Bill as Introduced

HB 212 - AS INTRODUCED

1999 SESSION

99-0208
03/10

HOUSE BILL ***212***

AN ACT relative to local ordinances or regulations affecting groundwater withdrawals.

SPONSORS: Rep. Weyler, Rock 18; Rep. Welch, Rock 18; Rep. J. Flanders Rock 18; Rep. Rubin, Rock 25

COMMITTEE: Resources, Recreation and Development

ANALYSIS

This bill provides that local ordinances or regulations affecting groundwater withdrawals enacted under statutory authority shall not be preempted by the groundwater protection act.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 212 – AS INTRODUCED

99-0208
03/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord One Thousand Nine Hundred and Ninety-Nine

AN ACT relative to local ordinances or regulations affecting groundwater withdrawals.

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

1 Water Management and Protection; Groundwater Protection Act; Effect on Local Ordinances; Groundwater Withdrawal Exception Removed. Amend RSA 485-C:20 to read as follows:

485-C:20 Effect on Local Ordinances. Nothing in this chapter shall be deemed to preempt the authority of municipalities, under other statutes, to enact local ordinances or regulations affecting groundwater, [~~other than groundwater withdrawals;~~] provided, however, that requirements imposed under this chapter shall be considered as minimum.

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

Hearing Minutes

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

PUBLIC HEARING ON HB 212

BILL TITLE: Relative to local ordinances or regulations affecting groundwater withdrawals.

DATE: January 13, 1999

LOB ROOM: 305 **Time Public Hearing Called to Order:** 11:00 A.M.

Time Adjourned: 12:26 P.M.

(please circle if present)

Committee Members: Reps. Royce, D. Lawton, Whalley, Crowell, R. Lawton, St. Hilaire, Cooney, Kibbey, Lavoie, ~~Hinman,~~ Mirski, O'Connell, Corbin, Roberts, Blanchard, Downing, Williams, Lefebvre, Robb-Theroux, Fortnam, Glines and Spang.

Bill Sponsors: Rep. Weyler, Rock 18; Rep. Welch, Rock 18; Rep. J. Flanders, Rock 18; Rep. Rubin, Rock 25

TESTIMONY

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

Rep. Wyler – Prime Sponsor – Supports – Testimony attached

Rep. Spang - What are present regulations from State? ANS: On > ½ million gal/acre.

Rep. Cooney - Should town or state be in control? ANS: Should be shared control.

Rep. Rubin – Co-Sponsor – Supports. Has concerns if water is taken out of one town and goes to another town, host town is protective of aquifer, but water leaves town. Concerned that aquifer may be depleted by private company taking water for profit.

Rep. Royce: Does state limit withdrawals? ANS: Yes, but prefers local control.

Rep. Rabideau – Supports Feels this is an issue in Stratum. Local people care most about the water and local control would protect it best.

Sen. Cohen – Opposes. Chapter 124 went into effect on 8/1/98. Last session SB 374, 375 gave some measure of local control. There has been no local impact on withdrawals. The state can presently stop private companies from draining aquifers.

Rep. Cooney: Does SB 374 do what this bill does? ANS: Yes.

Rep. Spang: Do we need more public involvement? ANS: DES is responsive per Chapter 124.

Rep. Blanchard: Suggests copies of Chapter 124 be given to committee members.

Jayne Byrne – Brentwood – Supports. Chapter 124 excludes local control of withdrawals. Private companies bottling water for profit. State/Local partnership works well in wetland, etc. regulations. SB 374 does not require notification to abutters. Chapter 124 is primarily aimed at public utilities, who have accountability that private companies do not have. She pointed out that Brentwood is entirely on well water only.

Rene Pelletier, DES – Opposed. Written testimony attached. Rules are being prepared based on Chapter 124. Abutters & municipalities must be notified. When approved, withdrawals and recharging is looked at. DES does not allow "mining of water". Withdrawing for profit is a question for another day.

Rep. Royce: What are the limitations now? ANS: The amount which can be recharged.

Rep. Downing: Would they be shut down if withdrawing more? ANS: Yes. Who monitors? ANS: There are ground monitors and town monitors.

Rep. Blanchard: Completeness information at DES? ANS: Application information is detailed.
(Copy of SB 374 was distributed)

Rep. Cooney: Do other states tax water withdrawals? ANS: No, but Canada charges for water taken out of country.

Rep. Robb-Theroux: Is there a detriment from withdrawals? ANS: No abuses known. DES monitors 10 bottle water producers.

Rep. Spang: Are subsequent applications allowed? ANS: Not from same recharge area.

Rep. Downing: In proposed rules, is drawing too much subject to cessation and fines? ANS: Yes

Rep. Whalley: What is the recharging area? ANS: Varies with area, rainfall, etc.

Rep. Roberts: Does town have say in regulation? ANS: Yes. If town is against, what then? Public hearing, DES evaluates application and testimony. DES can approve even if town does not want it.

Rep. Corbin: Can towns make good decisions about water withdrawals? ANS: Yes, but emotions get involved sometimes.

Rep. Spang: Is future growth considered? ANS: Long term planning is considered.

Rep. Mirski: What is the average withdrawal per capita in one town. ANS: 50 Gal/day/per person.

