

HB 486 - AS INTRODUCED

2017 SESSION

17-0304
08/04

HOUSE BILL **486**

AN ACT relative to the protection of wetlands.

SPONSORS: Rep. Spang, Straf. 6; Rep. Messmer, Rock. 24; Rep. Oxenham, Sull. 1; Rep. M. Smith, Straf. 6; Rep. Berch, Ches. 1; Rep. Grenier, Sull. 7; Rep. Beaulieu, Hills. 45; Rep. Burton, Straf. 6; Sen. Fuller Clark, Dist 21; Sen. Feltes, Dist 15; Sen. Watters, Dist 4

COMMITTEE: Resources, Recreation and Development

ANALYSIS

This bill identifies and defines different types of wetlands protected under the Wetlands Protection Act.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

17-0304
08/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Seventeen

AN ACT relative to the protection of wetlands.

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

1 Chapter Title; Wetlands Protection Act. Amend the chapter title of RSA 482-A to read as follows:

CHAPTER 482-A

~~[FILL AND DREDGE IN]~~ **WETLANDS PROTECTION ACT**

2 Wetlands Protection Act; Purpose. Amend RSA 482-A:1 to read as follows:

482-A:1 Finding of Public Purpose. It is found to be for the public good and welfare of this state to protect and preserve its submerged lands under tidal and fresh waters, ~~and~~ **including** its wetlands **and the adjacent lands that protect them**, (both salt water and fresh-water), as herein defined, from despoliation and unregulated alteration, because such despoliation or unregulated alteration will adversely affect the value of such areas as sources of nutrients for finfish, crustacea, shellfish and wildlife of significant value, will damage or destroy habitats and reproduction areas for plants, fish and wildlife of importance, will eliminate, depreciate or obstruct the commerce, recreation and aesthetic enjoyment of the public, will be detrimental to adequate groundwater levels, will adversely affect stream channels and their ability to handle the runoff of waters, will disturb and reduce the natural ability of wetlands to absorb flood waters and silt, thus increasing general flood damage and the silting of open water channels, and will otherwise adversely affect the interests of the general public.

3 New Paragraphs; Definitions. Amend RSA 482-A:2 by inserting after paragraph XI the following new paragraphs:

XII. "Buffer" means an upland area adjacent to a wetland or surface water body that supports the functionality of these aquatic systems by filtering run-off, trapping sediments, attenuating nutrient loads, regulating groundwater recharge and discharge, and providing wildlife habitat.

XIII. "High value wetlands" means wetlands that have been determined to be the most critical in the state to maintain the functions and values of wetlands and as defined by RSA 482-A:4, II.

4 Exemptions; Excavating and Dredging Permit. Amend the introductory paragraph of RSA 482-A:3, I(a) to read as follows:

(a) No person shall excavate, remove, fill, dredge, or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters **or in the buffer of high value wetlands** of the state without a permit from the department. Unless otherwise specified in rules adopted by the commissioner pursuant to RSA 482-A:11, any person seeking to obtain a permit shall submit to the department:

5 Different Types of Wetlands; Definitions. Amend RSA 482-A:4 to read as follows:

482-A:4 Definition. Without limiting RSA 482-A:3, the waters and adjacent areas within this state to which this chapter applies are defined as follows:



I.(a) *Waters and adjacent areas.* Wherever the tide ebbs and flows, this chapter shall apply to all lands submerged or flowed by mean high tide as locally determined, any sand dune or vegetation thereon in the state of New Hampshire, and, in addition, to those areas within 100 feet of the highest observable tide line which border on tidal waters, such as, but not limited to, banks, upland areas, bogs, salt marsh, swamps, meadows, flats or other lowlands subject to tidal action.

~~III.~~(b) Wherever fresh water flows or stands and in all areas above tidal waters not included in ~~[paragraph I of this section]~~ *this paragraph*, it shall apply (in addition to great ponds or lakes of 10 acres or more in natural area as provided for in RSA 482-A:16-20 and RSA 482-A:21-25) to those portions of great ponds or lakes created by the raising of the water level of the same, whether by public or private structure, and to all surface waters of the state as defined in RSA 485-A:2 which contain fresh water, including the portion of any bank or shore which borders such surface waters, and to any swamp or bog subject to periodical flooding by fresh water including the surrounding ~~[shore]~~ *upland that directly contributes to wetland functions as defined in RSA 482-A:2.*

II. *High value wetlands.* *High value wetlands subject to this section shall include the following, shall not be restricted to those identified on municipal, state, or national wetland inventory maps, and shall be determined by on-site observations by qualified wetland scientists, and mapping and consultation with relevant state agencies:*

(a) *S1 or S2 wetland natural communities based on criteria established by the department of resources and economic development New Hampshire natural heritage bureau.*

(b) *Exemplary wetland natural communities based on criteria established by the natural heritage bureau.*

(c) *Wetlands with critical wildlife habitat as defined by the fish and game department including:*

(1) *Marsh/scrub-shrub wetlands and any wetland that has a minimum contiguous amount of marsh and/or scrub-shrub cover of .75 acres.*

(2) *Peatland including any wetland that is peat-accumulating, defined as having soil depths greater than 16 inches of organic material, such as bogs and fens.*

(3) *Any wetland that contains threatened or endangered species habitat for a state-listed wildlife species of greatest conservation concern in existence within the last 20 years, as defined and published by the department of fish and game.*

(d) *Any wetland that is within 50 feet of, and hydrologically connected to, a Tier 3 or larger stream, as defined in departmental rules.*

(e) *Any wetland within the active floodplain characterized by frequently flooded soils.*

(f) *Any forested wetland greater than 5 acres in size and not included in the above criteria which has a minimum of 50 percent very poorly drained soils.*

III. *Wetland buffers established.*

(a) *A natural vegetation buffer of 100 feet shall be maintained from the mapped edge of all high value wetlands, except wetlands within 50 feet of, and hydrologically connected to, a Tier 3 or larger stream, as defined in department rules, which shall have a buffer of 50 feet, measured from the ordinary high water mark of the stream, plus an additional 25 feet from the edge of the wetland.*

(b) *The natural vegetation buffer of wetlands within an active floodplain will be measured from the edge of the maximum extent of the active floodplain.*

(c) *Buffers shall be measured horizontally from the edge of the wetland or surface water body as defined above.*

(d) *Buffers shall be retained in a natural condition, without any disturbance to or removal of vegetation, soil, rock, or other natural features, unless such disturbance or removal will enhance or restore one or more of the wetland functions.*

IV. *Municipal wetland buffer regulations.*

(a) *Except as provided in subparagraph (b), no ordinance or regulation adopted by a municipality shall require a wetland buffer that exceeds the buffers established in this section, unless the wetland is a prime wetland, or the municipality provides proof to the department through a detailed wetland functional assessment that the wetland in question is of such value or sensitivity as to require a buffer greater than that established in this section, or the disturbance proposed will have an exceptional adverse impact on the functions and values of the wetland.*

(b) *A municipal regulation that exceeds the buffer sizes under this chapter which has been enacted within 18 months of the effective date of this paragraph shall remain in effect unless repealed by the governing body of the municipality.*

V. *The department may waive the requirements of this section if it can be shown that a proposed action will result in an equivalent or increased level of ecological benefit to the wetland. This may include narrowing one or more areas of wetland buffer, provided others are widened, or accepting other mitigating measures.*

VI. *This section shall not apply to land subject to RSA 483-B or prime wetlands, as regulated under RSA 482-A:15.*

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

New Hampshire Statutes

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