

Bill as Introduced

HB 63 - AS INTRODUCED

2011 SESSION

11-0429

06/04

HOUSE BILL **63**

AN ACT extending the instream pilot program for one year.

SPONSORS: Rep. Kappler, Rock 2; Rep. L. Vita, Straf 3; Rep. C. Vita, Straf 3; Rep. Spang, Straf 7

COMMITTEE: Resources, Recreation and Development

ANALYSIS

This bill extends the instream pilot program for one year.

Explanation: Matter added to current law appears in *bold italics*.
 Matter removed from current law appears [~~in brackets and struckthrough.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT extending the instream pilot program for one year.

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

1 1 Instream Flow Pilot Program; Extension. Amend 2002, 278:3, III(b) as amended by 2003,
2 319:49, III(b), as amended by 2008, 5:3, III(b), as repealed and reenacted by 2009, 201:20 to read as
3 follows:

4 (a) By September 1, [2010] 2011, adopt and implement the protected instream flows and
5 water management plans relative to the Lamprey River and the Souhegan River.

6 2 Instream Flow Pilot Program; Extension. Amend 2002, 278:3, III(d) as amended by 2003,
7 319:49, III(d) as amended by 2008, 5:3, III(d) as repealed and reenacted by 2009, 201:20 to read as
8 follows:

9 (c) By December 1, [2012] 2013, submit a final report that details the activities and
10 results of the pilot program, including the impacts of the protected instream flows and water
11 management plans on water users, wildlife, recreation, and other interests along the rivers, a plan
12 for implementing protected instream flows and water management plans for other rivers designated
13 under RSA 483:15, and any recommendations for proposed legislation. The report shall also include
14 a summary of public comments received, the completed instream flow studies, and the adopted
15 protected instream flow levels and water management plans and shall be submitted to the senate
16 energy, environment and economic development committee, the house resources, recreation and
17 development committee, the senate president, the speaker of the house of representatives, the
18 governor, the committee to study the impact of water withdrawals on instream flows established
19 under 2000, 242:1, and the state library.

20 3 Instream Flow Pilot Program; Extension. Amend 2000, 242:5, as amended by 2001, 138:6, as
21 amended by 2002, 278:6, as amended by 2003, 5:4, as amended by 2009, 201:21 to read as follows:

22 242:5 Report. The committee shall report its findings and any recommendations for proposed
23 legislation to the senate president, the speaker of the house of representatives, the senate clerk, the
24 house clerk, the governor, and the state library on or before December 15, [2012] 2013.

25 4 Effective Date. This act shall take effect upon its passage.

Amendments

Rep. Kappler, Rock. 2
January 19, 2011
2011-0038h
06/01

Amendment to HB 63

1 Amend the bill by replacing section 3 with the following:

2

3 3 Instream Flow Pilot Program; Extension. Amend 2000, 242:5, as amended by 2001, 138:6, as
4 amended by 2002, 278:6, as amended by 2003, 319:50, as amended by 2009, 201:21 to read as
5 follows:

6 242:5 Report. The committee shall report its findings and any recommendations for proposed
7 legislation to the senate president, the speaker of the house of representatives, the senate clerk, the
8 house clerk, the governor, and the state library on or before December 15, ~~2012~~ 2013.

9

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

12

13 4 Instream Flow Pilot Program; Reporting Date Extended. Amend 2002, 278:2, III as amended
14 by 2003, 319:48 as amended by 2008, 5:2 as amended by 2009, 201:19 to read as follows:

15 III. The commissioner of the department of environmental services shall initiate and adopt
16 rules pursuant to RSA 541-A for other rivers designated under RSA 483:15 only after the adoption
17 and implementation of the rules relative to protected instream flows pursuant to RSA 483:9-c for the
18 Lamprey and Souhegan rivers and completion of the hearings and reports required under section 3,
19 III(b) and (c) of this act, but not before December 1, ~~2012~~ 2013.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

PUBLIC HEARING ON HB 63

BILL TITLE: extending the instream pilot program for one year.