Steve Del Deo, NH Waterworks – Opposed. Communities should participate and DES should encourage their participation. Ultimate decision should be made by the state.

Henry Veilleux, BIA – Opposed. The rules being prepared based on last session bills need a chance to work. The proposed draft rules should be reviewed by the committee.

David Batchelder, NH Waterwatch Stratum – Supports. Has concern that withdrawals of less than 57,000 gal/day are not regulated by DES. There is no oversight on these withdrawals.

Rep. Blanchard: Is the amount withdrawn monitored? ANS: No.

Rep Cooney: Do other agencies regulate all bottled water withdrawals? ANS: Chapter 124 eliminates oversight.

Rene Pelletier: Public health oversees bottled water – DES regulates all bottled water withdrawals.

Rep. Corbin: Could there be local control with state advisory role? ANS: No, since aquifers all cross boundaries.

Respectfully submitted,

Rep. Richard T. Cooney
Clerk

Wednesday, January 13, 1999

HB 212 PUBLIC HEARING

CALLED TO ORDER: 11:00 AM

Rep. Wyler – Prime Sponsor – Supports – Testimony attached

Stang: What are present regulations from State? Ans: On > ½ million gal/acre.

Cooney: Should town or state be in control? Ans: Should be shared control.

Rep. Rubin – Co-Sponsor – Supports

Has concern if water is taken out of one town and goes to another town, host town is protective of aquifer, but water leaves town. Concerned that aquifer may be depleted by private company taking water for profit.

Royce: Does state limit withdrawals? And: Yes, but prefers local control.

Rep. Rabideau – Supports

Feels this is an issue in Stratum. Local people care most about the water and local control would protect it best.

Sen. Cohen – Opposes

Chapter 124 went into effect on 8/1/98. Last session SB 374, 375 gave some measure of local control. There has been no local impact on withdrawals. The state can presently stop private companies from draining aquifers.

Cooney: Does SB 374 do what this bill does? Ans: Yes.

Stang: Do we need more public involvement? Ans: DES is responsive per Chapter 124.

Blanchard: Suggests copies of Chapter 124 be given to committee members.

Jayne Byrne – Brentwood – Supports

Chapter 124 excludes local control of withdrawals. Private companies bottling water for profit. State/Local partnership works well in wetland, etc regulations. SB 374 does not require notification to abutters. Chapter 124 is primarily aimed at public utilities, who have accountability that private companies do not have. She pointed out that Brentwood is entirely on well water only.

Rene Pelletier – DES – Opposed

Written testimony attached. Rules are being prepared based on Chapter 124. Abutters & municipalities must be notified. When approved, withdrawals and recharging is looked at. DES does not allow "mining of water". Withdrawing for profit is a question for another day.

Royce: What are the limitations now? Ans: The amount which can be recharged.

Downing: Would they be shut down if withdrawing more? Ans: Yes. Who monitors? There are ground monitors and town monitors.

Blanchard: Completeness information at DES? Ans: Application information is detailed.

(Copy of SB 374 was distributed)

Cooney: Do other states tax water withdrawals? Ans: No, but Canada charges for water taken out of country.

Robb-Theroux: Is there a detriment from withdrawals. Ans. No abuses known. DES monitors 10 bottle water producers.

Stang: Are subsequent applications allowed? Ans: Not from same recharge area.
Downing: In proposed rules, is drawing too much subject to cessation and fines? Ans: Yes
Whalley: What is the recharging area? Ans: Varies with area, rainfall, etc.
Roberts: Does town have say in regulation? Ans: Yes. If town is against, what then? Public hearing, DES evaluates application and testimony. DES can approve even if town does not want it.
Corbin: Can towns make good decisions about water withdrawals? Ans: Yes, but emotions get involved sometimes.
Spang: Is future growth considered? Ans: Long term planning is considered.
Mirski: What is the average withdrawal per capita in one town. Ans: 50 Gal/day/per person.

Steve Del Deo – NH Waterworks – Opposed

Communities should participate and DES should encourage their participation. Ultimate decision should be made by the state.

Henry Veilleux – BIA – Opposed

The rules being prepared based on last session bills need a chance to work. The proposed draft rules should be reviewed by the committee.

David Batchelder – NH Waterwatch Stratum – Supports

Has concern that withdrawals of less than 57,000 gal/day are not regulated by DES. There is no oversight on these withdrawals.
Blanchard: Is the amount withdrawn monitored? Ans: No.
Cooney: Do other agencies regulate all bottled water withdrawals? Ans: Chapter 124 eliminates oversight.

Pelletier: Public health oversees bottled water – DES regulates all bottled water withdrawals.
Corbin: Could there be local control with state advisory role? Ans: No, since aquifers all cross boundaries.

PUBLIC HEARING CLOSED AT 12:26 PM

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

PUBLIC HEARING ON HB 212

BILL TITLE: Relative to local ordinances or regulations affecting groundwater withdrawals.

DATE: January 13, 1999

LOB ROOM: 305 **Time Public Hearing Called to Order:** 11:00 A.M.

Time Adjourned: 12:24

(please circle if present)

Committee Members: Reps. Royce, D. Lawton, Whalley, Crowell, R. Lawton, St. Hilaire, Cooney, Kibbey, Lavoie, ~~Hinman~~, Mirski, O'Connell, Corbin, Roberts, Blanchard, Downing, Williams, Lefebvre, Robb-Theroux, Fortnam, Glines and Spang.

