fire, and there is the content that is actually burned such as dry wood
- Pamela Monroe, DES, concerns with bill, fiscal note, DES responds to citizens complaints to burning of illegal materials, this bill would require DES to respond to legal fires, high cost, staff would need to be available, there was a nuisance provision but that was changed, challenge for DES to enforce, interested in working to address this issue and local control is a better policy,
- Q: Prescott, enforced by town and state? Cost? A: possible but still expensive Q: Sen. Fuller Clark, local communities still address this? Expertise? A: ambient air monitors around the state but department does not have the ability to be everywhere, but there is equipment Q: Bradley, wet wood, outdoor boiler action taken by DES needed a physicians letter A: outdoor wood boiler pre 2008 was exempted and local health officer could not address issue without a doctors note Q: with Keene, does local health officer have the authority to address the burning there, anything to prevent what is going on there? A: Supreme court decision preempted the local municipality from acting, could not advise town to act without legislation, and would suggest open burning be included under the jurisdiction of local municipalities, Q: Keene situation, DES cannot intervene? A: cannot intervene unless there is a health issue, or burning prohibited materials Q: Can authority be given to address this issue A: yes
- Brad Simkins, DRED, interim director, Authority is not with local municipalities anymore, permit does say that fires must not be public health issues, the department is not taking a position, concern with impact on campgrounds, open burning, cannot have nuisance laws,
- Sen. Bradley Q: does your agency deal with permit violations? A: fire safety and air regulations in woodland areas,
- Sen. Woodburn Q: Can a distinction between urban and rural be found? A: DRED deals with protection of forests and grasslands from fires, not specifically buildings, woodland is considered vegetation so possibly inside urban centers
- Henry Veilleux, Camp Grounds, 10 folks here to speak as introduced, Greg Pittman, ex direct, Campgrounds association, opposed to the bill as stated, but if changed they cannot comment as of yet, do not want campgrounds to be negatively impacted by this proposed legislation, recommend that only seasoned wood be burned,

- Sen. Bradley Q: have there been complaints about campgrounds? A: several years ago there was a complaint, but it was resolved
- Sen. Fuller-Clark Q: could this bill be done in a way that respects campfires but limits repetitive burning that is a nuisance? A: Heath threats should be stopped and the campgrounds are willing to work with committee on that

**Fiscal Note:**

Yes, no details yet

**Future Action:**

Awaiting Executive action

CSC

Date hearing report completed: 2.1.13

[file: SB0046-FN report]



# Speakers

# SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Date: 1.30.13

Time: 9:45AM Public Hearing on

SB46-FN - relative to air quality violations for outdoor fires.

Please check box(es) that apply:

	SPEAKING	FAVOR	OPPOSED	NAME (Please print)	REPRESENTING
	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ERIN DOUGLASS-FISH	
✓	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Martin Connolly	
✓	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	NANCY K JOHNSON	Am. Lung Assoc
✓	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	State Rep John A. Burt	Goddstown NH
✓	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Jasen Stock	NH Timberland Owners Assoc.
✓	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Bob Cleary	NH Building Officials Assoc
✓	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Doug Pastor	NH Association of Fire Chiefs
✓	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Maura Marn	Rockingham 32
✓	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Lawrence Artz	Nashua NH Self
→	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Pamela Menroe	NH DES
✓	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Brad Simpkins	NH DRED-
✓	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Edna White	Greenville Fire
	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Andrew Sternberg	Crows Nest C.G. Newport NH
	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Sylvia Leggett	Roberts Knoll Campground, Athol
	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Gregg Pitman	NH Campground Owners Assoc
	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	STEVE JESSEMAN	LITTLETON/LISBON KOA LISBON NH
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		



# Testimony



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



**Thomas S. Burack, Commissioner**

January 30, 2013

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

*5 inch diameter  
gas x 700,000*

**Re: HB 46-FN relative to air quality violations**

Dear Chairman Prescott and Members of the Committee:

The Department of Environmental Services (DES) is pleased to offer testimony on SB 46-FN, which would amend RSA 125-C, the *Air Pollution Control Act*, to prohibit outdoor burning by a property owner if the nearest abutting residence is less than 300 feet from the fire and the smoke plume from the fire crosses the property line.

