

Bill as Introduced

HB 326 - AS AMENDED BY THE HOUSE

20Mar2019... 0672h

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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 1 Prime Wetlands; Definition. Amend RSA 482-A:15, I-a to read as follows:

2 I-a. For the purposes of this chapter, "prime wetlands" shall mean any contiguous areas
3 falling within the jurisdictional definitions of RSA 482-A:2, X and RSA 482-A:4 that, because of
4 their size, unspoiled character, fragile condition, or other relevant factors, make them of substantial
5 significance. A prime wetland shall be at least 2 acres in size, shall not consist of a water body only,
6 shall have at least 4 primary wetland functions, one of which shall be wildlife habitat. ***A prime***
7 ***wetland*** [~~and~~] shall have a width of at least 50 feet at its narrowest point ***across and***
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. ***"Prime wetlands" shall not include existing state***
14 ***highway right-of-ways or other jurisdictional areas relating to prime wetlands, including***
15 ***adjacent buffers.***

16 2 Effective Date. This act shall take effect 60 days after its passage.

HB 326 - AS AMENDED BY THE SENATE

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4 size, unspoiled character, fragile condition, or other relevant factors, make them of substantial
5 significance. A prime wetland shall be at least 2 acres in size, shall not consist of a water body only,
6 shall have at least 4 primary wetland functions, one of which shall be wildlife habitat. *A prime*
7 *wetland* [~~and~~] shall have a width of at least 50 feet at its narrowest point *across and*
8 *perpendicular to its longitudinal axis. An existing prime wetland can be expanded to an*
9 *area less than 50 feet at its narrowest point across and perpendicular to its longitudinal*
10 *axis if the municipality can demonstrate that its narrower portions provide a significant*
11 *contribution to the primary wetland functions of the prime wetland. To qualify as a*
12 *significant contribution, the narrower portions shall contain 4 or more primary wetland*
13 *functions as defined in RSA 482-A:2, XI and shall not include any man-made structures*
14 *under RSA 482-A:3, IV. The municipality shall consider any potential adverse effects on*
15 *the landowner of the narrower portion. Otherwise* the boundary of a prime wetland shall
16 coincide, where present, with the upland edge of any wetland, as defined in RSA 482-A:2, X, that is
17 part of the prime wetland. On-site verification of proposed prime wetland boundaries shall be
18 performed where landowner permission is provided. *For the purposes of this paragraph*
19 *existing state highway rights-of-way, including associated permanent easements, shall not*
20 *include prime wetlands or their adjacent buffers.*

21 2 Effective Date. This act shall take effect 60 days after its passage.

HB 326 - FINAL VERSION

20Mar2019... 0672h
05/15/2019 1888s
27Jun2019... 2596-CofC

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

AMENDED ANALYSIS

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

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HB 326 - FINAL VERSION

20Mar2019... 0672h
05/15/2019 1888s
27Jun2019... 2596-CofC

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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 1 Prime Wetlands; Definition. Amend RSA 482-A:15, I-a and I-b to read as follows:

2 I-a. For the purposes of this chapter, "prime wetlands" shall mean any contiguous areas
3 falling within the jurisdictional definitions of RSA 482-A:2, X and RSA 482-A:4 that, because of their
4 size, unspoiled character, fragile condition, or other relevant factors, make them of substantial
5 significance. A prime wetland shall be at least 2 acres in size, *excluding those areas described in*
6 *paragraph I-b*, shall not consist of a water body only, shall have at least 4 primary wetland
7 functions *within the 2 acre or greater area*, 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*.

10 I-b. *A prime wetland may include additional connected narrower wetland areas*
11 *less than 50 feet at their narrowest point across and perpendicular to their longitudinal*
12 *axis if the municipality can demonstrate that any such narrower portion provides a*
13 *significant contribution to the primary wetland functions of the prime wetland. To qualify*
14 *as a significant contribution, a narrower portion shall contain 4 or more primary wetland*
15 *functions as defined in RSA 482-A:2, XI and shall not include any man-made structures*
16 *under RSA 482-A:3, IV(b). The municipality shall consider any potential adverse effects on*
17 *the landowner from including any narrower portion*.

18 I-c. The boundary of a prime wetland shall coincide, where present, with the upland edge of
19 any wetland, as defined in RSA 482-A:2, X, that is part of the prime wetland. On-site verification of
20 proposed prime wetland boundaries shall be performed where landowner permission is provided.

21 I-d. *For the purposes of this paragraph existing state highway rights-of-way,*
22 *including associated permanent easements, shall not include prime wetlands or their*
23 *adjacent buffers*.

24 [~~I-b.~~] I-e. The commissioner shall adopt rules under RSA 541-A relative to the form, criteria,
25 and methods that shall be used to designate, map, and document prime wetlands, determine
26 boundaries in the field, and amend maps and designations once filed and accepted by the
27 department under paragraph II.

28 2 Effective Date. This act shall take effect 60 days after its passage.

29 VETOED July 29, 2019

1 Veto Sustained September 18, 2019

Amendments

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. ***For the purposes of this definition, the existing state***
15 ***highway right-of-way does not include prime wetlands, or other jurisdictional areas***
16 ***relating to prime wetlands, including adjacent buffers.***

Sen. Bradley, Dist 3
Sen. Watters, Dist 4
May 1, 2019
2019-1820s
06/01

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:

