

# Senate Energy and Natural Resources Committee

## *Griffin Roberge 271-2878*

**SB 118**, relative to impervious surfaces under the shoreland water quality protection act.

**Hearing Date:** January 31, 2017

**Time Opened:** 10:20 a.m.

**Time Closed:** 10:42 a.m.

**Members of the Committee Present:** Senators Innis, Bradley and Avar

**Members of the Committee Absent:** Senators Feltes and Fuller Clark

**Bill Analysis:** This bill excludes grass from the definition of impervious surfaces under the shoreland water quality protection act.

**Sponsors:**

Sen. Sanborn

Sen. Avar

Sen. French

Sen. Fuller Clark

Sen. Giuda

Sen. Gray

Sen. Innis

Sen. Kahn

Sen. Reagan

Sen. Ward

Sen. Watters

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**Who supports the bill:** Senator Bob Giuda (District 2), Senator Kevin Avar (District 12), Senator Dan Innis (District 24), Darlene Forst (NH DES), Rep. Peter Somssich (Rockingham – District 27), Bob Quinn (NH Association of Realtors), Senator Harold French (District 7), Brian Patrick Herrington (Scotts Miracle-Gro Company), James Skillen (The Lawn and Horticultural Products Working Group).

**Who opposes the bill:** Senator Ruth Ward (District 8).

**Who is neutral on the bill:** N/A.

**Summary of testimony presented in support:**

*Senator Andy Sanborn*

*Senate District 9*

- As prime sponsor, Senator Sanborn recognized the work of Senator Bradley in his continual work in revising the shoreland protection act.
- Speaking on behalf of two groups, TruGreen and Scotts Lawn Care, Senator Sanborn introduced SB 118 as a way of excluding grass as an impervious surface.
- Based on the Shoreland Protection Act, grass is considered an impervious

surface, meaning water does not go into the ground, but across the top of it.

- Senator Sanborn and others believe grass is a pervious product.
- Current statute only considers what is impervious and does not consider what is not impervious. SB 118 would open the way for listing surfaces that are impervious and surfaces that are not impervious.
- Senator Sanborn leaves it to the committee as to whether it wants to strike grass from the list of impervious surfaces or a recognition that grass is a pervious surface.
- In addition to SB 118, he introduced an amendment that was brought up in discussions focused on making grass a pervious surface. Given that grass can allow for filtration and absorb chemicals in the land, Senator Sanborn's amendment would make lawns, landscaped areas, and gardens ground cover.
- NH DES had a concern on the amendment. It would require the agency to regulate people mowing their lawns. Senator Sanborn has no intention of letting the agency do that.
- Senator Innis said one of the concern in his district is the Great Bay. Nitrogen has caused significant damage to the seagrass in that area. Senator Innis wondered if planting grass or other types of vegetation along the shoreline with nitrogen based fertilizer would do damage? Senator Sanborn recognized the work by communities along Great Bay in keeping nitrogen levels down as they are below levels of where they were in 1998. Senator Sanborn also went on the record to state that, based on ethics law, his family has owned water in the state for the past 100 years. Therefore, Senator Sanborn stated handling the Shoreland Protection Act would impact properties he or his family owns. Senator Sanborn stated communities have done great work in keeping their water clean. SB 118 is not changing the buffer level. Senator Sanborn said the bill is about balance and it should be considered.

*Darlene Forst*

*Shoreland Section Supervisor, Land Resource Management Programs, NH DES*

- Sat as the secretary on the shoreland study committee that drafted much of the language of the Shoreland Protection Act.
- Language in question regarding lawns and what is or is not ground cover was largely crafted by those in the lawn care industry.
- NH DES needs to do some outreach. Grass has never been considered impervious by the department. To say lawns are impervious would add a regulatory burden on the state and the department that was not needed, so grass was considered pervious. SB 118 is demonstrative of confusion around what the NH DES believes about grass.
- Nothing in the NH DES states lawns or grass as an impervious surface. Ms. Forst referenced the stormwater requirements for projects in the Shoreland Water Quality Protection Act.
- Grass is not currently considered to be impervious. SB 118 is simply a reaffirmation of what the NH DES already believes and should have no negative effect on the Shoreland Protection Act. Therefore, NH DES does not

oppose the legislation.

- However, NH DES has concerns that modifying the definition of impervious surfaces in a manner that begins to call out and define those surfaces that are indeed pervious may lead to unnecessary confusion and questions.
- NH DES anticipates that this change will result in future amendment requests to specify additional surfaces also considered pervious, to allay concerns about the status of each specific surface type.
- NH DES believes that in the interest of clarity and the general public to simply define what an impervious surface is. This comes with the implicit understanding that everything else shall be considered pervious.
- Senator Avard asked if the NH DES was in agreement with Senator Sanborn's amendment. Ms. Forst said the department was not.
- In statute, there is a prohibition on the mowing or cutting of ground cover within 50 feet of a waterfront. If you do not exclude lawn from the definition of ground cover, then there is a prohibition on cutting one's lawn within 50 feet of a body of water. That is not what the NH DES wants to get into. Ground cover is a term to relate to protected vegetation. NH DES does not want to regulate one's lawn.
- NH DES would be willing to work with Senator Sanborn to clarify the department's position on the amendment.
- Senator Avard asked if NH DES is opposed to SB 118. NH DES said it is not, but there is a way to amend it to clarify the language and prevent future amendment requests to specify additional surfaces that are to be considered pervious.
- Senator Bradley examined line 5 of SB 118 and asked Ms. Forst on her opinion on the inclusion of "grass, whether mowed or unmowed, shall not be considered an impervious surface." Ms. Forst it was no different from the language Senator Sanborn had. Ms. Forst said that if the committee wanted a clean change, it should include a definition of what it means to be pervious. She does not want the definition of pervious within the definition of impervious.
- Senator Bradley looked for a clarification from Ms. Forst in the way she would word the definition of pervious. She defined it as: "any surface that infiltrates water such as grass, lawn, or any other vegetative surfaces, maintained or unmaintained."

*James Houle*

*Program Director, UNH Stormwater Center*

- If a pervious surface is defined as a surface which water penetrates, that can include paved surfaces as well.
- There are such things as pervious pavements. We do not want to consider permeable pavements as pervious surfaces.
- Warned the committee to not write off pervious surfaces as simply surfaces where water can run through.

**Summary of testimony presented in opposition:** N/A.

**Neutral Information Presented:** N/A.

**Future Action:** Pending

GJR

Date Hearing Report completed: February 1, 2017