

# Bill as Introduced

SB 154-FN - AS INTRODUCED

2011 SESSION

11-0810  
06/10

SENATE BILL **154-FN**

AN ACT reforming the comprehensive shoreland protection act.

SPONSORS: Sen. Bradley, Dist 3; Sen. Boutin, Dist 16; Sen. Carson, Dist 14; Sen. De Blois, Dist 18; Sen. Forsythe, Dist 4; Sen. Gallus, Dist 1; Sen. Groen, Dist 6; Sen. Stiles, Dist 24; Sen. White, Dist 9; Rep. B. Patten, Carr 4; Rep. Ahlgren, Carr 4; Rep. Umberger, Carr 1; Rep. Chandler, Carr 1; Rep. Bettencourt, Rock 4

COMMITTEE: Energy and Natural Resources

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ANALYSIS

This bill makes extensive changes to the comprehensive shoreland protection act.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eleven*

AN ACT            reforming the comprehensive shoreland protection act.

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

1            1 Comprehensive Shoreland Protection; Minimum Standards Required. Amend RSA 483-B:2, IX  
2 to read as follows:

3            IX. Control building sites, placement of structures, and land uses ***that may potentially***  
4 ***damage the public waters.***

5            2 Minimum Standards Required. Amend RSA 483-B:2, XV to read as follows:

6            XV. Anticipate and respond to the impacts of development in shoreland areas ***to the extent***  
7 ***they may potentially damage the public waters.***

8            3 Definitions. Amend RSA 483-B:4, VII-b to read as follows:

9            VII-b. "Impervious surface" means any modified surface that cannot effectively absorb or  
10 infiltrate water. Examples of impervious surfaces include, but are not limited to, roofs, ***and unless***  
11 ***designed to effectively absorb or infiltrate water,*** decks, patios, and paved, gravel, or crushed stone  
12 driveways, parking areas, and walkways [~~unless designed to effectively absorb or infiltrate water~~].

13            4 Definitions. Amend RSA 483-B:4, X-b to read as follows:

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

21            5 Definitions. Amend RSA 483-B:4, XII and XIII to read as follows:

22            XII. "Person" means a corporation, company, association, society, firm, partnership or joint  
23 stock company, as well as [~~an individual,~~] a state, and any political subdivision of a state or any  
24 agency or instrumentality thereof.

25            XIII. "Primary building line" means a setback for primary structures of [~~at least~~] 50 feet  
26 from the reference line.

27            6 Definitions. Amend RSA 483-B:4, XV to read as follows:

28            XV. "Protected shoreland" means, for natural, fresh water bodies without artificial  
29 impoundments, for artificially impounded fresh water bodies, ***except private garden water***  
30 ***features and ponds,*** and for coastal waters and rivers, all land located within 250 feet of the  
31 reference line of public waters.

1 7 Definitions. Amend RSA 483-B:4, XVIII to read as follows:

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

5 8 Definitions. Amend RSA 483-B:4, XVIII-c to read as follows:

6 XVIII-c. "Replace in kind" means the substitution of a new structure for an existing legal  
7 structure, whether in total or in part, with no change **within 50 feet of the reference line** in ~~[size,~~  
8 ~~dimensions,]~~ **setback or area of the** footprint, ~~[interior square footage, and location,]~~ with the  
9 exception of changes resulting in an increase in the setback to public waters.

10 9 Definitions. Amend RSA 483-B:4, XX-a to read as follows:

11 XX-a. "Shoreland frontage" means the ~~[average of the distances of the actual natural~~  
12 ~~shoreline footage and a straight line drawn between property lines]~~ **actual shoreland frontage**  
13 **along the water front.**

14 10 Definitions. Amend RSA 483-B:4, XXII to read as follows:

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

18 11 Definitions. Amend RSA 483-B:4, XXIV-b to read as follows:

19 XXIV-b. "Unaltered state" means ~~[native]~~ vegetation allowed to grow without cutting, limbing,  
20 trimming, pruning, mowing, or other similar activities except as needed ~~[to maintain the health of the~~  
21 ~~plant being trimmed, as allowed by rules of the department]~~ **for plant health, normal maintenance,**  
22 **and renewal.**

23 12 Enforcement by Commissioner; Duties; Woodland Buffer. Amend RSA 483-B:5, II to read as  
24 follows:

25 II. The commissioner or his **or her** designee may, ~~[for cause,]~~ **by virtue of a permit issued**  
26 **under this chapter** enter upon ~~[any]~~ **subject** land or parcel at any reasonable time **with prior**  
27 **permission of the owner** to perform oversight and enforcement duties provided for in this chapter  
28 **limited to the conditions of the permit. Such permission shall expire when the project is**  
29 **complete or the permit has expired, whichever comes first.**

30 13 Permit Required; Exemption. Amend RSA 483-B:5-b, I to read as follows:

31 I.(a) No person shall commence construction, excavation, or filling activities within the  
32 protected shoreland without obtaining a permit from the department to ensure compliance with this  
33 chapter. **For projects which have no impact on water quality and which follow department**  
34 **rules, the department shall establish a permit by notification. Such projects shall include:**

35 (1) **Construction or other activity that adds less than 1,000 square feet of**  
36 **impervious area within a protected shoreland area.**

1                   (2) *Excavation of 1,000 cubic feet or less within a protected shoreland area*  
2 *that does not cause a significant change in runoff protection.*

3                   (3) *Filling of 1,000 cubic feet or less with material that does not cause a*  
4 *significant change in runoff protection.*

5                   (4) *Any activities defined by rules of the department as de minimis.*

6                   (b) The permit application fee shall be \$100 plus \$.10 per square foot of area affected by  
7 the proposed activities and shall be deposited in the wetlands and shorelands review fund  
8 established under RSA 482-A:3, III. Such fees shall be capped as follows:

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

12                   (2) For projects of ~~[0-9,999]~~ 1,001 - 9,999 square feet, \$750.

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

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

15                   ***If the application is denied, the application fee shall be refunded to the applicant***  
16 ***within 30 days of such denial.***

17                   14 Permit Required; Exemption. Amend RSA 483-B:5-b, V(a) through (c) to read as follows:

18                   V.(a) Within ~~[30]~~ 15 days of receipt of an application for a permit or ~~[75]~~ 30 days of receipt of  
19 an application for a permit that will require a ~~[variance of the minimum standard of RSA 483-B:9, V~~  
20 ~~or a]~~ waiver of the minimum standards of RSA 483-B:9, the department shall request any additional  
21 information *reasonably* required to complete its evaluation of the application, and provide the  
22 applicant with any written technical comments the department deems necessary. Any request for  
23 additional information shall specify that the applicant submit such information as soon as  
24 practicable and notify the applicant that if all of the requested information is not received within ~~[60]~~  
25 180 days of the request, the department shall deny the application.

26                   (b) When the department requests additional information pursuant to subparagraph (a),  
27 the department shall, within ~~[30]~~ 15 days of the department's receipt of the information:

28                   (1) Approve the application~~[, in whole or in part,]~~ and issue a permit; or

29                   (2) Deny the application, and issue written findings in support of the denial; or

30                   (3) Extend the time for rendering a decision on the application for good cause and  
31 with the written agreement of the applicant.

32                   (c) Where no request for additional information is made, the department shall, within  
33 ~~[30]~~ 15 days of receipt of the application for a permit or ~~[75]~~ 30 days of receipt of an application for a  
34 permit that will require a ~~[variance of the minimum standard of RSA 483-B:9, V or a]~~ waiver of the  
35 minimum standards of RSA 483-B:9[;],

36                   ~~[(1)]~~ approve or deny the application~~[, in whole or in part, and issue a permit; or~~

37                   ~~(2) Deny the application, and issue]~~ *with* written findings in support of the ~~[denial; or~~

1                   ~~(3) Extend the time for rendering a decision on the application for good cause and~~  
2 ~~with the written agreement of the applicant] decision.~~

3           15 Minimum Shoreland Protection Standards. Amend RSA 483-B:9, II(d) to read as follows:

4                   (d) No fertilizer, except limestone *or organic fertilizer*, shall be applied to vegetation  
5 or soils located within 25 feet of the reference line of any public water. Low phosphate, slow release  
6 nitrogen fertilizer ~~or~~ limestone, *or organic fertilizer*, may be used on areas beyond 25 feet from  
7 the reference line.

8           16 Minimum Shoreland Protection Standards. Amend RSA 483-B:9, V(a) through (b)(2)(A)(iii) to  
9 read as follows:

10                   (a) Maintenance of a Waterfront Buffer.

11                           (1) The waterfront buffer shall be those protected shorelands within 50 feet of the  
12 reference line. The purpose of this buffer shall be to protect the quality of public waters while  
13 allowing homeowner discretion with regard to water access, safety, viewscape maintenance, and lot  
14 design.

15                           (2) Within the waterfront buffer all of the following prohibitions and limitations shall  
16 apply:

17                                   (A) No chemicals, including pesticides or herbicides of any kind shall be applied  
18 to ground, turf, or established vegetation except *if applied by horticultural professionals or* as  
19 allowed under special permit issued by the division of pesticide control under rules adopted by the  
20 pesticide control board under RSA 541-A, or fertilizers of any kind except those specified in RSA 483-  
21 B:9, II(d) *unless such application is necessary to protect the waterfront buffer, and provided*  
22 *such materials do not enter the protected waterway.*

23                                   (B) Rocks and stumps and their root systems shall be left intact in the ground  
24 unless removal is specifically approved by the department, pursuant to RSA 482-A or RSA 483-B:11,  
25 II *or unless rocks are removed to improve runoff control or the planting in the waterfront*  
26 *buffer, and stumps that are removed are replaced with pervious surfaces, new trees, or*  
27 *other vegetation.*

28                                   (C) No natural ground cover shall be removed except as necessary for a foot path  
29 to water as provided under RSA 483-B:9, V(a)(2)(D)~~(viii)~~ *(ix), for normal maintenance, to*  
30 *protect the waterfront buffer*, cutting those portions that have grown over 3 feet in height for the  
31 purpose of providing a view, *to provide access to natural areas or shoreline*, or as specifically  
32 approved by the department, pursuant to RSA 482-A or RSA 483-B.

33                                   (D) Starting from the northerly or easterly boundary of the property, and  
34 working along the shoreline, the waterfront buffer shall be divided into 50 by 50 foot segments  
35 *excluding structures, beaches, and rock and ledge areas.* Within each segment a minimum  
36 combined tree ~~and~~, sapling, *shrub, and groundcover* score of at least 50 points shall be  
37 maintained. If for any reason there is insufficient area for a full segment, the number of points

1 required to be maintained in that partial segment shall be proportional to that required of a full  
 2 segment. *The landowner may meet the total point requirement over the entire frontage of*  
 3 *the lot by distributing the score in the most practical way so that the total points achieved*  
 4 *are equal to or greater than the total compiled by using the 50 by 50 foot segments.*

5 (i) Tree and sapling [diameters] *calipers* shall be measured [at 4-1/2 feet  
 6 above the ground] *in accordance with nursery industry standards* and are scored as follows:

7 Diameter Score

8 ~~[1 inch to 6 inches - 1~~

9 ~~greater than 6 inches to 12 inches - 5~~

10 ~~greater than 12 inches - 10]~~

11 *1 to 3 inches - 1*

12 *3 to 6 inches - 5*

13 *6 to 12 inches - 10*

14 *12 to 24 inches - 20*

15 *24 to 36 inches - 30*

16 *Greater than 36 inches - 50*

17 (ii) *Shrubs and groundcover plants shall be scored as follows:*

18 *One-gallon to 2-gallon shrub - 1/2 of a point*

19 *Three-gallon to 4-gallon shrub - one point*

20 *Ground cover planted in the form of sod or mat - one point for every 50 square feet*

21 *Sod or mat ground cover - no more than 15 points in each full segment*

22 *Shrub groundcover - no more than 20 points in each full segment*

23 ~~[(ii)]~~ (iii) Dead, diseased, or unsafe trees or saplings shall not be included in  
 24 scoring.

25 ~~[(iii)]~~ (iv) If the total tree and sapling score in any 50 foot by 50 foot segment  
 26 exceeds 50 points, then trees and saplings may be removed as long as the sum of the scores for the  
 27 remaining trees and saplings in that segment does not total less than 50 points. Trees and saplings  
 28 may be removed from partial segments provided that the sum of the scores for the remaining trees  
 29 and saplings in that partial segment is equal to or greater than the proportional point requirement.

30 ~~[(iv)]~~ (v) The department may approve applications pursuant to RSA 482-A  
 31 or RSA 483-B that include the planting of ~~[native]~~ trees and saplings as necessary to at least  
 32 maintain either the existing combined tree and sapling score or the minimum score required. ~~[The~~  
 33 ~~department shall not approve any]~~ **No** application ~~[that would]~~ **shall** result in a combined tree and  
 34 sapling score less than the minimum score required where the segment initially meets the minimum  
 35 score or would result in any reduction of the combined tree and sapling score where the segment does  
 36 not initially meet the minimum score, **unless the applicant is increasing the combined tree and**  
 37 **sapling score in other segments of the protected shoreland.**

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

8           ~~[(vi)]~~ (vii) Normal trimming, pruning, and thinning of branches to the extent  
9 necessary to maintain the health of the ~~[plant being trimmed,]~~ ***planted area as well to*** protect  
10 structures, maintain clearances, and provide views is permitted, ~~[as allowed by rules of the~~  
11 ~~department. Limbing of trees or saplings for the purpose of providing views shall be limited to the~~  
12 ~~bottom 1/2 of the trees or saplings]~~ ***provided such activity does not endanger the health of the***  
13 ***plant.***

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

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

23           (b) Maintenance of a Natural Woodland Buffer.

24           (1) A natural woodland buffer shall be maintained within 150 feet of the reference  
25 line. The first 50 feet of this buffer is designated the waterfront buffer and is subject to the  
26 additional requirements of subparagraph (a). The purpose of the natural woodland buffer shall be to  
27 protect the quality of public waters by minimizing erosion, preventing siltation and turbidity,  
28 stabilizing soils, preventing excess nutrient and chemical pollution, maintaining natural water  
29 temperatures, maintaining a healthy tree canopy and understory, preserving fish and wildlife  
30 habitat, and respecting the overall natural condition of the protected shoreland.

31           (2) Within the natural woodland buffer of a given lot:

32           (A)(i) ***To the extent that it is already in a natural, unlandscaped state, for***  
33 lots with ~~[one-half]~~ ***one*** acre or less of land within the natural woodland buffer, the vegetation within  
34 at least ~~[25]~~ ***20*** percent of the area ~~[outside]~~ ***including*** the waterfront buffer ***and exclusive of***  
35 ***impervious surfaces*** shall be maintained in an unaltered state ***unless vegetation, including***  
36 ***shrubs and trees in the landscaped areas, exceeds the 20 percent requirement.*** Owners of  
37 lots legally developed or landscaped prior to July 1, 2008 that do not comply with this standard are



1 encouraged to, but shall not be required to, increase the percentage of area maintained in an  
2 unaltered state. The percentage of area maintained in an unaltered state on nonconforming lots *not*  
3 *being developed* shall not be decreased.

4 (ii) *To the extent that it is already in a natural, unlandscaped state,*  
5 for lots with greater than ~~[one-half]~~ *one acre but less than 2 acres* of land within the natural  
6 woodland buffer, the vegetation within at least ~~[50]~~ *30* percent of the area ~~[outside]~~ *including* the  
7 waterfront buffer~~[,]~~ *and* exclusive of impervious surfaces, shall be maintained in an unaltered state  
8 *unless vegetation, including shrubs and trees in the landscaped areas, exceeds the 30*  
9 *percent requirement.* Owners of lots legally developed or landscaped prior to July 1, 2008 that do  
10 not comply with this standard are encouraged to, but shall not be required to, increase the  
11 percentage of area maintained in an unaltered state. The percentage of area maintained in an  
12 unaltered state on nonconforming lots *not being redeveloped* shall not be decreased.

13 (iii) *To the extent that it is already in a natural, unlandscaped state,*  
14 for lots with greater than *2 acres* of land within the natural woodland buffer, the  
15 vegetation within at least *50* percent of the area, including the waterfront buffer and  
16 exclusive of impervious surfaces, shall be maintained in an unaltered state unless  
17 vegetation, including shrubs and trees in the landscaped areas, exceeds the *50 percent*  
18 *requirement.* Owners of lots legally developed prior to July 1, 2008 that do not comply with  
19 *this standard may increase the percentage of area maintained in an unaltered state. The*  
20 *percentage of area maintained in an unaltered state on nonconforming lots not being*  
21 *redeveloped shall not be decreased.*

22 17 Minimum Lots and Residential Development. Amend RSA 483-B:9, V(e)(3) to read as follows:

23 (3) No lot having frontage on public waters, shall be created with less than ~~[150]~~ *50*  
24 feet of shoreland frontage.

25 18 Minimum Lots and Non-Residential Development. Amend RSA 483-B:9, V(f)(2) to read as  
26 follows:

27 (2) No lot having frontage on public water shall be created with less than ~~[150]~~ *50*  
28 feet of shoreland frontage.

29 19 Impervious Surfaces. Amend RSA 483-B:9, V(g)(1)-(3) to read as follows:

30 (1) ~~[Subject to subparagraph (2),]~~ No more than 30 percent of the area of a lot  
31 located within the protected shoreland shall be composed of impervious surfaces *unless a*  
32 *stormwater management system designed and certified by a professional engineer that will*  
33 *not concentrate stormwater runoff or contribute to erosion is implemented.*

34 (2) If the impervious surface area will exceed 20 percent, a stormwater management  
35 system shall be implemented and maintained which is designed to infiltrate increased stormwater  
36 from development occurring after the effective date of this paragraph in accordance with rules  
37 established by the department under RSA 485-A:17.

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

7 20 Waivers. Amend RSA 483-B:9, V(i) to read as follows;

8 (i) The commissioner shall have the authority to grant ~~[variances]~~ *waivers* from the  
 9 minimum standards of this section. Such authority shall be exercised ~~[subject to the criteria which~~  
 10 ~~govern the grant of a variance by a zoning board of adjustment under RSA 674:33, I(b)]~~ *if the*  
 11 *commissioner deems that strict compliance with the minimum standards of this section*  
 12 *will provide no material benefit to the public and have no material adverse effect on the*  
 13 *environment or the natural resources of the state. Waivers shall be granted to*  
 14 *accommodate the reasonable needs of persons with disabilities.*

15 21 Nonconforming Lots of Record. Amend RSA 483-B:10, I to read as follows:

16 I. Except when otherwise prohibited by law, present and successive owners of an individual  
 17 undeveloped lot may construct a single family residential dwelling *and appurtenant accessory*  
 18 *structures* on it, notwithstanding the provisions of this chapter. Conditions may be imposed which,  
 19 in the opinion of the commissioner, more nearly meet the intent of this chapter, while still  
 20 accommodating the applicant's rights.

21 22 New Paragraph; Nonconforming Lots of Record; Merger. Amend RSA 483-B:11 by inserting  
 22 after paragraph II the following new paragraph:

23 III. Consistent with RSA 674:39-a, a municipality shall not merge adjacent nonconforming  
 24 lots in common ownership without the consent of the owner.

25 23 Nonconforming Structures. RSA 483-B:11 is repealed and reenacted to read as follows:

26 483-B:11 Nonconforming Structures.

27 I. Except as otherwise prohibited by law or applicable municipal ordinance, nonconforming  
 28 structures located within the protected shoreland may be repaired, replaced in kind, reconstructed in  
 29 place, altered, or expanded. Repair, replacement-in kind, or reconstruction in place may alter or  
 30 remodel the interior design or existing foundation of the nonconforming structure, but shall result in no  
 31 expansion or relocation of the existing footprint within the waterfront buffer. Alteration or expansion  
 32 of a nonconforming structure may expand the existing footprint within the waterfront buffer, provided  
 33 the structure is not extended closer to the reference line and the proposal or property is made more  
 34 nearly conforming than the existing structure or the existing conditions of the property.

35 II. For the purposes of this section, a proposal that is "more nearly conforming" means alteration  
 36 of the location or size of the existing footprints, or redevelopment of the existing conditions of the  
 37 property, such that the structures or the property are brought into greater conformity with the design

1 standards of this chapter. Methods for achieving greater conformity include, without limitation,  
2 **reducing the overall square footage of structural footprints**, enhancing stormwater management,  
3 adding infiltration areas and landscaping, upgrading wastewater treatment, improving traffic  
4 management, or other enhancements that improve wildlife habitat or resource protection.

5 III. An expansion that increases the sewerage load to an onsite septic system, or changes or  
6 expands the use of a septic system, shall require a subsurface approval issued by the department.

7 IV. Under paragraph I, and except as otherwise prohibited by law or applicable municipal  
8 ordinance, primary nonconforming structures may be entirely demolished and reconstructed, with  
9 continued encroachment into the waterfront buffer, provided the replacement structure is located  
10 farther back from the reference line than the preexisting nonconforming structure.

11 24 Rehearings and Appeals. Amend RSA 483-B:14 to read as follows:

12 483-B:14 Rehearings and Appeals. Where the requirements of this chapter amend the existing  
13 statutory authority of the department or other agencies relative to certain established regulatory  
14 programs and shall be enforced under these established regulatory programs, the existing  
15 procedures governing contested cases and hearings and appeals regarding these requirements shall  
16 apply. Where requirements of this chapter are new and do not amend existing statutory authority  
17 relative to any established regulatory programs, the procedures set forth in RSA 541-A:31 for  
18 contested cases shall apply. **The landowner, however, shall have a right to appeal any**  
19 **disagreement with the department to the shoreland advisory committee established under**  
20 **RSA 483-B:21, at least 1/2 the members of which shall be shoreland owners.**

21 25 Rulemaking. Amend RSA 483-B:17, IV to read as follows:

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

25 26 Penalties. Amend RSA 483-B:18, II and III to read as follows:

26 II. Any person who **knowingly** violates this chapter and any person who purchases land  
27 affected by a violation of this chapter who knew or had reason to know of the violation shall be liable  
28 for remediation or restoration of the land affected.

29 III. Persons **intentionally** violating the provisions of this chapter **and damaging the**  
30 **public waterway who, after notification by the department, fail to make a good faith effort**  
31 **at remediation and restoration** shall be subject to the following:

32 (a) Upon petition of the attorney general or of the municipality in which the violation  
33 occurred, the superior court may levy upon any person **knowingly** violating this chapter a civil penalty  
34 in an amount not to exceed ~~[\$20,000]~~ **\$5,000** for ~~[each day of]~~ each continuing violation. The superior  
35 court shall have jurisdiction to restrain a continuing violation of this chapter, and to require remediation.

36 ~~[(b) Any person who knowingly violates any provision of this chapter, or any rule~~  
37 ~~adopted or order issued under this chapter or any condition of any permit issued under this chapter~~

1 ~~shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person, and,~~  
2 ~~notwithstanding RSA 651:2, may in addition to any sentence of imprisonment, probation or~~  
3 ~~conditional discharge, be fined not more than \$20,000 for each violation if found guilty pursuant to~~  
4 ~~this section. [Each day of violation shall constitute a separate offense.]~~

5           ~~[(e)] (b)~~ The commissioner, after notice and hearing pursuant to RSA 541-A, shall  
6 impose an administrative fine of up to \$5,000 for each offense upon any person who *knowingly*  
7 violates this chapter. Rehearings and appeals relating to such fines shall be governed by RSA 541.  
8 Imposition of an administrative fine under this section shall not preclude the imposition of further  
9 civil or criminal penalties under this chapter.

10           ~~[(d)] (c)~~ Notwithstanding the \$5,000 fine limit in subparagraph (c), the administrative  
11 fine for each repeat violation of this chapter may be multiplied by a factor of 2 for every previous  
12 violation *knowingly* committed by the person or entity.

13           27 Permit Application Fees; Effective Date. Amend 2008, 5:28, II to read as follows:

14           II. *Paragraph I* of section 27 of this act shall take effect July 1, ~~[2011]~~ **2016**.

15           28 Repeal. The following are repealed:

16           I. RSA 483-B:6, I(c) relative to permits for installation of septic systems.

17           II. RSA 483-B:9, V(c)(1), relative to subdivision of land within the protected shoreland.

18           III. RSA 483-B:9, V(g)(3), relative to impervious surfaces.

19           29 Effective Date. This act shall take effect 60 days after its passage.

LBAO  
11-0810  
02/02/11

**SB 154-FN - FISCAL NOTE**

AN ACT            reforming the comprehensive shoreland protection act.

**FISCAL IMPACT:**

Due to time constraints, the Office of Legislative Budget Assistant is unable to provide a fiscal note for this bill at this time. When completed, the fiscal note will be forwarded to the Senate Clerk's Office.

SB 154-FN - AS AMENDED BY THE SENATE

03/16/11 0788s  
03/30/11 1210s

2011 SESSION

11-0810  
06/10

SENATE BILL ***154-FN***

AN ACT reforming and renaming the comprehensive shoreland protection act.

SPONSORS: Sen. Bradley, Dist 3; Sen. Boutin, Dist 16; Sen. Carson, Dist 14; Sen. De Blois, Dist 18; Sen. Forsythe, Dist 4; Sen. Gallus, Dist 1; Sen. Groen, Dist 6; Sen. Stiles, Dist 24; Sen. White, Dist 9; Rep. B. Patten, Carr 4; Rep. Ahlgren, Carr 4; Rep. Umberger, Carr 1; Rep. Chandler, Carr 1; Rep. Bettencourt, Rock 4

COMMITTEE: Energy and Natural Resources

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ANALYSIS

This bill makes extensive changes to the comprehensive shoreland protection act.

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Explanation: Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears [~~in brackets and struckthrough~~]  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 154-FN – AS AMENDED BY THE SENATE

03/16/11 0788s  
03/30/11 1210s

11-0810  
06/10

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eleven*

AN ACT reforming and renaming the comprehensive shoreland protection act.

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

1 1 Shoreland Water Quality Protection Act. Amend the chapter heading of RSA 483-B to read as  
2 follows:

3 CHAPTER 483-B

4 ~~[COMPREHENSIVE]~~ SHORELAND **WATER QUALITY** PROTECTION ACT

5 2 Shoreland Water Quality Protection; Minimum Standards Required. Amend RSA 483-B:2, IX  
6 to read as follows:

7 IX. Control building sites, placement of structures, and land uses *that may potentially*  
8 *damage the public waters.*

9 3 Minimum Standards Required. Amend RSA 483-B:2, XV to read as follows:

10 XV. Anticipate and respond to the impacts of development in shoreland areas *to the extent*  
11 *they may potentially damage the public waters.*

12 4 Definitions. Amend RSA 483-B:4, VII-b to read as follows:

13 VII-b. "Impervious surface" means any modified surface that cannot effectively absorb or  
14 infiltrate water. Examples of impervious surfaces include, but are not limited to, roofs, *and unless*  
15 *designed to effectively absorb or infiltrate water*, decks, patios, and paved, gravel, or crushed  
16 stone driveways, parking areas, and walkways [~~unless designed to effectively absorb or infiltrate~~  
17 ~~water~~]

18 *VII-c. "Horticultural professional" means any arborist, landscape architect, or*  
19 *gardening consultant whose function is that of providing services relative to horticulture.*

20 5 Definitions. Amend RSA 483-B:4, X-b to read as follows:

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

28 6 Definitions. Amend RSA 483-B:4, XIII to read as follows:

29 XIII. "Primary building line" means a setback for primary structures of [~~at least~~] 50 feet

1 from the reference line.

2 7 Definitions. Amend RSA 483-B:4, XV to read as follows:

3 XV. "Protected shoreland" means, for natural, fresh water bodies without artificial  
4 impoundments, for artificially impounded fresh water bodies, *except private garden water*  
5 *features and ponds of less than 10 acres*, and for coastal waters and rivers, all land located  
6 within 250 feet of the reference line of public waters.

7 8 Definitions. Amend RSA 483-B:4, XVIII to read as follows:

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

11 9 Definitions. Amend RSA 483-B:4, XVIII-c to read as follows:

12 XVIII-c. "Replace in kind" means the substitution of a new structure for an existing legal  
13 structure, whether in total or in part [~~with no change in size, dimensions, footprint, interior square~~  
14 ~~footage, and location, with the exception of changes resulting in an increase in the setback to public~~  
15 ~~waters~~].

16 10 Definitions. Amend RSA 483-B:4, XX-a to read as follows:

17 XX-a. "Shoreland frontage" means the [~~average of the distances of the actual natural~~  
18 ~~shoreline footage and a straight line drawn between property lines~~] *actual shoreland frontage*  
19 *along the water front measured at the reference line.*

20 11 Definitions. Amend RSA 483-B:4, XXII to read as follows:

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

24 12 Definitions. Amend RSA 483-B:4, XXIV-b to read as follows:

25 XXIV-b. "Unaltered state" means [~~native~~] vegetation allowed to grow without cutting,  
26 limbing, trimming, pruning, mowing, or other similar activities except as needed [~~to maintain the~~  
27 ~~health of the plant being trimmed, as allowed by rules of the department~~] *for plant health,*  
28 *normal maintenance, and renewal.*

29 13 Enforcement by Commissioner; Duties; Woodland Buffer. Amend RSA 483-B:5, II to read as  
30 follows:

31 II. The commissioner or his *or her* designee may, for cause, enter upon any *subject* land or  
32 parcel at any reasonable time *after written notification and with prior permission of the*  
33 *owner* to perform oversight and enforcement duties provided for in this chapter.

34 14 Permit Required; Exemption. Amend RSA 483-B:5-b, I to read as follows:

35 I.(a) No person shall commence construction, excavation, or filling activities within the  
36 protected shoreland without obtaining a permit from the department to ensure compliance with this  
37 chapter. *For projects which have no impact on water quality and which follow department*



1 *rules, the applicant shall qualify for a permit by notification. The owner may proceed with*  
2 *the proposed project immediately upon receipt of written notice from the department that a*  
3 *complete and appropriate notification has been received by the department. A notification*  
4 *shall be complete and appropriate provided it meets or exceeds all of the minimum*  
5 *standards under RSA 483-B:9, includes a notification form signed by the owner of property,*  
6 *the name and address of the property owner, the address of the site on which the work will*  
7 *occur, the name of the jurisdictional waterbody, the tax map and lot number on which the*  
8 *proposed work will occur, plans clearly and accurately depicting the work to be completed*  
9 *relative to the reference line of the jurisdictional waterbody, photographs of the area to be*  
10 *impacted, and identification of those project criteria listed below that would qualify the*  
11 *project for a permit by notification. Such project criteria shall include:*

12 (1) *Construction, excavation, and filing, or other activity that impacts less*  
13 *than 1,500 square feet and adds no more than 900 square feet of impervious area within a*  
14 *protected shoreland area.*

15 (2) *Construction, excavation, and filling, directly related to stormwater*  
16 *management improvements and erosion control projects or environmental restoration or*  
17 *enhancement projects.*

18 (3) *Maintenance, repairs, and improvements of public utilities, public roads,*  
19 *and public access facilities.*

20 (4) *Any similar activities defined as qualified for a permit by notification by*  
21 *rules of the department.*

22 (b) The permit application fee shall be \$100 plus \$.10 per square foot of area affected by  
23 the proposed activities and shall be deposited in the wetlands and shorelands review fund  
24 established under RSA 482-A:3, III. Such fees shall be capped as follows:

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

28 (2) For projects of 0-9,999 square feet, *that do not qualify for a permit by*  
29 *notification*, \$750.

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

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

32 (c) *If the application is denied after relying on the recommendations of the*  
33 *department, the application fee shall be refunded to the applicant within 30 days of such*  
34 *denial.*

35 15 New Paragraph; Permit Required; Exemption. Amend RSA 483-B:5-b by inserting after  
36 paragraph IV-a the following new paragraph:

37 IV-b. No permits issued by the department pursuant to this chapter that involve private,

1 non-federal undertakings shall require coordination with or clearance by the New Hampshire  
2 division of historical resources.

3 16 Permit Required; Exemption. Amend RSA 483-B:5-b, V to read as follows:

4 V.(a) Within 30 days of receipt of an application for a permit or ~~[75]~~ 30 days of receipt of an  
5 application for a permit that will require a ~~[variance of the minimum standard of RSA 483-B:9, V or~~  
6 ~~a]~~ waiver of the minimum standards of RSA 483-B:9, the department shall request any additional  
7 information *reasonably* required to complete its evaluation of the application, and provide the  
8 applicant with any written technical comments the department deems necessary. Any request for  
9 additional information shall specify that the applicant submit such information as soon as  
10 practicable and notify the applicant that if all of the requested information is not received within  
11 ~~[60]~~ 120 days of the request, the department shall deny the application.

12 (b) When the department requests additional information pursuant to subparagraph (a),  
13 the department shall, within ~~[30]~~ 20 days of the department's receipt of the information:

14 (1) Approve the application~~[-in whole or in part,]~~ and issue a permit; or

15 (2) Deny the application, and issue written findings in support of the denial; or

16 (3) Extend the time for rendering a decision on the application for good cause and  
17 with the written agreement of the applicant.

18 (c) Where no request for additional information is made, the department shall, within  
19 30 days of receipt of the application for a permit or ~~[75]~~ 30 days of receipt of an application for a  
20 permit that will require a ~~[variance of the minimum standard of RSA 483-B:9, V or a]~~ waiver of the  
21 minimum standards of RSA 483-B:9[;],

22 ~~[(1)]~~ approve or deny the application~~[-in whole or in part, and issue a permit; or~~

23 ~~(2) Deny the application, and issue]~~ *with* written findings in support of the ~~[denial;~~

24 ~~or~~

25 ~~(3) Extend the time for rendering a decision on the application for good cause and~~  
26 ~~with the written agreement of the applicant]~~ *decision*.

27 (d) *Within 5 business days of receipt of a permit by notification filing the*  
28 *department shall issue a written notice to the property owner or agent stating that the*  
29 *notification has either been accepted or rejected.*

30 ~~[(d)]~~ (e)(1) The time limits prescribed by this paragraph shall supersede any time limits  
31 provided in any other provision of law. If the department fails to act within the applicable time  
32 frame established in subparagraphs (b) and (c), the applicant may ask the department to issue the  
33 permit by submitting a written request. If the applicant has previously agreed to accept  
34 communications from the department by electronic means, a request submitted electronically by the  
35 applicant shall constitute a written request.

36 (2) Within 14 days of the date of receipt of a written request from the applicant to  
37 issue the permit, the department shall:

1 (A) Approve the application, in whole or in part, and issue a permit; or

2 (B) Deny the application and issue written findings in support of the denial.

3 (3) If the department does not issue either a permit or a written denial within the  
4 14-day period, the applicant shall be deemed to have a permit by default and may proceed with the  
5 project as presented in the application. The authorization provided by this subparagraph shall not  
6 relieve the applicant of complying with all requirements applicable to the project, including but not  
7 limited to requirements established in or under this chapter and RSA 485-A relating to water  
8 quality.

9 (4) Upon receipt of a written request from an applicant, the department shall issue  
10 written confirmation that the applicant has a permit by default pursuant to subparagraph (d)(3),  
11 which authorizes the applicant to proceed with the project as presented in the application and  
12 requires the work to comply with all requirements applicable to the project, including but not limited  
13 to requirements established in or under this chapter and RSA 485-A relating to water quality.

