

Bill as Introduced

HB 468-FN - AS INTRODUCED

2011 SESSION

11-0404
06/03

HOUSE BILL ***468-FN***

AN ACT relative to assessments for aquatic resource compensatory mitigation.

SPONSORS: Rep. Ahlgren, Carr 4

COMMITTEE: Resources, Recreation and Development

ANALYSIS

This bill decreases the percentage rate of certain administrative assessments related to aquatic resource compensatory mitigation.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT relative to assessments for aquatic resource compensatory mitigation.

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

- 1 1 Payment for Freshwater and Tidal Wetlands Losses. Amend RSA 482-A:30, III to read as
- 2 follows:
- 3 III. An administrative assessment which equals [~~20~~] **10** percent of the sum of paragraphs I
- 4 and II.
- 5 2 Payment for Stream or Shoreline Losses. Amend RSA 482-A:30-a, II to read as follows:
- 6 II. An administrative assessment equal to [~~20~~] **10** percent of the amount in paragraph I.
- 7 3 Rulemaking. Amend RSA 482-A:31, II to read as follows:
- 8 II. The method of calculating the amount of in lieu payments under RSA 482-A:30 and
- 9 RSA 482-A:30-a which shall approximate the total cost of wetlands construction, stream and river
- 10 construction, or such other mitigation actions as would have been required by the department and
- 11 incurred by the applicant in the absence of making such payments. An administrative assessment of
- 12 [~~20~~] **10** percent of the total cost shall be added as part of the calculation method.
- 13 4 Effective Date. This act shall take effect July 1, 2011.

LBAO
11-0404
01/19/11

HB 468-FN - FISCAL NOTE

AN ACT relative to assessments for aquatic resource compensatory mitigation.

FISCAL IMPACT:

The Office of Legislative Budget Assistant is unable to complete a fiscal note for this bill as it is awaiting information from the Department of Environmental Services. . When completed, the fiscal note will be forwarded to the House Clerk's Office.

HB 468-FN - AS AMENDED BY THE HOUSE

23Feb2011... 0269h

2011 SESSION

11-0404

06/03

HOUSE BILL ***468-FN***

AN ACT relative to assessments for aquatic resource compensatory mitigation.

SPONSORS: Rep. Ahlgren, Carr 4

COMMITTEE: Resources, Recreation and Development

AMENDED ANALYSIS

This bill modifies the percentage rate of certain administrative assessments related to aquatic resource compensatory mitigation.

.....

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.

HB 468-FN - AS AMENDED BY THE HOUSE

23Feb2011... 0269h

11-0404
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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT relative to assessments for aquatic resource compensatory mitigation.

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- 1 1 Payment for Freshwater and Tidal Wetlands Losses. Amend RSA 482-A:30, III to read as
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- 8 II. The method of calculating the amount of in lieu payments under RSA 482-A:30 and
9 RSA 482-A:30-a which shall approximate the total cost of wetlands construction, stream and river
10 construction, or such other mitigation actions as would have been required by the department and
11 incurred by the applicant in the absence of making such payments. An administrative assessment of
12 [~~20~~] 10 percent of the total cost shall be added as part of the calculation method.
- 13 4 Repeal. The following are repealed:
- 14 I. 2010, 16:3, relative to payment for freshwater and tidal wetlands loss; version effective
15 July 1, 2012.
- 16 II. 2010, 16:5, relative to payment for stream or shoreline losses; version effective July 1,
17 2012.
- 18 III. 2010, 16:7, relative to rulemaking; version effective July 1, 2012.
- 19 5 Effective Date. This act shall take effect July 1, 2011.

LBAO
11-0404
Revised 02/14/11

HB 468 FISCAL NOTE

AN ACT relative to assessments for aquatic resource compensatory mitigation.

FISCAL IMPACT:

The Department of Environmental Services states this bill will decrease state restricted expenditures by \$120,000 in FY 2012 and increase state restricted expenditures in \$60,000 in FY 2103 and each year thereafter, and may increase state general fund expenditures by \$35,774 in FY 2012 and each year thereafter. There is no fiscal impact on county and local expenditures, or state, county, and local revenue.

METHODOLOGY:

The Department of Environmental Services states this bill decreases the percentage rate from 20 percent to 10 percent for administrative assessments related to aquatic resource compensatory mitigation. The Department assumes this bill will supersede the change in RSA 482-A:31-a from 20 percent to 5 percent effective July 1, 2012. The Department estimates \$1,200,000 will be contributed to the aquatic resources mitigation fund on an annual basis, down slightly from previous years due to the depressed economy. The fund, less the administrative assessment paid to the Department, is distributed to organizations for wetland enhancement projects. The administrative assessment will decrease from an estimated \$240,000 to \$120,000 a year by reducing the percent allowable from 20 percent to 10 percent in FY 2012, and increase the administrative assessment from an estimated \$60,000 to \$120,000 by increasing the percent allowable from 5 percent to 10 percent in FY 2013 and each year thereafter. The Department states the change in the administrative assessment will result in the loss of one full time staff position (labor grade 27). Depending on how the change in the administrative assessment affects workload a part-time position may be impacted, but the Department has no information to determine the impact.

	FY 2012	FY 2013	FY 2014	FY 2015
Full Time Staff Position (LG 27)	\$60,567	\$60,567	\$63,180	\$63,180
Benefits	30,283	30,283	31,590	31,590
Total	\$90,850	\$90,850	\$94,770	\$94,770

HB 468-FN - AS AMENDED BY THE HOUSE

- Page 3 -

In addition, the Department assumes the general fund would need to pick up costs associated with building maintenance of \$19,374, and information technology of \$16,400 in FY 2012 and each year thereafter.

Amendments

Rep. Ahlgren, Carr. 4
February 10, 2011
2011-0269h
06/03

Amendment to HB 468-FN

1 Amend the bill by inserting after section 3 the following and renumbering the original section 4 to
2 read as 5:

3

4 4 Repeal. The following are repealed:

5 I. 2010, 16:3, relative to payment for freshwater and tidal wetlands loss; version effective
6 July 1, 2012.

7 II. 2010, 16:5, relative to payment for stream or shoreline losses; version effective July 1,
8 2012.

9 III. 2010, 16:7, relative to rulemaking; version effective July 1, 2012.

2011-0269h

AMENDED ANALYSIS

This bill modifies the percentage rate of certain administrative assessments related to aquatic resource compensatory mitigation.

Rep. Spang, Straf. 7
February 10, 2011
2011-0282h
03/04

Amendment to HB 468-FN

1 Amend the bill by replacing sections 1 through 3 with the following:

2

3 1 Payment for Freshwater and Tidal Wetlands Losses. Amend RSA 482-A:30, III to read as
4 follows:

5 III. An administrative assessment which equals [20] 15 percent of the sum of paragraphs I
6 and II.

7 2 Payment for Stream or Shoreline Losses. Amend RSA 482-A:30-a, II to read as follows:

8 II. An administrative assessment equal to [20] 15 percent of the amount in paragraph I.

9 3 Rulemaking. Amend RSA 482-A:31, II to read as follows:

10 II. The method of calculating the amount of in lieu payments under RSA 482-A:30 and
11 RSA 482-A:30-a which shall approximate the total cost of wetlands construction, stream and river
12 construction, or such other mitigation actions as would have been required by the department and
13 incurred by the applicant in the absence of making such payments. An administrative assessment of
14 [20] 15 percent of the total cost shall be added as part of the calculation method.

15

16 Amend the bill by inserting after section 3 the following and renumbering the original section 4 to
17 read as 5:

18

19 4 Effective Date of 5 Percent Assessment. Amend 2010, 16:10, I to read as follows:

20 I. Sections 3, 5, and 7 of this act shall take effect July 1, [2012] 2013.

Rep. Spang, Straf. 7
February 10, 2011
2011-0282h
03/04

Amendment to HB 468-FN

" Not Adopted "

1 Amend the bill by replacing sections 1 through 3 with the following:

2

3 1 Payment for Freshwater and Tidal Wetlands Losses. Amend RSA 482-A:30, III to read as
4 follows:

5 III. An administrative assessment which equals [20] 15 percent of the sum of paragraphs I
6 and II.

7 2 Payment for Stream or Shoreline Losses. Amend RSA 482-A:30-a, II to read as follows:

8 II. An administrative assessment equal to [20] 15 percent of the amount in paragraph I.

9 3 Rulemaking. Amend RSA 482-A:31, II to read as follows:

10 II. The method of calculating the amount of in lieu payments under RSA 482-A:30 and
11 RSA 482-A:30-a which shall approximate the total cost of wetlands construction, stream and river
12 construction, or such other mitigation actions as would have been required by the department and
13 incurred by the applicant in the absence of making such payments. An administrative assessment of
14 [20] 15 percent of the total cost shall be added as part of the calculation method.

15

16 Amend the bill by inserting after section 3 the following and renumbering the original section 4 to
17 read as 5:

18

19 4 Effective Date of 5 Percent Assessment. Amend 2010, 16:10, I to read as follows:

20 I. Sections 3, 5, and 7 of this act shall take effect July 1, [2012] 2013.

Rep. Stepanek, Hills, 6
March 22, 2011
2011-1124h
06/03

Amendment to HB 468-FN

1 Amend the bill by replacing section 4 with the following:

2

3 4 Aquatic Resource Compensatory Mitigation; Effective Date. Amend 2010, 16:10, I to read as
4 follows:

5 I. Sections 3, 5, and 7 of this act shall take effect July 1, [~~2012~~] **2013**.

Committee Minutes




STATE OF NEW HAMPSHIRE

HOUSE OF REPRESENTATIVES

Office of the Speaker

MEMORANDUM

TO: Karen O. Wadsworth
House Clerk

FROM: William L. O'Brien
Speaker of the House 

DATE: March 22, 2011

RE: Temporary Committee Assignments

Please be advised of the following temporary appointments to the Ways and Means Committee for today, March 22, 2011:

Rep. Gary S. Hopper to replace Rep. Frank V. Sapareto
Rep. Clifford A. Newton to replace Rep. Jordan G. Ulery

WLO/sg

cc: House Majority Leader David J. Bettencourt
House Democratic Leader Terie Norelli
Rep. Stephen B. Stepanek, Ways and Means Committee Chair
Rep. Gary S. Hopper
Rep. Clifford A. Newton

Speakers

Hearing Minutes

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

PUBLIC HEARING ON HB 468-FN

BILL TITLE: relative to assessments for aquatic resource compensatory mitigation.

DATE: February 10, 2011

LOB ROOM: 305 **Time Public Hearing Called to Order:** 11:00 a.m.

Time Adjourned: 12:05 p.m.

(please circle if present)

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

Bill Sponsors: Rep. Ahlgren, Carr 4

TESTIMONY

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

* **Rep. Chris Ahlgren** - Prime sponsor of the bill. (See written testimony) What is the administrative fee that should be charged to a developer?

* **Rep. Susan Almy** - Opposes the bill. Thinks this is a tremendous asset to developers. The Department of Environmental Services (DES) is a professional business, and should be allowed to charge reasonable fees. Choice is to fully fund program or let it die.

* **Rep. James Aguiar** - Representing James McClammer. Reads his testimony, which advises ITL.

* **Michele Trembley, State Rivers Advisory Committee** - Opposes the bill. Advises ITL.

Gary Abbott, Associated General Contractors - No position on the bill. Fee sunsets in 2012. Maybe that's a better time to assess the fee schedule. Possibly retain until next year.

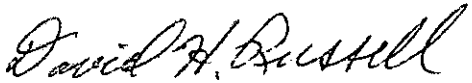
Rene Pelletier, NH Department of Environmental Services (DES) - If program can't support itself, it will have to go away. No permit has come before us with a 20% fee. Last year rivers became part of the program, requiring additional personnel. Predicting \$45,000 shortfall. Offers a compromise of 10%, but we'll be back again next year. Let's revisit fee structure after the bill sunsets.

Lawrence Morse, NH Association of Natural Resource Scientists - Concerned with the impact of this bill on smaller mitigation projects.

Joel Harrington, The Nature Conservancy - Opposes the bill.

Chris Wells, SPNHF - Opposes the bill. Come back after sunset in 2012. Recommend ITL.

Respectfully submitted,

A handwritten signature in cursive script that reads "David H. Russell". The signature is written in black ink and is positioned above the typed name.

Rep. David H. Russell
Acting Clerk

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

PUBLIC HEARING ON HB 468-FN

BILL TITLE: relative to assessments for aquatic resource compensatory mitigation.

DATE: 2/10/11

LOB ROOM: 305

Time Public Hearing Called to Order: ~~10:30~~ 11:00 AM

Time Adjourned: 12:05 PM

(please circle if present)

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

Bill Sponsors: Rep. Ahlgren, Carr 4

TESTIMONY

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

H B 468

Relative

- * ① Rep Ahlgren, Prime Sponsor
(See written testimony)
What is the administrative fee that should be charged to a developer?
- * ② Rep Susan Almy opposes bill
Thinks this is a tremendous asset to developers. DHS is a professional business, and should be allowed to charge reasonable fees. Choice is to fully fund program or let it die.
- * ③ Rep James Aguiar, representing Rep James McClammer, reads his testimony, which advises I.T.L.
- * ④ Michelle Tremblay - NH Rivers Council
Advises I.T.L.
- ⑤ Gary Abbott Associated General Contractors
No position on bill. Fee sunsets in 2012 maybe that's a better time to assess the fee schedule. Possibly retain until next year.

⑥ Rene Pelletier DRS

IF program can't support itself, it will have to go away. No permit has come before us with a 20% fee last year rivers became part of the program, requiring additional personnel. Predicting \$45,000 shortfall. Offers a compromise of 10%, but we'll be back again next year. Let's revisit fee structure after the bill sunsets.

⑦ Lawrence Morse NH Ass'n of Natural Resource Scientists

concerned with the impact of this bill on smaller mitigation projects.

⑧ Joel Harrington Nature Conservancy
Opposes bill.

⑨ Chris Wells SPNH opposes bill. Came back after sunset in 2012. Recommended 17%

HOUSE COMMITTEE ON WAYS AND MEANS

PUBLIC HEARING ON HB 468-FN

BILL TITLE: relative to assessments for aquatic resource compensatory mitigation.