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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
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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. An existing prime wetland can be expanded to an*
10 *area less than 50 feet at its narrowest point across and perpendicular to its longitudinal*
11 *axis if the municipality can demonstrate that its narrower portions provide a significant*
12 *contribution to the primary wetland functions of the prime wetland. To qualify as a*
13 *significant contribution, the narrower portions shall contain 4 or more primary wetland*
14 *functions as defined in RSA 482-A:2, XI and shall not include any man-made structures*
15 *under RSA 482-A:3, IV. The municipality shall obtain the approval of the landowner of*
16 *the narrower portion. Otherwise* the boundary of a prime wetland shall coincide, where present,
17 with the upland edge of any wetland, as defined in RSA 482-A:2, X, that is part of the prime
18 wetland. On-site verification of proposed prime wetland boundaries shall be performed where
19 landowner permission is provided. *For the purposes of this paragraph existing state highway*
20 *rights-of-way, including associated permanent easements, shall not include prime*
21 *wetlands or their adjacent buffers.*

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:

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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
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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*
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10 *area less than 50 feet at its narrowest point across and perpendicular to its longitudinal*
11 *axis if the municipality can demonstrate that its narrower portions provide a significant*
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13 *significant contribution, the narrower portions shall contain 4 or more primary wetland*
14 *functions as defined in RSA 482-A:2, XI and shall not include any man-made structures*
15 *under RSA 482-A:3, IV. The municipality shall consider any potential adverse effects on*
16 *the landowner of the narrower portion. Otherwise* the boundary of a prime wetland shall
17 coincide, where present, with the upland edge of any wetland, as defined in RSA 482-A:2, X, that is
18 part of the prime wetland. On-site verification of proposed prime wetland boundaries shall be
19 performed where landowner permission is provided. *For the purposes of this paragraph*
20 *existing state highway rights-of-way, including associated permanent easements, shall not*
21 *include prime wetlands or their adjacent buffers.*

Committee Minutes

SENATE CALENDAR NOTICE

Energy and Natural Resources

Sen Martha Fuller Clark, Chair
Sen Dan Feltes, Vice Chair
Sen David Watters, Member
Sen Jeb Bradley, Member
Sen Bob Giuda, Member

Date: April 17, 2019

HEARINGS

Tuesday

04/23/2019

(Day)	(Date)	(Name of Committee)	(Place)	(Time)
		Energy and Natural Resources	SH 103	9:00 a.m.
PRESENTATION				
9:00 a.m.				Committee to Study Exotic Aquatic Weeds and Exotic Aquatic Species of Wildlife in the State of New Hampshire
9:30 a.m.	HB 325			relative to control of marine pollution and aquatic growth.
9:45 a.m.	HB 326			relative to the definition of prime wetland.
10:00 a.m.	HB 682-FN			establishing a water resources fund in the department of environmental services and charging certain application and permit fees.
10:15 a.m.	HB 645-FN			establishing a dock registration procedure.
10:30 a.m.	HB 459-FN			defining industrial hemp, relative to its growth in New Hampshire, its use in food, and establishing a committee to study the federal guidelines on growing industrial hemp.

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

HB 325

Rep. Grassie

Rep. Adjutant

HB 326

Rep. Grassie

Rep. Adjutant

HB 682-FN

Rep. Spang

Sen. D'Allesandro

Sen. Watters

HB 645-FN

Rep. Renzullo

HB 459-FN

Rep. Bixby

Rep. Gagne

Rep. Pearl

Rep. Knirk

Rep. O'Connor

Rep. Cushing

Sen. Giuda

Sen. Reagan

Sen. Fuller Clark

Griffin Roberge 271-7875

Martha Fuller Clark
Chairman

Senate Energy and Natural Resources Committee

Griffin Roberge 271-7875

HB 326, relative to the definition of prime wetland.

Hearing Date: April 23, 2019.

Time Opened: 9:52 a.m.

Time Closed: 10:35 a.m.

Members of the Committee Present: Senators Fuller Clark, Watters and Bradley.

Members of the Committee Absent: Senators Feltes and Giuda.

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

Sponsors:

Rep. Grassie

Rep. Adjutant

Who supports the bill: Kelly Buchanan (NH Lakes Association), Michele Tremblay (NH Rivers Council), Representative Suzanne Smith (Grafton - District 8), Carol R. Foss (NH Audubon), Jim O'Brien (The Nature Conservancy), Representative Judith Spang (Strafford - District 6), Rick Van de Poll (Ecosystem Management Consultants), Terry Silverman (Fitzwilliam, NH),

Who opposes the bill: Gary Abbott (Association of General Contractors of NH), James P. Gove (Gove Environmental Services, Inc.), Cythnia Balcius (NH Association of Natural Resource Scientists).

Who is neutral on the bill: None.

Summary of testimony presented in support:

*Representative Chuck Grassie - provided written testimony
Strafford - District 11*

- Offered amendment 2019-1560h:
 - This amendment was offered on behalf of the NH Department of Transportation (NHDOT). HB 326 as introduced was amended in the House with amendment 2019-0672h, but NHDOT expressed concerns after HB 326 was amended by the House.
 - Amendment 2019-1560h ensures that the existing state highway rights-of-ways do not include prime wetlands, or other jurisdictional areas relating to prime wetlands, including adjacent buffers.
- HB 326 clarifies the definition of prime wetlands:
 - Prime wetlands, by statutory definition, are any contiguous areas that are, because of their size, unspoiled character, fragile conditions, and other relevant factors, significantly substantial.
 - Prime wetlands are designated so by a municipality. A municipality must go through a process with a public hearing and a vote. A prime wetland must also meet certain standards in statute.
- Prime wetlands are not always in a perfect geographic shape. Wetlands can have "fingers and toes," or connections or portions that extend off of the main wetland. These "fingers and toes" are still important to the function of a wetland.
 - For example, a swale could be part of a wetland, but does not qualify as a prime wetland due to current statutory definitions. Swales could help manage water runoff, filter pollutants, or increase

rainwater filtration. A swale could also connect two larger portions of a wetland together and be a major factor for flood control.

