

**HB 349 - AS INTRODUCED**

2015 SESSION

15-0605  
06/05

HOUSE BILL

**349**

AN ACT

relative to state buffers for projects requiring wetland permits.

SPONSORS:

Rep. Spang, Straf 6; Rep. Oxenham, Sull 1; Rep. Gottling, Sull 2; Rep. Beaulieu, Hills 45; Sen. Fuller Clark, Dist 21; Sen. Watters, Dist 4

COMMITTEE:

Resources, Recreation and Development

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ANALYSIS

This bill requires the department of environmental services to consider impacts to wetland buffers before granting permits for filling and dredging in wetlands.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to state buffers for projects requiring wetland permits.

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

1 1 Fill and Dredge in Wetlands; Definitions. RSA 482-A:2 is repealed and reenacted to read as  
2 follows:

3 482-A:2 Definitions. In this chapter:

4 I. "Adjacent area" means a bordering, contiguous, or neighboring area. Wetlands separated  
5 from other waters by dikes or barriers, natural river berms, beach dunes, and the like are "adjacent  
6 areas".

7 II. "Boat slip" means:

8 (a) On water bodies over 10,000 acres, means a volume of water 25 feet long, 8 feet wide,  
9 and 3 feet deep as measured at normal high water and located adjacent to a structure to which a  
10 watercraft may be secured.

11 (b) On water bodies of 10,000 acres or less, a volume of water 20 feet long, 6 feet wide,  
12 and 3 feet deep as measured at normal high water mark and located adjacent to a structure to which  
13 a watercraft may be secured.

14 III. "Commissioner" means the commissioner of environmental services.

15 IV. "Council" means the wetlands council established in RSA 21-O:5-a.

16 V. "Department" means the department of environmental services.

17 VI. "Direct impact" means an impact to the functional values of a wetland resulting from  
18 activities in the wetland area itself.

19 VII. "Division" means the division of water resources, department of environmental services.

20 VIII. "Indirect impact" means a change to one or more of the values of a wetland enumerated  
21 in RSA 482-A:1 resulting from a proposed activity in the upland area adjacent to a wetland that  
22 requires a permit, such as soil disturbance, the removal of any woody vegetation, impacts resulting  
23 from the use of construction machinery, or impacts from the operation or maintenance of a facility.

24 IX. "Local governing body" means "local governing body" as defined in RSA 672:6.

25 X. "Local legislative body" means "local legislative body" as defined in RSA 672:8.

26 XI. "Mean high tide" shall be determined according to the published tables and standards of  
27 the United States Coast and Geodetic Survey, adjusted to the locality from such tables.

28 XII. "Municipality" shall include cities, towns, and village districts.

29 XIII. "Person" shall mean any natural person, firm, partnership, association, corporation,  
30 company, organization, or legal entity of any kind including municipal corporations, governmental  
31 departments and agencies, or their subdivisions.

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1           XIV. “Sand dune” shall mean a hill or ridge of sand piled up by the wind and commonly  
2 found on the seacoast.

3           XV. “Structure” means, notwithstanding any other provision of law, something installed,  
4 erected, or constructed, but shall not include a bench, landing with dimensions no larger than 10 feet  
5 wide by 10 feet long, or stairs with a width not exceeding 6 feet, provided that such benches,  
6 landings, or stairs are installed, erected, or constructed without regrading or recontouring of the  
7 shoreline and are not over water. Structures include, but are not limited to, the following: fence,  
8 dock, breakwater, post, pile, building, bridge, culvert, and wall.

9           XVII. “Wetland buffer” means an area of upland adjacent to a wetland intended to protect  
10 the wetland from indirect impacts resulting from activities in the upland that degrade the wetland  
11 functions and values enumerated in RSA 482-A:1. It shall be measured from the edge of the wetland  
12 or bank on a horizontal plane to the outer edge of the wetland buffer.

13           XVIII. “Wetland functions” means the practical measurable values of wetlands. The 12  
14 primary wetland functions are ecological integrity, wetland-dependent wildlife habitat, fish and  
15 aquatic life habitat, scenic quality, educational potential, wetland-based recreation, flood storage,  
16 groundwater recharge, sediment trapping, nutrient trapping/retention/transformation, shoreline  
17 anchoring, and noteworthiness.