DATE: March 9, 2011

LOB ROOM: 202 **Time Public Hearing Called to Order:** 11:48 AM

Time Adjourned: 12:38 PM

(please circle if present)

Committee Members: Reps. Stepanek, Major, Griffie, Hess, Sapareto, Ulery, Osgood, Ober, Abram, Azarian, Daugherty, McDonnell, Murphy, Ohm, Sanborn, Shuler, Almy, Hamm, Butynski, Hatch and Cooney.

Bill Sponsors: Rep. Ahlgren, Carr 4

TESTIMONY

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

***Representative Ahlgren, prime sponsor – supports.** See written testimony. Basically this bill is to reduce the fee from 20% to 10%. Questions about why not let the law take effect and let the fee drop to 5% in July 2012? Answer: The state needs 10% to run the program. The fee of 20% has proven to be too high for anyone to use the program.

***Representative Almy – opposes.** See written testimony. There was a discussion of the history of the bill and what has happened in the past.

Representative Renzullo, Chairman, Resources, Recreation and Development – supports. He would like 20% to be the number not the 10% as in this bill.

***Rene Pelletier, NHDES – opposes.** See written testimony. Favors the program. Not too many comments about “fees” but wants 20%.

Cindy Balcius, NH Association of Natural Resource Scientists – supports. Favors 10% but would like 20% and back to 5% is okay.

Respectfully submitted,



Representative Russell Ober, Clerk

HOUSE COMMITTEE ON WAYS AND MEANS

PUBLIC HEARING ON HB 468-FN

BILL TITLE: relative to assessments for aquatic resource compensatory mitigation.

DATE:

3/9/11

LOB ROOM:

202

Time Public Hearing Called to Order: 11:48

Time Adjourned: 12:38

(please circle if present)

Committee Members: Reps. Stepanek, Major, Griffin, Hess, Sapareto, Ulery, Osgood, Ober, Abrami, Azarian, Daugherty, McDonnell, Murphy, Ohm, Sanborn, Shuler, Almy, Hamm, Butynski, Hatch and Cooney.

Bill Sponsors: Rep. Ahlgren, Carr 4

TESTIMONY

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

Rep Ahlgren* - primary sponsor
basically to reduce fee from 20% to 10%

Question about why not let the law take effect and let the fee drop to 5%
in July 2012.

Ans the state needs 10% to run the program
The fee of 20% has proven to be too high for anyone to use the program.

Rep Almy*

discussion of history of bill and what has happened in the past

Rep Ranzullo - Resources, Rec, committee chair
would like 20% to be the number not the 10% as in this bill

Rene Pelletier* - NHDES

favours program

not too many comments about 'fees' but wants 20%

Cindy Balcius NH Assn Natural Resource Scientists

favours 10% but would like 20% and back to 5% is ok

Testimony

HB 468 Relative to assessments for aquatic resource mitigation fund.

Thank you Chairman Renzullo. For the record, I am Rep. Chris Ahlgren and I represent Carroll County District #4. The intent of this bill is to reduce the administrative fee imposed for aquatic resource mitigation from the current 20% of assessment down to 10%.

The aquatic resource mitigation or ARM program is a good program in many ways. DES always encourages on site mitigation when possible but sometimes that it is not practical or possible. Essentially, the idea of program is to place a monetary value on wetlands in one area that will be lost during a development. That money is placed into the ARM fund and used to purchase and preserve other wetlands with higher functions and values. The advantages are 3 fold. It expedites the mitigation process saving the developers time. It helps the real estate owners value by making their land more developable. The environment gets a boost by assuring the protection of high value wetlands.

Let me give some back round information leading up to the introduction of this bill. Before July of 2010,

the program was federally subsidized through grant funding. The fee paid at that time was 5% of the assessment. When the grant funding was discontinued DES proposed legislation to increase the fee to 20% which was passed and enacted last session.

The problem with this of course is that we were greatly increasing the cost to developers in a already depressed market. Remember the increases in these costs were not going to preserve more land but to pay DES for the brokering of the land. Can you imagine the head scratching going on with the developers? If Real estate agents can work on a 6% commission, why does DES need 20%. Now my good friends from DES will follow my testimony to explain the lengthy process they must go through to justify this fee. My preemptive reply is that it is our duty to cost effectively administrate this program for a reasonable fee to our citizens. We are simply asking them to do more with less just like most every family in New Hampshire.



State of New Hampshire

GENERAL COURT

CONCORD

* (2)

MEMORANDUM

DATE: November 6, 2009

TO: Honorable John H. Lynch, Governor
Honorable Terie Norelli, Speaker of the House
Honorable Sylvia B. Larsen, President of the Senate
Honorable Karen O. Wadsworth, House Clerk
Tammy L. Wright, Senate Clerk
Honorable Susan Almy, Chair, House Ways & Means
Committee
Honorable Robert Odell, Chair, Senate Ways & Means
Committee
Michael York, State Librarian

FROM: Representative Jim McClammer, Chairman

SUBJECT: Final Report on SB 65-FN, Chapter 303:7-11,
Laws of 2009

Pursuant to Chapter 303:11, Laws of 2009, enclosed please find the Final Report of the Committee to Study the Administrative Fee Percentage Under RSA 482A:30, III, RSA 482-A30-A, II, and RSA 482-A:31, II and to Recommend a New Administrative Fee Percentage Adjusted to Cover the Cost of the Program.

Should you have any questions or comments regarding this report, please do not hesitate to contact me.

cc: Committee Members
Honorable Judith Spang, Chair, House Resources, Recreation and Development
Committee

FINAL REPORT

COMMITTEE TO STUDY THE ADMINISTRATIVE FEE PERCENTAGE UNDER RSA 482A:30, III, RSA 482-A30-A, II, AND RSA 482-A:31, II AND TO RECOMMEND A NEW ADMINISTRATIVE FEE PERCENTAGE ADJUSTED TO COVER THE COST OF THE PROGRAM

HB 65

Chapter 303:7-11, Laws of 2009

November 6, 2009

MEMBERS:

Representative Jim McClammer (Chairman)
Senator Harold Janeway
Representative David Boutin
Representative Susan Almy

MEETINGS:

September 16, 2009
October 6, 2009
October 27, 2009

COMMITTEE DUTIES:

The committee shall:

Study the administrative fee percentage under RSA 482-A:30, III, RSA 482-A:30-a, II, and RSA 482-A:31, II and recommend a new administrative fee percentage adjusted to cover the cost of the program.

BACKGROUND:

The Program is the Aquatic Resource Compensatory Mitigation (ARM) Program (RSA 482-A:28-33) that provides for the acceptance of payments in lieu of other forms of compensatory mitigation for an unavoidable loss of aquatic resource functions and values. This form of mitigation is commonly referred to as the "in-lieu fee option" of the "in-lieu fee program" and it is available to applicants who need to meet federal and state wetland permitting requirements. It is a discretionary option that is intended to expedite the permit process when other meaningful forms of compensatory mitigation have been difficult to identify. Attached to this report is a document, *Aquatic Resource Compensatory Mitigation*, which contains the current statutes that pertain to this program.

Payments are deposited into the Aquatic Resource Compensatory Fund (Fund) appropriated to the Department of Environmental (DES). Disbursements from the Fund are approved by the Wetland Council on recommendations provided by a site selection committee. Disbursements occur through a grants process "for costs related to wetlands creation or restoration, stream restoration, preservation of upland areas adjacent to wetlands, and the subsequent monitoring and maintenance of such areas." Attached to this report is a document, *2009 Draft Report of Activity of the Aquatic Resource Mitigation Fund Program*, which explains the grants process and summarizes the current status of the ARM Fund.

The Fund currently *may* be used to pay state personnel costs to support up to *two* full-time positions for administration of the fund and related projects. But after July 1, 2010 the Fund *may not* be used to pay personnel costs except, upon approval of the fiscal committee, to support up to *one* full-time position. Furthermore, only money from the 5 percent administrative assessment shall be used for this purpose. The administrative assessment is a percentage of the costs, set by statute and annually adjusted, that would have been required by the department and incurred by an applicant to construct wetlands or restore a stream or shoreline loss.

SB 65-FN (approved July 31, 2009) amended RSA 482-A:28 to expand the ARM Program to include wetland impact projects of any type or size, and river and stream projects. Thus, as of the effective date, September 29, 2009, river projects and *any* wetland project that requires some form of compensatory mitigation are eligible to make in-lieu fee payments to the ARM Fund if they comply with the compensatory mitigation sequence. That is: 1) the project avoids and minimizes impact to protected resources to the maximum extent practicable; and, 2) the project proponent has made a reasonable attempt to locate a meaningful establishment, restoration or preservation alternative (and none is available).

The expansion of the Program will likely increase deposits to the Fund and the number of state personnel necessary to administer the Program. So, SB 65-FN also establishes this committee to study the administrative assessment (fee) percentage that is necessary to fund state personnel costs.

FINDINGS:

The committee met three times and received various presentations from the Department of Environmental Services (DES), specifically from Rene Pelletier, Water Division, Environmental Programs Administrator and Lori Sommer, DES Water Division, Mitigation Coordinator. Information was clear but inconclusive for determining the precise administrative fee.

The staff person with the current responsibility for administration of the AMR Fund was supported, in part, by a \$50,000 grant from the United States Environmental Protection Agency. That staff person currently uses up to 80% of her time to administer the program. Another part-time staff member is engaged in tracking conservation easements.

Future personnel costs associated with administration of the fund and related projects, including the grants process, have yet to be fully determined. The DES does expect the evaluation of river projects and the administration of the grants process will take more time.

With respect to the grants process, DES regulations allow for deposits into the ARM Fund to be segregated into separate accounts for each of the sixteen (16) watersheds within the state. After funds accumulate for two years in a watershed account, the funds are disbursed. In April 2009, the first watershed account advertised a request for proposals, and grants have recently been announced. Eight watershed accounts have funds, and three more have recently advertised requests for proposals.

DES estimates personnel costs of one full time position (Labor Grade 27) and one part time position (Labor Grade 21) to administer the Program would range from approximately \$100,022 in FY 2009 to approximately \$146,686 in FY 2012. Attached to this report is *Fiscal Impact – One Full Time and One Part Time Positions Calculation Worksheet*, which provides details on personnel costs to administer the Program.¹

Future deposits into the ARM Fund are likely to increase as the types of projects that are now eligible (e.g., stream, river and any wetland project) to use the in-lieu fee option has expanded. But deposits may slow if the number of all permit applications continues to decrease as a result of the current economic downturn. These factors and the small number of previous applicants using the in-lieu fee option (sample size) make forecasting average yearly deposits difficult.

The average yearly deposit into the ARM fund for 2007-2009 is approximately \$635,671. Attached to this report is *Payments into the ARM Fund*, which provides details on deposits to the ARM Fund as of October 12, 2009. A 20% administrative assessment, based on this average, would generate approximately \$127,134/year. However, the DES feels that total deposits into the ARM Fund for the remainder of this year and future years will increase, and a 20% administrative assessment will be sufficient to cover projected personnel costs.

It was suggested the administrative assessment (fee) be increased from 5% to 20%, which could then be reexamined and adjusted in two years time when more data are available on deposits into the ARM fund and personnel costs of administering the Program.

Mr. Gary Abbott, Director, Association of General Contractors, discussed the proposed 20% administrative fee with members his Board of Directors and a subcommittee of his Environment Committee. He got varying responses but a general feeling that if the fee was justified by numbers they could see, it would be acceptable. The regulated community did express concern over the costs of complying with the requirement that applicants must prove other meaningful measures in the compensatory mitigation

¹ Also attached to this report is *Fiscal Impact – Two Full Time Positions Calculation Worksheet*, which DES provided on November 5, 2009.

sequence are not available before they can use the in-lieu fee option. DES has assured the Committee that an attempt will be made to reduce these costs.

RECOMMENDATIONS FOR PROPOSED LEGISLATION:

The Committee voted to: 1) increase the administrative assessment from 5% to 20%; 2) sunset the 20% administrative assessment increase in two years, 2012; 3) establish a separate non-lapsing administrative assessment account; 4) summarize all deposits and disbursements of the administrative assessment account in the annual ARM Fund Report, due October 1 of each year; and, 5) have DES provide an Interim Report, appended to the Annual ARM Fund Report, due October 1, 2011, on its efforts to reduce costs to applicants who choose to use the in-lieu fee option and need to comply with the compensatory mitigation sequence.

The Committee recommended using HB 681-FN that has been retained in the House Resources, Recreation and Development Committee as the vehicle to implement these recommendations. Attached is a *Proposed Amendment to HB 681*, which incorporates the recommended fee increase to 20% and then returns it to 5% when the provision sunsets in 2012.

ATTACHMENTS:

Chapter 303:7-11, Laws of 2009

Aquatic Resource Compensatory Mitigation Statute

2009 Draft Report of Activity of the Aquatic Resource Mitigation Fund Program

Fiscal Impact – One Full Time and One Part Time Positions Calculation Worksheet

Fiscal Impact – Two Full Time Positions Calculation Worksheet

Payments into the ARM Fund

Proposed Amendment to HB 681

Respectfully Submitted for the Committee,

Representative Jim McClammer, Chairman

303:7 Committee Established. There is established a committee to study the administrative fee percentage under RSA 482-A:30, III, RSA 482-A:30-a, II, and RSA 482-A:31, II and to recommend a new administrative fee percentage adjusted to cover the cost of the program.

303:8 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Three members of the house of representatives, 2 from the ways and means committee and one from the resources, recreation and development committee, appointed by the speaker of the house of representatives.

(b) One member of the senate, appointed by the president of the senate.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

303:9 Duties. The committee shall study the administrative fee percentage under RSA 482-A:30, III, RSA 482-A:30-a, II, and RSA 482-A:31, II and recommend a new administrative fee percentage adjusted to cover the cost of the program.

303:10 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Three members of the committee shall constitute a quorum.

303:11 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, the chairman of the house ways and means committee, the chairman of the senate ways and means committee, and the state library on or before November 1, 2009.

Current Statute Relative To 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.