- HB 326 seeks to expand the definition of a prime wetland to include these "fingers and toes."
- Senator Fuller Clark asked Representative Grassie to speak to amendment 2019-1560h.
 - Representative Grassie said amendment 2019-1560h offered a carveout for NHDOT. NHDOT was concerned about prime wetlands impacting their ability to work within their rights-of-ways for roadway maintenance and repairs.
- Senator Watters asked about the grammar of lines 14-16 of amendment 2019-1560h. It appeared the language was in HB 326 as amended by the House. Senator Watters questioned the grammatical changes to the wording.
 - Representative Grassie said amendment 2019-1560h was NHDOT's originally suggested language. However, when the amendment was originally given to OLS in the House, OLS produced an amendment that altered the language. Amendment 2019-1560h returns to NHDOT's originally suggested language.
- Senator Watters was concerned over the use of "or" rather than "nor" and its impact on prime wetlands.
 - Representative Grassie said the intention was to ensure NHDOT's existing highway right-of-way did not include prime wetlands and other adjacent buffers.
- Senator Watters expressed a concern over runoff.
 - Representative Grassie said NHDOT's language was a carveout. Without the carveout, NHDOT was concerned that if a right-of-way went through a prime wetland, they would not be able to do work on that road or adjacent buffers.

*Representative Judith Spang
Strafford – District 6*

- SB 19-FN (2012) amended the statutes relating to prime wetlands and included a provision restricting a prime wetland to having a width of 50 feet or more at its narrowest point. Testimony on SB 19-FN (2012) led the House Resources, Recreation, and Development Committee to believe areas less than 50 feet in width were wastelands with no environmental value.
- These "fingers and toes" are swales, culverts, and inlets. They can be important nesting areas for wildlife like loons.
- Runoff swales would not be eligible for protection under HB 326. HB 326 ensured that at least four of the twelve primary wetland functions were met as defined in RSA 482-A:2, XI.

*Rick Van de Poll – provided written testimony
Ecosystem Management Consultants*

- Provided an illustration of the Martin Road Marsh in Fitzwilliam. Two parts of the wetland connected by a smaller piece. Under current law, that connection is not a part of the prime wetland. These connections are important for wildlife habitats, flood control, and groundwater recharge. Prime wetlands should be protected in their entirety.
- RSA 482-A:15 that made it clear that the definition of significance was determined by a municipality.
- Since SB 19-FN (2012) passed, there have been no prime wetlands designated in NH in part due to the 50 foot limitation at a prime wetland's narrowest point. HB 326 is meant to include the local option for determining significance and their value.
- Senator Fuller Clark asked how "fingers and toes" were addressed in others states.
 - Dr. Van de Poll said other states did not designate important wetlands as prime wetlands. The closest example would be Class I wetlands in Vermont. Class I wetlands are fully protected, including their "fingers and toes."
- Senator Fuller Clark asked if it was fair to assume that the definition of significance varied from municipality to municipality and that making the statutory definition too rigid would inhibit the use of local characteristics.
 - Mr. Van de Poll said Senator Fuller Clark was correct.
- Senator Fuller Clark asked if prime wetland designations were delayed due to rigid statutory definitions.
 - Mr. Van de Poll said Senator Fuller Clark was correct.
- Senator Watters suggested an amendment to HB 326 to include a reference to municipalities determining significance with regards to wetlands.
 - Mr. Van de Poll was open to the suggestion.

Terry Silverman

Planning Board Member, Town of Fitzwilliam, NH

- As of March 2014, the Town of Fitzwilliam approved the expenditure of \$15,000 to complete a professional survey of Fitzwilliam's wetlands with Mr. Rick Van de Poll.
- The "fingers and toes" issue tied up Fitzwilliam's survey process until 2019.
- Most of the Fitzwilliam's prime wetlands are in remote locations. Fitzwilliam has over 5,000 wetlands over an acre. Fitzwilliam's prime wetland locations do not constitute a large part of Fitzwilliam.
- Senator Watters asked how Mr. Silverman would define a "significant contribution."
 - Mr. Silverman said Fitzwilliam used a value rating system that was developed by Mr. Van de Poll. It was a long process to develop that system and the ratings.
- Senator Watters asked if there was a public comment period involved with designating a prime wetland.
 - Mr. Silverman said Fitzwilliam had three or four opportunities for public comment.

Representative Suzanne Smith

Grafton – District 8, Chair, House Resources, Recreation, and Development Committee

- In order to designate a prime wetland, a municipality must go through a lengthy process. There are opportunities for public comment and a municipality must vote on the prime wetland designation. After the vote, the NH Department of Environmental Services (NHDES) must review the designation and give its approval.
- Senator Fuller Clark asked how Representative Smith would define a "significant contribution."
 - Representative Smith said the definitions of "wetlands" and "wetland functions" in RSA 482-A:2 had ample information to work with. However, Representative Smith could not comment on how many functions of a wetland define a "significant contribution."

Summary of testimony presented in opposition:

Gary Abbott & James P. Gove - provided written testimony

Executive Vice President, Association of General Contractors of New Hampshire (AGCNH)

President, Gove Environmental Services, Inc.

