

Bill as Introduced

HB 1233 - AS INTRODUCED

2012 SESSION

12-2371
06/05

HOUSE BILL **1233**

AN ACT establishing a statute of limitations on wetlands filling and dredging.

SPONSORS: Rep. Merrow, Carr 3; Rep. Mirski, Graf 10; Rep. McConkey, Carr 3; Rep. Babson,
Carr 3

COMMITTEE: Resources, Recreation and Development

ANALYSIS

This bill establishes a statute of limitations for persons who acquire property more than 5 years after an activity creating a violation of wetlands fill and dredge requirements has ended.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT establishing a statute of limitations on wetlands filling and dredging.

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

1 1 New Section; Limitation on Enforcement Action. Amend RSA 482-A by inserting after section
2 14-b the following new section:

3 482-A:14-c Limitation on Enforcement Action. No person who acquires property, by any means,
4 more than 5 years after an activity constituting a violation of this chapter has been completed, shall
5 be subject to an enforcement action under this chapter for such violation, unless the person knew of
6 the existence of the violation at the time he or she acquired the property. Nothing in this section
7 shall limit any enforcement action for ongoing groundwater contamination, including injunctive
8 relief requiring restoration of impacted areas, against the person committing the violation.

9 2 Effective Date. This act shall take effect January 1, 2013.

HB 1233 - AS AMENDED BY THE HOUSE

7Mar2012... 0562h

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5 be subject to an enforcement action under this chapter for such violation, provided such person
6 allows restoration of impacted areas, unless the person knew of the existence of the violation at the
7 time that the person acquired the property. Nothing in this section shall limit any enforcement
8 action for violation of this chapter, including injunctive relief requiring restoration of impacted
9 areas, against the person who committed the violation. Nothing in this section shall limit any
10 enforcement action with respect to any violation of this chapter, including injunctive relief requiring
11 restoration of impacted areas, for which written notice of the violation has been provided to the
12 owner by the department prior to January 1, 2013. In addition to any common law remedy, any
13 person who suffers damages as a result of a violation of this chapter committed by another may seek
14 compensation from the person who committed the violation, including diminution in property value
15 and reasonable attorney's fees.

16 2 Effective Date. This act shall take effect January 1, 2013.

CHAPTER 55
HB 1233 - FINAL VERSION

7Mar2012... 0562h

2012 SESSION

12-2371
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HOUSE BILL **1233**

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CHAPTER 55
HB 1233 – FINAL VERSION

7Mar2012... 0562h

12-2371
06/05

STATE OF NEW HAMPSHIRE

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13 person who suffers damages as a result of a violation of this chapter committed by another may seek
14 compensation from the person who committed the violation, including diminution in property value
15 and reasonable attorney's fees.

16 55:2 Effective Date. This act shall take effect January 1, 2013.

17 Approved: May 14, 2012

18 Effective Date: January 1, 2013

Committee Minutes

**SENATE CALENDAR NOTICE
ENERGY AND NATURAL RESOURCES**

- ✓ Senator Bob Odell Chairman
- ✓ Senator John Gallus V Chairman
- Senator Jeb Bradley
- ✓ Senator Gary Lambert
- ✓ Senator Amanda Merrill

For Use by Senate Clerk's
Office ONLY

Bill Status

Docket

Calendar

Proof: Calendar Bill Status

Date: April 4, 2012

HEARINGS

Thursday

4/12/2012

ENERGY AND NATURAL RESOURCES

LOB 102

9:00 AM

(Name of Committee)

(Place)

(Time)

EXECUTIVE SESSION MAY FOLLOW

- ✓ 9:00 AM HB1233 establishing a statute of limitations on wetlands filling and dredging.
- 9:15 AM HB1380 relative to the development of wetland mitigation banks.
- 9:30 AM HB1415 (New Title) relative to permits for repair or replacement of sewage and waste disposal system.
- 9:45 AM HB1477 relative to the definition of spent materials.
- 10:00 AM HB1636 relative to the extension of fill and dredge in wetlands permits.
- 10:15 AM HB1721 (New Title) relative to permitting for the replacement of sewage disposal systems and relative to oil spillage prevention, control, and countermeasure plans.

