

CHAPTER 218

SB 134-FN – FINAL VERSION

04/08/09 1209s

06May2009... 1462h

06/24/09 2329eba

2009 SESSION

09-0656

06/10

SENATE BILL ***134-FN***

AN ACT relative to the comprehensive shoreland protection act.

SPONSORS: Sen. Fuller Clark, Dist 24; Sen. Sgambati, Dist 4; Sen. Merrill, Dist 21; Sen. Odell, Dist 8; Rep. Spang, Straf 7; Rep. Borden, Rock 18

COMMITTEE: Energy, Environment and Economic Development

ANALYSIS

This bill makes various technical changes to the comprehensive shoreland protection act.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nine

AN ACT relative to the comprehensive shoreland protection act.

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

218:1 Definitions; Natural Ground Cover. Amend RSA 483-B:4, X-b to read as follows:

X-b. "Natural ground cover" means any herbaceous plant or any woody seedling or shrub generally less than 3 feet in height. Natural ground cover shall also include naturally occurring leaf or needle litter, stumps, decaying woody debris, stones, and boulders. Natural ground cover shall not include lawns, **landscaped areas, gardens**, invasive species as listed by the department of agriculture, markets, and food in accordance with RSA 430:53, III, exotic species as designated by rule of the department of environmental services in accordance with RSA 487:24, VII, imported organic or stone mulches, or other artificial materials.

218:2 Definitions; Primary Building Line. Amend RSA 483-B:4, XIII to read as follows:

XIII. "Primary building line" means a setback **for primary structures of at least 50 feet** from the reference line.

218:3 Definitions; Public Waters. RSA 483-B:4, XVI(a) is repealed and reenacted to read as follows:

(a) All lakes, ponds, and artificial impoundments greater than 10 acres in size.

218:4 Definitions; Reference Line. RSA 483-B:4, XVII is repealed and reenacted to read as follows:

XVII. "Reference line" means:

(a) For all lakes, ponds, and artificial impoundments greater than 10 acres in size, the surface elevation as listed in the Consolidated List of Water Bodies subject to the Comprehensive shoreland protection act as maintained by the department.

(b) For coastal waters, the highest observable tide line, which means a line defining the furthest landward limit of tidal flow, not including storm events, which can be recognized by indicators such as the presence of a strand line of flotsam and debris, the landward margin of salt tolerant vegetation, or a physical barrier that blocks further flow of the tide.

(c) For rivers, the ordinary high water mark.

218:5 Definitions; Removal or Removed. Amend RSA 483-B:4, XVIII to read as follows:

XVIII. "Removal or removed" means [~~cut, sawed, pruned,~~] girdled, felled, [~~pushed over, buried, burned,~~] killed, or **cut, sawed, pruned, pushed over, buried, burned, or any other activity conducted to the extent that it** otherwise destructively **alters or** altered **the vegetation**.

218:6 Definitions; Repair. Amend RSA 483-B:4, XVIII-b to read as follows:

XVIII-b. "Repair" means work conducted to restore an existing, legal structure by partial replacement of worn, broken, or unsound parts or to fix a specific defect, during which all of the exterior dimensions are intact and remain so ~~during~~ **at the conclusion of** construction.

218:7 Definitions; Structure. Amend RSA 483-B:4, XXII to read as follows:

XXII. "Structure" means anything ~~built~~ **constructed or erected** for the support, shelter or enclosure of persons, animals, goods, or property of any kind, ~~as well as anything constructed or erected~~ with a fixed location on or in the ground, exclusive of fences.

218:8 Definitions; Unaltered State; Urbanization. Amend RSA 483-B:4, XXIV-b and XXV to read as follows:

XXIV-b. "Unaltered state" means native vegetation allowed to grow without cutting, limbing, trimming, pruning, mowing, or other similar activities **except as needed to maintain the health of the plant being trimmed, as allowed by rules of the department.**

XXV. "Urbanization" means the concentrated development found in the sections of towns or cities where there has been an historic pattern of intensive building for **residential, commercial [or], industrial [use, or mixed residential, commercial, and industrial use], or mixed uses such that it contributes to or constitutes the municipality's downtown, community center, or central business district and wherein all vegetative buffers have been depleted, impervious surfaces are in excess of 50 percent, and residential uses are of at least 10 dwelling units per acre.**

218:9 Permit Required; Exemption. RSA 483-B:5-b, I(b)(1)-(3) is repealed and reenacted to read as follows:

(1) For projects that qualify for permit by notification under RSA 483-B:17, X, \$100 for restoration of water quality improvement projects and \$250 for all other permit by notification projects.