The current regulatory scheme requires residents of the State to obtain a burn permit from the Department of Resources and Economic Development (DRED) or the local fire warden. DRED estimates that there are approximately 80,000-100,000 burn permits issued annually. The permit contains conditions depending upon the size of the fire, the hours of the day when the fire can be kindled, and restrictions on the materials that can be burned consistent with the N.H. Code of Admin. Rules, Env-A 1000, *Open Air Source Pollution*. Specifically, the rules provide that only clean, untreated wood, and brush less than 5 inches in diameter can be burned. DES works with the State forest rangers and local fire wardens in determining the appropriate enforcement response in instances where non-conforming materials are burned. DES responds to approximately 30 complaints of burning non-conforming materials on an annual basis.

*winter months*

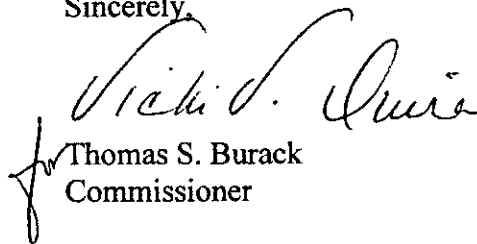
Effective in 2011, DES readopted Env-A 1000. Among other changes and clarifications to the rules that were adopted at that time, the provision that prohibited open burning if it was deemed as causing a nuisance was removed from the rules due to resource constraints at DES. While SB 46 does not prohibit the State forest ranger or local fire warden from issuing a burn permit if the burning will occur less than 300 feet from an abutting residence, it would require DES to respond to citizen's complaints and require that the smoke be abated or that the fire is extinguished, in the instance where the smoke from outdoor fires or burning devices crosses the property line. DES does not currently have the resources to implement this program. Accordingly, DES has prepared a fiscal note on the estimated fiscal impact of this bill.

DES understands that the intent of this bill is to address outdoor wood burning in instances where abutting neighbors may be impacted by the smoke. Wood smoke from burning even clean wood emits particulate matter that can impact public health and the environment.

However, we believe that a more streamlined approach would be to provide the local health officers or the local fire warden and the State forest ranger with the authority to revoke the burn permit in these instances. Consistent with this approach, DES would be happy to work with the sponsors and this Committee to offer an amendment consistent with this approach.

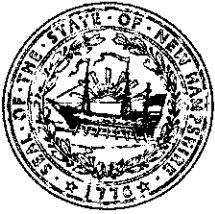
Thank you for the opportunity to provide testimony. Should you have further questions or need additional information, please contact Craig A. Wright, Acting Director, Air Resources Division (271-1088, [craig.wright@des.nh.gov](mailto:craig.wright@des.nh.gov)) or Pamela Monroe, Compliance Bureau Administrator, Air Resources Division (271-0882, [pamela.monroe@des.nh.gov](mailto:pamela.monroe@des.nh.gov)).

Sincerely,



Thomas S. Burack  
Commissioner

Cc: SB 46 Sponsors



STATE OF NEW HAMPSHIRE  
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT  
DIVISION OF FORESTS AND LANDS  
172 Pembroke Road P.O. Box 1856 Concord, New Hampshire 03302-1856

603-271-2214  
FAX: 603-271-6488  
www.nhdfi.org

January 30, 2013

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

**Re: HB 46-FN relative to air quality violations for outdoor fires**

Dear Chairman Prescott and Members of the Committee:

Thank you for the opportunity to testify on SB 46-FN, which would amend RSA 125-C, the *Air Pollution Control Act*, to prohibit outdoor burning by a property owner if the nearest abutting residence is less than 300 feet from the fire and the smoke plume from the fire crosses the property line. The Department of Resources and Economic Development is not taking a position on the bill at this time, however, we have several concerns.