Sponsors:

HB1233

Rep. Harry Mellow

Rep. Paul Mirski

Rep. David Babson

Rep. Mark McConkey

HB1380

Rep. Harry Mellow

Rep. Paul Mirski

Rep. David Babson

Sen. Jeb Bradley

HB1415

Rep. Mark Warden

Sen. John Gallus

Sen. Tom De Blois

HB1477

Rep. Bill Ohm

Rep. Donald LeBrun

Rep. Joseph Krasucki

Rep. Carl Seidel

Rep. Randall Whitehead

Rep. Mary Griffin

Sen. Jim Luther

Sen. Gary Lambert

Rep. Barry Palmer

Rep. Edith Hogan

Rep. Timothy Twombly

HB1636

Rep. Edward Moran

HB1721

Rep. Glenn Ritter

Rep. Warren Groen

Sen. Tom De Blois

*START:
END:*

Richard Parsons 271-3076

Sen. Bob Odell

Chairman

Energy and Natural Resources Committee

Hearing Report

FROM: Richard Parsons, Legislative Aide

HB 1233 – establishing a statute of limitations on wetlands filling and dredging.

HEARING DATE: April 12, 2012

MEMBERS PRESENT: Senators Odell, Gallus, Lambert, Merrill

MEMBERS ABSENT: Senator Bradley

Sponsor(s): Rep. Merrow, Carr 3; Rep. Mirski, Graf 10; Rep. McConkey, Carr 3; Rep. Babson, Carr 3

What the bill does: This bill establishes a statute of limitations for persons who acquire property more than 5 years after an activity creating a violation of wetlands fill and dredge requirements has ended.

Who supports the bill: Representative Merrow, Carr 3; Rep. Renzullo; Ari Pollack, Homebuilders; Gary Abbott, Association of General Contractors of NH; Jim Gove; Rene Pelletier, DES;

Who opposes the bill: No one.

Summary of testimony received:

Hearing opened at 9:03 AM

Rep. Merrow, Carroll 3 – Prime Sponsor – This bill was a request from the building industry as there appeared to be no statute of limitations on wetlands. The fear is that the department could go to an owner forever and tell them there is a problem even if it was a problem before the owner bought the property and hold the current owner responsible. This will not allow the department to force a new owner to pay for filling or dredging after 5 years if they did not know about the problem.

Rene Pelletier, DES, one of the problems that have been seen over the years is people buying property and when they come in and want to do a repair the department finds a problem that already existed before they bought to property. This will make it so the owner will be held harmless if they did not know about the problem and the language in the law allows the current owner to seek money from the previous owner to pay for the damages. **Senator Merrill** asked if the Attorney General's office testified in the House. Rene Pelletier answered that Allen Brooks, from the Attorney General's Office, helped draft the new amendment. There were concerns that it didn't have the clarity that would be desired. Further, the proposed language is from the Attorney General's Office. **Senator Lambert** asked that he is concerned with the statute of limitations provision. Rene Pelletier answered that it is common law practice and the language gives a little extra notice that they have the ability to get in there to do the repair and seek restoration.

Hearing closed at 9:12 AM

Funding: Not applicable.

Future Action: Senator Lambert made the motion that the bill ought to pass and the motion was seconded by Senator Merrill. The vote was 5-0 and Senator Lambert will report the bill to the floor.

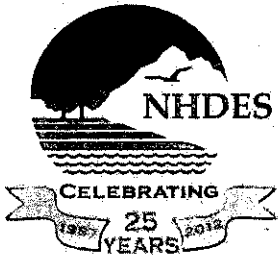
RMP

{file: HB 1233 report}

Date: 4/12/12

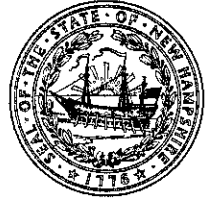
Speakers

Testimony



The State of New Hampshire
Department of Environmental Services

Thomas S. Burack, Commissioner



*Celebrating 25 Years of Protecting
New Hampshire's Environment*

April 12, 2012

The Honorable Bob Odell, Chairman
Energy and Natural Resources Committee
Legislative Office Building, Room 102
Concord, NH 03301

Re: HB 1233, establishing a statute of limitations on wetlands filling and dredging.