(2) For projects of 0-9,999 square feet, \$750.

(3) For projects of 10,000-24,999 square feet, \$1,875.

(4) For projects of 25,000 square feet or more, \$3,750.

218:10 Permit Required; Exemption. Amend RSA 483-B:5-b, III to read as follows:

III. Construction of public roads, public utility lines and associated structures and facilities, and public water access facilities shall be exempt from the permitting fees of paragraph I **and the abutter notification requirements of paragraph IV-a.**

218:11 Permit Required; Exemption. Amend RSA 483-B:5-b, IV-a and V to read as follows:

IV-a. At the time of the permit application, the applicant shall provide postal receipts or copies, verifying that the governing body of the municipality or municipalities in which the property is located **and the local river management advisory committee, if the project is within a designated river corridor defined in RSA 483:4, XVIII and contains river and river segments designated in RSA 483:15,** and all abutters have been notified of the

application by certified mail. **Applicants for the construction of public roads, public utility lines and associated structures and facilities, and public water access facilities shall only be required to provide postal receipts or copies, verifying that the governing body of the municipality or municipalities in which the property is located, and the local river management advisory committee if the project is within a designated river corridor defined in RSA 483:4, XVIII and contains river and river segments designated in RSA 483:15, have been notified of the application by certified mail.**

V.(a) Within 30 days of receipt of an application for a permit or 75 days of receipt of an application for a permit that will require a variance of the minimum standard of RSA 483-B:9, V or a waiver of the minimum standards of RSA 483-B:9, the department shall request any additional information required to complete its evaluation of the application, and provide the applicant with any written technical comments the department deems necessary. Any request for additional information shall specify that the applicant submit such information as soon as practicable and notify the applicant that if all of the requested information is not received within 60 days of the request, the department shall deny the application.

(b) When the department requests additional information pursuant to subparagraph (a), the department shall, within 30 days of the department's receipt of the information:

(1) Approve the application and issue a permit;

(2) Deny the application, **with written findings in support of the decision**, in whole or in part; or

(3) Extend the time for response for good cause and with the written agreement of the applicant.

(c) Where no request for additional information is made, the department shall, within 30 days of receipt of the application for a permit or 75 days of receipt of an application for a permit that will require a variance of the minimum standard of RSA 483-B:9, V or a waiver of the minimum standards of RSA 483-B:9, approve or deny the application, **with written findings in support of the decision** in whole or in part.

(d) If the department fails to render a decision in the time frame provided in this paragraph, the application shall be deemed to be approved and a permit shall be issued.

(e) All applications filed in accordance with the rules adopted by the department under RSA 483-B:17 and which meet the minimum standards of this chapter shall be approved and a permit shall be issued.

218:12 Minimum Shoreland Protection Standards. Amend RSA 483-B:9, II(d) to read as follows:

(d) No fertilizer, except limestone, shall be ~~used~~ **applied to vegetation or soils located** within 25 feet of the reference line of any ~~property. Twenty five feet beyond the reference line,~~ **public water**. Low phosphate, slow release nitrogen fertilizer or limestone, may be used on ~~lawns or areas with grass~~ **areas beyond 25 feet from the reference line**.

218:13 Minimum Shoreland Protection Standards. Amend RSA 483-B:9, V(a)(2)(A) to read as follows:

(A) No chemicals [~~shall be applied~~], including pesticides or herbicides of any kind **shall be applied to ground, turf, or established vegetation** except as allowed under special permit issued by the division of pesticide control under rules adopted by the pesticide control board under RSA 541-A, or fertilizers of any kind except those specified in RSA 483-B:9, II(d).

