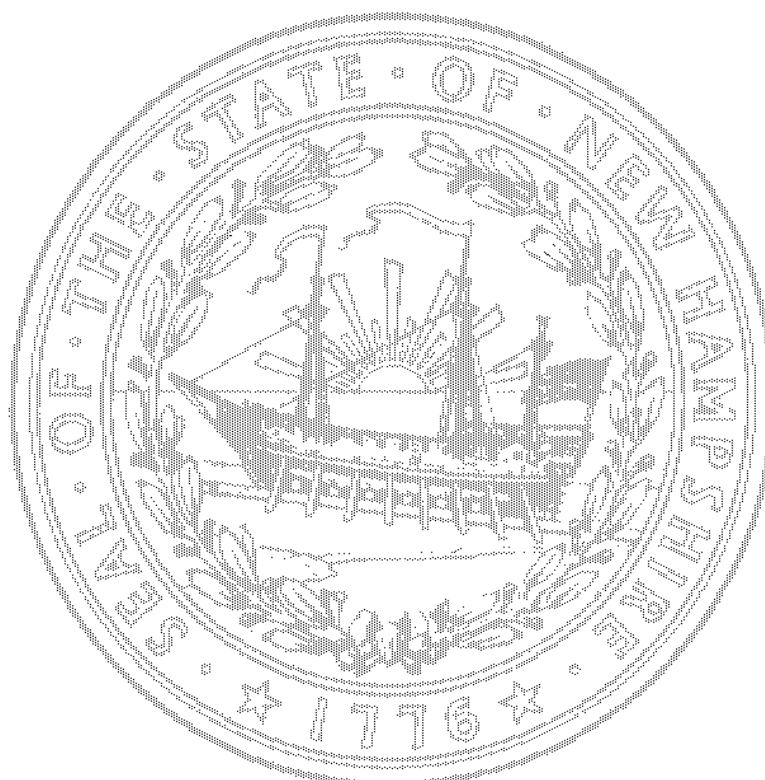


March 27, 2008

Nos. 10-11

STATE OF NEW HAMPSHIRE

WEB SITE ADDRESS:
www.gencourt.state.nh.us



Legislative

SENATE JOURNAL

ADJOURNMENT – MARCH 20, 2008 SESSION
COMMENCEMENT – MARCH 27, 2008 SESSION

SENATE JOURNAL 10 (continued)

March 20, 2008

Out of Recess.

LATE SESSION

Senator Foster moved that the Senate adjourn from the late session.

Adopted.

Adjournment.

SENATE JOURNAL 11

March 27, 2008

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend Canon Timothy Rich, chaplain to the Senate, offered the prayer:

Wondrous Worker of Wonders, we praise You, not alone for what has been, or for what is, but for what has yet to be. Turn loose the members of this body, that they may go with You to the edge of now and maybe to welcome the new, to see their possibilities, to accept their limits; and then move them to begin living all the way to the limits of compassion and justice, until released by hope, they embrace others as You and this time as Your Kingdom come. Amen

Senator Bragdon led the Pledge of Allegiance.

INTRODUCTION OF GUESTS

MOTION TO VACATE

Senator Burling moved to vacate **HB 1585-FN**, from the Executive Departments and Administration Committee to the Ways and Means Committee.

Adopted.

HB 1585-FN, relative to regulation of fuel gas fitters by the state fire marshal is vacated to the Ways and Means Committee.

Senator Larsen moved without objection to move Special Ordered HB 1151 to the end of the calendar.

HB 385-FN, relative to licensing and insurance fees. Commerce, Labor and Consumer Protection Committee. Ought to Pass, Vote 4-0. Senator DeVries for the committee.

Adopted.

Ordered to third reading.

HB 1152-FN, relative to interpreting statutory deadlines. Commerce, Labor and Consumer Protection Committee. Ought to Pass, Vote 4-0. Senator Barnes for the committee.

Adopted.

Ordered to third reading.

HB 1230, requiring pharmacists to charge an insured person the usual and customary price or the copayment, whichever is less, of filling a prescription. Commerce, Labor and Consumer Protection Committee. Ought to Pass, Vote 4-0. Senator Roberge for the committee.

Adopted.

Ordered to third reading.

HB 1384, relative to the regulation of designated agents by the New Hampshire real estate commission, and relative to the disclosure of certain property conditions. Commerce, Labor and Consumer Protection Committee. Ought to Pass, Vote 5-0. Senator Reynolds for the committee.

Adopted.

Ordered to third reading.

HB 777-FN-A, relative to agricultural exemptions from alteration of terrain permitting requirements and penalties for site development. Energy, Environment and Economic Development Committee. Inexpedient to Legislate, Vote 3-0. Senator Hassan for the committee.

Committee report of Inexpedient to Legislate is adopted.

HB 794-FN, establishing a commission to study the feasibility of public funding of state election campaigns. Election Law and Internal Affairs Committee. Ought to Pass, Vote 3-1. Senator Cilley for the committee.

Adopted.

Ordered to third reading.

Senator Letourneau is in opposition to HB 794-FN.

HB 1295, establishing a commission to study issues relating to stormwater. Energy, Environment and Economic Development Committee. Ought to Pass with Amendment, Vote 4-0. Senator Hassan for the committee.

Energy, Environment, and Economic Development

March 25, 2008

2008-1114s

06/09

Amendment to HB 1295

Amend paragraph I as inserted by section 2 of the bill by inserting after subparagraph (o) the following new subparagraphs:

- (p) A member of the Nature Conservancy, appointed by that organization.
- (q) A member of the New Hampshire Timberland Ownership Association, appointed by that organization.
- (r) A member of the New Hampshire Farm Bureau, appointed by that organization.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 291, relative to licensure of fireworks sellers. Executive Departments and Administration Committee. Ought to Pass, Vote 5-0. Senator Kelly for the committee.

Adopted.

Ordered to third reading.

HB 1166, relative to rate setting for interpreters for the deaf and hard of hearing. Executive Departments and Administration Committee. Ought to Pass, Vote 4-0. Senator Cilley for the committee.

Adopted.

Ordered to third reading.

HB 717, allowing municipalities to establish local community services and care planning boards. Public and Municipal Affairs Committee. Ought to Pass, Vote 5-0. Senator Roberge for the committee.

Adopted.

Ordered to third reading.

HB 185-FN, relative to economic revitalization zone credits. Ways and Means Committee. Ought to Pass, Vote 5-0. Senator Odell for the committee.

MOTION TO TABLE

Senator Hassan moved to have HB 185-FN laid on the table.

Adopted.

LAIID ON THE TABLE

HB 185-FN, relative to economic revitalization zone credits.

HB 1172-FN, changing the name of the pari-mutuel commission to the racing and charitable gaming commission. Ways and Means Committee. Ought to Pass, Vote 5-0. Senator Odell for the committee.

Adopted.

Ordered to third reading.

HB 1266, allowing 50 caliber pistols to take game animals in the state. Wildlife, Fish and Game, and Agriculture Committee. Ought to Pass, Vote 3-0. Senator Janeway for the committee.

Adopted.

Ordered to third reading.

HB 1277, relative to the definition of farm. Wildlife, Fish and Game, and Agriculture Committee. Ought to Pass, Vote 3-0. Senator Janeway for the committee.

Adopted.

Ordered to third reading.

HB 1411, relative to rulemaking under the native plant protection act. Wildlife, Fish and Game, and Agriculture Committee. Ought to Pass, Vote 3-0. Senator Janeway for the committee.

Adopted.

Ordered to third reading.

HJR 10, urging congress to allow for the interstate sale of state inspected meat and poultry. Wildlife, Fish and Game, and Agriculture Committee. Ought to Pass, Vote 3-0. Senator Janeway for the committee.

