

CHAPTER 235
SB 19 – FINAL VERSION

02/03/11 0092s
4Jan2012... 2590h
06/06/12 2396CofC

11-0955
06/10

2012 SESSION

SENATE BILL **19**

AN ACT relative to the definition and designation of “prime wetlands.”

SPONSORS: Sen. Odell, Dist 8; Sen. Rausch, Dist 19

COMMITTEE: Energy and Natural Resources

AMENDED ANALYSIS

This bill modifies the definition of “prime wetlands.”

This bill modifies the process for designating prime wetlands.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twelve

AN ACT relative to the definition and designation of “prime wetlands.”

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

1 235:1 Administrative Provisions. Amend RSA 482-A:11, IV(a) and RSA 482-A:11, IV(b)(1) to
2 read as follows:

3 IV.(a) The department shall not grant a permit with respect to any project to be undertaken
4 in [~~or within 100 feet of~~] an area mapped, designated, and filed as a prime wetland pursuant to
5 RSA 482-A:15, ***or within 100 feet of any prime wetland where a 100 foot buffer was required***
6 ***at the time of designation***, unless the department first notifies the local governing body, the
7 planning board, if any, and the conservation commission, if any, in the municipality within which
8 the wetlands lie, either in whole or in part, of its decision. Any such permit shall not be issued
9 unless the department is able, specifically, to find clear and convincing evidence on the basis of all
10 information considered by the department, and after a public hearing, if a public hearing is deemed
11 necessary under RSA 482-A:8, that the proposed project, either alone or in conjunction with other
12 human activity, will not result in the significant net loss of any of the values set forth in RSA 482-
13 A:1. This paragraph shall not be construed so as to relieve the department of its statutory
14 obligations under this chapter to protect wetlands not so mapped and designated.

15 (b)(1) A property owner may request from the department a waiver from subparagraph
16 (a), under rules adopted by the department, to perform forest management work and related
17 activities in the forested portion of a prime wetland or its 100-foot buffer, ***where such buffer was***
18 ***required at the time of designation, that do not qualify under the notification of forest***
19 ***management or timber harvest activities having minimum wetlands impact process***. The
20 request for the waiver shall include, but not be limited to:

21 (A) A sketch of the property depicting the best approximate location of each
22 prime wetland and its 100-foot buffer, ***where such buffer was required at the time of***
23 ***designation***, in which work is proposed and the location of proposed work, including access roads;

24 (B) A written description of the work to be performed and a copy of the notice of
25 intent to cut, if applicable; and

26 (C) A list of the prime wetland values as identified by the municipality in
27 designating each prime wetland under RSA 482-A:15.

28 235:2 Local Options; Prime Wetland. Amend RSA 482-A:15, I to read as follows:

29 I.(a) Any municipality, by its conservation commission, or, in the absence of a conservation

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1 commission, the planning board, or, in the absence of a planning board, the local governing body,
2 may undertake to designate, map, and document prime wetlands lying within its boundaries, or if
3 such areas lie only partly within its boundaries, then that portion lying within its boundaries. ***The***
4 ***conservation commission, planning board, or governing body shall give written notice to***
5 ***the owner of the affected land and all abutters 30 days prior to the public hearing, before***
6 ***designating any property as prime wetlands.***

7 (b) ***Prior to municipal vote under paragraph II, maps that depict wetland***
8 ***boundaries shall be prepared and landowners having proposed prime wetlands on their***
9 ***property shall be informed of the boundary delineation. The acceptance of any prime***
10 ***wetland designation by the department prior to the effective date of this paragraph shall***
11 ***remain in effect; however, any revision to the boundary shall be delineated using wetland***
12 ***delineation methods as adopted by the department and by the standards of this section.***

13 ***I-a.*** For the purposes of this chapter, “prime wetlands” shall mean any ***contiguous*** areas
14 falling within the jurisdictional definitions of RSA ~~[482-A:3]~~ ***482-A:2, X*** and RSA 482-A:4 ~~[that~~
15 ~~possess one or more of the values set forth in RSA 482-A:1 and]~~ that, because of their size, unspoiled
16 character, fragile condition, or other relevant factors, make them of substantial significance. ***A***
17 ***prime wetland shall be at least 2 acres in size, shall not consist of a water body only, shall***
18 ***have at least 4 primary wetland functions, one of which shall be wildlife habitat, and shall***
19 ***have a width of at least 50 feet at its narrowest point. The boundary of a prime wetland***
20 ***shall coincide, where present, with the upland edge of any wetland, as defined in RSA 482-***
21 ***A:2, X, that is part of the prime wetland. On-site verification of proposed prime wetland***
22 ***boundaries shall be performed where landowner permission is provided.***

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

27 235:3 Administrative Provisions. Amend RSA 482-A:11, IV(c) to read as follows:

28 (c) A property owner may request a waiver from the department, under rules adopted by
29 the department under RSA 541-A, from the provisions of this chapter to perform work not addressed
30 under subparagraph (b) within a portion of ~~the~~ ***any*** 100-foot buffer of a prime wetland on his or her
31 property ***as provided in subparagraph (a).*** At the time of the waiver request, the property owner
32 shall notify, by certified mail, the local governing body, the planning board, if any, and the
33 conservation commission, if any, of the municipalities in which the waiver is being sought that a
34 waiver is being sought from the department. Where a buffer associated with the application extends
35 into an abutting property, the property owner requesting the waiver shall provide notice to the
36 owner of that abutting property.

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1 235:4 New Paragraph; Definitions; Wetland Functions. Amend RSA 482-A:2 by inserting after
2 paragraph X the following new paragraph:

3 XI. “Wetland functions” means the practical measurable values of wetlands. The 12 primary
4 wetland functions are ecological integrity, wetland-dependent wildlife habitat, fish and aquatic life
5 habitat, scenic quality, educational potential, wetland-based recreation, flood storage, groundwater
6 recharge, sediment trapping, nutrient trapping/retention/transformation, shoreline anchoring, and
7 noteworthiness.

8 235:5 Effective Date. This act shall take effect 60 days after its passage.

9

10 Approved: June 18, 2012

11 Effective Date: August 17, 2012