Bill Sponsors: Rep. Weyler, Rock 18; Rep. Welch, Rock 18; Rep. J. Flanders, Rock 18; Rep. Rubin, Rock 25

TESTIMONY

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

REP. WEYLER: TEST. ATTACHED
STATE QUALITY REGULATIONS FROM STATE. 1/2 MIL GAL/ACRE REGULATIONS.
COONEY: TOWN VS STATE CONTROL? AYES: SHOULD BE SHARED. ~~SHD~~ TOWN SHOULD PROTECT AQUIFIER IF
REP. RUBIN: REMOVES H2O FROM TOWN & GOES TO ANOTHER TOWN. TOWN IS PROTECTIVE OF AQUIFER. CONCERNED THAT AQUIFER MAY BE DEPLETED. PRIVATE CO TAKING WATER.
ROYCE: STATE ADMITS WITHDRAWAL? AYES, YES BUT PREFER LOCAL CONTROL.
REP. RABIDEAU: PLAISTOW. STATEWIDE ISSUE, LOCAL CONTROL PROTECTS WATER, THAT CARE MOST ABOUT IT.

11:16 SEN COONEY: STRATUM. 81/SS CHAP WENT INTO EFFECT. NO LOCAL IMPACT ON WITHDRAWALS. SB 374-375. THESE GIVE SOME LOCAL CONTROL. STATE CAN NOW STOP PRIVATE CO FROM DRAINING AQUIFER.

COONEY: DOES 374 DO WHAT THIS BILL DOES. YES.

STAHL: DO WE NEED MORE PUBLIC INVOLVEMENT? ARTS: DES IS RESPONSIVE. CHAP 124.

BLANCHARD: HAVE COPIES OF 124 FOR COMMITTEE.

11:27 JAYNE BYRNE-BRENTWOOD: CHAPT 124 EXCLUDES LOCAL CONTROL OF WITHDRAWALS. PRIVATE COMPANIES BOTTLING WATER FOR PROFIT. STATE/LOCAL PARTNERSHIP IN WETLANDS, ETC. SB 374 (98) DOES NOT REQUIRE NOTIFICATION TO ABUTTERS. CHAP 124 IS PUBLIC UTILITIES. PUBLIC UTILITIES HAVE ACCOUNTABILITY NOT PRIVATE. BRENTWOOD ON WELL WATER ONLY.

11:34 RENE PELLETIER-DES: TESTIMONY ATTACHED. OPPOSED. AD HOC COM - HOW MANY MEETINGS. RULES BEING PREPARED BASED ON CHAP 124. ABBUTTERS & MUNICIPALITY MUST BE NOTIFIED. WHEN APPROVED, LOOK AT DAILY WITHDRAWALS & RECHARGING. DES DOES NOT ALLOW "MINING". WITHDRAWING FOR PROFITS A QUESTION FOR ANOTHER DAY.

ROYCE: LIMITATIONS NOW? ARTS: AMT TO WHICH CAN BE RECHARGED)

DOERFLINGER: SHUT DOWN IF DRAWING MORE? RIGHTS AWAY? WHO MONITORS? GROUND MONITORS & TOWN

Dowling (cont.):

Blanchard: Completeness of info @ DES.
Ans: Application layed is detailed (Copy of SB 370)

Cooney: Other states charge for H2O
Ans: No, Canada charges for out of country.

Robb: Detriment from withdrawals? Ans: No abuses known. Monitors 10 bottle water producers.

Stang: Subsequent applications allowed?
Ans: Owner includes recharge area.

Downing: Proposed rule drawing too more, flows etc. Ans: Immediate stoppage t fixes.

Whallet: Recharging size area? Ans varies with area, rainfall etc.

Roberts: Town regulates? Ans yes. If town against? Ans. Public hearing. DES evaluates application. Approved even if town does not want it.

Corbin: Can locals make good decisions about water withdrawals? Ans: Yes, but emotial sometime.

Spang: Future growth considered? Ans: Long term planning considered.

Mirski: Ave withdrawal per capita in one town. Ans: 50 gal/day/per person.

12:10 STEVE DEL DEO - NH WATER WORKS - OPPOSED
COMMUNITIES SHOULD PARTICIPATE & DES ENCOURAGES
ULTIMATE DECISION SHOULD BE BY STATE.

12:12 HENRY VEILLEUX - BIA - OPPOSED
LAST SESSION BILLS/RULES NEED CHANGE TO WORK
ENV PROPOSED DRAFT RULES SHOULD BE REVIEWED.

12:14 DAVID BATCHELDER - NH WATERWATCH - SUPPORTS
CONCERN < 57,000 GAL/DAY, LESS THAN DES.
NO OVERSIGHT ON WITHDRAWALS
BLANCHARD: MONITOR AMOUNT PUMPING? NO.
COONEY: OTHER AGENCIES REGULATE BOTTLED
WATER? CHAP 124 - ELIMINATES OVERSIGHT

12:20 PELLETIER: PUBLIC HEALTH OVERSEES BOTTLED
WATER. - DES REGULATES ALL BOTTLED WATER
WITHDRAWALS.
CORBIN: LOCAL CONTROL WITH STATE
ADVISORY ROLE? ANS: NO. TOWN
ONLY WITHDRAWALS. ANS: ALL CROSS
BOUNDRIES.