Adopted.

Ordered to third reading.

HJR 11, requesting the United States Department of Agriculture to provide redress for price reporting errors in milk prices. Wildlife, Fish and Game, and Agriculture Committee. Ought to Pass, Vote 3-0. Senator Janeway for the committee.

Adopted.

Ordered to third reading.

HJR 12, relative to support for research into colony collapse disorder. Wildlife, Fish and Game, and Agriculture Committee. Ought to Pass, Vote 3-0. Senator Janeway for the committee.

Adopted.

Ordered to third reading.

SPECIAL ORDER

HB 1151, relative to reporting dates for the instream flow pilot program. Energy, Environment and Economic Development Committee. Ought to Pass with Amendment, Vote 6-0. Senator Fuller Clark for the committee.

Sen. Fuller Clark, Dist. 24

March 18, 2008

2008-1057s

06/09

Amendment to HB 1151

Amend the bill by replacing all after section 3 with the following:

- 4 Change in Effective Date. Amend RSA 2007, 267:15, IV to read as follows:
 - IV. The remainder of this act shall take effect ~~[April]~~ **July** 1, 2008.
- 5 Repeal. The following are repealed:
 - I. 2007, 267:13, relative to a contingency.
 - II. 2007, 267:15, II and III, relative to effective dates.
- 6 Effective Date.
 - I. Sections 4 and 5 of this act shall take effect upon its passage.
 - II. The remainder of this act shall take effect 60 days after its passage.

Amendment adopted.

Senator Burling Rule 42 on HB 1151.

Senator Estabrook Rule 42 on HB 1151.

Senator Gottesman Rule 42 on HB 1151.

Senator Reynolds Rule 42 on HB 1151.

Senator Fuller Clark offered a floor amendment.

Sen. Fuller Clark, Dist. 24
March 26, 2008
2008-1125s
09/10

Floor Amendment to HB 1151

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

AN ACT relative to reporting dates for the instream flow pilot program and relative to certain requirements under the comprehensive shoreland protection act.

Amend the bill by replacing all after section 3 with the following:

- 4 Repeal. The following are repealed:
 - I. RSA 483-B:5-a, I-IV, relative to permit required.
 - II. RSA 483-B:5-a, V, relative to permit required.
 - III. RSA 483-B:4, VII-a, relative to definition of impervious surface.
 - IV. RSA 483-B:4, X-a, relative to definition of natural ground cover.
 - V. RSA 483-B:4, XI-a and XI-b, relative to nonconforming lot of record and nonconforming structure.
 - VI. RSA 483-B:4, XXIV-a, relative to definition of undisturbed state.

5 Definition. RSA 483-B:4, XVI(c) is repealed and reenacted to read as follows:

(c) Rivers, meaning all year-round flowing waters of fourth order or higher, as shown on the now current version of the U.S. Geological Survey 7 ½' topographic maps. Stream order shall be determined using the Strahler method, whereby the highest year-round streams in a watershed are first order streams, their juncture yields second order streams, the juncture of second order streams yields third order streams, et seq. A listing of the streams of fourth order and higher shall be prepared and maintained by the office of energy and planning and delivered to the commissioner 30 days after the effective date of this act.

6 Definition. RS 483-B:4, XXVI is repealed and reenacted to read as follows:

XXVI. "Water dependent structure" means a structure that services and supports activities that require direct access to, or contact with the water, or both, as an operational necessity and that requires a permit under RSA 482-A, including but not limited to a dock, wharf, pier, breakwater, beach, boathouse, retaining wall, or launching ramp.

7 Prior Approval; Permits. RSA 483-B:6 is repealed and reenacted to read as follows:

483-B:6 Prior Approval; Permits.

I. Within the protected shoreland, any person intending to:

(a) Engage in any earth excavation activity shall obtain all necessary local approvals in compliance with RSA 155-E.

(b) Construct a water-dependent structure, alter the bank, or construct or replenish a beach shall obtain approval and all necessary permits pursuant to RSA 482-A.

(c) Install a septic system as described in RSA 483-B:9, V(b)(1)-(3) shall obtain all permits pursuant to RSA 485-A:29.

(d) Conduct an activity resulting in a contiguous disturbed area exceeding 50,000 square feet shall obtain a permit pursuant to RSA 485-A:17.

(e) Subdivide land as described in RSA 483-B:9, V(d) and (e) shall obtain approval pursuant to RSA 485-A:29.

II. In applying for these approvals and permits, such persons shall demonstrate to the satisfaction of the department that the proposal meets or exceeds the development standards of this chapter. The department shall grant, deny, or attach reasonable conditions to a permit listed in subparagraphs I(a)-(e), to protect the public waters or the public health, safety or welfare. Such conditions shall be related to the purposes of this chapter.

8 Minimum Protection Standards. RSA 483-B:9, IV-b is repealed and reenacted to read as follows:

IV-b. Public utility lines and associated structures and facilities shall be permitted by the commissioner as necessary, consistent with the purposes of this chapter and other

state law.

9 Waterfront Buffer. RSA 483-B:9, V is repealed and reenacted to read as follows:

V. The following minimum standards shall apply to the protected shoreland provided that forest management not associated with shoreland development or land conversion, and conducted in compliance with RSA 227-J:9; forestry involving water supply reservoir watershed management; or agriculture conducted in accordance with best management practices; shall be exempt from the provisions of this chapter:

(a) NATURAL WOODLAND BUFFER.

(1) Where existing, a natural woodland buffer shall be maintained within 150 feet of the reference line. The purpose of this 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 the protected shoreland under conditions defined in RSA 483-B:9, V, all of the following prohibitions and limitations shall apply:

(A) Not more than a maximum of 50 percent of the basal area of trees, and a maximum of 50 percent of the total number of saplings shall be removed for any purpose in a 20-year period. A healthy, well-distributed stand of trees, saplings, shrubs, ground cover, and their living, undamaged root systems shall be left in place.

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

(C) Structures, as defined in RSA 483-B:4, XXII, within the natural woodland buffer shall be afforded an opening for building construction that shall be excluded when computing the percentage limitations under subparagraph (a)(2)(A).

(D) Dead, diseased, unsafe, or fallen trees, saplings, shrubs, or ground cover may be removed. Their removal shall not be used in computing the percentage limitations under subparagraph (a)(2)(A).

(E) Stumps and their root systems, which are located within 50 feet of the reference line, shall be left intact in the ground, unless removal is specifically approved by the department under RSA 482-A.

(F) Preservation of dead and living trees that provide dens and nesting places for wildlife is encouraged.

(G) Planting efforts that are beneficial to wildlife are encouraged.

(b) SEPTIC SYSTEMS.

(1) All new lots, including those in excess of 5 acres, created within the protected shoreland are subject to subdivision approval by the department of environmental services under RSA 485-A:29.

(2) The following conditions, based on the characteristics of the receiving soil as they relate to U.S. Department of Agriculture, Natural Resources Conservation Service drainage classes, shall dictate the setback requirements for all new leaching portions of new septic systems, as follows:

(A) Adjacent to ponds, lakes, estuaries, and the open ocean.

(i) Where the receiving soil downgradient of the leaching portions of a septic system is a porous sand and gravel material with a percolation rate equal to or faster than 2 minutes per inch, the setback shall be at least 125 feet from the reference line;

(ii) For soils with restrictive layers within 18 inches of the natural soil surface, the setback shall be at least 100 feet from the reference line; and

(iii) For all other soil conditions, the setback shall be at least 75 feet from the reference line.

(B) Adjacent to rivers the setback shall be no less than 75 feet.

