

Bill as
Introduced

HB 416 - AS INTRODUCED

2013 SESSION

13-0522
05/10

HOUSE BILL **416**

AN ACT shortening the appeals process for a permitting decision under RSA 482-A, relative to fill and dredge in wetlands.

SPONSORS: Rep. Ahlgren, Carr 6

COMMITTEE: Resources, Recreation and Development

ANALYSIS

This bill shortens the process for appealing a permitting decision under RSA 482-A, relative to fill and dredge in wetlands, by removing the requirement to request reconsideration.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT shortening the appeals process for a permitting decision under RSA 482-A, relative to fill and dredge in wetlands.

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

1 1 Public Comment and Hearing. Amend RSA 482-A:8 to read as follows:

2 482-A:8 Public Comment and Hearing. The department shall provide a reasonable opportunity for
3 public comment on proposals under RSA 482-A:3 and shall hold a public hearing for projects with
4 significant impact on the resources protected by this chapter or of substantial public interest. The
5 department shall notify by mail, the applicant and the property owner if different, the local governing
6 body of the municipality involved, the planning board, if any, and the municipal conservation
7 commission, if any, of the hearing. The department shall maintain a chronological file of all
8 applications received under RSA 482-A:3, which shall be available for public review during normal
9 business hours. The hearing requirement in this section may not apply to such minor projects and to
10 such minor improvements of the shoreline of those waters subject to the jurisdiction of this chapter as
11 the department may by reasonable rule provide. ~~[The hearing requirements of RSA 541-A:30 shall be
12 satisfied by a hearing on reconsideration in accordance with RSA 482-A:10, III.]~~

13 2 Dredge and Fill in Wetlands; Mediation and Appeal. Amend RSA 482-A:10 to read as follows:

14 482-A:10 Appeals.

15 I. Any person aggrieved by a decision made by the department under RSA 482-A:3 may
16 ~~[apply for reconsideration by the department, and then may]~~ appeal to the wetlands council and to
17 the supreme court as provided in ~~[this section]~~ ***RSA 21-O:14, including the provisions relative***
18 ***to requesting mediated or unmediated settlement discussions.*** A person aggrieved under this
19 section shall mean the applicant and any person required to be noticed by mail in accordance with
20 RSA 482-A:8 and RSA 482-A:9.

21 ~~[I-a.]~~ II. Any person subject to an order of the department under RSA 482-A:6 may appeal to
22 the wetlands council and to the supreme court as provided in ~~[this section]~~ ***RSA 21-O:14, including***
23 ***the provisions relative to requesting mediated or unmediated settlement discussions.*** ~~[The~~
24 ~~appellant shall not first request reconsideration, but shall file the appeal directly with the council as~~
25 ~~provided in paragraph IV, within 30 days of the date of the order.~~

26 ~~II. A request for reconsideration of a department decision under RSA 482-A:3 shall be filed~~
27 ~~with the department within 30 days of issuance of the department's decision. The request for~~
28 ~~reconsideration shall describe in detail each ground for the request for reconsideration.~~

29 ~~III. On reconsideration, the department shall receive and consider any new and additional~~
30 ~~evidence presented, and shall make findings of fact and rulings of law in support of its decision after~~

1 reconsideration. ~~The department may hold a public hearing in accordance with its rules.~~
 2 ~~Reconsideration hearings shall not be subject to the requirements of RSA 541-A. Reconsideration~~
 3 ~~hearings shall be noticed in accordance with rules adopted by the department, which notice shall be~~
 4 ~~sent to all persons entitled to notice of applications under RSA 482-A:8 and RSA 482-A:9, and the~~
 5 ~~department shall make a record of the proceedings. The department shall grant or deny the request~~
 6 ~~for reconsideration within 30 days of the department's receipt of the request or explain in writing to~~
 7 ~~the applicant why the request cannot be acted on and a statement of the time reasonably necessary~~
 8 ~~to act on the request. However, if the basis for denial includes failure by the applicant to submit all~~
 9 ~~requested information and the applicant submits all of the requested information with the request~~
 10 ~~for reconsideration, the department shall act on the request within 75 days from the date of the~~
 11 ~~department's receipt of the request for projects where the applicant proposes under one acre of~~
 12 ~~jurisdictional impact, and within 105 days for all other projects.-]~~

13 [IV.] III. An appeal from a decision of the department under RSA 482-A:3 [after
 14 reconsideration,] or an appeal from an order issued by the department under RSA 482-A:6, shall be
 15 filed in accordance with the applicable provisions of RSA 21-O:14 and rules adopted by the council
 16 pursuant to RSA 541-A regarding the number of copies to be filed, the address to which the notice of
 17 appeal must be sent or delivered, and the method of delivery.