12:26 CLOSED.

Sub-Committee Actions

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

SUBCOMMITTEE WORK SESSION ON HB 212

BILL TITLE: relative to local ordinances or regulations affecting groundwater withdrawals.

DATE: 2/3/99

Subcommittee Members: Reps. Cooney, Blanchard, Spang, Downing, Whalley, and Corbin

Comments and Recommendations:

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, (Re-Refer), Interim Study (Please circle one.)

Moved by Rep. Blanchard

Seconded by Rep. Downing

Vote: 6-0

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Richard T. Cooney
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

SUBCOMMITTEE WORK SESSION ON HB 212

BILL TITLE: relative to local ordinances or regulations affecting groundwater withdrawals.

DATE: ~~1/26/09~~

Subcommittee Members: Reps. Cooney, Blanchard, Spang, Downing, and Whalley, CORBIN

Comments and Recommendations:

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, (Re-Refer) Interim Study (Please circle one.)

Moved by Rep. BLANCHARD

Seconded by Rep. DOWNING

Vote: 6-0

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Richard T. Cooney
Subcommittee Chairman/Clerk

SUBCOMMITTEE WORK SESSION

COMMITTEE: RR & D

BILL NUMBER: HB 212

TITLE: RELATIVE TO LOCAL

DATE: 9/28/99 & 10/6/99 LOB ROOM: 307

TIME CALLED TO ORDER: 1:12 PM TIME ADJOURNED: 2:23 PM

SUBCOMMITTEE MEMBERS: CORBIN, COOKEY, SPANG, WHALLEY, DOWLING, BLANCHARD

NOTES: (Attach additional sheets if necessary)

NEXT MEETING 10/6/99 @ 10 AM

10/6/99 SUB COMMITTEE MEETING.

PRESENT: COOKEY, BLANCHARD, DOWLING, WHALLEY, SPANG.

REP COOKEY OPENED MEETING AT 10:06 AND GAVE A INTRODUCTION ON THE BILL.

REP WHALLE MOVED ITL AND SPOKE TO MOTION, REP BLANCHARD SPOKE IN FAVOR. VOTE WAS 5-0 FOR ITL.

RECOMMENDATION TO THE FULL COMMITTEE: ☒ See Below ☒ No Recommendation Yet

RECOMMENDATION IS ITL.

RESPECTFULLY SUBMITTED,

Rep. Richard Cooney
For the Subcommittee

Rev. 08/24/98

Sub-Committee Minutes

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

SUBCOMMITTEE WORK SESSION ON HB 212

BILL TITLE: relative to local ordinances or regulations affecting groundwater withdrawals.

DATE: 1/26/99

Subcommittee Members: Reps. Cooney, Blanchard, Spang, Downing, and Whalley

Comments and Recommendations:

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Richard T. Cooney
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

SUBCOMMITTEE WORK SESSION ON HB 212

BILL TITLE: HB 212

DATE: 1/26/99

Subcommittee Members: Reps. COONEY, CHAIR; BLANCHARD, SPANG, DOWNING, WHALLEY, CORBIN

Comments and Recommendations:

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk

Testimony

FILE COPY

Testimony of Rep. Kenneth L. Weyler
January 13, 1999 Room 305 11:00 a.m.

HB 212

Sorry I wasn't in on last session's discussions on water withdrawal. As chairman of the Kingston Planning Board I experienced this issue firsthand. We had a proposal to pump more than 20 million gallons of water per year from a 520 foot deep bed rock well. There was a great public concern from dozens of neighbors about the effect this would have on their wells. The town planning board was able to deal with the issues. We required a multi-day pump test with hydrologists on both sides, and several meetings with the neighbors.

I just don't see the same attention to local concerns through a state process as I do through a local process. Furthermore, it is that local involvement and education that allows a planning board to suggest, and the electorate to adopt, aquifer protection ordinances. In those parts of the state feeling constant development pressure, it is vital to get the electorate to accept some protection of this vital resource. Sacrifices in future development and land values will not be made unless the community sees an overall gain. Perhaps some of these concerns could be allayed if this committee saw fit to legalize and set rates for a depletion allowance paid to the town by a for profit water company that moved the water out of the local watershed. This committee may also have to examine mineral rights and the laws pertaining thereto.

We are partners with the state in protection of this resource and do not appreciate losing a place at the table. State agencies are not as sympathetic to local concerns as we expect our state representatives to be.

Please restore local governments' right to review these proposals. The dissemination of information in the affected areas is best done through a community based organization. Don't shut us out.

One of my constituents is here today. I hope you will call on her next. Jane Byrne's long experience as Chair of the Brentwood Planning Board has given her a statewide reputation for fairness and thoroughness. I would like you to hear her perspective.

Thank you.