18           XVIII. “Wetlands” means an area that is inundated or saturated by surface water or  
19 groundwater at a frequency and duration sufficient to support, and that under normal conditions  
20 does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

21           2 New Section; Fill and Dredge in Wetlands; Wetland Buffers. Amend RSA 482-A by inserting  
22 after section 4 the following new section:

23           482-A:4-a Wetland Buffers.

24           I. Except as provided in paragraph X, for any project or activity that requires a permit under  
25 this chapter, a buffer shall be allowed to revert to and be maintained in a natural vegetated state.

26           II.(a) The department shall consider all impacts to a wetland and its buffer, both direct and  
27 indirect, that may result from all activities of a proposed project before granting a permit under this  
28 section. However, consideration of indirect impacts by the department shall only be triggered by a  
29 direct impact to the wetland. Activities shall include construction, post-construction use, and post-  
30 construction maintenance of a proposed project or activity.

31           (b) Except for projects under paragraph IV and paragraph X, for any wetland for which a  
32 permit is required, the applicant may choose between a standard buffer under paragraph III or an  
33 evaluation-based buffer under paragraph V.

34           III. The standard buffer shall be 100 feet from the edge of the wetland or bank.

35           IV. Except for projects under paragraphs III and X, the department shall set the minimum  
36 buffer size for wetlands as follows:

37           (a) 100 feet for tier III, or 3rd order perennial streams having a drainage area of 660

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1 acres or more.

2 (b) 150 feet for documented vernal pools.

3 (c) 150 feet for state or locally recognized high value, highly ranked, or exemplary  
4 wetlands.

5 (d) 50 feet for wetlands adjacent to highly erodible upland soils, with an erodability  
6 index equal to or greater than 8.0.

7 V. For project areas other than those in paragraph IV and paragraph X, there shall be a  
8 buffer based on an evaluation by a certified wetland scientist of the following 7 functional values of  
9 the wetland being impacted by the proposed activity.

10 (a) Wetlands with functional values as follows will require a 50 foot buffer:

11 (1) Ecological integrity of at least 4.5 and less than 6.4.

12 (2) Wetland dependent wildlife of at least 4.5 and less than 5.9.

13 (3) Fish and aquatic life habitat of at least 4.1 and less than 5.4.

14 (4) Flood storage of at least 1.6 and less than 2.4

15 (5) Groundwater recharge of at least 1.1 and less than 3.0.

16 (6) Sediment trapping of at least 4.1 and less than 5.5.

17 (7) Nutrient transformation of at least 4.1 and less than 5.5.

18 (b) Wetlands with functional values as follows will require a 75 foot buffer:

19 (1) Ecological integrity from 6.5 to 8.4.

20 (2) Wetland dependent wildlife habitat from 6.0 to 7.5.

21 (3) Fish and aquatic life habitat from 5.5 to 6.5.

22 (4) Flood storage from 2.5 to 4.9.

23 (5) Groundwater recharge from 3.1 to 5.0.

24 (6) Sediment trapping from 5.5 to 6.9.

25 (7) Nutrient transformation from 5.6 to 7.4.

26 (c) Wetlands with functional values as follows will require a 100 foot buffer:

27 (1) Ecological integrity equal to or greater than 8.5.

28 (2) Wetland dependent wildlife equal to or greater than 7.5.

29 (3) Fish and aquatic life habitat equal to or greater than 6.5.

30 (4) Flood storage equal to or greater than 5.0.

31 (5) Groundwater recharge equal to or greater than 5.0.

32 (6) Sediment trapping equal to or greater than 7.0.

33 (7) Nutrient transformation equal to or greater than 7.5.

34 VI. Buffer minimums shall be set by the wetland's highest score for any one of the functions  
35 under paragraph V.

36 VII. The department may provide relief to the requirements of this section if it can be shown  
37 that a proposed action will result in an equivalent or increased level of ecological benefit to the

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1 wetland. Such action may include narrowing one or more areas of wetland buffer, provided others  
2 are widened, or accepting other mitigation. Best management practices shall be implemented as  
3 necessary to provide the wetland protection.

