

Committee Report

REGULAR CALENDAR

March 14, 2019

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Majority of the Committee on Resources, Recreation
and Development to which was referred HB 326,**

AN ACT relative to the definition of prime wetland.

**Having considered the same, report the same with the
following amendment, and the recommendation that the
bill OUGHT TO PASS WITH AMENDMENT.**

Rep. Judith Spang

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee:	Resources, Recreation and Development
Bill Number:	HB 326
Title:	relative to the definition of prime wetland.
Date:	March 14, 2019
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS WITH AMENDMENT 2019-0672h

STATEMENT OF INTENT

Prime wetlands are those few wetlands which a municipality has asked to be so designated by the state "because of their size, unspoiled character, fragile condition or other relevant factors making them of substantial significance." Nomination by the town follows a thorough study and a vote by the town. A wetland permit application for a prime wetland receives a higher level of review by the state. Several years ago the statutes defining prime wetlands were changed so they inadvertently eliminated some of the most important parts of the wetland, the narrower portions that might connect two wetland systems or be an integral part of their water supply and wildlife habitat. This bill corrects this by allowing these significant but narrower portions to be included in the delineated prime wetland as they should be. The amendment assures that existing highway rights of way shall not be defined as prime wetlands or buffers of them.

Vote 13-7.

Rep. Judith Spang
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Resources, Recreation and Development

HB 326, relative to the definition of prime wetland. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Judith Spang for the **Majority** of Resources, Recreation and Development. Prime wetlands are those few wetlands which a municipality has asked to be so designated by the state "because of their size, unspoiled character, fragile condition or other relevant factors making them of substantial significance." Nomination by the town follows a thorough study and a vote by the town. A wetland permit application for a prime wetland receives a higher level of review by the state. Several years ago the statutes defining prime wetlands were changed so they inadvertently eliminated some of the most important parts of the wetland, the narrower portions that might connect two wetland systems or be an integral part of their water supply and wildlife habitat. This bill corrects this by allowing these significant but narrower portions to be included in the delineated prime wetland as they should be. The amendment assures that existing highway rights of way shall not be defined as prime wetlands or buffers of them. **Vote 13-7.**

Original: House Clerk

Cc: Committee Bill File

Committee Report, HB 326
Relative to the Definition of a Prime Wetland
Judith Spang for the Majority
OTP/A Amendment 672h 13-7

Prime wetlands are those few which a municipality has asked to be so designated by the state "because of their size, unspoiled character, fragile condition or other relevant factors making them of substantial significance." Nomination by the town follows a thorough study and a vote by the town. A wetland permit application for a prime wetland receives a higher level of review by the state.

Several years ago the statutes defining prime wetlands were changed so they inadvertently eliminated some of the most important parts of the wetland, the narrower portions that might connect two wetland systems or be an integral part of their water supply and wildlife habitat. HB 326 corrects this by allowing these significant but narrower portions to be included in the delineated prime wetland as they should be.

The amendment assures that existing highway rights of way shall not be defined as prime wetlands or buffers of them

Amendment to HB 326

1 Amend RSA 482-A:15, I-a as inserted by section 1 of the bill by replacing it with the following:

2

3 I-a. For the purposes of this chapter, "prime wetlands" shall mean any contiguous areas
4 falling within the jurisdictional definitions of RSA 482-A:2, X and RSA 482-A:4 that, because of
5 their size, unspoiled character, fragile condition, or other relevant factors, make them of substantial
6 significance. A prime wetland shall be at least 2 acres in size, shall not consist of a water body only,
7 shall have at least 4 primary wetland functions, one of which shall be wildlife habitat. *A prime*
8 *wetland* [~~and~~] shall have a width of at least 50 feet at its narrowest point *across and*
9 *perpendicular to its longitudinal axis, unless it can be demonstrated by the municipality*
10 *that its narrower portions provide a significant contribution to the primary wetland*
11 *functions of the prime wetland. Otherwise* the boundary of a prime wetland shall coincide,
12 where present, with the upland edge of any wetland, as defined in RSA 482-A:2, X, that is part of
13 the prime wetland. On-site verification of proposed prime wetland boundaries shall be performed
14 where landowner permission is provided. *"Prime wetlands" shall not include existing state*
15 *highway right-of-ways or other jurisdictional areas relating to prime wetlands, including*
16 *adjacent buffers.*

REGULAR CALENDAR

March 14, 2019

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Minority of the Committee on Resources, Recreation
and Development to which was referred HB 326,**

AN ACT relative to the definition of prime wetland.