DATE: January 18, 2011

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

Time Adjourned: 10:15 a.m.

(please circle if present)

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

Bill Sponsors: Rep. Kappler, Rock 2; Rep. L. Vita, Straf 3; Rep. C. Vita, Straf 3; Rep. Spang, Straf 7

TESTIMONY

- * Use asterisk if written testimony and/or amendments are submitted.
- * **Rep. L. Mike Kappler** - Prime sponsor of the bill. Need one more year to complete report.
- * **Paul Currier, NH Department of Environmental Services (DES)** - Supports the bill. Bill at the request of the department. Uncooperative weather lead to delays. (Need a "low flow" year for the calculation. Now have one.)

Respectfully submitted,



Rep. Chris Christensen
Clerk

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

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Bill Sponsors: Rep. Kappler, Rock 2; Rep. L. Vita, Straf 3; Rep. C. Vita, Straf 3; Rep. Spang, Straf

7

TESTIMONY

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

4/18/11

Instream Flow ^{Ag. 1 of 1}

HB 63 Hearing extension

① Rep Keppeler - Prime -

* Need one more year to complete report

② * Paul Currier - DES

Bill @ request of Dept.

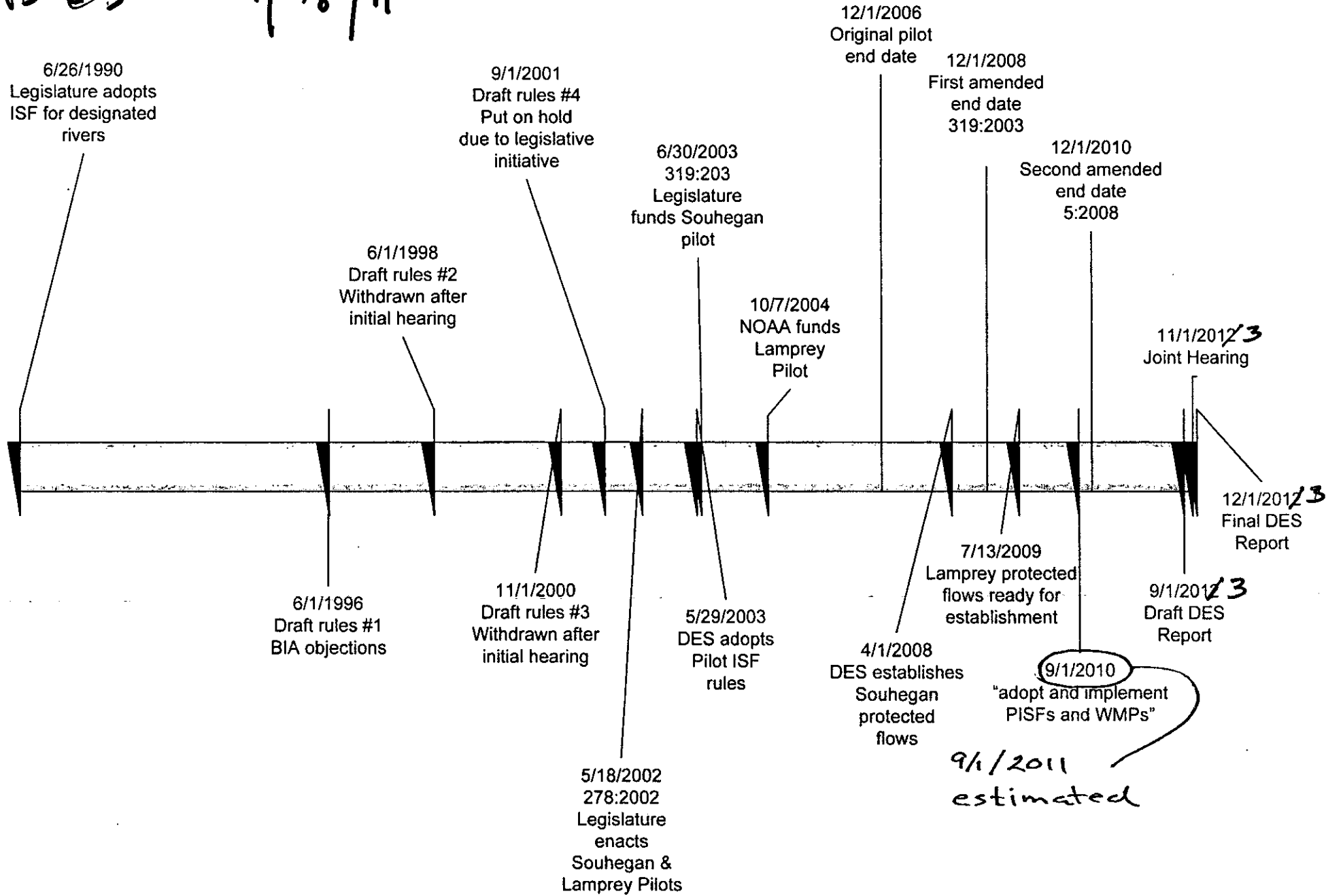
uncooperative weather led to delays -

(need a "low-flow" year for the calculation. Now have one)

Testimony

HB 63

1/18/11





**New Hampshire State Representative
L. Mike Kappler
Vice Chair Resources, Recreation, & Development Committee**

January 18, 2011

Dear Chairman and Committee,

HB-63 is another request for an extension of the reporting out dates for the Instream Flow Pilot Program.

Let me start with a brief history of the Program.

In 2000, Chapter 242 (SB-330) established a program, which was amended in 2001, 2003, 2005, 2007, & 2009 establishing a program to study the impact of water withdrawals on instream flows and the impact flow rules on entities that withdraw water or are affected by instream flows. This data work will be done as a pilot program on both the Souhegan and Lamprey Rivers.