- Discussed the reasoning behind the 50 foot requirement at a prime wetland's narrowest point:
 - Drainage ditches and runoff streams along highways and municipal roadways were being considered as part of a prime wetland. This led to confusion as to where a prime wetland began and ended. If these drainage ditches and runoff streams were considered part of a prime wetland, it would make any repair or maintenance of roadways difficult.
 - "Fingers and toes" may not be considered prime wetlands, but they are still considered regular wetlands.
- Repercussions if HB 326 passed:
 - HB 326 would make it possible for small, non-prime wetlands that do not meet the requirements of a prime wetland in RSA 482-A:15, I-a to be connected to a prime wetland, making the non-prime wetland a prime wetland.
 - Additionally, a prime wetland shall have at least four primary wetland functions as outlined in RSA 482-A:2, XI. These "fingers and toes" may only have one primary wetland function, therefore, they cannot meet the prime wetland definition.
 - HB 326 says a prime wetland shall also have a width of 50 feet at its narrowest point across and perpendicular to its longitudinal axis, unless a municipality can demonstrate that a prime wetland's narrow portions provide a significant contribution. On line 9, there is no definition as to what a "significant contribution" means. HB 326's language could be broadly interpreted, lessening the requirements for a prime wetland.
- Mr. Gove provided a map outline of a municipality with a prime wetland and smaller links connected to the prime wetland. If the smaller links were considered a prime wetland, it would halt any nearby land development. Based on the map, there is no clear end to where a prime wetland ends. A major question that HB 326 does not define how to determine significance for "fingers and toes."
- When a prime wetland is declared, a municipality automatically creates a 150 foot buffer around the prime wetland in order to protect it. That further impacts any development.
- Senator Fuller Clark asked how the AGCNH would define "significant contribution."
 - Mr. Abbott said a narrower portion would need to meet a number of primary wetland functions as outlined in RSA 482-A:2, XI. There should also be exemptions included for man-made structures, such as swales. Swales are built around developments to help water quality and should not be included as a prime wetland. Simple hydrologic support should not be the only factor that designates

an area as a prime wetland. There should also be a process for property owners and abutters over a municipality's decision to designate a "finger or toe" as a prime wetland.

- Senator Watters asked why four of the twelve primary wetland functions listed in RSA 482-A:2, XI - ecological integrity, wetland-dependent wildlife habitat, fish and aquatic life habitat, scenic quality, educational potential, wetland-based recreation, flood storage, groundwater recharge, sediment trapping, nutrient trapping/retention/transformation, shoreline anchoring, and noteworthiness - were needed for a prime wetland designation.
 - Mr. Abbott said he believed a prime wetland should have seven of the primary wetland functions, but under current statute, a prime wetland needed four primary wetland functions, one of which shall be wildlife habitat. Just because wetlands are large and serve as useful tools in flood control does not mean that they should be connected to or considered as a prime wetland.
- Senator Watters said that degrading a "finger or toe" could have a negative impact on the prime wetland. He asked if it was important to offer equal protection to the "fingers and toes."
 - Mr. Gove referenced his illustration. Some outlying areas not part of the prime wetland were just culverts to ensure wildlife movement. Regular wetlands, though not designated as a prime wetland, are still maintained and protected.
- Senator Fuller Clark said coastal waters were rising, impacting inland waters. She asked what impact that would have on wetlands.
 - Mr. Gove said there were two separate issues. Prime wetlands were often freshwater systems further inland, away from coastal waters. Therefore, most prime wetlands would not be affected by coastal water rise. Wetlands that are affected by the coastal water rise would become tidal wetlands and assume the significant, relevant protections for tidal wetlands.

Cindy Balcius

Legislative Committee Chair, New Hampshire Association of Natural Resource Scientists (NHANRS)

- NHANRS felt HB 326 should be turned into a study committee as there were parts of HB 326 that needed clarity and definition.
- HB 326 did not have enough stakeholders involved to provide input on HB 326's language.
- Ms. Balcius expressed a concern that some areas, such as a creek bed or a river bed, may extend out from a prime wetland and become a watershed, which does not have the same ecological functions as a prime wetland. There should be a process to remove the consideration of wetlands that do not have the same characteristics of a prime wetland. However, HB 326's language is too vague.

Neutral Information Presented: None.

GJR, edited by Marie Marston.

Date Hearing Report completed: April 23, 2019.

Notice of Meeting: Committee of Conference

6/19/19

9:00 a.m.

LOB 305

HB 326 relative to the definition of prime wetland.

House Conferees: Suzanne Smith, Spang, Grassie and Rung

Senate Conferees: Fuller Clark, Watters and Bradley

Speakers

Senate Energy & Natural Resources Committee

SIGN-IN SHEET

Date: Tuesday, April 23rd, 2019 Time: 9:45 a.m.

HB 326 AN ACT relative to the definition of prime wetland.

Name/Representing (please print neatly)

	Support	Oppose	Speaking?	Yes	No
Kelly Buchanan (NH LAKES)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Middle L. Truslay ^{new hampshire} ^{press council}	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Rep. Suzanne Smith R.R.D.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input type="checkbox"/>
CAROL R. FOSS NH AUDUBON	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Jim O'Brien The Nature Conservancy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
✓ Gary Abbott Assoc. General Contracting	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ Rep. Scott Spang R.R.D.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ Rep. Van der Peet	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ Tom Silverman, Litchfield	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep. Chuck Pearce	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep. [unclear]	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ [unclear]	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input type="checkbox"/>
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	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input type="checkbox"/>

if need

Testimony

Thank you Madame Chair, and members of the Committee.

My name is Representative Adjutant, and though I regretfully cannot be with you today, I wish to convey to you my full throated support for House Bill 326, an act that provides local municipalities greater flexibility in determining what they'd be able to designate as a prime wetland.

Like most kids going through school in the early 2000's, many science classes featured an appearance by Bill Nye, the Science guy, from whom I first learned about wetlands. For those who might not be as familiar, wetlands provide an ecosystem for many forms of wildlife, ranging from crustaceans, to finfish, some winged creatures, and insects. They provide a natural filtration system for clean drinking water that humans certainly need, and provide the ability to slow down and retain flood water in times of crisis. The legislation before you today doesn't reduce or restrict any of the definitions and benefits of a prime wetland, but instead, changes a defining element. Under the current statute, an otherwise wet-land, cannot be a wetland if it's narrowest point is under 50 feet in width, and frankly, that's incomprehensible to me, as in my opinion, a body of watery marsh that meets all the separate criteria for a wetland, but just has two major aquatic bodies connected by a smaller corridor of water, should be available for a town to consider a wetland for conservation purposes.