218:14 Minimum Shoreland Protection Standards. Amend RSA 483-B:9, V(a)(2)(C) to read as follows:

(C) No natural ground cover shall be removed except as necessary for a foot path to water as provided under RSA 483-B:9, V(a)(2)(D)(viii), cutting those portions that have grown over 3 feet in height for the purpose of providing a view, or as specifically approved by the department, pursuant to RSA 482-A or [~~483-B:11, II~~] **RSA 483-B**.

218:15 Minimum Shoreland Protection Standards. Amend RSA 483-B:9, V(a)(2)(D)(iv)-(viii) to read as follows:

(iv) The department may approve applications pursuant to RSA 482-A **or RSA 483-B** that include the planting of native trees and saplings as necessary to at least maintain either the existing combined tree and sapling score or the minimum score required. The department shall not approve any application that would result in a combined tree and sapling score less than the minimum score required where the segment initially meets the minimum score or would result in any reduction of the combined tree and sapling score where the segment does not initially meet the minimum score.

(v) Owners of lots **and holders of easements on lots** that were legally developed prior to July 1, 2008 may maintain but not enlarge cleared areas, including but not limited to existing lawns [~~and~~], beaches, **and rights-of-way for public utilities, public transportation, and public access, and may repair existing utility structures** within the waterfront buffer. Conversion to or planting of cleared areas with native species of ground cover, shrubs, saplings, and trees is encouraged but shall not be required unless it is necessary to meet the requirements of subparagraph (g)(2) or (g)(3), or RSA 483-B:11, II.

(vi) Normal trimming, pruning, and thinning of branches to the extent necessary to **maintain the health of the plant being trimmed**, protect structures, maintain clearances, and provide views is permitted, **as allowed by rules of the department**. [~~Trimming, pruning, and thinning of branches~~] **Limbing of trees or saplings** for the purpose of providing views shall be limited to the bottom 1/2 of the trees or saplings.

(vii) When necessary for the completion of construction activities permitted in accordance with RSA 483-B:6, a temporary 12 foot wide access path shall be allowed. **On those properties accessible only by water, this access path may be maintained provided it is stabilized with a surface that will infiltrate stormwater. On other properties** the access path shall be completely restored and replanted with native vegetation upon completion of construction except as allowed under subparagraph (viii).

(viii) A permanent 6-foot wide foot path to **provide access to any beaches, structures, existing open areas, and** the water body, configured in a manner that will not concentrate storm water runoff or contribute to erosion, is allowed.

218:16 Minimum Shoreland Protection Standards. Amend RSA 483-B:9, V(b)(2)(A)-(E) to read as follows:

(A)(i) For lots with one-half acre or less of land within the natural woodland buffer, the vegetation within at least 25 percent of the area outside the waterfront buffer shall be maintained in an unaltered state. Owners of lots legally developed **or landscaped** prior to July 1, 2008 that do not comply with this standard are encouraged to, but shall not be required to, increase the percentage of area maintained in an unaltered state. The percentage of area maintained in an unaltered state on nonconforming lots shall not be decreased.

(ii) For lots with greater than one-half acre of land within the natural woodland buffer, the vegetation within at least 50 percent of the area outside the waterfront buffer, exclusive of impervious surfaces, shall be maintained in an unaltered state. Owners of lots legally developed **or landscaped** prior to July 1, 2008 that do not comply with this standard are encouraged to, but shall not be required to, increase the percentage of area maintained in an unaltered state. The percentage of area maintained in an unaltered state on nonconforming lots shall not be decreased.

(B) Any person applying to the department for a septic system construction approval or alteration of terrain permit pursuant to RSA 485-A, or an excavating and dredging permit pursuant to RSA 482-A, within the protected shoreland shall include photographic documentation of **any areas of** the natural woodland buffer **in which impacts would occur**.

(C) Dead, diseased, or unsafe, trees, limbs, saplings, or shrubs that pose ~~[an imminent]~~ a hazard to structures or have the potential to cause personal injury may be removed regardless of any requirements that pertain to the natural woodland buffer under this chapter. Such exemptions shall not be used to contravene the intent of the law.

(D) **Maintenance and** preservation of dead and living trees that provide dens and nesting places for wildlife is encouraged.

(E) ~~[Native species]~~ Planting efforts that **do not introduce exotic or invasive species and** are beneficial to wildlife are encouraged.