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

17 [(f)] (g) The department may extend the time for rendering a decision under  
18 subparagraphs (b)(3) and (c)(3), without the applicant's agreement, on an application from an  
19 applicant who previously has been determined, after the exhaustion of available appellate remedies,  
20 to have failed to comply with this chapter or any rule adopted or permit or approval issued under  
21 this chapter, or to have misrepresented any material fact made in connection with any activity  
22 regulated or prohibited by this chapter, pursuant to an action initiated under RSA 483-B:18. The  
23 length of such an extension shall be no longer than reasonably necessary to complete the review of  
24 the application, and shall not exceed 30 days unless the applicant agrees to a longer extension. The  
25 department shall notify the applicant of the length of the extension.

26 [(g)] (h) The department may suspend review of an application for a proposed project on  
27 a property with respect to which the department has commenced an enforcement action against the  
28 applicant for any violation of this chapter, RSA 482-A, RSA 485-A:17, or RSA 485-A:29-44, or of any  
29 rule adopted or permit or approval issued pursuant to this chapter, RSA 482-A, RSA 485-A:17, or  
30 RSA 485-A:29-44. Any such suspension shall expire upon conclusion of the enforcement action and  
31 completion of any remedial actions the department may require to address the violation; provided,  
32 however, that the department may resume its review of the application sooner if doing so will  
33 facilitate resolution of the violation. The department shall resume its review of the application at  
34 the point the review was suspended, except that the department may extend any of the time limits  
35 under this paragraph and its rules up to a total of 30 days for all such extensions. For purposes of  
36 this subparagraph, "enforcement action" means an action initiated under RSA 482-A:13, RSA 482-  
37 A:14, RSA 482-A:14-b, RSA 483-B:18, RSA 485-A:22, RSA 485-A:42, or RSA 485-A:43.

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

2 (d) No fertilizer, except limestone, shall be applied to vegetation or soils located within  
3 25 feet of the reference line of any public water. *Beyond 25 feet, limestone or any fertilizer*  
4 *containing* low phosphate[;] *and* slow release nitrogen [~~fertilizer or limestone,~~] may be used [~~on~~  
5 ~~areas beyond 25 feet from the reference line~~].

6 18 Minimum Shoreland Protection Standards. RSA 483-B:9, V(a) through V(b)(2)(A)(ii) is  
7 repealed and reenacted to read as follows:

8 (a) Maintenance of a Waterfront Buffer.

9 (1) The waterfront buffer shall be those protected shorelands within 50 feet of the  
10 reference line. The purpose of this buffer shall be to protect the quality of public waters while  
11 allowing homeowner discretion with regard to water access, safety, viewscape maintenance, and lot  
12 design.

13 (2) Within the waterfront buffer all of the following prohibitions and limitations shall  
14 apply:

15 (A) No chemicals, including pesticides or herbicides of any kind shall be applied  
16 to ground, turf, or established vegetation except if applied by horticultural professionals who have a  
17 pesticide application license issued by the department of agriculture or as allowed under special  
18 permit issued by the division of pesticide control under rules adopted by the pesticide control board  
19 under RSA 541-A, or fertilizers of any kind except those specified in RSA 483-B:9, II(d).

20 (B) Rocks and stumps and their root systems shall be left intact in the ground  
21 unless removal is specifically approved by the department, pursuant to RSA 482-A or RSA 483-B:11,  
22 II or unless rocks are removed to improve runoff control or the planting in the waterfront buffer, and  
23 stumps that are removed are replaced with pervious surfaces, new trees, or other woody vegetation.

24 (C) No natural ground cover shall be removed except as necessary for a foot path  
25 to water and access ways as provided under RSA 483-B:9, V(a)(2)(D)(ix), for normal maintenance, to  
26 protect the waterfront buffer, cutting those portions that have grown over 3 feet in height for the  
27 purpose of providing a view, to provide access to natural areas or shoreline, or as specifically  
28 approved by the department, pursuant to RSA 482-A or RSA 483-B.

29 (D) Starting from the northerly or easterly boundary of the property, and  
30 working along the shoreline, the waterfront buffer shall be divided into 50 by 50 foot segments.  
31 Owners of land within the waterfront buffer shall measure, calculate, and maintain the tree, sapling,  
32 shrub, and groundcover point score in each of these segments in accordance with the methods and  
33 standards described in subparagraphs (i) through (ix).

34 (i) Tree and sapling diameters shall be measured at 4 1/2 feet above the  
35 ground for existing trees and saplings, or by caliper at a height consistent with established nursery  
36 industry standards when nursery stock is to be used, and are scored as follows:

37 Diameter or Caliper Score

1 1 to 3 inches – 1

2 3 to 6 inches – 5

3 6 to 12 inches –10

4 12 to 24 inches –15

5 Greater than 24 inches- 25

6 (ii) Shrubs and groundcover plants shall be scored as follows:

7 Four square feet of shrub area – 1 point.

8 Ground cover planted in the form of sod or mat – one point for every 50 square feet.

9 Shrub and groundcover shall not count for more than 25 points in each full segment.

10 (iii) Dead, diseased, or unsafe trees or saplings shall not be included in  
11 scoring.

12 (iv) If the total tree and sapling score in any 50 foot by 50 foot segment  
13 exceeds 50 points, then trees, saplings, shrubs, and groundcover (vegetation) may be removed as long  
14 as the sum of the scores for the remaining trees and saplings in that segment does not total less than  
15 50 points. If for any reason there is insufficient area for a full segment, or the segment contains  
16 areas incapable of supporting trees and saplings, such as areas of rock, ledge, or beaches, the point  
17 score requirement for the remaining vegetation in that partial segment shall be reduced  
18 proportionally to that required of a full segment. Vegetation shall not be removed from any segment  
19 which fails to meet the minimum point score for that segment. Owners are encouraged to take  
20 efforts to plan the maintenance of their waterfront buffer areas including the planting of additional  
21 non-invasive vegetation to increase point scores within segments, thus providing sufficient points to  
22 allow the future removal of vegetation as may become necessary while still meeting the requirements  
23 of this paragraph.

24 (v) The department shall approve applications pursuant to RSA 482-A or  
25 RSA 483-B that include the planting of trees, saplings, shrubs, and groundcover as necessary to at  
26 least maintain either the existing point score or the minimum score required. The department shall  
27 not approve any application that would result in a combined vegetation score of less than the  
28 minimum score required where the segment initially meets the minimum score or would result in  
29 any reduction of the point score where the segment does not initially meet the minimum score.

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

37 (vii) Normal trimming, pruning, and thinning of branches to the extent

1 necessary to maintain the health of the planted area as well to protect structures, maintain  
2 clearances, and provide views is permitted provided such activity does not endanger the health of the  
3 plant.

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

10 (ix) A permanent 6-foot wide foot path as well as access to any docks,  
11 beaches, structures, existing open areas, and the water body, configured in a manner that will not  
12 concentrate storm water runoff or contribute to erosion, are allowed.

13 (b) Maintenance of a Natural Woodland Buffer.

14 (1) A natural woodland buffer shall be maintained within 150 feet of the reference  
15 line. The first 50 feet of this buffer is designated the waterfront buffer and is subject to the  
16 additional requirements of subparagraph (a). The purpose of the natural woodland buffer shall be to  
17 protect the quality of public waters by minimizing erosion, preventing siltation and turbidity,  
18 stabilizing soils, preventing excess nutrient and chemical pollution, maintaining natural water  
19 temperatures, maintaining a healthy tree canopy and understory, preserving fish and wildlife  
20 habitat, and respecting the overall natural condition of the protected shoreland.

21 (2) Within the natural woodland buffer of a given lot the vegetation, except lawn,  
22 within at least 25 percent of the area outside the waterfront buffer shall be maintained unaltered or  
23 improved with additional vegetation. Owners of lots legally developed or landscaped prior to July 1,  
24 2008 that do not comply with this standard are encouraged to, but shall not be required to, increase  
25 the percentage of area to be maintained in an unaltered state. The percentage of area maintained in  
26 an unaltered state on nonconforming lots shall not be decreased.

27 19 Impervious Surfaces. Amend RSA 483-B:9, V(g) to read as follows:

28 (g) Impervious surfaces.

29 (1) [~~Subject to subparagraph (2),~~] No more than 30 percent of the area of a lot  
30 located within the protected shoreland shall be composed of impervious surfaces, ***unless a***  
31 ***stormwater management system designed and certified by a professional engineer that will***  
32 ***not concentrate stormwater runoff or contribute to erosion is implemented.***

33 (2) If the impervious surface area will exceed 20 percent, ***but is less than 30***  
34 ***percent,*** a stormwater management system shall be implemented and maintained which is designed  
35 to infiltrate increased stormwater from development occurring after the effective date of this  
36 paragraph in accordance with rules established by the department under RSA 485-A:17.

1 (3) If the impervious surface area will exceed ~~[20]~~ **30** percent and the ~~[natural]~~ tree,  
 2 ~~[and]~~ sapling ~~[cover]~~, **shrub, and groundcover** in the waterfront buffer does not meet the ~~[50-point~~  
 3 ~~minimum]~~ **point** score **requirement** of RSA 483-B:9, V(a)(2)(D) in any segment, then such segment  
 4 shall be planted, as determined by rule of the department, with ~~[native]~~ trees, saplings, **shrubs**, or  
 5 ~~[natural-ground-cover]~~ **groundcover** in sufficient quantity, type, and location either to meet the  
 6 minimum score or to provide at least an equivalent level of protection as provided by the minimum  
 7 score and shall be maintained in accordance with RSA 483-B:9, V(a).

8 20 Waivers. Amend RSA 483-B:9, V(i) to read as follows;

9 (i) The commissioner shall have the authority to grant ~~[variances]~~ **waivers** from the  
 10 minimum standards of this section. Such authority shall be exercised ~~[subject to the criteria which~~  
 11 ~~govern the grant of a variance by a zoning board of adjustment under RSA 674:33, 1(b)]~~ **if the**  
 12 **commissioner deems that strict compliance with the minimum standards of this section**  
 13 **will provide no material benefit to the public and have no material adverse effect on the**  
 14 **environment or the natural resources of the state. Waivers shall also be granted to**  
 15 **accommodate the reasonable needs of persons with disabilities.**

16 21 Nonconforming Lots of Record. Amend RSA 483-B:10, I to read as follows:

17 I. Except when otherwise prohibited by law, present and successive owners of an individual  
 18 undeveloped lot may construct a single family residential dwelling **and appurtenant accessory**  
 19 **structures** on it, notwithstanding the provisions of this chapter. Conditions may be imposed which,  
 20 in the opinion of the commissioner, more nearly meet the intent of this chapter, while still  
 21 accommodating the applicant's rights.

22 22 New Paragraph; Nonconforming Lots of Record; Merger. Amend RSA 483-B:10 by inserting  
 23 after paragraph II the following new paragraph:

24 III. Consistent with RSA 674:39-a, a municipality shall not merge adjacent nonconforming  
 25 lots in common ownership without the consent of the owner.

26 23 Nonconforming Structures. RSA 483-B:11 is repealed and reenacted to read as follows:

27 483-B:11 Nonconforming Structures.

28 I. Except as otherwise prohibited by law or applicable municipal ordinance, nonconforming  
 29 structures located within the protected shoreland may be repaired, replaced in kind, reconstructed in  
 30 place, altered, or expanded. Repair, replacement-in kind, or reconstruction in place may alter or  
 31 remodel the interior design or existing foundation of the nonconforming structure, but shall result in  
 32 no expansion or relocation of the existing footprint within the waterfront buffer. However, alteration  
 33 or expansion of a nonconforming structure may expand the existing footprint within the waterfront  
 34 buffer, provided the structure is not extended closer to the reference line and the proposal or  
 35 property is made more nearly conforming than the existing structure or the existing conditions of the  
 36 property.

37 II. For the purposes of this section, a proposal that is "more nearly conforming" means

1 alteration of the location or size of the existing footprints, or redevelopment of the existing conditions  
 2 of the property, such that the structures or the property are brought into greater conformity with the  
 3 design standards of this chapter. Methods for achieving greater conformity include, without  
 4 limitation, reducing the overall square footage of structural footprints, enhancing stormwater  
 5 management, adding infiltration areas and landscaping, upgrading wastewater treatment,  
 6 improving traffic management, or other enhancements that improve wildlife habitat or resource  
 7 protection.

8 III. An expansion that increases the sewerage load to an onsite septic system, or changes or  
 9 expands the use of a septic system, shall require a subsurface approval issued by the department.

10 IV. Under paragraph I, and except as otherwise prohibited by law or applicable municipal  
 11 ordinance, primary nonconforming structures may be entirely demolished and reconstructed, with  
 12 continued encroachment into the waterfront buffer, provided the replacement structure is located  
 13 farther back from the reference line than the preexisting nonconforming structure.

14 24 Rulemaking. Amend RSA 483-B:17, IV to read as follows:

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

18 25 Penalties. RSA 483-B:18, III is repealed and reenacted to read as follows:

19 III. Persons violating the provisions of this chapter and damaging the public waterway who,  
 20 after notification by the department, fail to make a good faith effort at remediation and restoration  
 21 shall be subject to the following:

22 (a) Upon petition of the attorney general or of the municipality in which the violation  
 23 occurred, the superior court may levy upon any person violating this chapter a civil penalty in an  
 24 amount not to exceed \$5,000 for each continuing violation. The superior court shall have jurisdiction  
 25 to restrain a continuing violation of this chapter, and to require remediation.

26 (b) The commissioner, after notice and hearing pursuant to RSA 541-A, may impose an  
 27 administrative fine of up to \$5,000 for each offense upon any person who violates this chapter.  
 28 Rehearings and appeals relating to such fines shall be governed by RSA 541. Imposition of an  
 29 administrative fine under this section shall not preclude the imposition of further civil penalties  
 30 under this chapter.

31 (c) Notwithstanding the \$5,000 fine limit in subparagraph (b), the administrative fine for  
 32 each repeat violation of this chapter may be multiplied by a factor of 2 for every previous violation  
 33 committed by the person or entity.

34 26 New Paragraph; Shoreland Advisory Committee. Amend RSA 483-B:21 by inserting after  
 35 paragraph VII the following new paragraph:

36 VIII. Any permit applications denied under any section of this chapter shall be reported to  
 37 the shoreland advisory committee by the department.



1 27 Permit Application Fees; Effective Date. Amend 2008, 5:28, II to read as follows:

2 II. **Paragraph I** of section 27 of this act shall take effect July 1, [2014] **2016**.

3 28 Definitions. Amend RSA 483-B:4, XVII(a) to read as follows:

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

7 29 Shoreland Advisory Committee. Amend the introductory paragraph of RSA 483-B:21 to read  
8 as follows:

9 There is established a shoreland advisory committee. All members shall be New Hampshire  
10 residents representing diverse geographic areas of the state. The primary focus of this committee is  
11 to address residential shorefront owner input and perspective relating to shoreland development  
12 regulated under the [comprehensive] shoreland **water quality** protection act under this chapter and  
13 the regulation of shoreline structures under RSA 482-A.

14 30 Approval to Increase a Load on a Sewage System. Amend RSA 485-A:38, II-a(c) to read as  
15 follows:

16 (c) When applicable, the proposed expansion, relocation, or replacement complies with  
17 the requirements of the [comprehensive] shoreland **water quality** protection act, RSA 483-B.

18 31 Repeal. RSA 483-B:9, V(c)(1), relative to subdivision of land within the protected shoreland,  
19 is repealed.

20 32 Effective Date.

21 I. Section 27 of this act shall take effect June 30, 2011.

22 II. The remainder of this act shall take effect 60 days after its passage.

LBAO  
11-0810  
02/02/11

**SB 154-FN - FISCAL NOTE**

AN ACT            reforming and renaming the comprehensive shoreland protection act.

**FISCAL IMPACT:**

Due to time constraints, the Office of Legislative Budget Assistant is unable to provide a fiscal note for this bill at this time. When completed, the fiscal note will be forwarded to the Senate Clerk's Office.

SB 154-FN – FINAL VERSION

03/16/11 0788s  
03/30/11 1210s  
4May2011... 1578h  
1June2011... 2006h

2011 SESSION

11-0810  
06/10

SENATE BILL **154-FN**

AN ACT reforming and renaming the comprehensive shoreland protection act and repealing New Hampshire’s regional greenhouse gas initiative cap and trade program for controlling carbon dioxide emissions.

SPONSORS: Sen. Bradley, Dist 3; Sen. Boutin, Dist 16; Sen. Carson, Dist 14; Sen. De Blois, Dist 18; Sen. Forsythe, Dist 4; Sen. Gallus, Dist 1; Sen. Groen, Dist 6; Sen. Stiles, Dist 24; Sen. White, Dist 9; Rep. B. Patten, Carr 4; Rep. Ahlgren, Carr 4; Rep. Umberger, Carr 1; Rep. Chandler, Carr 1; Rep. Bettencourt, Rock 4

COMMITTEE: Energy and Natural Resources

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AMENDED ANALYSIS

This bill makes extensive changes to the comprehensive shoreland protection act.

This bill repeals New Hampshire’s regional greenhouse gas initiative cap and trade program for controlling carbon dioxide emissions. This bill also clarifies how the moneys in the greenhouse gas emissions reduction fund may be used.

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Explanation: Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears [~~in brackets and struckthrough~~]  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 154-FN – FINAL VERSION

03/16/11 0788s  
03/30/11 1210s  
4May2011... 1578h  
1June2011... 2006h

11-0810  
06/10

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eleven*

AN ACT reforming and renaming the comprehensive shoreland protection act and repealing New Hampshire’s regional greenhouse gas initiative cap and trade program for controlling carbon dioxide emissions.

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

1 1 Shoreland Water Quality Protection Act. Amend the chapter heading of RSA 483-B to read as  
2 follows:

3 CHAPTER 483-B

4 ~~[COMPREHENSIVE]~~ SHORELAND **WATER QUALITY** PROTECTION ACT

5 2 Shoreland Water Quality Protection; Minimum Standards Required. Amend RSA 483-B:2, IX  
6 to read as follows:

7 IX. Control building sites, placement of structures, and land uses *that may potentially*  
8 *damage the public waters.*

9 3 Minimum Standards Required. Amend RSA 483-B:2, XV to read as follows:

10 XV. Anticipate and respond to the impacts of development in shoreland areas *to the extent*  
11 *they may potentially damage the public waters.*

12 4 Definitions. Amend RSA 483-B:4, VII-b to read as follows:

13 VII-b. “Impervious surface” means any modified surface that cannot effectively absorb or  
14 infiltrate water. Examples of impervious surfaces include, but are not limited to, roofs, *and unless*  
15 *designed to effectively absorb or infiltrate water*, decks, patios, and paved, gravel, or crushed  
16 stone driveways, parking areas, and walkways [~~unless designed to effectively absorb or infiltrate~~  
17 ~~water~~].

18 VII-c. *“Horticultural professional” means any arborist, landscape architect, or*  
19 *gardening consultant whose function is that of providing services relative to horticulture.*

20 5 Definitions. Amend RSA 483-B:4, X-b to read as follows:

21 X-b. “Natural ground cover” means any herbaceous plant or any woody seedling or shrub  
22 generally less than 3 feet in height. [~~Natural ground cover shall also include naturally occurring leaf~~  
23 ~~or needle litter, stumps, decaying woody debris, stones, and boulders.~~] Natural ground cover shall  
24 not include lawns, landscaped areas, gardens, invasive species as listed by the department of  
25 agriculture, markets, and food in accordance with RSA 430:53, III, exotic species as designated by  
26 rule of the department of environmental services in accordance with RSA 487:24, VII, imported

1 organic or stone mulches, or other artificial materials.

2 6 Definitions. Amend RSA 483-B:4, XIII to read as follows:

3 XIII. "Primary building line" means a setback for primary structures of [~~at least~~] 50 feet  
4 from the reference line.

5 7 Definitions. Amend RSA 483-B:4, XV to read as follows:

6 XV. "Protected shoreland" means, for natural, fresh water bodies without artificial  
7 impoundments, for artificially impounded fresh water bodies, **except private garden water**  
8 **features and ponds of less than 10 acres**, and for coastal waters and rivers, all land located  
9 within 250 feet of the reference line of public waters.

10 8 Definitions. Amend RSA 483-B:4, XVIII to read as follows:

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

14 9 Definitions. Amend RSA 483-B:4, XVIII-c to read as follows:

15 XVIII-c. "Replace in kind" means the substitution of a new structure for an existing legal  
16 structure, whether in total or in part [~~with no change in size, dimensions, footprint, interior square~~  
17 ~~footage, and location, with the exception of changes resulting in an increase in the setback to public~~  
18 ~~waters~~].

19 10 Definitions. Amend RSA 483-B:4, XX-a to read as follows:

20 XX-a. "Shoreland frontage" means the [~~average of the distances of the actual natural~~  
21 ~~shoreline footage and a straight line drawn between property lines~~] **actual shoreland frontage**  
22 **along the water front measured at the reference line.**

23 11 Definitions. Amend RSA 483-B:4, XXII to read as follows:

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

27 12 Definitions. Amend RSA 483-B:4, XXIV-b to read as follows:

28 XXIV-b. "Unaltered state" means [~~native~~] vegetation allowed to grow without cutting,  
29 limbing, trimming, pruning, mowing, or other similar activities except as needed [~~to maintain the~~  
30 ~~health of the plant being trimmed, as allowed by rules of the department~~] **for plant health,**  
31 **normal maintenance, and renewal.**

32 13 Enforcement by Commissioner; Duties; Woodland Buffer. Amend RSA 483-B:5, II to read as  
33 follows:

34 II. The commissioner or his **or her** designee may, for cause, enter upon any **subject** land or  
35 parcel at any reasonable time **after written notification** to perform oversight and enforcement  
36 duties provided for in this chapter.

37 14 Permit Required; Exemption. Amend RSA 483-B:5-b, I to read as follows:

1 I.(a) No person shall commence construction, excavation, or filling activities within the  
2 protected shoreland without obtaining a permit from the department to ensure compliance with this  
3 chapter. *Projects which have no impact on water quality and which follow department*  
4 *rules shall qualify for a permit by notification. The owner may proceed with the proposed*  
5 *project immediately upon receipt of written notice from the department that a complete*  
6 *and accepted notification has been received by the department. A notification shall be*  
7 *complete and accepted provided it meets or exceeds all of the minimum standards under*  
8 *RSA 483-B:9, includes a notification form signed by the owner of property, the name and*  
9 *address of the property owner, the address of the site on which the work will occur, the*  
10 *name of the jurisdictional waterbody, the tax map and lot number on which the proposed*  
11 *work will occur, plans clearly and accurately depicting the work to be completed relative*  
12 *to the reference line of the jurisdictional waterbody, photographs of the area to be*  
13 *impacted, and identification of those project criteria listed below that would qualify the*  
14 *project for a permit by notification. Such project criteria shall include:*

15 (1) *Construction, excavation, and filing, or other activity that impacts less*  
16 *than 1,500 square feet and adds no more than 900 square feet of impervious area within a*  
17 *protected shoreland area.*

18 (2) *Construction, excavation, and filling, directly related to stormwater*  
19 *management improvements and erosion control projects or environmental restoration or*  
20 *enhancement projects.*

21 (3) *Maintenance, repairs, and improvements of public utilities, public roads,*  
22 *and public access facilities.*

23 (4) *Any similar activities defined as qualified for a permit by notification by*  
24 *rules of the department.*

25 (b) The permit application fee shall be \$100 plus \$.10 per square foot of area affected by  
26 the proposed activities and shall be deposited in the wetlands and shorelands review fund  
27 established under RSA 482-A:3, III. Such fees shall be capped as follows:

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

31 (2) For projects of 0-9,999 square feet, *that do not qualify for a permit by*  
32 *notification, \$750.*

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

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

35 (c) *If the application is denied after relying on the recommendations of the*  
36 *department, the application fee shall be refunded to the applicant within 30 days of such*  
37 *denial.*

1 15 New Paragraph; Permit Required; Exemption. Amend RSA 483-B:5-b by inserting after  
2 paragraph IV-a the following new paragraph:

3 IV-b. No permits issued by the department pursuant to this chapter that involve private,  
4 non-federal undertakings shall require coordination with or clearance by the New Hampshire  
5 division of historical resources.

6 16 Permit Required; Exemption. Amend RSA 483-B:5-b, V to read as follows:

7 V.(a) Within 30 days of receipt of an application for a permit or ~~[75]~~ **30** days of receipt of an  
8 application for a permit that will require a ~~[variance of the minimum standard of RSA 483-B:9, V or~~  
9 ~~a]~~ waiver of the minimum standards of RSA 483-B:9, the department shall request any additional  
10 information *reasonably* required to complete its evaluation of the application, and provide the  
11 applicant with any written technical comments the department deems necessary. Any request for  
12 additional information shall specify that the applicant submit such information as soon as  
13 practicable and notify the applicant that if all of the requested information is not received within  
14 ~~[60]~~ **120** days of the request, the department shall deny the application.

15 (b) When the department requests additional information pursuant to subparagraph (a),  
16 the department shall, within ~~[30]~~ **20** days of the department's receipt of the information:

17 (1) Approve the application~~[-in whole or in part,]~~ and issue a permit; or

18 (2) Deny the application, and issue written findings in support of the denial; or

19 (3) Extend the time for rendering a decision on the application for good cause and  
20 with the written agreement of the applicant.

21 (c) Where no request for additional information is made, the department shall, within  
22 30 days of receipt of the application for a permit or ~~[75]~~ **30** days of receipt of an application for a  
23 permit that will require a ~~[variance of the minimum standard of RSA 483-B:9, V or a]~~ waiver of the  
24 minimum standards of RSA 483-B:9~~[-]~~,

25 ~~[(1)]~~ approve or deny the application~~[-in whole or in part, and issue a permit; or~~

26 ~~(2)-Deny the application, and issue]~~ *with* written findings in support of the ~~[denial;~~

27 ~~or~~

28 ~~(3)-Extend the time for rendering a decision on the application for good cause and~~  
29 ~~with the written agreement of the applicant]~~ *decision*.

30 (d) *Within 5 business days of receipt of a permit by notification filing, the*  
31 *department shall issue a written notice to the property owner or agent stating that the*  
32 *notification has either been accepted or rejected. If the department does not respond*  
33 *within the 5-day period, the property owner or agent may submit to the department a*  
34 *written request for a response. A request submitted electronically by the applicant shall*  
35 *constitute a written request provided that the applicant has previously agreed to accept*  
36 *electronic communication. If the department fails to respond to the written request within*  
37 *an additional 5 days the property owner or agent shall be deemed to have a permit by*

1 *notification and may proceed with the project as presented in the notification filing. The*  
2 *authorization provided by this subparagraph shall not relieve the applicant of complying*  
3 *with all requirements applicable to the project, including but not limited to requirements*  
4 *established in or under this chapter and RSA 485-A relative to water quality.*

5           ~~[(d)]~~ (e)(1) The time limits prescribed by this paragraph shall supersede any time limits  
6 provided in any other provision of law. If the department fails to act within the applicable time  
7 frame established in subparagraphs (b) and (c), the applicant may ask the department to issue the  
8 permit by submitting a written request. If the applicant has previously agreed to accept  
9 communications from the department by electronic means, a request submitted electronically by the  
10 applicant shall constitute a written request.

11           (2) Within 14 days of the date of receipt of a written request from the applicant to  
12 issue the permit, the department shall:

13                   (A) Approve the application, in whole or in part, and issue a permit; or

14                   (B) Deny the application and issue written findings in support of the denial.

15           (3) If the department does not issue either a permit or a written denial within the  
16 14-day period, the applicant shall be deemed to have a permit by default and may proceed with the  
17 project as presented in the application. The authorization provided by this subparagraph shall not  
18 relieve the applicant of complying with all requirements applicable to the project, including but not  
19 limited to requirements established in or under this chapter and RSA 485-A relating to water  
20 quality.

21           (4) Upon receipt of a written request from an applicant, the department shall issue  
22 written confirmation that the applicant has a permit by default pursuant to subparagraph ~~[(d)]~~  
23 (e)(3), which authorizes the applicant to proceed with the project as presented in the application and  
24 requires the work to comply with all requirements applicable to the project, including but not limited  
25 to requirements established in or under this chapter and RSA 485-A relating to water quality.

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

29           ~~[(f)]~~ (g) The department may extend the time for rendering a decision under  
30 subparagraphs (b)(3) and (c)(3), without the applicant's agreement, on an application from an  
31 applicant who previously has been determined, after the exhaustion of available appellate remedies,  
32 to have failed to comply with this chapter or any rule adopted or permit or approval issued under  
33 this chapter, or to have misrepresented any material fact made in connection with any activity  
34 regulated or prohibited by this chapter, pursuant to an action initiated under RSA 483-B:18. The  
35 length of such an extension shall be no longer than reasonably necessary to complete the review of  
36 the application, and shall not exceed 30 days unless the applicant agrees to a longer extension. The  
37 department shall notify the applicant of the length of the extension.



1           ~~(g)~~ **(h)** The department may suspend review of an application for a proposed project on  
2 a property with respect to which the department has commenced an enforcement action against the  
3 applicant for any violation of this chapter, RSA 482-A, RSA 485-A:17, or RSA 485-A:29-44, or of any  
4 rule adopted or permit or approval issued pursuant to this chapter, RSA 482-A, RSA 485-A:17, or  
5 RSA 485-A:29-44. Any such suspension shall expire upon conclusion of the enforcement action and  
6 completion of any remedial actions the department may require to address the violation; provided,  
7 however, that the department may resume its review of the application sooner if doing so will  
8 facilitate resolution of the violation. The department shall resume its review of the application at  
9 the point the review was suspended, except that the department may extend any of the time limits  
10 under this paragraph and its rules up to a total of 30 days for all such extensions. For purposes of  
11 this subparagraph, “enforcement action” means an action initiated under RSA 482-A:13, RSA 482-  
12 A:14, RSA 482-A:14-b, RSA 483-B:18, RSA 485-A:22, RSA 485-A:42, or RSA 485-A:43.

13           17 Minimum Shoreland Protection Standards. Amend RSA 483-B:9, II(d) to read as follows:

14           (d) No fertilizer, except limestone, shall be applied to vegetation or soils located within  
15 25 feet of the reference line of any public water. ***Beyond 25 feet***, ~~[low-phosphate, slow-release~~  
16 ~~nitrogen fertilizer or limestone;]~~ ***slow or controlled release fertilizer, as defined by rules***  
17 ***adopted by department***, may be used ~~[on areas beyond 25 feet from the reference line].~~

18           18 Minimum Shoreland Protection Standards. RSA 483-B:9, V(a) through V(b)(2)(A)(ii) is  
19 repealed and reenacted to read as follows:

20           (a) Maintenance of a Waterfront Buffer.

21           (1) The waterfront buffer shall be those protected shorelands within 50 feet of the  
22 reference line. The purpose of this buffer shall be to protect the quality of public waters while  
23 allowing homeowner discretion with regard to water access, safety, viewscape maintenance, and lot  
24 design.

25           (2) Within the waterfront buffer all of the following prohibitions and limitations shall  
26 apply:

27           (A) No chemicals, including pesticides or herbicides of any kind, shall be applied  
28 to ground, turf, or established vegetation except if applied by horticultural professionals who have a  
29 pesticide application license issued by the department of agriculture or as allowed under special  
30 permit issued by the division of pesticide control under rules adopted by the pesticide control board  
31 under RSA 541-A, or fertilizers of any kind except those specified in RSA 483-B:9, II(d).

32           (B) Rocks and stumps and their root systems shall be left intact in the ground  
33 unless removal is specifically approved by the department, pursuant to RSA 482-A or RSA 483-B:11,  
34 II or unless rocks are removed to improve runoff control or the planting in the waterfront buffer, and  
35 stumps that are removed are replaced with pervious surfaces, new trees, or other woody vegetation.

36           (C) No natural ground cover shall be removed except as necessary for a foot path  
37 to water and access ways as provided under RSA 483-B:9, V(a)(2)(D), ***(viii) and (ix)***, for normal

1 maintenance, to protect the waterfront buffer, cutting those portions that have grown over 3 feet in  
2 height for the purpose of providing a view, to provide access to natural areas or shoreline, or as  
3 specifically approved by the department, pursuant to RSA 482-A or RSA 483-B.

4 (D) Starting from the northerly or easterly boundary of the property, and  
5 working along the shoreline, the waterfront buffer shall be divided into 50 by 50 foot segments.  
6 Owners of land within the waterfront buffer shall measure, calculate, and maintain the tree, sapling,  
7 shrub, and groundcover point score in each of these segments in accordance with the methods and  
8 standards described in subparagraphs (i) through (ix).

9 (i) Tree and sapling diameters shall be measured at 4 1/2 feet above the  
10 ground for existing trees and saplings, or by caliper at a height consistent with established nursery  
11 industry standards when nursery stock is to be used, and are scored as follows:

12 Diameter or Caliper Score

13 1 to 3 inches - 1

14 3 to 6 inches - 5

15 6 to 12 inches - 10

16 12 to 24 inches - 15

17 Greater than 24 inches - 25

18 (ii) Shrubs and groundcover plants shall be scored as follows:

19 Four square feet of shrub area - 1 point.

20 Ground cover planted in the form of sod or mat - one point for every 50 square feet.

21 Shrub and groundcover shall not count for more than 25 points in each full segment.

22 (iii) Dead, diseased, or unsafe trees or saplings shall not be included in  
23 scoring.

24 (iv) If the total tree and sapling score in any 50 foot by 50 foot segment  
25 exceeds 50 points, then trees, saplings, and shrubs over 3 feet in height may be removed as long as  
26 the sum of the scores for the remaining trees and saplings in that segment does not total less than  
27 50 points. If for any reason there is insufficient area for a full segment, or the segment contains  
28 areas incapable of supporting trees and saplings, such as areas of rock, ledge, or beaches, the point  
29 score requirement for the remaining vegetation in that partial segment shall be reduced  
30 proportionally to that required of a full segment. Vegetation shall not be removed from any segment  
31 which fails to meet the minimum point score for that segment. Owners are encouraged to take  
32 efforts to plan the maintenance of their waterfront buffer areas including the planting of additional  
33 non-invasive vegetation to increase point scores within segments, thus providing sufficient points to  
34 allow the future removal of vegetation as may become necessary while still meeting the requirements  
35 of this paragraph.

36 (v) The department shall approve applications pursuant to RSA 482-A or  
37 RSA 483-B that include the planting of trees, saplings, shrubs, and groundcover as necessary to at

1 least maintain either the existing point score or the minimum score required. The department shall  
2 not approve any application that would result in a combined vegetation score of less than the  
3 minimum score required where the segment initially meets the minimum score or would result in  
4 any reduction of the point score where the segment does not initially meet the minimum score.

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

12 (vii) Normal trimming, pruning, and thinning of branches to the extent  
13 necessary to maintain the health of the planted area as well to protect structures, maintain  
14 clearances, and provide views is permitted provided such activity does not endanger the health of the  
15 plant.

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

22 (ix) A permanent 6-foot wide foot path as well as access to any docks,  
23 beaches, structures, existing open areas, and the water body, configured in a manner that will not  
24 concentrate storm water runoff or contribute to erosion, are allowed.

25 (b) Maintenance of a Natural Woodland Buffer.

