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HB 1289 – AS AMENDED BY THE HOUSE

07Mar2006... 0973h

2006 SESSION

06-2172 06/10

HOUSE BILL 1289

AN ACT relative to Pennichuck Brook and its watershed.

SPONSORS: Rep. Balboni, Hills 21; Rep. Crane, Hills 21; Rep. M. Martin, Hills 26

COMMITTEE: Resources, Recreation and Development

AMENDED ANALYSIS

This bill codifies certain proposed rules of the department of environmental services to protect the purity of Pennichuck Brook and its watershed.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Six

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AN ACT relative to Pennichuck Brook and its watershed.

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

1 New Subdivision; Pennichuck Brook and Watershed. Amend RSA 485 by inserting after section 61 the following new subdivision:

Pennichuck Brook and Watershed

485:62 Purpose. The purpose of this subdivision is to protect the purity of water of the Pennichuck Brook pond system, which is the principal drinking water supply source for the city of Nashua and an important water supply source for other municipalities in the region receiving water from the Pennichuck Water Works system.

485:63 Affected Area. This subdivision shall be effective within the Pennichuck Brook watershed above the Supply Pond dam which is located at approximate latitude 42 degrees 47' 30", longitude 71 degrees 28' 29", in the towns of Amherst, Hollis, Merrimack, Milford, and the city of Nashua.

485:64 Definitions. In this subdivision:

- I. "Pennichuck Brook ponds" means the series of ponds or impoundments and the connecting waters on Pennichuck Brook beginning with Pennichuck Pond and terminating at the Supply Pond dam.
- II. "Pennichuck Water Works" means the owner of the public water system serving the city of Nashua and portions of other towns in the region;
- III. "Protected area" means that portion of the area described in RSA 485:63 above which lies:
 - (a) Within 400 feet of the reference line of the Pennichuck Brook ponds;
 - (b) Within 200 feet of the reference line of any stream or other water body tributary to said ponds visible on the version of the U. S. Geological Survey 7 ½-minute topographic maps current in 2006, except for intermittent streams depicted with a broken line; or
 - (c) Within 100 feet of any intermittent tributary visible on the version of the U. S. Geological Survey 7 ½-minute topographic maps current in 2006, or any wetland adjacent to the Pennichuck Brook ponds or other water body tributary to said ponds.

IV. *****REDACTED COPY***** "Reference line" means "reference line" as defined in RSA 483-B:4, XVII.

V. "Restricted area" means that portion of the protected area which is a wetland or lies within 100 feet of the reference line of the Pennichuck Brook ponds or any stream or other water body tributary to said ponds.

VI. "Wetland" means "wetland" as defined in RSA 482-A:2, X.

485:65 Prohibited Activities. No person shall:

I. Alter the terrain, build, or expand any structure or pavement, or any septic system, cesspool, privy, or other device for the reception, storage, or discharge of domestic sewage, other than a structure necessary for the operation of the water works within the restricted area.

II. Allow any wastewater, sink drainage, excrement, or water that has been used for washing or cleansing materials, persons, or food, to run into any of the Pennichuck Brook ponds or their tributaries, or into any excavation or cesspool in the ground or onto the surface of any ground within the restricted area.

III. Deposit any substance which is subject to decay, including any dead animal or fish or parts thereof, food or food waste, or any waste, into the waters of or upon the ice of the Pennichuck Brook ponds or their tributaries or in the restricted area.

IV. Place or leave within the protected area any hazardous waste, as defined in RSA 147-A.

V. Place or leave within the protected area any solid waste as defined in RSA 149-M.

VI. Place or leave within the protected area any chemical waste or regulated contaminant as defined in RSA 485-C:2, XIII.

VII. Store on the ground any bulk fertilizer, compost, or manure within the protected area. This paragraph shall not prohibit outdoor storage of such items where protections approved by the department of agriculture, markets, and food to prevent leaching into the soil are used.

VIII. Place or use any boat, floating device, or recreational equipment on the Pennichuck Brook ponds below Holt Pond Dam, located at Thornton Road in the city of Nashua and the town of Merrimack.

IX. Bathe, swim, or wade in the Pennichuck Brook ponds.

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X. Place or use a boat, floating device, or other equipment powered by petroleum products on the Pennichuck Brook ponds.

XI. Permit or take any action of any kind which may endanger the purity of the Pennichuck Brook ponds.

XII. Apply pesticides or herbicides as defined in RSA 430:29 within the area under RSA 485:63, other than in strict conformance with the rules of the New Hampshire pesticide control board.

XIII. Apply fertilizer, manure, or compost to the land in the affected area under RSA 485:63, other than in strict conformance with Manual of Best Management Practices for Agriculture in New Hampshire, reprinted May 2001, or any subsequent best management practices identified and published by the commissioner of agriculture, markets, and food under RSA 431:34.