(3) The placement of all septic tanks and leaching portions of septic systems for replacement systems shall comply with the requirements of subparagraph (b)(2), to the maximum extent feasible.

(c) EROSION AND SILTATION.

(1) All new structures, modifications to existing structures, and excavation or earth moving within protected shoreland shall be designed and constructed in accordance with rules adopted by the department under RSA 541-A for terrain alteration under RSA 485-A:17, to manage stormwater and control erosion and sediment, during and after construction.

(2) New structures and all modifications to existing structures within the protected shoreland shall be designed and constructed to prevent the release of surface runoff across exposed mineral soils.

(3) A permit under RSA 485-A:17, I shall be required for improved, developed, or subdivided land whenever there is a contiguous disturbed area exceeding 50,000 square feet that is either partially or wholly within protected shoreland.

(d) MINIMUM LOTS AND RESIDENTIAL DEVELOPMENT. In the protected shoreland:

(1) The minimum size for new lots in areas dependent upon on-site septic

systems shall be determined by soil type lot size determinations, as established by the department of environmental services under RSA 485-A and rules adopted to implement it.

(2) For projects in areas dependent upon on-site sewage and septic systems, the total number of residential units in the protected shoreland, whether built on individual lots or grouped as cluster or condominium development, shall not exceed:

(A) One unit per 150 feet of shoreland frontage; or

(B) For any lot that does not have direct frontage, one unit per 150 feet of lot width as measured parallel to the shoreland frontage that lies between the lot and the reference line.

(3) No lot dependent upon an on-site septic system, having frontage on public waters, shall be created with less than 150 feet of shoreland frontage.

(4) Lots in areas serviced by municipal sewers shall conform to municipal minimum lot standards, and shall not be subject to any shoreland frontage requirement, except as provided by municipal standards.

(5) Lots and residential units outside of the protected shoreland shall not be subject to this chapter.

(e) MINIMUM LOTS AND NON-RESIDENTIAL DEVELOPMENT. In the protected shoreland:

(1) The minimum size for new non-residential lots in areas dependent upon on-site septic systems shall be determined by soil type lot size determinations, as set forth under rules adopted under RSA 541-A.

(2) Non-residential development requiring on-site water, sewage, and septic systems shall not be constructed on lots less than 150 feet in width.

(3) Non-residential lots in areas serviced by municipal sewers shall conform to municipal minimum lot standards.

(4) Non-residential lots outside of the protected shoreland shall not be subject to this chapter.

(f) COMMON OWNERS AND RESIDENTIAL OR NON-RESIDENTIAL DEVELOPMENT. In the protected shoreland, waterfront parcels held in common by one or more owners of contiguous interior parcels may be developed, but only in a manner consistent with the provisions of this chapter. Care shall be taken for the adequate provision of parking, toilet facilities, and related support systems to minimize the project's impact on the public waters.

(g) The commissioner shall have the authority to grant variances 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).

10 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, nonconforming structures, erected prior to July 1, 1994, located within the protected shoreland may be repaired, renovated, or replaced in kind using modern technologies, provided the result is a functionally equivalent use. Such repair or replacement may alter the interior design or existing foundation, but no expansion of the existing footprint or outside dimensions shall be permitted. An expansion that increases the sewerage load to an on-site septic system, or changes or expands the use of a septic system or converts a structure to condominiums or any other project identified under RSA 485-A:29-44 and rules adopted to implement it shall require approval by the department. Between the primary building line and the reference line, no alteration shall extend the structure closer to the public water, except that the addition of a deck or open porch is permitted up to a maximum of 12 feet towards the reference line.

II. When reviewing requests for the redevelopment of sites that contain nonconforming structures erected prior to July 1, 1994, the commissioner shall review proposals which are more nearly conforming than the existing structures, and may waive some of the standards specified in RSA 483-B:9, so long as there is at least the same degree of protection provided to the public waters. For the purposes of this section, a proposal that is "more nearly conforming" means a proposal for significant changes to the location or size of existing structures that bring the structures into greater conformity, or a proposal for changes to other aspects of the property, including but not limited to stormwater management, wastewater treatment or traffic volume or flow, or both types of proposal which significantly improve wildlife habitat or resource protection.

11 New Section; Permit Required; Exemption Amend RSA 483-B by inserting after section 5-a the following section:

483-B:5-b Permit Required; Exemption.

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.

(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 of 0-9,999 square feet, \$750.

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

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

II. Timber harvesting operations permitting requirements shall be in accordance with RSA 485-A:17, IV and therefore shall be exempt from the permitting requirement under paragraph I.

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.

IV. Impacts in the protected shoreland that receive a permit in accordance with RSA 482-A shall not require a permit under this section.

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

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

(1) Approve the application and issue a permit;

(2) Deny the application, in whole or in part; or

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

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

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

12 New Paragraph; Definitions. Amend RSA 483-B:4 by inserting after paragraph VII-a the following new paragraph:

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, decks, patios, and paved, gravel, or crushed stone driveways, parking areas, and

walkways unless designed to effectively absorb or infiltrate water.

13 New Paragraph; Definitions. Amend RSA 483-B:4 by inserting after paragraph X-a the following new paragraph:

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, 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.

14 Definitions. RSA 483-B:4, XI-c is repealed and reenacted to read as follows:

XI-c. "Nonconforming lot of record" means an existing lot which does not conform to the provisions of this chapter.

XI-d. "Nonconforming structure" means a structure that, either individually or when viewed in combination with other structures on the property, does not conform to the provisions of this chapter, including but not limited to the impervious surface limits of RSA 483-B:9, V(g).

XI-e. "Ordinary high water mark" means the line on the shore, running parallel to the main stem of the river, established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the immediate bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas. Where the ordinary high water mark is not easily discernable, the ordinary high water mark may be determined by the department of environmental services.

15 Definitions. RSA 483-B:4, XVI(c) is repealed and reenacted to read as follows:

(c) Rivers, meaning all year-round flowing waters of fourth order or higher and all rivers and river segments designated as protected under RSA 483:15. Stream order shall be determined using the New Hampshire hydrography dataset archived by the geographically referenced analysis and information transfer system (GRANIT) at the complex systems research center of the university of New Hampshire, and developed by GRANIT in collaboration with the department of environmental services. A listing of the streams of fourth order and higher shall be prepared and periodically updated by the GRANIT at the complex systems research center of the university of New Hampshire and delivered to the commissioner 30 days after the effective date of this section.

16 New Paragraph; Definitions. Amend RSA 483-B:4 by inserting after paragraph XXIV-a the following new paragraph:

XXIV-b. "Undisturbed state" means native vegetation allowed to grow without interference.

17 Definitions. RSA 483-B:4, XXVI is repealed and reenacted to read as follows:

XXVI. "Water dependent structure" means a structure that is a dock, wharf, pier, breakwater, beach, boathouse, retaining wall, or launching ramp or other similar structure, or any part thereof, built over, on, or in the waters of the state.

18 Other Required Permits and Approvals. RSA 483-B:6 is repealed and reenacted to read as follows:

483-B:6 Other Required Permits and Approvals.

I. Within the protected shoreland, any person intending to:

(a) Engage in any earth excavation activity shall obtain all necessary local approvals in compliance with RSA 155-E.

(b) Construct a water-dependent structure, alter the bank, or construct or replenish a beach shall obtain approval and all necessary permits pursuant to RSA 482-A.

(c) Install a septic system as described in RSA 483-B:9, V(c) shall obtain all permits pursuant to RSA 485-A:29.

(d) Conduct an activity resulting in a contiguous disturbed area exceeding 50,000 square feet shall obtain a permit pursuant to RSA 485-A:17.

(e) Subdivide land as described in RSA 483-B:9, V(e) and (f) shall obtain approval pursuant to RSA 485-A:29.