26 (1) A natural woodland buffer shall be maintained within 150 feet of the reference  
27 line. The first 50 feet of this buffer is designated the waterfront buffer and is subject to the  
28 additional requirements of subparagraph (a). The purpose of the natural woodland buffer shall be to  
29 protect the quality of public waters by minimizing erosion, preventing siltation and turbidity,  
30 stabilizing soils, preventing excess nutrient and chemical pollution, maintaining natural water  
31 temperatures, maintaining a healthy tree canopy and understory, preserving fish and wildlife  
32 habitat, and respecting the overall natural condition of the protected shoreland.

33 (2) Within the natural woodland buffer of a given lot the vegetation, except lawn,  
34 within at least 25 percent of the area outside the waterfront buffer shall be maintained unaltered or  
35 improved with additional vegetation. Owners of lots legally developed or landscaped prior to July 1,  
36 2008 that do not comply with this standard are encouraged to, but shall not be required to, increase  
37 the percentage of area to be maintained in an unaltered state. The percentage of area maintained in

1 an unaltered state on nonconforming lots shall not be decreased.

2 19 Impervious Surfaces. Amend RSA 483-B:9, V(g) to read as follows:

3 (g) Impervious surfaces.

4 (1) ~~[Subject to subparagraph (2),]~~ No more than 30 percent of the area of a lot  
5 located within the protected shoreland shall be composed of impervious surfaces, ***unless a***  
6 ***stormwater management system designed and certified by a professional engineer that will***  
7 ***not concentrate stormwater runoff or contribute to erosion is implemented.***

8 (2) If the impervious surface area will exceed 20 percent, ***but is less than 30***  
9 ***percent,*** a stormwater management system shall be implemented and maintained which is designed  
10 to infiltrate increased stormwater from development occurring after the effective date of this  
11 paragraph in accordance with rules established by the department under RSA 485-A:17.

12 (3) If the impervious surface area will exceed ~~[20]~~ **30** percent and the ~~[natural]~~ tree,  
13 ~~[and]~~ sapling ~~[cover],~~ ***shrub, and groundcover*** in the waterfront buffer does not meet the ~~[50-point~~  
14 ~~minimum]~~ ***point*** score ***requirement*** of RSA 483-B:9, V(a)(2)(D) in any segment, then such segment  
15 shall be planted, as determined by rule of the department, with ~~[native]~~ trees, saplings, ***shrubs,*** or  
16 ~~[natural ground cover]~~ ***groundcover*** in sufficient quantity, type, and location either to meet the  
17 minimum score or to provide at least an equivalent level of protection as provided by the minimum  
18 score and shall be maintained in accordance with RSA 483-B:9, V(a).

19 20 Waivers. Amend RSA 483-B:9, V(i) to read as follows;

20 (i) The commissioner shall have the authority to grant ~~[variances]~~ ***waivers*** from the  
21 minimum standards of this section. Such authority shall be exercised ~~[subject to the criteria which~~  
22 ~~govern the grant of a variance by a zoning board of adjustment under RSA 674:33, 1(b)]~~ ***if the***  
23 ***commissioner deems that strict compliance with the minimum standards of this section***  
24 ***will provide no material benefit to the public and have no material adverse effect on the***  
25 ***environment or the natural resources of the state. Waivers shall also be granted to***  
26 ***accommodate the reasonable needs of persons with disabilities.***

27 21 Nonconforming Lots of Record. Amend RSA 483-B:10, I to read as follows:

28 I. Except when otherwise prohibited by law, present and successive owners of an individual  
29 undeveloped lot may construct a single family residential dwelling ***and appurtenant accessory***  
30 ***structures*** on it, notwithstanding the provisions of this chapter. Conditions may be imposed which,  
31 in the opinion of the commissioner, more nearly meet the intent of this chapter, while still  
32 accommodating the applicant's rights.

33 22 New Paragraph; Nonconforming Lots of Record; Merger. Amend RSA 483-B:10 by inserting  
34 after paragraph II the following new paragraph:

35 III. Consistent with RSA 674:39-a, a municipality shall not merge adjacent nonconforming  
36 lots in common ownership without the consent of the owner.

37 23 Nonconforming Structures. RSA 483-B:11 is repealed and reenacted to read as follows:

## 1 483-B:11 Nonconforming Structures.

2 I. Except as otherwise prohibited by law or applicable municipal ordinance, nonconforming  
3 structures located within the protected shoreland may be repaired, replaced in kind, reconstructed in  
4 place, altered, or expanded. Repair, replacement-in kind, or reconstruction in place may alter or  
5 remodel the interior design or existing foundation of the nonconforming structure, but shall result in  
6 no expansion or relocation of the existing footprint within the waterfront buffer. However, alteration  
7 or expansion of a nonconforming structure may expand the existing footprint within the waterfront  
8 buffer, provided the structure is not extended closer to the reference line and the proposal or  
9 property is made more nearly conforming than the existing structure or the existing conditions of the  
10 property.

11 II. For the purposes of this section, a proposal that is "more nearly conforming" means  
12 alteration of the location or size of the existing footprints, or redevelopment of the existing conditions  
13 of the property, such that the structures or the property are brought into greater conformity with the  
14 design standards of this chapter. Methods for achieving greater conformity include, without  
15 limitation, reducing the overall square footage of structural footprints, enhancing stormwater  
16 management, adding infiltration areas and landscaping, upgrading wastewater treatment,  
17 improving traffic management, or other enhancements that improve wildlife habitat or resource  
18 protection.

19 III. An expansion that increases the sewerage load to an onsite septic system, or changes or  
20 expands the use of a septic system, shall require a subsurface approval issued by the department.

21 IV. Under paragraph I, and except as otherwise prohibited by law or applicable municipal  
22 ordinance, primary nonconforming structures may be entirely demolished and reconstructed, with  
23 continued encroachment into the waterfront buffer, provided the replacement structure is located  
24 farther back from the reference line than the preexisting nonconforming structure.

25 24 Rulemaking. Amend RSA 483-B:17, IV to read as follows:

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

29 25 Penalties. RSA 483-B:18, III is repealed and reenacted to read as follows:

30 III. Persons violating the provisions of this chapter and damaging the public waterway who,  
31 after notification by the department, fail to make a good faith effort at remediation and restoration  
32 shall be subject to the following:

33 (a) Upon petition of the attorney general or of the municipality in which the violation  
34 occurred, the superior court may levy upon any person violating this chapter a civil penalty in an  
35 amount not to exceed \$5,000 for each continuing violation. The superior court shall have jurisdiction  
36 to restrain a continuing violation of this chapter, and to require remediation.

37 (b) The commissioner, after notice and hearing pursuant to RSA 541-A, may impose an

1 administrative fine of up to \$5,000 for each offense upon any person who violates this chapter.  
2 Rehearings and appeals relating to such fines shall be governed by RSA 541. Imposition of an  
3 administrative fine under this section shall not preclude the imposition of further civil penalties  
4 under this chapter.

5 (c) Notwithstanding the \$5,000 fine limit in subparagraph (b), the administrative fine for  
6 each repeat violation of this chapter may be multiplied by a factor of 2 for every previous violation  
7 committed by the person or entity.

8 26 New Paragraph; Shoreland Advisory Committee. Amend RSA 483-B:21 by inserting after  
9 paragraph VII the following new paragraph:

10 VIII. Any permit applications denied under any section of this chapter shall be reported to  
11 the shoreland advisory committee by the department.

12 27 Permit Application Fees; Effective Date. Amend 2008, 5:28, II to read as follows:

13 II. Section 27 of this act shall take effect July 1, [2014] **2016**.

14 28 Definitions. Amend RSA 483-B:4, XVII(a) to read as follows:

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

18 29 Shoreland Advisory Committee. Amend the introductory paragraph of RSA 483-B:21 to read  
19 as follows:

20 There is established a shoreland advisory committee. All members shall be New Hampshire  
21 residents representing diverse geographic areas of the state. The primary focus of this committee is  
22 to address residential shorefront owner input and perspective relating to shoreland development  
23 regulated under the [~~comprehensive~~] shoreland **water quality** protection act under this chapter and  
24 the regulation of shoreline structures under RSA 482-A.

25 30 Approval to Increase a Load on a Sewage System. Amend RSA 485-A:38, II-a(c) to read as  
26 follows:

27 (c) When applicable, the proposed expansion, relocation, or replacement complies with  
28 the requirements of the [~~comprehensive~~] shoreland **water quality** protection act, RSA 483-B.

29 31 Repeal. RSA 483-B:9, V(c)(1), relative to subdivision of land within the protected shoreland,  
30 is repealed.

31 32 Powers and Duties of Commissioner; Reference Deleted. Amend RSA 125-O:6, I to read as  
32 follows:

33 I. Develop a trading and banking program to provide appropriate compliance flexibility in  
34 meeting the emission caps established under RSA 125-O:3, III [~~and allowance requirements of~~  
35 ~~RSA 125-O:21 and RSA 125-O:22~~], and to encourage earlier and greater emissions reductions and  
36 the development of new emission control technologies in order to maximize the cost-effectiveness  
37 with which the environmental benefits of this chapter are achieved.

1 33 Rulemaking Authority. Amend RSA 125-O:8 to read as follows:

2 125-O:8 Rulemaking Authority.

3 [~~I.~~] The commissioner shall adopt rules under RSA 541-A, commencing no later than  
4 180 days after the effective date of this section, relative to:

5 ~~[(a)] I.~~ The establishment of trading and banking programs as authorized by RSA 125-  
6 O:6, I.

7 ~~[(b)] II.~~ The establishment of a method for allocating allowances and other emissions  
8 reduction units or mechanisms as authorized by RSA 125-O:3, II and III.

9 ~~[(c)] III.~~ Emissions [~~and allowance~~] monitoring, [~~tracking,~~] recordkeeping, reporting, and  
10 other such actions as may be necessary to verify compliance with this chapter.

11 ~~[(d)] The method and requirements for auctioning budget allowances under RSA 125-~~  
12 ~~O:21, which may use regional organizations.~~

13 ~~(e) Defining eligible projects for early reduction allowances under RSA 125-O:21, IV, and~~  
14 ~~establishing criteria to quantify and grant such allowances.~~

15 ~~(f) Defining eligible projects for offset allowances under RSA 125-O:21, V, and~~  
16 ~~establishing criteria to quantify and grant such allowances, including the accreditation of third-party~~  
17 ~~verifiers.~~

18 ~~(g) The forms and information required on applications for a temporary or operating~~  
19 ~~permit required under RSA 125-O:22.~~

20 ~~H. The public utilities commission shall adopt rules, under RSA 541-A, to administer the~~  
21 ~~greenhouse gas emissions reduction fund pursuant to RSA 125-O:23.]~~

22 34 Compliance Dates. Amend RSA 125-O:9 to read as follows:

23 125-O:9 Compliance Dates. The owner or operator of each affected source shall comply with the  
24 provisions of this chapter, excluding the subdivision on mercury emissions, RSA 125-O:11 through  
25 125-O:18, [~~and the subdivision for CO<sub>2</sub> emissions, RSA 125-O:19 through RSA 125-O:28,~~] by  
26 December 31, 2006.

27 35 Non-Severability. Amend RSA 125-O:10 to read as follows:

28 125-O:10 Non-Severability. No provision of [~~RSA 125-O:1 through RSA 125-O:18 of~~] this  
29 chapter shall be implemented in a manner inconsistent with the integrated, multi-pollutant strategy  
30 [~~or RSA 125-O:1 through RSA 125-O:18~~] of this chapter, and to this end, the provisions of [~~RSA 125-~~  
31 ~~O:1 through RSA 125-O:18 of~~] this chapter are not severable.

32 36 Compliance. The repeal of the regional greenhouse gas initiative program on January 1,  
33 2012 under this act shall not affect each affected CO<sub>2</sub> source's obligation to satisfy the program's  
34 requirements for the compliance period ending December 31, 2011, including those contained in  
35 adopted rules. All means of enforcement shall remain in place for these requirements, including the  
36 provisions of RSA 125-O:7 and any permit issued or modified by the department of environmental  
37 services in accordance with RSA 125-O:22, IV.

1        37 Use of Funds. Notwithstanding the provisions of RSA 125-O:23, all moneys in the  
2 greenhouse gas emissions reduction fund as of July 1, 2011, and all subsequent moneys deposited  
3 into the fund, shall be allocated by the commission as an additional source of funding to electric  
4 distribution companies for CORE energy efficiency programs that are funded by system benefits  
5 charges.

6        38 Repeal. The following are repealed:

7            I. RSA 6:12, I(b)(272), relative to moneys deposited in the greenhouse gas emissions  
8 reduction fund.

9            II. RSA 125-O:3, III(d), relative to carbon dioxide cap.

10          III. RSA 125-O:19 through 125-O:28, relative to the regional greenhouse gas initiative.

11        39 Effective Date.

12            I. Section 27 of this act shall take effect June 30, 2011.

13            II. Sections 32-35 and paragraphs II and III of section 38 shall take effect January 1, 2012.

14            III. Paragraph I of section 38 of this act shall take effect January 1, 2013.

15            IV. The remainder of this act shall take effect upon its passage.



**SB 154-FN - FISCAL NOTE**

AN ACT            reforming and renaming the comprehensive shoreland protection act and repealing New Hampshire's regional greenhouse gas initiative cap and trade program for controlling carbon dioxide emissions.

**FISCAL IMPACT:**

The Department of Environmental Services states this bill, as amended by the House (Amendment #2011-1578h), will have no fiscal impact on state, county and local expenditures and revenue.

**METHODOLOGY:**

The Department of Environmental Services states this bill makes changes to the shoreland protection statute. The Department states the bill as amended will have no measurable fiscal impact on revenue and expenditures as all application fees would continue at current levels and there would be no new permitting processes or exemptions that would affect the number of applications files. The Department notes there is a provision to refund application fees for projects denied under certain specific circumstances. The Department indicates it has historically denied fewer than 2 percent of all applications received and only a small percentage of those denials would qualify for a refund. Therefore the Department states if there is any fiscal impact it would be negligible.

## SB 154 FISCAL NOTE

**AN ACT** reforming and renaming the comprehensive shoreland protection act and repealing New Hampshire's regional greenhouse gas initiative cap and trade program for controlling carbon dioxide emissions.

### **FISCAL IMPACT:**

The Public Utilities Commission and Department of Environmental Services state this bill, as amended by the House (Amendment #2011-2006h), will decrease state restricted revenues and expenditures by approximately \$6,728,835 in FY 2012 and by \$13,457,669 in FY 2013 and each year thereafter, and will decrease state expenditures by approximately \$6,750 in FY 2012 and by \$13,500 in FY 2013 and each year thereafter. This bill may decrease county and local revenues and expenditures in FY 2012 and each year thereafter.

### **METHODOLOGY:**

The Department of Environmental Services states this bill makes changes to the shoreland protection statute. The Department states this bill as amended will have no measureable fiscal impact on state, county, and local revenue and expenditures. The Department notes there is a provision to refund application fees for projects denied under certain specific circumstances; however, the Department has historically denied fewer than 2 percent of all applications and only a small percentage of those denials would qualify for a refund.

The Public Utilities Commission and Department of Environmental Services state this bill repeals the Greenhouse Gas Emissions Reduction Fund (GHGERF) and the Regional Greenhouse Gas Initiative (RGGI) cap and trade program for controlling carbon dioxide emissions. The Commission and the Department state GHGERF is funded by the sale of NH RGGI allowances and is distributed as grants to fund energy efficiency projects for citizens, nonprofits, businesses, and governmental entities. The Commission states RGGI allowances have been trading at or close to the auction floor price for the last two quarters, with some allowances going unsold. The Commission and Department assume only 75 percent of allowances will sell in FY 2012; therefore, if RGGI is repealed state restricted revenues to the GHGERF would be reduced by approximately \$6,728,835 in FY 2012 (3,560,230 New Hampshire allowances for half of FY 2012 = \* \$1.89 floor price of allowances). State restricted expenditures of GHGERF grants for energy efficiency projects would also be reduced by \$6,728,835. In FY 2013 through FY 2015 the Commission and Department assume all allowances would sell at the auction floor price; therefore, if RGGI is repealed state restricted revenues to the GHGERF would be reduced by approximately \$13,457,669 in FY 2013 and each

year thereafter (7,120,460 New Hampshire allowances for FY 2013 through FY 2015\* \$1.89 floor price of allowances). Additionally, the Commission states this bill requires all monies in the GHGERF as of July 1, 2011 (estimated by the Commission to be approximately \$6,500,000) and any subsequent monies deposited into the fund be allocated by the Commission to electric distribution companies for CORE energy efficiency programs. To the extent state, county, and local entities would apply for and receive GHGERF grants for energy efficiency projects, state, county, and local restricted revenues will be reduced by an indeterminable amount in FY 2012 and each year thereafter.

The Commission and Department assume RGGI will stay in effect throughout the other New England states where generators would continue to purchase RGGI allowances and incorporate that cost into their dispatch bids on the wholesale market. PSNH is the only utility in New Hampshire with a generation facility required to purchase RGGI allowances. If RGGI were repealed the direct cost for PSNH to purchase these allowances will be reduced. PSNH has indicated its compliance obligation is 4 million tons, of which it will receive 1.5 million free allowances. At \$1.89 per allowance, this will be \$4,725,000 per year ( $4,000,000 - 1,500,000 = 2,500,000 * \$1.89$ ), or \$0.0009 per kilowatt hour of default service load in calendar year 2012 and each year thereafter ( $\$4,725,000 / 5,400,000,000$  kilowatt hours). The Commission and Department estimate state expenditures may decrease by approximately \$6,750 in FY 2012 and \$13,500 in FY 2013 through FY 2015 (number of default service kilowatt hours purchased by the state annually =  $15,000,000 * \$0.0009$ ), based on information from the Department of Administrative Services. Additionally, to the extent county and local governments are default PSNH customers, county and local expenditures may decrease in FY 2012 and each year thereafter. Because the Commission and Department do not know the kilowatt hours of default PSNH service purchased by county and local governments, the exact fiscal impact cannot be determined at this time.

# Amendments

Amendment to SB 154-FN

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT reforming and renaming the comprehensive shoreland protection act.

4

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

6

7 1 Shoreland Water Quality Protection Act. Amend the chapter heading of RSA 483-B to read as  
8 follows:

9

CHAPTER 483-B

10

[COMPREHENSIVE] SHORELAND *WATER QUALITY* PROTECTION ACT

11

12 2 Shoreland Water Quality Protection; Minimum Standards Required. Amend RSA 483-B:2, IX  
13 to read as follows:

14

15 IX. Control building sites, placement of structures, and land uses *that may potentially*  
16 *damage the public waters.*

17

18 3 Minimum Standards Required. Amend RSA 483-B:2, XV to read as follows:

19

20 XV. Anticipate and respond to the impacts of development in shoreland areas *to the extent*  
21 *they may potentially damage the public waters.*

22

23 4 Definitions. Amend RSA 483-B:4, VII-b to read as follows:

24

25 VII-b. "Impervious surface" means any modified surface that cannot effectively absorb or  
26 infiltrate water. Examples of impervious surfaces include, but are not limited to, roofs, *and unless*  
27 *designed to effectively absorb or infiltrate water*, decks, patios, and paved, gravel, or crushed  
28 stone driveways, parking areas, and walkways [~~unless designed to effectively absorb or infiltrate~~  
29 ~~water~~]

30

31 VII-c. "*Horticultural professional*" means any arborist, landscape architect, or  
32 *gardening consultant whose function is that of providing services relative to horticulture.*

33

34 5 Definitions. Amend RSA 483-B:4, X-b to read as follows:

35

36 X-b. "Natural ground cover" means any herbaceous plant or any woody seedling or shrub  
37 generally less than 3 feet in height. [~~Natural ground cover shall also include naturally occurring leaf~~  
38 ~~or needle litter, stumps, decaying woody debris, stones, and boulders.~~] Natural ground cover shall  
39 not include lawns, landscaped areas, gardens, invasive species as listed by the department of  
40 agriculture, markets, and food in accordance with RSA 430:53, III, exotic species as designated by  
41 rule of the department of environmental services in accordance with RSA 487:24, VII, imported  
42

Amendment to SB 154-FN

- Page 2 -

1 organic or stone mulches, or other artificial materials.

2 6 Definitions. Amend RSA 483-B:4, XIII to read as follows:

3 XIII. "Primary building line" means a setback for primary structures of [~~at least~~] 50 feet  
4 from the reference line.

5 7 Definitions. Amend RSA 483-B:4, XV to read as follows:

6 XV. "Protected shoreland" means, for natural, fresh water bodies without artificial  
7 impoundments, for artificially impounded fresh water bodies, *except private garden water*  
8 *features and ponds of less than 10 acres*, and for coastal waters and rivers, all land located  
9 within 250 feet of the reference line of public waters.

10 8 Definitions. Amend RSA 483-B:4, XVIII to read as follows:

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

14 9 Definitions. Amend RSA 483-B:4, XVIII-c to read as follows:

15 XVIII-c. "Replace in kind" means the substitution of a new structure for an existing legal  
16 structure, whether in total or in part [~~with no change in size, dimensions, footprint, interior square~~  
17 ~~footage, and location, with the exception of changes resulting in an increase in the setback to public~~  
18 ~~waters~~].

19 10 Definitions. Amend RSA 483-B:4, XX-a to read as follows:

20 XX-a. "Shoreland frontage" means the [~~average of the distances of the actual natural~~  
21 ~~shoreline footage and a straight line drawn between property lines~~] *actual shoreland frontage*  
22 *along the water front measured at the reference line.*

23 11 Definitions. Amend RSA 483-B:4, XXII to read as follows:

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

27 12 Definitions. Amend RSA 483-B:4, XXIV-b to read as follows:

28 XXIV-b. "Unaltered state" means [~~native~~] vegetation allowed to grow without cutting,  
29 limbing, trimming, pruning, mowing, or other similar activities except as needed [~~to maintain the~~  
30 ~~health of the plant being trimmed, as allowed by rules of the department~~] *for plant health,*  
31 *normal maintenance, and renewal.*

32 13 Enforcement by Commissioner; Duties; Woodland Buffer. Amend RSA 483-B:5, II to read as  
33 follows:

34 II. The commissioner or his *or her* designee may, for cause, enter upon any *subject* land or  
35 parcel at any reasonable time *after written notification and with prior permission of the*  
36 *owner* to perform oversight and enforcement duties provided for in this chapter.

37 14 Permit Required; Exemption. Amend RSA 483-B:5-b, I to read as follows:

1 I.(a) No person shall commence construction, excavation, or filling activities within the  
2 protected shoreland without obtaining a permit from the department to ensure compliance with this  
3 chapter. *For projects which have no impact on water quality and which follow department*  
4 *rules, the applicant shall qualify for a permit by notification. The owner may proceed with*  
5 *the proposed project immediately upon receipt of written notice from the department that a*  
6 *complete and appropriate notification has been received by the department. A notification*  
7 *shall be complete and appropriate provided it meets or exceeds all of the minimum*  
8 *standards under RSA 483-B:9, includes a notification form signed by the owner of property,*  
9 *the name and address of the property owner, the address of the site on which the work will*  
10 *occur, the name of the jurisdictional waterbody, the tax map and lot number on which the*  
11 *proposed work will occur, plans clearly and accurately depicting the work to be completed*  
12 *relative to the reference line of the jurisdictional waterbody, photographs of the area to be*  
13 *impacted, and identification of those project criteria listed below that would qualify the*  
14 *project for a permit by notification. Such project criteria shall include:*

15 (1) *Construction, excavation, and filling, or other activity that impacts less*  
16 *than 1,500 square feet and adds no more than 900 square feet of impervious area within a*  
17 *protected shoreland area.*

18 (2) *Construction, excavation, and filling, directly related to stormwater*  
19 *management improvements and erosion control projects or environmental restoration or*  
20 *enhancement projects.*

21 (3) *Maintenance, repairs, and improvements of public utilities, public roads,*  
22 *and public access facilities.*

23 (4) *Any additional activities defined as qualified for a permit by notification*  
24 *by rules of the department.*

25 (b) The permit application fee shall be \$100 plus \$.10 per square foot of area affected by  
26 the proposed activities and shall be deposited in the wetlands and shorelands review fund  
27 established under RSA 482-A:3, III. Such fees shall be capped as follows:

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

31 (2) For projects of 0-9,999 square feet, *that do not qualify for a permit by*  
32 *notification*, \$750.

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

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

35 (c) *If the application is denied after relying on the recommendations of the*  
36 *department, the application fee shall be refunded to the applicant within 30 days of such*  
37 *denial.*

Amendment to SB 154-FN

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1 15 New Paragraph; Permit Required; Exemption. Amend RSA 483-B:5-b by inserting after  
2 paragraph IV-a the following new paragraph:

3 IV-b. No permits issued by the department pursuant to this chapter that involve private,  
4 non-federal undertakings shall require coordination with or clearance by the New Hampshire  
5 division of historical resources.

6 16 Permit Required; Exemption. Amend RSA 483-B:5-b, V to read as follows:

7 V.(a) Within 30 days of receipt of an application for a permit or ~~[75]~~ 30 days of receipt of an  
8 application for a permit that will require a ~~[variance of the minimum standard of RSA 483-B:9, V or~~  
9 ~~a]~~ waiver of the minimum standards of RSA 483-B:9, the department shall request any additional  
10 information *reasonably* required to complete its evaluation of the application, and provide the  
11 applicant with any written technical comments the department deems necessary. Any request for  
12 additional information shall specify that the applicant submit such information as soon as  
13 practicable and notify the applicant that if all of the requested information is not received within  
14 ~~[60]~~ 120 days of the request, the department shall deny the application.

15 (b) When the department requests additional information pursuant to subparagraph (a),  
16 the department shall, within ~~[30]~~ 20 days of the department's receipt of the information:

- 17 (1) Approve the application~~[- in whole or in part,]~~ and issue a permit; or  
18 (2) Deny the application, and issue written findings in support of the denial; or  
19 (3) Extend the time for rendering a decision on the application for good cause and  
20 with the written agreement of the applicant.

21 (c) Where no request for additional information is made, the department shall, within  
22 30 days of receipt of the application for a permit or ~~[75]~~ 30 days of receipt of an application for a  
23 permit that will require a ~~[variance of the minimum standard of RSA 483-B:9, V or a]~~ waiver of the  
24 minimum standards of RSA 483-B:9~~[-]~~,

- 25 ~~[(1)]~~ approve or deny the application~~[- in whole or in part, and issue a permit; or~~  
26 ~~(2) Deny the application, and issue]~~ *with* written findings in support of the ~~[denial;~~  
27 ~~or~~  
28 ~~(3) Extend the time for rendering a decision on the application for good cause and~~  
29 ~~with the written agreement of the applicant]~~ *decision*.

30 (d) *Within 5 business days of receipt of a permit by notification filing the*  
31 *department shall issue a written notice to the property owner or agent stating that the*  
32 *notification has either been accepted or rejected.*

33 ~~[(d)]~~ (e)(1) The time limits prescribed by this paragraph shall supersede any time limits  
34 provided in any other provision of law. If the department fails to act within the applicable time  
35 frame established in subparagraphs (b) and (c), the applicant may ask the department to issue the  
36 permit by submitting a written request. If the applicant has previously agreed to accept  
37 communications from the department by electronic means, a request submitted electronically by the





1 applicant shall constitute a written request.

2 (2) Within 14 days of the date of receipt of a written request from the applicant to  
3 issue the permit, the department shall:

4 (A) Approve the application, in whole or in part, and issue a permit; or

5 (B) Deny the application and issue written findings in support of the denial.

6 (3) If the department does not issue either a permit or a written denial within the  
7 14-day period, the applicant shall be deemed to have a permit by default and may proceed with the  
8 project as presented in the application. The authorization provided by this subparagraph shall not  
9 relieve the applicant of complying with all requirements applicable to the project, including but not  
10 limited to requirements established in or under this chapter and RSA 485-A relating to water  
11 quality.

12 (4) Upon receipt of a written request from an applicant, the department shall issue  
13 written confirmation that the applicant has a permit by default pursuant to subparagraph (d)(3),  
14 which authorizes the applicant to proceed with the project as presented in the application and  
15 requires the work to comply with all requirements applicable to the project, including but not limited  
16 to requirements established in or under this chapter and RSA 485-A relating to water quality.

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

20 ~~(f)~~ (g) The department may extend the time for rendering a decision under  
21 subparagraphs (b)(3) and (c)(3), without the applicant's agreement, on an application from an  
22 applicant who previously has been determined, after the exhaustion of available appellate remedies,  
23 to have failed to comply with this chapter or any rule adopted or permit or approval issued under  
24 this chapter, or to have misrepresented any material fact made in connection with any activity  
25 regulated or prohibited by this chapter, pursuant to an action initiated under RSA 483-B:18. The  
26 length of such an extension shall be no longer than reasonably necessary to complete the review of  
27 the application, and shall not exceed 30 days unless the applicant agrees to a longer extension. The  
28 department shall notify the applicant of the length of the extension.

29 ~~(g)~~ (h) The department may suspend review of an application for a proposed project on  
30 a property with respect to which the department has commenced an enforcement action against the  
31 applicant for any violation of this chapter, RSA 482-A, RSA 485-A:17, or RSA 485-A:29-44, or of any  
32 rule adopted or permit or approval issued pursuant to this chapter, RSA 482-A, RSA 485-A:17, or  
33 RSA 485-A:29-44. Any such suspension shall expire upon conclusion of the enforcement action and  
34 completion of any remedial actions the department may require to address the violation; provided,  
35 however, that the department may resume its review of the application sooner if doing so will  
36 facilitate resolution of the violation. The department shall resume its review of the application at  
37 the point the review was suspended, except that the department may extend any of the time limits



1 under this paragraph and its rules up to a total of 30 days for all such extensions. For purposes of  
2 this subparagraph, "enforcement action" means an action initiated under RSA 482-A:13, RSA 482-  
3 A:14, RSA 482-A:14-b, RSA 483-B:18, RSA 485-A:22, RSA 485-A:42, or RSA 485-A:43.

4 17 Minimum Shoreland Protection Standards. Amend RSA 483-B:9, II(d) to read as follows:

5 (d) No fertilizer, except limestone, shall be applied to vegetation or soils located within  
6 25 feet of the reference line of any public water. ***Beyond 25 feet, limestone or any fertilizer***  
7 ***containing*** low phosphate[~~]~~ ***and*** slow release nitrogen [~~fertilizer or limestone,~~] may be used [on  
8 ~~areas beyond 25 feet from the reference line~~].

9 18 Minimum Shoreland Protection Standards. RSA 483-B:9, V(a) through V(b)(2)(A)(ii) is  
10 repealed and reenacted to read as follows:

11 (a) Maintenance of a Waterfront Buffer.

12 (1) The waterfront buffer shall be those protected shorelands within 50 feet of the  
13 reference line. The purpose of this buffer shall be to protect the quality of public waters while  
14 allowing homeowner discretion with regard to water access, safety, viewscape maintenance, and lot  
15 design.

16 (2) Within the waterfront buffer all of the following prohibitions and limitations shall  
17 apply:

18 (A) No chemicals, including pesticides or herbicides of any kind shall be applied  
19 to ground, turf, or established vegetation except if applied by horticultural professionals who have a  
20 pesticide application license issued by the department of agriculture or as allowed under special  
21 permit issued by the division of pesticide control under rules adopted by the pesticide control board  
22 under RSA 541-A, or fertilizers of any kind except those specified in RSA 483-B:9, II(d).

23 (B) Rocks and stumps and their root systems shall be left intact in the ground  
24 unless removal is specifically approved by the department, pursuant to RSA 482-A or RSA 483-B:11,  
25 II or unless rocks are removed to improve runoff control or the planting in the waterfront buffer, and  
26 stumps that are removed are replaced with pervious surfaces, new trees, or other woody vegetation.

27 (C) No natural ground cover shall be removed except as necessary for a foot path  
28 to water and access ways as provided under RSA 483-B:9, V(a)(2)(D)(ix), for normal maintenance, to  
29 protect the waterfront buffer, cutting those portions that have grown over 3 feet in height for the  
30 purpose of providing a view, to provide access to natural areas or shoreline, or as specifically  
31 approved by the department, pursuant to RSA 482-A or RSA 483-B.

32 (D) Starting from the northerly or easterly boundary of the property, and  
33 working along the shoreline, the waterfront buffer shall be divided into 50 by 50 foot segments.  
34 Owners of land within the waterfront buffer shall measure, calculate, and maintain the tree, sapling,  
35 shrub, and groundcover point score in each of these segments in accordance with the methods and  
36 standards described in subparagraphs (i) through (ix).

37 (i) Tree and sapling diameters shall be measured at 4 1/2 feet above the



1 ground for existing trees and saplings, or by caliper at a height consistent with established nursery  
2 industry standards when nursery stock is to be used, and are scored as follows:

3 Diameter or Caliper Score

4 1 to 3 inches – 1

5 3 to 6 inches – 5

6 6 to 12 inches –10

7 12 to 24 inches –15

8 Greater than 24 inches- 25

9 (ii) Shrubs and groundcover plants shall be scored as follows:

10 Four square feet of shrub area – 1 point.

11 Ground cover planted in the form of sod or mat – one point for every 50 square feet.

12 Shrub and groundcover shall not count for more than 25 points in each full segment.

13 (iii) Dead, diseased, or unsafe trees or saplings shall not be included in  
14 scoring.

15 (iv) If the total tree and sapling score in any 50 foot by 50 foot segment  
16 exceeds 50 points, then trees, saplings, shrubs, and groundcover (vegetation) may be removed as long  
17 as the sum of the scores for the remaining trees and saplings in that segment does not total less than  
18 50 points. If for any reason there is insufficient area for a full segment, or the segment contains  
19 areas incapable of supporting trees and saplings, such as areas of rock, ledge, or beaches, the point  
20 score requirement for the remaining vegetation in that partial segment shall be reduced  
21 proportionally to that required of a full segment. Vegetation shall not be removed from any segment  
22 which fails to meet the minimum point score for that segment. Owners are encouraged to take  
23 efforts to plan the maintenance of their waterfront buffer areas including the planting of additional  
24 non-invasive vegetation to increase point scores within segments, thus providing sufficient points to  
25 allow the future removal of vegetation as may become necessary while still meeting the requirements  
26 of this paragraph.

27 (v) The department shall approve applications pursuant to RSA 482-A or  
28 RSA 483-B that include the planting of trees, saplings, shrubs, and groundcover as necessary to at  
29 least maintain either the existing point score or the minimum score required. The department shall  
30 not approve any application that would result in a combined vegetation score of less than the  
31 minimum score required where the segment initially meets the minimum score or would result in  
32 any reduction of the point score where the segment does not initially meet the minimum score.

33 (vi) Owners of lots and holders of easements on lots that were legally  
34 developed prior to July 1, 2008 may maintain but not enlarge cleared areas, including but not limited  
35 to existing lawns, gardens, landscaped areas, beaches, and rights-of-way for public utilities, public  
36 transportation, and public access, and may repair existing utility structures within the waterfront  
37 buffer. Conversion to or planting of cleared areas with non-invasive species of ground cover, shrubs,



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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.

(vii) Normal trimming, pruning, and thinning of branches to the extent necessary to maintain the health of the planted area as well to protect structures, maintain clearances, and provide views is permitted provided such activity does not endanger the health of the plant.

(viii) 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 vegetation upon completion of construction except as allowed under subparagraph (ix).

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

(b) Maintenance of a Natural Woodland Buffer.