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. The fund may be used to supplement the administrative assessments collected under RSA 482-A:30, III and RSA 482-A:30-a, II to support up to 2 full-time positions for administration of the fund and related projects.

[Paragraph II above replaced by paragraph II below on July 1, 2010.]

II. The fund may not be used to pay state personnel costs except, upon approval of the fiscal committee, to support up to one full-time position for administration of the fund and related projects. Only money from the 5 percent administrative assessment collected under RSA 482-A:30, III and RSA 482-A:30-a, II shall be used for this purpose.

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.

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

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

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

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

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.

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.

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.

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. 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.

**2009 REPORT OF THE ACTIVITY OF THE
NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES
AQUATIC RESOURCE MITIGATION FUND PROGRAM**

December 31, 2009

I. INTRODUCTION

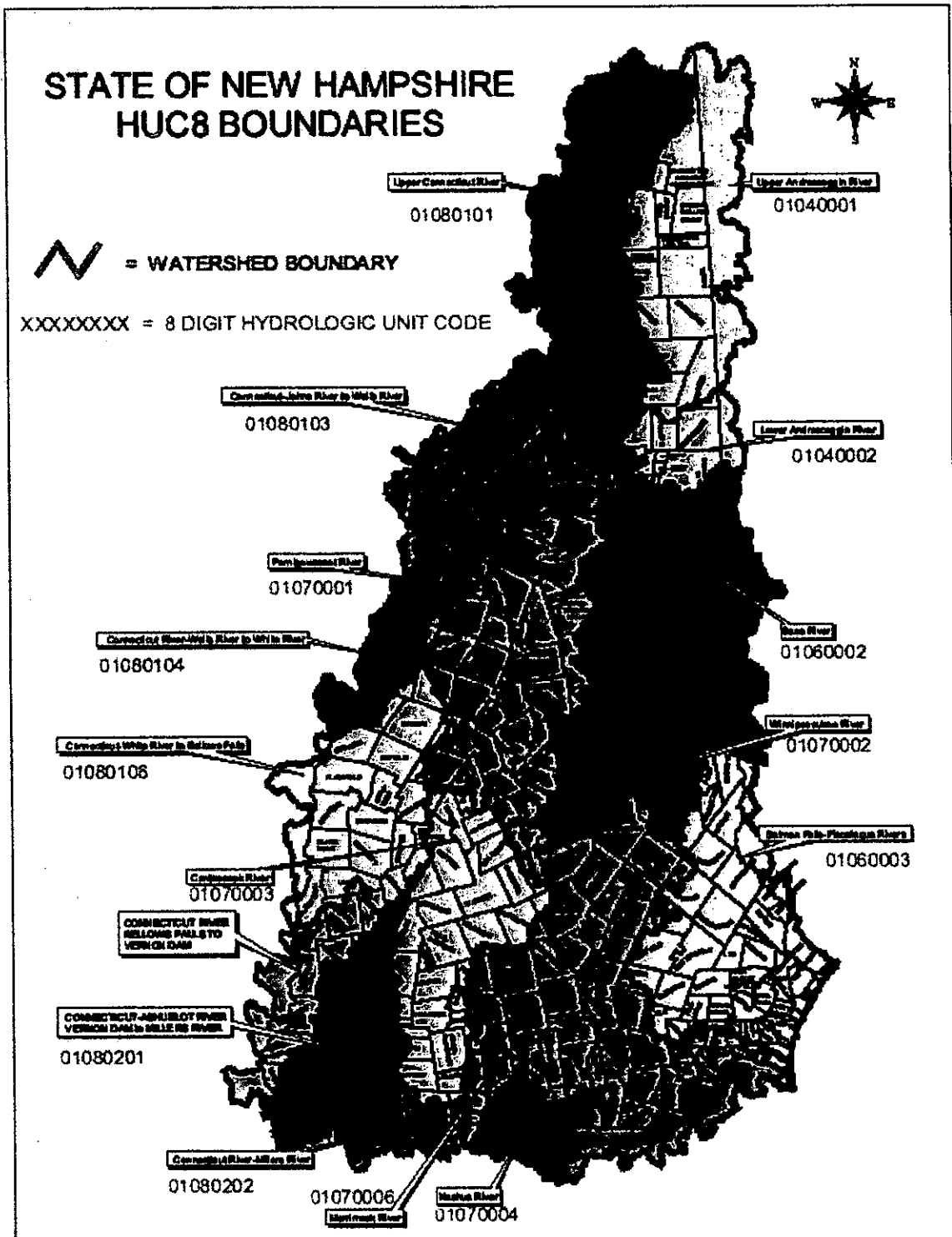
The Aquatic Resource Mitigation (ARM) Fund has been created as one of several compensatory mitigation options available to applicants for impacts to wetlands and other aquatic resources. This mitigation option is available for use after avoidance and minimization of impacts to these aquatic resources has been achieved. Although compensatory mitigation is often a requirement in permits, use of the ARM Fund can only occur after the applicant has reviewed other available forms of mitigation in the vicinity and local community. The ARM Fund seeks "no net loss" of aquatic resource acreage and functions using a watershed approach. See Figure 1 for the Hydrologic Unit Code 8 (HUC 8) display of the watersheds that is used for collection of funds.

The DES regulations allow for the funds in each watershed account to accumulate for two years after the first deposit into each account. After two years have lapsed, the funds are advertised in a request for proposals for disbursement. In April, 2009 the first watershed to be advertised for release was the Merrimack River Watershed with \$650,000.00 available. This report outlines the results of the first ARM Fund disbursement. Summaries of the wetland impacts, wetland functions and values lost, and accruals in each of the HUC 8 accounts that have accumulated funds are also noted. The purpose of this report is to advise the public of the status of the ARM Fund and to address items referenced in the DES regulations, Env-Wt 807.19, specifically:

- (1) A summary that details the sources of all payments received and all fund expenditures on a per-watershed basis;
- (2) A description of each project funded and information on the progress or completion of those projects;
- (3) The acreage and type of aquatic resource restored, created, or otherwise protected in each HUC 8 watershed by the projects; and
- (4) The functions gained by the projects.

The last section of this report highlights program achievements made by the mitigation program over the 2009 calendar year.

FIGURE 1. STATE OF NEW HAMPSHIRE HYDROLOGIC UNIT CODE 8 BOUNDARIES



II. WETLAND LOSS AND CONTRIBUTIONS RECEIVED

During the 2009 calendar year, 12 projects used the payment option as mitigation for permitted wetland impacts. The 12 permitted projects resulted in 6.02 acres of wetland loss. For these wetland impacts, the Fund accrued contributions totaling \$785,263.64. The impacts, contributions, functions and values impacted by projects that generated funds in calendar year 2009 are shown below. The totals for the 8 watersheds that have had deposits since 2007 are also noted, with the proposed release dates for each account.

**ARM FUND REVENUES, IMPACTS AND FUNCTION AND VALUES LOST
CALENDAR YEAR 2009**

**UPPER CONNECTICUT RIVER WATERSHED
Request for Proposal sent out September, 2009**

DES PERMIT LOCATION, FILE #	IMPACTS (in acres)	FUNCTIONS & VALUES LOST	REVENUES	DATE PERMIT ISSUED
Colebrook, 2005-2313	0.51	Floodflow alteration, wildlife and fish habitat, flood storage, sediment/nutrient filtering	\$52,933.59	2/18/2009
CURRENT TOTAL FOR WATERSHED	1.5		\$156,159.59	

UPPER ANDROSCOGGIN RIVER WATERSHED – Release October 2010

DES PERMIT LOCATION, FILE #	IMPACTS (in acres)	FUNCTIONS & VALUES LOST	REVENUES	DATE PERMIT ISSUED
CURRENT TOTAL FOR WATERSHED	0.61		\$63,110.55	

PEMIGEWASSETT RIVER WATERSHED – Release June 2010

DES PERMIT LOCATION, FILE #	IMPACTS (in acres)	FUNCTIONS & VALUES LOST	REVENUES	DATE PERMIT ISSUED
Lincoln, 2008-807	0.61	Storm water channel - manmade	\$64,812.14	4/20/2009
CURRENT TOTAL FOR WATERSHED	1.4		\$147,044.11	

CONNECTICUT RIVER from JOHNS RIVER TO WAITS RIVER
Request for Proposal sent out September, 2009

DES PERMIT LOCATION, FILE #	IMPACTS (in acres)	FUNCTIONS & VALUES LOST	REVENUES	DATE PERMIT ISSUED
Jefferson, 2008-1529	0.004	Wildlife habitat; Recreation	\$503.51	3/24/2009
Littleton, 2008-2762	0.30	Groundwater discharge, wildlife habitat	\$32,505.59	3/27/2009
Dalton, 2008-1332	0.29	Wildlife habitat	\$30,357.77	4/13/2009
Whitefield, 2008-1333	1.85	Groundwater discharge and wildlife habitat	\$90,000.00	5/12/2009
CURRENT TOTAL FOR WATERSHED	3.06		\$198,175.54	

WINNIPESAUKEE RIVER WATERSHED
Request for Proposal sent out September, 2009

DES PERMIT LOCATION, FILE #	IMPACTS (in acres)	FUNCTIONS & VALUES LOST	REVENUES	DATE PERMIT ISSUED
CURRENT TOTAL FOR WATERSHED	1.08		\$161,466.73	

SALMON FALLS RIVER – PISCATQUA RIVER WATERSHED – August 2010

DES PERMIT LOCATION, FILE #	IMPACTS (in acres)	FUNCTIONS & VALUES LOST	REVENUES	DATE PERMIT ISSUED
Lee, 2006-2733	0.55	Wildlife habitat	\$68,374.50	2/5/2009
Seabrook, 2008-1264	0.37	Groundwater recharge/discharge, floodflow alteration, nutrient rem/retention, wildlife habitat	\$57,198.96	6/8/2009
Durham, 2009-593	0.37	Roadside swales with limited function and values	\$14,653.53	8/19/2009
Hampton, 2009-937	0.55	Sediment/toxicant retention	\$95,766.77	10/7/2009
CURRENT TOTAL FOR WATERSHED	2.69		\$374,601.88	

MERRIMACK RIVER WATERSHED
Awards to 4 Projects Issued August, 2009

DES PERMIT LOCATION, FILE #	IMPACTS (in acres)	FUNCTIONS & VALUES LOST	REVENUES	DATE PERMIT ISSUED
Bow, 2008-2312	0.4	Stormwater detention of runoff from existing site	\$78,157.28	1/26/2009
Manchester, 2006-3219			\$200,000.00	2/19/2009
CURRENT TOTAL FOR WATERSHED			\$20,000.00	

**CONNECTICUT RIVER – ASHUELOT RIVER – VERNON DAM
 TO MILLERS RIVER WATERSHED – May 2010**

DES PERMIT LOCATION, FILE #	IMPACTS (in acres)	FUNCTIONS & VALUES LOST	REVENUES	DATE PERMIT ISSUED
CURRENT TOTAL FOR WATERSHED	0.85		\$113,033.10	

Two additional projects determined eligible for payment into the ARM Fund are noted below. These 2 projects have the potential of an additional \$79,663.74 to be paid into the Fund.

**POTENTIAL ARM FUND REVENUES, IMPACTS AND FUNCTION AND VALUES
 LOST IN CALENDAR YEAR 2009**

PROJECT TOWN	FILE # WATERSHED	IMPACTS	FUNCTIONS AND VALUES LOST	REVENUES
Rochester	Salmon Falls – Piscataqua Rivers	14,100	Limited wildlife habitat	49,663.74
Washington	CT-Ashuelot, Vernon Dam – Miller River	17,810	Wildlife habitat	30,000.00
TOTALS FOR POTENTIAL PAYMENTS		0.73		\$79,663.74

III. DISBURSAL OF WATERSHED FUNDS IN 2009

Merrimack River Watershed

The DES ARM Fund was established by law in August, 2006 as a mitigation option for certain projects not able to provide other forms of mitigation. The ARM Fund Site Selection Committee (Committee) was set up to provide a mechanism for reviewing, evaluating, and selecting wetland restoration, upland preservation, wetland creation, and other aquatic resource improvement proposals. The Committee is composed of representatives from the following organizations: DES, Department of Economic Development NH Heritage Bureau, NH Fish and Game Department, Office of Energy and Planning, NH Association of Natural Resource Scientists, NH Association of Conservation Commissions, The Nature Conservancy and the Society for the Protection of NH Forests. According to the law, the projects determined to be appropriate for receipt of ARM Fund monies are subject to approval by the US Army Corps of Engineers (ACE) and the NH Wetlands Council (Council).

The Committee is charged with identifying proposals to be funded by selecting high priority projects that most effectively compensate for the loss of functions and values in the watershed. The Council is charged with approving disbursements of the ARM Fund based on recommendations provided by the Committee per RSA 482-A:29.

On April 2, 2009 DES announced the availability of \$650,000 of funds accrued in the Merrimack River watershed. The funds came from 9 permitted projects located in the towns of Bow, Candia, Epsom, Hooksett, Londonderry and Manchester (See Attachment A). These permitted projects impacted the following functions: wildlife habitat, groundwater discharge and recharge, flood storage and sediment/toxicant retention. The request for proposals ended on June 5, 2009 and eight applications were received in response to the solicitation.

In July, 2009 the Committee visited all the sites for which access was available. On July 22 the Committee convened to evaluate the applications and recommended full funding of projects 1 through 3 as noted below. The Committee determined that the three selected projects provide the greatest potential to replace or protect specific wetland functions and values lost by the impacts in the Merrimack River HUC 8 watershed. Where project scores were comparable, preference was given to projects that provide the longer-term, more beneficial protection.

The Committee also recommended partial funding for the Nesenkeag Brook Headwaters Project of up to \$20,000 to determine if a restoration plan could result in long-term improvements at the site. This approval is contingent upon the Town providing long-term protection of the property. The Nesenkeag Brook project has the potential to have good restoration of wetland functions and a component of protection for long-term success. All four projects selected are summarized as follows with a site map for each of the four projects found in Attachment B.