4 VIII. The applicant shall provide the information and analyses required by the department  
5 to assess direct and indirect impacts on wetlands and aquatic resources. The information shall be  
6 prepared by a New Hampshire certified wetland scientist or other qualified professional as  
7 determined by the department.

8 IX. The department may provide a waiver to the requirements of this section, according to  
9 RSA 482-A:11.

10 X. This section shall not apply to the following:

- 11 (a) Man-made ditches.
- 12 (b) Man-made water conveyance structures.
- 13 (c) Man-made ponds other than those created as compensatory mitigation.
- 14 (d) Retention or detention ponds.
- 15 (e) Low impact development measures that are not created for wildlife habitat.
- 16 (f) Stormwater treatment wetlands.
- 17 (g) Stormwater treatment swales.
- 18 (h) Man-made wash ponds in aggregate industries.
- 19 (i) Minimum impact agriculture when performed in accordance with best management  
20 practices under RSA 483-B:3, III.
- 21 (j) Minimum impact timber harvesting when conducted in compliance with RSA 482-A:3,  
22 V, RSA 227-J:9, and best management practices for erosion control during timber harvesting  
23 activities.
- 24 (k) Activities regulated under RSA 483-B, the shoreland water quality protection act.
- 25 (m) Activities within 100 feet of the highest observable tide line.
- 26 (n) Activities for the management of areas to deter wildlife for public safety  
27 purposes, such as areas around airports.
- 28 (o) Public utility maintenance activities conducted in accordance with best  
29 management practices manual for utility maintenance in and adjacent to wetlands and water bodies  
30 in New Hampshire.
- 31 (p) Public repair or replacement of culverts or stream crossing structures in accordance  
32 with the best management practices for routine roadway maintenance in New Hampshire.
- 33 (q) Activities subject to permit-by-notification.
- 34 (r) Persons who construct and maintain recreational trails in accordance with the best  
35 management practices for erosion control during trail maintenance and construction published by  
36 the department of resources and economic development.

37 XI. Nonconforming uses and structures previously situated within the buffer may be

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1 expanded, provided the department finds that the proposed expansion conforms to the following  
2 addition standards:

3 (a) The encroachment upon the wetland is not increased and the expansion is located as  
4 far from the wetland as possible.

5 (b) The use or structure is located to minimize disturbance of existing vegetation within  
6 the buffer.

7 (c) Any potential decrease in wetland functional values resulting from the activity or use  
8 is properly mitigated on the site in accordance with 482-A:4-a, V. Mitigation strategies may include,  
9 but are not limited to: planting of indigenous vegetation in the buffer, improving existing or  
10 implementing new stormwater management and treatment, removal and management of invasive  
11 species on the property, or the removal of excess impervious surfaces.

12 XII. The department shall use its assessment of impacts, both direct and indirect, to render  
13 determinations relative to avoidance, minimization and compensatory mitigation, and, for major and  
14 minor projects, to determine whether the project proposal is the alternative with the least adverse  
15 impact on wetlands and aquatic resources.

16 XIII. The buffer shall not in itself constitute compensation for mitigation for wetland  
17 impacts nor replace mandatory buffer requirements for aquatic resource compensatory mitigation  
18 under RSA 482-A:28.

19 2 Local Option; Prime Wetlands. Amend RSA 482-A:15, I-a to read as follows:

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

29 3 Local Land Use Planning; Wetlands. Amend RSA 674:55 to read as follows:

30 674:55 Wetlands. Wherever the term "wetlands," whether singular or plural, is used in  
31 regulations and ordinances adopted pursuant to this chapter, such term shall be given the meaning  
32 in RSA 482-A:2, [~~X~~] *XVIII* and the delineation of wetlands for purposes of such regulations and  
33 ordinances shall be as prescribed in rules adopted under RSA 482-A. Nothing in this subdivision  
34 shall be construed to limit the powers otherwise granted under this chapter for municipalities to  
35 plan land use and enact regulations based on consideration of environmental characteristics,  
36 vegetation, wildlife habit, open space, drainage, potential for flooding, and protection of natural  
37 resources, including critical or sensitive areas or resources and groundwater. In the context of such

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1 authority, municipalities may define and delineate resources or environmental characteristics, such  
2 as wet soils or areas, and shoreline or buffer areas, in a manner different from the common meaning  
3 and delineation of wetlands required herein.

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