**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. Andrew Renzullo

FOR THE MINORITY OF THE COMMITTEE

**MINORITY
COMMITTEE REPORT**

Committee:	Resources, Recreation and Development
Bill Number:	HB 326
Title:	relative to the definition of prime wetland.
Date:	March 14, 2019
Consent Calendar:	REGULAR
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

Wetlands designated as "prime" are the gold standard of wetlands. Because of their size, unspoiled character, fragile condition, and other relevant factors they are considered as being substantially significant. They are the premier wetlands in NH. In 2011, SB 19 was enacted that tightened up the regulations as to what characteristics made a wetland "prime." Among these objective requirements were that a prime wetland must be contiguous, at least two acres in size, and have a width of at least 50 feet at its narrowest point, plus meet four of the primary wetlands functions. Any wetland missing any one of these requirements, while still being considered a wetland, could not be designated a prime wetland. This bill would allow a lesser width if it can be demonstrated that its narrower portions provide a significant contribution (a subjective determination) to the primary wetland functions of the prime wetland. This cheapens the designation of prime wetlands as it suddenly allows sub-prime wetlands, or even streams (which are not wetlands) to connect prime wetlands that do not meet the size requirements of the statute. This expansion of the prime wetlands designation will have a deleterious effect on land owners who will be subject to setback requirements on usable land presently not under such requirements.

Rep. Andrew Renzullo
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Resources, Recreation and Development

HB 326, relative to the definition of prime wetland. **INEXPEDIENT TO LEGISLATE.**

Rep. Andrew Renzullo for the **Minority** of Resources, Recreation and Development. Wetlands designated as "prime" are the gold standard of wetlands. Because of their size, unspoiled character, fragile condition, and other relevant factors they are considered as being substantially significant. They are the premier wetlands in NH. In 2011, SB 19 was enacted that tightened up the regulations as to what characteristics made a wetland "prime." Among these objective requirements were that a prime wetland must be contiguous, at least two acres in size, and have a width of at least 50 feet at its narrowest point, plus meet four of the primary wetlands functions. Any wetland missing any one of these requirements, while still being considered a wetland, could not be designated a prime wetland. This bill would allow a lesser width if it can be demonstrated that its narrower portions provide a significant contribution (a subjective determination) to the primary wetland functions of the prime wetland. This cheapens the designation of prime wetlands as it suddenly allows sub-prime wetlands, or even streams (which are not wetlands) to connect prime wetlands that do not meet the size requirements of the statute. This expansion of the prime wetlands designation will have a deleterious effect on land owners who will be subject to setback requirements on usable land presently not under such requirements.

Original: House Clerk

Cc: Committee Bill File

HB 326 Minority Report
Relative to the Definition of Prime Wetlands
Andrew Renzullo for the Minority
Minority wants ITL

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Voting Sheets

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

EXECUTIVE SESSION on HB 326

BILL TITLE: relative to the definition of prime wetland.

DATE: March 13, 2019

LOB ROOM: 305

MOTIONS: OUGHT TO PASS WITH AMENDMENT

Moved by Rep. Grassie Seconded by Rep. Noel AM Vote: 16-4

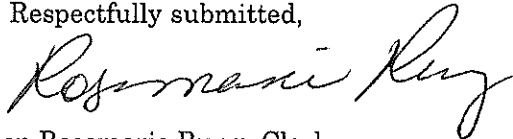
Amendment # 2019-0672h

Moved by Rep. Grassie Seconded by Rep. Noel Vote: 13-7

CONSENT CALENDAR: NO

Statement of Intent: Refer to Committee Report

Respectfully submitted,

A handwritten signature in cursive script that reads "Rosemarie Rung".