1. Project Proponent: Joint application by the Russell Foundation, Piscataquog Land Trust, and Saint Anselm College
Project Title: Stewart Property, Francestown

This project proposes to purchase, fee simple, 55 acres of the Stewart land in Francestown. This purchase will protect: (1) over 5,000 feet of shoreline along Rand Brook and the South Branch of the Piscataquog River including enhancement involving restoration of active cow pasture back to natural riparian vegetation and the removal of invasive species in both wetlands (approximately 2 acres) and uplands, (2) a NH Natural Heritage ranked exemplary floodplain forest that includes both upland and floodplain vernal pools, habitats for several species listed in the NH Wildlife Action Plan including nesting goshawk, woodcock, and wood turtle, and water quality of Rand Brook and the Piscataquog

River. A conservation plan developed by the proponents ranked protecting the Stewart parcel and adjacent land as among the top three land conservation priorities for the Piscataquog River Watershed. This project is part of a larger conservation initiative called the Headwaters Project.

Grant amount requested:	\$45,500.00
Amount of non-federal matching funds secured:	\$125,000.00
Total project costs:	\$170,000.00

Committee Findings:

- A. The project includes restoration of multiple types of wetland resources with a high likelihood of success;
- B. There is a blend of functions to be restored which will be protected through a conservation easement;
- C. The site includes protection of a buffer adjacent to other protected lands;
- D. There is a biodiversity of aquatic habitats including vernal pools, riparian habitat and headwater areas; and
- E. There is a threat to aquatic resources from development as it is adjacent to residential development and includes high quality uplands with river frontage.

2. Project Proponent: Town of Hooksett and Bear-Paw Regional Greenways partnership
Project Title: Clay Pond Headwaters Protection Project

The town and Bear-Paw Regional Greenways are working in partnership to conserve 733+/- acres of high value wildlife habitat in the Clay Pond Headwaters area, including over 130 acres of wetlands, and restore or provide habitat improvements for three streams that were negatively impacted crossings during historic settlement of the area. The goal is to permanently protect the area by combining town ownership with a conservation easement(s) held by Bear-Paw. This will assure permanent conservation of this area which is recognized as a top priority in Hooksett's Master Plan, the NH Wildlife Action Plan, Bear-Paw's Conservation Plan, and others. The three stream restoration sites will improve a total of 105 linear feet of perennial and intermittent habitat with a total of 6,389 square feet of restoration. The Hooksett Conservation Commission, ECHIP, the NHDES Wetlands Mitigation and Drinking Water Source Protection programs, and the Open Space Institute's Saving New England's Wildlife program have already committed funds to this important project.

Grant amount requested:	\$265,315.00
Amount of non-federal matching funds proposed:	\$1,064,475.00
Total project costs:	\$1,329,790.00

Committee Findings:

- A. Three restoration opportunities have a net functional benefit to habitat connectivity;
- B. Site includes large wetland complex, vernal pools of high habitat value, and is located in the headwaters of the HUC 10 watershed and a prime wetland, Clay Pond;
- C. Protection of the properties will add three parcels within the context of 733 acres of protected land adjacent to other large protected blocks; and
- D. The site is under potential threat primarily from forestry that does not follow best management practices which would adversely affect habitat and water quality functions. In addition, there is some potential for residential development.

3. Project Proponent: The Society for the Protection of NH Forest
Project Title: Concord Regional Solid Waste/Resource Recovery Center, Canterbury

The Forest Society seeks to purchase and protect a 294-acre parcel in Canterbury. This property was previously proposed for the Concord Regional Solid Waste/Resource Recovery Center. Protecting

this land is of critical conservation importance as it includes 26 acres of wetlands and two miles of undeveloped shoreline on the Merrimack River, as well as exemplary plant communities and habitat for several state-listed plant and animal species. The entire property is within Tier One, Highest Ranked Habitat in NH, as identified in the NH Wildlife Action Plan. The property overlies an aquifer, with substrate identified as glacial lake bottom deposits. The property is well known for its long scenic wooded shoreline along the Merrimack River, and the hiking, fishing and boating enjoyment opportunities it provides. It is also proximate to several other preserved parcels along the river.

Grant amount requested:	\$300,000.00
Amount of non-federal matching funds proposed:	\$510,000.00
Total project costs:	\$810,000.00

Committee Findings:

- A. There is no restoration potential proposed as part of the application but the project meets the intentions and goals for protection of high value upland and riparian habitat;
- B. The site contains federal & state listed plant species and exemplary natural communities with high value wildlife habitat with significant floodplain forest component;
- C. The proposed conservation easement will allow for restoration and enhancement activities on the wetlands and shoreline and will include specific provisions specifically allowing wetland restoration or enhancement activities on the property; and
- D. There is evidence of this property being under threat as it was previously considered for a regional landfill with a high likelihood it could have been developed. An application for the landfill had been submitted to DES for review.

**4. Project Proponent: Town of Londonderry
Project Title: Nesenkeag Brook Headwaters Project, Londonderry**

The restoration of the Nesenkeag Brook Headwaters site attempts to return a degraded ecosystem to its natural potential. The project proposes to restore and protect these values. The percentage of restored wetland functions will be assessed through annual monitoring for at least three years. After implementing restoration, specific measurable results will likely include: wildlife habitat improvement; reduction of invasive species; and possible water quality improvements. Other positive measurable results are likely after full on-site wetland analysis, hydrology, and final restoration plans are completed and implemented.

Grant amount requested:	\$88,198.00
Amount of non-federal matching funds proposed:	\$5,969.80
Total project costs:	\$94,167.80

Committee Findings:

- A. The opportunity for restoration and invasive species elimination includes a comprehensive review of the Nesenkeag Headwaters site which will include a detailed survey, wetland delineation, and engineered plan and specifications to address impaired functions and values and water quality issues;
- B. The final restoration plans are likely to address the following (but not limited to): restoring hydrologic conditions; grading to reestablish historic topography; control and removal of invasive plants; riparian planting with trees and other native wetland species;
- C. Although under Town ownership, no additional long-term protection measures, such as a conservation easement, are proposed; and
- D. There is a level of uncertainty of what will result from the hydrologic plan if the plan in fact, increases functions at that site.

The Committee's findings for the four applications that will not receive ARM funds are summarized in Attachment C.

IV. DES MITIGATION PROGRAM ACHIEVEMENTS IN 2009

In the third year of operation, the ARM Fund program has made huge progress in the use of collected funds. The following items summarize additional program achievements to date:

- The DES Wetlands Bureau, Mitigation Program was awarded US Environmental Protection Agency grant funds to develop a strategy for identifying wetland restoration projects at the HUC 8 watershed scale. The grant developed a model that was initially used for the Merrimack River watershed. The results of that effort can be reviewed on an interactive web site as follows: www.restoreNHwetlands.com. The second phase of the grant is to continue implementation of the model on the Winnepesaukee River, Upper Connecticut, and Connecticut River from the Johns River to Waits River watersheds. This second phase will be completed in December, 2009. The Department may continue the use of the model in other watersheds for identification of restoration opportunities.
- Senate Bill 65 was entered into legislation to expand the eligibility for projects with stream related impacts to provide payments in-lieu of other forms of mitigation. The Department of Environmental Services (DES) supported the bill which implements a recommendation of the Final Report of the Comprehensive Flood Management Study Commission (New Hampshire House Bill 648, Chapter 179.1, Laws of 2007). The report specifically recommended the development of a DES in-lieu mitigation option for projects that impact floodplains and stream channels. The funds generated will be eligible to municipal and state agencies, non-profit organizations and watershed associations for stream restoration and protection projects. See Attachment D for the final bill text.

V. CONCLUSION

The above projects demonstrate that the ARM Fund has made significant progress toward accomplishing its goal of providing watershed-based mitigation for permitted impacts. The Department recognizes the Fund is in an advantageous position to bring significant mitigation projects to completion. The new Aquatic Resource Mitigation program offers a chance for municipalities to accomplish high priority local conservation goals, a mechanism for developers to proceed with projects once not viable because no compensatory wetland mitigation was practicable; and an opportunity for the State to accomplish projects with greater conservation value than can be achieved through conventional compensatory wetland mitigation. For additional information, please contact Ms. Lori L. Sommer at 603-217-4059 or Lori.Sommer@des.nh.gov.

ATTACHMENT A.

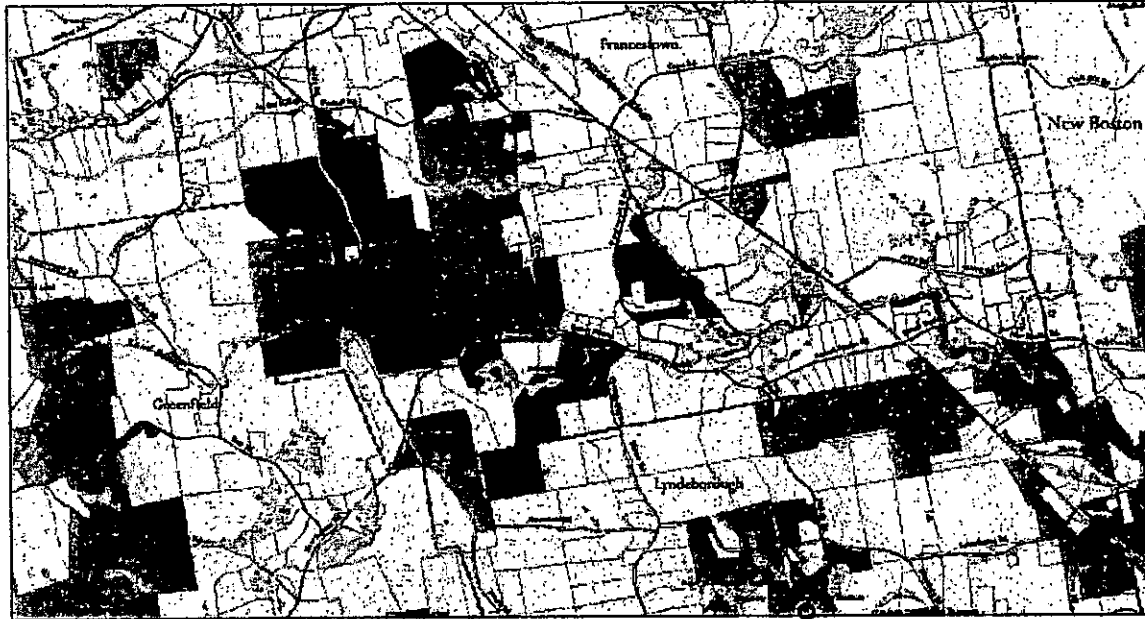
MERRIMACK RIVER WATERSHED ARM FUND PAYMENTS

PERMIT #	LOCATION	PROJECT TYPE	COWARDIN CLASS	PRIMARY FV's	OTHER ISSUES	WETLAND LOSS SQFT	PAYMENT AMOUNT	DEPOSIT DATE
2006-2360	Londonderry	Coca Cola 32,850 sq.ft. facility addition, access road	PEM manmade area used for drainage/retention	Storm water detention of runoff from existing site		17,520	52,394.00	1/25/2007
2006-712	Hooksett	SNU dining facility	PFO1	Floodflow alt, limited groundwater recharge/dischage, wildlife habitat		15,678	61,153.33	6/18/2007
2005-2505	Hooksett	Lowe's-Walmart stores	PEM1Ex, PFO1Ex, man-made seasonal stream	Groundwater recharge/dischage	Former gravel pit. Potential NE cottontail habitat.	25,381	77,636.00	9/6/2007
2006-1471	Candia	Light industrial park on 14 acre parcel	PFO1	Storm water det, sed/ tox retention		31,319	82,438.00	12/27/2007
2008-3	Londonderry	DOT roadway widening, intersection reconfiguring	PEM1F, R2UB2, PFO1 E	Wildlife habitat, sed/tox retention, some floodflow alt		22,332	35,545.44	3/27/2008
2006-3183	Epsom	Roadway crst. for commercial subdivision	PFO1E, PFO1C, PFO1/C and E	Groundwater recharge; floodflow alt; sed/tox removal;		19,922	52,342.79	8/16/2008
2007-2200	Epsom	Commercial development of 12 ac for retail	PFO1E	Flood storage, wildlife habitat		17,422	45,774.52	12/2/2008
2008-2312	Bow	PSNH power plant improvement	PSS1E	Flood storage, groundwater discharge, wildlife habitat	Worked with F&G on New England cottontail mitigation	26,905	78,157.28	1/26/2009
2006-3219	Manchester	Airport EMAS project	PFO1E, PSS	Sed tox/removal, wildlife habitat, nutrient retention	Wetland restoration was not successful		200,000	2/20/2009
TOTALS						176,479	685,441.36	

ATTACHMENT B.