(1) A natural woodland buffer shall be maintained within 150 feet of the reference line. The first 50 feet of this buffer is designated the waterfront buffer and is subject to the additional requirements of subparagraph (a). The purpose of the natural woodland buffer shall be to protect the quality of public waters by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrient and chemical pollution, maintaining natural water temperatures, maintaining a healthy tree canopy and understory, preserving fish and wildlife habitat, and respecting the overall natural condition of the protected shoreland.

(2) Within the natural woodland buffer of a given lot the vegetation, except lawn, within at least 25 percent of the area outside the waterfront buffer shall be maintained unaltered or improved with additional vegetation. 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 to be maintained in an unaltered state. The percentage of area maintained in an unaltered state on nonconforming lots shall not be decreased.

19 Impervious Surfaces. Amend RSA 483-B:9, V(g) to read as follows:

(g) Impervious surfaces.

(1) ~~[Subject to subparagraph (2),]~~ No more than 30 percent of the area of a lot located within the protected shoreland shall be composed of impervious surfaces, ***unless a stormwater management system designed and certified by a professional engineer that will not concentrate stormwater runoff or contribute to erosion is implemented.***

(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



1 from development occurring after the effective date of this paragraph in accordance with rules  
2 established by the department under RSA 485-A:17.

3 (3) If the impervious surface area will exceed [20] **30** percent and the [natural] tree,  
4 [and] sapling [cover], **shrub, and groundcover** in the waterfront buffer does not meet the [50-point  
5 minimum] **point score requirement** of RSA 483-B:9, V(a)(2)(D) in any segment, then such segment  
6 shall be planted, as determined by rule of the department, with [native] trees, saplings, **shrubs**, or  
7 [natural-ground-cover] **groundcover** in sufficient quantity, type, and location either to meet the  
8 minimum score or to provide at least an equivalent level of protection as provided by the minimum  
9 score and shall be maintained in accordance with RSA 483-B:9, V(a).

10 20 Waivers. Amend RSA 483-B:9, V(i) to read as follows;

11 (i) The commissioner shall have the authority to grant [variances] **waivers** from the  
12 minimum standards of this section. Such authority shall be exercised [subject to the criteria which  
13 govern the grant of a variance by a zoning board of adjustment under RSA 674:33, I(b)] **if the**  
14 **commissioner deems that strict compliance with the minimum standards of this section**  
15 **will provide no material benefit to the public and have no material adverse effect on the**  
16 **environment or the natural resources of the state. Waivers shall also be granted to**  
17 **accommodate the reasonable needs of persons with disabilities.**

18 21 Nonconforming Lots of Record. Amend RSA 483-B:10, I to read as follows:

19 I. Except when otherwise prohibited by law, present and successive owners of an individual  
20 undeveloped lot may construct a single family residential dwelling **and appurtenant accessory**  
21 **structures** on it, notwithstanding the provisions of this chapter. Conditions may be imposed which,  
22 in the opinion of the commissioner, more nearly meet the intent of this chapter, while still  
23 accommodating the applicant's rights.

24 22 New Paragraph; Nonconforming Lots of Record; Merger. Amend RSA 483-B:10 by inserting  
25 after paragraph II the following new paragraph:

26 III. Consistent with RSA 674:39-a, a municipality shall not merge adjacent nonconforming  
27 lots in common ownership without the consent of the owner.

28 23 Nonconforming Structures. RSA 483-B:11 is repealed and reenacted to read as follows:

29 483-B:11 Nonconforming Structures.

30 I. Except as otherwise prohibited by law or applicable municipal ordinance, nonconforming  
31 structures located within the protected shoreland may be repaired, replaced in kind, reconstructed in  
32 place, altered, or expanded. Repair, replacement-in kind, or reconstruction in place may alter or  
33 remodel the interior design or existing foundation of the nonconforming structure, but shall result in  
34 no expansion or relocation of the existing footprint within the waterfront buffer. However, alteration  
35 or expansion of a nonconforming structure may expand the existing footprint within the waterfront  
36 buffer, provided the structure is not extended closer to the reference line and the proposal or  
37 property is made more nearly conforming than the existing structure or the existing conditions of the



1 property.

2 II. For the purposes of this section, a proposal that is "more nearly conforming" means  
3 alteration of the location or size of the existing footprints, or redevelopment of the existing conditions  
4 of the property, such that the structures or the property are brought into greater conformity with the  
5 design standards of this chapter. Methods for achieving greater conformity include, without  
6 limitation, reducing the overall square footage of structural footprints, enhancing stormwater  
7 management, adding infiltration areas and landscaping, upgrading wastewater treatment,  
8 improving traffic management, or other enhancements that improve wildlife habitat or resource  
9 protection.

10 III. An expansion that increases the sewerage load to an onsite septic system, or changes or  
11 expands the use of a septic system, shall require a subsurface approval issued by the department.

12 IV. Under paragraph I, and except as otherwise prohibited by law or applicable municipal  
13 ordinance, primary nonconforming structures may be entirely demolished and reconstructed, with  
14 continued encroachment into the waterfront buffer, provided the replacement structure is located  
15 farther back from the reference line than the preexisting nonconforming structure.

16 24 Rulemaking. Amend RSA 483-B:17, IV to read as follows:

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

20 25 Penalties. RSA 483-B:18, III is repealed and reenacted to read as follows:

21 III. Persons violating the provisions of this chapter and damaging the public waterway who,  
22 after notification by the department, fail to make a good faith effort at remediation and restoration  
23 shall be subject to the following:

24 (a) Upon petition of the attorney general or of the municipality in which the violation  
25 occurred, the superior court may levy upon any person violating this chapter a civil penalty in an  
26 amount not to exceed \$5,000 for each continuing violation. The superior court shall have jurisdiction  
27 to restrain a continuing violation of this chapter, and to require remediation.

28 (b) The commissioner, after notice and hearing pursuant to RSA 541-A, may impose an  
29 administrative fine of up to \$5,000 for each offense upon any person who violates this chapter.  
30 Rehearings and appeals relating to such fines shall be governed by RSA 541. Imposition of an  
31 administrative fine under this section shall not preclude the imposition of further civil penalties  
32 under this chapter.

33 (c) Notwithstanding the \$5,000 fine limit in subparagraph (b), the administrative fine for  
34 each repeat violation of this chapter may be multiplied by a factor of 2 for every previous violation  
35 committed by the person or entity.

36 26 New Paragraph; Shoreland Advisory Committee. Amend RSA 483-B:21 by inserting after  
37 paragraph VII the following new paragraph:



1 VIII. Any permit applications denied under any section of this chapter shall be reported to  
2 the shoreland advisory committee by the department.

3 27 Permit Application Fees; Effective Date. Amend 2008, 5:28, II to read as follows:

4 II. *Paragraph I* of section 27 of this act shall take effect July 1, [~~2011~~] **2016**.

5 28 Definitions. Amend RSA 483-B:4, XVII(a) to read as follows:

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

9 29 Shoreland Advisory Committee. Amend the introductory paragraph of RSA 483-B:21 to read  
10 as follows:

11 There is established a shoreland advisory committee. All members shall be New Hampshire  
12 residents representing diverse geographic areas of the state. The primary focus of this committee is  
13 to address residential shorefront owner input and perspective relating to shoreland development  
14 regulated under the [~~comprehensive~~] shoreland *water quality* protection act under this chapter and  
15 the regulation of shoreline structures under RSA 482-A.

16 30 Approval to Increase a Load on a Sewage System. Amend RSA 485-A:38, II-a(c) to read as  
17 follows:

18 (c) When applicable, the proposed expansion, relocation, or replacement complies with  
19 the requirements of the [~~comprehensive~~] shoreland *water quality* protection act, RSA 483-B.

20 31 Repeal. RSA 483-B:9, V(c)(1), relative to subdivision of land within the protected shoreland,  
21 is repealed.

22 32 Effective Date.

23 I. Section 27 of this act shall take effect June 30, 2011.

24 II. The remainder of this act shall take effect 60 days after its passage.

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1 Amend the title of the bill by replacing it with the following:

2  
3 AN ACT reforming and renaming the comprehensive shoreland protection act.  
4

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

6  
7 1 Shoreland Water Quality Protection Act. Amend the chapter heading of RSA 483-B to read as  
8 follows:

9 CHAPTER 483-B

10 ~~[COMPREHENSIVE]~~ SHORELAND **WATER QUALITY** PROTECTION ACT

11 2 Shoreland Water Quality Protection; Minimum Standards Required. Amend RSA 483-B:2, IX  
12 to read as follows:

13 IX. Control building sites, placement of structures, and land uses *that may potentially*  
14 *damage the public waters.*

15 3 Minimum Standards Required. Amend RSA 483-B:2, XV to read as follows:

16 XV. Anticipate and respond to the impacts of development in shoreland areas *to the extent*  
17 *they may potentially damage the public waters.*

18 4 Definitions. Amend RSA 483-B:4, VII-b to read as follows:

19 VII-b. "Impervious surface" means any modified surface that cannot effectively absorb or  
20 infiltrate water. Examples of impervious surfaces include, but are not limited to, roofs, *and unless*  
21 *designed to effectively absorb or infiltrate water*, decks, patios, and paved, gravel, or crushed  
22 stone driveways, parking areas, and walkways [~~unless designed to effectively absorb or infiltrate~~  
23 ~~water~~]

24 VII-c. "*Horticultural professional*" means any arborist, landscape architect, or  
25 *gardening consultant whose function is that of providing services relative to horticulture.*

26 5 Definitions. Amend RSA 483-B:4, X-b to read as follows:

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



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1 organic or stone mulches, or other artificial materials.

2 6 Definitions. Amend RSA 483-B:4, XIII to read as follows:

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

5 7 Definitions. Amend RSA 483-B:4, XV to read as follows:

6 XV. "Protected shoreland" means, for natural, fresh water bodies without artificial  
7 impoundments, for artificially impounded fresh water bodies, *except private garden water*  
8 *features and ponds of less than 10 acres*, and for coastal waters and rivers, all land located  
9 within 250 feet of the reference line of public waters.

10 8 Definitions. Amend RSA 483-B:4, XVIII to read as follows:

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

14 9 Definitions. Amend RSA 483-B:4, XVIII-c to read as follows:

15 XVIII-c. "Replace in kind" means the substitution of a new structure for an existing legal  
16 structure, whether in total or in part [~~, with no change in size, dimensions, footprint, interior square~~  
17 ~~footage, and location, with the exception of changes resulting in an increase in the setback to public~~  
18 ~~waters~~].

19 10 Definitions. Amend RSA 483-B:4, XX-a to read as follows:

20 XX-a. "Shoreland frontage" means the [~~average of the distances of the actual natural~~  
21 ~~shoreline footage and a straight line drawn between property lines~~] *actual shoreland frontage*  
22 *along the water front measured at the reference line.*

23 11 Definitions. Amend RSA 483-B:4, XXII to read as follows:

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

27 12 Definitions. Amend RSA 483-B:4, XXIV-b to read as follows:

28 XXIV-b. "Unaltered state" means [~~native~~] vegetation allowed to grow without cutting,  
29 limbing, trimming, pruning, mowing, or other similar activities except as needed [~~to maintain the~~  
30 ~~health of the plant being trimmed, as allowed by rules of the department~~] *for plant health,*  
31 *normal maintenance, and renewal.*

32 13 Enforcement by Commissioner; Duties; Woodland Buffer. Amend RSA 483-B:5, II to read as  
33 follows:

34 II. The commissioner or his *or her* designee may, for cause, enter upon any *subject* land or  
35 parcel at any reasonable time *after written notification and with prior permission of the*  
36 *owner* to perform oversight and enforcement duties provided for in this chapter.

37 14 Permit Required; Exemption. Amend RSA 483-B:5-b, I to read as follows:

1 I.(a) No person shall commence construction, excavation, or filling activities within the  
2 protected shoreland without obtaining a permit from the department to ensure compliance with this  
3 chapter. *For projects which have no impact on water quality and which follow department*  
4 *rules, the applicant shall qualify for a permit by notification. The owner may proceed with*  
5 *the proposed project immediately upon receipt of written notice from the department that a*  
6 *complete and appropriate notification has been received by the department. A notification*  
7 *shall be complete and appropriate provided it meets or exceeds all of the minimum*  
8 *standards under RSA 483-B:9, includes a notification form signed by the owner of property,*  
9 *the name and address of the property owner, the address of the site on which the work will*  
10 *occur, the name of the jurisdictional waterbody, the tax map and lot number on which the*  
11 *proposed work will occur, plans clearly and accurately depicting the work to be completed*  
12 *relative to the reference line of the jurisdictional waterbody, photographs of the area to be*  
13 *impacted, and identification of those project criteria listed below that would qualify the*  
14 *project for a permit by notification. Such project criteria shall include:*

15 (1) *Construction, excavation, and filing, or other activity that impacts less*  
16 *than 1,500 square feet and adds no more than 900 square feet of impervious area within a*  
17 *protected shoreland area.*

18 (2) *Construction, excavation, and filling, directly related to stormwater*  
19 *management improvements and erosion control projects or environmental restoration or*  
20 *enhancement projects.*

21 (3) *Maintenance, repairs, and improvements of public utilities, public roads,*  
22 *and public access facilities.*

23 (4) *Any similar activities defined as qualified for a permit by notification by*  
24 *rules of the department.*

25 (b) The permit application fee shall be \$100 plus \$.10 per square foot of area affected by  
26 the proposed activities and shall be deposited in the wetlands and shorelands review fund  
27 established under RSA 482-A:3, III. Such fees shall be capped as follows:

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

31 (2) For projects of 0-9,999 square feet, *that do not qualify for a permit by*  
32 *notification, \$750.*

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

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

35 (c) *If the application is denied after relying on the recommendations of the*  
36 *department, the application fee shall be refunded to the applicant within 30 days of such*  
37 *denial.*

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1 15 New Paragraph; Permit Required; Exemption. Amend RSA 483-B:5-b by inserting after  
2 paragraph IV-a the following new paragraph:

3 IV-b. No permits issued by the department pursuant to this chapter that involve private,  
4 non-federal undertakings shall require coordination with or clearance by the New Hampshire  
5 division of historical resources.

6 16 Permit Required; Exemption. Amend RSA 483-B:5-b, V to read as follows:

7 V.(a) Within 30 days of receipt of an application for a permit or [75] 30 days of receipt of an  
8 application for a permit that will require a [~~variance of the minimum standard of RSA 483-B:9, V or~~  
9 a] waiver of the minimum standards of RSA 483-B:9, the department shall request any additional  
10 information *reasonably* required to complete its evaluation of the application, and provide the  
11 applicant with any written technical comments the department deems necessary. Any request for  
12 additional information shall specify that the applicant submit such information as soon as  
13 practicable and notify the applicant that if all of the requested information is not received within  
14 [60] 120 days of the request, the department shall deny the application.

15 (b) When the department requests additional information pursuant to subparagraph (a),  
16 the department shall, within [30] 20 days of the department's receipt of the information:

17 (1) Approve the application[~~, in whole or in part,~~] and issue a permit; or

18 (2) Deny the application, and issue written findings in support of the denial; or

19 (3) Extend the time for rendering a decision on the application for good cause and  
20 with the written agreement of the applicant.

21 (c) Where no request for additional information is made, the department shall, within  
22 30 days of receipt of the application for a permit or [75] 30 days of receipt of an application for a  
23 permit that will require a [~~variance of the minimum standard of RSA 483-B:9, V or a~~] waiver of the  
24 minimum standards of RSA 483-B:9[;],

25 [(1)] approve or deny the application[~~, in whole or in part, and issue a permit; or~~

26 (2) ~~Deny the application, and issue~~ *with* written findings in support of the [denial;

27 or

28 (3) ~~Extend the time for rendering a decision on the application for good cause and~~  
29 ~~with the written agreement of the applicant] *decision.*~~

30 (d) *Within 5 business days of receipt of a permit by notification filing the*  
31 *department shall issue a written notice to the property owner or agent stating that the*  
32 *notification has either been accepted or rejected.*

33 [(d)] (e)(1) The time limits prescribed by this paragraph shall supersede any time limits  
34 provided in any other provision of law. If the department fails to act within the applicable time  
35 frame established in subparagraphs (b) and (c), the applicant may ask the department to issue the  
36 permit by submitting a written request. If the applicant has previously agreed to accept  
37 communications from the department by electronic means, a request submitted electronically by the

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1 applicant shall constitute a written request.

2 (2) Within 14 days of the date of receipt of a written request from the applicant to  
3 issue the permit, the department shall:

4 (A) Approve the application, in whole or in part, and issue a permit; or

5 (B) Deny the application and issue written findings in support of the denial.

6 (3) If the department does not issue either a permit or a written denial within the  
7 14-day period, the applicant shall be deemed to have a permit by default and may proceed with the  
8 project as presented in the application. The authorization provided by this subparagraph shall not  
9 relieve the applicant of complying with all requirements applicable to the project, including but not  
10 limited to requirements established in or under this chapter and RSA 485-A relating to water  
11 quality.

12 (4) Upon receipt of a written request from an applicant, the department shall issue  
13 written confirmation that the applicant has a permit by default pursuant to subparagraph (d)(3),  
14 which authorizes the applicant to proceed with the project as presented in the application and  
15 requires the work to comply with all requirements applicable to the project, including but not limited  
16 to requirements established in or under this chapter and RSA 485-A relating to water quality.

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

20 ~~[(g)]~~ (g) The department may extend the time for rendering a decision under  
21 subparagraphs (b)(3) and (c)(3), without the applicant's agreement, on an application from an  
22 applicant who previously has been determined, after the exhaustion of available appellate remedies,  
23 to have failed to comply with this chapter or any rule adopted or permit or approval issued under  
24 this chapter, or to have misrepresented any material fact made in connection with any activity  
25 regulated or prohibited by this chapter, pursuant to an action initiated under RSA 483-B:18. The  
26 length of such an extension shall be no longer than reasonably necessary to complete the review of  
27 the application, and shall not exceed 30 days unless the applicant agrees to a longer extension. The  
28 department shall notify the applicant of the length of the extension.

29 ~~[(g)]~~ (h) The department may suspend review of an application for a proposed project on  
30 a property with respect to which the department has commenced an enforcement action against the  
31 applicant for any violation of this chapter, RSA 482-A, RSA 485-A:17, or RSA 485-A:29-44, or of any  
32 rule adopted or permit or approval issued pursuant to this chapter, RSA 482-A, RSA 485-A:17, or  
33 RSA 485-A:29-44. Any such suspension shall expire upon conclusion of the enforcement action and  
34 completion of any remedial actions the department may require to address the violation; provided,  
35 however, that the department may resume its review of the application sooner if doing so will  
36 facilitate resolution of the violation. The department shall resume its review of the application at  
37 the point the review was suspended, except that the department may extend any of the time limits

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1 under this paragraph and its rules up to a total of 30 days for all such extensions. For purposes of  
2 this subparagraph, "enforcement action" means an action initiated under RSA 482-A:13, RSA 482-  
3 A:14, RSA 482-A:14-b, RSA 483-B:18, RSA 485-A:22, RSA 485-A:42, or RSA 485-A:43.

4 17 Minimum Shoreland Protection Standards. Amend RSA 483-B:9, II(d) to read as follows:

5 (d) No fertilizer, except limestone, shall be applied to vegetation or soils located within  
6 25 feet of the reference line of any public water. *Beyond 25 feet, limestone or any fertilizer*  
7 *containing* low phosphate[.] *and* slow release nitrogen [~~fertilizer or limestone,~~] may be used [~~on~~  
8 ~~areas beyond 25 feet from the reference line~~].

9 18 Minimum Shoreland Protection Standards. RSA 483-B:9, V(a) through V(b)(2)(A)(ii) is  
10 repealed and reenacted to read as follows:

11 (a) Maintenance of a Waterfront Buffer.

12 (1) The waterfront buffer shall be those protected shorelands within 50 feet of the  
13 reference line. The purpose of this buffer shall be to protect the quality of public waters while  
14 allowing homeowner discretion with regard to water access, safety, viewscape maintenance, and lot  
15 design.

16 (2) Within the waterfront buffer all of the following prohibitions and limitations shall  
17 apply:

18 (A) No chemicals, including pesticides or herbicides of any kind shall be applied  
19 to ground, turf, or established vegetation except if applied by horticultural professionals who have a  
20 pesticide application license issued by the department of agriculture or as allowed under special  
21 permit issued by the division of pesticide control under rules adopted by the pesticide control board  
22 under RSA 541-A, or fertilizers of any kind except those specified in RSA 483-B:9, II(d).

23 (B) Rocks and stumps and their root systems shall be left intact in the ground  
24 unless removal is specifically approved by the department, pursuant to RSA 482-A or RSA 483-B:11,  
25 II or unless rocks are removed to improve runoff control or the planting in the waterfront buffer, and  
26 stumps that are removed are replaced with pervious surfaces, new trees, or other woody vegetation.

27 (C) No natural ground cover shall be removed except as necessary for a foot path  
28 to water and access ways as provided under RSA 483-B:9, V(a)(2)(D)(ix), for normal maintenance, to  
29 protect the waterfront buffer, cutting those portions that have grown over 3 feet in height for the  
30 purpose of providing a view, to provide access to natural areas or shoreline, or as specifically  
31 approved by the department, pursuant to RSA 482-A or RSA 483-B.

32 (D) Starting from the northerly or easterly boundary of the property, and  
33 working along the shoreline, the waterfront buffer shall be divided into 50 by 50 foot segments.  
34 Owners of land within the waterfront buffer shall measure, calculate, and maintain the tree, sapling,  
35 shrub, and groundcover point score in each of these segments in accordance with the methods and  
36 standards described in subparagraphs (i) through (ix).

37 (i) Tree and sapling diameters shall be measured at 4 1/2 feet above the

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1 ground for existing trees and saplings, or by caliper at a height consistent with established nursery  
2 industry standards when nursery stock is to be used, and are scored as follows:

3 Diameter or Caliper Score

4 1 to 3 inches – 1

5 3 to 6 inches – 5

6 6 to 12 inches –10

7 12 to 24 inches –15

8 Greater than 24 inches- 25

9 (ii) Shrubs and groundcover plants shall be scored as follows:

10 Four square feet of shrub area – 1 point.

11 Ground cover planted in the form of sod or mat – one point for every 50 square feet.

12 Shrub and groundcover shall not count for more than 25 points in each full segment.

13 (iii) Dead, diseased, or unsafe trees or saplings shall not be included in  
14 scoring.

15 (iv) If the total tree and sapling score in any 50 foot by 50 foot segment  
16 exceeds 50 points, then trees, saplings, shrubs, and groundcover (vegetation) may be removed as long  
17 as the sum of the scores for the remaining trees and saplings in that segment does not total less than  
18 50 points. If for any reason there is insufficient area for a full segment, or the segment contains  
19 areas incapable of supporting trees and saplings, such as areas of rock, ledge, or beaches, the point  
20 score requirement for the remaining vegetation in that partial segment shall be reduced  
21 proportionally to that required of a full segment. Vegetation shall not be removed from any segment  
22 which fails to meet the minimum point score for that segment. Owners are encouraged to take  
23 efforts to plan the maintenance of their waterfront buffer areas including the planting of additional  
24 non-invasive vegetation to increase point scores within segments, thus providing sufficient points to  
25 allow the future removal of vegetation as may become necessary while still meeting the requirements  
26 of this paragraph.

27 (v) The department shall approve applications pursuant to RSA 482-A or  
28 RSA 483-B that include the planting of trees, saplings, shrubs, and groundcover as necessary to at  
29 least maintain either the existing point score or the minimum score required. The department shall  
30 not approve any application that would result in a combined vegetation score of less than the  
31 minimum score required where the segment initially meets the minimum score or would result in  
32 any reduction of the point score where the segment does not initially meet the minimum score.

33 (vi) Owners of lots and holders of easements on lots that were legally  
34 developed prior to July 1, 2008 may maintain but not enlarge cleared areas, including but not limited  
35 to existing lawns, gardens, landscaped areas, beaches, and rights-of-way for public utilities, public  
36 transportation, and public access, and may repair existing utility structures within the waterfront  
37 buffer. Conversion to or planting of cleared areas with non-invasive species of ground cover, shrubs,

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1 saplings, and trees is encouraged but shall not be required unless it is necessary to meet the  
2 requirements of subparagraph (g)(2) or (g)(3), or RSA 483-B:11, II.

3 (vii) Normal trimming, pruning, and thinning of branches to the extent  
4 necessary to maintain the health of the planted area as well to protect structures, maintain  
5 clearances, and provide views is permitted provided such activity does not endanger the health of the  
6 plant.

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

13 (ix) A permanent 6-foot wide foot path as well as access to any docks,  
14 beaches, structures, existing open areas, and the water body, configured in a manner that will not  
15 concentrate storm water runoff or contribute to erosion, are allowed.

16 (b) Maintenance of a Natural Woodland Buffer.

17 (1) A natural woodland buffer shall be maintained within 150 feet of the reference  
18 line. The first 50 feet of this buffer is designated the waterfront buffer and is subject to the  
19 additional requirements of subparagraph (a). The purpose of the natural woodland buffer shall be to  
20 protect the quality of public waters by minimizing erosion, preventing siltation and turbidity,  
21 stabilizing soils, preventing excess nutrient and chemical pollution, maintaining natural water  
22 temperatures, maintaining a healthy tree canopy and understory, preserving fish and wildlife  
23 habitat, and respecting the overall natural condition of the protected shoreland.

24 (2) Within the natural woodland buffer of a given lot the vegetation, except lawn,  
25 within at least 25 percent of the area outside the waterfront buffer shall be maintained unaltered or  
26 improved with additional vegetation. Owners of lots legally developed or landscaped prior to July 1,  
27 2008 that do not comply with this standard are encouraged to, but shall not be required to, increase  
28 the percentage of area to be maintained in an unaltered state. The percentage of area maintained in  
29 an unaltered state on nonconforming lots shall not be decreased.

30 19 Impervious Surfaces. Amend RSA 483-B:9, V(g) to read as follows: .

31 (g) Impervious surfaces.

32 (1) ~~[Subject to subparagraph (2);]~~ No more than 30 percent of the area of a lot  
33 located within the protected shoreland shall be composed of impervious surfaces, ***unless a***  
34 ***stormwater management system designed and certified by a professional engineer that will***  
35 ***not concentrate stormwater runoff or contribute to erosion is implemented.***

36 (2) If the impervious surface area will exceed 20 percent, a stormwater management  
37 system shall be implemented and maintained which is designed to infiltrate increased stormwater

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1 from development occurring after the effective date of this paragraph in accordance with rules  
2 established by the department under RSA 485-A:17.

3 (3) If the impervious surface area will exceed ~~[20]~~ **30** percent and the ~~[natural]~~ tree,  
4 ~~[and]~~ sapling ~~[cover]~~, **shrub, and groundcover** in the waterfront buffer does not meet the ~~[50-point~~  
5 ~~minimum]~~ **point score requirement** of RSA 483-B:9, V(a)(2)(D) in any segment, then such segment  
6 shall be planted, as determined by rule of the department, with ~~[native]~~ trees, saplings, **shrubs**, or  
7 ~~[natural ground cover]~~ **groundcover** in sufficient quantity, type, and location either to meet the  
8 minimum score or to provide at least an equivalent level of protection as provided by the minimum  
9 score and shall be maintained in accordance with RSA 483-B:9, V(a).

10 20 Waivers. Amend RSA 483-B:9, V(i) to read as follows;

11 (i) The commissioner shall have the authority to grant ~~[variances]~~ **waivers** from the  
12 minimum standards of this section. Such authority shall be exercised ~~[subject to the criteria which~~  
13 ~~govern the grant of a variance by a zoning board of adjustment under RSA 674:33, 1(b)]~~ **if the**  
14 **commissioner deems that strict compliance with the minimum standards of this section**  
15 **will provide no material benefit to the public and have no material adverse effect on the**  
16 **environment or the natural resources of the state. Waivers shall also be granted to**  
17 **accommodate the reasonable needs of persons with disabilities.**

18 21 Nonconforming Lots of Record. Amend RSA 483-B:10, I to read as follows:

19 I. Except when otherwise prohibited by law, present and successive owners of an individual  
20 undeveloped lot may construct a single family residential dwelling **and appurtenant accessory**  
21 **structures** on it, notwithstanding the provisions of this chapter. Conditions may be imposed which,  
22 in the opinion of the commissioner, more nearly meet the intent of this chapter, while still  
23 accommodating the applicant's rights.

24 22 New Paragraph; Nonconforming Lots of Record; Merger. Amend RSA 483-B:10 by inserting  
25 after paragraph II the following new paragraph:

26 III. Consistent with RSA 674:39-a, a municipality shall not merge adjacent nonconforming  
27 lots in common ownership without the consent of the owner.

28 23 Nonconforming Structures. RSA 483-B:11 is repealed and reenacted to read as follows:

29 483-B:11 Nonconforming Structures.

30 I. Except as otherwise prohibited by law or applicable municipal ordinance, nonconforming  
31 structures located within the protected shoreland may be repaired, replaced in kind, reconstructed in  
32 place, altered, or expanded. Repair, replacement in kind, or reconstruction in place may alter or  
33 remodel the interior design or existing foundation of the nonconforming structure, but shall result in  
34 no expansion or relocation of the existing footprint within the waterfront buffer. However, alteration  
35 or expansion of a nonconforming structure may expand the existing footprint within the waterfront  
36 buffer, provided the structure is not extended closer to the reference line and the proposal or  
37 property is made more nearly conforming than the existing structure or the existing conditions of the



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1 property.

2 II. For the purposes of this section, a proposal that is "more nearly conforming" means  
3 alteration of the location or size of the existing footprints, or redevelopment of the existing conditions  
4 of the property, such that the structures or the property are brought into greater conformity with the  
5 design standards of this chapter. Methods for achieving greater conformity include, without  
6 limitation, reducing the overall square footage of structural footprints, enhancing stormwater  
7 management, adding infiltration areas and landscaping, upgrading wastewater treatment,  
8 improving traffic management, or other enhancements that improve wildlife habitat or resource  
9 protection.

10 III. An expansion that increases the sewerage load to an onsite septic system, or changes or  
11 expands the use of a septic system, shall require a subsurface approval issued by the department.

12 IV. Under paragraph I, and except as otherwise prohibited by law or applicable municipal  
13 ordinance, primary nonconforming structures may be entirely demolished and reconstructed, with  
14 continued encroachment into the waterfront buffer, provided the replacement structure is located  
15 farther back from the reference line than the preexisting nonconforming structure.

16 24 Rulemaking. Amend RSA 483-B:17, IV to read as follows:

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

20 25 Penalties. RSA 483-B:18, III is repealed and reenacted to read as follows:

21 III. Persons violating the provisions of this chapter and damaging the public waterway who,  
22 after notification by the department, fail to make a good faith effort at remediation and restoration  
23 shall be subject to the following:

24 (a) Upon petition of the attorney general or of the municipality in which the violation  
25 occurred, the superior court may levy upon any person violating this chapter a civil penalty in an  
26 amount not to exceed \$5,000 for each continuing violation. The superior court shall have jurisdiction  
27 to restrain a continuing violation of this chapter, and to require remediation.

28 (b) The commissioner, after notice and hearing pursuant to RSA 541-A, may impose an  
29 administrative fine of up to \$5,000 for each offense upon any person who violates this chapter.  
30 Rehearings and appeals relating to such fines shall be governed by RSA 541. Imposition of an  
31 administrative fine under this section shall not preclude the imposition of further civil penalties  
32 under this chapter.

33 (c) Notwithstanding the \$5,000 fine limit in subparagraph (b), the administrative fine for  
34 each repeat violation of this chapter may be multiplied by a factor of 2 for every previous violation  
35 committed by the person or entity.

36 26 New Paragraph; Shoreland Advisory Committee. Amend RSA 483-B:21 by inserting after  
37 paragraph VII the following new paragraph:

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1 VIII. Any permit applications denied under any section of this chapter shall be reported to  
2 the shoreland advisory committee by the department.

3 27 Permit Application Fees; Effective Date. Amend 2008, 5:28, II to read as follows:

4 II. *Paragraph I* of section 27 of this act shall take effect July 1, [2011] **2016**.

5 28 Definitions. Amend RSA 483-B:4, XVII(a) to read as follows:

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

9 29 Shoreland Advisory Committee. Amend the introductory paragraph of RSA 483-B:21 to read  
10 as follows:

11 There is established a shoreland advisory committee. All members shall be New Hampshire  
12 residents representing diverse geographic areas of the state. The primary focus of this committee is  
13 to address residential shorefront owner input and perspective relating to shoreland development  
14 regulated under the [comprehensive] shoreland *water quality* protection act under this chapter and  
15 the regulation of shoreline structures under RSA 482-A.

16 30 Approval to Increase a Load on a Sewage System. Amend RSA 485-A:38, II-a(c) to read as  
17 follows:

18 (c) When applicable, the proposed expansion, relocation, or replacement complies with  
19 the requirements of the [comprehensive] shoreland *water quality* protection act, RSA 483-B.

20 31 Repeal. RSA 483-B:9, V(c)(1), relative to subdivision of land within the protected shoreland,  
21 is repealed.

22 32 Effective Date.

23 I. Section 27 of this act shall take effect June 30, 2011.

24 II. The remainder of this act shall take effect 60 days after its passage.

# Committee Minutes

**SENATE CALENDAR NOTICE  
ENERGY AND NATURAL RESOURCES**

Senator Bob Odell Chairman  
 Senator John Gallus V Chairman  
 Senator Jeb Bradley  
 Senator Gary Lambert  
 Senator Amanda Merrill

For Use by Senate Clerk's Office ONLY	
<input type="checkbox"/>	Bill Status
<input type="checkbox"/>	Docket
<input type="checkbox"/>	Calendar
Proof: <input type="checkbox"/>	Calendar <input type="checkbox"/> Bill Status

**Date: February 10, 2011**

**HEARINGS**

**Thursday**

**2/17/2011**

**ENERGY AND NATURAL RESOURCES**

**LOB 102**

**9:00 AM**

(Name of Committee)

(Place)

(Time)

**EXECUTIVE SESSION MAY FOLLOW**

9:00 AM	SB20	relative to shoreland protection permits.
9:15 AM	SB38	relative to extensions for wetland and shoreland permits.
9:30 AM	SB124-FN	relative to the comprehensive shoreland protection act.
✓9:45 AM	SB154-FN	reforming the comprehensive shoreland protection act.
10:00 AM	SB144	relative to extending certain permits and approvals.