The state of New Hampshire requires anyone who wishes to burn clean, ordinary combustibles such as leaves, brush or untreated lumber, or have a camp or cooking fire to have written permission from the landowner *and* a written fire permit except when the ground is covered with snow. Fire Permits are obtained locally through the Forest Fire Warden, Deputy Warden's and Issuing Agents.

The Division of Forests and Lands within DRED is statutorily responsible for the protection of our forests from wildfire; and while it is the responsibility of the Department of Environmental Services to respond to air quality complaints, violations of any air resource regulations are automatically violations of fire permit rules under RES 5601.04. Therefore, in practice, it is often the local Forest Fire Warden and/or district Forest Ranger who is asked to investigate complaints regarding outdoor fires. In 2012 Forest Rangers responded to 898 fire-related calls for service and issued 225 fire-related enforcement actions, mostly permit infractions. The agency estimates that between 80,000 and 100,000 fire permits are issued annually, however, this does not take into account the number of legal fires kindled when there is snow covering the ground and a permit is not necessary, nor does it address seasonal permits or campground permits. The actual number of legal fires kindled each year is most certainly much larger than 100,000. Given Forests and Lands responsibility for enforcing NH's forest fire laws and the agency's practice of assisting DES in the enforcement of air quality laws as they relate to outdoor fires, we are concerned that this bill will be difficult to enforce and does not adequately address issued related to nuisance smoke from outdoor fires.



The department is also concerned about this bill from a recreational perspective. The Division of Parks and Recreation operates 19 State Park campgrounds, with several locations that abut heavily-settled residential areas, such as at Bear Brook State Park in Allenstown, Pawtuckaway in Raymond, White Lake in Tamworth, and Lake Francis in Pittsburg. Campfires are an intrinsic part of the outdoor camping experience, serving as the gathering place for cooking, socializing, and community-building for families, youth groups and scouts.

For the 2012 summer season, the Division earned \$2,382,552 in camping revenue, accounting for a significant portion of the Division's total revenue generation. The Division is deeply concerned that SB 46 would significantly impact the camper experience in our campgrounds; resulting in reduced visitation and reducing a major revenue source for the Division.

DRED understands that the intent of this bill is to address outdoor wood burning in instances where abutting neighbors may be negatively impacted by the smoke. It may be appropriate for a local official such as a health officer to have the authority to enforce rules regarding nuisance smoke, as well as Forest Fire Wardens and Deputies, as was the case prior to 2011. However, it should be noted that the Division of Forests and Lands, and by extension Forest Fire Wardens, authority for enforcing open burning laws comes through our laws regarding protection of forests from wildfires. We have no legal authority regarding open burning when there is snow cover or the burning device is enclosed.

Thank you for the opportunity to provide testimony on this bill. If the sponsors or this committee would like to amend this bill or pursue different legislation regarding nuisance smoke, DRED would be happy to provide assistance.

Sincerely,



Brad W. Simpkins,  
Interim Director





1800 Elm Street  
Manchester, NH 03101  
Tel: (603) 369-3977  
Fax: (603) 369-3978

1-800-LUNG USA  
lungne.org

## Testimony of the American Lung Association in New Hampshire in FAVOR of SB-46, AN ACT relative to air quality violations for outdoor fires

January 30, 2013

*Chair*

Paula Daley DePlanche (Dover)

*Vice Chair*  
Guy Sylvester (Portsmouth)

*Second Vice Chair*  
Peter Loeser, MD (Concord)

Barbara Callahan, PhD (Graham)

Craig Donais (Manchester)

Mark Favorite (Rochester)

Susan Martore-Baker (Manchester)

Richard G. Rumba (Peterborough)

Linda L. Sirak (Manchester)

Paula K. Smith (Raymond)

Good morning. My name is Nancy Johnson and I am here today representing the American Lung Association in New Hampshire in support of SB-46.