State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES
6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867

January 13, 1999

The Honorable H. Charles Royce, Chairman
Resources, Recreation, and Development Committee
Legislative Office Building, Room 305
Concord, New Hampshire 03301

SUBJECT: House Bill 212, relative to local ordinances or regulations affecting groundwater withdrawals

Dear Chairman Royce:

Thank you for the opportunity to comment on House Bill 212 which seeks to provide authority for local regulation of groundwater withdrawals. It does this by removing language that was added to RSA 485-C:20 last year with the passage of Senate Bill 374 (Chapter 124, Laws of 1998). As you know, the Department of Environmental Services (DES) was an active participant in the ad hoc workgroup that came to consensus on the language contained in Senate Bill 374, including the exclusion of local regulation of groundwater withdrawals. Accordingly, as set forth below, DES opposes House Bill 212.

Prior to 1998, clear authority did not exist, at either the state or local level, to limit large groundwater withdrawals that could impact surrounding water resources such as wells, wetlands or surface waters. In addition, there was no established process to solicit and respond to local concerns regarding large withdrawals. These concerns were addressed in Senate Bill 374.

Since the occurrence of groundwater does not respect municipal boundaries, it was and is our position, as well as the consensus position of the ad hoc workgroup, that large groundwater withdrawals should be regulated by the State but with substantial opportunity for local participation. Although a well may be located in one community, the area that contributes water to, and that could be impacted by withdrawals from, that source may be in another municipality. Thus, regulation of withdrawals at the local level can be generally divisive and is often technically unsound.

Many communities in New Hampshire have very limited or no access to aquifers capable of supporting a large groundwater withdrawal to satisfy their water supply needs. Consequently, these municipalities are forced to look elsewhere for a well site. If local regulation is allowed to occur, access by "water poor" communities to an adequate water supply will be subject to the approval of neighboring communities. Local control can also result in the potentially inequitable and unwise use of the State's groundwater resources. Under current law, DES must regulate large withdrawals and solicit and respond to the concerns of all potentially affected municipalities, thus balancing the management of the resource with the needs in a regional fashion. Finally, we believe that there may frequently be a lack of technical expertise at the local

level which makes a redundant local review process unnecessarily expensive for all parties involved.

In summary, DES opposes House bill 212 because we believe that local regulation of groundwater will not improve the protection of the State's water resources and may considerably increase the cost of siting new wells. Further, we believe that rulemaking authority and legislative changes implemented with the passage of Senate Bill 374 in 1998 provide a framework to consistently and equitably regulate large groundwater withdrawals.

Thank you again for this opportunity to comment and if you have questions, or need further information, please do not hesitate to contact me at 271-3503 or Rene Pelletier at 271-2951.

Sincerely,

Robert W. Varney
Commissioner

RP:RAN/bdt
cc: The Honorable Kenneth L. Weyler
The Honorable David A. Welch
The Honorable John W. Flanders, Sr.
The Honorable George R. Rubin

FILED (HB 212)

CHAPTER 124
SB 374 - FINAL VERSION

4/2/98 1235s

1998 SESSION

98-2773
03/09

SENATE BILL *374*

AN ACT relative to large water withdrawals and relative to exemptions from local planning and zoning requirements for public utilities.

SPONSORS: Sen. Cohen, Dist 24; Sen. Russman, Dist 19; Sen. J. King, Dist 18; Rep. Musler, Straf 6; Rep. A. Merrill, Straf 8; Rep. Royce, Ches 9; Rep. Woods, Rock 25

COMMITTEE: Environment

AMENDED ANALYSIS

This bill:

I. Requires notice of groundwater withdrawals of 57,600 gallons or more in a 24-hour period to governing bodies of municipalities and water suppliers within the anticipated zone of contribution of the well.

II. Requires the commissioner of the department of environmental services to adopt rules regarding identification of impacts on surface waters, subsurface waters, water-related natural resources, and public, private, residential, and farm wells of new groundwater withdrawals of 57,600 gallons or more in a 24-hour period.

III. Requires the commissioner of the department of environmental services to adopt rules regarding conservation management plans and approvals for new groundwater withdrawals of 57,600 gallons or more in a 24-hour period.

IV. Requires a recommendation by the department of environmental services for exemptions for water supply-related structures by the public utilities commission from local planning and zoning requirements for public utilities.

V. Requires approval by the department of environmental services for new groundwater withdrawals of 57,600 gallons or more in a 24-hour period.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

CHAPTER 124
SB 374 - FINAL VERSION

4/2/98 1235s

98-2773
03/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord One Thousand Nine Hundred and Ninety-Eight

AN ACT relative to large water withdrawals and relative to exemptions from local planning and zoning requirements for public utilities.

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

124:1 New Paragraph; Safe Drinking Water Act; Drinking Water Rules; New Large Water Withdrawals by Public Water Systems. Amend RSA 485:3 by inserting after paragraph XII the following new paragraph:

XIII. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to new groundwater withdrawals of 57,600 gallons or more in any 24-hour period by public water systems. Such rules shall include:

(a) Criteria and procedures for requiring public water systems to identify and address impacts of withdrawals on surface waters, subsurface waters, water-related natural resources, and public, private, residential, and farm wells within the anticipated zone of contribution to the withdrawal.

(b) Requirements relative to conservation management plans which demonstrate the need for the proposed withdrawals, to be submitted by the public water system seeking approval for a withdrawal.

