SB 491 - AS INTRODUCED

2020 SESSION

SENATE BILL

491

AN ACT relative to shoreland water quality.


COMMITTEE: Energy and Natural Resources

ANALYSIS

This bill clarifies the definitions of shoreland frontage, structure, and pervious surface and makes changes to the minimum shoreland protection standards regarding such subjects.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

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

1 Definitions; Shoreland Frontage. Amend RSA 483-B:4, XX-a to read as follows:

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

2 Definition; Structure. Amend RSA 483-B:4, XXII to read as follows:

XXII. "Structure" means anything constructed or erected for the support, shelter or enclosure of persons, animals, goods, or property of any kind, with a fixed permanent location on or in the ground, exclusive of fences and shall be either a primary structure as defined in paragraph XIV or an accessory structure as defined in paragraph II.

3 Definition; Pervious Surface. Amend RSA 483-B:4, XII-a to read as follows:

XII-a. "Pervious surface" means any surface, whether natural, man-made, or modified, that can effectively absorb or infiltrate water including, but not limited to, vegetated surface, such as woodlands, planted beds, and lawns, and those pervious pavements, concretes, and block and paver systems specifically designed and maintained to effectively absorb and infiltrate water. Such systems shall have a filter course thickness of at least 12 inches and the ratio of the total contributing area to the pervious surface area shall be no more than 5:1.

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

(D) Starting from the northerly or easterly boundary of the property, and working along the shoreline, the waterfront buffer shall be divided into segments measuring 25 feet along the reference line and 50 feet inland. Owners of land within the waterfront buffer shall measure, calculate, and maintain the tree[s], sapling, [shrub, and groundcover] point score in each of these segments in accordance with the methods and standards described in subparagraphs (i) through (ix).

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

Diameter or Caliper-Score
1 to 3 inches-1
Greater than 3 to and including 6 inches-5
Greater than 6 to and including 12 inches-10
Greater than 12 inches-15
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(ii) For the purpose of meeting the replanting requirements under RSA 483-B:9, V(g)(3), shrubs and groundcover plants shall be scored as follows:

Four square feet of shrub area-1 point.

Ground cover, not including mowed lawn-one point for every 50 square feet.

Shrub and groundcover shall count for at least 5 points and not more than 10 points in each full segment.

(iii) Dead, diseased, or unsafe trees or saplings, and invasive species shall not be included in scoring.

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

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

(2)(A) [On a given lot, at least 25 percent of the woodland buffer area located between 50 feet and 150 feet from the reference line shall be maintained as natural woodland. The vegetation, exclusive of lawn, within the natural woodland shall be maintained in an unaltered state or improved with additional vegetation. Owners of lots legally developed or landscaped prior to July 1, 2008 that do not comply with this standard are encouraged to, but shall not be required to, increase the percentage of the woodland buffer area to be maintained as natural woodland. The percentage of the woodland buffer area maintained as natural woodland on nonconforming lots shall not be decreased.]

(i) For lots with one-half acre or less of land within the woodland buffer, at least 25 percent of the woodland buffer area located between 50 feet and 150 feet from the reference line shall be maintained as natural woodland in an unaltered state.

Owners of lots legally developed or landscaped prior to July 1, 2008 that do not comply with this standard are encouraged to, but shall not be maintained in an unaltered state on nonconforming lots shall not be decreased.

(ii) For lots with greater than one-half acre of land within the woodland buffer at least 50 percent of the woodland buffer area located between 50 feet
and 150 feet from the reference line, exclusive of impervious surfaces shall be maintained as natural woodland in an unaltered state. The percentage of area maintained in an unaltered state on nonconforming lots shall not be decreased.

(iii) In addition, the commissioner of the department of natural and cultural resources may order vegetation on lands or properties owned by, leased to, or otherwise under the control of the department of natural and cultural resources within the protected shoreland to be cut when overgrowth of vegetation impairs law enforcement activities and endangers public safety. If such cutting will exceed that which is allowed under this subparagraph, the commissioner of the department of natural and cultural resources shall provide written notification to the department of environmental services identifying the areas to be cut and an explanation of the need for the cutting at least 2 weeks prior to the undertaking.

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

(g) Impervious Surfaces.

(1) Subject to subparagraphs (2) and (3), no more than 30 percent of the area of a lot located within the protected shoreland shall be composed of impervious surfaces.

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

(3) If the impervious surface area will exceed 20 percent and the natural tree and sapling cover in the waterfront buffer does not meet the 25-point minimum score of RSA 483-B:9, V(a)(2)(D) in any segment, then such segment shall be planted, as determined by rule of the department, with native trees, saplings, or natural ground cover in sufficient quantity, type, and location either to meet the minimum score or to provide at least an equivalent level of protection as provided by the minimum score and shall be maintained in accordance with RSA 483-B:9, V(a).

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

7 Nonconforming Structures. Amend RSA 483-B:11 to read as follows:

483-B:11 Nonconforming Structures.

I. Except as otherwise prohibited by law or applicable municipal ordinance, nonconforming structures located within the protected shoreland may be repaired, replaced in kind, reconstructed in place, altered, or expanded. Repair, replacement-in kind, or reconstruction in place may alter or remodel the interior design or existing foundation of the nonconforming structure, but shall result in no expansion or relocation of the existing footprint within the waterfront buffer. [However,] Alteration or expansion of the footprint of a nonconforming primary structure [may expand the existing footprint] within the waterfront buffer may be permitted in accordance with RSA 483-
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**B:5-b**, provided the structure is not extended closer to the reference line and the proposal or property is made more nearly conforming than the existing structure or the existing conditions of the property. This provision shall not allow for the enclosure, or conversion to living space, of any deck or open porch located between the primary structure and the reference line and within the waterfront buffer.

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

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

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

**V.** Notwithstanding [paragraphs I and IV] paragraph I, between the primary building line and the reference line, no alteration shall extend the structure closer to the public water, except that a deck or open porch extending a maximum of 12 feet towards the reference line may be added to nonconforming structures erected prior to July 1, 1994.

**8** New Paragraph; Permit Required; Exemption. Amend RSA 483-B:5-b by inserting after paragraph III the following new paragraph:

**III-a.** Applications for projects solely funded by legally recognized non-profit organizations, municipal, county, state, or federal entities shall be exempt from the permitting fees of paragraph I.

**9** Effective Date. This act shall take effect 60 days after its passage.