PARCEL INFORMATION FOR FOUR ARM FUND PROJECTS

Stewart Property, Francestown

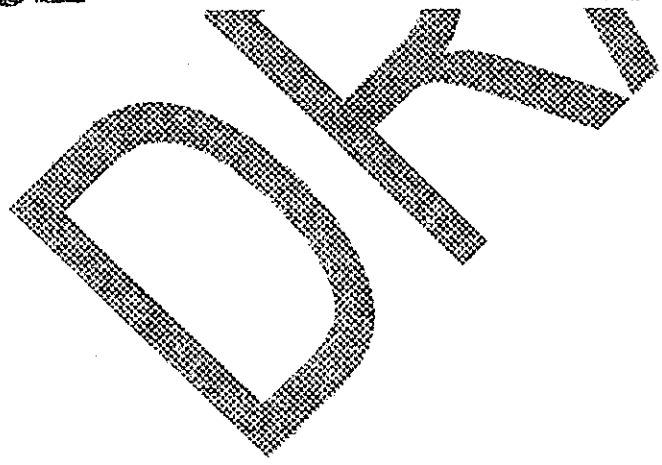


Stewart Property Local Context

- Stewart Property
- Completed HP-1 Projects
- Town Boundaries
- Stewart and Abner
- Other Conserved Lands
- 20' Contours
- Lakes and Ponds
- Tax Parcels
- Public Roads
- Wetlands



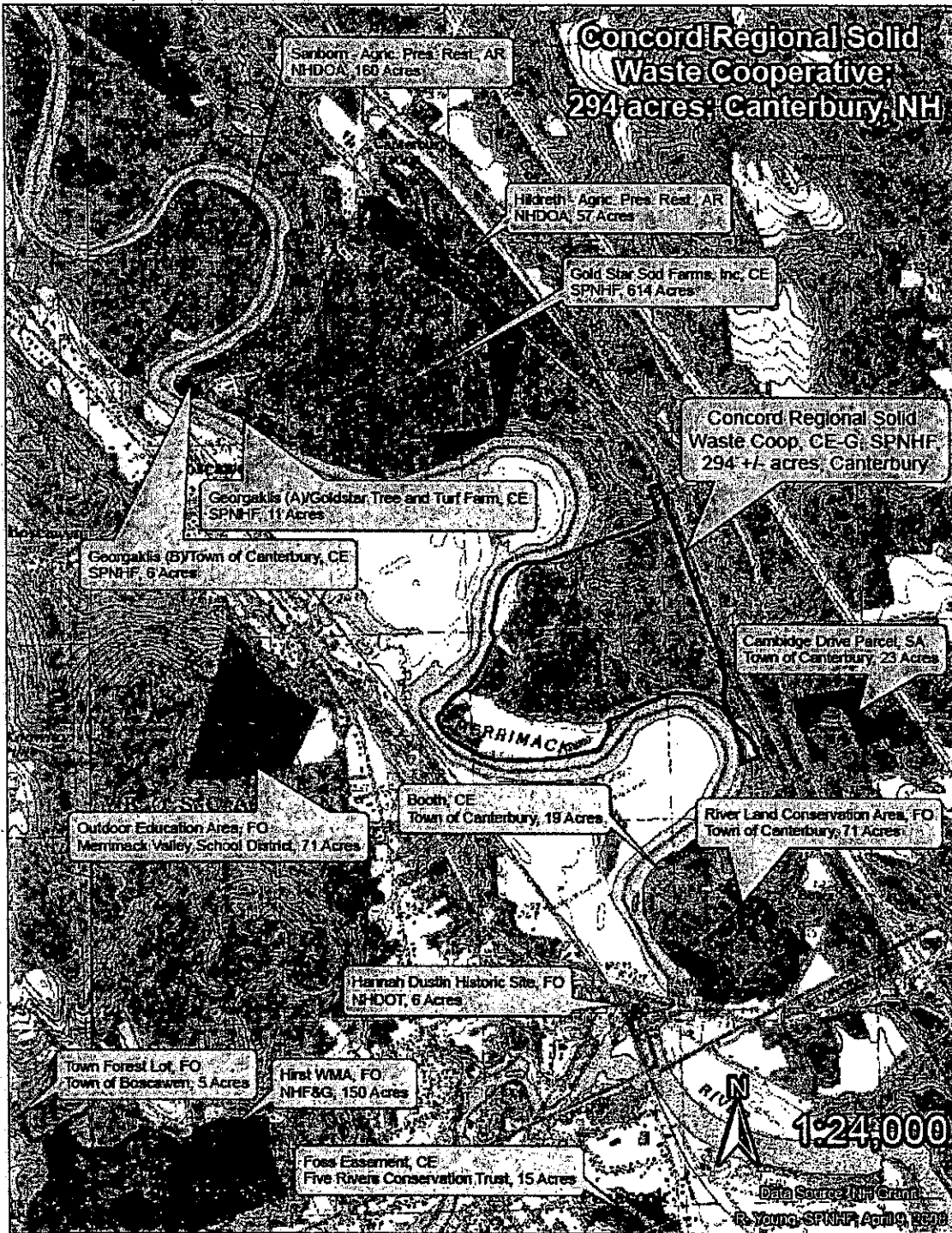
ENVIRONMENTAL CONSULTANTS
One American Hill Street, Suite 200
Manchester, NH 03102
Tel: 603.888.1111



Clay Pond Headwaters Project, Hooksett - 2005 Aerial View



CRSWRRC, Canterbury



ATTACHMENT C.

SUMMARY OF FOUR ARM FUND PROJECTS
NOT SELECTED FOR FUNDING

1. Project Proponent: Southeast Land Trust of New Hampshire
Project Title: Grassy Brook Farm/Paul-Mannino Property, South Hampton

Grassy Brook Farm is 46.97 acres of wetlands, fields, and forest. This property drains into the Grassy Brook wetland complex that flows into the Powwow River and eventually the Merrimack River. The proponent proposes to protect and conserve the property through the conveyance of a conservation easement with an option to purchase contingent on ARM funding.

Grant amount requested:	\$150,513.98.00
Amount of non-federal matching funds proposed:	\$2,023.00
Total project costs:	\$152,538.98

Committee Findings:

- A. The application does not propose restoration although some culvert enhancements could be considered in addition to the budget for protecting the parcel, however, that would involve getting permission from several other landowners;
- B. The majority of the wetlands, approximately 10 acres, are located in the central portion of the property and are a part of the Grassy Brook drainage that flows into the Powwow River and eventually the Merrimack River.
- C. The conservation easement on this parcel may lead to additional adjacent parcels to be protected; and
- D. The threat of development is questionable as access is limited and would require permission to cross other parcels.

2. Project Proponent: Town of Litchfield and agent Swamp, Inc.
Project Title: Greenwich Road, Litchfield

This is a four year project to restore an emergent wetland that is owned by the town and located on Greenwich Road. The site is threatened by invasive species, specifically Phragmites and purple loosestrife. Open water habitat also is proposed to be created. A portion of marsh is currently under a conservation easement. Funds are proposed to be used for final restoration plan and to cover costs associated with the restoration work, construction management, permit costs, excavation costs and disposal of excavated materials, as well as post-construction monitoring and maintenance.

Grant amount requested:	\$164,035.00
Amount of non-federal matching funds proposed:	\$0
Total project costs:	\$164,035.00

Committee Findings:

- A. The proposal for invasive species management has a low potential for long-term sustainability as it addresses symptoms rather than the problem(s);
- B. The area was originally a spruce-fir forest that will not be restored in this application; and
- C. Impacts to the upland buffer for creation of open water is not justified.

3. Project Proponent: Town of Windham and agent Swamp, Inc.
Project Title: Lowell Road, Windham

This four year project aims to restore an emergent wetland threatened by invasive plants and to create open water habitat. The property is located on Lowell Road and is privately owned. This project

requests ARM funds to develop final restoration plans and to cover costs associated with the proposed restoration work, construction of a walkway, permit costs and administrative costs. ARM funds are also requested for pre- and post-restoration monitoring and maintenance expenses until the site is successfully restored.

Grant amount requested:	\$61,685.00
Amount of matching non-federal funds proposed:	\$0
Total project costs:	\$61,685.00

Committee Findings:

- A. The proposal for invasive species management has a low potential for long-term success;
- B. The area is in highly developed location and susceptible to continual exposure to invasive species; and
- C. The proposal provides questionable restoration methods and does not achieve long-term protection of the property.

4. Project Proponent: Town of Windham and agent Swamp, Inc.

Project Title: Marblehead Road, Windham

This four year project aims to restore a portion of a sixty-two acre red maple swamp threatened by invasive plants. The wetland to be restored is located on Marblehead Road and abuts a former incinerator site. The ash has been capped and does not produce methane. The Town of Windham owns the entire landfill and adjacent marsh. Three town organizations are involved with this project: the Conservation Commission, the town Health Officer, and the Board of Selectmen.

Grant amount requested:	\$41,660
Amount of non-federal matching funds proposed:	\$0
Total project costs:	\$41,660.00

Committee Findings:

- A. The proposal for invasive species management has a low potential for long-term success;
- B. The site is adjacent to a capped landfill that may be used in a way that may cause degradation of habitat values;
- C. The proposal provides questionable restoration methods and does not achieve long-term protection of the property; and
- D. The invasive species "problem" does not seem to have reduced the functioning of the wetland.

ATTACHMENT D
SENATE BILL 65-FN – FINAL VERSION
2009 SESSION

09-0743

06/03

SENATE BILL **65-FN**

BT relative to the acceptance of in lieu payments for the restoration or creation of wetlands and establishing a committee to study the administrative fee percentage for such in lieu payments.

SORS: Sen. Janeway, Dist 7; Rep. Kappler, Rock 2; Rep. Gottling, Sull 3

COMMITTEE: Energy, Environment and Economic Development

AMENDED ANALYSIS

This bill:

I. Permits the department of environmental services to accept in lieu payments for the restoration or creation of wetlands and the preservation of upland areas adjacent to wetlands, streams, rivers, and their riparian habitats.

II. Establishes a committee to study the administrative fee percentage for such in lieu payments.

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.

03/11/09 0642s

06May2009... 1337h

03Jun2009... 1920h

06/24/09 2219CofC

06/24/09 2357eba

09-0743

06/03

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nine

BT relative to the acceptance of in lieu payments for the restoration or creation of wetlands and establishing a committee to study the administrative fee percentage for such in lieu payments.

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

303:1 Aquatic Resource Compensatory Mitigation. Amend RSA 482-A:28 to read as follows:

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 ~~[a proposed activity which at a minimum:~~

~~I. Impacts less than one acre of wetlands and meets the criteria for a United States Army Corps of Engineers state programmatic general permit.~~

~~II. Exceeds one acre of impact for a public roadway or a public utility project and meets the criteria for a United States Army Corps of Engineers state programmatic general permit]~~ **impacts to resources protected under this chapter.**

303:2 Fund Established. Amend RSA 482-A:29, I to read as follows:

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.

303:3 New Section; Payment for Stream or Shoreline Losses. Amend RSA 482-A by inserting after section 30 the following new section:

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

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

303:4 Rulemaking. Amend RSA 482-A:31, II to read as follows:

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.

303:5 Aquatic Resource Compensatory Mitigation Fund. Amend RSA 482-A:29, II to read as follows:

II. The fund may ~~[not]~~ be used to ~~[pay state personnel costs except, upon approval of the fiscal committee,]~~ **supplement the administrative assessments collected under RSA 482-A:30, III and RSA 482-A:30-a, II** to support up to ~~[one]~~ **2** full-time ~~[position]~~ **positions** for administration of the fund and related projects. ~~[Only money from the 5 percent administrative assessment collected under RSA 482-A:30, III shall be used for this purpose.]~~

303:6 Aquatic Resource Compensatory Mitigation Fund. RSA 482-A:29, II is repealed and reenacted to read as follows:

II. The fund may not be used to pay state personnel costs except, upon approval of the fiscal committee, to support up to one full-time position for administration of the fund and related projects.

Only money from the 5 percent administrative assessment collected under RSA 482-A:30, III and RSA 482-A:30-a, II shall be used for this purpose.

303:7 Committee Established. There is established a committee to study the administrative fee percentage under RSA 482-A:30, III, RSA 482-A:30-a, II, and RSA 482-A:31, II and to recommend a new administrative fee percentage adjusted to cover the cost of the program.

303:8 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Three members of the house of representatives, 2 from the ways and means committee and one from the resources, recreation and development committee, appointed by the speaker of the house of representatives.

(b) One member of the senate, appointed by the president of the senate.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

303:9 Duties. The committee shall study the administrative fee percentage under RSA 482-A:30, III, RSA 482-A:30-a, II, and RSA 482-A:31, II and recommend a new administrative fee percentage adjusted to cover the cost of the program.

303:10 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Three members of the committee shall constitute a quorum.

303:11 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, the chairman of the house ways and means committee, the chairman of the senate ways and means committee, and the state library on or before November 1, 2009.

303:12 Effective Date.

I. Section 6 of this act shall take effect July 1, 2010.

II. Section 5 and sections 7-12 of this act shall take effect upon its passage.

III. The remainder of this act shall take effect 60 days after its passage.

Approved: July 31, 2009

Effective Date: I. Section 6 shall take effect July 1, 2010.

II. Sections 5 and 7-12 shall take effect July 31, 2009.

III. Remainder shall take effect September 29, 2009.

LBAO

09-0743

Amended 06/10/09

**FISCAL IMPACT – ONE FULL TIME AND ONE PART TIME
POSITIONS CALCULATION WORKSHEET**

FULL TIME

Labor Grade 27, start @ step 3	FY 2009	FY 2010	FY 2011	FY 2012
Salary	53,137.50	55,497.00	57,934.50	60,567.00
Full Time Benefits	3,294.53	3,440.81	3,591.94	3,755.15
Social Security (6.2% of salary)	770.49	804.71	840.05	878.22
Medicare (1.45% of salary)	4,314.77	4,683.95	7,021.66	7,340.72
Retirement (12.12% of salary)	4,484.81	4,683.95	4,889.67	5,111.85
Additional Fringe Benefit	19.50	19.50	19.50	19.50
Life Insurance	3,294.53	3,440.81	3,591.94	3,755.15
Dental Insurance	1,506.96	1,522.03	1,537.25	1,552.63
Health Insurance	23,015.76	23,245.92	23,478.38	23,713.16
Total Salary & Benefits	90,544.31	93,897.86	99,312.95	102,938.24

Other Costs

Current Expense Equipment (one-time)	1,928.00	1,928.00	1,980.00	1,980.00
Office Space	3,688.00	3,513.00	3,583.26	3,654.93
OIT costs	2,812.00	3,894.00	3,971.88	4,051.32
Travel	1,050.00	1,150.00	1,150.00	1,173.00

TOTAL POSITION COSTS	100,022.31	104,382.86	109,998.09	113,797.48
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PART TIME

Labor grade 21, start @ Step 3	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
SALARY	\$41,086.50	\$42,744.00	\$44,538.00	\$46,410.00	\$48,769.50
HOURLY	\$21.07	\$21.92	\$22.84	\$23.80	\$25.01
30 HOUR WORK WEEK	\$30,340.80	\$31,564.80	\$32,889.60	\$34,272.00	\$36,014.40

