

HB 1451-FN - AS INTRODUCED

2022 SESSION

22-2131

08/04

HOUSE BILL            ***1451-FN***

AN ACT                relative to the recovery of submerged logs.

SPONSORS:            Rep. Adjutant, Graf. 17

COMMITTEE:          Resources, Recreation and Development

---

ANALYSIS

This bill establishes a permit and process for the removal of submerged logs. This bill also establishes the submerged log recovery fund.

-----

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                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to the recovery of submerged logs.

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

1 1 New Subdivision; Submerged Log Recovery. Amend RSA 487 by inserting after section 43 the  
2 following new subdivision:

3 Submerged Log Recovery

4 487:44 Definitions. In this subdivision:

5 I. "Bottomland" means land the state of New Hampshire and bays and harbors of the lakes,  
6 ponds, and shores lying below and lake ward of the ordinary high-water mark defined in RSA  
7 487:44,V.

8 II. "Department" means the department of environmental services.

9 III. "Fair market value" means the price based upon the unique historical and physical  
10 properties, including, but not limited to, species, growth rates, volume, and condition of the  
11 submerged logs as calculated at dockside following delivery to shore.

12 IV. "Lakes" have the same meaning as RSA 271:20.

13 V. "Ordinary high-water mark" means the elevations described in RSA 483-B:4, XI-e. When  
14 the soil, configuration of the surface, or vegetation has been altered by human activity, the ordinary  
15 high-water mark is located where it would have been if this alternation had not occurred.

16 VI. "Patented lands" means any bottomlands lying within a specific government grant area,  
17 including a private or federally-owned land.

18 VII. "Riparian owner" means a person who owns frontage bordering bottomlands.

19 VIII. "Riparian rights" means those rights associated with the ownership of frontage  
20 bordering bottomlands subject to the public trust.

21 IX. "Submerged log" means a portion of the trunk of a felled tree that has not been furthered  
22 processed for any end use and is located on, in, over, or under bottomland. "Submerged log" shall not  
23 include a portion of a tree that is located in the water or on, in, over, or under bottomland that poses  
24 a navigational or safety hazard or is of no or little commercial value.

25 X. "Unpatented lands" means all bottomlands except patented lands.

26 487:45 Submerged Logs; Reservation of Ownership Rights. This state reserves to itself title and  
27 ownership of all submerged logs lying on or over, embedded in, or buried under unpatented lands.

28 487:46 Removal of Submerged Logs from Bottomland Patented Lands, or Underwater Preserves;  
29 Permit.

30 I. No person shall remove submerged logs from bottomlands except as authorized by a  
31 permit issued by the department pursuant to RSA 487:47.

1           II. The department may issue a permit under this subdivision to a person for the removal of  
2 submerged logs from patented lands if permission is received from the lawful owner of the patented  
3 lands.

4           III. No person shall recover, alter, or destroy abandoned property while engaging in  
5 submerged log removal operations under a submerged log removal permit issued under this  
6 subdivision.

7           487:47 Application for Submerged Log Removal Permit.

8           I. Applications for submerged log removal permits shall be submitted before March 1 of each  
9 calendar year.

10          II. An application for a submerged log removal permit shall be submitted in writing on a  
11 form provided by the department and shall include:

12           (a) A description of the proposed bottomland log removal area with boundaries  
13 delineated by the use of current technology such as a digital global positioning system or other  
14 technology approved by the department. The proposed bottomland log removal area shall be a  
15 contiguous area of not more than 320 acres. The area proposed shall be square or rectangular in  
16 shape, and the length shall not exceed the width by more than a factor of 6.

17           (b) A description of the methods to be used to raise the submerged logs, the time of year  
18 during which submerged logs will be raised, and the procedures to be used for transferring logs to  
19 the shore.

20           (c) Identification of any adverse environmental impacts associated with the proposed  
21 submerged log removal method.

22           (d) Identification of the steps proposed to mitigate any adverse environmental impacts  
23 caused by the proposed submerged log removal operation.

24           (e) Other information that the department considers necessary in evaluating a  
25 submerged log removal permit application.