One of the American Lung Association's key goals is to assure that the air we breathe does not cause or worsen lung disease. This is the basic reason we are in favor of this proposal.

Wood smoke is the most common air pollutant during the heating season. We are also concerned that it is becoming a common pollutant throughout the year as more people use outdoor fire pits and other methods of burning wood.

The pollution produced when wood is burned has health effects that are very similar to secondhand tobacco smoke. The particle pollution from the smoke can raise the risk of heart attacks and stroke, stunt lung function and development, damage lung tissue and airways, increase hospital visits for respiratory and cardiovascular problems and trigger asthma attacks.

As more research has been conducted we are learning that particle pollution is unhealthy at levels that were once considered safe. For these reasons the ALA supports a wide variety of efforts to reduce particle pollution to the lowest levels possible. We certainly recognize that smoke from wood burning stoves is a byproduct from what is often the essential need to heat a home at a reasonable cost. That same reasoning does not apply to outdoor recreational fires.

We would ask you to consider amending this proposal in two ways. First, use the bill to clearly define wood smoke as a public health nuisance and to define a violation as visible smoke crossing a property line for more than 12 minutes in any one hour period. The violation process would require that the neighbor file a complaint. Other states have used this approach for controlling outdoor wood boiler emissions. Putting the definition of a violation in statute would also give an affected neighbor the ability to pursue a legal resolution of a problem through the courts if the state or local government refuses to take action.

The second suggested amendment we suggest would address an unintended consequence of prior policy action.



*Greg P. Farnham*

Page 2 of 2

Prior to 2005, local fire wardens were permitted to regulate open burning for a number of reasons including fire safety, burning of prohibited materials, or if it created smoke that was deemed to be a "nuisance".

In 2005 the State Supreme Court determined (in an un-related ruling) that local governments are precluded from regulating "air pollution". Most legal experts equate "smoke" with "air pollution". Therefore the State Fire Marshal's Office advised the fire wardens that NH towns and cities are no longer able to regulate smoke as a "nuisance"

During rule revisions in 2011, the DES officially removed the "nuisance clause" from their rules to comply with this legal determination. Town Health Officers can regulate "public health" nuisances, but these are narrowly defined as agents that can carry or transmit odor or disease (ie: garbage, rodents, insects, etc.). It does not include smoke despite the overwhelming scientific evidence linking smoke with illness and even increased deaths.

Based on this situation New Hampshire now has no one with the authority to regulate a "nuisance" situation when dealing with smoke.

We urge you to use this bill as a vehicle to remedy this situation by giving health officers and/or DES the authority to act.

We respectfully seek your unanimous support for the bill with our suggested amendments.

Thank you.

PG<sup>m</sup>  
2/4/13

**Draft Proposed by DES**

As an alternative to the language currently in SB 46-FN as introduced, DES suggests creating a new section, 147:16-c that reads as follows:

**RSA 147:16-c Open Burning Nuisance.** The health officers may, in writing, order the discontinuance of any open burning that, upon a determination by the health officer, is causing a nuisance or is injurious to public health. As used in this section, "open burning" means the burning of any type of combustible material outside in the ambient air where the products of combustion are discharged directly into the atmosphere rather than through a stack, chimney, or flue. Recreational campgrounds and camping parks subject to RSA 216-I and recreation camps subject to RSA 485-A:23 shall be exempt from this section.

Minimum

January 30, 2013

SB 46—Relative to air quality violations for outdoor fires.

Erin Douglass-Fish  
117 Gilsum St. Keene NH 03431  
Home # 603-352-9309—Cell # 603-313-2794  
Email [butcherin@gmail.com](mailto:butcherin@gmail.com)

Good morning--and thank you--Senator Prescott, Senator Odell and distinguished members of the Energy and Natural Resources Committee for allowing me to speak with you today.