There are both progressive and conservative reasons to support this legislation. On the one hand, we face a climate crisis of epic proportions, and the more we can do to preserve access to natural, clean drinking water, and the protection of ecosystems, the better it is for the natural community, and ourselves. On the other hand, this is about local control, and also, local safety. As I mentioned earlier, wetlands slow otherwise dangerously fast-paced floods, a threat we are certainly familiar with in the Lakes Region, and that my friend, Senator Giuda is familiar with in Warren and Plymouth. By halting development on land you'd otherwise think is a wetland, except for an insignificant and irrelevant technicality, we can conserve valuable ecological assets, and provide another line of defense in public safety simultaneously.

I want to thank you all for allowing this testimony to be read, and I want to take a second to thank Representative Grassie for his leadership on this issue, and would ask him to field any questions you would have in my absence.

Voting Members:

Michele L. Tremblay
Chair
Conservation
Community

Larry T. Spencer
Vice Chair
Conservation
Commissions

Edna Feighner
Historic/Archeological
Interests

Christopher Hodgdon
NH Fish & Game
Commission

Mark Lombardi
Granite State
Hydropower
Association

Frederick J. McNeill
Municipal Officer

Allan G. Palmer
Business & Industry
Association

Norman Sims
Recreational Interests

Ruth Ward
Local River Management
Advisory Committees

Donald L. Ware
Public Water Suppliers

Vacant
Agricultural Community

Non-Voting Members:

Jennifer Gilbert
NH Office of
Strategic Initiatives

Mark Hemmerlein
NH Department of
Transportation

John Magee
NH Fish & Game
Department

Gail McWilliam Jellie
NH Department of
Agriculture,
Markets & Food

Alexx Monastiero
NH Department of
Safety

Vacant
NH Department of
Natural and Cultural
Resources

Staff:

Tracie Sales
Program Manager

Jen Drociak
Watershed Coordinator

Mariah Mitchell
Program Assistant

N.H. Rivers Management and Protection Program

N.H. Rivers Management Advisory Committee

April 23, 2019

The Honorable Martha Fuller Clark, Chair
Senate Energy and Natural Resources Committee
Senate House, Room 103
Concord, NH 03301

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

Dear Chair Fuller Clark and Members of the Committee:

The Rivers Management Advisory Committee (RMAC) is writing to express its support for House Bill 326 as introduced, which modifies the definition of prime wetland to include narrow wetland areas that provide significant wetland function.

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

The RMAC requests that the House amendment to HB 326 relating to highway-right of-ways be clarified. The wording suggests that highway rights-of-way should not be considered prime wetlands or prime wetland buffers, but the sentence is unclear.

The RMAC is a legislatively created body charged to work with the New Hampshire Department of Environmental Services (NHDES) to administer RSA 483, the Rivers Management and Protection Program. The Governor and Council appointed Committee is comprised of members from 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 Program and with advising the NHDES Commissioner on the merits of such legislation.

In conclusion, the RMAC supports HB 326 as introduced 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 Martha Fuller Clark
Chair, Senate Energy and Natural Resources Committee
HB 326 April 23, 2019
Page 2

Should you have any questions regarding our testimony, please feel free to contact me at 603.796.2615
or MLT@naturesource.net.

Sincerely,



Michele L. Tremblay
RMAC Chair

cc: Rep. Chuck Grassie
Rep. Joshua Adjutant
RMAC Representatives
Robert R. Scott, Commissioner, NHDES
Thomas O'Donovan, Director, Water Division, NHDES
Ted Diers, Administrator, Watershed Mgmt. Bur., NHDES
Tracie Sales, Rivers and Lakes Programs Manager, NHDES
Local River Management Advisory Committee Chairs

Voting Members:

David Packard
Chair
NH Lakes Assn.

Bruce Allen
Conservation
Commissions

Mark Borrin
Tourism Industry

Shane Bradt
Scientific Community

Edmund Crawford
Marine Trades
Association

Tiffany Grade
Conservation
Community

Janet Kidder
Planning Boards

Frank Lemay
NH BIA

Lisa Morin
State Conservation
Committee (*pending*)

Rex Norman
Municipal Official

Dick Smith
Fishing Interests

Bruce Temple
NH Fish & Game
Commission (*pending*)

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
NH Dept. of
Ag, Markets & Food

Staff:

Tracie Sales
Program Manager

Jen Drociak
Watershed Coordinator

Mariah Mitchell
Program Assistant

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

April 23, 2019

The Honorable Martha Fuller Clark, Chair
Senate Energy and Natural Resources Committee
Senate House, Room 103
Concord, NH 03301

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

Dear Chair Fuller Clark and Members of the Committee:

The Lakes Management Advisory Committee (LMAC) is writing to express its support for House Bill 326 as introduced, which adds narrow areas of wetland to the definition of prime wetland when the area provides important wetland values.

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 as introduced 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 Martha Fuller Clark
Chair, Senate Energy and Natural Resources Committee
HB 326 April 23, 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
Thomas O'Donovan, Director, Water Division, NHDES
Ted Diers, Administrator, Watershed Mgmt. Bur., NHDES
Tracie Sales, Rivers and Lakes Programs Manager, NHDES

Rick Van de Poll, Ph.D.
30 No. Sandwich Rd.
Center Sandwich, NH 03227

March 20, 2019

TO:

Senate Energy & Natural Resources Committee
Honorable Martha Fuller-Clark, Jeb Bradley, Dan Feltes, David Watters, & Bob Giuda
Senate Office Building
Concord, NH 03301

RE: HB326

Dear Committee Members;

I am writing to you today in support of House Bill 326 relative to prime wetlands, which passed the floor of the House today by 212-134.

As you know, RSA 482-A:15 in the wetlands statute gives municipalities the option of protecting certain wetlands as "prime." These wetlands have special significance "because of their size, unspoiled character, fragile condition, or other relevant characters..." Once approved by the state, a public hearing is required for any proposed impacts to a prime wetland, and greater scrutiny is given each permit application that intends to dredge and fill a prime wetland.

