



**PENNICHUCK**

**EXHIBIT 4**

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April 17, 2006

Senator Robert O'Dell, Chairman  
Senate Energy and Economic Development Committee  
Room 102, Legislative Office Building  
Concord, NH 03301

RE: HB 1289

Dear Senator O'Dell and Committee Members:

The purpose of this letter is to clarify Pennichuck Water Works (PWW) position on HB 1289. While PWW supports the concept of legislated buffers throughout its watershed, and for its part has maintained such buffers on the lands it owns, it has the following concerns regarding HB 1289:

1. This legislation establishes buffers strictly on set back distances without regard to the science of buffers which account for soil types, soil slopes, soil cover and location of the buffered area relative to the actual supply. This type of legislation should be administered at the local level through zoning where the arbitrary buffers that are typically applied through the legislative process can be evaluated and changed when appropriate through the variance process.
2. This legislation amounts to a regulatory taking in that it will make numerous parcels of land through out the watershed undevelopable. In an ideal world watersheds would be to totally undeveloped or extensive undeveloped buffers would exist but this is not possible or practical for most watersheds where customers and water supply must coexist together. PWW is still in the process of acquiring additional buffer lands via easements and acquisition from private owners. While the establishment of the buffers proposed by this legislation would relieve PWW of the need to acquire these buffers it would also result in the taking of over 500 acres of land that could have been developed under current zoning ordinances. The use of low impact development zoning can effectively allow for the development of watershed land without creating a negative impact on the water supply. It should be noted that on a local level PWW has successfully worked with the City of Nashua and the Town of Amherst to craft local zoning regulations that established reasonable setbacks and the use of low impact development so that the watershed could be protected without taking away land owners property rights. PWW will continue to work with its local communities to protect its watershed by acquiring critical lands for buffers where appropriate and by working with local planning staff to ensure that projects throughout its over 17,000 acre watershed occur with minimal impact on its water supplies quality or quantity.

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3. This legislation is being proposed by the State Legislature for only one watershed within the State. While PWW appreciates the desire of the State legislature to help protect its watershed it also believes that if this legislation is to be implemented that it should be implemented on a state wide not a local basis. For the reasons delineated above the implementation of this type of legislation on a state wide basis would result in extensive regulatory takings throughout the State since a large portion of the land within the State is part of the watershed for some local public water supply.

After careful reevaluation of the proposed legislation PWW does not support HB 1289. PWW believes that individual watershed protection is a local zoning issue. The implementation of buffers around key components of the watershed is best left to each local community where the nuances of each water supply and the potential of a regulatory taking can be evaluated.

Thank you for your time and consideration in this matter. If you have any questions concerning this letter please do not hesitate to contact me at 913-2330.

Very Truly Yours,

A handwritten signature in cursive script that reads "Donald L. Ware".

Donald L. Ware, P.E.  
President, Pennichuck Water Works, Inc.

# SENATE ENERGY & ECONOMIC DEVELOPMENT EXHIBIT 4 COMMITTEE

Date 04/18/06

Time 3:00 p.m.

Public Hearing on HB # 1289

relative to Pennichuck Brook and its watershed.

Please check box(es) below that apply.

SPEAKING	FAVOR	OPPOSED	NAME (Please print)	REPRESENTING
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep Jacquelyn Citley	Dist 3, Straf
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	REP MARCIA MOODY	DIST 12 ROCKINGHAM
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep Joan Schure	Dist 26 N.H.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep Hugh L. Rablind	Dist 4 Cheshire
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	REP DENNIS ABBOTT	DIST 12 ROCK
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	REP ANGELINE KOPKA	" 26 Nashua/Hillsborough
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep David Russell	Bethlehem
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep DEREK OWEN	Wrentham
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<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Gary Abbott	Associated General Contractors of NH
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ellen Baker	Hollis NH
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Peter Baker	Hollis NH
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	James M. Kereh	Amherst, NH
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rose Watson	Amherst NH
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Doug Bogen	Clean Water Action
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Judith A. Leason	Amherst NH 03031
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	D. J. Kinn	Amherst N.H.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Betsy H. EDWARDS	Hollis, NH

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Public Hearing on HB # 1289

Please check box(es) below that apply.

REPRESENTING

[illegible]

3

Time 3:00 p.m.

Public Hearing on HB # 1289

*relative to Pennichuck Brook and its watershed.*

Please check box(es) below that apply.