(f) Conduct an activity regulated under a local zoning ordinance shall obtain all necessary local approvals.

II. In applying for approvals and permits, pursuant to paragraph I, applicants shall demonstrate that the proposal meets or exceeds the development standards of this chapter. The department shall develop minimum standards for information to be required on or with all applications under paragraph I. The department or municipality shall grant, deny, or attach reasonable conditions to approvals or permits listed in subparagraphs I(a)-(f), to protect the public waters or the public health, safety or welfare. Such conditions shall be related to the purposes of this chapter.

III. The commissioner shall have the sole authority to issue variances and waivers of the provisions of this chapter as specifically authorized by this chapter.

IV. No variance, permit, or approval issued by a municipality shall exempt the owner from obtaining any other necessary permit or approval from the department as required by this chapter.

19 Minimum Shoreland Protection Standards. RSA 483-B:9, IV-b is repealed and reenacted to read as follows:

IV-b. Public utility lines and associated structures and facilities, public roads, and public water access facilities including boat ramps shall be permitted by the commissioner as necessary and consistent with the purposes of this chapter and other state law.

20 Waterfront Buffer. RSA 483-B:9, V is repealed and reenacted to read as follows:

V. The following minimum standards shall apply to areas and activities within the protected shoreland with the exception of forest management that is not associated with shoreland development or land conversion, and is conducted in compliance with RSA 227-J:9; forestry conducted by or under the direction of a water supplier for the purpose of managing a water supply watershed; and agriculture conducted in accordance with best management practices as required by RSA 483-B:3, III:

(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 of any kind or fertilizers of any kind except those specified in RSA 483-B:9, II(d), shall be applied.

(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.

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

(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 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.

(i) Tree and sapling diameters shall be measured at 4 1/2 feet above the ground and are scored as follows:

Diameter	Score
1 inch to 6 inches	1

greater than 6 inches to 12 inches	5
greater than 12 inches	10

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

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

(v) Owners of lots that were legally developed prior to April 1, 2008 may maintain but not enlarge cleared areas, including but not limited to existing lawns and beaches, within the waterfront buffer. Conversion to or planting of cleared areas with native species of ground cover, shrubs, saplings, and trees is encouraged but shall not be required unless it is necessary to meet the requirements of subparagraphs (g)(2) or (g)(3), or RSA 483-B:11, II.

(vi) Normal trimming, pruning, and thinning of branches to the extent necessary to protect structures, maintain clearances, and provide views is permitted. Trimming, pruning, and thinning of branches for the purpose of providing views shall be limited to the bottom 1/2 of the trees or saplings.

(vii) When necessary for the completion of construction activities permitted in accordance with RSA 483-B:6, a temporary 12 foot wide access path shall be allowed. The access path shall be completely restored and replanted with native vegetation upon completion of construction except as allowed under subparagraph (viii).

(viii) A permanent 6-foot wide foot path to the water body, configured in a manner that will not concentrate storm water runoff or contribute to erosion, is 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) At least 50 percent of the area outside of impervious surfaces shall be maintained in an undisturbed state. Owners of lots legally developed prior to April 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 undisturbed state, except as required by the department under RSA 483-B:11, II. The percentage of area maintained in an undisturbed state on nonconforming lots shall not be decreased.

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

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

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

(E) Native species planting efforts that are beneficial to wildlife are encouraged.

(c) SEPTIC SYSTEMS.

(1) The subdivision of a parcel of land shall be subject to subdivision approval by the department of environmental services under RSA 485-A:29 if any portion of the land to be subdivided is within the protected shoreland.

(2) The following conditions, based on the characteristics of the receiving soil as they relate to U.S. Department of Agriculture, Natural Resources Conservation Service drainage classes, shall dictate the setback requirements for all new leaching portions of new septic systems, as follows:

(A) Adjacent to ponds, lakes, estuaries, and the open ocean.

(i) Where the receiving soil downgradient of the leaching portions of a septic system is a porous sand and gravel material with a percolation rate equal to or faster

than 2 minutes per inch, the setback shall be at least 125 feet from the reference line;

(ii) For soils with restrictive layers within 18 inches of the natural soil surface, the setback shall be at least 100 feet from the reference line; and

(iii) For all other soil conditions, the setback shall be at least 75 feet from the reference line.

(B) Adjacent to rivers the setback shall be no less than 75 feet.

(3) The placement of all septic tanks and leaching portions of septic systems for replacement systems shall comply with the requirements of subparagraph (c)(2), to the maximum extent feasible.

(d) EROSION AND SILTATION.

(1) All new structures, modifications to existing structures, and excavation or earth moving within protected shoreland shall be designed and constructed in accordance with rules adopted by the department under RSA 541-A for terrain alteration under RSA 485-A:17, to manage stormwater and control erosion and sediment, during and after construction.

(2) New structures and all modifications to existing structures within the protected shoreland shall be designed and constructed to prevent the release of surface runoff across exposed mineral soils.

(3) A permit under RSA 485-A:17, I shall be required for improved, developed, or subdivided land whenever there is a contiguous disturbed area exceeding 50,000 square feet that is either partially or wholly within protected shoreland.

(e) MINIMUM LOTS AND RESIDENTIAL DEVELOPMENT. In the protected shoreland:

(1) The minimum size for new lots in areas dependent upon on-site septic systems shall be determined by soil type lot size determinations, as established by the department of environmental services under RSA 485-A and rules adopted to implement it.

(2) For projects in areas dependent upon on-site sewage and septic systems, the total number of residential units in the protected shoreland, whether built on individual lots or grouped as cluster or condominium development, shall not exceed:

(A) One unit per 150 feet of shoreland frontage; or

(B) For any lot that does not have direct frontage, one unit per 150 feet of lot width as measured parallel to the shoreland frontage that lies between the lot and the reference line.

(3) No lot having frontage on public waters, shall be created with less than 150 feet of shoreland frontage.

(4) Lots and residential units outside of the protected shoreland shall not be

subject to this chapter.

(f) MINIMUM LOTS AND NON-RESIDENTIAL DEVELOPMENT. In the protected shoreland:

(1) The minimum size for new non-residential lots in areas dependent upon on-site septic systems shall be determined by soil type lot size determinations, as set forth under rules adopted under RSA 541-A.

(2) No lot having frontage on public water shall be created with less than 150 feet of shoreland frontage.

(3) Non-residential lots outside of the protected shoreland shall not be subject to this chapter.

(g) IMPERVIOUS SURFACES.

(1) No more than 20 percent of the area of a lot located within the protected shoreland shall be composed of impervious surfaces, except as provided in subparagraphs (2) and (3).

(2) The impervious surface area shall not exceed 25 percent provided that in the waterfront buffer, in addition to any other provisions that apply to such area under this chapter, no trees or saplings shall be removed as provided for in RSA 483-B:9, V(a)(2)(D)(iii) and such restriction is recorded in the chain of title for the property. In addition, if the natural tree and sapling cover in the waterfront buffer does not meet the 50-point minimum score of RSA 483-B:9, V(a)(2)(D) in any segment, then such segment shall be planted, as determined by rule of the department, with native trees, saplings, or natural ground cover in sufficient quantity, type, and location either to meet the minimum score or to provide at least an equivalent level of protection as offered by the minimum score.

(3) The impervious surface area shall not exceed 30 percent provided the conditions of subparagraph (2) are satisfied and a stormwater management system designed to ensure that post-development total runoff volume shall not exceed the pre-development total runoff volume, and approved by the department, shall be implemented and maintained.

(4) Property owners and developers are encouraged to seek creative solutions that utilize low impact development techniques.