In 2012, this section of the statute was amended to give foresters and loggers easier access to timber. It waived the requirement for them to get wetland permits to cut timber in or adjacent to prime wetlands. Further, it required that prime wetlands "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, ***and shall have a width of at least 50 feet at its narrowest point***" (emphasis added).

It was this last clause that resulted in an unintended consequence that regretfully has prevented many towns from designating prime wetlands since that time. Whereas the intent was to make prime wetlands generally wider than 50 feet, the literal interpretation of the law means that no part of the prime wetland shall be less than 50 feet wide. The legal counsel for DES interpreted the amendment this way when I submitted a report to designate six prime wetlands in Fitzwilliam in 2017. In effect, the unintended consequence of the amendment has been to, as has it has been referred, 'cut off all the fingers and toes of a prime wetland.'

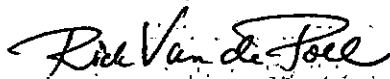
These poorly drained and sometimes very poorly drained edges to high value wetlands contain some of the highest functionality of the entire system. In fact, eliminating them could result in compromising some of the most critical wetland functions such as flood storage, groundwater recharge, wildlife corridors, and rare & endangered species habitat. In the Fitzwilliam example, such an interpretation resulted in 74 'cuts' to the six candidate prime wetlands, with one of the wetlands being cut roughly in half.

HB 326 corrects this unintended consequence and gives back the power to the municipality to designate an entire wetland as prime instead of a cut-up part of it. It also reinforces the idea that the municipality has the power to make such a decision by town ballot, as indicated by the RSA section title, **Local Option**.

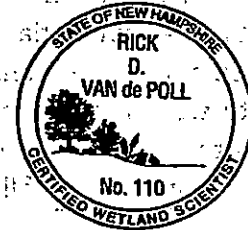
As a certified wetland scientist who has designated hundreds of acres of prime wetlands in 11 towns in the state, and who has fought hard to retain the validity of protecting the highest and best aquatic resources we have, I encourage you to support the passage of this bill in the Senate.

Thank you very much for your time and consideration of these remarks.

Sincerely;

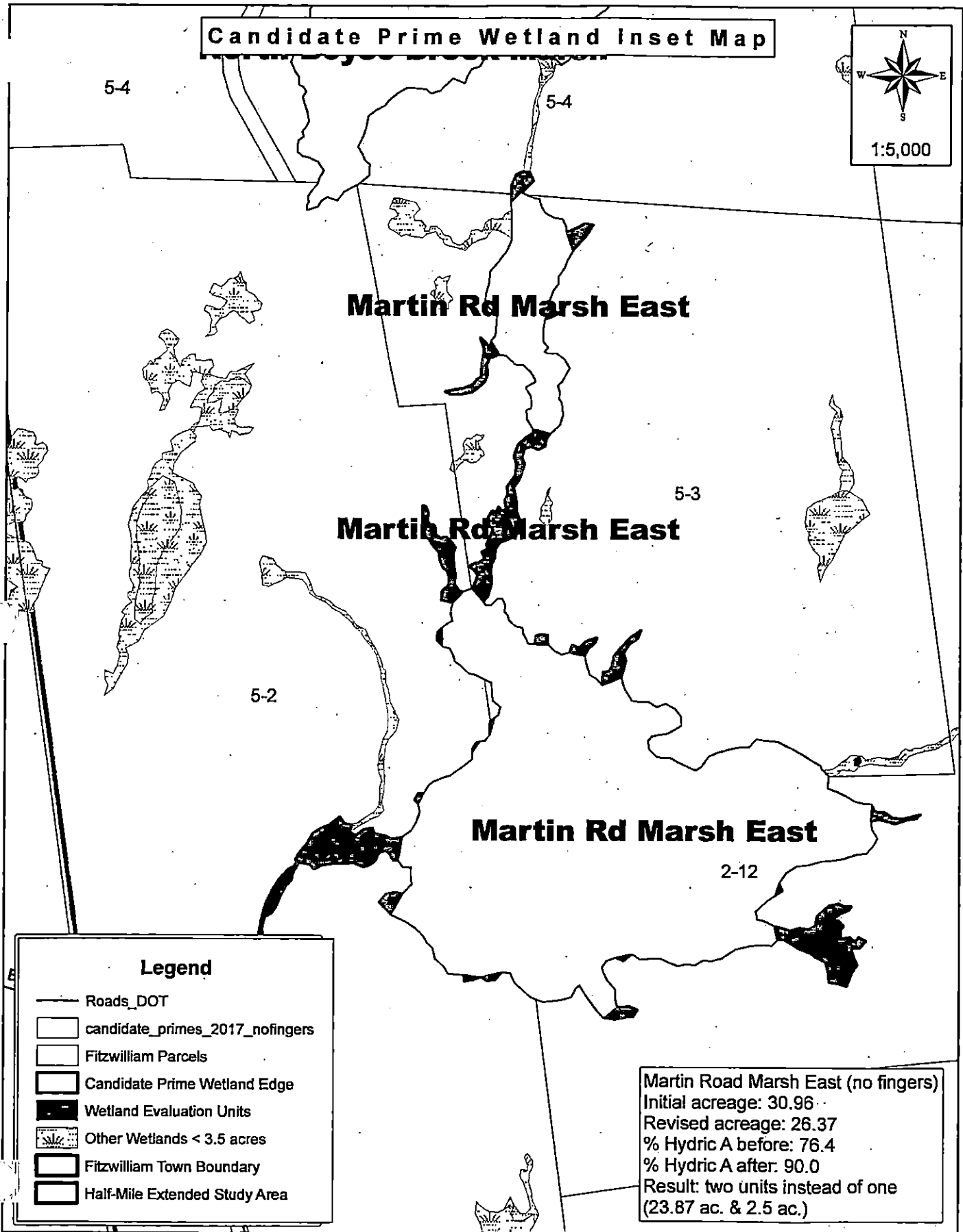
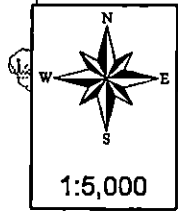