(c) Procedures by which the department may deny permission for withdrawals or order the applicant to provide a response policy, as provided by department rules, for provision of alternative water supply at no initial capital cost to persons whose wells are adversely affected by the proposed withdrawal or order reduced withdrawals if hydrogeologic data indicate that water-related resources are being adversely affected by the withdrawals.

124:2 New Paragraph; Water Management and Protection; Groundwater Protection Act; Rulemaking; New Groundwater Withdrawals. Amend RSA 485-C:4 by inserting after paragraph XI the following new paragraph:

XII. All new groundwater withdrawals of 57,600 gallons or more in any 24-hour period. Such rules shall include:

(a) Criteria and procedures for requiring persons to identify and address impacts of withdrawals on surface waters, subsurface waters, water-related natural resources, and public, private, residential, and farm wells within the anticipated zone of contribution to the withdrawal.

(b) Requirements relative to conservation management plans which demonstrate the need for the proposed withdrawals, to be submitted by the persons seeking approval for a withdrawal.

(c) Procedures by which the department may deny permission for withdrawals or order the applicant to provide a response policy, as provided by department rules, for provision of alternative water supply at no initial capital cost to persons whose wells are adversely affected by the proposed withdrawal or order reduced withdrawals if hydrogeologic data indicate that water-related resources are being adversely affected by the withdrawals.

124:3 New Section; Water Management and Protection; Groundwater Protection Act; Notification of Large Groundwater Withdrawals. Amend RSA 485-C by inserting after section 14 the following new section:

485-C:14-a Notification of Large Groundwater Withdrawal Required. Notwithstanding any provision of law to the contrary, before any person may withdraw 57,600 gallons or more of water in any 24-hour period from a well, such person shall provide written notice to the governing body of the municipality in which the well is located and to the governing bodies of each municipality and each supplier of water within the anticipated zone of contribution to the well. This section shall apply only to wells established after the effective date of this section.

124:4 New Section; Water Management and Protection; Groundwater Protection Act; Approval for Large Groundwater Withdrawals. Amend RSA 485-C by inserting after section 20 the following new section:

485-C:21 Approval for Large Groundwater Withdrawals.

I. No person may withdraw 57,600 gallons or more of water in any 24-hour period from a well sited after the effective date of this section without the prior approval of the department.

II. Applications for approval of water withdrawals of 57,600 gallons or more per day shall be filed with the department in a form approved by the department. A preliminary report submitted by a public water system pursuant to department rules shall be an application for purposes of this section. Copies of the application shall be forwarded by certified mail by the applicant to the governing bodies of each municipality and each supplier of water within the anticipated zone of contribution to the well.

III. Following the submission of the application, the department shall hold a public hearing on the application in the municipality in which the proposed withdrawal is to be made upon the request of the governing body of any municipality or supplier of water within the anticipated zone of contribution, provided that such a hearing is requested within 15 days of receipt of the application.

IV. The department shall hold the public hearing within 30 days after the request of the governing body of the municipality or the supplier of water made pursuant to paragraph III. Notice of the hearing shall be made by the applicant and shall be published twice in 2 different weeks, the last publication to be 7 days before the hearing, in one newspaper of general circulation throughout the state and another newspaper of general circulation in the municipality. The notice shall also be posted in 2 public places in the municipality.

V. The applicant and the governing body of each municipality and each supplier of water within the anticipated zone of contribution to the well may submit comments to the department relative to the proposed withdrawal within 45 days after the public hearing in the municipality or, if no hearing is requested, within 45 days after the receipt of the application. If the comments relative to the application make recommendations to the department, the department shall specifically consider such recommendations and shall issue written findings with respect to each issue raised that is contrary to the decision of the department.

VI. Rehearings and appeals from a decision of the department under this section shall be in accordance with RSA 541.

124:5 Local Land Use Planning; Emergency Temporary Zoning and Planning Ordinances; Utility Structures; Exemption; Environmental Services Recommendation Added. Amend RSA 674:30, III to read as follows:

III. A public utility which uses or proposes to use a structure which does not fit the criteria described in paragraph I, or fits those criteria and has been denied a waiver, or has been granted a waiver with conditions unacceptable to the utility when the waiver was applied for pursuant to paragraph I, may petition the public utilities commission to be exempted from the operation of any local ordinance, code, or regulation enacted under this title. The public utilities commission, following a public hearing, may grant such an exemption if it decides that the present or proposed situation of the structure in question is reasonably necessary for the convenience or welfare of the public ***and, if the purpose of the structure relates to water supply withdrawal, the exemption is recommended by the department of environmental services.***

124:6 Water Management and Protection; Groundwater Protection Act; Effect on Local Ordinances; Groundwater Withdrawals Excepted. Amend RSA 485-C:20 to read as follows:

485-C:20 Effect on Local Ordinances. Nothing in this chapter shall be deemed to preempt the authority of municipalities, under other statutes, to enact local ordinances or regulations affecting groundwater, ***other than groundwater withdrawals;*** provided, however, that requirements imposed under this chapter shall be considered as minimum.

124:7 Effective Date. This act shall take effect 60 days after its passage.

(Approved: June 2, 1998)
(Effective Date: August 1, 1998)

LBAO
98-2773
4/14/98

SB 374 FISCAL NOTE

AN ACT relative to large water withdrawals and relative to exemptions from local planning and zoning requirements for public utilities.