18 [IV-a.] IV. A notice of appeal to the council shall contain a detailed description of the land
 19 involved in the department's decision and shall set forth fully every ground upon which it is claimed
 20 that the decision complained of is unlawful or unreasonable. Only those grounds set forth in the
 21 notice of appeal shall be considered by the council.

22 V. [The council on appeal shall hold] **Any appeal hearing held by the council shall**
 23 **be** an adjudicative hearing as provided in RSA 541-A and the council's rules. The hearing shall
 24 be noticed in accordance with RSA 541-A:31, III. For appeals of department decisions under
 25 RSA 482-A:3, the notice shall also be sent to all persons entitled to notice of applications under
 26 RSA 482-A:8 and RSA 482-A:9. The burden of proof shall be on the party seeking to set aside the
 27 department's decision to show that the decision is unlawful or unreasonable. On appeal of
 28 requests proposed, sponsored, or administered by the department of transportation, there shall
 29 be a rebuttable presumption that there is a public need for the requested project, and that the
 30 department of transportation has exercised appropriate engineering judgment in the project's
 31 design. All findings of the department upon all questions of fact properly before it shall be prima
 32 facie lawful and reasonable.

33 V-a. Any person whose rights will be directly affected by the outcome of the appeal may
 34 appear and become a party to the appeal. Any person whose rights may be directly affected by the
 35 outcome of the appeal may file a request to intervene as provided in RSA 541-A:32.

36 VI. On appeal, the council may affirm the decision of the department or may remand to the
 37 department with a determination that the decision complained of is unlawful or unreasonable. The

1 council shall specify the factual and legal basis for its determination and shall identify the evidence
2 in the record created before the council that supports its decision.

3 VII. Any party aggrieved by a decision of the council may apply to the council for
4 reconsideration as specified in RSA 541.

5 VIII. Any party aggrieved by a decision of the council after reconsideration may appeal to
6 the supreme court as specified in RSA 541.

7 IX. In the case of a remand to the department by the council, the department may accept the
8 council's determination and reissue a decision or order, imposing such conditions as are necessary and
9 consistent with the purposes of this chapter, or may appeal as provided in paragraphs VII and VIII.

10 X. [Repealed.]

11 XI. [Repealed.]

12 XII. [Repealed.]

13 XIII. [Repealed.]

14 XIV. [Repealed.]

15 XV. [Repealed.]

16 XVI. [Repealed.]

17 XVII. [Repealed.]

18 XVIII. If a permit is granted with respect to any activity proposed to be undertaken in or
19 adjacent to a prime wetland as mapped, designated, and filed pursuant to RSA 482-A:15, the
20 conservation commission or local governing body may ~~request reconsideration by the department~~
21 ~~and, if aggrieved by the decision or reconsideration,~~ appeal said decision to the wetlands council and
22 the supreme court in the manner prescribed in this section. The filing of a request for
23 reconsideration *under paragraph VII* shall automatically stay the effectiveness of the
24 ~~department's~~ *council's* decision relating to said prime wetland. Said stay shall remain in force
25 until the ~~department~~ *council* has issued its decision after reconsideration.

26 3 Dwellings Over Water. Amend RSA 482-A:26, V to read as follows:

27 V. The provisions of RSA 482-A:10, relative to ~~reconsideration and~~ appeals, and RSA 482-
28 A:10-a, relative to takings without compensation, shall apply to all decisions of the department made
29 under paragraph III.

30 4 Effective Date. This act shall take effect 60 days after its passage.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

PUBLIC HEARING ON HB 416

BILL TITLE: shortening the appeals process for a permitting decision under RSA 482-A, relative to fill and dredge in wetlands.

DATE: February 12, 2013

LOB ROOM: 305 **Time Public Hearing Called to Order:** 1:00 p.m.

Time Adjourned: 1:10 p.m.