218:17 Minimum Shoreland Protection Standards. Amend RSA 483-B:9, V(d)(1) to read as follows:

(1) All new structures, modifications to existing structures, and excavation or earth moving within protected shoreland shall be designed and constructed in ~~[accordance with]~~ **a manner that incorporates appropriate protective practices which are substantially equivalent to those required under** rules adopted by the department under RSA 541-A for terrain alteration under RSA 485-A:17, to manage stormwater and control erosion and sediment, during and after construction.

218:18 Minimum Shoreland Protection Standards. Amend RSA 483-B:9, V(g)(2) to read as follows:

(2) If the impervious surface area will exceed 20 percent, a stormwater management system shall be implemented and maintained which is designed to infiltrate increased stormwater from development occurring after the effective date of this paragraph in accordance with rules established by the department under RSA 485-A:17. ~~[In addition, if the natural tree and sapling cover in the waterfront buffer does not meet the 50-point minimum score of RSA 483-B:9, V(a)(2)(D) in any segment, then such segment shall be planted, as determined by~~

~~rule of the department, with native trees, saplings, or natural ground cover in sufficient quantity, type, and location either to meet the minimum score or to provide at least an equivalent level of protection as provided by the minimum score and shall be maintained in accordance with RSA 483-B:9, V(a).]~~

218:19 Minimum Shoreland Protection Standards. RSA 483-B:9, V(g)(3) is repealed and reenacted to read as follows:

(3) If the impervious surface area will exceed 20 percent and the natural tree and sapling cover in the waterfront buffer does not meet the 50-point minimum score of RSA 483-B:9, V(a)(2)(D) in any segment, then such segment shall be planted, as determined by rule of the department, with native trees, saplings, or natural ground cover in sufficient quantity, type, and location either to meet the minimum score or to provide at least an equivalent level of protection as provided by the minimum score and shall be maintained in accordance with RSA 483-B:9, V(a).

218:20 Minimum Shoreland Protection Standards. Amend RSA 483-B:10, II to read as follows:

II. Building on nonconforming lots of record shall be limited to single family residential structures and related facilities, including, but not limited to, ***appurtenant accessory structures such as walkways and driveways, and water dependent structures such as*** docks, piers, [~~boathouses, boat loading ramps, walkways,~~] and [~~other water dependent structures,~~] ***breakwaters*** consistent with state law.

218:21 Minimum Shoreland Protection Standards. Amend RSA 483-B:12, I-II to read as follows:

I. The governing body of a municipality may, in its discretion, request the commissioner to exempt all or a portion of the protected shoreland within its boundaries from the provisions of this chapter if the governing body finds that special local urbanization conditions ***as defined in RSA 483-B:4, XXV***, exist in the protected shoreland for which the exemption is sought.

II. If the governing body of a municipality requests such an exemption, it shall submit evidence of existing and historical patterns of building and development in the protected shoreland ***in demonstration of the special local urbanization conditions***. Such evidence shall address:

(a) Current and past building density.

(b) Commercial [~~or~~], industrial [~~uses~~], ***or residential uses***.

(c) Municipal or other public utilities.

(d) Current municipal land use regulations which affect the protected shoreland.

(e) ***Designation as a downtown, community center, central business district, or urbanized area or urban cluster as delineated by the United States Census Bureau.***

(f) Any other information which the commissioner may reasonably require.

218:22 Minimum Shoreland Protection Standards. Amend RSA 483-B:17, IV to read as follows:

IV. Procedures and criteria for the **size**, placement, **and construction** of small accessory structures such as storage sheds and gazebos, [~~the size, placement, and construction of~~] which [~~is~~] **are** consistent with the intent of this chapter, between the reference line and the primary building line.

218:23 Repeal. The following are repealed:

I. RSA 483-B:4, III, relative to the definition of basal area.

II. RSA 483-B:9, V(e)(2), relative to minimum lots and residential development.

III. RSA 483-B:17, VIII, relative to rulemaking authority to define the opening for building construction.

218:24 Effective Date. This act shall take effect 60 days after its passage.

Approved: July 15, 2009

Effective Date: September 13, 2009