Rep Rosemarie Rung, Clerk

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

EXECUTIVE SESSION on HB 326

BILL TITLE: relative to the definition of prime wetland.

DATE: March 13, 2019

LOB ROOM: 305

MOTION: (Please check one box)

OTP ITL Retain (1st year) Adoption of Amendment # _____
 Interim Study (2nd year) (if offered)

Moved by Rep. Grassie Seconded by Rep. Noel Vote: _____

MOTION: (Please check one box)

OTP OTP/A ITL Retain (1st year) Adoption of 2019 Amendment # 0672 h.
 Interim Study (2nd year) (if offered)

Moved by Rep. Grassie Seconded by Rep. Noel Vote: 16-4

MOTION: (Please check one box)

OTP OTP/A ITL Retain (1st year) Adoption of Amendment # _____
 Interim Study (2nd year) (if offered)

Moved by Rep. Grassie Seconded by Rep. Noel Vote: 13-7

MOTION: (Please check one box)

OTP OTP/A ITL Retain (1st year) Adoption of Amendment # _____
 Interim Study (2nd year) (if offered)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

CONSENT CALENDAR: ___ YES NO

Minority Report? Yes ___ No If yes, author, Rep: Renzullo Motion ITL

Respectfully submitted: Rosemarie Rung
Rep Rosemarie Rung, Clerk



2019 SESSION

Resources, Recreation and Development

Bill #: 326 Motion: Adoption AM #: 2019-0672h Exec Session Date: 3/13/2019

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Smith, Suzanne J. Chairman	✓		
Maes, Kevin G. Vice Chairman	✓		
Spang, Judith T.	✓		
Parkhurst, Henry A. L.	✓		
Thomas, Yvonne D.	✓		
Grassie, Chuck W.	✓		
Bushway, Patricia J.	✓		
Cohen, Bruce L.	✓		
Noel, Henry W.	✓		
Rung, Rosemarie Clerk	✓		
Thomas, Wendy E.N.	✓		
Renzullo, Andrew		✓	
Gould, Linda R.	✓		
Horgan, James F.		✓	
Feeney, George		✓	
Gunski, Michael D.	✓		
Harb, Robert D.	✓		
Hobson, Deborah L.	✓		
Lucas, Gates S. <i>Torosian</i>		✓	
Whittemore, James R.	✓		
TOTAL VOTE:	16	4	



2019 SESSION

Resources, Recreation and Development

Bill #: 326 Motion: OTPA AM #: 0672 ²⁰¹⁹⁻ Exec Session Date: 3/13/19

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Smith, Suzanne J. Chairman	✓		
Maes, Kevin G. Vice Chairman	✓		
Spang, Judith T.	✓		
Parkhurst, Henry A. L.	✓		
Thomas, Yvonne D.	✓		
Grassie, Chuck W.	✓		
Bushway, Patricia J.	✓		
Cohen, Bruce L.	✓		
Noel, Henry W.	✓		
Rung, Rosemarie Clerk	✓		
Thomas, Wendy E.N.	✓		
Renzullo, Andrew		✓	
Gould, Linda R.		✓	
Horgan, James F.		✓	
Feeney, George		✓	
Gunski, Michael D.		✓	
Harb, Robert D.		✓	
Hobson, Deborah L.	✓		
Lucas, Gates S. <i>Torosian</i>		✓	
Whittemore, James R.	✓		
TOTAL VOTE:	13	7	

Amendment to HB 326

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Hearing Minutes

HOUSE COMMITTEE ON RESOURCES, RECREATION AND DEVELOPMENT

PUBLIC HEARING ON HB 326

BILL TITLE: relative to the definition of prime wetland.

