

Bill as Introduced

HB 230 - AS INTRODUCED

2011 SESSION

11-0384

06/10

HOUSE BILL **230**

AN ACT exempting the repair of certain structures from compensatory mitigation requirements.

SPONSORS: Rep. Hunt, Ches 7

COMMITTEE: Resources, Recreation and Development

ANALYSIS

This bill exempts owners of waters, that are solely within the boundaries of the owner's property and have no abutters, who repair or replace existing structures from compensatory mitigation requirements.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT exempting the repair of certain structures from compensatory mitigation requirements.

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

1 1 New Subparagraph; Excavating and Dredging Permit; Certain Exemptions. Amend RSA 482-
2 A:3, IV by inserting after subparagraph (b) the following new subparagraph:

3 (c) The replacement or repair of existing structures in any waters which are not public
4 waters of the state under RSA 271:20 and which are located solely within the boundaries of the
5 owner's property, and which have no direct abutters, is exempt from the compensatory mitigation
6 requirements of this chapter.

7 2 Effective Date. This act shall take effect 60 days after its passage.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

PUBLIC HEARING ON HB 230

BILL TITLE: exempting the repair of certain structures from compensatory mitigation requirements.

DATE: February 3, 2011

LOB ROOM: 305 **Time Public Hearing Called to Order:** 10:00 a.m.

Time Adjourned: 10:40 a.m.

(please circle if present)

Committee Members: Reps. Renzullo, Kappler, C. Christensen, Russell, Ahlgren, Merrow, Bolster, Howard, Hutchinson, Lovett, Pettengill, Schroadter, Spang, Parkhurst, Moody, Aguiar and Thomas.

Bill Sponsors: Rep. Hunt, Ches 7

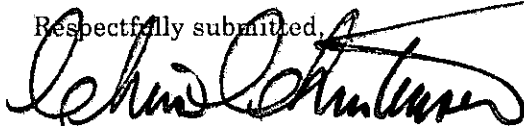
TESTIMONY

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

Rep. John Hunt - Prime sponsor of the bill. Described requirement for mitigation and case where constituent was to put 17 acres in mitigation. Monadnock conservation didn't want the land as it was too small. Alternative was a \$200,000 mitigation fee. Wants to be able to use materials inside the dam to repair the dam. Dams are earth with concrete spillway. We're dealing with non-public waters, but dam is across stream which is public water. Part of mitigation fee is Army Corp. fee. State relief may not cover this. The goal of this bill is to make it easier for owners to repair and maintain dams. New Hampshire likes it's ponds and we should make it possible to keep them.

* **Collis Adams, NH Department of Environmental Services (DES)** - DES takes no position and is available for question. Bill does not conflict with agreement with Corps of Engineers. Permit still required, but not compensatory mitigation. Must be in line in it's impact on wetlands. This is new territory for DES, as no similar legislation has surfaced. Each situation must be looked at on a case by case basis, as there is no "blanket approach".

Respectfully submitted,



Rep. D. L. Chris Christensen
Clerk

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

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Committee Members: Reps. Renzullo, Kappler, Christensen, Russell, Ahlgren, Merrow, Bolster, Howard, Hutchinson, Lovett, Pettengill, Schroadter, Spang, Parkhurst, Moody, Aguiar and Thomas.

Bill Sponsors: Rep. Hunt, Ches 7

TESTIMONY

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2/3/11

HB 230

Exempting certain structures
from mitigation as Reg's

Reg Hunt - promise - owns a dam.

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& case where constituent was to put
17 acres in mitigation. Monadnock
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As it was too small. Alternative was
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but dam is across stream which is
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HB230 -

Rep Hunt Goal is to make it easier for owners to repair & maintain dams.

NH likes its ponds & we should make it possible to keep them.

2. ~~H~~ Colis Adams - DES

DES takes no position

He is available for questions.

Bill does not conflict with

Agreement w/ Corps of Engineers.

