



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner
April 28, 2011

The Honorable Bob Odell, Chairman
Energy and Natural Resources Committee
Legislative Office Building, Room 102
Concord, NH 03301

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

Dear Chairman Odell:

Thank you for the opportunity to comment on HB 468, as amended, which would decrease the percentage rate of certain administrative assessments related to aquatic resource compensatory mitigation from 20% to 10% for FY 2012 and FY 2013. The Department of Environmental Services (DES) does not support HB 488 as amended for the reasons discussed below.

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 was increased from 5% to 20%, for two reasons. First, the original 5% administrative assessment 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 all 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 assessment to

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20% would be sufficient to add one 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 assessment, which is also scheduled to revert to 5% effective July 1, 2012.

As originally proposed by Representative Christopher Ahlgren, the bill sponsor, HB 468 included a reduction in the administrative assessment to 10% from 20% and deleted the reversion to 5% scheduled to occur on July 1, 2012. DES concurred with this approach because 10% would provide sufficient resources to support one full time staff person, which is adequate staffing during the current slow economy, and a longer time period for us to understand and evaluate program activity and required long term staffing levels. This was a reasonable modification recognizing that further discussions may be required in future years as the program matures. HB 468 in its original form was approved by the House Resources, Recreation and Development Committee of which Representative Ahlgren is a member. However, the bill was amended by the House Ways and Means Committee to reduce the administrative assessment to 10%, while keeping the reversion to 5% and shifting the reversion date to July 1, 2013. We do not support the amended bill and request that you consider amending the bill as passed by the House back to the original bill language as proposed by Representative Ahlgren.

In closing, DES seeks to ensure that the administrative assessment 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 achieving 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,


for Thomas S. Burack, Commissioner

cc: Representative Ahlgren