(please circle if present)

Committee Members: Reps. Chandley, Suzanne Smith, Aguiar, Gottling, Thomas L. Webb, Hubbard, Parkhurst, Beaulieu, Wazlaw, Lovett, Renzullo, Holmes, Cormier, Merrow, Ahlgren, Wright, Mullen, Schroadter and Ferrante.

Bill Sponsors: Rep. Ahlgren, Carr 6

TESTIMONY

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

Rep. Chris Ahlgren - Prime sponsor of the bill. Introduced the bill. Came out of HB 256 Study Committee - housekeeping bill.

* **Gretchen Hamel, Legal Council, NH Department of Environmental Services (DES)** - Supports the bill. Described the application and appeals process. Reconsideration eliminates 60 days (stay).

Respectfully submitted,

Rep. Jane E. Beaulieu
Clerk



HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

PUBLIC HEARING ON HB 416

BILL TITLE: shortening the appeals process for a permitting decision under RSA 482-A, relative to fill and dredge in wetlands.

DATE: 2/12/13

LOB ROOM: 305 **Time Public Hearing Called to Order:** 1:00 p.m.

Time Adjourned:

(please circle if present)

Committee Members: Reps. Chandley, Suzanne Smith, Aguiar, Gottling, Thomas, L. Webb, Hubbard, Parkhurst, Beaulieu, Wazlaw, Lovett, Renzullo, Holmes, Cormier, Merrow, Ahlgren, Wright, Mullen, Schroadter and Ferrante.

Bill Sponsors: Rep. Ahlgren, Carr 6

TESTIMONY

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

1:00 PM

Came out of HB256 study committee - housekeeping bill

Rep Chris Ahlgren - introduced the bill

* DES - supports

Described the application & appeals process

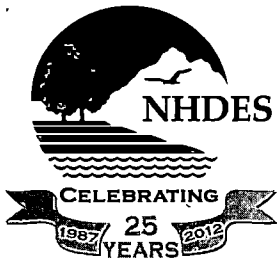
Mitchell Hamel - supports
legal counsel from DES

reconsideration eliminates 60 days (stay)

adjourn 1:10 pm

Rep. Jane Beaulieu

Testimony



The State of New Hampshire
Department of Environmental Services

Thomas S. Burack, Commissioner



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

February 12, 2013

The Honorable Shannon Chandley, Chair
Resources, Recreation and Development Committee
Legislative Office Building, Room 305
Concord, NH 03301

Re: HB 416; AN ACT shortening the appeals process for a permitting decision under RSA 482-A, relative to fill and dredge in wetlands.


Dear Representative Chandley:

Thank you for the opportunity to comment on House Bill 416, which would shorten the appeals process for fill and dredge permits issued by the Department of Environmental Services (DES). DES supports the bill as introduced.

Prior to 2008, the Wetlands Council (and its predecessor, the Wetlands Board) were required by RSA 482-A:10 to hold a record-based hearing on appeals from Department decisions under RSA 482-A. Because the opportunity to present testimony and evidence to the Council was limited, a reconsideration proceeding within the Department was needed to ensure that all relevant evidence was received and considered. In 2008, the Wetlands Council process was aligned with the other Councils associated with the Department, such that the Council now conducts evidentiary hearings in appeals under RSA 482-A. See Laws of 2008, 171:6. As such, there is no longer any need for the reconsideration process at the Department level, and the additional step simply adds two months or more to the appeals process.

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

Sincerely,


for Thomas S. Burack
Commissioner

cc: Representative Ahlgren

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

Voting Sheets

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

EXECUTIVE SESSION on HB 416

BILL TITLE: shortening the appeals process for a permitting decision under RSA 482-A, relative to fill and dredge in wetlands.

DATE: March 5, 2013

LOB ROOM: 305

Amendments:

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

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

Moved by Rep. Hubbard

Seconded by Rep. Aguiar

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

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

Moved by Rep.

Seconded by Rep.

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

CONSENT CALENDAR VOTE: YES

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Jane E. Beaulieu, Clerk

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

EXECUTIVE SESSION on HB 416

BILL TITLE: shortening the appeals process for a permitting decision under RSA 482-A, relative to fill and dredge in wetlands.

DATE: 3/5/13

LOB ROOM: 305

Amendments:

Sponsor: Rep. OLS Document #:
Sponsor: Rep. OLS Document #:
Sponsor: Rep. OLS Document #:

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

Moved by Rep. *Hubbard*

Seconded by Rep. *Agar*

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

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

Moved by Rep.