Rick Van de Poll, Ph.D. CWS #110
Ecosystem Management Consultants



AFTER LAW CHANGE

Candidate Prime Wetland Inset Map



Legend

- Roads_DOT
- candidate_primes_2017_nofingers
- Fitzwilliam Parcels
- Candidate Prime Wetland Edge
- Wetland Evaluation Units
- ▨ Other Wetlands < 3.5 acres
- Fitzwilliam Town Boundary
- Half-Mile Extended Study Area

Martin Road Marsh East (no fingers)
 Initial acreage: 30.96
 Revised acreage: 26.37
 % Hydric A before: 76.4
 % Hydric A after: 90.0
 Result: two units instead of one
 (23.87 ac. & 2.5 ac.)

960 480 0 960 Feet



AGC of New Hampshire
Building Forward. Constructing Change.



April 30, 2019

Senator Jeb Bradley
Senator David Watters

Dear Senators,

I would like to comment on behalf of the Associated General Contractors of New Hampshire (AGC of NH) in regard to House Bill 326, relative to the definition of prime wetlands. The association is concerned that this legislation would expand the definition of prime wetlands to areas that span less than 50 feet across. AGC was part of the effort that first established the 50-foot minimum in response to some cities and towns claiming channels and drainage ditches as prime wetlands, which made it difficult for development. The 50-foot minimum also ensures that small areas that don't meet the requirements by themselves can't be "linked" via narrow channels and ditches to areas that meet the definitions of prime wetlands.

The changes proposed in HB 326 would allow municipalities to determine whether a prime wetland's narrower portion provides a "significant contribution to the primary wetland functions". We are concerned that this will permit municipalities to expand designated areas to include sections that weren't initially voted on by the town. AGC would like to clarify that change by adding language requiring that areas less than 50 feet wide must meet the criteria of 4 functions and have the approval of the landowner in order for it to be expanded into the prime wetland.

Our language suggestion is included in red below:

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. An existing prime wetland can be expanded to an area less than 50 feet at its narrowest point across and perpendicular to its longitudinal axis if it can be demonstrated by the municipality that its narrower portions provide a significant contribution to the*

Associated General Contractors of New Hampshire
48 Grandview Road • Bow, NH 03304
T: (603) 225-2701 • F: (603) 226-3859

primary wetland functions of the prime wetland. To qualify as a significant contribution, the narrower portions must contain 4 or more primary wetland functions as defined in RSA 482-A:2 XI and not include any man-made structures as defined in RSA 42-A:3 IV, and the municipality must obtain the approval of the landowner of the narrower portion. 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. "Prime wetlands" shall not include existing state highway right-of-ways or other jurisdictional areas relating to prime wetlands, including adjacent buffers. [Note: DOT recommended an amendment for this last line.]

Thank you for considering our suggestions for HB 326. Please feel free to contact me if you have any questions at 225-2701 or gabbott@agcnh.org.

Sincerely,

Gary A. Abbott,
Executive Vice President

Associated General Contractors of New Hampshire
48 Grandview Road • Bow, NH 03304
T: (603) 225-2701 • F: (603) 226-3859

Voting Sheets

Senate Energy & Natural Resources Committee
EXECUTIVE SESSION RECORD
2019-2020 Session

Bill # HP 326

Hearing date: 04/23/2019

Executive Session date: 05/09/2019

Motion of: Amendment 2019-1820s Vote: 3-1

Committee Member	Present	Made by	Second	Yes	No
Sen. Fuller Clark, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Feltes, Vice Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Watters	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Bradley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Giuda	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Motion of: OTPA Vote: _____

Committee Member	Present	Made by	Second	Yes	No
Sen. Fuller Clark, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Feltes, Vice Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Watters	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Bradley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Giuda	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Present	Made by	Second	Yes	No
Sen. Fuller Clark, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Feltes, Vice Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Watters	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Bradley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Giuda	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: Bradley

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Thursday, May 9, 2019

THE COMMITTEE ON Energy and Natural Resources

to which was referred **HB 326**

AN ACT relative to the definition of prime wetland.

Having considered the same, the committee recommends that the Bill

ought to pass with amendment

by a vote of: 3-1

Amendment # 1888s

Senator Jeb Bradley
For the Committee

Griffin Roberge 271-7875

ENERGY AND NATURAL RESOURCES

HB 326, relative to the definition of prime wetland.

Ought to Pass with Amendment, Vote 3-1.

Senator Jeb Bradley for the committee.

Docket of HB326

Docket Abbreviations

Bill Title: relative to the definition of prime wetland.**Official Docket of HB326.:**