**Sponsors:**

**SB20**

Sen. Bob Odell

**SB38**

Sen. Bob Odell

**SB124-FN**

Sen. John Gallus

**SB154-FN**

Sen. Jeb Bradley  
 Sen. James Forsythe  
 Sen. Raymond White  
 Rep. Gene Chandler

Rep. Frank Sapareto

Rep. Stephanie Eaton

Sen. David Boutin  
 Sen. John Gallus  
 Rep. Betsey Patten  
 Rep. David Bettencourt

Sen. Sharon Carson  
 Sen. Fenton Groen  
 Rep. Christopher Ahlgren

Sen. Tom De Blois  
 Sen. Nancy Stiles  
 Rep. Karen Umberger

**SB144**

Sen. Sharon Carson

Sen. Bob Odell

Rep. Betsey Patten

Rep. Andrew Renzullo

START: 10:07 AM

END: 11:39 AM

# Energy and Natural Resources Committee

## Hearing Report

**TO:** Members of the Senate

**FROM:** Richard Parsons, Legislative Aide

**RE:** Hearing report on SB 154-FN – **reforming the comprehensive shoreland protection act.**

**HEARING DATE:** February 17, 2011

**MEMBERS OF THE COMMITTEE PRESENT:** Senators Odell, Gallus, Bradley, Lambert, Merrill

**MEMBERS OF THE COMMITTEE ABSENT:** No one

**Sponsor(s):** Sen. Bradley, Dist 3; Sen. Boutin, Dist 16; Sen. Carson, Dist 14; Sen. De Blois, Dist 18; Sen. Forsythe, Dist 4; Sen. Gallus, Dist 1; Sen. Groen, Dist 6; Sen. Stiles, Dist 24; Sen. White, Dist 9; Rep. B. Patten, Carr 4; Rep. Ahlgren, Carr 4; Rep. Umberger, Carr 1; Rep. Chandler, Carr 1; Rep. Bettencourt, Rock 4

**What the bill does:** This bill makes extensive changes to the comprehensive shoreland protection act.

**Who supports the bill:** Sen. Carson, Dist. 14; Sen. Boutin, Dist. 16; Gary Abbott, Assoc. General Contractors; Ken Rhodes, CLD Consulting Engineers, NHAGC; Ari Pollack, Home Builders Association of NH; Joe Skiffington, Skiffington Homes; Rep. Betsey Patten, Carr. 4; Ed Dupont, The Dupont Group; Jared Teutsch, NH Lakes Association; Sen. Stiles, Dist. 24; Rene Pelletier, DES; Sen. De Blois, Dist. 18; Sen. Groen, Dist. 6; Sen. White, Dist. 9; Paul Goodwin, NH Shorefront Association; Paul Montrone, NH Shoreline Coalition; Larry Sunderland; Paul Nickerson, NH Audubon; Peter Rice, NH Shoreline and Property Rights Guardians; Lou Gargiolo; Wayne Montgomery; Mark Flanders; John Ramsey, Planet Green; Tom Christensen, NH Shoreline Coalition

**Who opposes the bill:** Nancy Johnson, NH Planners Association; Amy Manzelli, NH Rivers Council; Chris Albert, NH Assoc. Natural Resource Scientist; Isabel Parke, Lamprey River Nominating Committee; Michele

Tremblay, NH Rivers Council; Peter Stanley, NHARPC; Chris Devine, Squam Lakes Association; Gerald Miller; Wendell Berry, LMAC;

**Neutral position:** Russ Wilder, ACEC; Joel Harrington, TNC; Tom Thomson; David Cumer, resident of Henniker, supports the bill with an amendment.

**Summary of testimony received:**

Senator Jeb Bradley, District 3 – prime sponsor

- Hearing opened at 10:07am
- This bill is an attempt to be a clarification and in some senses a simplification of the Shoreland Protection Act.
- Strives to meet 3 goals but do it in a way that people understand what has been written.
  1. Protect water quality
  2. Protect the shoreland environment
  3. Maintain traditional property rights
- Key Points:
  - The act should not be criminalizing behavior to the extent it does.
    - \$20,000 fine a day is changed.
  - It is appropriate that there be proper notification when there will be inspection.
  - Expand upon permit by notification for 1,000 square feet and make an allowance for de minimis activity
    - Small projects create huge compliance costs.
  - Make more rational tree provisions
    - Allow for large trees as well as shrubs
  - Allowance for more waivers as long as there would not be an adverse effects on the environment.
    - This creates flexibility.
  - Provide that the shoreland advisory council will now hear appeal rights.
- Another provision is the intertwinement of shoreland permits and Department of historic resource permits
  - The way the two permits mesh it creates a title problem for people that don't have the paperwork requirement from the Department of Historical Resources.

*General testimony received for SB 20, SB 38, SB124-FN, and SB 154-FN during the hearing for SB 20.*

Gary Abbott, Vice President of Assoc. General Contractors of NH

- We know there are problems with the Shoreland Protection Act.
  - In support of fixing the SPA because the association recognizes there are problems.

- We checked off support for all of the shoreland bills.
  - Our organization voted and even supported a repeal and have the whole thing come back because we know it doesn't work for commercial.
    - It has an impact on the economy, construction and how much work is out there.
- Question from Senator Odell: How do you know about the magnitude of the problems? Who figures that all out in relation to the Shoreland Protection Act?
  - Poised the question to members of the association.
    - The association is made up of general contractors, subcontractors, attorneys, consultants.
      - Attorneys talked about cases were they couldn't get projects through.
      - Consultants talked about projects that didn't go further because the costs were running too high to try to get a permit.
        - It wasn't anecdotal, there were specific examples given by members.

Jim Gove, Gove Environmental Services, Inc.

- In support
- SB 20
  - As a consultant had to deal with the redevelopment portion quite a lot.
    - Projects all over the state in places like Manchester, Concord, Claremont.
      - Places that have existing development and want to do a little more.
  - One question is when does this requirement get triggered?
  - Right now, the trigger is 50,000 square feet
    - McDonald's alone would be over 50,000 square feet.
    - That is a built-in trigger
  - Finding that when we come in for redevelopment projects the Department has been very good about granting waivers.
    - However, it is another step and another process when we have already met the water quality requirements through the AoT.
      - Why put us through a shoreland waiver process that basically does the same thing.
- SB 38:
  - It would be great to go into automatic extensions.
  - In this economy, clients have trouble getting financing and things done with the bank and they have to have extensions.
    - The problem is there is still a long process on how to get an extension.
      - It will save money in the long run for businesses.

- Shoreland bills:
  - Have about 150 projects that have something to do with wetlands, and shoreland every year.
    - In the past year, maybe 20 projects about violations of shoreland act.
    - Can be difficult for homeowners to understand all the aspects of what they can and can't do.
    - There should be part where de minimis activity is allowed
- Question from Senator Odell: SB38: Asking for a 5-year extension beyond the first 5 years. That extension would be parallel to the extension offered by other DES permits. Correct?
  - Correct.
  - The way it is setup you can extend up to 5 years, but often you need to be date specific.
  - The beauty is even if you think you need 3 years you can get the automatic 5 years extension to help a lot.

Ken Rhodes, CLD Consulting Engineers, NHAGC

- SB 20 and 38:
- In support
  - Support because the basic concept of the linkage of the AoT review gives a lot of protection for redevelopment projects in the arena of shoreland protection.
  - The department has been good about making a reasoned evaluation of how things are going, but it still does add time.
    - Sometimes when the project is in the beginning stages, the applicant, and particularly when they have to explain to financing organizations, the level of doubt can lead to a project being altered or not going forward as sometimes these are risk averse.
- Question from Senator Odell: When mentioned PSNH and other buildings in Manchester along the Merrimack River. The Department eventually gives the waiver for such facilities?
  - They do.
    - The only caveat is that at times there comes the opportunity for a local conservation commission to get involved and comment and give another point to bring more questions.
    - Example of project in the Lakes Region near exit 20.
      - The person wanted to put in parking spots in the upland side.
      - Those six parking places created an additional permit.
  - Question from Senator Gallus: In a project of that nature what are the additional costs for those minor changes?
    - Doing the form, supporting the technical requests can add an extra day or two of time.
    - Continued Lakes Region example



- Went to the planning board which had a member of the conservation commission on the board that recommended it go to the conservation commission.
  - The cost could have been higher after that commission.
  - You can't really put a price tag on the level of uncertainty that can occur project to project.

Isabel Parke, Lamprey River Watershed Association, Lamprey River Nominating Committee

- In opposition
- Concerned that these bills will in some way affect the nominating process of the Lamprey River.
  - 13 towns along the river that wanted the river to be nominated.
- Water quality and quantity belongs to us all.
  - Modifying the buffers shouldn't happen without a lot of scientific data.
- Make sure the provisions are not weakened through these bills.
- Comment from Senator Merrill: By way of disclosure, Senator Merrill is a co-sponsor the legislation to designate the Lamprey to the rivers program.

*The following is testimony received specifically during the hearing for SB 124-FN.*

Ari Pollack, Home Builders Association of NH

- In support
- Offers necessary reforms and improvements to the existing act.
- The association believes the CSPA is a worthwhile program and has no interest in repealing the program.
- This bill specifically deals with items of review time periods for applications.
  - Two categories:
    - How long the Department has to receive and review and make initial determination for an application.
    - If additional information is requested from the applicant how long the Department has once that submission is made.
      - Would bring both time periods down.
- Clarifies the concept of redevelopment.
  - Lack of clarity in the rules and law as to what can be redeveloped.
  - Provide home owners and builders more predictability.
- A more workable act is a better act and more enforceable act.
- The present practice of DES is to put as a condition of approval reference to the division of historical resources.

- It is not a mandate, but there is clearly a reference to the clearing process, which frankly is usually reserved to federal practices.
  - CSPA is a New Hampshire Act, not a federal process.
  - Dragging the division of historical resources creates ambiguity into the process.
- Looking forward to language that would clarify for private, non-federal projects the reference to the division of historical resources not be part of the permit language and should not be present in the conditions of approval language.

Cindy Balcius, NH Association of Natural Resource Scientists

- Cannot support as written
- There are several locations we think this bill goes contrary to the purpose and intent of the act.
- Believe 154 is still the vehicle to get things done.

Joel Harrington

- Large shoreland owner in the state
- Context to the act:
  - The SPA was established in 1991,
  - Governor Gregg led the leadership for the SPA because a number of lakes were experiencing algae blooms, silt and sedimentation, invasive aquatic weeds and septic discharge issues.
    - Many lakes were closed during the time.
  - What communities were doing is having a piece meal approach to changing water quality
    - Developers were going in and seeing that each town had their own ordinances when it came to shoreland protection.
  - It created a statewide guideline to help the towns
  - Carl Johnson did a big overhaul 10 years later
- Support the direction of SB 154
- These waters are held in trust by the state for the people of the state.
- It is the state that has jurisdiction and control over these large water bodies so this guidance is important.
  - Don't want our water bodies becoming impaired so much so that the guidance and direction that the state is trying to go in don't come under the direction of the federal government under the state's 303-D water quality list.
    - Would produce costly alternatives.
- Critical to the CSPA is a significant amount of the efforts has been voluntary.
- Have seen the amendment and believe it is a good start.
  - Concerned about permit by notification for a 1,000 square feet.
  - Important to define what we mean by water quality degradation

Isabel Parke

- Question that small projects have large costs.
  - There are a lot of small projects and those are the projects that are going to contaminate the lakes and it is important to realize the role that small projects play in contamination.
- Waiving of permits is a problem because the question is who is going to review the applications to see who is having a harmful effect on the water.
- Time it takes to review applications.
  - Given that there probably are going to be cut in staff maybe that should be reconsidered because it may not be reasonable.
- Comment from Senator Bradley: Extending the fees so that the staff can still be in place.

#### Michelle Tremblay, NH Rivers Council

- Council cannot support current version of bill.
- A stable regulatory environment tends to be the preference by businesses.
- Concerned that the reform needs a comprehensive approach.
- Critical Issues to the NH Rivers Council:
  - Allowing natural conditions to function as water quality filters and protections.
    - “Native” to “non-invasive” wording needs to be worked on.
    - Sod or mat as a ground cover should be discouraged.
      - It is often so compact and so tightly grown that it does not act as a filter.
    - “Nursery industry standards” may not be enforceable.
      - Don’t believe it is a term that has been worked on with stakeholders.
  - Equip the Department to implement and enforce the law
    - The applicants should pay a fee to cover the Department’s costs to review applications.
    - Allowing the Department sufficient time to respond to applicants is important to not overburden the Department.
- Small aggregate into large ones
  - PBN – permits by notification
    - Council agrees with the concept, but disagrees with allowing PBN for any activity that adds less than 1,000 square feet of impervious area within a protected area
  - US Geological Survey and the Department published studies that concluded that as little as 10% impervious surface cover degrades water quality.
- Question from Senator Odell: Did the Council vote?
  - Yes.
- Question from Senator Odell: You highlighted the fiscal note. I am not sure why this has a fiscal note.
  - Senator Bradley: I believe it is because of the reauthorization of the fees for the Department.

- Other comment on the fiscal note was about the 60 days upon passage.
  - Should these changes happen a lot of cities and towns would be caught by surprise by this and 60 days is inadequate.

Peter Stanley, NH Association of Regional Planning Committees

- The amendment is still lacking in key areas
- Works for the town of New London as the planning administrator
  - In 2007, when this version came out we adopted it and got rid of our regulation in an effort to find a standard, and it was simpler for people to comply.
- Purpose is to maintain a vegetative buffer and to restrict the amount of impervious surface in close proximity to the water.
- Experience has been that the act works well after working with the individuals.
  - Concern is the bill's elimination of "individual" from the definition of "person."
    - Anecdotal evidence suggests that most of the development occurring within the protected shoreland is by individual property owners, all of whom would be wholly exempt.
  - Have managed to do very well with it.
    - Have had turnarounds in the same day.
- Have to be careful not to make the towns go back to doing their own thing.
- Concerned that there is no upper limit on impervious surfaces and believe that the effect of the changes in the scoring and natural woodland buffer sections will be a net decrease in vegetation of approx. 50% from the reference line to the 150 ft. setback line.
  - If you adopt this as written you allow that reduction.
- Like aspects like value for shrubs because there is need for a diverse mix of vegetation.
- Group would support the legislation if it didn't gut those two provisions of the legislation.
- Question from Senator Odell: What is your take on the impact on first 50 feet from the setback as opposed to the first 150 feet?
  - When thing has happened in the first 50 feet.
    - Have gone from one permitted access way to the waterfront to unlimited

Tom Thompson

- In opposition
- Tree farmer and forest land owner
- Member of the Shoreland Coalition
- Emphasize balancing water quality and the rights of private land owners.
- The issue with the bill to be considered:
- High cost of permits and fines.
  - Committee needs to really look at that.

- Hypothetical, if owning 290-feet and wanted to subdivide that land in half we could not do that because there is a 150-foot minimum of waterfront.
  - Thinks that should be changed from 150 to 50 feet.

Paul Goodwin, NH Shorefront Association

- Own Watermark Marine Construction of Gilford and Sunapee.
  - President of NH Shorefront Association
  - On the original Shoreland Commission and was just appointed to the Shoreland Advisory Committee.
- Generally in favor of amendments
- PBN rules
  - Have spent hours working on PBN rules.
  - Have never seen these rules.
- The 1,000 square foot limit
  - The concept is that the area is based on a site plan.
  - Should be based on size not digging, because some slopes are larger.
  - Maybe remove the volume from that section.
- Projects where there is a public road within the buffer.
  - The person may not even own waterfront land.
  - There maybe should be clarification as to waterfront on the land as opposed to within 250 feet.

Paul Montrone, NH Shoreline Coalition

- In support
- The CSPA is well-intentioned but overly punitive on land owners.
- One unintended consequence has been the slowdown of legitimate maintenance and construction activity on the shorefront, costing our communities tax revenues and good jobs during a time of major recession.
- Satisfied to see the penalties have been modified to only punish those who knowingly, rather than inadvertently, violate this complicated law
- Happy to see that property owners who have been denied a permit by the DES will now be able to appeal to the Shoreland Advisory Committee which has representation by shoreland owners.

Peter Rice, NH Shoreline and Property Rights Guardians

- In support
- The bill has numerous provisions that will assist property owners and will have a positive effect on water quality.
- Restores the rights of property owners.
- Ensures rights to privacy on own property.
- Provides reasonable and useful standards for providing water quality.
- Provides flexibility for the use of the property.
- Allows re-hearings and appeals to a board of peers

Wendell Berry, Lakes Management Advisory Committee

- In opposition
- The Lakes Management Advisory Committee voted to oppose SB 154 as introduced.

- Would like to support the amendment but have not seen it yet.
- Three comments:
  - 1. Feel the CSPA is needed
  - 2. Concerned that changes that may be made to mitigate situations on more developed lakes not leave the less developed lakes more vulnerable
  - Continued need for meaningful consequences for ignoring the laws.

Lou Gargiolo

*Testimony was temporarily cut off at this point in the hearing audio. An e-mail with the points being made by Mr. Gargiolo was requested.*

Mark Flanders

- Support of the bill, but not as written
- Custom homebuilder who lives and works in Meredith
- An important part of this bill is Permit by Notification.
- The bill really affected the installation of cheaper construction projects like porches, kitchen projects.
- A lot of the cost is not the permit but before getting the permit fee.
  - A lot of fees just for getting the permit
- Timeframes:
  - Glad to see work on reducing the timeframes, but if they can prepare the permits in that amount of time, someone should be able to review them in that amount of time.
- Have to weigh the water quality, but not put people out of jobs while doing it.

John Ramsey, Planet Green

- In support
- Support anything that is logical that supports the environment.
- The waiting time is too much for a small company.

Tom Christensen

- Member of Wetland Council and NH Shoreline Coalition
- Example from good friend who wasn't able to make it:
  - \$40,000 for permits that were needed for her house.
- Trees make ground cover difficult
- Some of the rules are contrary to the intent of sod and other forms of ground cover and erosion.

Joe Skiffington, Skiffington Homes

- In support
- Homebuilder
- Question from Senator Odell: You have worked with the law and understand some changes will be appropriate?
  - Yes.

Jeff Dickinson, Granite State Independent Living

- In support

- Very important section of the bill would allow for a waiver for someone with a disability who may need an specific access accommodation to access the water way.
  - No matter the changes, we would just ask that you keep this small section in.

Jared Teutsch, NH Lakes Association

- In support of the bill with an amendment.
- If water quality declines we are going to lose jobs, it is going to negatively impact our economy and we want to keep our water quality high.
- The bill would benefit from a name change.
  - Change to “The Comprehensive Water Quality Protection Act.”

Rene Pelletier, DES

- In support
- DES does believe a few changes need to be made to the CSPA.
- Concerns for clarity
  - Some proposed amendments may add less clarity
- The Department had a concern about the enforcement.
  - DES has a major responsibility to check on properties.
  - The bill as originally written would have required us to obtain a warrant to go onto properties.
- Statutory shoreland committee
  - Design of the committee is that they would continue to review the act
  - The thought process was this is an act that constantly has nuances
- NH's water quality is the intent today because of past action of legislators
- Question from Odell: What about the value of the first 50 feet above the importance of the land in this act? What about this balance?
  - NH is being cautious as it is. 50 feet is primetime area
    - What degrades our water quality is what generated either sufficiently from stormwater or through the subsurface.
    - The good thing about trees and low shrubs is nutrient uptake, and that is what this act is all about.

Hearing closed at 11:39 am

**Funding:** Due to time constraints, the Office of Legislative Budget Assistant is unable to provide a fiscal note for this bill at this time. When completed, the fiscal note will be forwarded to the Senate Clerk's Office.

**Future Action:** Pending.

**RMP**

[file: SB 0154 report]

Date: 2/22/11



# Speakers

# Senate Energy and Natural Resources Committee: Sign-In Sheet

Date: 2/17/2011

Time: 9:45 AM Public Hearing on SB 154-FN

SB 154-FN

reforming the comprehensive shoreland protection act.

Name	Representing	Support	Oppose	Speaking?	Yes	No
SENATOR SHARON CARSON	SD # 14	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sen. David Bartol	District # 16	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Gary Abbott	Assoc. General Contractors	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Ihen Rhodes	CLW CONSULTING ENGR & AEC	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
NANCY JOHNSON	NH PLANNERS ASSOC	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<del>AMY MARZELLI</del> Amy Marzelli	NH Rivers Council	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
ARR POLLACK	MEMBERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
JOE SKIFFINGTON	SKIFFINGTON HOMES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Betsy Patten	Carroll, 4	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Chris Albert	NH Assoc. Natural Resource Scientist	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Russ Wilder	AEC	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
JOEL Harrington	TNC	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Isabel Parke	400-year River Nantuxy Gorge	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Wade Frankley	New Hampshire rivers council	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ed Dupont	The Dupont Group	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Senator Stiles	District # 4	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Rene PELLETIER	NHDES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
PETER STABLEY	NHARRC	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jared Tentsch	NH LAKES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>





# Testimony

*New Hampshire Association of Natural Resource Scientists*

*Post Office Box 110 • Concord, NH 03302*



February 18, 2011

Senator Robert Odell, Chair  
Committee on Energy and Natural Resources  
107 N. Main Street, Room 302 - State House  
Concord, NH 03301

**RE: SB 154, AN ACT reforming the Comprehensive Shoreland Protection Act**

Dear Senator Odell and Fellow Members of the Committee:

The NH Association of Natural Resource Scientists ("NHANRS") is a state-wide non-profit professional organization whose membership includes wetland scientists, soil scientists, and wildlife biologists from the consulting community, as well as from the academic and public sectors. Our Legislative Committee has reviewed and discussed SB 154, and wishes to offer our comments.

SB 154 as written proposes to modify the entire Comprehensive Shoreland Act. NHANRS is very supportive of the initiative to amend the Shoreland Act and the bill as written does contain several good proposed changes. However, there are several other proposed changes within the bill that will negate the entire purpose of the act and the firm scientific basis that supports the standards implemented by the act. Therefore, NHANRS opposes the bill as written and strongly suggests that the Shoreland Advisory Committee that was established under RSA 483-B on July 13, 2010 and tasked to look closely at the act and propose changes to address the concerns that have resulted in this legislation conjunction with the original purpose and intent of the act.

NHANRS was part of the original Shoreland Commission that looked closely at New Hampshire's public waters and its value and function to the people of New Hampshire. As part of the Commission we reviewed and discussed countless scientific studies, shoreland development trends and many, many hours of testimony from countless stakeholders and members of the public. The resulting act incorporated scientific data that would serve to be the starting point for the long term protection and preservation for one of our states greatest natural resources while trying to balance the specific property rights of shorefront owners.

NHANRS is prepared to work quickly and diligently with any Committee, the bill's sponsors and its proponents to provide reasonable and clear language to amend the act while ensuring the long term protection of the integrity of our public waters. In the meantime, we can be contacted through our lobbyist, Dana Bisbee, Devine Millimet & Branch, at 226-1000.

We thank the Committee for your time and consideration in hearing our comments.

Sincerely,



Lawrence E. Morse, Chair  
Legislative Committee

**Testimony of Joel M. Harrington, Director of Government Relations  
Senate Bill 154  
An Act Reforming the Comprehensive Shoreland Protection Act  
February 17, 2011  
Energy and Natural Resources Committee**

Dear Chairman Odell and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill 154, An Act Reforming the Comprehensive Shoreland Protection Act. We appreciate the efforts by the sponsors to ensure that the Shoreland Protection Act (SPA) serves its intended purpose to protect of the state's valuable natural resources.

When the SPA was passed in 1991, the General Court outlined its purpose. It stated:

- I. The shorelands of the state are among its most valuable and fragile natural resources and their protection is essential to maintain the integrity of public waters.
- II. The public waters of New Hampshire are valuable resources held in trust by the state. The state has an interest in protecting those waters and has the jurisdiction to control the use of the public waters and adjacent shoreland for the greatest public benefit.
- III. There is great concern throughout the state relating to the utilization, protection, restoration and preservation of shorelands because of their effect on state waters.
- IV. Under current law the potential exists for uncoordinated, unplanned and piecemeal development along the state's shorelines, which could result in significant negative impacts on the public waters of New Hampshire.

The Nature Conservancy (TNC) believes this purpose accurately describes the fragility and importance of New Hampshire's water bodies

and the adjacent shoreline. Because this act is so critical to protecting water quality, The Nature Conservancy feels that the Act and its application should be examined to determine if it does accomplish the goals specified in its purpose.

Since the SPA was first funded in 1994, concerns have been raised as to its effectiveness. Specifically, there are questions about whether there is sufficient knowledge of the Act among property owners, municipalities, developers, and the general public to ensure voluntary compliance. Also, in the creation of the SPA, various uses, buffer distances, and exemptions were prescribed in the legislation. TNC believes it is appropriate to review these provisions to ascertain whether or not they accomplish the goals outlined in the purpose of the Act.

The New Hampshire Department of Environmental Services (DES) is charged with enforcing the provisions of the SPA. As the program currently works, the Department does not review a property or development proposal unless a complaint is received (usually after the damage has been done). DES' lack of resources prohibits a more pro-active approach. Since the Department is not reviewing all development within the 250 foot buffer, a significant amount of voluntary compliance must occur.

While the current approach of reacting to complaints may seem adequate, The Nature Conservancy questions if it is sufficiently able to protect surface water quality as outlined in the purpose of RSA 483B.

TNC recognizes that New Hampshire's waters are important to the tourism industry in the state, and therefore important to the economy. We support a bill that appropriately ensures the adequate protection our state waters.

Thank you.





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**Mission**

Ecologically sound  
management of New  
Hampshire's rivers,  
watersheds and related  
natural resources.

February 17, 2011

The Honorable Robert Odell, Chair  
Senate Energy and Natural Resources Committee  
Legislative Office Building Room 102  
Concord, NH 03301

RE: SB 154-FN relative to the Comprehensive Shoreland Protection Act

Dear Chair Odell,

The New Hampshire Rivers Council ("Council") favors permit consistency and streamlined process to ensure program efficiency and uniform protections for surface water quality. However, several changes proposed in SB 154 would remove important protections for water quality. Therefore, the Council cannot support the current version of SB 154.

For the record, the Council strongly opposes the repeal of the Comprehensive Shoreland Protection Act ("CSPA", "the Act"), which has been proposed in other bills this session.

The health of our economy, including tourism, housing, and construction, and our quality of life depends on our water resources. Protection and conservation of water resources is the most inexpensive and effective management option. Clean water is an important factor in the decision<sup>1</sup> to visit New Hampshire and to buy or build a home here. A stable regulatory environment<sup>2</sup> is best for businesses. Existing and future businesses rely on water resources because they are a major factor to keep and attract a work force. The Council believes that everyone agrees that protecting water quality is of monumental importance.

Because protecting water resources is so important, it must be done with care and the decision making for it without haste. Amendment of the Comprehensive Shoreland Protection Act this session would be premature. The state Shoreland Advisory Committee ("SAC") is composed of stakeholders representing diverse interests including the state's industries and shorefront owners. It will be meeting this year to study the CSPA. In addition, regulatory and process changes within the Department of Environmental Services ("the Department") are proposed in SB 142-FN. As a result of these ongoing initiatives, it is expected that most permits will be simplified and the processes streamlined. The Council strongly urges your committee not to take action on any shoreland bills pending the findings, recommendations, and other outcomes of the SAC and SB 142.

<sup>1</sup> What's Our Water Worth? <http://www.nhrivers.org/documents/Econ%20Study%20Brochure.pdf>

<sup>2</sup> Industry Seeks Certainty, Not GOP Attacks <http://insideepa.com/Inside-EPA-General/Inside-EPA-Public-Content/industry-desire-for-regulatory-certainty-may-blunt-gop-assault-on-epa/menu-id-565.html>

If your committee feels that it must take action now, the Council urges you to consider the following three critical issues. Note that because of the comprehensive nature of the proposed amendments, the Council has numerous recommended revisions. I have attached a mark-up of the latest version of the bill to which we had access. The mark-up shows all of the Council's recommendations. In this letter, we focus on the Council's three highest priority issues. The Council will also bring all of these recommendations to the SAC.

### **I. Allowing natural conditions to function as water quality filters and protections**

Native vegetation and unaltered areas protect New Hampshire's water quality. Natural conditions perform many valuable functions, including groundwater recharge, soil retention, stormwater absorption, and nutrient filtration. Maintenance of these natural conditions maximizes protection of water quality.

Accordingly, the definition of "natural ground cover" should retain the sentence "Natural ground cover shall also include naturally occurring leaf or needle litter, stumps, decaying woody debris, stones, and boulders."

Sod or mat as a ground cover should be discouraged. They perform the aforescribed natural functions poorly. Numerous studies show that they can be compacted so as to become nearly impervious. Additionally, maintenance often involves products such as fertilizers, herbicides, and pesticides, which contribute unwanted nutrients to surface waters.

The proposed amendments would also change the term "native" to "non-invasive." This is problematic. We now know that many species that we used to think of as "non-invasive" have actually become extremely invasive. Resulting overgrowth affects neighbors and often necessitates significant shoreland disturbance when the plants have to be cut back, treated with herbicides, or mechanically removed.

Lastly, reference should not be made to "nursery industry standards." As far as the Council has determined, any such standards have not had the opportunity to be vetted with stakeholder groups and accepted as best management practices by the appropriate regulatory and enforcement agencies.

### **II. Equip the Department to Implement and Enforce the Law**

For the Act to have any meaning, the Department must have the ability and resources to implement and enforce it. That means that the Department's authority to enter upon a property to investigate possible violations of the Act, including permits, should not be premised upon obtaining the prior permission of the owner. Applicants should pay a fee to cover the Department's costs to review applications—whether the permit is denied or approved—and for permits by notification. Denying an application and processing a permit by notification uses Department resources. If fees are not maintained for Department functions, the cost of those functions is shifted to other broad based tax revenues, such as property taxes.

Allow the Department sufficient time to respond to applications, which would be 30 days to respond to applications for permits, and 61 days to respond to applications for permits that will require a variance or waiver.

Lastly on this issue, do not force the government to prove a "knowing" or "intentional" state of mind for any penalty to apply. This part of the proposed amendments flies in the face of the well-settled legal principle that ignorance of the law does not excuse one from being bound by it. This kind of requirement is usually reserved only for criminal prosecutions. Moreover, the Department should be able to order those who have not followed the law to repair the shoreland and remediate any water quality degradation.

### **III. Small aggregate into large ones**

Although the Council agrees with the concept of permit by notification (PBN) in certain circumstances, it disagrees with allowing PBN for any activity that adds less than 1,000 square feet of impervious area within a protected shoreland area. Studies show that incremental increases to impervious surface result in degraded water quality because of the aggregate effect. Indeed, the US Geological Survey and the Department published studies that concluded that as little as 10% impervious surface cover degrades water quality. The Council urges you not to think only about individual lots, but instead to look at the water resource as a whole, and all of the lots that drain into it.

Thank you for the opportunity to provide these comments. The Council looks forward to working with you on this important bill so that we can protect water quality in a meaningful and reasonable way.

Sincerely,



Michele L. Tremblay  
President

CC: The Honorable Jeb Bradley  
Amy Manzelli, Sulloway & Hollis, PLLC, on retainer to the New Hampshire Rivers  
Council  
Tom Burack, Commissioner, New Hampshire Department of Environmental Services

New Hampshire Rivers Council Bill Mark-up • February 17, 2011

SB 154-FN – Amendment

2011 SESSION

SENATE BILL *154-FN as amended*

AN ACT reforming *and renaming* the comprehensive shoreland protection act.

COMMITTEE: Energy and Natural Resources

ANALYSIS

This bill makes extensive changes to the comprehensive shoreland protection act.

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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.

11-0810

06/10

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eleven*

AN ACT reforming the comprehensive shoreland protection act.

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

**CHAPTER 483-B**  
**COMPREHENSIVE SHORELAND**  
**WATER QUALITY PROTECTION ACT**

1 Comprehensive *Water Quality Shoreland* Protection; Minimum Standards Required. Amend RSA 483-B:2, IX to read as follows:

IX. Control building sites, placement of structures, and land uses *that may potentially damage the public waters*.

2 Minimum Standards Required. Amend RSA 483-B:2, XV to read as follows:

XV. Anticipate and respond to the impacts of development in shoreland areas,

**Deleted:** *to the extent they may potentially damage the public waters*

3 Definitions. Amend RSA 483-B:4, VII-a to read as follows:

VII-a. ~~[Repealed]~~ *“Horticultural professional” means any arborist, landscape architect, or gardening consultant whose function is that of providing services relative to horticulture.*

Definitions. Amend RSA 483-B:4, VII-b to read as follows:

VII-b. “Impervious surface” means any modified surface that cannot effectively absorb or infiltrate water. Examples of impervious surfaces include, but are not limited to, roofs, *and unless designed to effectively absorb or infiltrate water*, decks, patios, and paved, gravel, or crushed stone driveways, parking areas, and walkways ~~[unless designed to effectively absorb or infiltrate water]~~.

4 Definitions. 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.

**Comment [MLT1]:** Suggest not deleting these types of groundcovers

5 Definitions. Amend RSA 483-B:4, XII and XIII to read as follows:

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

6 Definitions. Amend RSA 483-B:4, XV to read as follows:

XV. "Protected shoreland" means, for natural, fresh water bodies without artificial impoundments, for artificially impounded fresh water bodies, **except private garden water features and ponds less than 10 acres in size**, and for coastal waters and rivers, all land located within 250 feet of the reference line of public waters.

7 Definitions. Amend RSA 483-B:4, XVIII to read as follows:

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

8 Definitions. Amend RSA 483-B:4, XVIII-c to read as follows:

XVIII-c. "Replace in kind" means the substitution of a new structure for an existing legal structure, whether in total or in part, with no change **within 50 feet of the reference line** in ~~[size, dimensions,]~~ **setback or area of the footprint**, ~~[interior square footage, and location,]~~ with the exception of changes resulting in an increase in the setback to public waters.

10 Definitions. Amend RSA 483-B:4, XXII to read as follows:

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

Deleted: permanent

11 Definitions. Amend RSA 483-B:4, XXIV-b 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]~~ **for plant health, normal maintenance, and renewal.**

12 Enforcement by Commissioner; Duties; Woodland Buffer. Amend RSA 483-B:5, II to read as follows:

II. The commissioner or his *or her* designee may, ~~[for cause,]~~ **with cause and by virtue of a permit issued under this chapter** enter upon ~~[any]~~ **subject** land or parcel at any reasonable time to perform oversight and

Deleted: with prior permission of the owner

enforcement duties provided for in this chapter, 13 Permit Required; Exemption. Amend RSA 483-B:5-b, I to read as follows:

**Deleted:** *limited to the conditions of the permit. Such permission shall expire when the project is complete or the permit has expired, whichever comes first.*§

I.(a) No person shall commence construction, excavation, or filling activities within the protected shoreland without obtaining a permit from the department to ensure compliance with this chapter. ***For projects which have no impact on water quality and which follow department rules, the department shall establish a permit by notification. Such projects shall include:***

***(2) Excavation of 1,000 cubic feet or less within a protected shoreland area that does not cause a significant change in runoff protection.***

**Deleted:** *(1) Construction or other activity that adds less than 1,000 square feet of impervious area within a protected shoreland area.*§

***(3) Filling of 1,000 cubic feet or less with material that does not cause a significant change in runoff protection.***

(b) The permit application fee shall be \$100 plus \$.10 per square foot of area affected by the proposed activities and shall be deposited in the wetlands and shorelands review fund established under RSA 482-A:3, III. Such fees shall be capped 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]~~ **1,000 – 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.

**Comment [MLT2]:** The Rivers Council is concerned about this change. While it supports PBNs in some cases, fees are still appropriate to support this program. Otherwise, costs are shifted to all taxpayers and not those who are applying. There is further concern that this will de-fund the program to the point where it cannot meet its mandate—especially with the proposed shorter review periods in this bill.

