

H.526. An Relating to the Establishment of Lake Shoreland Protection Standards
Section by Section Summary: As Proposed by Senate Natural Resources and Energy

Sec. 1. Legislative Findings

- This section states the findings that support the enactment of the bill. The findings declare:
 - Sec. 1(1): Clean water is essential to Vermont’s quality of life.
 - Sec. 1(2): Preserving and protecting all waters is necessary for recreation, economics, and habitat.
 - Sec. 1(3): There are multiple pressures on the protection of water quality.
 - Sec. 1(4): The State has responded to some of the pressures on water quality—such as stormwater, wastewater, and agricultural runoff—but issues remain.
 - Sec. 1(5): Vermont’s lakes are valuable economic and natural resources that need protection.
 - Sec. 1(6): Naturally vegetated shorelands and best management practices provide important natural resources benefits, including filtering water, minimizing pollution, and maintaining aquatic habitat.
 - Sec. 1(7): Healthy lakes and shorelands support Vermont’s tourism economy, promote recreational opportunities, support property values and tax base, and reduce human health risks.
 - Sec. 1(8): According to Agency of Natural Resources’ (ANR’s) Act 138 Report, review of development, protection, and stabilization of shorelands is necessary because of their importance.
 - Sec. 1(9): 184 towns have a lake larger than 10 acres, but only 48 towns regulate shoreland in a way which requires vegetative cover. Scientifically based standards for impervious surface and cleared area are needed to protect water quality and shoreland habitat, while allowing for development.
 - Sec. 1(10): Rights of private property owners to control access to shoreland they own should not be and are not affected by the State’s regulation of impervious surface or cleared areas in shoreland.
 - Sec. 1(11): It is in the public interest for the General Assembly to establish lake shoreland protection standards for impervious surface and cleared area in shorelands of the State’s lakes.

Sec. 2. 10 V.S.A. chapter 49A—Lake Shoreland Protection Standards

10 V.S.A. § 1441. Purpose

- Provides that the purposes of 10 V.S.A. chapter 49A are to:
 - Provide clear, adaptable standards for creation of impervious surface or cleared area in shorelands.
 - Prevent degradation of water quality in lakes and preserve natural stability of shoreline.
 - Mitigate, minimize, and manage impacts on lakes from new impervious surface or cleared area.
 - Mitigate flood and erosion damage to structures and other resources in shorelands.
 - Accommodate creation of cleared area and impervious surface in a protected shoreland area that allows for reasonable development of existing parcels.
 - Protect shoreland owners’ access to, views of, and use of the State’s lakes.
 - Preserve and further the economic benefits of lakes and their shorelands.

10 V.S.A. § 1442. Definitions

- Adds multiple definitions related to Lake Shoreland Protection. Key definitions include:
 - § 1442(2): “Best management practices” means approved activities, maintenance procedures, and other practices to prevent or reduce the effects of impervious surface or cleared area on water quality and natural resources.
 - § 1442(3): “Cleared area” means an area where existing vegetative cover, soil, or duff is permanently removed or altered. Cleared area does not include vegetation management according to the shoreland standards in 10 V.S.A. § 1447
 - § 1442(6): “Expansion” means an increase or addition of impervious surface or cleared area.
 - § 1442(7): “Habitable structure” means a permanent assembly of material for support, shelter, or enclosure of persons, animals, or goods. It is not motor homes, tents, or other temporary structures.
 - § 1442(8): “Impervious surface” means manmade surfaces, including paved and unpaved roads, parking areas, roofs, driveways, and walkways, from which precipitation runs off rather than infiltrate.
 - This is the same definition used in the State Stormwater Program.
 - § 1442(9): “Lake” means a body of standing water, including a pond or a reservoir, which may have natural or artificial water level control. Lakes do not include private ponds.
 - § 1442(10): “Mean water level” means the mean water level of a lake as defined in ANR’s Mean Water Level Rules adopted under 29 V.S.A. § 410. H.526 does not change mean water level standards.
 - § 1442(11): “Parcel” means a portion of land or a tract with defined boundaries created by sale, gift, lease, mortgage, foreclosure, partition, decree, or filing of a plat or deed in town records.
 - § 1442(15): “Protected shoreland area” means all land located within 250 feet of the mean water level of a lake that is greater than 10 acres in surface area.
 - § 1442(19): “Vegetative cover” means mixed vegetation within the protected shoreland area, consisting of trees, shrubs, ground cover, and duff.
 - Vegetative cover is not grass, lawn, noxious weeds, or nuisance plants.