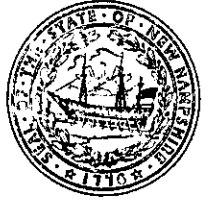
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This is new territory for DES, as no similar legislation has surfaced. Each situation must be looked at on a case by case basis, as there is no "blanket approach"

Testimony



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

February 3, 2011

HB 220

The Honorable Andrew Renzullo, Chairman
Resources, Recreation and Development Committee
Legislative Office Building, Room 305
Concord, New Hampshire 03301

Re: HB 230, exempting the repair of certain structures from compensatory mitigation requirements.

Dear Chairman Renzullo:

Thank you for the opportunity to comment on HB 230, which would exempt the replacement or repair of existing structures from compensatory mitigation requirements when the structures are not located on public waters of the state. The Department of Environmental Services (DES) does not have a position on HB 230 and is providing this letter to assist the Committee to understand the scope of the bill.

RSA 482-A:2, IX, defines a "structure" as "something installed, erected, or constructed, but shall not include a bench, landing with dimensions no larger than 10 feet wide by 10 feet long, or stairs with a width not exceeding 6 feet, provided that such benches, landings, or stairs are installed, erected, or constructed without regrading or recontouring of the shoreline and are not over water. Structures include, but are not limited to, the following: fence, dock, breakwater, post, pile, building, bridge, culvert, and wall."

RSA 271:20 defines "state-owned public waters" as "all natural bodies of fresh water situated entirely in the state having an area of 10 acres or more." and further states that these waters are "held in trust by the state for public use; and no corporation or individual shall have or exercise in any such body of water any rights or privileges not common to all citizens of this state." DES maintains an official list of all public waters in the state which we can provide to the Committee upon request.

HB 230 proposes to exempt the replacement or repair of existing structures from the compensatory mitigation requirements of RSA 482-A for structures that are not in public waters of the state and that are located on waters which are on one owner's property. As proposed, this bill does not conflict with other state requirements and federal wetlands permitting requirements under the United States Army Corps of Engineers State Programmatic General Permit (SPGP) for New Hampshire.

Thank you for this opportunity to comment. Please call Collis Adams at 271-4054, or me at 271-2958, if you have any questions or need additional information.

Very truly yours,

Thomas S. Burack, Commissioner

cc: Representative Hunt

Aquatic Resource Compensatory Mitigation

482-A:28 Aquatic Resource Compensatory Mitigation. – In lieu of other forms of compensatory mitigation, the department may accept payment for an unavoidable loss of aquatic resource functions and values from impacts to resources protected under this chapter.

Source. 2006, 313:1, eff. Aug. 18, 2006. 2009, 303:1, eff. Sept. 29, 2009.

482-A:29 Fund Established. –

I. There is hereby established the aquatic resource compensatory mitigation fund into which payments made under this subdivision shall be deposited. The fund shall be a separate, nonlapsing fund continually appropriated to the department to be used only as specified in this subdivision for costs related to wetlands creation or restoration, stream and river restoration, stream and river enhancement, preservation of upland areas adjacent to wetlands and riparian areas, and the subsequent monitoring and maintenance of such areas.

II. A separate, non-lapsing account shall be established within the fund into which all administrative assessments collected under RSA 482-A:30, III and RSA 482-A:30-a, II shall be placed. Such account moneys shall only be used to support up to 2 full-time positions for administration of the fund and related projects. No other fund moneys shall be used for state personnel costs.

III. The state treasurer shall invest the fund as provided by law. Interest received on such investment shall be credited to the fund.

IV. The wetlands council, established by RSA 21-O:5-a, shall approve disbursements of the aquatic resource compensatory mitigation fund based on recommendations provided by the site selection committee established under RSA 482-A:32, and in accordance with rules adopted by the commissioner.

Source. 2006, 313:1, eff. Aug. 18, 2006. 2009, 303:2, eff. Sept. 29, 2009; 303:5, eff. July 31, 2009; 303:6, eff. July 1, 2010. 2010, 16:1, eff. July 1, 2010 at 12:01 a.m.