**FISCAL IMPACT – TWO FULL TIME POSITIONS
CALCULATION WORKSHEET**

FULL TIME

Labor Grade 27, start @ step 3	FY 2009	FY 2010	FY 2011	FY 2012
Salary	53,137.50	55,497.00	57,934.50	60,567.00
Full Time Benefits	3,294.53	3,440.81	3,591.94	3,755.15
Social Security (6.2% of salary)	770.49	804.71	840.05	878.22
Medicare (1.45% of salary)	4,314.77	4,683.95	7,021.66	7,340.72
Retirement (12.12% of salary)	4,484.81	4,683.95	4,889.67	5,111.85
Additional Fringe Benefit	19.50	19.50	19.50	19.50
Life Insurance	3,294.53	3,440.81	3,591.94	3,755.15
Dental Insurance	1,506.96	1,522.03	1,537.25	1,552.63
Health Insurance	23,015.76	23,245.92	23,478.38	23,713.16
Total Salary & Benefits	90,544.31	93,897.86	99,312.95	102,938.24
Other Costs				
Current Expense Equipment (one-time)	1,928.00	1,928.00	1,980.00	1,980.00
Office Space	3,688.00	3,513.00	3,583.26	3,654.93
OIT costs	2,812.00	3,894.00	3,971.88	4,051.32
Travel	1,050.00	1,150.00	1,150.00	1,173.00
TOTAL POSITION COSTS	100,022.31	104,382.86	109,998.09	113,797.48

FULL TIME**Labor grade 21, start @ Step 3**

	FY 2010	FY 2011	FY 2012
Salary	\$41,086.50	\$42,744.00	\$44,538.00
Full Time Benefits	3,440.81	3,591.94	3,755.15
Social Security (6.2% of salary)	804.71	840.05	878.22
Medicare (1.45% of salary)	4,683.95	7,021.66	7,340.72
Retirement (12.12% of salary)	4,683.95	4,889.67	5,111.85
Additional Fringe Benefit	19.50	19.50	19.50
Life Insurance	3,440.81	3,591.94	3,755.15
Dental Insurance	1,522.03	1,537.25	1,552.63
Health Insurance	23,245.92	23,478.38	23,713.16
Total Salary & Benefits	\$82,928.18	\$87,714.39	\$90,664.38
Current Expense	1,928.00	1,980.00	1,980.00
Office Space	3,513.00	3,583.26	3,654.93
OIT costs	3,894.00	3,971.88	4,051.32
Travel	1,150.00	1,150.00	1,173.00
TOTAL POSITION COSTS	\$93,413.18	\$98,399.53	\$101,523.63

PAYMENTS INTO THE ARM FUND

PERMIT #	LOCATION	WETLAND LOSS (square feet)	TOTAL PAYMENT AMOUNT	5% ADMIN FEE	DEPOSIT DATE	ACCOUNT LETTER
2006-2360	Londonderry	17,520	52,394.00	2,512.62	1/25/2007	F
2006-712	Hooksett	15,678	61,153.33	2,877.09	6/18/2007	F
2002-1856	Bethlehem	14,800	14,904.44	690.00	7/20/2007	O
2002-2529	Littleton	11,898	29,904.23	1,424.00	8/2/2007	O
2006-516	Pittsburg	43,452	103,226.00	4,915.51	8/20/2007	P
2005-3055	Tilton	25,850	85,108.00	4,053.43	8/30/2007	D
2005-2505	Hooksett	25,381	77,636.00	3,713.96	9/6/2007	F
2006-2266	Moultonboro	21,485	76,358.73	3,636.14	12/5/2007	D
2006-1471	Candia	31,319	82,438.00	3,920.13	12/27/2007	F
2007-881	Lincoln	12,437	30,122.14	1,434.39	2/27/2008	N
2007-145	Woodstock	15,500	37,280.06	1,775.23	3/1/2008	N
2008-3	Londonderry	22,332	35,545.44	1,692.41	3/27/2008	F
2007-2703	Keene	36,990	113,033.10	5,382.53	4/30/2008	I
2007-1538	Lincoln	6,123	14,829.77	706.18	6/23/2008	N
2008-590	Rye	2,000	14,216.22	676.96	7/28/2008	E
2006-3183	Epsom	19,922	52,342.79	2,492.51	8/16/2008	F
2007-2373	Stratham	35,000	124,391.90	5,923.42	9/2/2008	E
2008-2098	Milan	26,435	63,110.55	3,005.26	10/17/2008	A
2007-2200	Epsom	17,422.00	45,774.52	2,179.73	12/2/2008	F
2008-2312	Bow	26,905	78,157.28	3,721.78	1/26/2009	F
2005-2313	Colebrook	22,075	52,933.59	2,520.65	2/18/2009	P
2006-2733	Lee	23,890	68,374.50	3,242.36	2/5/2009	E
2006-3219	Manchester		200,000.00	10,000.00	2/19/2009	F
2008-1529	Jefferson	210	503.51	23.98	3/24/2009	O
2008-2762	Littleton	12,933	32,505.59	1,450.00	3/27/2009	O
2008-1332	Dalton	12645	30,357.77	1,445.67	4/13/2009	O
2008-807	Lincoln	26760	64,812.14	3,086.29	4/20/2009	N
2008-1333	Whitefield	80,770	90,000.00	4,500.00	5/12/2009	O
2008-1264	Seabrook	16,094	57,198.96	\$2,723.53	6/8/2009	E
2009-593	Durham	16,094	14,653.53	\$697.79	8/19/2009	E
2009-937	Hampton	24,001	95,766.77	4,560.32	10/7/2009	E
2008-2780	Portsmouth	1,000	7,980.00	380.01	8/19/2009	E
TOTALS		664,921	1,907,012.86	91,363.88		

REVISED OCTOBER 12, 2009

Amendment to HB 681-FN

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to assessments for aquatic resource compensatory mitigation.

4

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

6

7 1 Aquatic Resource Compensatory Mitigation; Fund Established. RSA 482-A:29, II is repealed
8 and reenacted to read as follows:

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

14 2 Payment for Freshwater and Tidal Wetlands Losses. Amend RSA 482-A:30, III to read as
15 follows:

16 III. An administrative assessment which equals ~~[5]~~ 20 percent of the sum of paragraphs I
17 and II.

18 3 Payment for Freshwater and Tidal Wetlands Losses. Amend RSA 482-A:30, III to read as
19 follows:

20 III. An administrative assessment which equals ~~[20]~~ 5 percent of the sum of paragraphs I
21 and II.

22 4 Payment for Stream or Shoreline Losses. Amend RSA 482-A:30-a, II to read as follows:

23 II. An administrative assessment equal to ~~[5]~~ 20 percent of the amount in paragraph I.

24 5 Payment for Stream or Shoreline Losses. Amend RSA 482-A:30-a, II to read as follows:

25 II. An administrative assessment equal to ~~[20]~~ 5 percent of the amount in paragraph I.

26 6 Rulemaking. Amend RSA 482-A:31, II to read as follows:

27 II. The method of calculating the amount of in lieu payments under RSA 482-A:30 and
28 RSA 482-A:30-a which shall approximate the total cost of wetlands construction, stream and river
29 construction, or such other mitigation actions as would have been required by the department and
30 incurred by the applicant in the absence of making such payments. An administrative assessment of
31 ~~[5]~~ 20 percent of the total cost shall be added as part of the calculation method.

32 7 Rulemaking. Amend RSA 482-A:31, II to read as follows:

1 II. The method of calculating the amount of in lieu payments under RSA 482-A:30 and
2 RSA 482-A:30-a which shall approximate the total cost of wetlands construction, stream and river
3 construction, or such other mitigation actions as would have been required by the department and
4 incurred by the applicant in the absence of making such payments. An administrative assessment of
5 [20] 5 percent of the total cost shall be added as part of the calculation method.

6 8 Report. Amend RSA 482-A:33 to read as follows:

7 482-A:33 Report. The department shall submit an annual report by October 1 beginning with
8 fiscal year 2006, to the fiscal committee, the chairperson of the house resources, recreation and
9 development committee, and the chairperson of the senate environment and wildlife committee
10 summarizing all receipts and disbursements of the aquatic resource compensatory mitigation fund,
11 including a description of all projects undertaken *and the status of the administrative*
12 *assessment account*. Each report shall be in such detail with sufficient information to be fully
13 understood by the general court and the public. After submission to the general court, the report
14 shall be available to the public.

15 9 Department Investigation. The department of environmental services shall investigate ways
16 of compiling and providing information on known compensatory mitigation opportunities to
17 applicants who need to compensate for unavoidable impacts by their proposed projects, as part of the
18 wetlands permitting process, and propose to make in lieu payments under RSA 482-A:28-33. The
19 department shall report on the results of this investigation on October 1, 2011 as part of its annual
20 report under RSA 482-A:33.

21 10 Effective Date.

22 I. Sections 3, 5, and 7 of this act shall take effect July 1, 2012.

23 II. Section 1 shall take effect July 1, 2010 at 12:01 a.m.

24 III. The remainder of this act shall take effect July 1, 2010.

2009-2477h

AMENDED ANALYSIS

This bill temporarily increases the percentage of certain administrative assessments related to aquatic resource compensatory mitigation.

* (2)

HB 681-FN, relative to aquatic resource compensatory mitigation. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Jim U McClammer for the **Majority** of Resources, Recreation and Development: This bill enables developers and applicants to have an option to deposit funds into the aquatic resource mitigation (ARM) fund. The intent of the ARM program is to lower costs for applicants by expediting the permit process. Through HB 681, the administrative assessment is increased for two years from five percent to twenty percent, to cover the cost of DES personnel in administering the ARM program. After two years, the legislature will evaluate whether this assessment should be changed based on its two year history. **Vote 14-6.**

Rep. Christopher J Ahlgren for the **Minority** of Resources, Recreation and Development: Although the minority agrees with the merits of the aquatic resource compensatory fund program and believes the program should continue, we do not believe that now is the time to increase the administrative fee paid to the state of New Hampshire by 300%. The current shortfall was precipitated by federal funds for this program being eliminated. Without this "one time money" we are now again passing along the burden to our citizens. More importantly, we are placing this burden on one of our most depressed economic sectors, private construction. An alternative method of funding this program must be available and should be considered.

Floor 173-146

HB 681-FN, relative to assessments for aquatic resource compensatory mitigation. **OUGHT TO PASS.**

Rep. Susan W. Almy for Ways and Means: The aquatic resource compensatory mitigation program is a voluntary program prized by developers and environmentalists alike. It was being subsidized by a federal grant that ran out. The developers have indicated that they would prefer to pay the true cost of the program rather than lose it. Raising the administrative assessment from 5% to 20% of the voluntary contribution to the mitigation fund achieves that. Given the short track record of the program, it is sunsetted in 2 years to allow reconsideration of the cost and assessment. **Vote 15-2.**

Consent Calendar

Connecticut Valley Environmental Services, Inc.
Charlestown, New Hampshire

February 10, 2011

Mr. Andrew Renzullo, Chairman
House Resources, Recreation and Development Committee

**re: HOUSE BILL 468-FN - Aquatic Resource Mitigation
Proposed reduction in Administrative Fee**

Dear Honorable Members of the House Resources, Recreation and Development Committee:

I am writing as a former member of your committee and an environmental consultant with more than twenty years of experience with permitting development projects in New Hampshire. This bill which proposes to lower the administrative assessment on contributions to the aquatic resource mitigation (ARM) fund will put the entire program in jeopardy.

1. This is a discretionary program that applicants (developers) are not obligated to use.
2. It makes the permitting process more predictable and expedites the processing of Department of Environmental Services (DES) applications.
3. The current administrative fee of 20% is based on careful evaluation of past deposits into the fund and DES costs to administer the fund, as well as realistic projections of future deposits and costs to administer the program.
4. The fee will automatically revert to 5% on July 1, 2012, at which time the program will be reevaluated to determine an appropriate percentage.
5. To reduce the administrative fee to less than the cost for DES to administer the program will require taxpayers to subsidize this program.
6. If taxpayers do not subsidize the program then the program will not meet federal permit requirements for compensatory mitigation and it will no longer be a viable tool (option) for applicants to use.
7. Although the intent of the bill - to further reduce costs to applicants - has merit, it will unfortunately lead to the demise of the program.

This program reduces costs to applicants and conserves our most important natural resources. I implore you to ITL this bill to enable this important program to continue.

Sincerely,
CVES, Inc.


James U. McClammer, Jr.
President

C:\MyFiles\Politics\R,R&D\ARMfundletter.wpd

Connecticut Valley Environmental Services, Inc. * Post Office Box 1204 * Charlestown, NH 03603 * 603-826-5214

N.H. Rivers Management and Protection Program

N.H. Rivers Management Advisory Committee

February 10, 2011

The Honorable Andrew Renzullo, Chair
House Resources, Recreation and Development Committee
Legislative Office Building, Room 305
Concord, NH 03301

RE: HB 468- FN: An Act relative to assessments for aquatic resource compensatory mitigation.

Dear Chair Renzullo and Members of the Committee:

The Rivers Management Advisory Committee (RMAC) is writing to express its unanimous opposition for House Bill 468-FN, which seeks to decrease the percentage rate of certain administrative assessments related to aquatic resource compensatory mitigation.

The RMAC is a legislatively created body charged to work with the NH Department of Environmental Services (DES) on the administration of RSA 483, the RMPP. The Governor and Council appointed Committee is comprised of members from the business, agriculture, hydroelectric, municipal government, water supply, conservation, recreation, fish and game, and historical interests. Among its other responsibilities, the RMAC is charged with reviewing legislation relevant to the RMPP and with advising the DES Commissioner on the merits of such legislation.

The RMAC's opposition is based on the understanding that the reduction of administrative assessments retained by DES, as a percentage of payments into the Aquatic Resource Mitigation (ARM) fund, may impact DES' ability to manage the fund due to reduced staffing. The ARM fund serves as a method for development project applicants impacting wetlands, who otherwise are unable to mitigate such impacts, to make payments into the fund that are then distributed to outside organizations for wetland enhancement projects. ARM is also an effective tool to satisfy federal requirements. These wetland enhancement projects directly and more effectively protect or restore river resources throughout the state. Without adequate staffing levels DES will not be able to properly administer the ARM fund, there will be a reduction in the quality and quantity of wetland enhancement projects conducted aimed at protecting the state's water resources with the greatest efficacy. The risk of failing to satisfy federal requirements and potentially a more burdensome and slower process for those Applicants seeking to use the ARM process also exists.

