

Senate Commerce Committee

Aaron Jones 271-2609

SB 27-FN, relative to dwellings over water.

Hearing Date: January 14, 2025

Time Opened: 10:43 a.m.

Time Closed: 11:09 a.m.

Members of the Committee Present: Senators Innis, Murphy, McGough, Fenton and Reardon

Members of the Committee Absent : Senator Ricciardi

Bill Analysis: This bill allows improvements to certain dwellings over water.

Sponsors:

Sen. Lang

Sen. McConkey

Sen. Long

Sen. Murphy

Who supports the bill: Senator Tim Lang, Senator Mark McConkey, Hon. Kevin Cavanaugh, John Cronin, Steve Surdam, Curtis Howland

Who opposes the bill: Andrea LaMoreaux (NH Lakes), Daniel Richardson

Who is neutral on the bill: Philip Trowbridge (NH Department of Environmental Services), Darlene Forst (NH Department of Environmental Services)

Summary of testimony presented in support:

Grant Bosse, on behalf of Senator Tim Lang

- This bill would specify how improvements to dwellings over water could be undertaken to bring them into alignment with local building codes without expanding living space.
- This technical change would allow existing structures to be improved safely.

Hon. Kevin Cavanaugh

- This bill would give the commissioner discretion to issue a waiver, and it would have no negative impact on the environment.

John Cronin

- Attorney Cronin said he valued the protection of wetlands, and he understood their importance to the state's economy and residents.

- Attorney Cronin provided the Committee with an exhibit showing an older home with a garage built into the shoreline. When the property was purchased, he said it was in poor condition, so improvements were made to the staircase in the back of the property.
- The property owners hired a contractor who applied for a building permit. Since a local permit was obtained, the contractor was told a permit from the Department of Environmental Services (DES) was not needed. Consequently, DES took enforcement action, and they ordered for the renovations to be taken down.
- Attorney Cronin said this bill provided for the least possible amount of change, while allowing DES to have discretion. If passed, he emphasized the application would be limited since there are few dwellings over water.
- This bill did not permit for more bedroom or living space.
- Attorney Cronin reiterated that he wanted to provide the Wetlands Council with the ability to waive, in limited circumstances, improvements to existing dwelling that pose no threat to the water, aquatic species, birds, or animals.
- **Senator Fenton** said the phrase “no negative impact to the environment” on Line 21 seemed broad. He asked if they were concerned that without a definition a person could claim a species of grass was there.
 - **Attorney Cronin** said it was possible. In this case, however, there would be no negative impact to the environment. For example, the legs of the porch could have gone into the water instead they were cantilevered. While he approved of a tighter definition, he tried to strike a balance, so the rights of DES were not encroached on.
- **Senator Fenton** asked how many houses there were.
 - **Attorney Cronin** believed there were less than 100, but there is a lot of shoreline and coves. Under existing law, restaurants with extended decks over water are allowed. These are more impactful compared to houses over water, which are rare and limited.
- **Senator Fenton** asked if a house could be built over the water.
 - **Attorney Cronin** said no. Boathouses with platforms into the water, which were built years ago, have been found to be an encroachment on the public trust. Owners are required to do a dug in boathouse at end of their fee titled property.
- **Senator Reardon** asked if the definition of improvement was limited by the local building code.
 - **Attorney Cronin** stated it would be relevant to the local code, but it would not be specifically defined as an improvement. Nothing could be done without a local building permit. If it is too broad of an improvement, DES has discretion.

Steve Surdam

- Five years ago, Mr. Surdam went through a similar issue.

- In this case, the landing and the stairs of the property did not touch the water. From his personal experience, Mr. Surdam said he has seen things that are more intrusive.

Summary of testimony presented in opposition:

Andrea LaMoreaux, President and Policy Advocate, NH Lakes

- As the health of lakes have degraded, it has had a negative impact on aquatic habits and public health.
- Ms. LaMoreaux believed Section B of the bill was not lake friendly because existing structures could be expanded horizontally or vertically. If significant expansion were allowed, there would be blockage of sunlight and shading in shallow areas. This could affect sensitive fish habits, particularly spawning areas, and native grasses or plants that provide oxygen.
- Ms. LaMoreaux asked the Committee to amend Section B to not allow for substantial expansion outward or upward.
- If numerous dwellings expand, it could have a cumulative impact on water quality.
- **Senator Innis** asked if their concerns were addressed on Lines 20 to 22 where it states, “the commissioner may waive the existing standards in order to allow a structure to be expanded, provided that there shall be no negative impact to the environment, expansion of the existing footprint, and square footage of living space”.
 - **Ms. LaMoreaux** wondered if the living space included decks or similar types of structures. If they are not included, an individual could build a sizable deck and create shading.

Neutral Information Presented:

Philip Trowbridge, Manager of the Land Resources Management Program, New Hampshire Department of Environmental Services, and Darlene Forst, Administrator of the Wetlands Bureau, New Hampshire Department of Environmental Services

- RSA 482-A:26 governs dwelling structures over water, which are private structures over state submerged lands.
- Mr. Trowbridge said the issue of balancing private and public use of water is up to the Legislature.
- Mr. Trowbridge said they were concerned that relaxing the limits on expansion could lead to inconsistencies between different statutes. Further, it could be confusing if it is easier to expand structures over public waters than it is to expand them in a protected shoreland close to the water.

- Mr. Trowbridge said it is worthwhile to prevent lake water quality problems, such as cyanobacteria.
- Even if all towns have building codes for properties over state submerged lands, the Department did not have the expertise to understand or enforce every building code.
- This bill would change how the Department determined if a property was expanded by changing “outside dimensions” to “living space”. Mr. Trowbridge said they did not relish the idea of determining if a walk-in closet was living space.
- Mr. Trowbridge said the word “improvement” was not well defined.
- A lot of decisions made by the Department are appealed by abutters; thus, the ambiguities would impact how the Department defended their decisions in court.
- Based on an Attorney General opinion, the Department was in the process of updating their rules as well as removing some restrictions on boathouses.
- Since the property being discussed is in an ongoing legal case, Mr. Trowbridge encouraged the Committee to look at the filings before the court.
- **Senator Reardon** asked for the status of the rules.
 - **Ms. Forst** stated they had been presented to the Wetlands Council, and it was their first step towards revamping the entire approach to boathouses over public waters.
- **Senator Innis** suggested the Department work with Senator Lang on this bill.
 - **Mr. Trowbridge** said they would be happy to work with him.