482-A:30 Payment for Freshwater and Tidal Wetlands Losses. – For freshwater and tidal wetlands losses, the in lieu payment shall be the sum of:

I. The cost that would have been incurred if a wetland of the same type was constructed at the ratios adopted by the department based on a price of \$65,000 per acre of wetland created, to be adjusted at the beginning of the calendar year according to the annual simple rate of interest on judgments established by RSA 336:1;

II. The area of wetlands, as used in the calculation performed under paragraph I, times the cost of land in the municipality where the impact is occurring as calculated by the total assessed land values in the municipality, as determined by the department of revenue administration, which are equalized, divided by the number of acres in the municipality to yield a per acre equalized land value; and

[Paragraph III effective until July 1, 2012; see also paragraph III set out below.]

III. An administrative assessment which equals 20 percent of the sum of paragraphs I and II.

[Paragraph III effective July 1, 2012; see also paragraph III set out above.]

III. An administrative assessment which equals 5 percent of the sum of paragraphs I and II.

Source. 2006, 313:1, eff. Aug. 18, 2006. 2010, 16:2, eff. July 1, 2010; 16:3, eff. July 1, 2012.

482-A:30-a Payment for Stream or Shoreline Losses. – For stream or shoreline resource losses, the in lieu payment shall be the sum of:

I. The cost that would have been incurred if a stream of the same type was restored at the ratios adopted by the department, based on a price of \$200 per linear foot of channel or bank impacts or both, to be adjusted at the beginning of the calendar year according to the annual simple rate of interest on judgments established by RSA 336:1; and

[Paragraph II effective until July 1, 2012; see also paragraph II set out below.]

II. An administrative assessment equal to 20 percent of the amount in paragraph I.

[Paragraph II effective July 1, 2012; see also paragraph II set out above.]

II. An administrative assessment equal to 5 percent of the amount in paragraph I.

Source. 2009, 303:3, eff. Sept. 29, 2009. 2010, 16:4, eff. July 1, 2010; 16:5, eff. July 1, 2012.

For Use With HB 230

482-A:31 Rulemaking. – The commissioner shall adopt rules under RSA 541-A relative to:

I. Identification of appropriate situations under which in lieu payments may be made. The criteria in RSA 482-A:28 shall be the minimum requirements for projects eligible for in lieu payments.

[Paragraph II effective until July 1, 2012; see also paragraph II set out below.]

II. The method of calculating the amount of in lieu payments under RSA 482-A:30 and RSA 482-A:30-a which shall approximate the total cost of wetlands construction, stream and river construction, or such other mitigation actions as would have been required by the department and incurred by the applicant in the absence of making such payments. An administrative assessment of 20 percent of the total cost shall be added as part of the calculation method.

[Paragraph II effective July 1, 2012; see also paragraph II set out above.]

II. The method of calculating the amount of in lieu payments under RSA 482-A:30 and RSA 482-A:30-a which shall approximate the total cost of wetlands construction, stream and river construction, or such other mitigation actions as would have been required by the department and incurred by the applicant in the absence of making such payments. An administrative assessment of 5 percent of the total cost shall be added as part of the calculation method.

III. Criteria to use in selecting projects that would compensate for the lost aquatic resource functions or values.

(a) Tidal aquatic resources shall be compensated by the selection of qualifying tidal projects.

(b) An emphasis shall be given to selecting from among the qualifying projects those that are nearer to the site of the lost aquatic resource.

(c) No project shall be funded with in lieu payments from losses that occurred outside the hydrologic unit code 8 watershed, as developed by the United States Geological Survey, in which the project is located.

(d) Such criteria shall be adopted in consultation with the site selection committee established under RSA 482-A:32.

Source. 2006, 313:1, eff. Aug. 18, 2006. 2009, 303:4, eff. Sept. 29, 2009. 2010, 16:6, eff. July 1, 2010; 16:7, eff. July 1, 2012.

482-A:32 Site Selection Committee Established. –

I. There is established a site selection committee for the purpose of identifying projects to be funded from the aquatic resource compensatory mitigation fund.

II. The committee shall consist of the following members:

(a) The commissioner of the department of environmental services, or designee.

(b) The executive director of the fish and game department, or designee.

(c) The director of the office of energy and planning, or designee.

(d) The commissioner of the department of resources and economic development, or designee.