10 V.S.A. § 1443. Individual Permit—Impervious Surface or Cleared Area in Protected Shoreland Area

- § 1443(a): Beginning January 1, 2014, an ANR permit would be required for creation of impervious surface or cleared area in a protected shoreland area.
 - Existing impervious surface or cleared area in the protected shoreland area does not need a permit, and H.526 allows existing activities to continue and allows many activities without a permit, including minor creation of impervious surface or cleared area. See 10 V.S.A. § 1446.
- § 1443(b): ANR shall issue a permit if the proposed impervious surface or cleared area meets the requirements under 10 V.S.A. § 1444 for individual permits or 10 V.S.A. § 1445 for nonconforming lots.
- § 1443(c): This section provides the application process for a permit, including the form to be submitted, the notice required, and the opportunity for public comment for 30 days.

- § 1443(d): Shoreland permits may include permit conditions, including the authority to clear vegetation within 3 feet of each side of a footpath in the protected shoreland area no more frequently than twice a year in order to allow for maintenance or repair of structures or other ANR-approved activity.
- § 1443(e) and (f): Permits will be issued for an indefinite term, and shall run with the land if recorded in municipal land records.
 - Permits issued to property owners will not need to be renewed or reissued every 5 years.

10 V.S.A. § 1444. Permit Standards

- §1444(a): Except for nonconforming lots under 10 V.S.A. § 1445 and allowed uses or exemptions under 10 V.S.A. § 1446, ANR shall issues a permit for creation of impervious surface or cleared area in a protected shoreland area, if:
 - § 1444(a)(1): Cleared area or impervious surface is located at least 100 feet from the mean water level.
 - § 1444(a)(2): Cleared area or impervious surface within the protected shoreland area is located on a slope of less than 20%; or the applicant demonstrates the site will have stable slope with minimal erosion or impact on water quality.
 - § 1444(a)(3): No more than 20% of the protected shoreland area of a parcel shall consist of impervious surface, or the applicant shall demonstrate best management practices will be used to manage, treat, and control erosion from stormwater runoff for the portion of impervious surface that exceeds 20%.
 - § 1444(a)(4): No more than 40% of the protected shoreland area of the parcel shall consist of cleared area—including area cleared for impervious surface—or the applicant demonstrates best management practices will be used to provide erosion control, bank stability, and habitat functionally equivalent to having no more than 40% of the protected shoreland area cleared.
 - § 1444(a)(5): Within 100 feet of the mean water level, vegetative cover is managed according to the requirements of 10 V.S.A. § 1447—as added by the bill.
- § 1444(b): Repair or replacement of a private road or highway that adds impervious surface or cleared area on a parcel will not count as impervious surface or cleared area on the parcel for purposes of a permit.
- § 1444(c): Cleared area or impervious surface shall be measured on a horizontal plane.

10 V.S.A. § 1445. Nonconforming Parcels

- § 1445(a): Provides for when a person can get a permit if the applicant cannot meet the 100 foot setback requirement under § 1444(a)(1);
 - The parcel must have been in existence on July 1, 2014; and
 - The applicant cannot meet the setback due to parcel size; site characteristic, such as ledge; or application of an existing municipal bylaw.
- § 1445(b): On a nonconforming lot, the following permit standards apply:
 - § 1445(b)(1): For a parcel with no habitable structure, the cleared area or impervious surface shall be as far as possible from the mean water level and no less than 25 feet from the mean water level.