My name is Erin Douglass-Fish and I'm from Keene NH--I am here today to speak in favor of Senate Bill 46-Relative to air quality violations for outdoor fires.

I am here today with my 14 year old daughter Audrey--today is her birthday!

The approval of Senate Bill 46 is critical in terms of providing DES the tools to uphold and enforce the law as it pertains to our rights regarding air pollution under RSA 125-C.

The law states we have the right to be protected from harmful air pollution on our property--we are entitled to the enjoyment of our life and property without unreasonable interference or detriment to our health, safety or welfare from air pollution/smoke.

According to DES--There is a lack of awareness that wood smoke is a major source of air pollution in the United States. DES clearly defines the burning of wood and yard debris as harmful air pollution--that the combustion of organic matter such as wood and yard debris releases a variety of harmful substances, including particulates, carcinogens, carbon monoxide and other respiratory irritants and toxins. In fact according to the EPA wood smoke can enter your home and reach up to 70 percent of outdoor levels.

In 2011 the NH DES Air Resources Division readopted their administrative rules pertaining to open burning. One major change was the deletion of the "nuisance clause" for open burning. As a result, fire departments can no longer require a permittee to extinguish an outside fire if the smoke is creating a nuisance.

Historically if the smoke from someone's fire from outdoor burning was negatively affecting someone else--the complainant could request the local fire department to have the fire put out. In fact there are still multiple municipalities that still make mention of that legal right on their official fire department web sites--stating--"Air pollution laws require the fire to be extinguished if one person complains about the smoke." This is still listed --for example on the Durham NH Fire Departments website.

Regardless of the reason behind the deletion of the nuisance clause--or the challenges DES may face--they are still ultimately accountable to fulfill their enforcement responsibilities to protect NH residents from smoke/air pollution.

I believe Senate Bill 46 would enable DES to close the loophole the removal of this nuisance clause created--and therefore provide NH residents reasonable protection from smoke from outdoor burning--as this does affect the greater good of NH.

You may be asking or wondering at this point--why do I care?

This is why--

My family's lives this summer were literally turned into a toxic, smoke and ash filled nightmare. This began for us on July 7<sup>th</sup> of 2012--with new neighbors who moved in diagonally behind us at the end of May of 2012.

My husband and I have lived in our home for over 20 years. It's been the only home my daughter has ever known. We live in an older residential neighborhood in Keene where many of the homes are located close together. In fact we have a shared driveway with our elderly next-door neighbor--who up until this summer had lived in her home for over 50 years.

My family--as well as all of the residents of Keene, NH--live with wood smoke virtually year round in our neighborhoods--on average 8 to 9 months a year. Living in New England as we do--home heat from wood is a big part of the culture.

Therefore my family really looks forward to the few months we have where we can for the most part, breathe smoke free air. I cherish this time with my family--and this summer was no exception. We were already enjoying the warm weather--opening our windows, sitting outside on our porch when the new neighbors started burning.

From July 7<sup>th</sup> 2012, through August 18<sup>th</sup> of 2012, my family was forced to breathe in toxic smoke/air pollution on a regular basis--as well as have ash rain down on our property multiple times from active fires. We were afforded no meaningful protection--none.

There were many nights we couldn't open our windows or even enjoy sitting on our porch because the smoke was so bad. The ambient smoke filled our home--with some areas of our home being worse than others. The stench was everywhere.

Our daughter is our life--and we had to have her sleep in another part of our home this summer because of the amount of ambient smoke coming into her bedroom!

My family experienced headaches, throat and eye irritation as well as coughing from being forced to breathe the smoke from these fires.

The smoke also forced us to run our air conditioners--when normally we would have turned them off in the evening--just to filter the air a little. It offered little relief--but it was better than nothing.