Field work began in 2005 and has continued. The analysis needs data from the 3 flow magnitudes for each bioperiod in the streams, and has proven to be a major task as they are weather controlled, where:

The "common flow" is the flow corresponding to the highest habitat magnitude above which the frequency of an occurrence begins to decline significantly.

The "critical flow" is the flow corresponding to the second to the lowest habitat magnitude. Critical flow magnitudes describe less habitat availability than that provided by the common flow, but this habitat magnitude is not unusual.

The "rare flow" is the flow corresponding to the lowest of habitat magnitudes for which the frequency of occurrence increases significantly. Rare flow habitat availability is severely reduced and very uncommon.

These flow values are characterized by 2 durations, "allowable" and "catastrophic", by counting the days the conditions are met.

During these flow periods, analysis is performed for various reasons including: natural flow paradigm; human use; and the environmental needs, such as aquatic and riparian, including their life cycles.

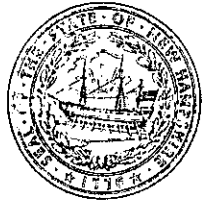
Weather conditions have again held up the completion of all the analysis and reporting requiring that another extension of time be requested as I have done in HB-63 and I ask that you vote to recommend passage.

Thank you.

L. Mike Kappler



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

2

January 18, 2011

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

Re: HB 63, extending the instream pilot program for one year.

Dear Chairman Renzullo:

Thank you for the opportunity to comment on HB 63. This bill would extend for one year the reporting dates for the Instream Flow Pilot program of the Rivers Management and Protection Program. The Department of Environmental Services (DES) supports this legislation.