FISCAL IMPACT:

The Department of Environmental Services estimates this bill, as amended by the Senate, may increase local expenditures by $100,000 in FY 1999 and each year thereafter. There will be no fiscal impact on state and county expenditures or state, county and local revenues.

METHODOLOGY:

The Department states that currently, when a public water system submits an application to develop a new water supply source or increase the production of an existing source, rules require that they must submit a hydrogeological report. This bill would require a more rigorous report to identify impacts, if any, on surrounding resources. This could involve a long term monitoring strategy or some other technical approach to address the potential impact issue. The Department estimates that this could cost approximately $10,000 per source application. The Department estimates reviewing and approving 15 new municipal wells annually. Assuming 10 of these wells need additional technical information to address natural resource impact, the estimated total cost to locals would be approximately $100,000 per year.

Voting Sheets

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

EXECUTIVE SESSION on HB 212

BILL TITLE: **Relative to local ordinances or regulations affecting groundwater withdrawals.**

DATE: 2/9/99

LOB ROOM: 305

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, (Re-Refer) Interim Study (Please circle one.)

Moved by Rep. Cooney

Seconded by Rep. Blanchard

Vote: 15-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

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

CONSENT CALENDAR VOTE: 15-0

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Richard T. Cooney, Clerk

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

EXECUTIVE SESSION on HB 212

BILL TITLE: **Relative to local ordinances or regulations affecting groundwater withdrawals.**

DATE:

LOB ROOM: 305

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep. COONEY

Seconded by Rep. BLANCHARD

Vote: 15-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

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

CONSENT CALENDAR VOTE: 15-0

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Richard T. Cooney, Clerk

RESOURCES, RECREATION AND DEVELOPMENT 1999 SESSION

Bill # HB 212

Public Hearings _____ Executive Session 2/8/99

COMMITTEE REPORT: RE. REFER

	YEAS	NAYS
Royce, H Charles, Chairman	X	
Lawton, David M, V Chairman	X	
Whalley, Michael D		
Crowell, Peter O		
St Hilaire, Paul E		
Cooney, Richard T, Clerk	X	
Kibbey, David D	X	
Mirski, Paul M		
Lawton, Robert M	X	
Lavoie, Gerard H	X	
O'Connell, Timothy D	X	
Corbin, C David		
Roberts, William E	X	
Blanchard, MaryAnn N	X	
Downing, Michael W	X	
Williams, Carol A	X	
Lefebvre, Roland J	X	
Robb-Theroux, Amy E	X	
Fortnam, Janet W		
Glines, Sara B	X	
Spang, Judith T	X	
TOTAL VOTE	15-0	

Appeared in Favor | Appeared in Opposition

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

EXECUTIVE SESSION on HB 212

BILL TITLE: RELATIVE TO ORDINANCES OR REGULATIONS AFFECTING GROUNDWATER WITHDRAWALS

DATE: 10/21/99

LOB ROOM: 305

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, (ITL), Re-Refer, Interim Study (Please circle one.)

Moved by Rep. COONEY

Seconded by Rep. D. LAWTON

Vote: 14-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

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

CONSENT CALENDAR VOTE: {14-0}

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Richard T. Cooney, Clerk

Bill # HB212

Public Hearings _____ Executive Session 10/21/99

COMMITTEE REPORT: ITL

	YEAS	NAYS
Royce, H Charles, Chairman	X	
Lawton, David M, V Chairman	X	
Whalley, Michael D	X	
Cooney, Richard T, Clerk	X	
Kibbey, David D		
Mirski, Paul M		
Lawton, Robert M		
Lavoie, Gerard H	X	
O'Connell, Timothy D	X	
Corbin, C David		
Roberts, William E	X	
Fields, Dennis H	X	
Czech, Stanley E	X	
Blanchard, MaryAnn N	X	
Downing, Michael W	X	
Williams, Carol A	X	
Lefebvre, Roland J		
Robb-Theroux, Amy E	X	
Fortnam, Janet W		
Glines, Sara B	X	
Spang, Judith T		
TOTAL VOTE	14-0	

Appeared in Favor	Appeared in Opposition

Committee Report

COMMITTEE REPORT

COMMITTEE: **Resources, Recreation and Development**

BILL NUMBER: **HB 212**

TITLE: relative to local ordinances or regulations affecting groundwater withdrawals.

DATE: 2/10/99 CONSENT CALENDAR YES ☒ NO ☐

☐ OUGHT TO PASS

☐ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☒ RE-REFER

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

This bill addresses the question of local or state control of ground water withdrawals. Several related issues were raised during the committee process. In addition, new rules based on last session's legislation, have yet to go into effect. The committee feels more time is needed to address these issues..

Vote 15-0.

Rep. Richard T. Cooney
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

CONSENT CALENDAR

Resources, Recreation and Development
HB 212, relative to local ordinances or regulations affecting groundwater withdrawals. RE-REFER Rep. Richard T. Cooney for **Resources, Recreation and Development:** This bill addresses the question of local or state control of ground water withdrawals. Several related issues were raised during the committee process. In addition, new rules based on last session's legislation, have yet to go into effect. The committee feels more time is needed to address these issues. Vote 15-0.

