

Amendment to HB 222

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 New Section; Impacts Assessments. Amend RSA 482-A by inserting after section 3 the
4 following new section:

5 482-A:3-a Impacts Assessments.

6 I.(a) In determining whether to approve or deny an application for a permit, the department
7 shall assess the changes in the functions and values of wetlands and aquatic resources that are
8 reasonably likely to be caused by the construction and post-construction use and maintenance of the
9 proposed project.

10 (b) Except for those projects excluded pursuant to RSA 482-A:3-a, III, the department
11 shall assess the changes in the functions and values of wetlands and aquatic resources that are
12 reasonably likely to be caused by the construction and post-construction use and operation of those
13 portions of a project proposed to be located in an indirect-impact evaluation area. For purposes of
14 this section, "indirect-impact evaluation areas" are areas surrounding or bordering wetlands or
15 other aquatic resources, the width of which shall be determined on an application-specific basis as
16 follows

17 (1) Except as otherwise provided in subparagraphs (6) and (7), and until such time
18 as the department adopts rules pursuant to paragraph IV, the width of indirect-impact evaluation
19 areas shall be determined using the functional value indices for "Ecological Integrity," "Wetland
20 Wildlife Habitat," "Finfish Habitat," "Noteworthiness," "Flood Control Potential," "Ground Water
21 Use Potential," "Sediment Trapping," and "Nutrient Attenuation," as calculated using the
22 methodology in the Comparative Evaluation of Nontidal Wetlands in New Hampshire, as published
23 by the department in March 1991 ("the New Hampshire Method").

24 (2) Road-side ditches, detention basins, drainage structures, treatment swales,
25 constructed stormwater treatment wetlands, dug ponds, rain gardens or other stormwater treatment
26 structures, and natural wetlands having a functional value index of less than 0.3 for all of the
27 functional value indices identified in subparagraph (i), shall have no indirect-impact evaluation area.

28 (3) Freshwater wetlands having a functional value index equal to or greater than 0.3
29 but less than 0.5 for one or more of the functional value indices identified in subparagraph (1) shall
30 have an indirect-impact evaluation area 50 feet wide.

31 (4) Freshwater wetlands that have a functional value index of 0.5 or more for "Flood
32 Control Potential," "Groundwater Use Potential," "Sediment Trapping," or "Nutrient Attenuation"

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1 shall have an indirect-impact evaluation area 100 feet wide, provided that they have a functional
2 value index of 0.5 or less for "Ecological Integrity," "Wetland Wildlife Habitat," "Finfish Habitat," or
3 "Noteworthiness."

4 (5) Freshwater wetlands that have a functional value index greater than 0.5 for
5 "Ecological Integrity," "Wetland Wildlife Habitat," "Finfish Habitat," or "Noteworthiness," shall have
6 an indirect-impact evaluation area 300 feet wide.

7 (6) Prime wetlands and tidal wetlands shall have an indirect-impact evaluation area
8 300 feet wide.

9 (7) The department may, in its discretion, establish indirect-impact evaluation areas
10 with widths greater than those enumerated in subparagraphs (2) - (6) where necessary to address
11 issues of special concern, including but not limited to impacts that may cause or contribute to the
12 violation of water quality standards.

13 (8) The width of an indirect-impact evaluation area shall be measured on a
14 horizontal plane from the boundary of a wetland or the bank of a surface water.

15 (9) Applicants shall depict in permit application materials any applicable indirect-
16 impact evaluation area for every wetland and aquatic resource located on the property on which the
17 project is proposed, and shall describe the analysis by which they calculated the width of such areas.

18 II. Applicants shall be responsible for providing information and analyses needed by the
19 department for its assessment of direct and indirect impacts. The department shall have the
20 authority to require additional information and analyses when it finds an applicant's submission to
21 be incomplete for purposes of assessing a proposed project's impacts on wetlands and aquatic
22 resources.

23 III. The following activities and project types shall be excluded from the requirements set
24 forth in this section relative to the assessment of indirect impacts, including the calculation of
25 indirect-impact evaluation areas:

26 (a) Agriculture performed in accordance with best management practices described in
27 RSA 483-B:3, III and involving only temporary impacts to wetlands and aquatic resources;

28 (b) Forestry conducted in compliance with RSA 482-A:3, V and RSA 227-J and involving
29 only temporary impacts to wetlands and aquatic resources;

30 (c) Utility maintenance activities conducted in accordance with RSA 482-A:3, XV; and

31 (d) Projects subject to permit by notification.

32 IV. No later than 12 months after the effective date of this section, the department shall
33 adopt rules establishing an evaluation methodology that shall be used in place of the New
34 Hampshire Method referenced and used in RSA 482-A:3-a, I(b)(1)-(5) and (7) for purposes of
35 determining applicable indirect-impact evaluation area widths. The department's rules shall ensure
36 that under the new methodology, wetlands and aquatic resources will be assigned the same indirect-
37 impact evaluation area widths as they would have pursuant to RSA 482-A:3-a, I(b)(2)-(5). The

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1 provisions of RSA 482-A:3-a, I(b)(6) and (7) shall not be affected by this paragraph.

2 V. The department shall use its assessment of impacts, both direct and indirect, to render
3 determinations relative to avoidance, minimization, and compensatory mitigation, and, for major
4 and minor projects, to determine whether the project proposal is the alternative with the least
5 adverse impact to wetlands and aquatic resources. Under no circumstances shall the department
6 approve or conditionally approve, in whole or in part, permit applications for projects that will cause
7 or contribute to significant degradation of the functions and values of the wetlands and other aquatic
8 resources subject to this chapter.

9 VI. Nothing in this section shall be construed to require a dredge and fill permit, or a
10 wetlands impact assessment, for projects occurring entirely outside of areas subject to the
11 department's jurisdiction under this chapter.

12 2 Effective Date. This act shall take effect 60 days after its passage.