(h) COMMON OWNERS AND RESIDENTIAL OR NON-RESIDENTIAL DEVELOPMENT. In the protected shoreland, waterfront parcels held in common by one or more owners of contiguous interior parcels may be developed, but only in a manner consistent with the provisions of this chapter. Care shall be taken for the adequate provision of parking, toilet facilities, and related support systems to minimize the project's impact on the public waters.

(i) The commissioner shall have the authority to grant variances 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).

21 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, nonconforming structures located within the protected shoreland may be repaired, renovated, or replaced in kind using modern technologies, provided the result is a functionally equivalent use. Such repair or replacement may alter the interior design or existing foundation, but shall result in no expansion of the existing footprint except as authorized by the department pursuant to paragraph II. An expansion that increases the sewerage load to an on-site septic system, or changes or expands the use of a septic system or converts a structure to condominiums or any other project identified under RSA 485-A:29-44 and rules adopted to implement it shall require approval by the department. Between the primary building line and the reference line, no alteration shall extend the structure closer to the public water, except that the addition of a deck or open porch is permitted up to a maximum of 12 feet towards the reference line for nonconforming structures erected prior to July 1, 1994.

II. When reviewing requests for the redevelopment of sites that contain nonconforming structures or any expansions of nonconforming structures the commissioner shall review proposals which are more nearly conforming than the existing structures, and may waive some of the standards specified in RSA 483-B:9, so long as there is at least the same degree of protection provided to the public waters. For the purposes of this section, a proposal that is "more nearly conforming" means a proposal for significant changes to the location or size of existing structures that bring the structures into greater conformity, or a proposal for changes to other aspects of the property, including but not limited to stormwater management, wastewater treatment or traffic volume or flow, or both types of proposal which significantly improve wildlife habitat or resource protection.

22 Repeal. The following are repealed:

I. RSA 483-B:5-b, I(b), relative to permit application fees.

II. RSA 483-B:5-b, III, relative to exemptions from permit application fees.

23 Effective Date.

I. Paragraph II of section 4 of this act shall take effect April 1, 2008 at 12:02 a.m.

II. Paragraphs I and III-VI of section 4 and sections 5-10 of this act shall take effect April 1, 2008 at 12:01 a.m.

III. Section 22 of this act shall take effect July 1, 2011.

IV. The remainder of this act shall take effect October 1, 2008.

2008-1125s

AMENDED ANALYSIS

This bill extends the reporting dates for the instream flow pilot program.

This bill also changes the effective date for certain provisions of 2007, 267 and 2007, 269, relating to the comprehensive shoreland protection act, from April 1, 2008 to October 1, 2008.

Senator Fuller Clark withdrew the floor amendment.

MOTION OF RECONSIDERATION

Senator Foster, having voted with the prevailing side, moved reconsideration of **HB 1151** whereby the committee amendment was adopted.

Adopted.

Senator Burling Rule 42 on HB 1151.

Senator Estabrook Rule 42 on HB 1151.

Senator Gottesman Rule 42 on HB 1151.

Senator Reynolds Rule 42 on HB 1151.

The question is on the adoption of the committee amendment.

Sen. Fuller Clark, Dist. 24

March 18, 2008

2008-1057s

06/09

Amendment to HB 1151

Amend the bill by replacing all after section 3 with the following:

4 Change in Effective Date. Amend RSA 2007, 267:15, IV to read as follows:

IV. The remainder of this act shall take effect ~~April~~ **July** 1, 2008.

5 Repeal. The following are repealed:

I. 2007, 267:13, relative to a contingency.

II. 2007, 267:15, II and III, relative to effective dates.

6 Effective Date.

I. Sections 4 and 5 of this act shall take effect upon its passage.

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

Amendment failed.

Senator Burling Rule 42 on HB 1151.

Senator Estabrook Rule 42 on HB 1151.

Senator Gottesman Rule 42 on HB 1151.

Senator Reynolds Rule 42 on HB 1151.

Senator Fuller Clark offered a floor amendment.

Sen. Fuller Clark, Dist. 24

March 26, 2008

2008-1125s

09/10

Floor Amendment to HB 1151

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

AN ACT relative to reporting dates for the instream flow pilot program and relative to certain requirements under the comprehensive shoreland protection act.

Amend the bill by replacing all after section 3 with the following:

4 Repeal. The following are repealed:

- I. RSA 483-B:5-a, I-IV, relative to permit required.
- II. RSA 483-B:5-a, V, relative to permit required.
- III. RSA 483-B:4, VII-a, relative to definition of impervious surface.
- IV. RSA 483-B:4, X-a, relative to definition of natural ground cover.
- V. RSA 483-B:4, XI-a and XI-b, relative to nonconforming lot of record and nonconforming structure.
- VI. RSA 483-B:4, XXIV-a, relative to definition of undisturbed state.

5 Definition. RSA 483-B:4, XVI(c) is repealed and reenacted to read as follows:

(c) Rivers, meaning all year-round flowing waters of fourth order or higher, as shown on the now current version of the U.S. Geological Survey 7 ½' topographic maps. Stream order shall be determined using the Strahler method, whereby the highest year-round streams in a watershed are first order streams, their juncture yields second order streams, the juncture of second order streams yields third order streams, et seq. A listing of the streams of fourth order and higher shall be prepared and maintained by the office of energy and planning and delivered to the commissioner 30 days after the effective date of this act.

6 Definition. RS 483-B:4, XXVI is repealed and reenacted to read as follows:

XXVI. “Water dependent structure” means a structure that services and supports activities that require direct access to, or contact with the water, or both, as an operational necessity and that requires a permit under RSA 482-A, including but not limited to a dock, wharf, pier, breakwater, beach, boathouse, retaining wall, or launching ramp.

7 Prior Approval; Permits. RSA 483-B:6 is repealed and reenacted to read as follows:

483-B:6 Prior Approval; Permits.

I. Within the protected shoreland, any person intending to:

(a) Engage in any earth excavation activity shall obtain all necessary local approvals in compliance with RSA 155-E.

(b) Construct a water-dependent structure, alter the bank, or construct or replenish a beach shall obtain approval and all necessary permits pursuant to RSA 482-A.

(c) Install a septic system as described in RSA 483-B:9, V(b)(1)-(3) shall obtain all permits pursuant to RSA 485-A:29.

(d) Conduct an activity resulting in a contiguous disturbed area exceeding 50,000 square feet shall obtain a permit pursuant to RSA 485-A:17.

(e) Subdivide land as described in RSA 483-B:9, V(d) and (e) shall obtain approval pursuant to RSA 485-A:29.

II. In applying for these approvals and permits, such persons shall demonstrate to the satisfaction of the department that the proposal meets or exceeds the development standards of this chapter. The department shall grant, deny, or attach reasonable conditions to a permit listed in subparagraphs I(a)-(e), to protect the public waters or the public health, safety or welfare. Such conditions shall be related to the purposes of this chapter.

8 Minimum Protection Standards. RSA 483-B:9, IV-b is repealed and reenacted to read as follows:

IV-b. Public utility lines and associated structures and facilities shall be permitted by the commissioner as necessary, consistent with the purposes of this chapter and other state law.

9 Waterfront Buffer. RSA 483-B:9, V is repealed and reenacted to read as follows:

V. The following minimum standards shall apply to the protected shoreland provided that forest management not associated with shoreland development or land conversion, and conducted in compliance with RSA 227-J:9; forestry involving water supply reservoir watershed management; or agriculture conducted in accordance with best management practices; shall be exempt from the provisions of this chapter:

(a) NATURAL WOODLAND BUFFER.