14 Permit Required; Exemption. Amend RSA 483-B:5-b, V(a) through (c) to read as follows:

**Deleted:** *If the application is denied, after receiving recommendations from the department, the application fee shall be refunded to the applicant within 30 days of such denial.*§

V.(a) Within ~~[30]~~ **15** days of receipt of an application for a permit or ~~[75]~~ **30** 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 ***reasonably*** 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]~~ **180** 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]~~ 30 days of the department's receipt of the information:

Deleted: 15

- (1) Approve the application ~~[, in whole or in part,]~~ and issue a permit; or
- (2) Deny the application, and issue written findings in support of the denial; or
- (3) Extend the time for rendering a decision on the application 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]~~ 30 days of receipt of the application for a permit or ~~[75]~~ 61 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[?],

Deleted: 15

Deleted: 30

~~[(1)]~~ approve or deny the application ~~[, in whole or in part, and issue a permit; or~~

~~[(2) Deny the application, and issue]~~ *with* written findings in support of the ~~[denial; or~~

~~[(3) Extend the time for rendering a decision on the application for good cause and with the written agreement of the applicant]~~ *decision.*

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

(a) Maintenance of a Waterfront Buffer.

(1) The waterfront buffer shall be those protected shorelands within 50 feet of the reference line. The purpose of this buffer shall be to protect the quality of public waters while allowing homeowner discretion with regard to water access, safety, viewscape maintenance, and lot design.

(2) Within the waterfront buffer all of the following prohibitions and limitations shall apply:

(A) No chemicals, including pesticides or herbicides of any kind shall be applied to ground, turf, or established vegetation except *if applied by horticultural professionals who have a pesticide application license issued by the N.H. Department of Agriculture or 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).

(B) Rocks and stumps and their root systems shall be left intact in the ground unless removal is specifically approved by the department, pursuant to RSA 482-A or RSA 483-B:11, II ***or unless rocks are removed to improve runoff control or the planting in the waterfront buffer, and stumps that are removed are replaced with new trees or other woody vegetation.***

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(C) No natural ground cover shall be removed except as necessary for a foot path to water ***and access ways*** as provided under RSA 483-B:9, V(a)(2)(D)~~(viii)~~ ***(ix), for normal maintenance, to protect the waterfront buffer,*** cutting those portions that have grown over 3 feet in height for the purpose of providing a view, ***to provide access to natural areas or shoreline,*** or as specifically approved by the department, pursuant to RSA 482-A or RSA 483-B.

(D) Starting from the northerly or easterly boundary of the property, and working along the shoreline, the waterfront buffer shall be divided into 50 by 50 foot segments. Within each segment a minimum combined tree ~~[and],~~ sapling, ***shrub, and groundcover*** score of at least 50 points shall be maintained. If for any reason there is insufficient area for a full segment, the number of points required to be maintained in that partial segment shall be proportional to that required of a full segment.

Deleted: excluding structures, beaches, and rock and ledge areas

(i) Tree and sapling diameters shall be measured at 4 1/2 feet above the ground ***or calipers measured in accordance with nursery industry standards*** and are scored as follows:

Comment [MLT3]: The Rivers Council does not know of any accepted nursery standards? Is this term defined in statute and is the reference document published and agreed upon by the NHDES and stakeholder groups? If agriculture and forestry has BMPs, nurseries will need to follow the same process if they are to use the "standards" term in statute.

**Diameter or Caliper Score**

~~[1 inch to 6 inches - 1~~

~~greater than 6 inches to 12 inches - 5~~

~~greater than 12 inches - 10]~~

***1 to 3 inches - 1***

***3 to 6 inches - 5***

***6 to 12 inches - 10***

***12 to 24 inches - 20***

**24 to 36 inches – 30**

**Greater than 36 inches – 40**

**(ii) Shrubs and groundcover plants shall be scored as follows:**

**Equivalent to one-gallon to 2-gallon shrub – 1 point**

**Equivalent to three-gallon to 4-gallon shrub – 2 points**

**~~Ground cover planted in the form of sod or mat – 1 point for every 50 square feet~~**

**Sod or mat ground cover - no more than 20 points in each full segment**

**Shrub groundcover - no more than 40 points in each full segment**

**(iii) (iii) Dead, diseased, or unsafe trees or saplings shall not be included in scoring.**

**(iii) (iv) If the total tree and sapling score in any 50 foot by 50 foot segment exceeds 50 points, then trees and saplings may be removed as long as the sum of the scores for the remaining trees and saplings in that segment does not total less than 50 points. Trees and saplings may be removed from partial segments provided that the sum of the scores for the remaining trees and saplings in that partial segment is equal to or greater than the proportional point requirement.**

**(iv) (v) 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]~~ **No application ~~[that would]~~ shall 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) (vi) 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, **gardens, landscaped areas,** 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]~~ **native** species of ground cover, shrubs, saplings, and trees is encouraged but**

**Comment [MLT4]:** Sod or mat groundcover should not be encouraged—and its point value appears far too high, thereby encouraging and rewarding its use as a viable option to trees and woody vegetation. This conversion will likely be significant coupled with the proposed permissiveness in fertilizer and pesticide application.

**Comment [MLT5]:** The term "non-invasive" is not an accepted one that applies to specific species. "Native" is more easily defined from historical regional plant lists. Many recommendations for plantings of non-native (thought to be non-invasive at the time) species have turned out to be very invasive as climate conditions, e.g. warmer, wetter, have changed. The result is plants growing out of control in areas and propagating to others. This has necessitated shoreland disturbance, including herbicide applications, and digging up woody shrubs to combat non-native overgrowth. A better alternative would be to encourage regional native species planting by providing point or other incentives.

**Deleted: non-invasive**

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.

~~[(vii)]~~ (vii) Normal trimming, pruning, and thinning of branches to the extent necessary to maintain the health of the ~~[plant being trimmed,]~~ **planted area as well to** protect structures, maintain clearances, and provide views is permitted, ~~[as allowed by rules of the department. Limbing of trees or saplings for the purpose of providing views shall be limited to the bottom 1/2 of the trees or saplings]~~ **provided such activity does not endanger the health of the plant.**

~~[(viii)]~~ (viii) 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)]~~ (ix) A permanent 6-foot wide foot path ~~[to provide]~~ **as well as** 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]~~ **are** allowed.

(b) Maintenance of a Natural Woodland Buffer.

(1) A natural woodland buffer shall be maintained within 150 feet of the reference line. The first 50 feet of this buffer is designated the waterfront buffer and is subject to the additional requirements of subparagraph (a). The purpose of the natural woodland buffer shall be to protect the quality of public waters by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrient and chemical pollution, maintaining natural water temperatures, maintaining a healthy tree canopy and understory, preserving fish and wildlife habitat, and respecting the overall natural condition of the protected shoreland.

(2) Within the natural woodland buffer of a given lot:

(A)(i) **To the extent that it is already in a naturalized state,** for lots with ~~[one-half]~~ **one** acre or less of land within the natural woodland buffer, the vegetation within at least ~~[25]~~ **20** percent of the area ~~[outside]~~ **including** the waterfront buffer **and exclusive of impervious surfaces** shall be maintained in an unaltered state **unless vegetation, including shrubs and trees in the landscaped areas, exceeds the 20 percent requirement.** Owners of lots legally developed or landscaped prior to July 1,

**Comment [MLT6]:** The Rivers Council does not believe that there are any areas in NH that have not been disturbed. "Unlandscaped" is not an accepted term given that most areas where construction and other improvements have occurred have been "landscaped." The same applies to the use of the term in ii and A iii (below)

**Deleted: , unlandscaped**

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 *not being developed* shall not be decreased.

(ii) *To the extent that it is already in a naturalized state*, for lots with greater than ~~[one-half]~~ *one acre but less than 2 acres* of land within the natural woodland buffer, the vegetation within at least ~~[50]~~ *30* percent of the area ~~[outside]~~ *including* the waterfront buffer~~[-]~~ *and* exclusive of impervious surfaces, shall be maintained in an unaltered state *unless vegetation, including shrubs and trees in the landscaped areas, exceeds the 30 percent requirement*. 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 *not being redeveloped* shall not be decreased.

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(iii) *To the extent that it is already in a naturalized state*, for lots *within the natural woodland buffer, the vegetation within at least 50 percent of the area, including the waterfront buffer and exclusive of impervious surfaces, shall be maintained in an unaltered state unless vegetation, including shrubs and trees in the landscaped areas, exceeds the 50 percent requirement*. Owners of lots legally developed prior to July 1, 2008 that do not comply with this standard may increase the percentage of area maintained in an unaltered state. The percentage of area maintained in an unaltered state on nonconforming lots *not being redeveloped* shall not be decreased.

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19 Impervious Surfaces. Amend RSA 483-B:9, V(g)(1)-(3) to read as follows:

(1) ~~[Subject to subparagraph (2),]~~ No more than 10 percent of the area of a lot located within the protected shoreland shall be composed of impervious surfaces *unless a stormwater management system designed by a professional, certified by the department, that will not concentrate stormwater runoff or contribute to erosion or water quality degradation is implemented*.

Comment [MLT7]: This should be 10%, as USGS and NHDES studies have proven is when water quality measurably declines but the Rivers Council is willing to have this be a focus of the Shoreland Advisory Committee and would welcome its findings.

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(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.

Comment [MLT8]: The Council suggests keeping this wording or, as required, revising it to conform with other changes.

~~[(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).]~~

20 Waivers. Amend RSA 483-B:9, V(i) to read as follows;

(i) The commissioner shall grant [~~variances~~] *waivers* from the minimum standards of this section. Such authority shall be exercised [~~subject to the criteria which govern the grant of a variance by a zoning board of adjustment under RSA 674:33, I(b)]~~ *when the applicant provides a plan that is more nearly conforming to the minimum standards then the existing conditions and the plan will have no material adverse effect on water quality. Waivers shall also be granted to accommodate the reasonable need of persons with disabilities.*

**Comment [MLT9]:** The Rivers Council prefers variances vs. waivers. It is concerned about one individual in the Department being able to allow these changes with virtually no objective and written guidance. This will create inconsistent rulings and conditions in the state that will result in regulatory and enforcement confusion for applicants.

21 Nonconforming Lots of Record. Amend RSA 483-B:10, I to read as follows:

I. Except when otherwise prohibited by law, present and successive owners of an individual undeveloped lot may construct a single family residential dwelling *and appurtenant accessory structures* on it, notwithstanding the provisions of this chapter. Conditions may be imposed which, in the opinion of the commissioner, more nearly meet the intent of this chapter, while still accommodating the applicant's rights.

22 New Paragraph; Nonconforming Lots of Record; Merger. Amend RSA 483-B:11 by inserting after paragraph II the following new paragraph:

III. Consistent with RSA 674:39-a, a municipality shall not merge adjacent nonconforming lots in common ownership without the consent of the owner.

23 Nonconforming Structures. RSA 483-B:11 is repealed and reenacted to read as follows:

483-B:11 Nonconforming Structures.

I. Except as otherwise prohibited by law or applicable municipal ordinance, nonconforming structures located within the protected shoreland may be repaired, replaced in kind, reconstructed in place, altered, or expanded. Repair, replacement-in kind, or reconstruction in place may alter or remodel the interior design or existing foundation of the nonconforming structure, but shall result in no expansion or relocation of the existing footprint within the waterfront buffer. Alteration or expansion of a nonconforming structure may

expand the existing footprint within the waterfront buffer, provided the structure is not extended closer to the reference line and the proposal or property is made more nearly conforming than the existing structure or the existing conditions of the property.

II. For the purposes of this section, a proposal that is "more nearly conforming" means alteration of the location or size of the existing footprints, or redevelopment of the existing conditions of the property, such that the structures or the property are brought into greater conformity with the design standards of this chapter. Methods for achieving greater conformity include, without limitation, **reducing the overall square footage of structural footprints**, enhancing stormwater management, adding infiltration areas and landscaping, upgrading wastewater treatment, improving traffic management, or other enhancements that improve wildlife habitat or resource protection.

III. An expansion that increases the sewerage load to an onsite septic system, or changes or expands the use of a septic system, shall require a subsurface approval issued by the department.

IV. Under paragraph I, and except as otherwise prohibited by law or applicable municipal ordinance, primary nonconforming structures may be entirely demolished and reconstructed, with continued encroachment into the waterfront buffer, provided the replacement structure is located farther back from the reference line than the preexisting nonconforming structure.

25 Rulemaking. Amend RSA 483-B:17, IV to read as follows:

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

26 Penalties. Amend RSA 483-B:18, II and III to read as follows:

~~III. Persons violating the provisions of this chapter shall be subject to the following:~~

(a) Upon petition of the attorney general or of the municipality in which the violation occurred, the superior court may levy upon any person violating this chapter a civil penalty in an amount not to exceed [~~\$20,000~~] **\$5,000** for [~~each day of~~] each continuing violation. The superior court shall have jurisdiction to restrain a continuing violation of this chapter, and to require remediation.

**Comment [MLT10]:** The Rivers Council feels that all "knowingly" and "intentional" language has to be stricken. The burden to the State of NH to prove "knowledge" and "intention" is unreasonable and its existence constitutes the largest loophole (inconsistent with other state laws) possible.

**Deleted: knowingly**

**Deleted: and damaging the public waterway who, after notification by the department, fail to make a good faith effort at remediation and restoration**

**Deleted: knowingly**

~~[(b) Any person who knowingly violates any provision of this chapter, or any rule adopted or order issued under this chapter or any condition of any permit issued under this chapter shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person, and, notwithstanding RSA 651:2, may in addition to any sentence of imprisonment, probation or conditional discharge, be fined not more than \$20,000 for each violation if found guilty pursuant to this section. [Each day of violation shall constitute a separate offense.]~~

~~[(e)] (b) The commissioner, after notice and hearing pursuant to RSA 541-A, shall impose an administrative fine of up to \$5,000 for each offense upon any person who violates this chapter. Rehearings and appeals relating to such fines shall be governed by RSA 541. Imposition of an administrative fine under this section shall not preclude the imposition of further civil or criminal penalties under this chapter.~~

Deleted: knowingly

~~[(d)] (c) Notwithstanding the \$5,000 fine limit in subparagraph (b)(e), the administrative fine for each repeat violation of this chapter may be multiplied by a factor of 2 for every previous violation committed by the person or entity.~~

Deleted: knowingly

27 Permit Application Fees; Effective Date. Amend 2008, 5:28, II to read as follows:

II. *Paragraph I* of section 27 of this act shall take effect July 1, ~~[2011]~~ 2016.

28 Repeal. The following are repealed:

II. RSA 483-B:9, V(c)(1), relative to subdivision of land within the protected shoreland.

III. RSA 483-B:9, V(g)(3), relative to impervious surfaces.

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

Comment [MLT11]: In keeping with The Rivers Council's previous comments about municipal governments' burdens, 60 days is unreasonable. Municipalities are not ready and cannot be ready for the gap that this will leave in their regulatory landscape.

LBAO

11-0810

02/02/11

## SB 154-FN - FISCAL NOTE

AN ACT reforming the comprehensive shoreland protection act.

**FISCAL IMPACT:**

Due to time constraints, the Office of Legislative Budget Assistant is unable to provide a fiscal note for this bill at this time. When completed, the fiscal note will be forwarded to the Senate Clerk's Office.

**Comment [MLT12]:** The NHRC is concerned that the fiscal impact to the state is not only unavailable but also the financial burden to municipalities, many of whom do not have the time, expertise, and money to enact their own protection ordinances and enforce them. While the LGC may not weigh in on this issue, I believe that it is a crucial one for New Hampshire's towns and cities. Most municipalities probably have no idea what is being proposed and where their regulatory landscape—and the landscape itself—will change as a result of this bill.



SB 154-FN - AS INTRODUCED

2011 SESSION

11-0810

06/10

SENATE BILL **154-FN**

| AN ACT reforming and renaming the comprehensive shoreland protection act.

SPONSORS: Sen. Bradley, Dist 3; Sen. Boutin, Dist 16; Sen. Carson, Dist 14; Sen. De Blois, Dist 18; Sen. Forsythe, Dist 4; Sen. Gallus, Dist 1; Sen. Groen, Dist 6; Sen. Stiles, Dist 24; Sen. White, Dist 9; Rep. B. Patten, Carr 4; Rep. Ahlgren, Carr 4; Rep. Umberger, Carr 1; Rep. Chandler, Carr 1; Rep. Bettencourt, Rock 4

COMMITTEE: Energy and Natural Resources

ANALYSIS

This bill makes extensive changes to the comprehensive shoreland protection act.

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Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struckthrough~~]

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

11-0810

06/10

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eleven*

| AN ACT reforming and renaming the comprehensive shoreland protection act.

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

**CHAPTER 483-B**  
**SHORELAND**  
**WATER QUALITY PROTECTION ACT**

1, Shoreland Water Quality Protection; Minimum Standards Required.  
Amend RSA 483-B:2, IX to read as follows:

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IX. Control building sites, placement of structures, and land uses *that may potentially damage the public waters.*

2 Minimum Standards Required. Amend RSA 483-B:2, XV to read as follows:

XV. Anticipate and respond to the impacts of development in shoreland areas *to the extent they may potentially damage the public waters.*

3 Definitions. Amend RSA 483-B:4, VII-a to read as follows:

VII-a. ~~Repealed~~ ***“Horticultural professional” means any arborist, landscape architect, or gardening consultant whose function is that of providing services relative to horticulture.***

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4 Definitions. Amend RSA 483-B:4, VII-b to read as follows:

VII-b. “Impervious surface” means any modified surface that cannot effectively absorb or infiltrate water. Examples of impervious surfaces include, but are not limited to, roofs, ***and unless designed to effectively absorb or infiltrate water,*** decks, patios, and paved, gravel, or crushed stone driveways, parking areas, and walkways [~~unless designed to effectively absorb or infiltrate water~~].

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45 Definitions. 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.

6 Definitions. Amend RSA 483-B:4, and XIII to read as follows:

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

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*AKA ORIGINAL*

Deleted: XII. "Person" means a corporation, company, association, society, firm, partnership or joint stock company, as well as ~~an individual,~~ a state, and any political subdivision of a state or any agency or instrumentality thereof. ¶

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7 Definitions. Amend RSA 483-B:4, XV to read as follows:

XV. "Protected shoreland" means, for natural, fresh water bodies without artificial impoundments, for artificially impounded fresh water bodies, ***except private garden water features and ponds of less than 10 acres,*** and for coastal waters and rivers, all land located within 250 feet of the reference line of public waters.

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8 Definitions. Amend RSA 483-B:4, XVIII to read as follows:

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

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9 Definitions. Amend RSA 483-B:4, XVIII-c to read as follows:

XVIII-c. "Replace in kind" means the substitution of a new structure for an existing legal structure, whether in total or in part.

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10 Definitions. Amend RSA 483-B:4, XX-a to read as follows:

XX-a. "Shoreland frontage" means the ~~[average of the distances of the actual natural shoreline footage and a straight line drawn between property lines]~~ ***actual shoreland frontage along the water front measured at the reference line.***

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11 Definitions. Amend RSA 483-B:4, XXII to read as follows:

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

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12 Definitions. Amend RSA 483-B:4, XXIV-b 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] *for plant health, normal maintenance, and renewal.*

13 Enforcement by Commissioner; Duties; Woodland Buffer. Amend RSA 483-B:5, II to read as follows:

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II. The commissioner or his *or her* designee may, for cause, enter upon ~~[any]~~ ***subject*** land or parcel at any reasonable time ***after written notification and with prior permission of the owner*** to perform oversight and enforcement duties provided for in this chapter.

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14 Permit Required; Exemption. Amend RSA 483-B:5-b, I to read as follows:

I.(a) No person shall commence construction, excavation, or filling activities within the protected shoreland without obtaining a permit from the department to ensure compliance with this chapter. ***For projects which have no impact on water quality and which follow department rules, the applicant shall qualify for a permit by notification (PBN). The owner may proceed with the proposed project immediately upon receipt of written notice from the department that a complete and appropriate notification has been received by the department. A notification shall be considered complete and appropriate provided it includes a notification form signed by the owner of property, the name and address of the property owner, the address of the site on which the work will occur, the name of the jurisdictional waterbody, the tax map and lot number on which the proposed work will occur, plans clearly and accurately depicting the work to be completed relative to the reference line of the jurisdictional waterbody, photographs of the area to be impacted, and identification of those project criteria listed below that would qualify the permit by notification: Such projects shall include:***

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***(1) Construction, excavation and filling, or other activity that adds less than 900 square feet of impervious area within a protected shoreland area.***

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***(2) Any additional activities defined by rules of the department.***

(b) The permit application fee shall be \$100 plus \$.10 per square foot of area affected by the proposed activities and shall be deposited in the wetlands and shorelands review fund established under RSA 482-A:3, III. Such fees shall be capped as follows:

Deleted: (2) Excavation of 1,000 cubic feet or less within a protected shoreland area that does not cause a significant change in runoff protection.¶  
(3) Filling of 1,000 cubic feet or less with material that does not cause a significant change in runoff protection.¶  
(4) Any activities defined by rules of the department as de minimis.

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(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 ~~that do not qualify for a permit by notification~~, 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.

***If the application is denied, the application fee minus an administrative charge of 50% of the fee paid, shall be refunded to the applicant within 30 days of such denial.***

15; Permit Required Exemption. Amend 483-B:5-b by adding the following new paragraph:

***IV-b. Permits issued by the Department pursuant to this chapter that involve private, non-federal undertakings shall not require coordination with or clearance by the New Hampshire Division of Historical Resources.***

15 Permit Required; Exemption. Amend RSA 483-B:5-b, V(a) through (c) to read as follows:

V.(a) Within ~~30,~~ days of receipt of an application for a permit or ~~[75]~~ 30 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 ***reasonably*** 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]~~, ***120*** 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]~~, ***20*** days of the department's receipt of the information:

(1) Approve the application~~[, in whole or in part,]~~ and issue a permit; or

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(2) Deny the application, and issue written findings in support of the denial;  
or

(3) Extend the time for rendering a decision on the application 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]~~ **30** days of receipt of the application for a permit or ~~[75]~~ **30** 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[;],

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~~[(d) WAITING FOR NHDES PBN LANGUAGE HERE]~~

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~~[(1) approve or deny the application[, in whole or in part, and issue a permit; or~~

~~(2) Deny the application, and issue] with written findings in support of the [denial; or~~

~~(3) Extend the time for rendering a decision on the application for good cause and with the written agreement of the applicant] decision.~~

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

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(d) No fertilizer, except limestone, shall be applied to vegetation or soils located within 25 feet of the reference line of any public water. ***Beyond 25 feet, limestone or any fertilizer containing low phosphate and, slow release nitrogen [or], may be used.***

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17 Minimum Shoreland Protection Standards. Amend RSA 483-B:9, V(a) through (b)(2)(A)(iii) to read as follows:

(a) Maintenance of a Waterfront Buffer.

(1) The waterfront buffer shall be those protected shorelands within 50 feet of the reference line. The purpose of this buffer shall be to protect the quality of public waters while allowing homeowner discretion with regard to water access, safety, viewscape maintenance, and lot design.

(2) Within the waterfront buffer all of the following prohibitions and limitations shall apply:

(A) No chemicals, including pesticides or herbicides of any kind shall be applied to ground, turf, or established vegetation except ***if applied by horticultural professionals who have a pesticide application license issued by the N.H. Department of Agriculture*** or 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).

Deleted: *unless such application is necessary to protect the waterfront buffer, and provided such materials do not enter the protected waterway*

(B) Rocks and stumps and their root systems shall be left intact in the ground unless removal is specifically approved by the department, pursuant to RSA 482-A or RSA 483-B:11, II ***or unless rocks are removed to improve runoff control or the planting in the waterfront buffer, and stumps that are removed are replaced with pervious surfaces, new trees, or other woody vegetation.***

(C) No natural ground cover shall be removed except as necessary for a foot path to water ***and access ways*** as provided under RSA 483-B:9, V(a)(2)(D)~~(viii)~~ ***(ix), for normal maintenance, to protect the waterfront buffer,*** cutting those portions that have grown over 3 feet in height for the purpose of providing a view, ***to provide access to natural areas or shoreline,*** or as specifically approved by the department, pursuant to RSA 482-A or RSA 483-B.

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(D) Starting from the northerly or easterly boundary of the property, and working along the shoreline, the waterfront buffer shall be divided into 50 by 50 foot segments. Within each segment a minimum combined tree ~~[and]~~, sapling, ***shrub, and groundcover*** score of at least 50 points shall be maintained. If for any reason there is insufficient area for a full segment, ***or the segment contains beaches, rock or ledge*** the number of points required to be maintained in that partial segment shall be proportional to that required of a full segment. ***The landowner may meet the total point requirement over the entire frontage of the lot by distributing the score in the most practical way so that the total points achieved are equal to or greater than the total compiled by using the 50 by 50 foot segments.***

Deleted: *excluding structures, beaches, and rock and ledge areas*

(i) Tree and sapling diameters shall be measured at 4 1/2 feet above the ground, ***or calipers measured in accordance with nursery industry standards*** and are scored as follows:

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Deleted: *calipers*  
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Diameter ***or Caliper*** Score

~~[1 inch to 6 inches 1~~

greater than 6 inches to 12 inches 5

~~greater than 12 inches 10]~~

*1 to 3 inches - 1*

*3 to 6 inches - 5*

*6 to 12 inches - 10*

*12 to 24 inches - 20*

*24 to 36 inches - 30*

*Greater than 36 inches - 40*

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*(ii) Shrubs and groundcover plants shall be scored as follows:*

Deleted: One-gallon to 2-gallon shrub - 1/2 of a point

Deleted: Three-gallon to 4-gallon shrub - one point

*Four square feet of shrub area - 1 point*

*Ground cover planted in the form of sod or mat - one point for every 50 square feet*

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*Sod or mat ground cover - no more than 20 points in each full segment*

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*Shrub groundcover - no more than 40 points in each full segment*

~~(iii)~~ (iii) Dead, diseased, or unsafe trees or saplings shall not be included in scoring.

~~(iii)~~ (iv) If the total tree and sapling score in any 50 foot by 50 foot segment exceeds 50 points, then trees and saplings may be removed as long as the sum of the scores for the remaining trees and saplings in that segment does not total less than 50 points. Trees and saplings may be removed from partial segments provided that the sum of the scores for the remaining trees and saplings in that partial segment is equal to or greater than the proportional point requirement.

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~~(iv)~~ (v) The department *shall* 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. *Absent a waiver,* 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.

Deleted: , unless the applicant is increasing the combined tree and sapling score in other segments of the protected shoreland

~~(v)~~ (vi) 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, **gardens, landscaped areas**, 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]~~ **non-invasive** 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)~~ (vii) Normal trimming, pruning, and thinning of branches to the extent necessary to maintain the health of the ~~[plant being trimmed,]~~ **planted area as well to** protect structures, maintain clearances, and provide views is permitted, ~~[as allowed by rules of the department. Limbing of trees or saplings for the purpose of providing views shall be limited to the bottom 1/2 of the trees or saplings]~~ **provided such activity does not endanger the health of the plant.**

~~(vii)~~ (viii) 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)~~ (ix) A permanent 6-foot wide foot path ~~[to provide]~~ **as well as** 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]~~ **are** allowed.

(b) Maintenance of a Natural Woodland Buffer.

(1) A natural woodland buffer shall be maintained within 150 feet of the reference line. The first 50 feet of this buffer is designated the waterfront buffer and is subject to the additional requirements of subparagraph (a). The purpose of the natural woodland buffer shall be to protect the quality of public waters by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrient and chemical pollution, maintaining natural water temperatures, maintaining a healthy tree canopy

and understory, preserving fish and wildlife habitat, and respecting the overall natural condition of the protected shoreland.

(2) Within the natural woodland buffer of a given lot:

(A) ~~(A)~~ The vegetation, **except lawn**, within at least 25 percent of the area [outside] ~~including~~ the waterfront buffers shall be maintained. 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.

INCLUDE  
+ 85% IDG  
DELETE  
" INCLUDING "

18 Impervious Surfaces. Amend RSA 483-B:9, V(g)(1)-(3) to read as follows:

(1) ~~[Subject to subparagraph (2),]~~ No more than 30 percent of the area of a lot located within the protected shoreland shall be composed of impervious surfaces **unless a stormwater management system designed and certified by a professional engineer that will not concentrate stormwater runoff or contribute to erosion is implemented.**

(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.

~~[(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).]~~

19 Waivers. Amend RSA 483-B:9, V(i) to read as follows:

(i) The commissioner shall grant ~~[variances]~~ **waivers** from the minimum standards of this section. Such authority shall be exercised ~~[subject to the criteria which govern the grant of a variance by a zoning board of adjustment under RSA 674:33, I(b)]~~ **The commissioner shall grant waivers with the minimum standards of this section will provide no material benefit to the public and have no material adverse effect on the environment or**

Deleted: To the extent that it is already in a natural, unlandscaped state, for lots with [one-half] one acre or less of land within the natural woodland buffer, t

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Deleted: and exclusive of impervious surfaces

Deleted: in an unaltered state unless vegetation, including shrubs and trees in the landscaped areas, exceeds the 20 percent requirement

Deleted: not being developed

Deleted: (ii) To the extent that it is already in a natural, unlandscaped state, for lots with greater than [one-half] one acre but less than 2 acres of land within the natural woodland buffer, the vegetation within at least [50] 30 percent of the area [outside] including the waterfront buffer[-] and exclusive of impervious surfaces, shall be maintained in an unaltered state unless vegetation, including shrubs and trees in the landscaped areas, exceeds the 30 percent requirement.

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 not being redeveloped shall not be decreased. ¶

(iii) To the extent that it is already in a natural, unlandscaped state, for lots with greater than 2 acres of land within the natural woodland buffer, the vegetation within at least 50 percent of the area, including the waterfront buffer and exclusive of impervious surfaces, shall be maintained in an unaltered state unless ... [1]

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*the natural resources of the state. Waivers shall also be granted to accommodate the reasonable needs of persons with disabilities.*

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20 Nonconforming Lots of Record. Amend RSA 483-B:10, I to read as follows:

I. Except when otherwise prohibited by law, present and successive owners of an individual undeveloped lot may construct a single family residential dwelling **and appurtenant accessory structures** on it, notwithstanding the provisions of this chapter. Conditions may be imposed which, in the opinion of the commissioner, more nearly meet the intent of this chapter, while still accommodating the applicant's rights.

21 New Paragraph; Nonconforming Lots of Record; Merger. Amend RSA 483-B:11 by inserting after paragraph II the following new paragraph:

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III. Consistent with RSA 674:39-a, a municipality shall not merge adjacent nonconforming lots in common ownership without the consent of the owner.

22 Nonconforming Structures. RSA 483-B:11 is repealed and reenacted to read as follows:

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483-B:11 Nonconforming Structures.

I. Except as otherwise prohibited by law or applicable municipal ordinance, nonconforming structures located within the protected shoreland may be repaired, replaced in kind, reconstructed in place, altered, or expanded. Repair, replacement-in kind, or reconstruction in place may alter or remodel the interior design or existing foundation of the nonconforming structure, but shall result in no expansion or relocation of the existing footprint within the waterfront buffer. Alteration or expansion of a nonconforming structure may expand the existing footprint within the waterfront buffer, provided the structure is not extended closer to the reference line and the proposal or property is made more nearly conforming than the existing structure or the existing conditions of the property.

II. For the purposes of this section, a proposal that is "more nearly conforming" means alteration of the location or size of the existing footprints, or redevelopment of the existing conditions of the property, such that the structures or the property are brought into greater conformity with the design standards of this chapter. Methods for achieving greater conformity include, without limitation, **reducing the overall square footage of structural footprints**, enhancing stormwater management, adding infiltration areas and landscaping, upgrading wastewater treatment, improving traffic management, or other enhancements that improve wildlife habitat or resource protection.

III. An expansion that increases the sewerage load to an onsite septic system, or changes or expands the use of a septic system, shall require a subsurface approval issued by the department.

IV. Under paragraph I, and except as otherwise prohibited by law or applicable municipal ordinance, primary nonconforming structures may be entirely demolished and reconstructed, with continued encroachment into the waterfront buffer, provided the replacement structure is located farther back from the reference line than the preexisting nonconforming structure.

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23 Rehearings and Appeals. Amend RSA 483-B:14 to read as follows:

483-B:14 Rehearings and Appeals. Where the requirements of this chapter amend the existing statutory authority of the department or other agencies relative to certain established regulatory programs and shall be enforced under these established regulatory programs, the existing procedures governing contested cases and hearings and appeals regarding these requirements shall apply. Where requirements of this chapter are new and do not amend existing statutory authority relative to any established regulatory programs, the procedures set forth in RSA 541-A:31 for contested cases shall apply. 24 Rulemaking. Amend RSA 483-B:17, IV to read as follows:

Deleted: *The landowner, however, shall have a right to appeal any disagreement with the department to the shoreland advisory committee established under RSA 483-B:21, at least 1/2 the members of which shall be shoreland owners.* ¶  
25

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

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25 Penalties. Amend RSA 483-B:18, II and III to read as follows:

II. Any person who **knowingly** violates this chapter and any person who purchases land affected by a violation of this chapter who knew or had reason to know of the violation shall be liable for remediation or restoration of the land affected.

III. Persons **intentionally** violating the provisions of this chapter **and damaging the public waterway who, after notification by the department, fail to make a good faith effort at remediation and restoration** shall be subject to the following:

(a) Upon petition of the attorney general or of the municipality in which the violation occurred, the superior court may levy upon any person **knowingly** violating this chapter a civil penalty in an amount not to exceed [~~\$20,000~~] **\$5,000** for [~~each day of~~] each continuing violation. The superior court shall have jurisdiction to restrain a continuing violation of this chapter, and to require remediation.

~~[(b) Any person who knowingly violates any provision of this chapter, or any rule adopted or order issued under this chapter or any condition of any permit issued under this chapter shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person, and, notwithstanding RSA 651:2, may in addition to any sentence of imprisonment, probation or conditional discharge, be fined not more than \$20,000 for each violation if found guilty pursuant to this section. [Each day of violation shall constitute a separate offense.]~~

~~[(e)]~~ (b) The commissioner, after notice and hearing pursuant to RSA 541-A, shall impose an administrative fine of up to \$5,000 for each offense upon any person who **knowingly** violates this chapter. Rehearings and appeals relating to such fines shall be governed by RSA 541. Imposition of an administrative fine under this section shall not preclude the imposition of further civil or criminal penalties under this chapter.

~~[(d)]~~ (c) Notwithstanding the \$5,000 fine limit in subparagraph (c), the administrative fine for each repeat violation of this chapter may be multiplied by a factor of 2 for every previous violation **knowingly** committed by the person or entity.

26 Shoreland Advisory Committee. Amend RSA 483-B:21 by adding the following new paragraph:

~~VIII. Any person aggrieved by a department decision may, in addition to other remedies available at law, appeal to the committee for a determination of whether the department decision was unlawful or unreasonable. The burden of proof shall be upon the party seeking to set aside or otherwise modify the department's decision. The committee shall adopt rules of procedure to govern its administration of such appeals. The committee may affirm or reverse the department's decision, or remand the matter back to the department for further findings.~~

*DISCREP DENIALS WILL BE REPORTED TO THE DEPT*

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27 Permit Application Fees; Effective Date. Amend 2008, 5:28, II to read as follows:

II. *Paragraph I* of section 27 of this act shall take effect July 1, ~~[2011]~~ 2016.

28 Repeal. The following are repealed:

II. RSA 483-B:9, V(c)(1), relative to subdivision of land within the protected shoreland.

Deleted: I. RSA 483-B:6, I(c) relative to permits for installation of septic systems.¶

III. RSA 483-B:9, V(g)(3), relative to impervious surfaces.

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

LBAO

11-0810

02/02/11

**SB 154-FN - FISCAL NOTE**

AN ACT reforming the comprehensive shoreland protection act.

