

CHAPTER 43
HB 416 – FINAL VERSION

2013 SESSION

13-0522
05/10

HOUSE BILL **416**

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

SPONSORS: Rep. Ahlgren, Carr 6

COMMITTEE: Resources, Recreation and Development

ANALYSIS

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

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

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

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

1 43:1 Public Comment and Hearing. Amend RSA 482-A:8 to read as follows:

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

14 43:2 Dredge and Fill in Wetlands; Mediation and Appeal. Amend RSA 482-A:10 to read as
15 follows:

16 482-A:10 Appeals.

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

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

28 [~~H.~~] A request for reconsideration of a department decision under RSA 482 A:3 shall be filed
29 with the department within 30 days of issuance of the department's decision. The request for

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1 ~~reconsideration shall describe in detail each ground for the request for reconsideration.~~

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

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

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

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

36 ~~V-a. Any person whose rights will be directly affected by the outcome of the appeal may~~

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

3 VI. On appeal, the council may affirm the decision of the department or may remand to the
4 department with a determination that the decision complained of is unlawful or unreasonable. The
5 council shall specify the factual and legal basis for its determination and shall identify the evidence
6 in the record created before the council that supports its decision.

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

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

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

15 X. [Repealed.]

16 XI. [Repealed.]

17 XII. [Repealed.]

18 XIII. [Repealed.]

19 XIV. [Repealed.]

20 XV. [Repealed.]

21 XVI. [Repealed.]

22 XVII. [Repealed.]

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

31 43:3 Dwellings Over Water. Amend RSA 482-A:26, V to read as follows:

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

35 43:4 Effective Date. This act shall take effect 60 days after its passage.

36 Approved: June 4, 2013

37 Effective Date: August 3, 2013