(1) Where existing, a natural woodland buffer shall be maintained within 150 feet of the reference line. The purpose of this 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 the protected shoreland under conditions defined in RSA 483-B:9, V, all of the following prohibitions and limitations shall apply:

(A) Not more than a maximum of 50 percent of the basal area of trees, and a maximum of 50 percent of the total number of saplings shall be removed for any purpose in a 20-year period. A healthy, well-distributed stand of trees, saplings, shrubs, ground cover, and their living, undamaged root systems shall be left in place.

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

(C) Structures, as defined in RSA 483-B:4, XXII, within the natural woodland buffer shall be afforded an opening for building construction that shall be excluded when computing the percentage limitations under subparagraph (a)(2)(A).

(D) Dead, diseased, unsafe, or fallen trees, saplings, shrubs, or ground cover may be removed. Their removal shall not be used in computing the percentage limitations under subparagraph (a)(2)(A).

(E) Stumps and their root systems, which are located within 50 feet of the reference line, shall be left intact in the ground, unless removal is specifically approved by the department under RSA 482-A.

(F) Preservation of dead and living trees that provide dens and nesting places for wildlife is encouraged.

(G) Planting efforts that are beneficial to wildlife are encouraged.

(b) SEPTIC SYSTEMS.

(1) All new lots, including those in excess of 5 acres, created within the protected shoreland are subject to subdivision approval by the department of environmental services under RSA 485-A:29.

(2) The following conditions, based on the characteristics of the receiving soil as they relate to U.S. Department of Agriculture, Natural Resources Conservation Service drainage classes, shall dictate the setback requirements for all new leaching portions of new septic systems, as follows:

(A) Adjacent to ponds, lakes, estuaries, and the open ocean.

(i) Where the receiving soil downgradient of the leaching portions of a septic system is a porous sand and gravel material with a percolation rate equal to or faster than 2 minutes per inch, the setback shall be at least 125 feet from the reference line;

(ii) For soils with restrictive layers within 18 inches of the natural soil surface, the setback shall be at least 100 feet from the reference line; and

(iii) For all other soil conditions, the setback shall be at least 75 feet from the reference line.

(B) Adjacent to rivers the setback shall be no less than 75 feet.

(3) The placement of all septic tanks and leaching portions of septic systems for replacement systems shall comply with the requirements of subparagraph (b)(2), to the maximum extent feasible.

(c) EROSION AND SILTATION.

(1) All new structures, modifications to existing structures, and excavation or earth moving within protected shoreland shall be designed and constructed in accordance with rules adopted by the department under RSA 541-A for terrain alteration under RSA 485-A:17, to manage stormwater and control erosion and sediment, during and after construction.

(2) New structures and all modifications to existing structures within the protected shoreland shall be designed and constructed to prevent the release of surface runoff across exposed mineral soils.

(3) A permit under RSA 485-A:17, I shall be required for improved, developed, or subdivided land whenever there is a contiguous disturbed area exceeding 50,000 square feet that is either partially or wholly within protected shoreland.

(d) MINIMUM LOTS AND RESIDENTIAL DEVELOPMENT. In the protected shoreland:

(1) The minimum size for new lots in areas dependent upon on-site septic systems shall be determined by soil type lot size determinations, as established by the department of environmental services under RSA 485-A and rules adopted to implement it.

(2) For projects in areas dependent upon on-site sewage and septic systems, the total number of residential units in the protected shoreland, whether built on individual lots or grouped as cluster or condominium development, shall not exceed:

(A) One unit per 150 feet of shoreland frontage; or

(B) For any lot that does not have direct frontage, one unit per 150 feet of lot width as measured parallel to the shoreland frontage that lies between the lot and the reference line.

(3) No lot dependent upon an on-site septic system, having frontage on public

waters, shall be created with less than 150 feet of shoreland frontage.

(4) Lots in areas serviced by municipal sewers shall conform to municipal minimum lot standards, and shall not be subject to any shoreland frontage requirement, except as provided by municipal standards.

(5) Lots and residential units outside of the protected shoreland shall not be subject to this chapter.

(e) MINIMUM LOTS AND NON-RESIDENTIAL DEVELOPMENT. In the protected shoreland:

(1) The minimum size for new non-residential lots in areas dependent upon on-site septic systems shall be determined by soil type lot size determinations, as set forth under rules adopted under RSA 541-A.

(2) Non-residential development requiring on-site water, sewage, and septic systems shall not be constructed on lots less than 150 feet in width.

(3) Non-residential lots in areas serviced by municipal sewers shall conform to municipal minimum lot standards.

(4) Non-residential lots outside of the protected shoreland shall not be subject to this chapter.

(f) COMMON OWNERS AND RESIDENTIAL OR NON-RESIDENTIAL DEVELOPMENT. In the protected shoreland, waterfront parcels held in common by one or more owners of contiguous interior parcels may be developed, but only in a manner consistent with the provisions of this chapter. Care shall be taken for the adequate provision of parking, toilet facilities, and related support systems to minimize the project's impact on the public waters.

(g) The commissioner shall have the authority to grant variances 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).

10 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, nonconforming structures, erected prior to July 1, 1994, located within the protected shoreland may be repaired, renovated, or replaced in kind using modern technologies, provided the result is a functionally equivalent use. Such repair or replacement may alter the interior design or existing foundation, but no expansion of the existing footprint or outside dimensions shall be permitted. An expansion that increases the sewerage load to an on-site septic system, or changes or expands the use of a

septic system or converts a structure to condominiums or any other project identified under RSA 485-A:29-44 and rules adopted to implement it shall require approval by the department. Between the primary building line and the reference line, no alteration shall extend the structure closer to the public water, except that the addition of a deck or open porch is permitted up to a maximum of 12 feet towards the reference line.

II. When reviewing requests for the redevelopment of sites that contain nonconforming structures erected prior to July 1, 1994, the commissioner shall review proposals which are more nearly conforming than the existing structures, and may waive some of the standards specified in RSA 483-B:9, so long as there is at least the same degree of protection provided to the public waters. For the purposes of this section, a proposal that is "more nearly conforming" means a proposal for significant changes to the location or size of existing structures that bring the structures into greater conformity, or a proposal for changes to other aspects of the property, including but not limited to stormwater management, wastewater treatment or traffic volume or flow, or both types of proposal which significantly improve wildlife habitat or resource protection.

11 New Section; Permit Required; Exemption Amend RSA 483-B by inserting after section 5-a the following section:

483-B:5-b Permit Required; Exemption.

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.

(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 of 0-9,999 square feet, \$750.
- (2) For projects of 10,000--24,999 square feet, \$1,875.
- (3) For projects of 25,000 square feet or more, \$3,750.

II. Timber harvesting operations permitting requirements shall be in accordance with RSA 485-A:17, IV and therefore shall be exempt from the permitting requirement under paragraph I.

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.

IV. Impacts in the protected shoreland that receive a permit in accordance with RSA 482-A shall not require a permit under this section.

V.(a) Within 30 days of receipt of an application for a permit or 75 days of receipt of

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

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

- (1) Approve the application and issue a permit;
- (2) Deny the application, in whole or in part; or
- (3) Extend the time for response for good cause and with the written agreement of the applicant.

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

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

12 New Paragraph; Definitions. Amend RSA 483-B:4 by inserting after paragraph VII-a the following new paragraph:

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, decks, patios, and paved, gravel, or crushed stone driveways, parking areas, and walkways unless designed to effectively absorb or infiltrate water.

13 New Paragraph; Definitions. Amend RSA 483-B:4 by inserting after paragraph X-a the following new paragraph:

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, 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.

14 Definitions. RSA 483-B:4, XI-c is repealed and reenacted to read as follows:

XI-c. “Nonconforming lot of record” means an existing lot which does not conform to the provisions of this chapter.