My husband and I have made exhaustive efforts in terms of cooperatively seeking help and protection only to be ping ponged back and forth multiple times among local and state entities--including but not limited to the Keene Fire Department, the Keene Code Enforcement Department, the Keene City Attorney, DES, DHHS, the Division of Forests and Lands as well as the EPA and others.

The common mantra regarding the neighbors and their burning--that was echoed by the Keene Fire Department, DES and the Division of Forests and Lands was that--the neighbors have as much right to burn as we do to complain--which is completely false.

Our right to breathe reasonably pure air on our property does not require a permit--It's the law. Whereas the neighbors privilege to burn is just that--a privilege: A privilege that requires a permit and is subject to being "Summarily Suspended"--pending any violations of the restrictions.

However, somehow this all got flipped--and breathing reasonably clean air became the privilege--and nonessential open burning became the right--with no consideration to the health and safety of our family or the community.

Initially the neighbors behind us were burning in a homemade incinerator device which even though our local fire department told us numerous times was legal--wasn't. DES sent a letter to the neighbor indicating they couldn't burn in it anymore--so the neighbors just built a homemade fire pit and burned in that. The smoke and ash didn't lessen—in fact it got worse.

We witnessed the neighbors burning copious amounts of pine, brush, leaves and other wood. The fires would often burn late into the night smoldering--filling the already saturated air with smoke and ash.

We witnessed the neighbors burning illegally during the day.

We witnessed the neighbors illegally leave the fire unattended.

We witnessed the neighbors illegally burn wood that was not generated from their property.

Ultimately the neighbors were allowed to continue burning.

In terms of the toxic smoke that was regularly emitted onto our property Pam Monroe who was my primary contact at DES this summer considered it to be a nonissue. Why? Because what the neighbors were burning was deemed legal. The smoke is the big elephant in the room--not worthy of consideration because of a rule that defines what can be burned.

The rules regarding open burning are meant to define and protect our rights under the law--not undermine our rights --or use as an excuse not to uphold and enforce the law.

It was bad enough being assaulted by the smoke and ash in our home and on our property--but then to be treated as if we were nothing but a nuisance--with no meaningful protection given to us by the authorities we trusted to protect us was devastating.

On Friday morning August 3<sup>rd</sup> 2012, I contacted Keene Code Enforcement--and John Rogers and Josh Gorman --both code enforcement officers--came to our home along with--Keene Fire Chief Gary Lamoureux. The reason we had them come to our home--was because yet again--there was ash all over our property from the neighbors burning--and we wanted them to witness this as well as voice our other concerns.

Through the course of this meeting--my husband and I both discussed our concerns regarding the toxic smoke and dangerous ash. We also voiced our serious concerns about our elderly, next-door neighbor Alberta--whom we have a shared driveway with--and whose home is even closer to the burners than ours.

We told them that Alberta was in poor health suffering from COPD--and that we knew the smoke was a dangerous threat to her health and safety. In her 80's-- Alberta had lived in her home for over 50 years and had been our neighbor for the 20 years we've owned our home.

Alberta could no longer drive--she lived alone as her husband is deceased and they had no children. Alberta's sister who lives in VT--would come off and on to visit-- and to care for her. However it had been over six weeks since she had visited as she was dealing with her own health issues.

Less than a week later after our meeting in which my husband and I pleaded for help from the Keene Fire Chief and two Keene Code Enforcement officers--Alberta had a heart attack.

On Thursday morning August 9<sup>th</sup> 2012, I noticed Alberta hadn't gotten her mail from the day before--and worried--I tried calling her on the phone as well as knocking on her door.

When she didn't answer--I entered an unlocked door at her home--and I found Alberta in a living room chair--clutching an inhaler in one hand and a crumpled tissue in the other hand. I called 911--and Alberta was taken to the ER.

As soon as I entered Alberta's home--I could smell the wood smoke. The neighbors had burned heavily the 4 nights prior--taken one night off--and had burned another 4 nights prior to that.