In 1990, RSA 483 was amended to require instream flow protection on rivers designated for protection under the Rivers Management and Protection Program. Reaching agreement on a method for applying instream flow protections in low flow situations proved to be a challenge. In 2002, a broad coalition of New Hampshire business and conservation interests joined together to enact Chapter 278, Laws of 2002 establishing pilot programs for instream flow protection on two Designated Rivers - the Lamprey River in the coastal watershed and the Souhegan River in the Merrimack watershed.

Laws of 2003, Chapter 319 provided initial funding, which was applied to the Souhegan pilot, and revised the reporting dates for various instream flow pilot activities described in Chapter 278. Federal funds were then secured for the Lamprey pilot. The field work and scientific analyses were completed for both pilot projects in 2009. However, the level of effort and time necessary for full stakeholder and legislative participation for development of final protected instream flows required greater time than originally anticipated.

DES believes that additional time to complete these pilot projects is warranted, so that the Water Management Plans needed for water use management and dam operation to protect instream flows can be finalized. The requested time will be used for additional meetings with the local advisory committees and individual water users as well as other stakeholders. This additional stakeholder involvement will be used to refine technical procedures for flow management in the water management plans and to consider and address concerns of specific water users and dam owners to build a consensus and ensure that both pilot projects are successful.

Thank you for the opportunity to comment on this important legislation. If you have any questions or need additional information, please contact Paul Currier, Watershed Management Bureau Administrator at 271-3289, or me at 271-2958.

Sincerely,

Thomas S. Burack
Commissioner

TSB/lwm

cc: Representative L. Mike Kappler
Representative Lucien Vita
Representative Carol Vita
Representative Judith Spang
RMAC Members (via electronic mail)

~~education and experience and who shall administer the New Hampshire volunteer river assessment program.~~

~~487:42 Acceptance and Expenditure of Funds. The commissioner may apply for and accept gifts, donations of money, federal, municipal, or private grants, or other funds or incentives from any source. The funds accepted under this section shall be paid into the rivers management and protection fund established under RSA 483:13. The commissioner may expend such funds for the purposes of this subdivision.~~

→ 201:19 Instream Flow Pilot Program; Reporting Date Extended. Amend 2002, 278:2, III as amended by 2003, 319:48 and 2008, 5:2 to read as follows:

III. The commissioner of the department of environmental services shall initiate and adopt rules pursuant to RSA 541-A for other rivers designated under RSA 483:15 only after the adoption and implementation of the rules relative to protected instream flows pursuant to RSA 483:9-c for the Lamprey and Souhegan rivers and completion of the hearings and reports required under section 3, III(b) and (c) of this act, but not before December 1, 2012. *- This date not amended by bill.*

→ 201:20 Instream Flow Pilot Program; Reporting Date Extended. 2002, 278:3, III as amended by 2003, 319:49, and 2008, 5:3 is repealed and reenacted to read as follows:

III. The commissioner of the department of environmental services shall:

(a) By September 1, 2010, adopt and implement the protected instream flows and water management plans relative to the Lamprey River and the Souhegan River.

(b) Two years after the adoption and implementation of the protected instream flow levels and water management plans for the Lamprey River and the Souhegan River, issue a report that includes observed and projected impacts of the protected instream flows and water management plans on water users, wildlife, recreation, and other interests along the rivers, and any recommendations for proposed legislation. Within 60 days of the issuance of such report, the department shall hold a public hearing jointly with the senate energy, environment and economic development committee and the house resources, recreation and development committee and provide a public comment period of 30 days. The department shall consider the public comments received when formulating any revisions to the protected instream flow levels and water management plans for the Lamprey River and the Souhegan River.

(c) By December 1, 2012, submit a final report that details the activities and results of the pilot program, including the impacts of the protected instream flows and water management plans on water users, wildlife, recreation, and other interests along the rivers, a plan for implementing protected instream flows and water management plans for other rivers designated under RSA 483:15, and any recommendations for proposed legislation. The report shall also include a summary of public comments received, the completed instream flow studies, and the adopted protected instream flow levels and water management plans and shall be submitted to the senate energy, environment and economic development committee, the house resources, recreation and development committee, the senate president, the speaker of the house of representatives, the governor, the committee to study the impact of

(over)

water withdrawals on instream flows established under 2000, 242:1, and the state library.