XI-d. “Nonconforming structure” means a structure that, either individually or when viewed in combination with other structures on the property, does not conform to the provisions of this chapter, including but not limited to the impervious surface limits of RSA 483-B:9, V(g).

XI-e. “Ordinary high water mark” means the line on the shore, running parallel to the main stem of the river, established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the immediate bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas. Where the ordinary high water mark is not easily discernable, the ordinary high water mark may be determined by the department of environmental services.

15 Definitions. RSA 483-B:4, XVI(c) is repealed and reenacted to read as follows:

(c) Rivers, meaning all year-round flowing waters of fourth order or higher and all rivers and river segments designated as protected under RSA 483:15. Stream order shall be determined using the New Hampshire hydrography dataset archived by the geographically referenced analysis and information transfer system (GRANIT) at the complex systems research center of the university of New Hampshire, and developed by GRANIT in collaboration with the department of environmental services. A listing of the streams of fourth order and higher shall be prepared and periodically updated by the GRANIT at the complex systems research center of the university of New Hampshire and delivered to the commissioner 30 days after the effective date of this section.

16 New Paragraph; Definitions. Amend RSA 483-B:4 by inserting after paragraph XXIV-a the following new paragraph:

XXIV-b. “Undisturbed state” means native vegetation allowed to grow without interference.

17 Definitions. RSA 483-B:4, XXVI is repealed and reenacted to read as follows:

XXVI. “Water dependent structure” means a structure that is a dock, wharf, pier, breakwater, beach, boathouse, retaining wall, or launching ramp or other similar structure, or any part thereof, built over, on, or in the waters of the state.

18 Other Required Permits and Approvals. RSA 483-B:6 is repealed and reenacted to read as follows:

483-B:6 Other Required Permits and Approvals.

I. Within the protected shoreland, any person intending to:

(a) Engage in any earth excavation activity shall obtain all necessary local approvals in compliance with RSA 155-E.

(b) Construct a water-dependent structure, alter the bank, or construct or replenish a beach shall obtain approval and all necessary permits pursuant to RSA 482-A.

(c) Install a septic system as described in RSA 483-B:9, V(c) shall obtain all permits pursuant to RSA 485-A:29.

(d) Conduct an activity resulting in a contiguous disturbed area exceeding 50,000 square feet shall obtain a permit pursuant to RSA 485-A:17.

(e) Subdivide land as described in RSA 483-B:9, V(e) and (f) shall obtain approval pursuant to RSA 485-A:29.

(f) Conduct an activity regulated under a local zoning ordinance shall obtain all necessary local approvals.

II. In applying for approvals and permits, pursuant to paragraph I, applicants shall demonstrate that the proposal meets or exceeds the development standards of this chapter. The department shall develop minimum standards for information to be required on or with all applications under paragraph I. The department or municipality shall grant, deny, or attach reasonable conditions to approvals or permits listed in subparagraphs I(a)-(f), to protect the public waters or the public health, safety or welfare. Such conditions shall be related to the purposes of this chapter.

III. The commissioner shall have the sole authority to issue variances and waivers of the provisions of this chapter as specifically authorized by this chapter.

IV. No variance, permit, or approval issued by a municipality shall exempt the owner from obtaining any other necessary permit or approval from the department as required by this chapter.

19 Minimum Shoreland Protection Standards. RSA 483-B:9, IV-b is repealed and reenacted to read as follows:

IV-b. Public utility lines and associated structures and facilities, public roads, and public water access facilities including boat ramps shall be permitted by the commissioner as necessary and consistent with the purposes of this chapter and other state law.

20 Waterfront Buffer. RSA 483-B:9, V is repealed and reenacted to read as follows:

V. The following minimum standards shall apply to areas and activities within the protected shoreland with the exception of forest management that is not associated with shoreland development or land conversion, and is conducted in compliance with RSA 227-J:9; forestry conducted by or under the direction of a water supplier for the purpose of managing a water supply watershed; and agriculture conducted in accordance with best management practices as required by RSA 483-B:3, III:

(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 of any kind or fertilizers of any kind except those specified in RSA 483-B:9, II(d), shall be applied.

(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.

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

(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 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.

(i) Tree and sapling diameters shall be measured at 4 1/2 feet above the ground and are scored as follows:

Diameter	Score
1 inch to 6 inches	1
greater than 6 inches to 12 inches	5
greater than 12 inches	10

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

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

(v) Owners of lots that were legally developed prior to April 1, 2008 may maintain but not enlarge cleared areas, including but not limited to existing lawns and beaches, within the waterfront buffer. Conversion to or planting of cleared areas with native species of ground cover, shrubs, saplings, and trees is encouraged but shall not be required unless it is necessary to meet the requirements of subparagraphs (g)(2) or (g)(3), or RSA 483-B:11, II.

(vi) Normal trimming, pruning, and thinning of branches to the extent necessary to protect structures, maintain clearances, and provide views is permitted. Trimming, pruning, and thinning of branches for the purpose of providing views shall be limited to the bottom 1/2 of the trees or saplings.

(vii) When necessary for the completion of construction activities permitted in accordance with RSA 483-B:6, a temporary 12 foot wide access path shall be allowed. The access path shall be completely restored and replanted with native vegetation upon completion of construction except as allowed under subparagraph (viii).

(viii) A permanent 6-foot wide foot path to the water body, configured in a manner that will not concentrate storm water runoff or contribute to erosion, is 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) At least 50 percent of the area outside of impervious surfaces shall be maintained in an undisturbed state. Owners of lots legally developed prior to April 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 undisturbed state, except as required by the department under RSA 483-B:11, II. The percentage of area maintained in an undisturbed state on nonconforming lots shall not be decreased.

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

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

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

(E) Native species planting efforts that are beneficial to wildlife are encouraged.

(c) SEPTIC SYSTEMS.

(1) The subdivision of a parcel of land shall be subject to subdivision approval by the department of environmental services under RSA 485-A:29 if any portion of the land to be subdivided is within the protected shoreland.

(2) The following conditions, based on the characteristics of the receiving soil as they relate to U.S. Department of Agriculture, Natural Resources Conservation Service drainage classes, shall dictate the setback requirements for all new leaching portions of new septic systems, as follows:

(A) Adjacent to ponds, lakes, estuaries, and the open ocean.

(i) Where the receiving soil downgradient of the leaching portions of a septic system is a porous sand and gravel material with a percolation rate equal to or faster than 2 minutes per inch, the setback shall be at least 125 feet from the reference line;

(ii) For soils with restrictive layers within 18 inches of the natural soil surface, the setback shall be at least 100 feet from the reference line; and

(iii) For all other soil conditions, the setback shall be at least 75 feet from the reference line.

(B) Adjacent to rivers the setback shall be no less than 75 feet.

(3) The placement of all septic tanks and leaching portions of septic systems for replacement systems shall comply with the requirements of subparagraph (c)(2), to the maximum extent feasible.

(d) EROSION AND SILTATION.

(1) All new structures, modifications to existing structures, and excavation or earth moving within protected shoreland shall be designed and constructed in accordance with rules adopted by the department under RSA 541-A for terrain alteration under RSA 485-A:17, to manage stormwater and control erosion and sediment, during and after construction.

(2) New structures and all modifications to existing structures within the protected shoreland shall be designed and constructed to prevent the release of surface runoff across exposed mineral soils.

(3) A permit under RSA 485-A:17, I shall be required for improved, developed, or subdivided land whenever there is a contiguous disturbed area exceeding 50,000 square feet that is either partially or wholly within protected shoreland.

(e) MINIMUM LOTS AND RESIDENTIAL DEVELOPMENT. In the protected shoreland:

(1) The minimum size for new lots in areas dependent upon on-site septic systems shall be determined by soil type lot size determinations, as established by the department of environmental services under RSA 485-A and rules adopted to implement it.