Date	Body	Description
12/31/2018	H	Introduced 01/02/2019 and referred to Resources, Recreation and Development HJ 2 P. 45
1/30/2019	H	Public Hearing: 02/13/2019 01:45 pm LOB 305
3/6/2019	H	Executive Session: 03/13/2019 10:00 am LOB 305
3/14/2019	H	Majority Committee Report: Ought to Pass with Amendment #2019-0672h for 03/19/2019 (Vote 13-7; RC) HC 16 P. 32
3/14/2019	H	Minority Committee Report: Inexpedient to Legislate
3/20/2019	H	Amendment #2019-0672h : AA VV 03/20/2019 HJ 11 P. 22
3/20/2019	H	Ought to Pass with Amendment 2019-0672h: MA RC 212-134 03/20/2019 HJ 11 P. 22
3/29/2019	S	Introduced 03/28/2019 and Referred to Energy and Natural Resources; SJ 12
4/17/2019	S	Hearing: 04/23/2019, Room 103, SH, 09:45 am; SC 19
5/9/2019	S	Committee Report: Ought to Pass with Amendment #2019-1888s , 05/15/2019; SC 22
5/15/2019	S	Committee Amendment #2019-1888s , RC 16Y-8N , AA; 05/15/2019; SJ 16
5/15/2019	S	Ought to Pass with Amendment 2019-1888s, RC 16Y-8N , MA; OT3rdg; 05/15/2019; SJ 16
6/10/2019	H	House Non-Concurs with Senate Amendment 1888s and Requests CofC (Rep. Suzanne Smith): MA VV 06/06/2019 HJ 18 P. 41
6/10/2019	H	Speaker Appoints: Reps. Suzanne Smith, Spang, Grassie, Rung 06/06/2019 HJ 18 P. 41
6/11/2019	S	Sen. Fuller Clark Accedes to House Request for Committee of Conference, MA, VV; (In recess 06/06/2019); SJ 20
6/11/2019	S	President Appoints: Senators Fuller Clark, Watters, Bradley; (In Recess 06/06/2019); SJ 20
6/13/2019	H	Conference Committee Meeting: 06/19/2019 09:00 am LOB 305
6/20/2019	S	Conference Committee Report Filed, #2019-2596c ; 06/27/2019
6/27/2019	S	Conference Committee Report #2019-2596c ; RC 16Y-8N , Adopted; 06/27/2019; SJ 21
6/27/2019	H	Conference Committee Report 2596c: Adopted, VV 06/27/2019 HJ 20 P. 32
7/10/2019	S	Enrolled (In recess 06/27/2019); SJ 21
7/12/2019	H	Enrolled 06/27/2019 HJ 20 P. 56
7/30/2019	H	Vetoed by Governor Sununu 07/29/2019
9/18/2019	H	Veto Sustained 09/18/2019: RC 223-160 Lacking Necessary Two-Thirds Vote HJ 21 P. 21

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: HB 326

Senate Committee: ENR

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

- amendment # 1560h - amendment # 1820

- amendment # 1888 - amendment # _____

Executive Session Sheet

Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

_____ - amendment # _____ _____ - amendment # _____

_____ - amendment # _____ _____ - amendment # _____

Post Floor Action: (if applicable) {Clerk's Office}

Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference): 2596

Enrolled Bill Amendment(s)

Governor's Veto Message

All available versions of the bill: {Clerk's Office}

as amended by the senate _____ as amended by the house

final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Committee Aide

Date

Senate Clerk's Office JM

1 Committee of Conference Report on HB 326, relative to the definition of prime wetland.

2
3 Recommendation:

4 That the House recede from its position of nonconcurrence with the Senate amendment, and
5 concur with the Senate amendment, and

6 That the Senate and House adopt the following new amendment to the bill as amended by the
7 Senate, and pass the bill as so amended:

8
9 Amend the bill by replacing section 1 with the following:

10
11 1 Prime Wetlands; Definition. Amend RSA 482-A:15, I-a and I-b to read as follows:

12 I-a. For the purposes of this chapter, "prime wetlands" shall mean any contiguous areas
13 falling within the jurisdictional definitions of RSA 482-A:2, X and RSA 482-A:4 that, because of their
14 size, unspoiled character, fragile condition, or other relevant factors, make them of substantial
15 significance. A prime wetland shall be at least 2 acres in size, *excluding those areas described in*
16 *paragraph I-b*, shall not consist of a water body only, shall have at least 4 primary wetland
17 functions *within the 2 acre or greater area*, one of which shall be wildlife habitat. *A prime*
18 *wetland* [~~—and~~] shall have a width of at least 50 feet at its narrowest point *across and*
19 *perpendicular to its longitudinal axis*.

20 I-b. *A prime wetland may include additional connected narrower wetland areas*
21 *less than 50 feet at their narrowest point across and perpendicular to their longitudinal*
22 *axis if the municipality can demonstrate that any such narrower portion provides a*
23 *significant contribution to the primary wetland functions of the prime wetland. To qualify*
24 *as a significant contribution, a narrower portion shall contain 4 or more primary wetland*
25 *functions as defined in RSA 482-A:2, XI and shall not include any man-made structures*
26 *under RSA 482-A:3, IV(b). The municipality shall consider any potential adverse effects on*
27 *the landowner from including any narrower portion*.

28 I-c. [~~The~~] *The* boundary of a prime wetland shall coincide, where present, with the upland
29 edge of any wetland, as defined in RSA 482-A:2, X, that is part of the prime wetland. On-site
30 verification of proposed prime wetland boundaries shall be performed where landowner permission
31 is provided.

32 I-d. *For the purposes of this paragraph existing state highway rights-of-way,*
33 *including associated permanent easements, shall not include prime wetlands or their*
34 *adjacent buffers*.

Committee of Conference Report on HB 326
- Page 2 -

35 ~~[I-b.]~~ *I-e.* The commissioner shall adopt rules under RSA 541-A relative to the form, criteria,
36 and methods that shall be used to designate, map, and document prime wetlands, determine
37 boundaries in the field, and amend maps and designations once filed and accepted by the
38 department under paragraph II.

The signatures below attest to the authenticity of this Report on HB 326, relative to the definition of
prime wetland.

Conferees on the Part of the Senate

Conferees on the Part of the House

Sen. Fuller Clark, Dist. 21

Rep. Suzanne Smith, Graf. 8

Sen. Watters, Dist. 4

Rep. Spang, Straf. 6

Sen. Bradley, Dist. 3

Rep. Grassie, Straf. 11

Rep. Rung, Hills. 21

Committee of Conference Report on HB 326
- Page 3 -

2019-2596-CofC

AMENDED ANALYSIS

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