2/10/99

HB-212 BLURB

THIS BILL ADDRESSES THE QUESTION OF LOCAL OR STATE CONTROL OF GROUND WATER WITHDRAWALS. SEVERAL RELATED ISSUES WERE RAISED DURING THE COMMITTEE PROCESS. IN ADDITION, NEW RULES, BASED ON LAST SESSION'S LEGISLATION, HAVE YET TO GO INTO EFFECT. THE COMMITTEE FEELS MORE TIME IS NEEDED TO ADDRESS THESE ISSUES.

C Rowe

Richard Cooney

COMMITTEE REPORT

COMMITTEE: **Resources, Recreation and Development**

BILL NUMBER: **HB 212**

TITLE: relative to local ordinances or regulations affecting groundwater withdrawals.

DATE: October 21, 1999 CONSENT CALENDAR YES ☒ NO ☐

☐ OUGHT TO PASS

☐ OUGHT TO PASS WITH AMENDMENT

☒ INEXPEDIENT TO LEGISLATE

☐ RE-REFER

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

This bill, as introduced, would give municipalities the final say on the permitting of large groundwater withdrawals. During the hearing process and committee deliberations, there was little support for this change since aquifers often cross political boundaries and therefore lend themselves to regional or statewide control. However, there were many important related issues concerning groundwater withdrawals discussed during the process. These included possible fees or taxes on certain groundwater withdrawals, consideration of an allocation process for water, zoning issues, and several others. These issues are the subject of several bills introduced in the 2000 session. This bill was voted "Inexpedient to Legislate" overwhelmingly by the committee.

Vote 14-0.

Rep. Richard T. Cooney
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

CONSENT CALENDAR

Resources, Recreation and Development

HB 212, relative to local ordinances or regulations affecting groundwater withdrawals.

INEXPEDIENT TO LEGISLATE

Rep. Richard T. Cooney for **Resources, Recreation and Development:** This bill, as introduced, would give municipalities the final say on the permitting of large groundwater withdrawals. During the hearing process and committee deliberations, there was little support for this change since aquifers often cross political boundaries and therefore lend themselves to regional or statewide control. However, there were many important related issues concerning groundwater withdrawals discussed during the process. These included possible fees or taxes on certain groundwater withdrawals, consideration of an allocation process for water, zoning issues, and several others. These issues are the subject of several bills introduced in the 2000 session. This bill was voted "Inexpedient to Legislate" overwhelmingly by the committee. Vote 14-0.

DRAFT

COMMITTEE REPORT

COMMITTEE: **Resources, Recreation and Development**

BILL NUMBER: **HB 212**

TITLE: relative to local ordinances or regulations affecting groundwater withdrawals.

DATE: October 21, 1999 CONSENT CALENDAR YES ☒ NO ☐

☐ OUGHT TO PASS

☐ OUGHT TO PASS WITH AMENDMENT

☒ INEXPEDIENT TO LEGISLATE

☐ RE-REFER

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

This bill, as introduced, would give municipalities the final say on the permitting of large groundwater withdrawals. During the hearing process and committee deliberations, there was little support for this change since aquifers often cross political boundaries and therefore lend themselves to regional or statewide control. However, there were many important related issues concerning groundwater withdrawals discussed during the process. These included possible fees or taxes on certain groundwater withdrawals, consideration of an allocation process for water, zoning issues, and several others. These issues are the subject of several bills introduced in the 2000 session. This bill was voted "Inexpedient to Legislate" overwhelmingly by the committee.

Vote 14-0. 16. C.R

Rep. Richard T. Cooney
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

COMMITTEE REPORT

COMMITTEE: RR & D

BILL NUMBER: HB 212

TITLE: RELATIVE TO LOCAL ORDINANCES OR REGULATIONS AFFECTING GROUNDWATER WITHDRAWALS.

DATE: 10/21/98 **CONSENT CALENDAR:** YES ☒ NO ☐

☐ **OUGHT TO PASS**

☐ **OUGHT TO PASS W/ AMENDMENT**

Amendment No. _____

☒ **INEXPEDIENT TO LEGISLATE**

☐ **RE-REFER**

☐ **INTERIM STUDY** (Available only 2nd year of biennium)

STATEMENT OF INTENT:

SEE ATTACHED

COMMITTEE VOTE: 14-0

- **Original to House Clerk**
- **Copy to Committee Bill File**
- **Use Another Report for Minority Report**

RESPECTFULLY SUBMITTED,

Rep. Richard Coon
For the Committee

Rev. 08/24/98

October 21, 1999

BLURB FOR HB212

This bill, as introduced, would give municipalities the final say on the permitting of large groundwater withdrawals. During the hearing process and committee deliberations, there was little support for this change, since aquifers often cross political boundaries and therefore lend themselves to regional or statewide control. However, there were many important related issues concerning groundwater withdrawals discussed during the process. These included possible fees or taxes on certain groundwater withdrawals, consideration of an allocation process for water, zoning issues, and several others. These issues are the subject of several bills introduced in the 2000 session, ~~and therefore were not needed to be addressed by this bill.~~ Therefore, this bill was voted ITL overwhelmingly by the committee, ~~20~~ 14 to 0.

Richard T. Cooney

Richard T. Cooney
Rockingham District 26

Okay KCR