26           (f) An application fee of \$100.

27          III. An application for a submerged log removal permit shall not be complete until all  
28 information requested on the application form and any other information requested by the  
29 department are received. Within 30 days of its receipt of an application, the department shall notify  
30 the applicant in writing if the application is deficient. The applicant shall submit the requested  
31 information to the department with 30 days after the date the notice is provided. If the applicant  
32 fails to respond within the 30-day period, the department shall deny the submerged log removal  
33 permit unless the applicant requests and the department approves an extension of time based upon  
34 the applicant's reasonable justification for the extension.

35          IV. Application fees received under this section shall be placed in the submerged log fund  
36 established in RSA 487:51.

1 V. Upon receiving a complete application for a submerged log removal permit, the  
2 department shall:

3 (a) Place the application on public notice for a 20-day period for review and comment;  
4 and

5 (b) Retain a copy for its own review and comment.

6 VI. The department shall review each complete application received for a submerged log  
7 removal permit and shall not issue a permit unless it determines both of the following:

8 (a) That any adverse impacts, including but not limited to, impacts to the environment,  
9 natural resources, riparian rights, and the public trust are minimal and will be mitigated to the  
10 extent practicable; and

11 (b) That the proposed activity will not unreasonably affect the public health, safety, and  
12 welfare.

13 VII. The department may determine that certain areas within a proposed bottomland log  
14 removal area described in an application for a submerged log removal permit shall not be authorized  
15 for submerged log removal based upon adverse impacts, including, but not limited to, adverse  
16 impacts to the environment, natural resources, riparian rights, and the public trust.

17 VIII. The department shall make a decision on whether or not to issue a submerged log  
18 removal permit under this section within 30 days after the close of the review and comment period  
19 or, if a public hearing is held, within 30 days after the date of that public hearing.

20 IX. If the department issues a submerged log removal permit, the department shall  
21 condition the permit on compliance with both of the following:

22 (a) The permit holder has provided the department with a \$500 log recovery fee.

23 (b) The permittee has provided the department a bond as requested in RSA 487:48, VII.

24 X. The department shall deposit all log recovery fees from subparagraph IX(a) into the  
25 submerged log recovery fund established in RSA 487:51.

26 487:48 Submerged Log Removal Permit; Transfer; Termination.

27 I. The department shall not authorize the same bottomland log removal area in more than  
28 one submerged log removal permit at any time.

29 II. The department may modify the boundaries of a proposed bottomland log removal area in  
30 a submerged log removal permit to avoid overlaps with other active submerged log removal permits  
31 or adverse impacts, including, but not limited to, impacts to the environment, natural resources,  
32 riparian rights, and the public trust.

33 III. A submerged log removal plan approved by the department shall be included in each  
34 submerged log removal permit.

35 IV. A submerged log removal permit shall contain terms and conditions that are determined  
36 by the department to protect the environment, natural resources, riparian rights, and the public  
37 trust.

1 V. Each submerged log removal permit shall expire 5 years after the date on which the  
2 permit is issued. If federal approval is required, an applicant shall notify the department of the date  
3 on which the federal government issued its approval for the submerged log removal permit.

4 VI. A submerged log removal permit issued under this section is not transferable unless the  
5 transfer is approved in writing by the department.

6 VII. An applicant for a submerged log removal permit shall provide a bond acceptable to the  
7 department required by the department based upon permit conditions including in the amount of not  
8 less than \$1,000 or more than \$50,000 as required by the department based upon permit conditions  
9 including costs of restoration and payments. Except as provided in paragraph VIII, the term of the  
10 bond shall extend for one year following the expiration of the submerged log removal permit. The  
11 bond shall be provided to the department at least 10 days prior to beginning submerged log removal  
12 in a bottomland log removal area. The bond shall ensure compliance with the submerged log  
13 removal permit and all required payments under RSA 487:50. If a submerged log removal permit is  
14 terminated under paragraph VIII, the department shall issue a written statement releasing the  
15 permit holder or bonding company or both upon satisfaction of the department as to the compliance  
16 of the permit holder with the terms and conditions of the permit and satisfaction of all payments as  
17 required in RSA 487:50.

