



The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**

February 10, 2011

The Honorable Andrew Renzullo, Chairman  
Resources, Recreation and Development Committee  
Legislative Office Building, Room 305  
Concord, New Hampshire 03301

**Re: HB 468, relative to assessments for aquatic resource compensatory mitigation**

Dear Chairman Renzullo:

Thank you for the opportunity to comment on HB 468, which would decrease the percentage rate of certain administrative assessments related to aquatic resource compensatory mitigation from 20% to 10% for FY 2012. The Department of Environmental Services (DES) does not support this bill as proposed because we are concerned that the proposed reduction in administrative assessment will leave DES with inadequate resources to properly manage the Aquatic Resource Compensatory Mitigation (ARM) Fund.

Under the United States Army Corps of Engineers State General Programmatic Permit (SPGP) for New Hampshire, mitigation for proposed wetlands dredge and fill impacts is required for major projects to comply with federal standards under the Clean Water Act. Wetlands permit project applicants have the option to pay into the ARM Fund to comply with these federal mitigation requirements when other types of mitigation, such as restoration or preservation, are unavailable to offset proposed wetland impacts or are not cost effective. Participation in this program is voluntary for wetlands permit applicants.

Dedicated ARM Fund monies are collected by DES and then distributed on a competitive basis to outside organizations to fund projects that preserve or restore wetlands in the watershed where the permitted project occurred. In New Hampshire, these funds have already been used for many projects to preserve and restore wetlands. This program has been very successful for permit applicants and has resulted in many significant wetlands preservation and restoration projects across the state. A detailed list of projects funded by the ARM Fund is available upon request.

When funds are paid into the ARM Fund, an administrative assessment is collected by DES in accordance with RSA 482-A:30, III to provide us with the ability to manage the fund. During the 2010 legislative session, the administrative assessment fee was increased from 5% to 20%, for two reasons. First, the original 5% fee had been demonstrated by experience over several years to be insufficient to cover the expenses for the one full time staff member assigned to manage the fund. Second, the ARM Fund program had been expanded to include stream mitigation projects in addition to wetlands mitigation projects. This expansion is projected to further increase the work load beyond that which could be handled by one full time staff member, especially as the economy improves. In 2010, DES provided information to the Legislature to demonstrate that an increase in the administrative fee to 20% would be sufficient to add one

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Resources, Recreation and Development Commission  
February 10, 2011

Page 2 of 2

additional full time staff member to the program in the near future. This information formed the basis for the legislative change to a 20% administrative fee. However, the administrative fee is also scheduled to revert to 5% effective July 1, 2012. DES understands that the bill sponsor, Representative Ahlgren, may introduce an amendment that would permanently set the fee level at 10%. DES believes that such an approach could provide a workable resolution of this issue.

In closing, DES seeks to ensure that the administrative fee level will provide adequate resources in the long term for effective ARM Fund program implementation. If this program cannot be effectively managed, the United States Army Corps of Engineers will not allow this option for applicants as a means to comply with federal wetland permit mitigation requirements. This would have a negative impact on New Hampshire's economy because wetlands permit applicants for public works and development projects would be unable to use this option, which is frequently the most cost effective or only feasible means for compliance with federal wetlands mitigation permitting requirements.

Thank you for this opportunity to comment. Please call me at 271-2958, or Rene Pelletier at 271-2951, if you have any questions or need additional information.

Very truly yours,



Thomas S. Burack, Commissioner

cc: Representative Ahlgren