DATE: February 13, 2019

LOB ROOM: 305

Time Public Hearing Called to Order: 2:42 p.m.

Time Adjourned: 3:27 p.m.

Committee Members: Reps. Suzanne Smith, Maes, Rung, Spang, Y. Thomas, Grassie, Bushway, Cohen, Noel, W. Thomas, Renzullo, Gould, Horgan, Feeny and Whittemore

Bill Sponsors:

Rep. Grassie

Rep. Adjutant

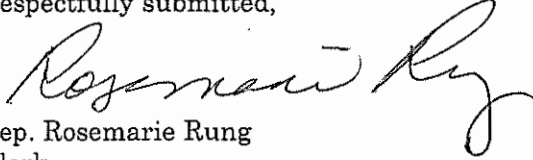
TESTIMONY

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

1. *Rep. Chuck Grassie introduced the bill as the main sponsor and yielded to Dr. Rick Van de Poll. An "unofficial" amendment was distributed.
2. Dr. Rick Van de Poll presented slides explaining prime wetlands and their existence in NH.
3. Terry Silverman of the Fitzwilliam Planning Board spoke in favor of the bill and explained how Fitzwilliam has benefitted from its wetlands protection policies.
4. Kevin Nyhan from the NH Department of Transportation did not take a position of the bill. He explained some of the wetlands practices they employ and suggested an amendment.
5. Susan Silverman of Fitzwilliam Conservation Commission spoke in favor of the bill.
6. Cindy Balcios from the NH Association of Natural Resource Scientists spoke in opposition to the bill. She spoke that not all parts of a prime wetland ("fingers and toes") have the same functions and values.
7. Kevin Woollee of the Fitzwilliam Conservation Commission spoke in favor of the bill and provided written testimony.
8. Robin Peard Blais spoke in favor of the bill.
9. Gary Abbott of Associated General Contractors spoke in opposition of the bill as it doesn't clearly define the boundaries of a prime wetland.
10. Bill Klubben of the NH Planners Association spoke in favor of the bill because of the present exclusion of prime wetland because of the 50 ft. minimum width.
11. Barbara Richter of the NH Association of Conservation Commissions testified in favor of the bill.
12. Rep. Grassie commented further about the importance of the "fingers and toes," particularly during high water events (big storms, floods).

13. **Cindy Balcios** spoke again about how the municipality identifies a wetland using aerial photography and GPS and that the final map may not be verified by site specific data so the boundary of prime wetland may not be accurate.
14. **Dr. Rick Van de Poll** spoke again about how this is about providing protection to a valuable ecosystem and that NH has been chipping away at protections (e.g., dredge and fill that have not been mitigated).
15. **Susan Fitzwilliam** spoke again.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Rosemarie Rung".

Rep. Rosemarie Rung
Clerk

NH HOUSE OF REPRESENTATIVES
RESOURCES, RECREATION AND DEVELOPMENT COMMITTEE
TESTIMONY ON HB 326

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14. Dr. Rick Van de Poll spoke again about how this is about providing protection to a valuable ecosystem and that NH has been chipping away at protections (e.g., dredge and fill that have not been mitigated).
15. Susan Fitzwilliam spoke again.

Testimony

1*

HB 326 - AS INTRODUCED (NHDOT PROPOSED AMENDMENT)

2019 SESSION

19-0555
08/06

HOUSE BILL 326

AN ACT relative to the definition of prime wetland.

SPONSORS: Rep. Grassie, Straf. 11; Rep. Adjutant, Graf. 17

COMMITTEE: Resources, Recreation and Development

ANALYSIS

This bill further defines prime wetland for local protection in fill and dredge permits.

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.
19-0555
08/06

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nineteen

AN ACT relative to the definition of prime wetland.