Dear Chairman Odell:

Thank you for the opportunity to comment on HB 1233, which would establish a statute of limitations for violations of wetlands dredging and filling requirements under certain conditions for new property owners who were unaware of unresolved wetlands violations. The Department of Environmental Services (DES) supports HB 1233 as amended by the House.

HB 1233, if enacted, would provide assurance to a new property owner that they would not be subject to enforcement action if they have no knowledge of unresolved wetlands violations that occurred on the property more than 5 years before property acquisition. This liability relief is provided on the condition that the new owner will allow any necessary restoration of impacted wetlands areas. HB 1233 would also explicitly not limit enforcement action against any persons who have committed wetlands violations on qualifying properties.

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

Very truly yours,

Thomas S. Burack
Commissioner

cc: Representatives Merrow, Mirski, McConkey, and Babson

www.des.nh.gov

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095
(603) 271-3503 • TDD Access: Relay NH 1-800-735-2964

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Date: 4/12/12

THE COMMITTEE ON Energy and Natural Resources
to which was referred House Bill 1233

AN ACT establishing a statute of limitations on wetlands filling
and dredging.

Having considered the same, the committee recommends that the Bill:

OUGHT TO PASS

BY A VOTE OF: 4-0

AMENDMENT # s

Senator Gary E. Lambert
For the Committee

Richard Parsons 271-3076

New Hampshire General Court - Bill Status System

Docket of HB1233

Docket Abbreviations

Bill Title: establishing a statute of limitations on wetlands filling and dredging.*Official Docket of HB1233:*

Date	Body	Description
11/17/2011	H	Introduced 1/4/2012 and Referred to Resources, Recreation and Development; HJ 7 , PG.348
12/22/2011	H	Public Hearing: 1/17/2012 10:45 AM LOB 305
1/18/2012	H	Subcommittee Work Session: 1/26/2012 10:30 AM LOB 305
1/18/2012	H	==CANCELLED== Executive Session: 1/31/2012 1:00 PM LOB 305
2/1/2012	H	Subcommittee Work Session: 2/2/2012 10:30 AM LOB 305
2/8/2012	H	Executive Session: 2/21/2012 11:00 AM LOB 305
2/22/2012	H	Committee Report: Ought to Pass with Amendment #0562h for Mar 7 (Vote 17-0; CC); HC 18 , PG.1074
2/22/2012	H	Proposed Committee Amendment #2012-0562h; HC 17 , PG.981
3/7/2012	H	Amendment #0562h Adopted, VV; HJ 21 , PG.1318
3/7/2012	H	Ought to Pass with Amendment #0562h: MA VV; HJ 21 , PG.1318
3/7/2012	S	Introduced and Referred to Energy and Natural Resources; SJ 7 , Pg.185
4/4/2012	S	Hearing: 4/12/12, Room 102, LOB, 9:00 a.m.; SC14
4/12/2012	S	Committee Report: Ought to Pass, 4/18/12; SC15
4/18/2012	S	Ought to Pass: MA, VV; OT3rdg
4/25/2012	H	Enrolled
5/2/2012	S	Enrolled
5/21/2012	H	Signed By Governor 05/14/2012; Effective 01/01/2013; Chapter 0055

NH House

NH Senate

Other Referrals

COMMITTEE REPORT FILE INVENTORY

HB 1233 ORIGINAL REFERRAL

RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE AIDE AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

DOCKET (Submit only the latest docket found in Bill Status)

COMMITTEE REPORT

CALENDAR NOTICE

HEARING REPORT

HANDOUTS FROM THE PUBLIC HEARING

PREPARED TESTIMONY AND OTHER SUBMISSIONS

SIGN-UP SHEET(S)

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

____ - AMENDMENT # ____ ____ - AMENDMENT # ____
____ - AMENDMENT # ____ ____ - AMENDMENT # ____

ALL AVAILABLE VERSIONS OF THE BILL:

AS INTRODUCED AS AMENDED BY THE HOUSE
 FINAL VERSION ____ AS AMENDED BY THE SENATE

____ OTHER (Anything else deemed important but not listed above, such as amended fiscal notes): _____

DATE DELIVERED TO SENATE CLERK 6/29/12


BY COMMITTEE AIDE