(d) Meet the requirements of subparagraphs (a)-(b) independently for the Lamprey River and the Souhegan River through separate reports, hearings, and regulatory adoption and implementation.

→ 201:21 **Committee to Study the Impact of Water Withdrawals on Instream Flows; Report Date Extended.** Amend 2000, 242:5 as amended by 2001, 138:6, 2002, 278:6, 2003, 319:50, and 2008, 5:4 to read as follows:

242:5 Report. The committee shall report its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before December 15, 2012.

201:22 The Alstead Veterans Memorial Bridge. Pursuant to RSA 4:43, the bridge at the intersection of N.H. Route 12A and N.H. Route 123 in Alstead, department of transportation number 060159, which spans the Cold River, is hereby named the Alstead Veterans Memorial Bridge. Appropriate signage and markers may be placed at the bridge.

201:23 Signage. The cost of design, construction, maintenance, and installation of any signage, replacement signage, or other markers authorized under section 22 of this act shall not be a charge to the state. However, the design, construction, and installation of any signage or other markers authorized under section 22 of this act shall be approved by the department of transportation.

201:24 Effective Date.

- I. Section 2 of this act shall take effect July 1, 2010 at 12:01 a.m.
- II. The remainder of this act shall take effect upon its passage.

(Approved: July 15, 2009)

- (Effective Date: I. Section 2 of this act shall take effect July 1, 2010 at 12:01 a.m.
- II. The remainder of this act shall take effect July 15, 2009.)

CHAPTER 202 (HB 245)

AN ACT EXTENDING STUDY COMMITTEES AND COMMISSIONS.

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

202:1 Committee to Study the Feasibility of Establishing Pro Se Law Libraries. Amend RSA 2008, 221:5 to read as follows:

221:5 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, and the state library on or before November 1, 2009.

202:2 Committee to Study Issues Related to Cooperative School Districts; Report Date. Amend 2007, 257:5 as amended by 2008, 152:7 to read as follows:

(over)

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Voting Sheets

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

EXECUTIVE SESSION on HB 63

BILL TITLE: extending the instream pilot program for one year.

DATE: January 20, 201

LOB ROOM: 305

Amendments:

Sponsor: Rep. Kappler OLS Document #: 2011 0038h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

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

Moved by Rep. Kappler

Seconded by Rep. Spang

Vote: 17-0 (Please attach record of roll call vote.)

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

Moved by Rep. Kappler

Seconded by Rep. Spang

Vote: 17-0 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 17-0

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Chris Christensen, Clerk

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

EXECUTIVE SESSION on HB 63

BILL TITLE: extending the instream pilot program for one year.

DATE: 1/20/11

LOB ROOM: 305

Amendments:

Sponsor: Rep.

Kappler

OLS Document #:

2011-0038h

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions:

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

Moved by Rep.

Kappler

Seconded by Rep.

Spang

Vote: 17-0 (Please attach record of roll call vote.)

Motions:

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

Moved by Rep.

Kappler

Seconded by Rep.

Spang

Vote: 17-0 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

17-0

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

Statement of Intent:

Refer to Committee Report

Respectfully submitted,

Rep. Chris Christensen, Clerk

Amend 0038 h

OFFICE OF THE HOUSE CLERK
RESOURCES, RECREATION and DEVELOPMENT

Bill# HB63 Title Extending ^{flow} instruction pilot
program for one year

PH Date 1/18/11 Exec Date 1/20/11

Motion OTM/R Amendment # 0038 h

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

TOTAL 17- 0

OFFICE OF THE HOUSE CLERK
 RESOURCES, RECREATION and DEVELOPMENT.