Seconded by Rep.

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

CONSENT CALENDAR VOTE:

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Jane E. Beaulieu, Clerk

Rep. Jan Beaulieu



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/10/2013 9:30:36 AM
Roll Call Committee Registers
Report

2013 SESSION

RESOURCES, RECREATION AND DEVELOPMENT

Bill #: 416 Title: shortening the appeals process for a
PH Date: 2/12/13 Exec Session Date: 3/5/13
Motion: OTP Amendment #: _____

MEMBER	YEAS	NAYS
Chandley, Shannon E, Chairman	<i>at</i>	
Smith, Suzanne J, V Chairman	✓	
Parkhurst, Henry A. L.	✓	
Lovett, Sid	<i>absent</i>	
Aguiar, James D	✓	
Thomas, Yvonne D	✓	
Gottling, Suzanne H	✓	
Hubbard, Pamela J	✓	
Beaulieu, Jane E, Clerk	✓	
Webb, Leigh A	✓	
Wazlaw, Brian	✓	
Renzullo, Andrew ,	✓	
Ahlgren, Christopher J	✓	
Merrow, Harry C	✓	
Schroadter, Adam R	✓	
Ferrante, Beverly A	✓	
Cormier, Jane	✓	
Holmes, Stephen	✓	
Mullen, John A	✓	
Wright, Donald S	<i>at</i>	
TOTAL VOTE:	<i>17</i>	<i>0</i>

Committee Report

CONSENT CALENDAR

March 6, 2013

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on RESOURCES, RECREATION AND DEVELOPMENT to which was referred HB416,

AN ACT shortening the appeals process for a permitting decision under RSA 482-A, relative to fill and dredge in wetlands. Having considered the same, report the same with the recommendation that the bill OUGHT TO PASS.

Rep. Pamela J Hubbard

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	RESOURCES, RECREATION AND DEVELOPMENT
Bill Number:	HB416
Title:	shortening the appeals process for a permitting decision under RSA 482-A, relative to fill and dredge in wetlands.
Date:	March 6, 2013
Consent Calendar:	YES
Recommendation:	OUGHT TO PASS

STATEMENT OF INTENT

This bill shortens the appeal process for permitting decisions relative to fill and dredge in wetlands. The Wetlands Council is already aligned with the other Councils associated with the department and conducts evidentiary hearings in appeals. This bill will eliminate reconsideration at the department level, which is no longer needed, and could shorten the appeals process by up to two months.

Vote 17-0.

Rep. Pamela J Hubbard
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

RESOURCES, RECREATION AND DEVELOPMENT

HB416, shortening the appeals process for a permitting decision under RSA 482-A, relative to fill and dredge in wetlands. **OUGHT TO PASS.**

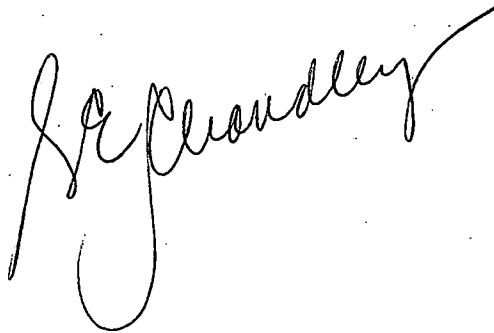
Rep. Pamela J Hubbard for RESOURCES, RECREATION AND DEVELOPMENT. This bill shortens the appeal process for permitting decisions relative to fill and dredge in wetlands. The Wetlands Council is already aligned with the other Councils associated with the department and conducts evidentiary hearings in appeals. This bill will eliminate reconsideration at the department level, which is no longer needed, and could shorten the appeals process by up to two months. **Vote 17-0.**

HB 416

OTP

This bill shortens the appeal process for permitting decisions relative to fill and dredge in wetlands. The Wetlands Council is already aligned with the other Councils associated with the department and conducts evidentiary hearings in appeals. This bill will eliminate reconsideration at the department level, which is no longer needed, and could shorten the appeals process by up to two months.

Pamela Hubbard

A handwritten signature in cursive script, appearing to read "P. Hubbard", is written in the lower center of the page.

HB 416

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Pam Hubbard

two