(e) Four members of the public, appointed by the governor and council for a term of 3 years or until a successor is chosen. The members of the public shall be as follows:

(1) A member of a municipal conservation commission at the time of appointment, who shall be one of 3 nominees submitted by the New Hampshire Association of Conservation Commissions.

(2) A natural resource scientist, who shall be one of 3 nominees submitted by the New Hampshire Association of Natural Resource Scientists.

(3) A person with experience in environmental protection and resource management at the time of appointment, who shall be one of 3 nominees submitted by the Nature Conservancy.

(4) A person with experience in environmental protection and resource management at the time of appointment, who shall be one of 3 nominees submitted by the Society for the Protection of New Hampshire Forests.

III. The members of the committee shall elect a chairperson annually.

IV. Each public member of the committee shall receive \$50 per meeting. The other members of the site selection committee shall receive no compensation other than their regular state salaries but shall receive mileage paid at the rate set for state employees.

Source. 2006, 313:1, eff. Aug. 18, 2006.

482-A:33 Report. – The department shall submit an annual report by October 1 beginning with fiscal year 2006, to the fiscal committee, the chairperson of the house resources, recreation and development committee, and the chairperson of the senate environment and wildlife committee summarizing all receipts and disbursements of the aquatic resource compensatory mitigation fund, including a description of all projects undertaken and the status of the administrative assessment account. Each report shall be in such detail with sufficient information to be fully understood by the general court and the public. After submission to the general court, the report shall be available to the public.

Source. 2006, 313:1, eff. Aug. 18, 2006. 2010, 16:8, eff. July 1, 2010.

Voting Sheets

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

EXECUTIVE SESSION on HB 230

BILL TITLE: exempting the repair of certain structures from compensatory mitigation requirements.

DATE: February 8, 2011

LOB ROOM: 305

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

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

Moved by Rep. Bolster

Seconded by Rep. Aguiar

Vote: 11-4 (Please attach record of roll call vote.)

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

Moved by Rep.

Seconded by Rep.

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

CONSENT CALENDAR VOTE: NO

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Chris Christensen, Clerk

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

EXECUTIVE SESSION on HB 230

BILL TITLE: exempting the repair of certain structures from compensatory mitigation requirements.

DATE: 2/8/11

LOB ROOM: 305

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

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

Moved by Rep. *Bolster*

Seconded by Rep. *Aguiar*

Vote: *11/4* (Please attach record of roll call vote.)

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

Moved by Rep.

Seconded by Rep.

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

CONSENT CALENDAR VOTE:

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Chris Christensen, Clerk

David Russell, acting clerk

RESOURCES, RECREATION AND DEVELOPMENT

Bill #: 236 Title: exempting certain structures from compliance mitigation

PH Date: 2/3/11 Exec Session Date: 2/8/11

Motion: OTP Amendment #: _____

MEMBER	YEAS	NAYS
Renzullo, Andrew, Chairman	✓	
Kappler, Lawrence M, V Chairman	✓	
Christensen, D.L. Chris		
Russell, David H	✓	
Ahlgren, Christopher J	✓	
Merrow, Harry C	✓	
Bolster, Peter S	✓	
Howard, Thomas J		
Hutchinson, Winfred O	✓	
Lovett, Charlene M	✓	
Pettengill, Laurie P	✓	
Schroadter, Adam R	✓	
Spang, Judith T		✓
Parkhurst, Henry A. L.		✓
Moody, Marcia G		✓
Aguiar, James D	✓	
Thomas, Yvonne D		✓

TOTAL VOTE: 11 4
 Printed: 1/4/2011

Committee Report

REGULAR CALENDAR

February 10, 2011

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Majority of the Committee on RESOURCES,
RECREATION AND DEVELOPMENT to which was
referred HB230,**

**AN ACT exempting the repair of certain structures from
compensatory mitigation requirements. Having
considered the same, report the same with the
recommendation that the bill OUGHT TO PASS.**

Rep. Peter S Bolster

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee: **RESOURCES, RECREATION AND
DEVELOPMENT**
Bill Number: **HB230**
Title: **exempting the repair of certain structures from
compensatory mitigation requirements.**
Date: **February 10, 2011**
Consent Calendar: **NO**
Recommendation: **OUGHT TO PASS**

STATEMENT OF INTENT

This bill exempts owners of waters, that are solely within the boundaries of the owner's property and have no abutters, who repair or replace existing structures from compensatory mitigation requirements. The bill addresses an economical and practical means to repair and maintain existing structures on small bodies of water without the need for expensive compensatory mitigation.