**FISCAL IMPACT:**

Due to time constraints, the Office of Legislative Budget Assistant is unable to provide a fiscal note for this bill at this time. When completed, the fiscal note will be forwarded to the Senate Clerk's Office.

(ii) *To the extent that it is already in a natural, unlandscaped state, for lots with greater than ~~one-half~~ one acre but less than 2 acres of land within the natural woodland buffer, the vegetation within at least ~~[50]~~ 30 percent of the area ~~[outside]~~ including the waterfront buffer[,] and exclusive of impervious surfaces, shall be maintained in an unaltered state unless vegetation, including shrubs and trees in the landscaped areas, exceeds the 30 percent requirement.* 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 *not being redeveloped* shall not be decreased.

(iii) *To the extent that it is already in a natural, unlandscaped state, for lots with greater than 2 acres of land within the natural woodland buffer, the vegetation within at least 50 percent of the area, including the waterfront buffer and exclusive of impervious surfaces, shall be maintained in an unaltered state unless vegetation, including shrubs and trees in the landscaped areas, exceeds the 50 percent requirement.* Owners of lots legally developed prior to July 1, 2008 that do not comply with this standard may increase the percentage of area maintained in an unaltered state. The percentage of area maintained in an unaltered state on nonconforming lots *not being redeveloped* shall not be decreased.

17 Minimum Lots and Residential Development. Amend RSA 483-B:9, V(e)(3) to read as follows:

(3) No lot having frontage on public waters, shall be created with less than ~~[150]~~ 50 feet of shoreland frontage.

18 Minimum Lots and Non-Residential Development. Amend RSA 483-B:9, V(f)(2) to read as follows:

(2) No lot having frontage on public water shall be created with less than ~~[150]~~ 50 feet of shoreland frontage.



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February 17, 2011

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

***Subject: SB 154, reforming the Comprehensive Shoreland Protection Act.***

Dear Senator Odell:

The New Hampshire Planners Association, representing over 200 land use planning professionals in our state, supports some of the provisions of SB 154, but has concerns regarding other provisions of the bill which we believe will significantly weaken the Comprehensive Shoreland Protection Act ("CSPA").

As you know, the CSPA was enacted in 1991 to protect the water quality of New Hampshire's larger water bodies by setting minimum requirements for the development and use of all land within 250 feet of the reference line. At its core, the CSPA allows development to occur within the protected shoreland while assuring that vegetated areas remain to help keep our waters clean. In enacting the CSPA, the Legislature recognized that large water bodies are a vital and irreplaceable component of the ecosystem and must be protected. Indeed, large water bodies are *state-wide public resources* that must be afforded a level of protection from the environmental impacts of shoreland development. The CSPA is critical to ensure that minimum development standards designed to protect water quality are applicable to the shorelands of all the state's large water bodies.

Nevertheless, the NHPA recognizes that the CSPA may need adjustment. SB 154 contains several common sense reforms that we support. For example, the provision of the bill granting DES the power to grant "waivers" from the requirements of the Act instead of imposing the stricter "variance" standard is a more common sense approach to the administration of the CSPA that would provide both DES and property owners some needed flexibility. The NHPA is also in favor of the provision granting DES authority to issue permits by notification for projects which have no impact on water quality and support the continuation of the fee structure to pay for DES enforcement.

The overall effect of the bill, however, is to enfeeble the CSPA and substantially narrow its scope. Of most concern is the bill's elimination of "individual" from the definition of "person." The core requirement of the CSPA is that "[n]o person shall commence construction, excavation, or filling activities within the protected shoreland without obtaining a permit from [DES] to ensure compliance with [the CSPA]." Anecdotal evidence suggests that most of the development occurring within the protected shoreland is by individual property owners, all of whom would be wholly exempt from the CSPA under SB 154.

We are also concerned that there is no upper limit on impervious surfaces and believe that the effect of the changes in the scoring and natural woodland buffer sections will be a net decrease in vegetation of approximately 50% from the reference line to the 150 ft. setback line. In short, the NHPA strongly believes that overall the proposed reforms of the CSPA under SB 154 will result in a serious degradation of water quality statewide.

SB 154 includes several sensible modifications of the Act that we support. If you wish to pursue a clarifying amendment to address the other elements of the bill, we would be happy to assist you. Thank you for this opportunity to provide comment.

Sincerely,

  
Timothy J. Corwin, Esq.  
Legislative Liaison



Testimony of Paul Montrone  
SB 154-FN Legislative Hearing

February 17, 2011

I am Paul Montrone, representing the NH Shoreline Coalition and I appreciate the opportunity to testify today. We have testified at numerous hearings over the past three years, encouraging NH legislators to amend the Comprehensive Shoreland Protection Act.

As we have stated before, although this Act is well-intentioned, it mistakenly positions shoreline property owners as an enemy to be punished, and not the most important ally in protecting New Hampshire's precious waterways. The Act contains many requirements that interfere with normal family life that have nothing to do with water quality. It includes provisions that are impractical and virtually unenforceable, and burden property owners with expensive application requirements even for small projects.

In addition, one unintended consequence of this Act has been the slowdown of legitimate maintenance and construction activity on the shorefront, costing our communities tax revenues and good jobs during a time of major recession.

Some amendments were wisely made over the past two years, and they were a move in the right direction. We congratulate the legislature and DES on this action. They did not, however, resolve most of the underlying problems with the Act. More changes are clearly required.

SB154-FN contains many positive amendments that will place the law on a solid footing that can then be supported by the thousands and thousands of shoreland owners that are the first line of defense in protecting our water quality.

In addition to making the Act more practical and useful, under SB 154 we are particularly gratified to see the penalties have been modified so they only apply to property owners who knowingly, rather than inadvertently, violate this complicated law; and furthermore, we do not have to worry about potentially going to jail for pruning a branch of our tree or planting our flowers in the wrong place.

We are also happy to see that with SB 154 property owners who have been denied a permit by the DES will now be able to appeal to the Shoreland Advisory Committee which has representation by shoreland owners.

In brief, the NH Shoreline Coalition is pleased with and completely supportive of SB 154-FN, as well as the additional amendments proposed by the Lakes Association.

Thank you for your attention

**LAKES MANAGEMENT ADVISORY COMMITTEE**

**NH Lakes Management and Protection Program**

New Hampshire Department of Environmental Services  
29 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

February 17, 2011

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

**RE: SB 154-FN - An Act reforming the comprehensive shoreland protection act**

Dear Chairman Odell and Members of the Committee:

The Lakes Management Advisory Committee (LMAC) is writing to express its opposition to Senate Bill 154, as introduced, relative to reforming the shoreland protection act.

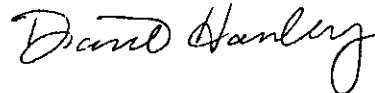
The intent of the Comprehensive Shoreland Protection Act (CSPA) is to protect water quality by guiding the growth and development of our surface water shorelines. Waterbodies are affected by the different land uses within the entire lake watershed but that area of land immediately adjacent to the lake can and does impact water quality most directly. Our lakes, ponds, rivers and streams are significant economic, recreational, cultural and natural resource assets and the preservation of water quality is imperative to the well-being of our waterbodies.

We understand that an amendment to SB 154 will be introduced today. We assume that the amendment will result in a better CSPA and would like to support it but since we have not reviewed it, we cannot comment directly on its content. We do support and would like to recommend that the amended bill be sent to a subcommittee which would allow the appropriate parties the opportunity to review and discuss it and determine if it will address the concerns that the constituent groups have expressed regarding the CSPA. We would also like to thank those that worked to develop the proposed amendment presented today.

The LMAC is a legislatively created body charged to work with the NH Department of Environmental Services (DES) on the administration of RSA 483-A, the Lakes Management and Protection Act. The Governor and Council appointed Committee is comprised of 19 members from academia, business, conservation organizations, lake associations, tourism, fish and game commission, marine trades, realtors, and municipal government. Among its other responsibilities, the LMAC is charged with reviewing legislation relevant to the LMPP and with advising the DES Commissioner on the merits of such legislation.

Thank you for your consideration of our comments. If you have any questions regarding our testimony please do not hesitate to contact Jacquie Colburn, Lakes Coordinator at (603) 271-2959.

Sincerely,



Diane Hanley, Chair  
Lakes Management Advisory Committee

cc: Senator Bradley  
Senator Carson  
Senator Forsythe  
Senator Groen  
Senator White  
Representative Ahlgren  
Representative Chandler  
Thomas S. Burack, Commissioner, DES

Senator Boutin  
Senator DeBlois  
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Senator Stiles  
Representative Patten  
Representative Umberger  
Representative Bettencourt  
Harry Stewart, DES



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February 16<sup>th</sup>, 2011

Senate Energy and Natural Resources Committee  
Statehouse Room 302  
107 N. Main Street  
Concord, NH 03301

To the Members of the Senate Energy and Natural Resources Committee,

We here at Granite State Independent Living (GSIL) would like to applaud the sponsors of SB154 for including language that would allow for the application for a waiver of some of the requirements of this law to accommodate the access needs of people with disabilities. While GSIL does not possess the expertise to evaluate the environmental impact of this bill, and thus cannot come out in support of or in opposition to it, we appreciate the effort of the bill's sponsors to specifically address the needs of persons with disabilities as they relate to this bill.

As do all citizens of New Hampshire, persons with disabilities yearn for access to our state's resources and opportunities, including recreation. By leaving open the option of waiving some requirements of the Shoreland Protection Act for persons with disabilities, it will be more likely that such individuals will be able to more fully enjoy the lakes and waterways of New Hampshire.

We also hope that in the process of finalizing this bill you will maintain this language that positively impacts persons with disabilities. Thank you again for all of your fine efforts and your service to New Hampshire and its citizens.

Sincerely,

A handwritten signature in black ink that reads "Jeff Dickinson". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Jeff Dickinson  
Advocacy Coordinator





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February 17, 2011

Senator Bob Odell, Chairman  
Energy and Natural Resources Committee  
New Hampshire Senate  
Legislative Office Building, Room 102  
Concord, New Hampshire 03301

**Subject: SB 154-FN Reforming the Comprehensive Shoreland Protection Act**

Dear Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify about Senate Bill 154. On behalf of New Hampshire Lakes Association (NH LAKES), a 501(c)3, member-supported nonprofit organization representing over 26,000 lake enthusiasts, we support SB 154 if amended and urge the Committee to vote Ought to Pass as amended.

NH LAKES supports SB 154 with modest changes because this bill revises the existing Comprehensive Shoreland Protect Act (CSPA) while maintaining critical water quality protection for all of NH's lakes. This is also a good example of compromise legislation that provides meaningful improvements to the CSPA regulations.

In addition, NH LAKES feels that the CSPA would benefit from a name change as The Comprehensive *Water Quality* Protection Act since it is the PREMIER water quality protection statute in NH. NH LAKES feels this will help the public understand the importance of protecting the shorelands for clean, clear water.

For these reasons, NH LAKES supports SB 154 if amended, and urges the Committee to vote *Ought to Pass as amended*. Thank you.

Sincerely,

Jared A. Teutsch  
President

SB 154-FN – AS INTRODUCED

2011 SESSION

11-0810

06/10

SENATE BILL **154-FN**

| AN ACT reforming and renaming the comprehensive shoreland protection act.

SPONSORS: Sen. Bradley, Dist 3; Sen. Boutin, Dist 16; Sen. Carson, Dist 14; Sen. De Blois, Dist 18; Sen. Forsythe, Dist 4; Sen. Gallus, Dist 1; Sen. Groen, Dist 6; Sen. Stiles, Dist 24; Sen. White, Dist 9; Rep. B. Patten, Carr 4; Rep. Ahlgren, Carr 4; Rep. Umberger, Carr 1; Rep. Chandler, Carr 1; Rep. Bettencourt, Rock 4

COMMITTEE: Energy and Natural Resources

ANALYSIS

This bill makes extensive changes to the comprehensive shoreland protection act.

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Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struckthrough~~]

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

11-0810

06/10

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eleven*

| AN ACT reforming and renaming the comprehensive shoreland protection act.

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

**CHAPTER 483-B**  
**COMPREHENSIVE SHORELAND**  
**WATER QUALITY PROTECTION ACT**

1 Comprehensive Water Quality Protection; Minimum Standards Required. Amend RSA 483-B:2, IX to read as follows:

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Deleted: Shoreland

IX. Control building sites, placement of structures, and land uses *that may potentially damage the public waters*.

2 Minimum Standards Required. Amend RSA 483-B:2, XV to read as follows:

XV. Anticipate and respond to the impacts of development in shoreland areas *to the extent they may potentially damage the public waters*.

3 Definitions. Amend RSA 483-B:4, VII-a to read as follows:

VII-a. ~~Repealed~~ *“Horticultural professional” means any arborist, landscape architect, or gardening consultant whose function is that of providing services relative to horticulture.*

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4 Definitions. Amend RSA 483-B:4, VII-b to read as follows:

VII-b. “Impervious surface” means any modified surface that cannot effectively absorb or infiltrate water. Examples of impervious surfaces include, but are not limited to, roofs, *and unless designed to effectively absorb or infiltrate water*, decks, patios, and paved, gravel, or crushed stone driveways, parking areas, and walkways [~~unless designed to effectively absorb or infiltrate water~~].

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5 Definitions. 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.

6 Definitions. Amend RSA 483-B:4, and XIII to read as follows:

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

Deleted: XII. "Person" means a corporation, company, association, society, firm, partnership or joint stock company, as well as [an individual,] a state, and any political subdivision of a state or any agency or instrumentality thereof. ¶

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7 Definitions. Amend RSA 483-B:4, XV to read as follows:

XV. "Protected shoreland" means, for natural, fresh water bodies without artificial impoundments, for artificially impounded fresh water bodies, ***except private garden water features and ponds of less than 10 acres***, and for coastal waters and rivers, all land located within 250 feet of the reference line of public waters.

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8 Definitions. Amend RSA 483-B:4, XVIII to read as follows:

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

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9 Definitions. Amend RSA 483-B:4, XVIII-c to read as follows:

XVIII-c. "Replace in kind" means the substitution of a new structure for an existing legal structure, whether in total or in part, with no change ***within 50 feet of the reference line*** in [~~size, dimensions,~~] ***setback or area of the footprint, [interior square footage, and location,]*** with the exception of changes resulting in an increase in the setback to public waters.

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10 Definitions. Amend RSA 483-B:4, XX-a to read as follows:

XX-a. "Shoreland frontage" means the [~~average of the distances of the actual natural shoreline footage and a straight line drawn between property lines~~] ***actual shoreland frontage along the water front.***

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11 Definitions. Amend RSA 483-B:4, XXII to read as follows:

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

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12 Definitions. Amend RSA 483-B:4, XXIV-b 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~~] **for plant health, normal maintenance, and renewal.**

13 Enforcement by Commissioner; Duties; Woodland Buffer. Amend RSA 483-B:5, II to read as follows:

Deleted: 12

II. The commissioner or his *or her* designee may, [~~for cause,~~] with cause and by virtue of a permit issued under this chapter enter upon [~~any~~] **subject** land or parcel at any reasonable time **with prior permission of the owner limited to the conditions of the permit. Such permission shall expire when the project is complete or the permit has expired, whichever comes first.**

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14 Permit Required; Exemption. Amend RSA 483-B:5-b, I to read as follows:

I.(a) No person shall commence construction, excavation, or filling activities within the protected shoreland without obtaining a permit from the department to ensure compliance with this chapter. **For projects which have no impact on water quality and which follow department rules, the department shall establish a permit by notification (PBN). Each of such PBN's shall be limited to one of the following;**

Deleted: Such projects shall include:

**(1) Construction or other activity that adds less than 1,000 square feet of impervious area within a protected shoreland area.**

**(2) Excavation of 1,000 cubic feet or less within a protected shoreland area that does not cause a significant change in runoff protection.**

**(3) Filling of 1,000 cubic feet or less with material that does not cause a significant change in runoff protection.**

(b) The permit application fee shall be \$100 plus \$.10 per square foot of area affected by the proposed activities and shall be deposited in the wetlands and shorelands review fund established under RSA 482-A:3, III. Such fees shall be capped as follows:

Deleted: (4) Any activities defined by rules of the department as de minimis.

(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.

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(2) For projects of [~~0-9,999~~] **1,000- 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.

***If the application is denied, after receiving recommendations from the department, the application fee shall be refunded to the applicant within 30 days of such denial.***

**15 Permit Required; Exemption. Amend RSA 483-B:5-b, V(a) through (c) to read as follows:**

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V.(a) Within ~~[30]~~ **15** days of receipt of an application for a permit or ~~[75]~~ **30** 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 **reasonably** 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]~~ **180** 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]~~ **15** days of the department's receipt of the information:

(1) Approve the application~~[- in whole or in part,]~~ and issue a permit; or

(2) Deny the application, and issue written findings in support of the denial;  
or

(3) Extend the time for rendering a decision on the application 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]~~ **15** days of receipt of the application for a permit or ~~[75]~~ **30** 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[;],

~~[(1)]~~ approve or deny the application~~[- in whole or in part, and issue a permit;~~  
~~or~~

~~(2) Deny the application, and issue] *with* written findings in support of the [denial; or~~

~~(3) Extend the time for rendering a decision on the application for good cause and with the written agreement of the applicant] *decision*.~~

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

Deleted: 15

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

Deleted: *or organic fertilizer*

17 Minimum Shoreland Protection Standards. Amend RSA 483-B:9, V(a) through (b)(2)(A)(iii) to read as follows:

Deleted: 16

(a) Maintenance of a Waterfront Buffer.

(1) The waterfront buffer shall be those protected shorelands within 50 feet of the reference line. The purpose of this buffer shall be to protect the quality of public waters while allowing homeowner discretion with regard to water access, safety, viewscape maintenance, and lot design.

(2) Within the waterfront buffer all of the following prohibitions and limitations shall apply:

(A) No chemicals, including pesticides or herbicides of any kind shall be applied to ground, turf, or established vegetation except *if applied by horticultural professionals who have a pesticide application license issued by the N.H. Department of Agriculture or 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).*

Deleted: *unless such application is necessary to protect the waterfront buffer, and provided such materials do not enter the protected waterway*

(B) Rocks and stumps and their root systems shall be left intact in the ground unless removal is specifically approved by the department, pursuant to RSA 482-A or RSA 483-B:11, II *or unless rocks are removed to improve runoff control or the planting in the waterfront buffer, and stumps that are removed are replaced with pervious surfaces, new trees, or other woody vegetation.*

(C) No natural ground cover shall be removed except as necessary for a foot path to water *and access ways* as provided under RSA 483-B:9, V(a)(2)(D)~~[(viii)]~~ *(ix), for normal maintenance, to protect the waterfront*

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**buffer**, cutting those portions that have grown over 3 feet in height for the purpose of providing a view, **to provide access to natural areas or shoreline**, or as specifically approved by the department, pursuant to RSA 482-A or RSA 483-B.

(D) Starting from the northerly or easterly boundary of the property, and working along the shoreline, the waterfront buffer shall be divided into 50 by 50 foot segments **excluding structures, beaches, and rock and ledge areas**. Within each segment a minimum combined tree ~~and~~, sapling, **shrub, and groundcover** score of at least 50 points shall be maintained. If for any reason there is insufficient area for a full segment, the number of points required to be maintained in that partial segment shall be proportional to that required of a full segment. **The landowner may meet the total point requirement over the entire frontage of the lot by distributing the score in the most practical way so that the total points achieved are equal to or greater than the total compiled by using the 50 by 50 foot segments.**

(i) Tree and sapling diameters shall be measured at 4 1/2 feet above the ground or calipers measured in accordance with nursery industry standards and are scored as follows:

Diameter or Caliper Score

[1 inch to 6 inches - 1

greater than 6 inches to 12 inches - 5

greater than 12 inches - 10]

**1 to 3 inches - 1**

**3 to 6 inches - 5**

**6 to 12 inches - 10**

**12 to 24 inches - 20**

**24 to 36 inches - 30**

**Greater than 36 inches - 40**

(ii) Shrubs and groundcover plants shall be scored as follows:

Equivalent to one-gallon to 2-gallon shrub - 1 point

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~~Equivalent to three-gallon to 4-gallon shrub - 2 points~~

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~~Ground cover planted in the form of sod or mat - one point for every 50 square feet~~

~~Sod or mat ground cover - no more than 20 points in each full segment~~

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~~Shrub groundcover - no more than 40 points in each full segment~~

Deleted: 2

~~(iii)~~ (iii) Dead, diseased, or unsafe trees or saplings shall not be included in scoring.

~~(iii)~~ (iv) If the total tree and sapling score in any 50 foot by 50 foot segment exceeds 50 points, then trees and saplings may be removed as long as the sum of the scores for the remaining trees and saplings in that segment does not total less than 50 points. Trees and saplings may be removed from partial segments provided that the sum of the scores for the remaining trees and saplings in that partial segment is equal to or greater than the proportional point requirement.

~~(iv)~~ (v) The department shall 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~~ **No** application ~~that would~~ shall 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.

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Deleted: , unless the applicant is increasing the combined tree and sapling score in other segments of the protected shoreland

~~(v)~~ (vi) 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, **gardens, landscaped areas,** 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~~ **non-invasive** 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)~~ (vii) Normal trimming, pruning, and thinning of branches to the extent necessary to maintain the health of the ~~plant being trimmed,~~ **planted area as well to** protect structures, maintain clearances, and provide views is permitted, ~~as allowed by rules of the department. Limbing of trees or saplings for the purpose of providing views shall be limited to the bottom 1/2~~

~~of the trees or saplings]~~ ***provided such activity does not endanger the health of the plant.***

~~(vii)]~~ ***(viii)*** 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)]~~ ***(ix)*** A permanent 6-foot wide foot path ~~[to provide]~~ ***as well as*** 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]~~ ***are*** allowed.

(b) Maintenance of a Natural Woodland Buffer.

(1) A natural woodland buffer shall be maintained within 150 feet of the reference line. The first 50 feet of this buffer is designated the waterfront buffer and is subject to the additional requirements of subparagraph (a). The purpose of the natural woodland buffer shall be to protect the quality of public waters by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrient and chemical pollution, maintaining natural water temperatures, maintaining a healthy tree canopy and understory, preserving fish and wildlife habitat, and respecting the overall natural condition of the protected shoreland.

(2) Within the natural woodland buffer of a given lot:

(A)(i) ***To the extent that it is already in a natural, unlandscaped state,*** for lots with ~~[one-half]~~ ***one*** acre or less of land within the natural woodland buffer, the vegetation within at least ~~[25]~~ ***20*** percent of the area ~~[outside]~~ ***including the waterfront buffer and exclusive of impervious surfaces*** shall be maintained in an unaltered state ***unless vegetation, including shrubs and trees in the landscaped areas, exceeds the 20 percent requirement.*** 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 ***not being developed*** shall not be decreased.

(ii) ***To the extent that it is already in a natural, unlandscaped state,*** for lots with greater than ~~[one-half]~~ ***one*** acre ***but less than 2 acres*** of land within the natural woodland buffer, the vegetation within at least ~~[50]~~ ***30***

percent of the area ~~[outside]~~ **including** the waterfront buffer~~;~~ **and** exclusive of impervious surfaces, shall be maintained in an unaltered state **unless vegetation, including shrubs and trees in the landscaped areas, exceeds the 30 percent requirement.** 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 **not being redeveloped** shall not be decreased.

**(iii) To the extent that it is already in a natural, unlandscaped state, for lots with greater than 2 acres of land within the natural woodland buffer, the vegetation within at least 50 percent of the area, including the waterfront buffer and exclusive of impervious surfaces, shall be maintained in an unaltered state unless vegetation, including shrubs and trees in the landscaped areas, exceeds the 50 percent requirement. Owners of lots legally developed prior to July 1, 2008 that do not comply with this standard may increase the percentage of area maintained in an unaltered state. The percentage of area maintained in an unaltered state on nonconforming lots not being redeveloped shall not be decreased.**

**17 Impervious Surfaces. Amend RSA 483-B:9, V(g)(1)-(3) to read as follows:**

**(1) ~~[Subject to subparagraph (2),]~~ No more than 30 percent of the area of a lot located within the protected shoreland shall be composed of impervious surfaces **unless a stormwater management system designed and certified by a professional engineer that will not concentrate stormwater runoff or contribute to erosion or water quality degradation is implemented.****

**(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.**

~~**(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).]**~~

**Deleted:** 17 Minimum Lots and Residential Development. Amend RSA 483-B:9, V(e)(3) to read as follows:¶

**(3) No lot having frontage on public waters, shall be created with less than ~~[150]~~ 50 feet of shoreland frontage. ¶**

**18 Minimum Lots and Non-Residential Development. Amend RSA 483-B:9, V(f)(2) to read as follows:¶**

**(2) No lot having frontage on public water shall be created with less than ~~[150]~~ 50 feet of shoreland frontage. ¶**

19

18 Waivers. Amend RSA 483-B:9, V(i) to read as follows:

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(i) The commissioner shall ~~grant [variances]~~ *waivers* from the minimum standards of this section. Such authority shall be exercised ~~[subject to the criteria which govern the grant of a variance by a zoning board of adjustment under RSA 674:33, I(b)]~~ *when the applicant provides a plan that is more nearly conforming to the minimum standards than the existing conditions and the plan will have no material adverse effect on water quality. Waivers shall also be granted to accommodate the reasonable needs of persons with disabilities.*

Deleted: have the authority to

Deleted: if the commissioner deems that strict compliance with the minimum standards of this section will provide no material benefit to the public and have no material adverse effect on the environment or the natural resources of the state.

19 Nonconforming Lots of Record. Amend RSA 483-B:10, I to read as follows:

Deleted: 21

I. Except when otherwise prohibited by law, present and successive owners of an individual undeveloped lot may construct a single family residential dwelling *and appurtenant accessory structures* on it, notwithstanding the provisions of this chapter. Conditions may be imposed which, in the opinion of the commissioner, more nearly meet the intent of this chapter, while still accommodating the applicant's rights.

20 New Paragraph; Nonconforming Lots of Record; Merger. Amend RSA 483-B:11 by inserting after paragraph II the following new paragraph:

Deleted: 22

III. Consistent with RSA 674:39-a, a municipality shall not merge adjacent nonconforming lots in common ownership without the consent of the owner.

21 Nonconforming Structures. RSA 483-B:11 is repealed and reenacted to read as follows:

Deleted: 23

483-B:11 Nonconforming Structures.

I. Except as otherwise prohibited by law or applicable municipal ordinance, nonconforming structures located within the protected shoreland may be repaired, replaced in kind, reconstructed in place, altered, or expanded. Repair, replacement-in kind, or reconstruction in place may alter or remodel the interior design or existing foundation of the nonconforming structure, but shall result in no expansion or relocation of the existing footprint within the waterfront buffer. Alteration or expansion of a nonconforming structure may expand the existing footprint within the waterfront buffer, provided the structure is not extended closer to the reference line and the proposal or property is made more nearly conforming than the existing structure or the existing conditions of the property.

II. For the purposes of this section, a proposal that is "more nearly conforming" means alteration of the location or size of the existing footprints,



or redevelopment of the existing conditions of the property, such that the structures or the property are brought into greater conformity with the design standards of this chapter. Methods for achieving greater conformity include, without limitation, **reducing the overall square footage of structural footprints**, enhancing stormwater management, adding infiltration areas and landscaping, upgrading wastewater treatment, improving traffic management, or other enhancements that improve wildlife habitat or resource protection.

III. An expansion that increases the sewerage load to an onsite septic system, or changes or expands the use of a septic system, shall require a subsurface approval issued by the department.

IV. Under paragraph I, and except as otherwise prohibited by law or applicable municipal ordinance, primary nonconforming structures may be entirely demolished and reconstructed, with continued encroachment into the waterfront buffer, provided the replacement structure is located farther back from the reference line than the preexisting nonconforming structure.

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22 Rehearings and Appeals. Amend RSA 483-B:14 to read as follows:

483-B:14 Rehearings and Appeals. Where the requirements of this chapter amend the existing statutory authority of the department or other agencies relative to certain established regulatory programs and shall be enforced under these established regulatory programs, the existing procedures governing contested cases and hearings and appeals regarding these requirements shall apply. Where requirements of this chapter are new and do not amend existing statutory authority relative to any established regulatory programs, the procedures set forth in RSA 541-A:31 for contested cases shall apply. **The landowner, however, shall have a right to appeal any disagreement with the department to the shoreland advisory committee established under RSA 483-B:21, at least 1/2 the members of which shall be shoreland owners.**

Deleted: 25

23 Rulemaking. Amend RSA 483-B:17, IV to read as follows:

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

Deleted: 26

24 Penalties. Amend RSA 483-B:18, II and III to read as follows:

II. Any person who **knowingly** violates this chapter and any person who purchases land affected by a violation of this chapter who knew or had reason

to know of the violation shall be liable for remediation or restoration of the land affected.

III. Persons *intentionally* violating the provisions of this chapter *and damaging the public waterway who, after notification by the department, fail to make a good faith effort at remediation and restoration* shall be subject to the following:

(a) Upon petition of the attorney general or of the municipality in which the violation occurred, the superior court may levy upon any person *knowingly* violating this chapter a civil penalty in an amount not to exceed [~~\$20,000~~] **\$5,000** for [~~each day of~~] each continuing violation. The superior court shall have jurisdiction to restrain a continuing violation of this chapter, and to require remediation.

~~[(b) Any person who knowingly violates any provision of this chapter, or any rule adopted or order issued under this chapter or any condition of any permit issued under this chapter shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person, and, notwithstanding RSA 651:2, may in addition to any sentence of imprisonment, probation or conditional discharge, be fined not more than \$20,000 for each violation if found guilty pursuant to this section. [Each day of violation shall constitute a separate offense.]~~

~~[(e) (b) The commissioner, after notice and hearing pursuant to RSA 541-A, shall impose an administrative fine of up to \$5,000 for each offense upon any person who *knowingly* violates this chapter. Rehearings and appeals relating to such fines shall be governed by RSA 541. Imposition of an administrative fine under this section shall not preclude the imposition of further civil or criminal penalties under this chapter.~~

~~[(d) (c) Notwithstanding the \$5,000 fine limit in subparagraph (c), the administrative fine for each repeat violation of this chapter may be multiplied by a factor of 2 for every previous violation *knowingly* committed by the person or entity.~~

~~25 Permit Application Fees; Effective Date. Amend 2008, 5:28, II to read as follows:~~

Deleted: 27

II. *Paragraph I* of section 27 of this act shall take effect July 1, [~~2011~~] **2016**.

Deleted: 28

~~26 Repeal. The following are repealed:~~

II. RSA 483-B:9, V(c)(1), relative to subdivision of land within the protected shoreland.

Deleted: I. RSA 483-B:6, I(c) relative to permits for installation of septic systems.¶

III. RSA 483-B:9. V(g)(3), relative to impervious surfaces.

Deleted: 29

~~27 Effective Date. This act shall take effect 60 days after its passage.~~

LBAO

11-0810

02/02/11

**SB 154-FN - FISCAL NOTE**

AN ACT reforming the comprehensive shoreland protection act.

**FISCAL IMPACT:**

Due to time constraints, the Office of Legislative Budget Assistant is unable to provide a fiscal note for this bill at this time. When completed, the fiscal note will be forwarded to the Senate Clerk's Office.

# What's Our Water Worth?

A perceived decline in water quality could mean lost recreational sales, income, & jobs.

## NORTH WOODS

Lost sales: \$1.8 million  
Lost income: \$640,000  
Lost jobs: 29

## WHITE MOUNTAINS

Lost sales: \$11.8 million  
Lost income: \$4.2 million  
Lost jobs: 189

## DARTMOUTH-SUNAPEE

Lost sales: \$870,000  
Lost income: \$310,000  
Lost jobs: 14

## LAKES REGION

Lost sales: \$25 million  
Lost income: \$8.8 million  
Lost jobs: 396

## MERRIMACK VALLEY

Lost sales: \$8.3 million  
Lost income: \$3 million  
Lost jobs: 131

## MONADNOCK

Lost sales: \$509,000  
Lost income: \$180,000  
Lost jobs: 9

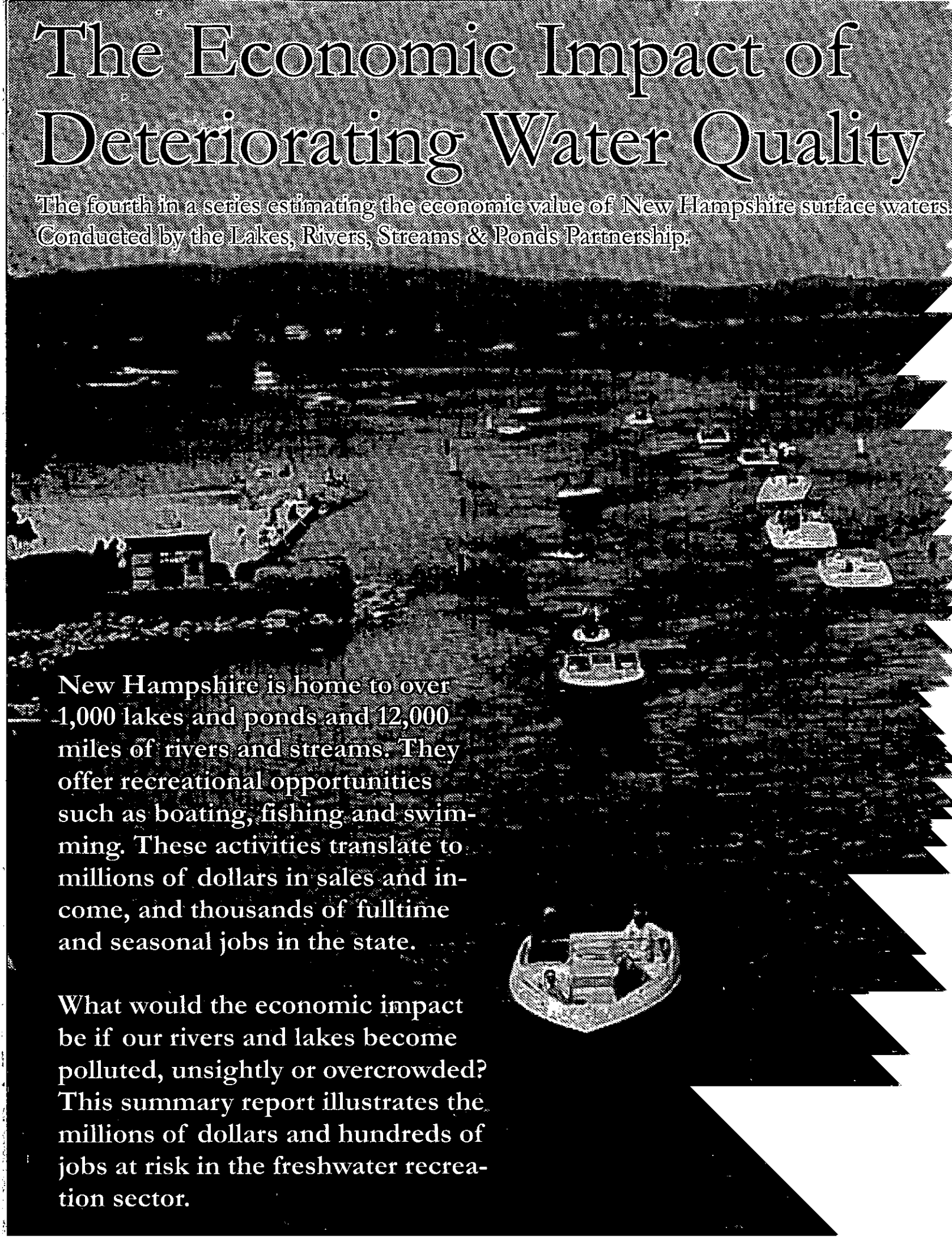
## SEACOAST

Lost sales: \$2.6 million  
Lost income: \$930,000  
Lost jobs: 43



# The Economic Impact of Deteriorating Water Quality

The fourth in a series estimating the economic value of New Hampshire surface waters.  
Conducted by the Lakes, Rivers, Streams & Ponds Partnership.