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

1 Prime Wetlands; Definition. Amend RSA 482-A:15, I-a to read as follows:
I-a. For the purposes of this chapter, "prime wetlands" shall mean any contiguous areas falling within the jurisdictional definitions of RSA 482-A:2, X and RSA 482-A:4 that, because of their size, unspoiled character, fragile condition, or other relevant factors, make them of substantial significance. A prime wetland shall be at least 2 acres in size, shall not consist of a water body only, shall have at least 4 primary wetland functions, one of which shall be wildlife habitat. *A prime wetland* ~~[and]~~ shall have a width of at least 50 feet at its narrowest point *across and perpendicular to its longitudinal axis, unless it can be demonstrated by the municipality that its narrower portions provide a significant contribution to the primary wetland functions of the prime wetland. Otherwise* the boundary of a prime wetland shall coincide, where present, with the upland edge of any wetland, as defined in RSA 482-A:2, X, that is part of the prime wetland. On-site verification of proposed prime wetland boundaries shall be performed where landowner permission is provided. *For purposes of this definition, the existing state highway right-of-way does not include prime wetlands, or other jurisdictional areas relating to prime wetlands, including adjacent buffers.*

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February 13, 2019

Dear members of the Resources, Recreation and Development Committee,

I am speaking today in favor of HB326 "relative to the definition of prime wetland". My appreciation of the importance of wetlands, especially of prime wetlands which are of particularly unique, fragile and/or unspoiled was found while attending public hearings for the 2016 Prime Wetland study completed for the town of Fitzwilliam. I found out during the hearings Fitzwilliam has many wetlands of high value which by designating them as prime would give the additional protections they deserve.

Beginning also in 2016 I received training in finding and documenting Vernal Pools. While exploring for Vernal Pools on Fitzwilliam public lands I saw firsthand the beauty and importance of the wetland complexes on these lands. Because of this experience, my love of the outdoors and the knowledge acquired from attending the Prime Wetland public hearings when asked to become a member of the Fitzwilliam Conservation Commission I accepted the appointment.

I was disappointed to learn that because of technical definitions and changes in legal language the six wetlands approved as prime by the voters of Fitzwilliam were not accepted by the DES. Passage of HB 326 will give Fitzwilliam and other towns the opportunity to demonstrate why wetlands approved as prime by voters but initially rejected by DES should now be accepted.

I request committee members to vote yes on HB326 with an "Ought To Pass" recommendation.

Thank you,
Kevin Woolley
Fitzwilliam Conservation Commission
Fitzwilliam, NH

Prime wetlands have high value functions, which is why they are more carefully regulated. It is important to note that often the highest value lies in the poorly drained edges, where the narrow fingers stretch out into the landscape. The existing law does not take into account wetlands that are less than 50 wide, and may cut off the fingers of a wetland complex. HB 326 would further define the law to include “*its narrower portions provide a significant contribution to the primary wetland functions of the prime wetland.*” This change to the definition of prime wetlands would allow for protection of the larger wetland complex, better protecting the water resources as a whole.

Wetlands provide critical functions including flood control, water quality maintenance through filtering pollution, wildlife habitat, groundwater recharge and shore land stabilization. These functions and values in turn provide a multitude of benefits to the public good. Wetlands perform critical functions best when they are hydrologically connected across the landscape. Allowing for the flow of water between wetland areas is a basic concept in the protection of water resources. Impacts to a wetland complex are felt downstream and may eventually limit the overall function of the ecosystem.

Please help conservation commissions continue to protect NH’s water resources.
Vote yes on HB 326 to allow for narrow portions of wetlands to be included in the definition of prime wetlands.

Respectfully submitted,



Barbara Richter
NHACC Executive Director

N.H. Lakes Management and Protection Program
N.H. Lakes Management Advisory Committee

February 13, 2019

Voting Members:

David Packard
Chair
NH Lakes Assn.

Bruce Allen
Conservation
Commissions

Mark Borrin
Tourism Industry

Shane Bradt
Scientific Community

Linda Brownson
State Conservation
Committee

Edmund Crawford
Marine Trades
Association

Tiffany Grade
Conservation
Community

Janet Kidder
Planning Boards

Frank Lemay
NH BIA

Ernest Millette
NH Fish & Game
Commission

Rex Norman
Municipal Official

Dick Smith
Fishing Interests

Mary Truell
NH Association of
Realtors

Non-Voting Members:

Garret Graaskamp
Vice Chair
NH Fish & Game Dept.