(2) For projects in areas dependent upon on-site sewage and septic systems, the total number of residential units in the protected shoreland, whether built on individual lots or grouped as cluster or condominium development, shall not exceed:

(A) One unit per 150 feet of shoreland frontage; or

(B) For any lot that does not have direct frontage, one unit per 150 feet of lot width as measured parallel to the shoreland frontage that lies between the lot and the reference line.

(3) No lot having frontage on public waters, shall be created with less than 150 feet of shoreland frontage.

(4) Lots and residential units outside of the protected shoreland shall not be subject to this chapter.

(f) MINIMUM LOTS AND NON-RESIDENTIAL DEVELOPMENT. In the protected shoreland:

(1) The minimum size for new non-residential lots in areas dependent upon on-site septic systems shall be determined by soil type lot size determinations, as set forth under rules adopted under RSA 541-A.

(2) No lot having frontage on public water shall be created with less than 150 feet of shoreland frontage.

(3) Non-residential lots outside of the protected shoreland shall not be subject to this chapter.

(g) IMPERVIOUS SURFACES.

(1) No more than 20 percent of the area of a lot located within the protected shoreland shall be composed of impervious surfaces, except as provided in subparagraphs (2) and (3).

(2) The impervious surface area shall not exceed 25 percent provided that in the waterfront buffer, in addition to any other provisions that apply to such area under this chapter, no trees or saplings shall be removed as provided for in RSA 483-B:9, V(a)(2)(D)(iii) and such restriction is recorded in the chain of title for the property. In addition, if the natural tree and sapling cover in the waterfront buffer does not meet the 50-point minimum score of RSA 483-B:9, V(a)(2)(D) in any segment, then such segment shall be planted, as determined by rule of the department, with native trees, saplings, or natural ground cover in sufficient quantity, type, and location either to meet the minimum score or to provide at least an equivalent level of protection as offered by the minimum score.

(3) The impervious surface area shall not exceed 30 percent provided the conditions of subparagraph (2) are satisfied and a stormwater management system designed to ensure that post-development total runoff volume shall not exceed the pre-development total runoff volume, and approved by the department, shall be implemented and maintained.

(4) Property owners and developers are encouraged to seek creative solutions that utilize low impact development techniques.

(h) COMMON OWNERS AND RESIDENTIAL OR NON-RESIDENTIAL DEVELOPMENT. In the protected shoreland, waterfront parcels held in common by one or more owners of contiguous interior parcels may be developed, but only in a manner consistent with the provisions of this chapter. Care shall be taken for the adequate provision of parking, toilet facilities, and related support systems to minimize the project's impact on the public waters.

(i) The commissioner shall have the authority to grant variances 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).

21 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, nonconforming structures located within the protected shoreland may be repaired, renovated, or replaced in kind using modern technologies, provided the result is a functionally equivalent use. Such repair or replacement may alter the interior design or existing foundation, but shall result in no

expansion of the existing footprint except as authorized by the department pursuant to paragraph II. An expansion that increases the sewerage load to an on-site septic system, or changes or expands the use of a septic system or converts a structure to condominiums or any other project identified under RSA 485-A:29-44 and rules adopted to implement it shall require approval by the department. Between the primary building line and the reference line, no alteration shall extend the structure closer to the public water, except that the addition of a deck or open porch is permitted up to a maximum of 12 feet towards the reference line for nonconforming structures erected prior to July 1, 1994.

II. When reviewing requests for the redevelopment of sites that contain nonconforming structures or any expansions of nonconforming structures the commissioner shall review proposals which are more nearly conforming than the existing structures, and may waive some of the standards specified in RSA 483-B:9, so long as there is at least the same degree of protection provided to the public waters. For the purposes of this section, a proposal that is “more nearly conforming” means a proposal for significant changes to the location or size of existing structures that bring the structures into greater conformity, or a proposal for changes to other aspects of the property, including but not limited to stormwater management, wastewater treatment or traffic volume or flow, or both types of proposal which significantly improve wildlife habitat or resource protection.

22 Repeal. The following are repealed:

I. RSA 483-B:5-b, I(b), relative to permit application fees.

II. RSA 483-B:5-b, III, relative to exemptions from permit application fees.

23 Effective Date.

I. Paragraph II of section 4 of this act shall take effect April 1, 2008 at 12:02 a.m.

II. Paragraphs I and III-VI of section 4 and sections 5-10 of this act shall take effect April 1, 2008 at 12:01 a.m.

III. Section 22 of this act shall take effect July 1, 2011.

IV. The remainder of this act shall take effect October 1, 2008.

2008-1125s

AMENDED ANALYSIS

This bill extends the reporting dates for the instream flow pilot program.

This bill also changes the effective date for certain provisions of 2007, 267 and 2007, 269, relating to the comprehensive shoreland protection act, from April 1, 2008 to October 1, 2008.

Floor amendment adopted.

Senator Burling Rule 42 on HB 1151.

Senator Estabrook Rule 42 on HB 1151.

Senator Gottesman Rule 42 on HB 1151.

Senator Reynolds Rule 42 on HB 1151.

The question is on the adoption of the bill as amended.

Adopted.

Senator Burling Rule 42 on HB 1151.

Senator Estabrook Rule 42 on HB 1151.

Senator Gottesman Rule 42 on HB 1151.

Senator Reynolds Rule 42 on HB 1151.

Ordered to third reading.

Senators Clegg, Downing, Gatsas and Kenney are in opposition to the committee amendment on HB 1151.

Senator Gatsas is in favor of HB 1151.

MOTION TO REMOVE FROM THE TABLE

Senator Hassan moved to have HB 185-FN removed from the table.

Adopted.

HB 185-FN, relative to economic revitalization zone credits.

The question is on the committee report of Ought to Pass.

Adopted.

Referred to the Finance Committee (Rule 26).

RESOLUTION

Senator Foster moved that the Senate adjourn from the early session, that the business of the late session be in order at the present time, that all bills and resolutions ordered to third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Adopted.

LATE SESSION

Third Reading and Final Passage

HB 291, relative to licensure of fireworks sellers.

HB 385-FN, relative to licensing and insurance fees.

HB 717, allowing municipalities to establish local community services and care planning boards.

HB 794-FN, establishing a commission to study the feasibility of public funding of state election campaigns.

HB 1151, relative to reporting dates for the instream flow pilot program.

HB 1152-FN, relative to interpreting statutory deadlines.

HB 1166, relative to rate setting for interpreters for the deaf and hard of hearing.

HB 1172-FN, changing the name of the pari-mutuel commission to the racing and charitable gaming commission.

HB 1230, requiring pharmacists to charge an insured person the usual and customary price or the copayment, whichever is less, of filling a prescription.

HB 1266, allowing 50 caliber pistols to take game animals in the state.

HB 1277, relative to the definition of farm.

HB 1295, establishing a commission to study issues relating to stormwater.

HB 1384, relative to the regulation of designated agents by the New Hampshire real estate commission, and relative to the disclosure of certain property conditions.

HB 1411, relative to rulemaking under the native plant protection act.

HJR 10, urging congress to allow for the interstate sale of state inspected meat and poultry.

HJR 11, requesting the United States Department of Agriculture to provide redress for price reporting errors in milk prices.

HJR 12, relative to support for research into colony collapse disorder.

ANNOUNCEMENTS

Senator Barnes Rule 44.

Senator Gallus Rule 44.

Senator Letourneau Rule 44.

RESOLUTION

Senator Foster moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, referring bills to committee, scheduling hearings, sending and receiving messages, and processing enrolled bill reports and amendments.

Adopted.

In recess to the Call of the Chair.