- § 1445(b)(2): For a parcel with a habitable structure, the expansion of the structure shall be on the side of the structure farthest from the lake, unless ANR determines that: 1) expansion on the farthest side of the structure is not possible due to site characteristics, site limitations, or a municipal bylaw; 2) the expansion will not negatively impact water quality; and 3) the structure is not expanded toward the mean water level.
- § 1445(b)(3): Cleared area or impervious surface within the protected shoreland area is located on a slope of less than 20%; or the applicant demonstrates the site will have stable slope with minimal erosion or impact on water quality.
- § 1444(b)(4): No more than 20% of the protected shoreland area of a parcel shall consist of impervious surface, or the applicant shall demonstrate best management practices will be used to manage, treat, and control erosion from stormwater runoff for the portion of impervious surface that exceeds 20%.
- § 1444(b)(5): No more than 40% of the protected shoreland area of the parcel shall consist of cleared area—including area cleared for impervious surface—or the applicant demonstrates best management practices will be used to provide erosion control, bank stability, and habitat functionally equivalent to having no more than 40% of the protected shoreland area cleared.
- § 1445(c): A permit issued for a nonconforming lot shall not require compliance with the requirements for vegetative cover, i.e., maintaining a required amount of vegetation within 100 feet of the lake.
- § 1445(d): Sets forth the application process for a nonconforming parcel. The Secretary may issue a permit for a nonconforming lot to an applicant who meets the requirements of subsection 1445(b).

10 V.S.A. § 1446. Registered Projects; Exemptions from Permitting

- § 1446(a)(1): The following projects in a protected shoreland area do not require a permit if the person performing them registers the activity with ANR:
 - § 1446(a)(1)(A): Creation of no more than 100 square feet of impervious surface or cleared area within 100 feet of the mean water level, the impervious surface or cleared area is located at least 25 feet from the mean water level, and the vegetation management standards are followed.
 - § 1446(a)(1)(B): Creation of 500 square feet of impervious surface, cleared area, or a combination of both, provided that the impervious surface or cleared area is at least 100 feet from the mean water level, the site has a slope of 20% or less, no more than 20% of the protected shoreland area is impervious surface, and no more than 40% of the protected shoreland area is cleared.
- § 1446(a)(2): A person shall not use the registration process to create more than a maximum total of 100 square feet of impervious surface or cleared within 100 feet of the mean water level or 500 square feet within the entire protected shoreland area
- § 1446(a)(3): A registration shall take effect 15 days after being filed with ANR, unless ANR requests additional information or requires a permit.
- § 1446(a)(4): Registrations are for an indefinite term.
- § 1446(b). The following activities in a protected shoreland area do not require a permit under 10 V.S.A. § 1444 or 1445:
 - § 1446(b)(1): Management of vegetative cover in compliance with 10 V.S.A. § 1447.