18 VIII. A permit holder may request in writing, and the department may grant, termination of  
19 a submerged log removal permit prior to the expiration date, including release form quarterly  
20 reports and bond requirements.

21 487:49 Application for Permit; Hearing.

22 I. The department may hold a public hearing on an application for a submerged log removal  
23 permit if the department desires additional information before making a decision on the permit  
24 application, or upon request if such request is made within the public notice period.

25 II. An applicant for a submerged log removal permit or a riparian owner who is aggrieved by  
26 an action or inaction of the department under this subdivision may request a formal hearing on the  
27 matter.

28 487:50 Sawlog Stumpage Value; Disposition of Payments.

29 I. The state reserves a payment of 15 percent of the sawlog stumpage value of each  
30 submerged log that is removed from public lands and intended for sale to another party. As used in  
31 this subdivision, "sawlog stumpage value" means the price received from recovered submerged logs.

32 II. The holder of a submerged log removal permit shall provide the department with a  
33 detailed report and all payments due under this section within 30 day after the close of each  
34 calendar quarter. The report shall include an accurate scaling at dockside of all submerged logs  
35 removed by species. The permit holder shall provide for an independent agent, approved by the  
36 department in writing, to conduct the scaling and species determination.

1 III. All payments received under this section shall be forwarded to the state treasury for  
2 deposit into the submerged log fund established in RSA 487:51.

3 IV. After a permit holder is notified in writing that a payment under this section is overdue,  
4 the department may order suspension of the submerged log removal permit until the payment is  
5 submitted in full. The permit holder shall not resume submerged log removal operations until the  
6 department provides written authorization for the operations to resume.

7 487:51 Submerged Log Recovery Fund. There is hereby established the submerged log recovery  
8 fund. The fund shall be administered by the department and shall be kept distinct and separate  
9 from all other funds. All fees collected under this subdivision shall be credited to the fund. All  
10 moneys in the fund shall be nonlapsing and continually appropriated to the department for the  
11 purposes of this subdivision.

12 487:52 Civil Enforcement and Penalties.

13 I. The department may bring a civil action against a person in the superior court in the  
14 county in which a violation occurs to do the following:

15 (a) Enforce compliance with subdivision and any rules adopted under this subdivision.

16 (b) Restrain a violation of this subdivision or any rules adopted under this subdivision.

17 (c) Enjoy the further performance of, or order the removal of any project that is  
18 undertaken contrary to this subdivision or the rules adopted under this subdivision.

19 (d) Enforce a permit issued under this subdivision.

20 (e) Order the restoration of an area affected by a violation of this subdivision or the rules  
21 adopted under this subdivision to its prior condition.

22 II. In an action brought under this subdivision, the superior court, in addition to any other  
23 relief granted, may assess a civil fine of no more than \$5,000 per day for each day of violation of this  
24 subdivision or the rules adopted under this subdivision.

25 III. Any civil fine or remedy assessed, sought or agreed to by the department shall be  
26 appropriate to the violation.

27 IV. Civil fines recovered under this section shall be deposited in the submerged log recovery  
28 fund established in RSA 487:51.

29 487:53 Criminal Enforcement and Penalties.

30 I. A person who commits any of the following acts shall guilty of a class B misdemeanor  
31 punishable by a fine of no more than \$10,000 per day for each day of violation.

32 (a) Violates this subdivision or any rule adopted under this subdivision.

33 (b) Violates a permit issued under this subdivision.

34 (c) Makes a false statement, representation, or certification in an application for or with  
35 regard to a permit or in a notice or report required by a permit.

36 (d) Renders inaccurate any monitoring device or method required to be maintained by a  
37 permit.

**HB 1451-FN - AS INTRODUCED**

**- Page 6 -**

1           II. In addition to any other penalty provided in this section, the court shall order a person  
2 convicted under this section to return to the state any logs removed from bottomlands in violation of  
3 this subdivision or the rules adopted under this subdivision, or to compensate the state for the full  
4 market value of the logs. If the person convicted under this section had been issued a permit under  
5 this subdivision, the permit shall be void as of the date of the conviction.

