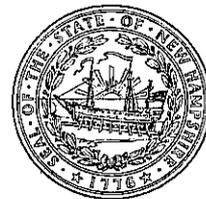




The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



Thomas S. Burack, Commissioner

April 1, 2010

The Honorable Martha Fuller Clark, Chairman  
Senate Energy, Environment and Economic Development  
Legislative Office Building, Room 102  
Concord, New Hampshire 03301

**Re: HB 681-FN as amended relative to assessments for aquatic resource  
compensatory mitigation**

Dear Chairman Fuller Clark:

Thank you for the opportunity to comment on HB 681 as amended relative to assessments for the aquatic resource compensatory mitigation (ARM) fund. The Department of Environmental Services (DES) supports this bill.

HB 681 proposes to modify the ARM fund program by amending RSA 482-A:29, 30, 30-a, 31 and 33. The bill proposes that the administrative fee be increased from 5% to 20% for the period from July 1, 2010 through June 30, 2012 then revert back to the current fee level of 5% on July 1, 2012. DES would also be required to report annually to the General Court on all receipts and disbursements from the ARM fund and the projects implemented and to provide a report to the General Court by October 1, 2011 on ways to compile and provide information to wetlands permit applicants on known compensatory mitigation opportunities.

When compensatory mitigation is required as a permit condition for projects with substantial wetlands impacts, there are four possible ways for permittees to achieve compliance: preservation of lands with significant natural resource value, wetlands restoration, wetlands creation or payment into the state ARM fund. Any one or a combination of these options might be used in a mitigation package to comply with DES rules and the requirements of the U.S. Army Corps of Engineers. Note that participation in the ARM fund program is an option for applicants rather than a mandate since these other compensatory mitigation alternatives are also available. Contribution to the ARM fund as a means to achieve required compensatory mitigation was originally authorized in New Hampshire in 2006 by enactment of RSA 482-A:28 through 30. In 2009, RSA 482-A:30-a was enacted to expand ARM fund coverage to include compensatory mitigation for stream or shoreline losses. ARM fund payments collected by DES are pooled with funds collected from other permitted projects within the same watershed to be used to fund environmental projects with substantial conservation value. Projects are selected for funding based on a competitive process for each watershed. To date, DES has either selected projects or requested proposals for projects in the Merrimack, Winnepesaukee, Ashuelot, Pemigewasset and Connecticut River watersheds.

When the ARM fund was enacted in 2006, a 5% administrative fee was authorized to be collected and used by DES for program administration. At that time, the expected level of participation in this optional program by applicants was uncertain. To

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date, participation has been relatively high and future participation is expected to increase for two reasons. First, as noted above, the ARM fund participation option was expanded in 2009 by enactment of RSA 482-A:30-a to include compensatory mitigation for stream or shoreline losses. Second, the Corps of Engineers has expressed greater support for compensatory mitigation by ARM fund contributions than at any time in the past, thus further promoting program expansion.

RSA 482-A authorizes two full time positions to implement the ARM fund Program, one of which is currently filled. Staff responsibilities include a wide range of activities such as providing applicants with technical support during the wetlands permitting process, coordination with Wetlands Bureau permitting staff as permits are written, issuance of ARM fund approval letters, the distribution of ARM funds to selected mitigation projects and assessment of project success after projects have been implemented. In State Fiscal Year 2010, the existing 5% administrative fee provided about \$33,000 in revenues, thus only covering the costs for about half of the existing filled position. Revenues provided by the proposed 20% administrative fee would cover the annual costs for two staff at last year's activity levels. If HB 681 is enacted, the increased fee coupled with the required annual reports will enable more complete program implementation and provide adequate information for DES and the General Court to determine the appropriate funding level for this program for the future.

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

Very truly yours,



Thomas S. Burack  
Commissioner

cc: Senator Reynolds  
Representatives E. Merrick, Russell, S. Merrick, and Sad