In conclusion, the RMAC unanimously opposes House Bill 468-FN, which seeks to decrease the percentage rate of certain administrative assessments related to aquatic resource compensatory mitigation.

If you have further questions, please feel free to contact me at (603) 466-8149 or kkimball@outdoors.org.

Sincerely,

Kenneth D. Kimball, Ph.D., Chairman
Rivers Management Advisory Committee

Voting Members:

Kenneth D. Kimball
Chair
Recreational
Interests

Michele L. Tremblay
Vice Chair
Conservation
Community

VACANT
Agricultural
Community

Donald L. Ware
Public
Water Suppliers

James W. Ryan
NH Fish & Game
Commission

Allan G. Palmer
Business & Industry
Association

Gary L. Kerr
Granite State
Hydropower
Association

Larry T. Spencer
Conservation
Commissions

Anne Krantz
Historic/Archeological
Interests

Fredrick J. McNeill
Municipal
Officer

Kathryn P. Nelson
Local River
Management
Advisory Committees

Non-Voting Members:

Jennifer Czysz
NH Office of
Energy & Planning

Johanna Lyons
NH Department of
Resources and
Economic
Development

John Magee
NH Fish & Game
Department

Kevin Nyhan
NH Department of
Transportation

Gail McWilliam
Jillie
NH Department of
Agriculture,
Markets & Food

Lance Harbour
NH Department of
Safety

Staff:

Steven M. Couture
Rivers Coordinator
NH Department of
Environmental
Services

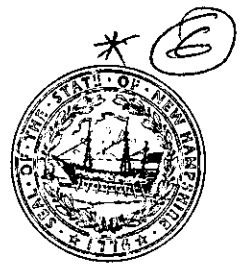
cc:

Representative Ahlgren
RMAC members *(via email)*
Tom Burack, Commissioner, DES *(via email)*
Mike Walls, Assistant Commission, DES *(via email)*
Harry Stewart, Director, Water Division, DES *(via email)*
Paul Currier, Administrator, WMB, DES *(via email)*
Steven M. Couture, Rivers Coordinator, DES *(via email)*
Charlie Ryan, Chair, Ammonoosuc River LAC *(via email)*
Barbara Skuly, Chair, Ashuelot River LAC *(via email)*
Rick Healey, Chair, Cochecho River LAC *(via email)*
Jenny Polcari, Co-Chair, Cold River LAC *(via email)*
Theresa Darling, Business Manager, Connecticut River Joint Commission *(via email)*
Michelle Hamm, Chair Contoocook River LAC *(via email)*
Don Clement, Chair, Exeter River LAC *(via email)*
Liz Evans, Chair, Isinglass River LAC *(via email)*
Sarah Callaghan, Chair, Lamprey River LAC *(via email)*
Bob Robbins, Chair, Lower Merrimack River LAC *(via email)*
Max Stamp, Chair, Pemigewasset River LAC *(via email)*
Dick Ludders, Chair, Piscataquog River LAC *(via email)*
George May, Chair, Souhegan River LAC *(via email)*
Robert Parrish, Chair, Swift River LAC *(via email)*
Michele L. Tremblay, Chair, Upper Merrimack LAC *(via email)*

29 Hazen Drive; PO Box 95; Concord, NH 03302-0095; Tel: 271-8811; Fax 271-7894
<http://des.nh.gov/organization/divisions/water/wmb/rivers/rmac/index.htm>



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

February 10, 2011

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

Re: HB 468, relative to assessments for aquatic resource compensatory mitigation

Dear Chairman Renzullo:

Thank you for the opportunity to comment on HB 468, which would decrease the percentage rate of certain administrative assessments related to aquatic resource compensatory mitigation from 20% to 10% for FY 2012. The Department of Environmental Services (DES) does not support this bill as proposed because we are concerned that the proposed reduction in administrative assessment will leave DES with inadequate resources to properly manage the Aquatic Resource Compensatory Mitigation (ARM) Fund.

Under the United States Army Corps of Engineers State General Programmatic Permit (SPGP) for New Hampshire, mitigation for proposed wetlands dredge and fill impacts is required for major projects to comply with federal standards under the Clean Water Act. Wetlands permit project applicants have the option to pay into the ARM Fund to comply with these federal mitigation requirements when other types of mitigation, such as restoration or preservation, are unavailable to offset proposed wetland impacts or are not cost effective. Participation in this program is voluntary for wetlands permit applicants.

Dedicated ARM Fund monies are collected by DES and then distributed on a competitive basis to outside organizations to fund projects that preserve or restore wetlands in the watershed where the permitted project occurred. In New Hampshire, these funds have already been used for many projects to preserve and restore wetlands. This program has been very successful for permit applicants and has resulted in many significant wetlands preservation and restoration projects across the state. A detailed list of projects funded by the ARM Fund is available upon request.

When funds are paid into the ARM Fund, an administrative assessment is collected by DES in accordance with RSA 482-A:30, III to provide us with the ability to manage the fund. During the 2010 legislative session, the administrative assessment fee was increased from 5% to 20%, for two reasons. First, the original 5% fee had been demonstrated by experience over several years to be insufficient to cover the expenses for the one full time staff member assigned to manage the fund. Second, the ARM Fund program had been expanded to include stream mitigation projects in addition to wetlands mitigation projects. This expansion is projected to further increase the work load beyond that which could be handled by one full time staff member, especially as the economy improves. In 2010, DES provided information to the Legislature to demonstrate that an increase in the administrative fee to 20% would be sufficient to add one

The Honorable Andrew Renzullo, Chairman
Resources, Recreation and Development Commission
February 10, 2011

Page 2 of 2

additional full time staff member to the program in the near future. This information formed the basis for the legislative change to a 20% administrative fee. However, the administrative fee is also scheduled to revert to 5% effective July 1, 2012. DES understands that the bill sponsor, Representative Ahlgren, may introduce an amendment that would permanently set the fee level at 10%. DES believes that such an approach could provide a workable resolution of this issue.

In closing, DES seeks to ensure that the administrative fee level will provide adequate resources in the long term for effective ARM Fund program implementation. If this program cannot be effectively managed, the United States Army Corps of Engineers will not allow this option for applicants as a means to comply with federal wetland permit mitigation requirements. This would have a negative impact on New Hampshire's economy because wetlands permit applicants for public works and development projects would be unable to use this option, which is frequently the most cost effective or only feasible means for compliance with federal wetlands mitigation permitting requirements.

Thank you for this opportunity to comment. Please call me at 271-2958, or Rene Pelletier at 271-2951, if you have any questions or need additional information.

Very truly yours,



Thomas S. Burack, Commissioner

cc: Representative Ahlgren

HB 468 Relative to assessments for aquatic resource mitigation fund.

Thank you Chairman Stepanek. For the record, I am Rep. Chris Ahlgren and I represent Carroll County District #4. The intent of this bill is to reduce the administrative fee imposed for aquatic resource mitigation from the current 20% of assessment down to 10%.

The aquatic resource mitigation or ARM program is a good program in many ways. DES always encourages on site mitigation when possible but sometimes that it is not practical or possible. Essentially, the idea of program is to place a monetary value on wetlands in one area that will be lost during a development. That money is placed into the ARM fund and used to purchase and preserve other wetlands with higher functions and values. The advantages are 3 fold. It expedites the mitigation process saving the developers time. It helps the real estate owners value by making their land more developable. The environment gets a boost by assuring the protection of high value wetlands.

Let me give some back round information leading up to the introduction of this bill. Before July of 2010,

the program was federally subsidized through grant funding. The fee paid at that time was 5% of the assessment. When the grant funding was discontinued DES proposed legislation to increase the fee to 20% which was passed and enacted last session.

The problem with this of course is that we were greatly increasing the cost to developers in a already depressed market. Remember the increases in these costs were not going to preserve more land but to pay DES for the brokering of the land. Can you imagine the head scratching going on with the developers? If Real estate agents can work on a 6% commission, why does DES need 20%. Now my good friends from DES will follow my testimony to explain the lengthy process they must go through to justify this fee. My preemptive reply is that it is our duty to cost effectively administrate this program for a reasonable fee to our citizens. We are simply asking them to do more with less just like most every family in New Hampshire.



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

*File Copy H.B. 468
René Pelletier*



Thomas S. Burack, Commissioner
March 9, 2011

The Honorable Stephen Stepanek, Chairman
Ways and Means Committee
Legislative Office Building, Room 202
Concord, New Hampshire 03301

Re: HB 468, as amended, relative to assessments for aquatic resource compensatory mitigation

Dear Chairman Stepanek:

Thank you for the opportunity to comment on HB 468, as amended, which would decrease the percentage rate of certain administrative assessments related to aquatic resource compensatory mitigation from 20% to 10% for FY 2012 then maintain the assessment at 10% in future years. The Department of Environmental Services (DES) supports this bill as amended.

Under the United States Army Corps of Engineers State General Programmatic Permit (SPGP) for New Hampshire, mitigation for proposed wetlands dredge and fill impacts is required for major projects to comply with federal standards under the Clean Water Act. Wetlands permit project applicants have the option to pay into the ARM Fund to comply with these federal mitigation requirements when other types of mitigation, such as restoration or preservation, are unavailable to offset proposed wetland impacts or are not cost effective. Participation in this program is voluntary for wetlands permit applicants.

Dedicated ARM Fund monies are collected by DES and then distributed on a competitive basis to outside organizations to fund projects that preserve or restore wetlands in the watershed where the permitted project occurred. In New Hampshire, these funds have already been used for many projects to preserve and restore wetlands. This program has been very successful for permit applicants and has resulted in many significant wetlands preservation and restoration projects across the state. A detailed list of projects funded by the ARM Fund is available upon request.

When funds are paid into the ARM Fund, an administrative assessment is collected by DES in accordance with RSA 482-A:30, III to provide us with the ability to manage the fund. During the 2010 legislative session, the administrative assessment fee was increased from 5% to 20%, for two reasons. First, the original 5% fee had been demonstrated by experience over several years to be insufficient to cover the expenses for the one full time staff member assigned to manage the fund. Second, the ARM Fund program had been expanded to include stream mitigation projects in addition to wetlands mitigation projects. This expansion is projected to further increase the work load beyond that which could be handled by one full time staff member, especially as the economy improves. In 2010, DES provided information to the Legislature to demonstrate that an increase in the administrative fee to 20% would be sufficient to add one additional full time staff member to the program in the near future. This information formed the

The Honorable Stephen Stepanek, Chairman
Ways and Means Committee
March 9, 2011

Page 2 of 2

basis for the legislative change to a 20% administrative fee. However, the administrative fee is also scheduled to revert to 5% effective July 1, 2012. HB 468 as amended would stabilize the fee at 10% for the long term. This is expected to provide adequate resources to support one full time staff person and to provide time for us to further understand and evaluate program activity and necessary staffing levels in the long term. DES believes that this approach provides a workable resolution of this issue at this time, recognizing that in the long term the administrative assessment may have to change as the program matures.

In closing, DES seeks to ensure that the administrative fee level will provide adequate resources in the long term for effective ARM Fund program implementation. If this program cannot be effectively managed, the United States Army Corps of Engineers will not allow this option for applicants as a means to comply with federal wetland permit mitigation requirements. This would have a negative impact on New Hampshire's economy because wetlands permit applicants for public works and development projects would be unable to use this option, which is frequently the most cost effective or only feasible means for achieving compliance with federal wetlands mitigation permitting requirements.

Thank you for this opportunity to comment. Please call me at 271-2958, or Rene Pelletier at 271-2951, if you have any questions or need additional information.

Very truly yours,



Thomas S. Burack, Commissioner

cc: Representative Ahlgren

HB 468:

Developer with Wetlands Issues

Seek Mitigation Site in Affected Town
(can take years - killing project)

Pay into ARM Fund

in-lieu fee

admin. assessment

Grants Program

staffing of program

- 1) moneys put in pots for separate watersheds
- 2) bids solicited for each watershed as enough money arrives
- 3) expert group makes awards
- 4) staff follows up implementation of projects funded
- 5) EPA + Army Corps of Engineers have ability to accept/reuse this program as adequate mitigation for their projects

- 1) confirm no local sites exist (on ground)
- 2) accept in-lieu fee option
- 3) develop grant bidding process for each watershed
- 4) staff award process
- 5) follow up on easements over time

In normal market needs 1 1/2 - 2 staff (specialists) - in low/no market no \$ coming in

Important ! ! ! !

Voting Sheets

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

EXECUTIVE SESSION on HB 468-FN

BILL TITLE: relative to assessments for aquatic resource compensatory mitigation.

DATE: February 10, 2011

LOB ROOM: 305

Amendments:

Sponsor: Rep. Ahlgren	OLS Document #:	2011	0269h
Sponsor: Rep. Spang	OLS Document #:	2011	0282h
Sponsor: Rep.	OLS Document #:		

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

Moved by Rep. Ahlgren
Seconded by Rep. Kappler
Vote: 10-4 (Please attach record of roll call vote.)

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

Moved by Rep. Spang
Seconded by Rep. Moody
Vote: 5-8 (Please attach record of roll call vote.)

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

Moved by Rep. Ahlgren
Seconded by Rep. Kappler
Vote: 10-3 (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

HB 468

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

EXECUTIVE SESSION on HB 468-FN

BILL TITLE: relative to assessments for aquatic resource compensatory mitigation.