*SPEAKING FAVOR OPPOSED*

NAME (Please print)

REPRESENTING

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END

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Rep. Mary Ellen Martin

Hillborough 24

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Lars Christensen

Hall Dist 27



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The State of New Hampshire  
**EXHIBIT 4**  
*Department of Environmental Services*



Michael P. Nolin  
Commissioner

April 18, 2006

The Honorable Bob Odell, Chairman  
Senate Energy & Economic Development  
Room 102; LOB  
Concord, New Hampshire 03301

**RE: House Bill 1289, Relative to Pennichuck Brook and its watershed**

Dear Senator Odell:

Thank you for the opportunity to comment on HB 1289 which would establish land use restrictions and other requirements for the protection of Pennichuck Brook and its watershed. DES supports this legislation and would like to provide the committee with the following information.

RSA 485:24 currently provides DES with the authority to adopt rules "as it may deem best to protect the water or ice supply against any dangerous contamination." DES has adopted such rules on a case-by-case basis in Part Env-Ws 386, and readopted those rules with amendments on November 23, 2005. Currently, Env-Ws 386.50 contains provisions for the protection of Pennichuck Brook, which is the principal water supply source for Pennichuck Water Works, serving the city of Nashua and portions of surrounding communities.

The watershed of Pennichuck Brook is highly developed, with a mix of suburban and increasingly urban land uses. DES considers any development in a water supply watershed to represent a potential threat to the quality of the water supply source. Studies by the American Water Works Association and the Trust for Public Lands indicate that decreased forest cover in a water supply watershed is associated with the need for more extensive treatment of the raw water in order to meet applicable standards for human consumption, and consequently higher treatment costs.

Historically, the trend in drinking water regulation has been for increasingly stringent health-based water quality standards for an ever-growing list of contaminants. Making matters more difficult, the disinfection of surface waters with chlorine compounds creates byproducts which themselves pose a health risk. Therefore, DES, the U.S. Environmental Protection Agency, and the U.S. water supply profession do not consider treatment alone to be the preferred approach to ensuring safe drinking water. The preferred approach, the so-called multiple-barrier approach, includes source protection as a key component. In an ideal environment, source protection consists of maintaining a water supply watershed in its natural state. In the real world, source protection is a balancing act involving a variety of interests and objectives.

A well-accepted approach to balancing water quality considerations with private property rights is to focus on the preservation or protection of land immediately adjacent to rivers, streams, and other water bodies, because the protection of such buffers is effective at reducing the loading of pollutants carried in runoff. This is the approach emphasized by the N.H. Shoreland Protection Act (RSA 483-B) and similar statutes in other states. Unfortunately, RSA 483-B does not provide any protection for Pennichuck Brook or its tributaries because they are not fourth-order streams.



The Honorable Bob Odell, Chairman  
April 18, 2006

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Land now or formerly owned by Pennichuck Water Works (PWW) provides protected buffers along portions of Pennichuck Brook and the Pennichuck ponds under a 1983 Public Utilities Commission order, and municipalities in the watershed have established buffers ranging from 25 to 225 feet. A 1998 Watershed Management Plan prepared by a consultant for Pennichuck Water Works evaluated the full range of threats facing the water supply, and recommended the protection of a 400-foot buffer zone around the Pennichuck ponds and 200 feet along all tributaries and wetlands, mirroring the Commonwealth of Massachusetts approach to protecting the Metropolitan District's water supply sources. Also in 1998, PWW proposed changes to Env-Ws 386.50 that would have increased protective setbacks to 250 feet along Pennichuck Brook, the ponds, and their tributaries. HB 1289 is consistent with language contained a draft DES watershed rule which resulted from a number of discussions with DES, representatives of the watershed communities (Nashua, Amherst, Hollis, Merrimack, and Milford) and the general public. DES considers the approach embodied in HB 1289 to be sound. Taken together with other efforts of PWW and the City of Nashua to protect Pennichuck Brook, it provides important protection for the water supply source serving Nashua and portions of the surrounding towns.

Thank you again for the opportunity to comment on this legislation. If you have any questions or need additional information, please do not hesitate to call Sarah Pillsbury at 271-1168 or me at 271-3449.

Sincerely,  
  
Michael P. Nolan  
Commissioner

cc: Representative Balboni  
Representative Martin  
Representative Hills  
Harry T. Stewart, DES Water Division Director  
Sarah Pillsbury, DES

# HOUSE RECORD

## Second Year of the 159<sup>th</sup> General Court Calendar and Journal of the 2006 Session

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Vol. 28

Concord, N.H.

Tuesday, March 7, 2006

No. 23

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## HOUSE JOURNAL No. 6 (cont.)