- § 1446(b)(2): Removal of no more than 250 square feet of existing vegetation under three feet in height within 100 feet of the mean water level to allow for recreational use, provided that the cutting or vegetation removal occurs at least 25 feet from the mean water level, and other ground cover is not removed.
- § 1446(b)(3): Maintenance, but not expansion, of lawns, gardens, landscaped areas, and beaches in existence on July 1, 2014.
- § 1446(b)(4): Creation of one footpath per parcel with a width of no greater than 6 feet to provide access to the mean water level. This includes stairs, landing areas, and platforms in the footpath.
- § 1446(b)(5): Construction within the footprint of an impervious surface in existence on July 1, 2014, provided there is no net increase in the amount of impervious surface.
- § 1446(b)(6): Silvicultural activities. Silvicultural activities in a protected shoreland area if the silvicultural activities are in compliance with: (A) a forest management plan, approved by the Commissioner of Forests, Parks and Recreation, for the land in the protected shoreland area in which the silvicultural activities occur; and (B) the accepted management practices adopted by the Commissioner of Forests, Parks and Recreation under 10 V.S.A. § 2622.
- § 1446(b)(7): Agricultural activities. Agricultural activities on land in agricultural production on July 1, 2014, provided that: 1) no impervious surface shall be created or expanded on the protected shoreland areas, except, when there is no alternative outside the protected shoreland area, the construction of a best management practice to abate an agricultural water quality issue that is approved by the Secretary of Agriculture, Food and Markets; and 2) the agricultural activity complies with the AAPs or other permit or rules it is subject to.
- § 1446(b)(8): Transportation infrastructure and private roads. The routine maintenance, emergency repair, repair, and replacement of transportation infrastructure by the Vermont Agency of Transportation or by a municipality; and the repair and replacement of private roads, provided that the private road is managed according to the water quality requirements under the Agency of Transportation town road and bridge standards.
- § 1446(b)(9): Railroad activities within the jurisdiction of federal law.
- § 1446(b)(10): Parcel intersected by public highway. When a parcel in a protected shoreland area is intersected by a public highway, that portion of the parcel away from the lake does not need a permit for cleared area or impervious surface.
- § 1446(b)(11): Wastewater systems and potable water supplies. Installation, maintenance, repair, or replacement of a wastewater system or potable water supply permitted by ANR.
- § 1446(b)(12): Stormwater treatment. Discharges of stormwater, stormwater treatment facilities or practices, including repair or maintenance, permitted by ANR.
- § 1446(b)(13): Utility projects and utility lines.
 - (A) The construction of utility projects that are subject to 30 V.S.A. § 248.
 - (B) The routine repair and maintenance of utility lines and structures, including vegetation maintenance in utility line corridors, in a protected shoreland area that are subject to 30 V.S.A. § 248, chapter 151 of this title, or a vegetation management plan approved by the Agency in a protected shoreland area. Vegetation management practices in a protected shoreland area shall be

performed in accordance with a vegetation management plan approved by the Agency of Natural Resources.

(C) The emergency repair of utility lines and poles in protected shoreland areas, provided that such repair minimizes adverse impacts to vegetation in the protected shoreland area.

- § 1446(b)(14): Act 250 permits. Projects with an Act 250 permit.
- § 1446(b)(15): Projects in designated downtowns and village centers.
- § 1446(b)(16): Urban and industrial redevelopment. Construction, creation, or expansion of impervious surface or cleared area within a protected shoreland area, provided that the area subject to construction is urban or industrial in nature, contains as of July 1, 2014, impervious or cleared area, and has been designated by municipal bylaw for redevelopment; and the municipality has a shoreland bylaw determined by ANR to be functionally equivalent to the State shoreland standards.
- § 1446(b)(17): Mosquito control. Clearing of vegetation for mosquito control when there is a public health hazard and ANR approves the clearing.
- § 1446(b): Activities that do not require a permit do not require compliance with the vegetation management standards

10 V.S.A. § 1447. Vegetation Protection Standards

- § 1447(a): Within 100 feet of the mean water level, cutting of trees is allowed, provided that a well-distributed stand of trees and other natural vegetation is maintained. Vegetation management that occurs within the protected shoreland area and that is conducted according to the requirements of this section shall not be counted toward the cleared area on a parcel.
- § 1447(b): A “well-distributed stand of trees adjacent to a lake” shall be defined as maintaining a minimum rating score of 12, in each 25-foot by 25-foot area within 100 feet of the mean water level, as determined by the following rating system.

(1) Diameter of tree at 4-1/2 feet above ground level (inches)	Points
2–< 4 in.	1
4–< 8 in.	2
8–< 12 in.	4
12 in. or greater	8

- § 1447(b)(2): The following shall govern in applying this point system:
 - 25-foot by 25-foot plots shall be established within 100 feet of the mean water level for vegetation management purposes.
 - Each successive plot must be adjacent to but not overlap a previous plot.
 - Any plot not containing the required points must have no vegetative cover removed unless the removal is allowed pursuant to a registration or individual permit.
 - Any plot containing the required points may have trees removed down to the minimum points allowed.
 - Existing vegetation under three feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or as allowed pursuant to a registration or individual permit.