Capt. Tim Dunleavy
NH Dept. of Safety

Eric Feldbaum
NH Dept. of Natural and
Cultural Resources

Jennifer Gilbert
NH Office of Strategic
Initiatives

Mark Hemmerlein
NH Dept. of Trans.

**David Rousseau/
Bob Wolff**
NH Dept. of
Ag, Markets & Food

Staff:

Tracie Sales
Program Manager

Jen Drociak
Watershed Coordinator

Mariah Mitchell
Program Assistant

The Honorable Suzanne Smith, Chair
House Resources, Recreation, and Development
Legislative Office Building, Room 305
Concord, NH 03301

RE: HB 326 *relative to the definition of a prime wetland.*

Dear Chair Smith and Members of the Committee:

The Lakes Management Advisory Committee (LMAC) is writing to express its support for House Bill 326, which further defines prime wetland for local protection in fill and dredge permits.

The proposed expanded definition of prime wetland would allow municipalities to include narrower portions, or "fingers" of wetlands in their designation. These narrower portions could be fringe wetlands, low-gradient feeder stream systems, or connectors between two larger wetland systems and provide significant habitat for macroinvertebrate, fish, birds, and wildlife. As such, these narrower portions can provide a significant contribution to the wetland functions and values of the prime wetland. The LMAC believes the current exclusion of these narrower portions is arbitrary and not based upon science. Thus, the LMAC supports HB 326 to allow these narrower portions to be included as prime wetlands.

The LMAC is a legislatively created body charged to work with the New Hampshire Department of Environmental Services (NHDES) to administer RSA 483-A, the Lakes Management and Protection Program. The Governor and Council appointed Committee is comprised of 19 members representing academia, business, conservation organizations, lake associations, tourism, fish and game commission, marine trades, realtors, municipal government as well as several state agencies. Among its other responsibilities, the LMAC reviews legislation relevant to the Program and the state's lakes and ponds, and advises the NHDES Commissioner on the merits of such legislation.

In conclusion, the LMAC supports HB 326 relative to the definition of a prime wetland because it would include sensitive narrower portions of these wetlands which can be as significant as the larger wetland itself in their functions and values.

The Honorable Suzanne Smith
Chair, Resources, Recreation, and Development
HB 326 February 13, 2019
Page 2

Should you have further questions about this testimony, please feel free to contact me at (603) 867-9299 or appliedforce52@gmail.com.

Sincerely,



David Packard
Chair

cc: Rep. Chuck Grassie
Rep. Joshua Adjutant
LMAC Representatives
Robert R. Scott, Commissioner, NHDES
Rene Pelletier, Assistant Director, Water Division, NHDES
Ted Diers, Administrator, Watershed Mgmt. Bur., NHDES
Tracie Sales, Rivers and Lakes Programs Manager, NHDES

Bill as
Introduced

HB 326 - AS INTRODUCED

2019 SESSION

19-0555
08/06

HOUSE BILL **326**

AN ACT relative to the definition of prime wetland.

SPONSORS: Rep. Grassie, Straf. 11; Rep. Adjutant, Graf. 17

COMMITTEE: Resources, Recreation and Development

ANALYSIS

This bill further defines prime wetland for local protection in fill and dredge permits.

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8 *perpendicular to its longitudinal axis, unless it can be demonstrated by the municipality*
9 *that its narrower portions provide a significant contribution to the primary wetland*
10 *functions of the prime wetland. Otherwise* the boundary of a prime wetland shall coincide,
11 where present, with the upland edge of any wetland, as defined in RSA 482-A:2, X, that is part of
12 the prime wetland. On-site verification of proposed prime wetland boundaries shall be performed
13 where landowner permission is provided.

14 2 Effective Date. This act shall take effect 60 days after its passage.