The majority of these days and nights were hot and humid--and that coupled with the intense smoke from the neighbors burning made for a toxic health hazard just waiting to happen--and it did!

Alberta never came home again--she now lives in a nursing home. We were told her home will be going on the market in the spring to be sold.

When I told Alberta's sister what had happened--I also showed her and her daughter-in-law photographs I had taken of the smoke and ash--and they couldn't understand why someone would burn like this especially while the weather was so hot. And of course they had no idea it had been going on--as they hadn't been to visit in over 6 weeks.

We are extremely grateful Alberta is alive--however we are shocked, saddened and angered at the senselessness of this situation. This did not have to happen.

When I called Fire Chief Lamoureux and left a message regarding what had happened to Alberta--Chief Lamoureux never returned my call.

When I recently spoke to Alberta's nephew letting him know I was still making efforts to have this rectified-- I spoke to him about how bad the smoke and ash were this summer--and he told me his Aunt's attic is filled with ash from the fires--it had come in through the soffit on her roof and covered everything. I literally started shaking when he told me this. I asked him if I could take some pictures of the ash--and he allowed me to.

Emotionally this has been a traumatic burden on our family--and it's still not over. We looked to our city and state to protect us and we have been abandoned.



Many have agreed there is a problem--but there has been no urgent need to uphold the law.

The burners have been afforded all the protection and legal enabling to continue to burn with no consideration for the health, safety or well-being of our family or the community.

Legally my neighbors have the privilege--not the right--to obtain a permit to burn. My neighbors permit and privilege to burn should have been suspended and revoked this summer. It wasn't.

The law exists--it needs to be upheld and enforced. I believe Senate Bill 46— Relative to air quality violations for outdoor fires--will give some teeth to the law and provide reasonable protection to the greater good of NH.

In closing--I pose a question to you--will it take a burner like this moving in behind where you live to make you realize how precious the air you breathe is?

Thank you to the committee members--and thank you to Senator Reagan--and those representing the American Lung Association for your time and consideration.

Respectfully,

-Erin Douglass-Fish

# Committee Report

STATE OF NEW HAMPSHIRE  
SENATE  
REPORT OF THE COMMITTEE  
FOR THE CONSENT CALENDAR

Date: 2.7.13

THE COMMITTEE ON Energy and Natural Resources  
to which was referred Senate Bill 46-FN

AN ACT                   relative to air quality violations for outdoor fires.

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

**IS INEXPEDIENT TO LEGISLATE**

BY A VOTE OF:   5-0

AMENDMENT # N/As

CONSENT CALENDAR VOTE: 5-0

Senator Jeb E. Bradley for the Committee

The prime sponsor asked for a recommendation of inexpedient to legislate for this legislation. The committee has decided to honor that request at this time.

Chris Cote 271-3067

## New Hampshire General Court - Bill Status System

**Docket of SB46**

Docket Abbreviations

**Bill Title:** relative to air quality violations for outdoor fires.*Official Docket of SB46:*

<b>Date</b>	<b>Body</b>	<b>Description</b>
1/3/2013	S	<b>Introduced</b> and Referred to Energy & Natural Resources; <b>SJ 4</b>
1/24/2013	S	Hearing: 1/30/13, Room 101, LOB, 9:45 a.m.; <b>SC6</b>
2/7/2013	S	Committee Report: Inexpedient to Legislate, 2/14/13; Vote 5-0; CC; <b>SC8</b>
2/14/2013	S	Inexpedient to Legislate, MA, VV === BILL KILLED ===; <b>SJ 5</b>

NH House

NH Senate

# Other Referrals

SB 46

# 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 # 0204s      \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_
- AMENDMENT # 0227s      \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_

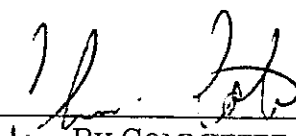
ALL AVAILABLE VERSIONS OF THE BILL:

- 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

8.8.13



BY COMMITTEE AIDE