Wednesday, February 22, 2006

RECESS

### RESOLUTION

(Rep. Cloutier in the Chair)

Rep. Graham offered the following: RESOLVED, that in accordance with the list in the possession of the Clerk, Senate Bills numbered 253, 281, 282, 296, 300, 325, 334, 359, 396, and 400 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

Adopted.

### INTRODUCTION OF SENATE BILLS

First, second reading and referral

**SB 253**, relative to enforcement of support orders for college and postsecondary educational expenses. (Judiciary)

**SB 281-FN**, establishing an organ and tissue donor registry. (Transportation)

**SB 282-FN-L**, relative to removal of abandoned vehicles. (Transportation)

**SB 296-FN**, relative to recovery of public assistance. (Health, Human Services and Elderly Affairs)

**SB 300-FN-A-L**, exempting certain transfers of real estate between charitable organizations from the real estate transfer tax. (Ways and Means)

**SB 325**, making technical corrections and other changes to motor vehicle laws. (Transportation)

**SB 334**, authorizing the use of a credit freeze as a means of deterring identity theft. (Commerce)

**SB 359-FN**, relative to the regulation of plumbers and water treatment technicians by the plumbers' board. (Executive Departments and Administration)

**SB 396**, repealing the rulemaking authority of the New Hampshire children's trust fund board. (Children and Family Law)

**SB 400-FN**, relative to highway welcome signs. (Transportation)

RECESS



noncontributing and makes noncontributing wetlands exempt from regulation. The majority of testimony opposed the bill for a variety of reasons, including severe costs to develop such a classification system especially as wetlands are not static; the current cooperative application system between the US Army Corps of Engineers and the State of New Hampshire is a streamlined and cost effective program that could be in jeopardy; and the need for SB 140 relative to wetland in-lieu fee program would be virtually eliminated. This bill would essentially allow small "noncontributing" wetlands to be filled without regulation, and there would be more of a negative impact to existing wetlands programs and regulations, than would be gained. Vote 18-0.

## **HB 1289**, relative to Pennichuck Brook and its watershed. **OUGHT TO PASS WITH AMENDMENT**

Rep. Mary Ellen Martin for Resources, Recreation and Development: This provides a structure for protecting the water quality of the principal drinking water supply source for Nashua and other municipalities of the region. The Department of Environmental Services (DES), US EPA, and the US water supply profession affirm that source protection is a key component of their preferred approach. Vote 18-0.

### **Amendment (0973h)**

Amend the bill by replacing all after the enacting clause with the following:

-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. "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:**

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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.

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.

(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.

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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.  
2006-0973h

**AMENDED ANALYSIS**

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

**HB 1315**, relative to the definition and classification of dams. **OUGHT TO PASS WITH AMENDMENT**

Rep. Mary Ellen Martin for Resources, Recreation and Development: This bill clarifies the definition and hazard classification of a dam. The current ABC designation does not tell you which is best or worst. We now classify each as low, significant or high level of hazard potential. It also exempts certain storm water detention areas from being defined as a dam. Vote 17-0.

**Amendment (0935h)**

Amend RSA 482:2, II(a) as inserted by section 2 of the bill by replacing it with the following:

II. **(a)** "Dam" means any artificial barrier, including appurtenant works, which impounds or diverts water, and which has a height of 4 feet or more, or a storage capacity of 2 acre-feet or more, or is located at the outlet of a great pond. A roadway culvert shall not be considered a dam if its invert is at the natural bed of the water course, it has adequate discharge capacity, and it does not impound water under normal circumstances. Artificial barriers which create surface impoundments for liquid industrial or liquid commercial wastes, **septage**, or [municipal] sewage, regardless of height or storage capacity, shall be considered dams.

**HB 1317**, relative to the eradication of exotic aquatic weeds. **OUGHT TO PASS WITH AMENDMENT**

Rep. Donald A. Brueggemann for Resources, Recreation and Development: This bill was initiated by the Exotic Aquatic Weeds Committee which was established as a clearing house and legislative focus for addressing invasive species in state waters. During the past couple of years, an integrated approach that includes hand-pulling, barriers, monitoring, mapping and targeted herbicide application has yielded significant success. The experience of a treatment for variable milfoil to Lower Suncook Lake two seasons ago has even raised the possibility of eradication. If this possibility is to be fulfilled, however, it was clear that a more flexible and straight-forward aquatic herbicide application process was necessary. The original bill changed primary oversight of aquatic herbicide application from the Department of Agriculture to the Department of Environmental Services. The