DATE: 2/10/11

LOB ROOM: 305 2/10/11

Amendments:

Sponsor: Rep. Ahlgren

OLS Document #: 2011-0269h

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

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

pass

Moved by Rep. Ahlgren

Seconded by Rep. ~~Hutchinson~~ Kappler

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

10-4
282h
5-8
Fails

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

Moved by Rep. Ahlgren

Seconded by Rep. Kappler

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

10-3

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

OFFICE OF THE HOUSE CLERK
 RESOURCES, RECREATION and DEVELOPMENT

Vote on Amendment
 0269h

Bill# HB468 Title Account for Aquatic
Complementary Mitigation

PH Date 2/10/11 Exec Date 2/10/11

Motion GTP/A Amendment # 0269h

Member	Yea	Nay
RENZULLO, Chair	✓	
KAPPLER Vice-Chair	✓	
CHRISTENSEN	✓	
RUSSELL	✓	
AHLGREN	✓	
MERROW	✓	
BOLSTER	✓	
HOWARD	Absent	
HUTCHINSON	✓	
LOVETT	✓	
PETTENGILL	✓	
SCHROADTER	Absent	
SPANG		✓
PARKHURST		Absent
MOODY		✓
AGUIAR		✓
THOMAS		✓

TOTAL 10 4

OFFICE OF THE HOUSE CLERK
 RESOURCES, RECREATION and DEVELOPMENT

Vote on bill w/ Amendment

HB 168-FN Title Assessment for Aquatic

Compensatory Mitigation

PH Date 2/10/11 Exec Date 2/10/11

Motion OTR/A Amendment # 0269h

Member	Yea	Nay
RENZULLO, Chair	✓	
KAPPLER Vice-Chair	✓	
CHRISTENSEN	✓	
RUSSELL	Absent	
AHLGREN	✓	
MERROW	✓	
BOLSTER	✓	
HOWARD	Absent	
HUTCHINSON	✓	
LOVETT	✓	
PETTENGILL	✓	
SCHROADTER	Absent	
SPANG		✓
PARKHURST		Absent
MOODY		✓
AGUIAR	✓	
THOMAS		✓

TOTAL

10

3

HOUSE COMMITTEE ON WAYS AND MEANS

EXECUTIVE SESSION on HB 468-FN

BILL TITLE: relative to assessments for aquatic resource compensatory mitigation.

DATE: March 22, 2011

LOB ROOM: 202

Amendments:

Sponsor: Rep. Stepanek OLS Document #: 2011 1124h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

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

Moved by Rep. P. Abrami

Seconded by Rep. S. Almy

Vote: 21-0 VOICE VOTE – MOTION ADOPTED

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

Moved by Rep. G. Azarian

Seconded by Rep. D. Daugherty

Vote: 21-0 (Please attach record of roll call vote.)

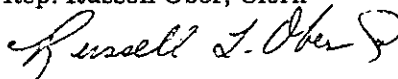
CONSENT CALENDAR VOTE:

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Russell Ober, Clerk



HOUSE COMMITTEE ON WAYS AND MEANS

EXECUTIVE SESSION on HB 468-FN

BILL TITLE: relative to assessments for aquatic resource compensatory mitigation.

DATE:

B/A/N 3/22/2011

LOB ROOM: 202

Amendments:

Sponsor: Rep. *Stepanek*

OLS Document #: *2011-1124h*

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

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

Moved by Rep. *Abraham*

Seconded by Rep. *Almy*

Vote: *21-0* (Please attach record of roll call vote.)

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

Moved by Rep. *Agarwal*

Seconded by Rep. *Daugherty*

Vote: *21-0* (Please attach record of roll call vote.)

regular calendar

CONSENT CALENDAR VOTE:

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Russell Ober, Clerk

Committee Report

REGULAR CALENDAR

February 11, 2011

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Majority of the Committee on RESOURCES,
RECREATION AND DEVELOPMENT to which was
referred HB468-FN,**

**AN ACT relative to assessments for aquatic resource
compensatory mitigation. Having considered the same,
report the same with the following amendment, and the
recommendation that the bill OUGHT TO PASS WITH
AMENDMENT.**

Rep. Christopher J Ahlgren

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee: **RESOURCES, RECREATION AND
DEVELOPMENT**
Bill Number: **HB468-FN**
Title: **relative to assessments for aquatic resource
compensatory mitigation.**
Date: **February 11, 2011**
Consent Calendar: **NO**
Recommendation: **OUGHT TO PASS WITH AMENDMENT**

STATEMENT OF INTENT

The majority of the committee feels that, as a policy matter aquatic resource mitigation is an excellent program. The problem lies with the percentage of assessment (20%) used for the administrative fee. The bill as introduced, recommends 10%. We as a committee believe the percentage assessment should be revisited by Ways and Means. After referral to Ways and Means the proposed percentage can be evaluated and adjusted as necessary based on their evaluation of the financial data. In addition, the current percentage will sunset July 1, 2012. This bill establishes a permanent percentage. Having a stable fee percentage will be good for New Hampshire businesses.

Vote 10-3

Rep. Christopher J Ahlgren
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

RESOURCES, RECREATION AND DEVELOPMENT

HB468-FN, relative to assessments for aquatic resource compensatory mitigation. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Christopher J Ahlgren for the **Majority** of RESOURCES, RECREATION AND DEVELOPMENT. The majority of the committee feels that, as a policy matter aquatic resource mitigation is an excellent program. The problem lies with the percentage of assessment (20%) used for the administrative fee. The bill as introduced, recommends 10%. We as a committee believe the percentage assessment should be revisited by Ways and Means. After referral to Ways and Means the proposed percentage can be evaluated and adjusted as necessary based on their evaluation of the financial data. In addition, the current percentage will sunset July 1, 2012. This bill establishes a permanent percentage. Having a stable fee percentage will be good for New Hampshire businesses. **Vote 10-3.**

Original: House Clerk
Cc: Committee Bill File

HB 468

OTP/A

The majority of the committee feels that, as a policy matter aquatic resource mitigation is an excellent program. The problem lies with the percentage of assessment (20%) used for the administrative fee. The bill as introduced, recommends 10%. We as a committee believe the percentage assessment should be revisited by Ways and Means. After referral to Ways and Means the proposed percentage can be evaluated and adjusted as necessary based on their evaluation of the financial data. In addition, the current percentage will sunset July 1, 2012. This bill establishes a permanent percentage. Having a stable fee percentage will be good for New Hampshire businesses.

Chris Ahlgren

A handwritten signature in black ink, appearing to read "Chris Ahlgren", written in a cursive style.

HB 468

OTP/A

The majority of the committee feels that, as a policy matter aquatic resource mitigation is an excellent program. The problem lies with the percentage of assessment (20%) used for the administrative fee. The bill as introduced, recommends 10%. We as a committee believe the percentage assessment should be revisited by Ways and Means. After referral to Ways and Means the proposed percentage can be evaluated and adjusted as necessary. In addition, based on their evaluation of the financial data the current percentage will sunset July 1, 2012. This bill establishes a permanent percentage. Having a stable fee will be good for New Hampshire businesses.

↑
percentage

Chris Ahlgren

HB 468

OTP/A

The majority of the committee feels ^{that,} as a policy ^{matter,} ~~that~~ the aquatic resource ~~revenue~~ mitigation is an excellent program. The problem lies with the percentage of assessment used for the administrative fee. The bill, as introduced, recommends 10%. We as a committee believe the ~~current 20%~~ should be revisited by Ways and Means. After referral to Ways and Means the proposed percentage can be evaluated and adjusted a necessary. ^{Percentage assessment based on their evaluation of the ~~state~~ financial data.} The current percentage will sunset July 1, 2012. This bill also makes the percentage permanent ^{Establishes a} ~~and the stability of the fee~~ will be good for New Hampshire. ^{Having a stable fee}

Chris Ahlgren

BUSINESSES.

In addition,

(20%)

Establishes a

Percentage assessment based on their evaluation of the ~~state~~ financial data.

HB 468 OTA AS Amended

Rep. Christopher J. Ahlgrren

The majority of the committee feels as
a policy matter that ^{THE AQUATIC RESOURCE MITIGATION} ~~this~~ is an ~~very~~ excellent
program. The problem lies with the
percentage of assessment used for the
administrative fee. The bill as introduced
recommends 10%. We as a committee
believe the current 20% should be revisited
by ways and means. AFTER Referral to
ways and means ~~the~~ ^{the proposed} percentage can
be ~~evaluated and~~ ^{evaluated and} adjusted as necessary.
The current percentage will sunset July 1, 2012.
This bill also makes the percentage
permanent and the stability
of the fee will be good for New
Hampshire.

my

REGULAR CALENDAR

February 11, 2011

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Minority of the Committee on RESOURCES,
RECREATION AND DEVELOPMENT to which was
referred HB468-FN,**

**AN ACT relative to assessments for aquatic resource
compensatory mitigation. 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: **HB468-FN**
Title: **relative to assessments for aquatic resource
compensatory mitigation.**
Date: **February 11, 2011**
Consent Calendar: **NO**
Recommendation: **INEXPEDIENT TO LEGISLATE**

STATEMENT OF INTENT

There was no testimony in favor of this bill from any of the program's users. The aquatic resources compensatory mitigation (ARM) program offers significant advantages to the development community. It promotes development in a time when the real estate market is struggling by giving developers an option to avoid more costly and time-consuming methods of mitigating their wetland impacts. Except for the sponsor, the Committee received no testimony the current fee is too high. There was no justification offered for reducing the fees involved, although those fees were established through an exhaustive study by Ways and Means last session. The department of environmental services testified that lowering the administrative fee to 10% would threaten the viability of this valuable program, already facing a \$45,000 deficit due to the inadequate fee charged to date. It is mystifying to the Minority that the bill also eliminates the Ways and Means sunset of the fee schedule due to occur next year. Having a year or two more of data upon which to establish the correct fee makes sense. Instead, this bill eliminates that opportunity to try out the current fee before reducing it to an unproven level that risks the viability of a program so advantageous to businesses in NH.

Rep. Judith T Spang
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

RESOURCES, RECREATION AND DEVELOPMENT

HB468-FN, relative to assessments for aquatic resource compensatory mitigation. **INEXPEDIENT TO LEGISLATE.**

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

There was no testimony in favor of this bill from any of the program's users. The aquatic resources compensatory mitigation (ARM) program offers significant advantages to the development community. It promotes development in a time when the real estate market is struggling by giving developers an option to avoid more costly and time-consuming methods of mitigating their wetland impacts. Except for the sponsor, the Committee received no testimony the current fee is too high. There was no justification offered for reducing the fees involved, although those fees were established through an exhaustive study by Ways and Means last session. The department of environmental services testified that lowering the administrative fee to 10% would threaten the viability of this valuable program, already facing a \$45,000 deficit due to the inadequate fee charged to date. It is mystifying to the Minority that the bill also eliminates the Ways and Means sunset of the fee schedule due to occur next year. Having a year or two more of data upon which to establish the correct fee makes sense. Instead, this bill eliminates that opportunity to try out the current fee before reducing it to an unproven level that risks the viability of a program so advantageous to businesses in NH.

Original: House Clerk
Cc: Committee Bill File


468-Fn/A ITL

There was no testimony in favor of this bill from any of the program's users. The aquatic resources compensatory mitigation (ARM) program offers significant advantages to the development community. It promotes development in a time when the real estate market is struggling by giving developers an option to avoid more costly and time-consuming methods of mitigating their wetland impacts. Except for the sponsor, the Committee received no testimony the current fee is too high.

There was no justification offered for reducing the fees involved, although those fees were established through an exhaustive study by Ways and Means last session. The department of environmental services testified that lowering the administrative fee to 10% would threaten the viability of this valuable program, already facing a \$45,000 deficit due to the inadequate fee charged to date.

It is mystifying to the Minority that the bill also eliminates the Ways and Means sunset of the fee schedule due to occur next year. Having a year or two more of data upon which to establish the correct fee makes sense. Instead, this bill eliminates that opportunity to try out the current fee before reducing it to an unproven level that risks the viability of a program so advantageous to businesses in NH.

Judith Spang

A handwritten signature in black ink, appearing to read "Chris Reynolds", written in a cursive style.

REGULAR CALENDAR

March 30, 2011

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on WAYS AND MEANS to which was referred HB468-FN,

AN ACT relative to assessments for aquatic resource compensatory mitigation. Having considered the same, report the same with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.

Rep. Gary S Azarian

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	WAYS AND MEANS
Bill Number:	HB468-FN
Title:	relative to assessments for aquatic resource compensatory mitigation.
Date:	March 22, 2011
Consent Calendar:	NO
Recommendation:	OUGHT TO PASS WITH AMENDMENT

STATEMENT OF INTENT

This bill would allow off-site mitigation when on-site mitigation is either impossible or impractical. The assessment provides three distinct advantages. It saves the developer time in expediting the mitigation process, assures the protection of high value wetlands resources and adds value to real estate that would otherwise be undeveloped. There is a benefit for the state, local communities and those that own and develop real estate.

Vote 21-0.

Rep. Gary S Azarian
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

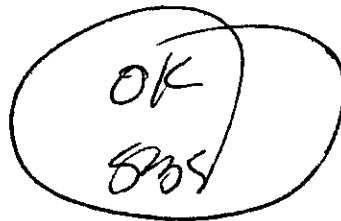
WAYS AND MEANS

HB468-FN, relative to assessments for aquatic resource compensatory mitigation. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Gary S Azarian for **WAYS AND MEANS**. This bill would allow off-site mitigation when on-site mitigation is either impossible or impractical. The assessment provides three distinct advantages. It saves the developer time in expediting the mitigation process, assures the protection of high value wetlands resources and adds value to real estate that would otherwise be undeveloped. There is a benefit for the state, local communities and those that own and develop real estate. **Vote 21-0.**

Original: House Clerk
Cc: Committee Bill File

This bill would allow off-site mitigation when on-site mitigation is either impossible or impractical. The assessment provides three distinct advantages. It saves the developer time in expediting the mitigation process, assures the protection of high value wetlands resources and adds value to real estate that would otherwise be undeveloped. There is a benefit for the state, local communities and those that own and develop real estate.



OK
SAS

COMMITTEE REPORT

COMMITTEE: Water & Marsh

BILL NUMBER: HB 468-FX

TITLE: relative to assessments for aquatic resource
compensatory mitigation

DATE: 3-22-11 CONSENT CALENDAR: YES NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2nd year of biennium)

Amendment No. <u>1124h</u>

STATEMENT OF INTENT:

This bill would allow off-site mitigation when on-site mitigation is either impossible or impractical. The assessment provides three distinct advantages. It saves the developer time in expediting the mitigation process, ~~it~~ assures the protection of high value wetlands resources and adds value to real estate that would otherwise be undevelopable. There is a benefit for the state, local communities and those that own and develop real estate.

OK
SOS

COMMITTEE VOTE: 21-0

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. GARY S. AZARION
For the Committee