



NEW HAMPSHIRE DIVISION OF HISTORICAL RESOURCES

State of New Hampshire, Department of Cultural Resources
19 Pillsbury Street, P. O. Box 2043, Concord NH 03302-2043
Voice / TTY RELAY ACCESS 1-800-735-2964
<http://www.state.nh.us/nhdhr>

603-271-3483
603-271-3558
FAX 603-271-3433
preservation@nhdhr.state.nh.us

1791 LAW AMENDED TO PROTECT STONE WALLS

A law passed in 1791 has been amended to protect New Hampshire's stone walls against theft in the twenty-first century. Governor John Lynch signed the amended law on July 31, 2009.

Once rare, such theft has become epidemic in New Hampshire and other New England states as the value of weathered stone for landscaping has increased dramatically. A flagrant example of such theft was reported in the *Manchester Union Leader* in July 2008. In the winter of 2007-8, 500 feet of wall was stolen from the Leslie C. Bockes Memorial Forest in Londonderry. Thieves brazenly used their machinery under the guise of moving snow. Many other such thefts have not been reported or even detected, including some in New Hampshire state parks and forests.

In an effort to define penalties for trespass and theft of resources, the General Court decreed in



Stone wall on North Pembroke Road, Pembroke, NH
(Photograph by James. L. Garvin)

1791 "that if any person shall dig up or carry away any stones, ore, gravel, clay or sand belonging to the proprietors of any common land, or to any particular person or persons, every such offender shall forfeit and pay treble damages to the party or parties injured thereby, and also a sum not exceeding five pounds." This language has been retained in New Hampshire's statutes almost unchanged. The law was amended in 1842 to include "turf or mold" among the protected resources, and to change the maximum penalty for theft from "five pounds" to "fifteen dollars." Both five pounds and fifteen dollars were roughly equivalent to fifteen

days' wages for an ordinary worker, making the penalty for such theft a strong deterrent.

Transformed into RSA 539:4 in 1955, this statute has been regarded as almost the only legal countermeasure against the theft of stone walls. But the law did not specifically mention "walls," and the wording of the law was changed at some point to set the fifteen dollar fine as the maximum penalty, not a fine in addition to "treble damages." Inflation reduced the fine from a deterrent to a mere caricature of a penalty.

Prompted by local thefts of stone walls, Representative Judith Day of North Hampton introduced bills in the 2008 and 2009 legislative sessions to amend RSA 539:4, specifically focusing the amended statute on the protection of stone walls. The 2009 bill was referred to the House Judiciary Committee, which appointed a subcommittee, composed of Representatives Gary Richardson, Philip Preston, David Nixon, and Janet

Wall, to consider the proposed changes.

After careful study, in which DHR staff participated, the subcommittee decided to honor the long history of the 1791 statute by retaining most of its original wording, including the additions of 1842. But to the list of protected resources, the subcommittee added the words "stone from a stone wall." They then replaced the ineffective fifteen dollar maximum fine with the words, "shall forfeit to the person injured treble damages, based on the cost of materials and restoration, and including attorney's fees and costs."

The vulnerability of stone walls to theft and damage has become a regional concern and the subject of increasing publicity. In 2008, the National Trust for Historic Preservation featured an article about New England stone walls in its on-line newsletter. The Trust highlighted the Stone Wall Initiative in Connecticut, founded in 2002 by geology professor Robert Thorson of the University of Connecticut, the author of a history and a field guide to stone walls. The Trust article noted that "while some towns are working to add stricter penalties for wall removal, brazen theft in remote areas –

including state parks, forests, and country roads – continues." In May 2009, reporter Tom Mooney of the Providence Journal wrote a feature article on stone walls in New England. Mooney prefaced his article with the observation that "New England's old stone walls, which for generations have stood as icons to forebears' gritty resolve against an inhospitable terrain, are prompting much emotion these days."

*James L. Garvin
State Architectural Historian*