- Pruning of tree branches on the bottom one-third of a tree's height is allowed.
- Removal of dead, diseased, or unsafe trees shall be allowed regardless of points.
- § 1447(c): Defines what “other natural vegetation” means for purposes of the section, i.e., retaining existing vegetation under 3 feet in height and other ground cover and retaining at least 5 saplings less than 2 inches in diameter at 4.5 feet above ground level for each 25-foot by 25-foot area.

10 V.S.A. § 1445. Municipal Delegation

- § 1445(a): ANR may delegate to a municipality the authority to permit construction, creation, or expansion of impervious surface or cleared area under the Shorelands chapter if:
 - the municipality adopted a shoreland bylaw regulating construction or creation of impervious surface and cleared area within a protected shoreland area;
 - the municipal bylaw is at least as stringent as the Shoreland standards, upon a determination by ANR that the bylaw is functionally equivalent.
- § 1445(b): Delegation shall be by agreement between ANR and the municipality. The delegation agreement shall include terms for revocation.
 - § 1445(b)(2): Under the delegation agreement, the municipality may agree that ANR may institute enforcement if the municipality cannot enforce the municipal bylaw.
 - § 1445(b)(3): The delegation agreement shall require the municipality to:
 - have or establish a permit process for construction of impervious surface or creation of cleared area in protected shoreland areas;
 - take timely and appropriate enforcement actions and commit to reporting annually to the Secretary on a form and date determined by the Secretary;
 - comply with all other requirements of the rules adopted under this chapter; and
 - cure defects in a bylaw or ordinance or in administration or enforcement when notified by ANR.
 - § 1445(b)(4): A municipality shall be presumed to meet delegation requirements for permit process and enforcement if it designated a zoning administrator or official as responsible for permitting and enforcement of construction, creation, or expansion of impervious surface or cleared area.

10 V.S.A. § 1449. ANR Coordination

- § 1449(a): During technical review of a permit application for a wastewater system, potable water supply, stormwater discharge, or stormwater treatment facility that is proposed to be located in a protected shoreland area and that does not require a State shoreland permit:
 - The ANR division issuing the permit shall consult with ANR's Lakes and Ponds Section regarding practices that could reduce the impact of the proposed activity on the protected shoreland area.
- § 1449(c): All ANR lands within a protected shoreland area shall be managed according to the Shorelands requirements.

10 V.S.A. § 1450. Municipal Zoning Bylaw or Ordinance

- This section provides that all applicable municipal zoning bylaws still apply to construction of impervious surface or cleared area in the protected shoreland area.

10 V.S.A. § 1451. Rulemaking

- This section grants ANR authority to adopt rules to implement the Shorelands chapter. This is a common grant of authority for programs such as this.

Sec. 3. 10 V.S.A. § 8003. ANR Enforcement

- This section provides that the Lake Shoreland Protection Standards and Permits shall be enforceable by ANR under the Agency's statutory enforcement chapter.

Sec. 4. 10 V.S.A. § 8503. ANR Appeals

- This section provides that an act or decision of ANR with regard to the Lake Shoreland Protection Standards shall be appealable to the Environmental Division of the Superior Court.

Sec. 5. Shoreland Permit Fee

- This section establishes the fee for a Shorelands permit at \$0.50 per square foot of impervious surface or cleared area constructed or created.

Sec. 6. Enforcement of Aquatic Nuisance Species Prohibitions

- This section authorizes any law enforcement officer to cite a person for the transport of aquatic nuisance plants on a boat or vehicle under 10 V.S.A. § 1454.
 - Currently, the prohibition on transport of aquatic nuisance species is only enforceable by ANR's six enforcement officers.

Sec. 7. Transition; Vested Rights

- This section clarifies that a person who before July 1, 2014 obtained or applied for all State, local or federal permits for construction or creation of impervious surface within a protected shoreland area shall not be required to obtain a shorelands permit.
- This section is recognition of how Vermont implements the vested rights doctrine and is intended to prevent confusion as to whether persons with permits or in the process of applying for permits needs a shorelands permit.

Sec. 8. Effective Date

- The act takes effect July 1, 2014.