Vote 11-4

Rep. Peter S Bolster
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

RESOURCES, RECREATION AND DEVELOPMENT

HB230, exempting the repair of certain structures from compensatory mitigation requirements.
OUGHT TO PASS.

Rep. Peter S Bolster for the **Majority** of RESOURCES, RECREATION AND DEVELOPMENT.

This bill exempts owners of waters, that are solely within the boundaries of the owner's property and have no abutters, who repair or replace existing structures from compensatory mitigation requirements. The bill addresses an economical and practical means to repair and maintain existing structures on small bodies of water without the need for expensive compensatory mitigation. **Vote 11-4.**

HB 230

OTP

This bill exempts owners of waters, that are solely within the boundaries of the owner's property and have no abutters, who repair or replace existing structures from compensatory mitigation requirements. The bill addresses an economical and practical means to repair and maintain existing structures on small bodies of water without the need for expensive compensatory mitigation.

Peter Bolster

A handwritten signature in black ink, appearing to read "Peter Bolster", is written in a cursive style.

HB 230 - AS INTRODUCED

2011 SESSION

11-0384

06/10

HOUSE BILL

230

OTY Majority

AN ACT

exempting the repair of certain structures from compensatory mitigation requirements.

SPONSORS:

Rep. Hunt, Ches 7

COMMITTEE:

Resources, Recreation and Development

ANALYSIS

This bill exempts owners of waters, that are solely within the boundaries of the owner's property and have no abutters, who repair or replace existing structures from compensatory mitigation requirements.

Explanation:

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

add to it

The Bill addresses ~~the~~ ^{an} economical ~~and~~ practical means to repair and maintain ~~the~~ existing structures on ~~non-state owned~~ ~~state owned~~ ~~waters~~ small bodies of water without the need for expensive compensatory mitigation.

arty mller

REGULAR CALENDAR

February 10, 2011

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Minority of the Committee on RESOURCES,
RECREATION AND DEVELOPMENT to which was
referred HB230,**

**AN ACT exempting the repair of certain structures from
compensatory mitigation requirements. Having
considered the same, and being unable to agree with
the Majority, report with the following Resolution:
RESOLVED, That it is INEXPEDIENT TO LEGISLATE.**

Rep. Judith T Spang

FOR THE MINORITY OF THE COMMITTEE

**MINORITY
COMMITTEE REPORT**

Committee: **RESOURCES, RECREATION AND
DEVELOPMENT**
Bill Number: **HB230**
Title: **exempting the repair of certain structures from
compensatory mitigation requirements.**
Date: **February 10, 2011**
Consent Calendar: **NO**
Recommendation: **INEXPEDIENT TO LEGISLATE**

STATEMENT OF INTENT

The minority believes this bill needs work to clarify its language and to establish whether this would be found to be a non-issue, when existing state regulations are examined more closely.

Rep. Judith T Spang
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

RESOURCES, RECREATION AND DEVELOPMENT

HB230, exempting the repair of certain structures from compensatory mitigation requirements.
INEXPEDIENT TO LEGISLATE.

Rep. Judith T Spang for the **Minority** of RESOURCES, RECREATION AND DEVELOPMENT.

The minority believes this bill needs work to clarify its language and to establish whether this would be found to be a non-issue, when existing state regulations are examined more closely.

Original: House Clerk
Cc: Committee Bill File

HB 230

MINORITY IFL

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Judith Spang

A handwritten signature in black ink, appearing to be 'J Spang', located in the lower right quadrant of the page.

Minority

Blurb for
HB 230

The Minority believes this bill needs work to clarify its language and to establish whether ~~existing state statutes do not already~~ this would be found to be ~~this is~~ a non-issue, when existing state regulations are examined more closely.

Judith Spang

Andy Muller