An aerial, black and white photograph of a large body of water, likely a lake or a wide river. The water is filled with numerous small, light-colored boats, possibly rowing teams or small recreational vessels, scattered across the surface. The shoreline is visible in the background, with some buildings and trees. The overall scene suggests a busy day of water recreation.

New Hampshire is home to over 1,000 lakes and ponds and 12,000 miles of rivers and streams. They offer recreational opportunities such as boating, fishing and swimming. These activities translate to millions of dollars in sales and income, and thousands of fulltime and seasonal jobs in the state.

What would the economic impact be if our rivers and lakes become polluted, unsightly or overcrowded? This summary report illustrates the millions of dollars and hundreds of jobs at risk in the freshwater recreation sector.

# Key Regional Findings

Perceived water quality decline could mean varying economic losses for state's regions.

North Woods	Lost Sales*	Lost Income*	Lost Jobs
Clarity & purity	\$1.8 million	\$640,000	29
Water level & flow	\$1.4 million	\$480,000	21
Views & scenery	\$970,000	\$350,000	15
Crowding	\$780,000	\$280,000	12

White Mountains	Lost Sales	Lost Income	Lost Jobs
Clarity & purity	\$11.8 million	\$4.2 million	189
Water level & flow	\$5.7 million	\$2 million	93
Views & scenery	\$5.8 million	\$2.1 million	94
Crowding	\$4.3 million	\$1.5 million	71

Dartmouth - Sun.	Lost Sales	Lost Income	Lost Jobs
Clarity & purity	\$870,000	\$310,000	14
Water level & flow	\$580,000	\$188,000	9
Views & scenery	\$553,000	\$172,000	9
Crowding	\$334,000	\$118,000	6

Lakes Region	Lost Sales	Lost Income	Lost Jobs
Clarity & purity	\$25 million	\$8.8 million	396
Water level & flow	\$15.3 million	\$5.5 million	247
Views & scenery	\$14.4 million	\$5.1 million	231
Crowding	\$9.5 million	\$3.3 million	149

Monadnock	Lost Sales	Lost Income	Lost Jobs
Clarity & purity	\$509,000	\$181,000	9
Water level & flow	\$522,000	\$165,000	8
Views & scenery	\$443,000	\$130,000	7
Crowding	\$216,000	\$76,000	4

Merrimack Valley	Lost Sales	Lost Income	Lost Jobs
Clarity & purity	\$8.3 million	\$3 million	131
Water level & flow	\$4.1 million	\$1.4 million	63
Views & scenery	\$4.1 million	\$1.5 million	65
Crowding	\$3 million	\$1.1 million	47

Seacoast	Lost Sales	Lost Income	Lost Jobs
Clarity & purity	\$2.6 million	\$931,000	43
Water level & flow	\$1.3 million	\$452,000	21
Views & scenery	\$1.4 million	\$464,000	21
Crowding	\$954,000	\$337,000	16

\* Lost Sales and Lost Income figures are rounded to the nearest \$100,000 when figures are in the millions, and nearest \$1,000 when figures are in the hundred thousands.



# About this Study



## Purpose

The primary goal of this study was to answer the question:

"How would the state economy be affected if residents and visitors who fish, boat and swim perceive any negative changes to the water quality in the areas where they recreate?"

The secondary study goals were to create useful information for policy makers and promote "big picture" thinking that overcomes the perception that growth and healthy public waters are mutually exclusive.



## Methodology

This study collected data from residents and visitors who fish, swim and boat.

During the summer of 2006 seventy-five freshwater access points were randomly selected from 400 public and quasi-public sites. These sites represent the state's seven tourism regions.

A questionnaire was administered to 912 people, producing 843 sets of usable data. Respondents were asked about their annual use of state waters and how it might be affected if they perceived negative changes in four areas of water quality:

- Crowding
- Natural beauty and scenery
- Water clarity and purity (algae, mercury, millfoil, other invasives)
- Water levels and flows.

By combining two methods of assessment this report determined the estimated economic impact in a unique manner. First, survey respondents were asked how much they spend and how often they visit when they swim, boat or fish.

Second, they were asked how water quality changes would impact the number of times they visited. The link between actual spending and the hypothetical change in visitation gives the potential economic impact of changing water quality.



## Notable Findings

- Visitor days by anglers, boaters and swimmers total **14.9 million** or 29% of the 51.4 million visitor days per year in the state.

Respondents who would decrease visiting days if conditions worsened in the next 12 months:

Clarity & purity	69%
Crowding	46%
Views & scenery	56%
Water level or flow	43%

- Annual sales generated by anglers, boaters and swimmers is over **\$379 million**. This exceeds revenues from Laconia's Bike Week, two annual NASCAR events, Off-Highway Vehicle spending and spending at agricultural fairs.
- Annual total household income generated is about **\$134 million**.
- Nearly **6,000** fulltime and seasonal jobs are generated by these activities.
- Between **79% and 94%** of respondents reported high levels of satisfaction with water quality, views, crowding levels and water levels.
- Between **1/2 and 2/3** of visitors would decrease their visits to a site if they perceived a decline in water quality, views, crowding or water levels.
- Perceived declines in water clarity and purity would have the greatest economic impact - **\$51 million** in lost sales, **\$18 million** in lost income and **800** lost jobs.



## Intended Use

The Lakes, Rivers, Streams and Ponds Partnership commissioned this study to inform state legislators, agency officials, mayors, town managers, selectmen, planning boards, non-profit organizations, the media and the general public. The full report is available online at a variety of sites, including [www.nhrivers.org](http://www.nhrivers.org), [www.nhlakes.org](http://www.nhlakes.org), and [www.des.state.nh.us/wmb/lakes/economicvalues.html](http://www.des.state.nh.us/wmb/lakes/economicvalues.html).

The raw data is available to applicants on a case-by-case basis. Contact New Hampshire Lakes for details.



## Author

Anne Nordstrom, Ph.D. was the Project Manager and author of this study.



## Previous Reports

**Estimates of Select Economic Values of NH lakes, Rivers, Streams & Ponds**, (June 2003), revealed that surface waters annually contribute an estimated \$247 million in property taxes and \$1.5 billion in total sales from fishing, boating, swimming and public drinking water supplies.

**Public Opinion Poll Results in the Study of Select Economic Values of NH Lakes, Rivers, Streams and Ponds**, (December 2004), determined the most important reasons residents visit freshwaters are:

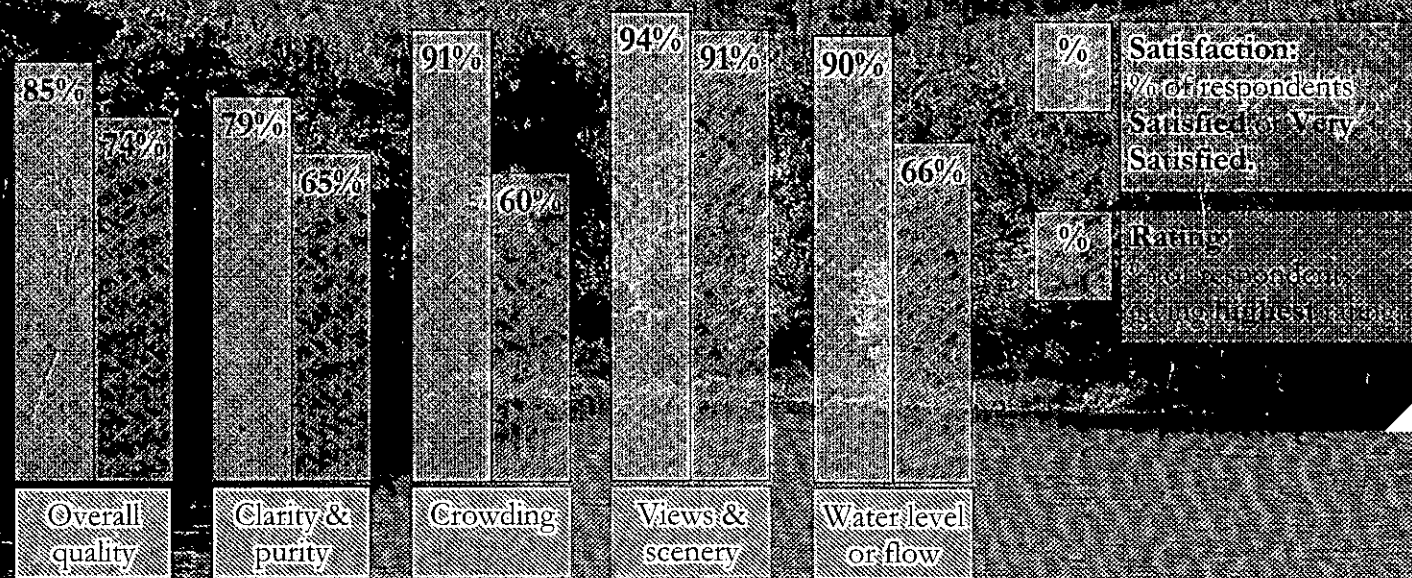
- Quality of fishing, boating, or swimming
- Overall beauty of the area
- Variety of activities
- Water quality.

Most residents report that if conditions worsen, they would decrease participation in activities to less than a few times a year.



# Key Statewide Findings

Current perception of water quality is very good.



Economic impact of swimming, fishing, boating is significant.

	Sales	Income	Jobs
Current Values	\$379 million	\$134 million	5,990

Perceived water quality decline could mean economic losses.

	Lost Sales	Lost Income	Lost Jobs
Decrease in water clarity or purity	\$51 million	\$18 million	810
Change in water levels or flows	\$29 million	\$10 million	460
Change in views or scenery	\$28 million	\$10 million	440
Increased crowding	\$19 million	\$7 million	310

**NOTE:** The issues selected for this study are interdependent. For example, a decrease in quality of views might be connected to an increase in crowding. The artificial separation of these issues for this research will result in a probable under-estimation of the economic costs of changing water quality.



# The Economic Impact of Potential Decline in New Hampshire Water Quality: The Link Between Visitor Perceptions, Usage and Spending

Phase IV Report, May 2007

Steering Committee of the  
Lakes, Rivers, Streams & Ponds Partnership



New Hampshire Lakes  
New Hampshire Rivers Council

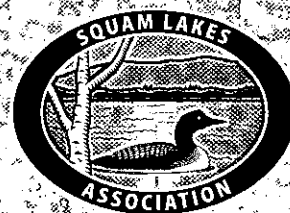
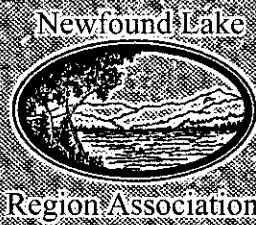
New Hampshire Department of Environmental Services

New Hampshire Fish and Game Department

Squam Lakes Association

Lake Sunapee Protective Association

Newfound Lake Region Association



For additional information about this study, please contact:

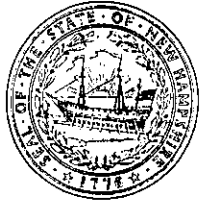
New Hampshire Lakes  
3 Silk Farm Road, Concord, NH 03301  
603-226-0299 or [info@nhlakes.org](mailto:info@nhlakes.org)

Published October, 2007

Funding for this report comes from the US Fish & Wildlife Service, New Hampshire Department of Environmental Services, New Hampshire Lakes and the New Hampshire Rivers Council.  
All photos by NH Department of Environmental Services, NH Rivers Council and NH Lakes.



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



**Thomas S. Burack, Commissioner**

February 17, 2011

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

**RE: SB 154-FN - An Act reforming the Comprehensive Shoreland Protection Act**

Dear Senator Odell:

Thank you for the opportunity to comment on SB154, an act which would reform the Comprehensive Shoreland Protection Act. The Department of Environmental Services (DES) has had the opportunity to review the amendment language presented today and supports the general intent of the amendment as proposed.

Thank you for the 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.

Sincerely,

*Michael Odell, Ass't Comm.*  
for Thomas S. Burack  
Commissioner

cc: Senator Bradley  
Senator Carson  
Senator Forsythe  
Senator Groen  
Senator White  
Representative Ahlgren  
Representative Chandler

Senator Boutin  
Senator DeBlois  
Senator Gallus  
Senator Stiles  
Representative Patten  
Representative Umberger

# *New Hampshire Association of Natural Resource Scientists*

Post Office Box 110 • Concord, NH 03302



## **Comments on proposed changes to the Waterfront Buffer vegetation point systems of the Comprehensive Shoreland Protection Act (CSPA)**

By: James S. Kennedy, Landscape Architect/Wetland Scientist

For: Legislative Committee, New Hampshire Association of Natural Resource Scientists (NHANRS)

Date: February 21, 2011

**1. Background:** The existing Waterfront Buffer point system was developed by the Woodland Buffer Subcommittee of the SB 83 Comprehensive Shoreland Protection Act Commission. The subcommittee selected a system based on study of existing and potential tree counting methods, using sample data from natural, developed, and theoretical sites representing a mix of land uses on varied waterfront locations in New Hampshire. A 1-5-10 tree and sapling system on 50 by 50 -foot grids was chosen by the Subcommittee and adopted by the full Commission. The 50-point minimum score was 50% of the 100-point average of natural, undeveloped sites, and approximated the 50% managed cut (measured by basal area) allowed by the original CSPA. The points were applied only to saplings (including large shrubs) and trees, since the shrub layer was assumed to remain in an undisturbed state, except for periodic cutting of vegetation over 3 feet in height.

**2. Proposed Changes to the point system:** The proposed SB 154 and Amendments (as of 2/14/2011) modify the points by dividing the saplings into two classes, doubling the tree points, and adding up to 50 points for large trees. Using this proposed system with the data collected for the original study results in point scores which average 230% greater than the 1-5-10 system. This results in an average 44% reduction in the vegetation density of the 50-foot Waterfront Buffer, or 22% of the 100-point natural woodland condition. When the proposed shrub counts are included (up to 20 points), these percentages are further reduced. These results clearly violate the original intent of the CSPA.

**3. Alternate Point Systems:** The current CSPA and the Administrative Rules for Shoreland Protection regulate two environments - a naturally occurring meadow, shrub, or wooded waterfront; and a developed, landscaped or restored waterfront. Suggested alternate point systems could be as follows:

**Natural or non-landscaped Waterfront:** A suggested point system could be as follows:

Saplings	1-3" dbh	1 point
Saplings	3-6" dbh	3 points
Trees	6-12" dbh	5 points
Trees	12-24" dbh	10 points
Trees	24" dbh & greater	20 points

Trees and saplings should be measured at dbh (4.5 above ground, since this is a forestry standard, is above the 3-foot maintained shrub level, and prevents measurement of root flares, butt swell, and multiple stems.

If this system is applied to the sample data this results in an average increase of 130% in point scores. Approximately 25% of the data sites that did not meet the minimum 50-point requirement would now

meet the minimum, and 25% would increase from the 50-point level to the 100-point or "natural" woodland.

**Restored or Landscaped Waterfront:**

Ground Cover	6" - 12" height	1 point/50 sq ft
Shrubs	12-24" height	0.3 points (NHDES) or 1.0 point (SB154)
Shrubs	24-36" height	0.5 points (NHDES) or 2.0 points (SB154)
Trees	1-3" caliper	1 point
Trees	3-6" caliper	3 points

Trees and saplings from nursery stock should be measured by caliper (1.0' above ground).

Shrubs should be measured by height (not gallons), according to the American Standard for Nursery Stock (ANSI Z60.1-2004).

The term "ground cover" should be re-defined as "...any herbaceous plant or woody seedling or shrub *at least 6 inches in height* and less than 3 feet in height." The terms "mat" and "sod" should not be used, as they generally refer to installation, and could be interpreted as grass sod for lawns, which are not permitted in the Waterfront Buffer.

**4. Grid segments:** The SB 154 proposal suggests that beaches and rock and ledge areas not be counted as part of a grid segment. These areas not omitted in the original studies, as they were not large and rarely occurred as un-vegetated areas. Many natural areas with 100 points or more contained ledge areas or rocky shorelines.

The SB 154 proposal includes shrubs and ground cover in the point scores. As discussed above, shrubs and ground cover should be counted only in restoration or landscaped areas.

The SB 154 proposal distributes the grid scores over the entire frontage of a lot. This proposal may create large openings in front of structures, thus defeating the original purposes of the CSPA. Also, the existing statute allows for cutting and pruning of vegetation to provide views along a relatively homogenous waterfront.

allowed by rules of the department] for plant health, normal maintenance, and renewal.

13 Enforcement by Commissioner; Duties; Woodland Buffer. Amend RSA 483-B:5, II to read as follows:

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II. The commissioner or his or her designee may, for cause, enter upon [any] subject land or parcel at any reasonable time after written notification and with prior permission of the owner to perform oversight and enforcement duties provided for in this chapter.

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14 Permit Required; Exemption. Amend RSA 483-B:5-b, I to read as follows:

I.(a) No person shall commence construction, excavation, or filling activities within the protected shoreland without obtaining a permit from the department to ensure compliance with this chapter. For projects which have no impact on water quality and which follow department rules, the applicant shall qualify for a permit by notification (PBN). The owner may proceed with the proposed project immediately upon receipt of written notice from the department that a complete and appropriate notification has been received by the department. A notification shall be considered complete and appropriate provided it includes a notification form signed by the owner of property, the name and address of the property owner, the address of the site on which the work will occur, the name of the jurisdictional waterbody, the tax map and lot number on which the proposed work will occur, plans clearly and accurately depicting the work to be completed relative to the reference line of the jurisdictional waterbody, photographs of the area to be impacted, and identification of those project criteria listed below that would qualify the permit by notification. Such projects shall include:

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(1) Construction, excavation and filling, or other activity that adds less than 900 square feet of impervious area within a protected shoreland area provided there is no alteration of areas in an unaltered state; or

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(2) Any additional activities defined by rules of the department.

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(b) The permit application fee shall be \$100 plus \$.10 per square foot of area affected by the proposed activities and shall be deposited in the wetlands and shorelands review fund established under RSA 482-A:3, III. Such fees shall be capped as follows:

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(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 that do not qualify for a permit by notification, 0-9,999 square feet, \$750.

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

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

If the application is denied, the application fee minus an administrative charge of 50% of the fee paid, shall be refunded to the applicant within 30 days of such denial.

15: Permit Required Exemption. Amend 483-B:5-b by adding the following new paragraph:

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*IV-b. Permits issued by the Department pursuant to this chapter that involve private, non-federal undertakings shall not require coordination with or clearance by the New Hampshire Division of Historical Resources.*

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15 Permit Required; Exemption. Amend RSA 483-B:5-b, V(a) through (c) to read as follows:

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V.(a) Within ~~30~~ days of receipt of an application for a permit or ~~[75]~~ 30 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 **reasonably** 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]~~ 120 days of the request, the department shall deny the application.

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(b) When the department requests additional information pursuant to subparagraph (a), the department shall, within ~~[30]~~ 20 days of the department's receipt of the information:

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(1) Approve the application ~~[, in whole or in part,]~~ and issue a permit; or

(2) Deny the application, and issue written findings in support of the denial; or

(3) Extend the time for rendering a decision on the application 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]~~ **30** days of receipt of the application for a permit or ~~[75]~~ **30** 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[-],

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~~[(1) approve or deny the application[, in whole or in part, and issue a permit; or~~

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~~(2) Deny the application, and issue] with written findings in support of the [denial; or~~

~~(3) Extend the time for rendering a decision on the application for good cause and with the written agreement of the applicant] **decision.**~~

**[(d) Within 5 business days of receipt of a permit by notification filing the department shall issue a written notice to the property owner or agent stating that the notification has either been accepted or rejected..**

~~16 Minimum Shoreland Protection Standards. Amend RSA 483-B:9, II(d) to read as follows:~~

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~~(d) No fertilizer, except limestone, shall be applied to vegetation or soils located within 25 feet of the reference line of any public water. **Beyond 25 feet, limestone or any fertilizer containing low phosphate and** slow release nitrogen ~~[or]~~, may be used.~~

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~~17 Minimum Shoreland Protection Standards. Amend RSA 483-B:9, V(a) through (b)(2)(A)(iii) to read as follows:~~

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Deleted: limestone, or organic fertilizer,

Deleted: on areas beyond 25 feet from the reference line

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(a) Maintenance of a Waterfront Buffer.

(1) The waterfront buffer shall be those protected shorelands within 50 feet of the reference line. The purpose of this buffer shall be to protect the quality of public waters while allowing homeowner discretion with regard to water access, safety, viewscape maintenance, and lot design.

(2) Within the waterfront buffer all of the following prohibitions and limitations shall apply:

(A) No chemicals, including pesticides or herbicides of any kind shall be applied to ground, turf, or established vegetation except **if applied by horticultural professionals who have a pesticide application license issued by the N.H. Department of Agriculture or as allowed under special permit issued by the division of pesticide control under rules adopted by the**

**Parsons, Richard**

---

**From:** Forst, Darlene [Darlene.Forst@des.nh.gov]  
**Sent:** Friday, March 04, 2011 8:43 AM  
**To:** Parsons, Richard; Renzullo, Andrew; apollack@gcglaw.com; paul@tarkka.com; mark@flandersandco.com; pwg@docksource.com; skiff@skiffingtonhomes.com; Aube, Jason R; james.kennedy@valley.net; jstock@nhtoa.org; Bradley, Jeb  
**Subject:** RE: Latest version of SB 154 amendment

I believe there is a significant error on Page 8. The sections having originally been designated as paragraphs (ii) and (iii) are struck through. They were not struck through in earlier drafts nor were they discussed in the work session.

-----Original Message-----

**From:** Parsons, Richard [mailto:Richard.Parsons@leg.state.nh.us]  
**Sent:** Thursday, March 03, 2011 3:37 PM  
**To:** Renzullo, Andrew; apollack@gcglaw.com; paul@tarkka.com; mark@flandersandco.com; pwg@docksource.com; skiff@skiffingtonhomes.com; Aube, Jason R; Forst, Darlene; james.kennedy@valley.net; jstock@nhtoa.org; Bradley, Jeb  
**Subject:** FW: Latest version of SB 154 amendment

I wanted to make sure everyone had a copy of the proposed amendment.

Thanks,  
Rich

**Richard M. Parsons**  
*Legislative Aide*  
Aide to the Senate Energy and Natural Resources Committee  
NH State Senate  
State House, Room 115  
Concord, NH 03301  
(603) 271-3076

---

**From:** Jared Teutsch [mailto:jteutsch@nhlakes.org]  
**Sent:** Thursday, March 03, 2011 2:04 PM  
**To:** 'Pelletier, Rene'; 'Keyes, Karen'; 'Paul W. Goodwin'; 'Ari Pollack'  
**Cc:** 'Forst, Darlene'; jebebrad@metrocast.net; Parsons, Richard  
**Subject:** Latest version of SB 154 amendment

Hi Everyone,

Attached is the most recent version of the SB 154 amendment as discussed at the subcommittee meeting on Monday. Please let me know if I missed something or you have questions. Thank you.

Jared

---

Jared A. Teutsch, J.D.  
President  
NH LAKES Association  
14 Horseshoe Pond Lane  
Concord, NH 03301  
(603) 226-0299  
(603) 224-9442 fax  
[www.nhlakes.org](http://www.nhlakes.org)  
"Dedicated to protecting NH's lakes and their watersheds"



**Parsons, Richard**

---

**From:** Forst, Darlene [Darlene.Forst@des.nh.gov]  
**Sent:** Friday, March 04, 2011 8:58 AM  
**To:** Parsons, Richard; Renzullo, Andrew; apollack@gcglaw.com; paul@tarkka.com; mark@flandersandco.com; pwg@docksource.com; skiff@skiffingtonhomes.com; Aube, Jason R; james.kennedy@valley.net; jstock@nhtoa.org; Bradley, Jeb  
**Cc:** jteutsch@nhlakes.org  
**Subject:** RE: Latest version of SB 154 amendment

My apologies but I suspect there are also errors on page 9 where the provision allowing a 12 construction access road has been deleted and on page 12 where paragraphs II and III have now been struck through in their entirety.

-----Original Message-----

**From:** Parsons, Richard [mailto:Richard.Parsons@leg.state.nh.us]  
**Sent:** Thursday, March 03, 2011 3:37 PM  
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**Richard M. Parsons**  
*Legislative Aide*  
Aide to the Senate Energy and Natural Resources Committee  
NH State Senate  
State House, Room 115  
Concord, NH 03301  
(603) 271-3076

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**Sent:** Thursday, March 03, 2011 2:04 PM  
**To:** 'Pelletier, Rene'; 'Keyes, Karen'; 'Paul W. Goodwin'; 'Ari Pollack'  
**Cc:** 'Forst, Darlene'; jebebrad@metrocast.net; Parsons, Richard  
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Jared

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Jared A. Teutsch, J.D.  
President  
NH LAKES Association  
14 Horseshoe Pond Lane  
Concord, NH 03301  
(603) 226-0299  
(603) 224-9442 fax  
[www.nhlakes.org](http://www.nhlakes.org)  
"Dedicated to protecting NH's lakes and their watersheds"

**From** "Brian Schutt"  
**Subject** Shoreland  
**Date** Mon, February 28, 2011 8:49  
**To** JohnG@GallusandGreen.com  
**Attachments**

- shoreland suggestions.pdf (44 k)

---

Good morning Senator,

I realize that this may be a little late, but attached are some recommendations that have come out of our own Bureau of Environment within DOT.

Thanks,

Brian T. Schutt  
NHDOT, District One Engineer  
641 Main St  
Lancaster, NH 03584  
P: (603) 788-4641  
F: (603) 788-4260  
[bschutt@dot.state.nh.us](mailto:bschutt@dot.state.nh.us) <<mailto:bschutt@dot.state.nh.us>>

<<shoreland suggestions>>

## Comprehensive Shoreland Protection Act NHDOT Comments and Recommendations

- Exempt public road projects from the Shoreland permitting process. Currently, Administrative Rule Env-Wq 1406.02 exempts agriculture and timber harvesting from the requirements of RSA 483-B. It is often impossible for linear road projects to comply with many aspects of the Comprehensive Shoreland Protection Act, especially requirements relative to natural ground cover, impervious surfaces, maintenance of a waterfront buffer, and maintaining property in an unaltered state. The exemption could apply only to projects that involve existing roads, and a Memorandum of Agreement (MOA) between NHDOT and NHDES could be developed in place of the requirements of RSA 483-B. (It may be appropriate for proposed public road projects that involve new alignment to be held to the requirements of RSA 483-B.) Note that NHDOT is currently exempt from obtaining a NHDES Site-Specific Permit (Alteration of Terrain) and operates instead under an MOA between the two agencies.

### Barring full exemption from RSA 483-B, the NHDOT has the following recommendations:

- 483-B:9 V (a) (2) (D) (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, beaches, and rights-of-way for public utilities, public transportation, and public access, and may repair existing utility structures within the waterfront buffer.*

SB 0124 removes the language regarding rights-of-way, which may result in the need for DOT to obtain a shoreland permit simply to mow roadsides within the waterfront buffer. NHDOT recommends that rights-of-way remain in the RSA.

- 483-B:5-b 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.*

SB 0124 would eliminate the abutter notification exemption for public road projects. Notifying all abutters along lengthy, linear projects is time consuming and costs money due to staff time and the expense of certified mail. NHDOT recommends that this exemption remain in the RSA.

- Exempt construction of public roads from the vegetation grid/scoring requirement of RSA 483-B:9 V (a) (D) (2). DOT projects do not fit the methodology used to determine a vegetation score for two important reasons: 1) road projects do not have clearly defined property boundaries and 2) road projects cannot maintain 50 points within a project area that largely consists of the roadway structure. DES has been allowing DOT to simply show square footage of impacts to the protected shoreland rather than using the scoring method; however, it would be prudent to acknowledge this in the RSA to ensure consistency into the future.

- SB 0154, Amend RSA 483-B:5-b, I *For projects which have no impact on water quality and which follow department rules, the department shall establish a permit by notification.*  
**RSA 483-B:17 X establishes a Permit by Notification process, as well as activities that do not require a Shoreland permit. The current list of activities allowed under Permit by Notification does not benefit NHDOT and the Department supports the expansion of activities. It would be beneficial for all parties if DOT was invited to participate in rulemaking to derive a list of *de minimis* activities.**
  
- SB 0154, Amend RSA 483-B:5-b, V(a) through (c) relative to timing of permit issuance.  
**NHDOT has not had any problems with the existing permitting timeframe.**
  
- SB 0124, Amend RSA 483-B:5-b, IV-a relative to the local river management advisory committee.  
**NHDOT has not had any problems with notifying local river management advisory committees about Shoreland applications, and coordinates with these groups as part of the environmental review process for most Department projects, regardless of the need for a Shoreland permit.**

# Committee Report

STATE OF NEW HAMPSHIRE  
SENATE  
REPORT OF THE COMMITTEE

Date: March 10, 2011

THE COMMITTEE ON Energy and Natural Resources  
to which was referred Senate Bill 154-FN

AN ACT                    reforming the comprehensive shoreland protection act.

Having considered the same, the committee recommends that the Bill:

**OUGHT TO PASS WITH AMENDMENT**

BY A VOTE OF:    5-0

AMENDMENT # 0788s

Senator Jeb E. Bradley  
For the Committee

Richard Parsons 271-3076

## New Hampshire General Court - Bill Status System

**Docket of SB154**

Docket Abbreviations

**Bill Title:** (New Title) reforming and renaming the comprehensive shoreland protection act and repealing New Hampshire's regional greenhouse gas initiative cap and trade program for controlling carbon dioxide emissions.

*Official Docket of SB154:*

<b>Date</b>	<b>Body</b>	<b>Description</b>
2/3/2011	S	Introduced and Referred to Energy and Natural Resources, <b>SJ 5</b> , Pg.46
2/10/2011	S	Hearing: 2/17/11, Room 102, LOB, 9:45 a.m.; <b>SC11</b>
3/10/2011	S	Committee Report: Ought to Pass with Amendment #2011-0788s, NT, 3/16/11; <b>SC15</b>
3/16/2011	S	Committee Amendment 0788s, NT, AA, VV; <b>SJ 9</b> , Pg.123
3/16/2011	S	Ought to Pass with Amendment 0788s, NT, MA, VV; Refer to Finance Rule 4-3; <b>SJ 9</b> , Pg.124
3/24/2011	S	Committee Report: Ought to Pass with Amendment #2011-1210s, 3/30/11; <b>SC17</b>
3/30/2011	S	Committee Amendment 1210s, AA, VV; <b>SJ 11</b> , Pg.223
3/30/2011	S	Ought to Pass with Amendment 1210s, MA, VV; OT3rdg; <b>SJ 11</b> , Pg.224
3/30/2011	S	Passed by Third Reading Resolution; <b>SJ 11</b> , Pg.239
3/31/2011	H	Introduced and Referred to Resources, Recreation and Development; <b>HJ 35</b> , PG.1241
4/5/2011	H	Public Hearing: 4/12/2011 1:00 PM LOB 305
4/12/2011	H	Subcommittee Work Session: 4/19/2011 10:15 AM LOB 305
4/19/2011	H	Executive Session: 4/26/2011 11:15 AM LOB 305
4/27/2011	H	Committee Report: Ought to Pass with Amendment #1578h for May 4 (Vote 16-0; RC); <b>HC 36</b> , PG.1249-1250
4/27/2011	H	Proposed Committee Amendment #2011-1578h; <b>HC 36</b> , PG.1280-1281
5/4/2011	H	Amendment #1578h Adopted, VV; <b>HJ 42</b> , PG.1478-1479
5/4/2011	H	Ought to Pass with Amendment #1578h: MA VV; <b>HJ 42</b> , PG.1478-1479
5/4/2011	H	Referred to Finance; <b>HJ 42</b> , PG.1479
5/5/2011	H	Public Hearing: 5/11/2011 10:00 AM LOB 210-211
5/12/2011	H	Executive Session: 5/17/2011 10:00 AM LOB 210-211 ==RECESSED==
5/18/2011	H	Continued Executive Session: 5/24/2011 10:00 AM LOB 210-211
5/25/2011	H	Majority Committee Report: Ought to Pass with Amendment #2006h(NT) for June 1 (Vote 20-6; RC); <b>HC 43</b> , PG.1499
5/25/2011	H	Proposed Majority Committee Amendment #2011-2006h (New Title); <b>HC 43</b> , PG.1519-1521
5/25/2011	H	Minority Committee Report: Inexpedient to Legislate; <b>HC 43</b> , PG.1499
6/1/2011	H	Amendment #2006h(NT) Adopted, DIV 248-109; <b>HJ 48</b> , PG.1647-1648
6/1/2011	H	Ought to Pass with Amendment #2006h(NT): MA VV; <b>HJ 48</b> , PG.1647-1648
6/8/2011	S	Sen. Bradley Concurs with House Amendment #1578h, 2006h, NT, <b>RC</b>

		14Y-9N, MA; <b>SJ 20</b> , Pg.551
6/8/2011	H	Enrolled; <b>HJ 51</b> , PG.1726
6/8/2011	S	Enrolled
7/6/2011	S	Vetoed by Governor 07/06/2011, <b>SC32</b>

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NH House

NH Senate

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# Other Referrals

# COMMITTEE REPORT FILE INVENTORY

SB 0154-FN ORIGINAL REFERRAL \_\_\_\_\_ RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE AIDE AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

DOCKET (Submit only the latest docket found in Bill Status)

COMMITTEE REPORT

CALENDAR NOTICE

HEARING REPORT

HANDOUTS FROM THE PUBLIC HEARING

PREPARED TESTIMONY AND OTHER SUBMISSIONS

SIGN-UP SHEET(S)

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

- AMENDMENT # 07255 \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_  
 - AMENDMENT # 07888 \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_

ALL AVAILABLE VERSIONS OF THE BILL:

AS INTRODUCED \_\_\_\_\_ AS AMENDED BY THE HOUSE  
 FINAL VERSION  AS AMENDED BY THE SENATE

OTHER (Anything else deemed important but not listed above, such as amended fiscal notes): REVISED FISCAL NOTE 0810

IF YOU HAVE A RE-REFERRED BILL, YOU ARE GOING TO MAKE UP A DUPLICATE FILE FOLDER

DATE DELIVERED TO SENATE CLERK 7/22/11

  
\_\_\_\_\_  
BY COMMITTEE AIDE