485:66 Exemptions. RSA 485:65 shall not apply to:

I. Employees of Pennichuck Water Works or their designees engaged in the performance of necessary duties for studying, monitoring, protecting, and controlling said stream and ponds.

II. The establishment and maintenance of trails and other facilities for passive recreational uses.

III. The establishment and maintenance of facilities for the operation of the water works.

IV. Timber harvesting activities conducted in strict accordance with state of New Hampshire laws including RSA 227-J and the January 2001 edition of "Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire," by department of resources and economic development, division of forests and lands or any subsequent edition of the same manual or another manual adopted for the same purpose by the division of forests and lands.

V. Agricultural operations operating in compliance with the Manual of Best Management Practices for New Hampshire, reprinted May 2001, or any subsequent best management practices identified and published by the commissioner of agriculture, markets, and food, under RSA 431:34.

485:67 Development Restrictions.

I.(a) Development in the entire protected area shall be subject to the minimum shoreland protection standards that normally apply within the 250-foot protected shoreland and the natural woodland buffer requirement that normally applies within 150 feet of the reference line provided for in RSA 483-B:9.

(b) In determining whether a natural woodland buffer is "existing" in the sense of RSA 483-B:9, V(a)(1), the department shall determine whether said buffer existed as of the effective date of this subdivision.

II. The following shall apply to any activity requiring local subdivision approval or site plan approval that will result in impervious cover of more than 15 percent of the lots involved within the area described in RSA 485:63:

(a) Infiltration of stormwater from a 2-year, 24-hour storm event post-development shall equal or exceed infiltration from the 2-year, 24-hour storm event pre-development.

(b) A stormwater management system shall be designed to comply with rules adopted by the department and to remove 80 percent of the average annual load of total suspended solids, grease, oil, and floatables in the runoff leaving the site after the site is developed.

(c) A stormwater management system shall have an operation and maintenance plan to ensure that the system continues to function as designed.

(d) The owner of the land on which the stormwater management system is located shall operate and maintain the system according to the plan required in subparagraph (c).

(e) The owner of the land on which such activity is proposed to take place shall provide a copy of all submissions required by the local planning board to Pennichuck Water Works, Nashua Regional Planning Commission, Pennichuck Brook Watershed Council, and the planning boards of the municipalities named in RSA 485:63, at the same time such submissions are provided to the local planning board, to enable all parties to determine whether the proposed activity will comply with the standards in this paragraph.

485:68 Nonconforming Uses. An existing nonconforming land use within the protected area shall be governed by the following:

I. A nonconforming land use existing as of the effective date of this subdivision may be continued, subject to the following:

(a) On lawns or areas with grass, no fertilizers may be used except those used in accordance with the department of agriculture, markets, and food's best management practices under RSA 431:34.

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(b) The department shall require the use of best management practices if the department determines they are needed to restore or protect water quality.

(c) Existing agricultural operations operating in compliance with the Manual of Best Management Practices for Agriculture in New Hampshire, reprinted May 2001, or any subsequent best management practices identified and published by the commissioner of agriculture, markets, and food pursuant to RSA 431:34, shall be exempt from the restrictions in subparagraph (a).

II. If a change in use, including a change from seasonal to year-round use or an increase in the intensity of a land use to such an extent that the nature or magnitude of its impact on water quality can be expected to increase, occurs or is proposed, all of the requirements of this subdivision shall apply.

III. If an existing nonconforming use is discontinued for 2 consecutive years, all the requirements of this subdivision shall apply.

485:69 Notice. The Pennichuck Water Works shall provide to the public a summary of the prohibitions listed below by:

I. Posting notice at all locations identified by the department where persons might reasonably be expected to access the Pennichuck Brook ponds or their tributaries.

II. Publishing notice annually in a newspaper of general circulation in the areas affected by said provisions.

III. Providing a copy of this section annually to the planning board and conservation commission of each municipality listed in RSA 485:63.

485:70 Enforcement. In accordance with the provisions of RSA 485:24, the department shall designate the health officers and the boards of health of the city of Nashua and the towns of Amherst, Hollis, Merrimack, and Milford and their duly authorized agents as agents of the department for the enforcement of this section in cooperation with the department.

485:71 Penalty. Any person violating this subdivision shall, in accordance with RSA 485:26, be guilty of a misdemeanor if a natural person or guilty of a felony if any other person.

485:72 Effect on Local Ordinances. Nothing in this chapter shall be deemed to preempt the authority of the municipalities in the affected area, under other statutes, to enact local

ordinances or regulations protecting Pennichuck Brook and its watershed; provided, however, that requirements imposed under this subdivision shall be considered as minimum.

2 Effective Date. This act shall take effect January 1, 2007.