~~Amend 0038H~~
 GTP/A

Bill# HB 63 Title Extending the instream
pilot program for one year

PH Date 1/18/11 Exec Date 1/20/11

Motion GTP/A Amendment # 2011-0038H

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

TOTAL

17

0

Committee Report

CONSENT CALENDAR

January 21, 2011

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on RESOURCES, RECREATION AND DEVELOPMENT to which was referred HB63,

AN ACT extending the instream pilot program for one year. Having considered the same, report the same with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.

Rep. Lawrence M Kappler

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	RESOURCES, RECREATION AND DEVELOPMENT
Bill Number:	HB63
Title:	extending the instream pilot program for one year.
Date:	January 21, 2011
Consent Calendar:	YES
Recommendation:	OUGHT TO PASS WITH AMENDMENT

STATEMENT OF INTENT

HB 63 is simply another year extension to the instream flow pilot program. Field work began in 2005 and has continued. The analysis needs data from three flow magnitudes for each bio-period in the streams and has proven to be a major task as they are weather controlled. The bill also extends the implementation date preventing the commissioner of New Hampshire Department of Environmental Services (DES) from initiating or adopting rules prior to program completion.

Vote 17-0.

Rep. Lawrence M Kappler
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

RESOURCES, RECREATION AND DEVELOPMENT

HB63, extending the instream pilot program for one year. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Lawrence M Kappler for RESOURCES, RECREATION AND DEVELOPMENT. HB 63 is simply another year extension to the instream flow pilot program. Field work began in 2005 and has continued. The analysis needs data from three flow magnitudes for each bio-period in the streams and has proven to be a major task as they are weather controlled. The bill also extends the implementation date preventing the commissioner of New Hampshire Department of Environmental Services (DES) from initiating or adopting rules prior to program completion. **Vote 17-0.**

Original: House Clerk
Cc: Committee Bill File

HB 63

OTP/A

HB 63 is simply another year extension to the instream flow pilot program. Field work began in 2005 and has continued. The analysis needs data from three flow magnitudes for each bio-period in the streams and has proven to be a major task as they are weather controlled. The bill also extends the implementation date preventing the commissioner of New Hampshire Department of Environmental Services (DES) from initiating or adopting rules prior to program completion.

L. Mike Kappler

HB 63

OTP/A

HB 63 is simply another year extension to the instream flow pilot program. Field work began in 2005 and has continued. The analysis needs data from three flow magnitudes for each bio-period in the streams and has proven to be a major task as they are weather controlled. The ~~amendment only~~^{Bill} also extends the date preventing the commissioner of New Hampshire Department of Environmental Services (DES) from initiating or adopting rules prior to program completion.

L. Mike Kappler

Implementa-
tion

COMMITTEE REPORT

COMMITTEE: RR & D COMMITTEE

BILL NUMBER: HB-63

TITLE: EXTENDING THE INSTREAM FLOW PILOT PROGRAM
FOR ONE YEAR.

DATE: 1/20/11 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.
2011-0038H

STATEMENT OF INTENT:

HB-63 IS SIMPLY ANOTHER ^{YEAR} EXTENSION TO THE
INSTREAM FLOW PILOT PROGRAM. FIELD WORK BEGAN IN 2005
AND HAS CONTINUED. THE ANALYSIS NEEDS DATA FROM 3 FLOW
MAGNITUDES FOR EACH ^{BIO PERIOD IN} ~~BIO PERIOD~~ THE STREAMS AND HAS PROVEN
TO BE A MAJOR TASK AS THEY ARE WEATHER CONTROLLED.
THIS AMENDMENT ONLY ALSO EXTENDS THE DATE PREVENTING
THE COMMISSIONER OF NHDDES FROM INITIATING OR ADOPTING
RULES PRIOR TO PROGRAM COMPLETION.

COMMITTEE VOTE: 17-0

RESPECTFULLY SUBMITTED,

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

Rep. *[Signature]*
For the Committee