6           487:54 Rulemaking. The department may adopt rules under RSA 541-A for the administration  
7 of this subdivision.

8           2 New Subparagraph; Submerged Log Recovery Fund. Amend RSA 6:12, I(b) by inserting after  
9 subparagraph (382) the following new subparagraph:

10                       (383) Moneys deposited in the submerged log recovery fund established in RSA  
11 487:51.

12           3 Effective Date. This act shall take effect January 1, 2023.

**HB 1451-FN- FISCAL NOTE  
AS INTRODUCED**

AN ACT relative to the recovery of submerged logs.

**FISCAL IMPACT:**     State             County             Local             None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	Indeterminable	Indeterminable	Indeterminable
<b>Expenditures</b>	\$0	Indeterminable Increase in Excess of \$191,000	Indeterminable Increase In Excess of \$93,000	Indeterminable Increase In Excess of \$97,000
<b>Funding Source:</b>	<input checked="" type="checkbox"/> General <input type="checkbox"/> Education <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Submerged Log Recovery Fund			

**COUNTY:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable	Indeterminable	Indeterminable

**METHODOLOGY:**

This bill creates a new permitting process for the salvage of timber from the bottom of lakes, requiring applicants to pay \$100 for the application fee and a \$500 log recovery fee before any work commences. These funds would be deposited in a new Submerged Log Recovery Fund (Fund). In addition, permit holders must pay 15 percent of sawlog stumpage value for any submerged log remove, which would also be deposited into the Fund. The Department states there are about 1,000 lakes and ponds in the state and there is no inventory of which lakes contain submerged logs. At this time, there is no way of estimating the amount of income that this bill could generate.

The Department states to administer this program it would need a new position (Environmentalist III, labor grade 23). In addition, the Department would need to create a new permit tracking database given that the permit requirements in the proposed bill are so different from other permitting processes in the state. Based on similar other efforts for other new applications, the Department estimates a one-time cost of \$100,000 for the database. Assuming a start date for the position of July 1, 2022, which would be necessary given the time needed to write and adopt administrative rules, and to develop the database, the total cost for the position is estimated to be \$91,000 in FY 2023, \$93,000 in FY 2024, and \$97,000 in FY 2025.



It should be noted that the bill does not authorize any new positions and it is unclear if the fees charged would offset the cost of a new employee. Therefore, the costs associated with the position and database development may at least be partially an expense of the state general fund.

In addition, this bill contains penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Council	FY 2022	FY 2023
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Misdemeanor	\$300/Case	\$300/Case
Assigned Counsel – Misdemeanor	\$60/Hour up to \$1,400	\$60/Hour up to \$1,400
<p>It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. Historically, approximately 85% of the indigent defense caseload has been handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%). Beginning in March of 2021, the public defender program has had to close intake to new cases due to excessive caseloads. Due to these closures, the contract and assigned counsel program have had to absorb significantly more cases. The system is experiencing significant delays in appointing counsel and the costs of representation have increased due to travel time and multiple appointments.</p>		
NH Association of Counties	FY 2022	FY 2023
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$125	\$105 to \$125

This bill contains penalties that will have an indeterminable impact on the Judicial Branch system. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. In the past the Judicial Branch has used averaged caseload data based on time studies to estimate the fiscal impact of proposed legislation. The per case data on costs for routine criminal cases currently available to the Judicial Branch are based on studies of judicial and clerical weighted caseload times for processing average routine criminal cases that are more than fifteen years old so the data does not have current validity. A new case study is being conducted and updated estimates will be available in the future.

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department may be able to absorb the cost within its existing budget. However, if the Department needs to prosecute significantly more cases or handle more appeals, then costs will increase by an indeterminable amount.

**AGENCIES CONTACTED:**

Department of Environmental Services, Department of Justice, Judicial Council, Judicial Branch, and New Hampshire Association of Counties