

Agency of Natural Resources
Department of Environmental Conservation

MEMORANDUM
Confidential and Privileged

To: The Senate Natural Resources and Energy Committee

From: Matt Chapman, DEC General Counsel;
Susan Warren, Manager, Lakes and Ponds Program

Date: January 16, 2014

Re: Proposed changes to the ANR proposed revisions to H. 526

The Department of Environmental Conservation (DEC) recommends that the Committee incorporate the following changes into H.526. These recommendations are DEC's suggestions for addressing many of the questions, concerns, and issues raised during the Committee's discussion of this bill.

1. p. 6. The Committee suggested including a provision to allow for the removal of plants such as poison ivy. DEC recommends the following change to address this suggestion:

(17) "Vegetative cover" means mixed vegetation within the protected shoreland area, consisting of trees, shrubs, groundcover, and duff, but not including grass lawns, invasive and noxious weeds designated pursuant to 6 V.S.A. § 1034, and plants harmful to human health including poison ivy and poison oak.

2. p. 7. Legislative counsel requested clarification of the language in section 1443(a)(1). The Committee expressed interest in requiring registrations for the creation of up to 500 square feet of impervious surface or cleared area within the protected shoreland area and at least 100 feet from the mean water level (p. 17. This activity is currently a de minimis activity under section 1446(b)(1)(D)). The Committee also expressed concerns about individuals using the 500 square foot exemption and the registration process to avoid coming in for a permit. DEC recommends the following changes to address the foregoing concerns. If the Committee chooses to adopt these changes, then the de minimis exemption for the creation of 500 square feet of impervious surface or cleared area should be deleted from section 1446(b)(1).

(1) A person shall not create on a parcel more than a maximum total of 100 square feet of impervious surface within 100 feet of the mean water level without first registering with the Secretary, except **Except** pursuant to sections 1445 or 1446 of this title or subsection (b) of this section. **If, if a person plans to create either 100 square feet or less of impervious surface or cleared area within 100 feet of the mean water level or 500 square feet or less of impervious surface or cleared area within the protected**

shoreland area and at least 100 feet from the mean water level, the person shall provide a registration to the Secretary documenting that: . A person shall not use the registration process to create more than a maximum total per parcel of 100 square feet of impervious surface or cleared area within 100 feet of the mean water level and 500 square feet of impervious surface or cleared area within the protected shoreland area and at least 100 feet from the mean water level.

(A) Registrations for the creation of 100 square feet or less of impervious surface or cleared area within 100 feet of the mean water level must document that:

(i) all vegetation management that will take place within 100 feet of the mean water level will meet the requirements of section 1444 of this title except for that cleared area for the 100 square feet or less of impervious surface or cleared area; and

(B)(ii) the impervious surface or cleared area will be at least 25 feet from the mean water level.

(B) Registrations for the creation of 500 square feet of impervious surface or cleared area within the protected shoreland area and at least 100 feet from the mean water level must document that:

(i) any proposed cleared area or area within the protected shoreland area where an impervious surface will be sited has a slope of less than 20 percent;

(ii) the protected shoreland area will have after the completion of the project less than 20 percent impervious surface; and

(iii) the protected shoreland area will have after completion of the project less than 40 percent of the area cleared, including that area cleared for the purposes of creating impervious surface.

3. p. 11. The Department of Forest, Parks and Recreation recommended that the bill be changed to remove the phrase “selective cutting” and replace it with “vegetative management.” Those changes are reflected below:

(a) Within 100 feet of the mean water level, selective cutting of trees vegetation management 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 towards the cleared area on a parcel

4. p. 11-13. The Committee requested that DEC look at New Hampshire and Maine’s point systems to determine whether either of those systems provides points for shrubs. Unlike the Agency proposal, New Hampshire allows, for mitigation and site restoration purposes, the use of shrubs for such mitigation or restoration. New Hampshire does not allow the cutting of forest and replacement of those trees with shrubs or provide points for shrubs in their point system.

5. p. 12-13. The Committee expressed several concerns about various provisions in section 1444, the vegetation management section. First, the Committee was concerned that the term “vegetation” was used, but not defined (“vegetative cover” is defined). Next, the Committee questioned the purpose of section 1444(b)(2)(E). DEC recommends the following changes to address those concerns:

(C) Any plot not containing the required points must have no ~~vegetation~~ **vegetative cover** removed unless the removal is allowed pursuant to a registration or individual permit.

(D) Any plot containing the required points may have ~~vegetation~~ **trees** removed down to the minimum points allowed.

(E) ~~Where conditions permit, no more than 50 percent of the points on any 25-foot by 25-foot area may consist of trees greater than 9 inches in diameter.~~

(F) Existing ~~vegetation~~ **vegetative cover** 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.

(G) Pruning of tree branches on the bottom one-third of a tree’s height is allowed.

(H) **Removal of Dead dead**, diseased, or unsafe trees shall be allowed regardless of points.

6. p. 14. The Committee expressed concerns about the standard that municipal bylaws and ordinances would have to meet under section 1445(a)(2) for a municipality to be delegated. DEC recommends the following change to address this concern:

(2) the Secretary determines that the municipality adopted a municipal bylaw or ordinance that is ~~at least as stringent as~~ **functionally equivalent to** sections 1443, 1444, and 1446 of this title **and achieves the purpose and intent of this chapter.**

7. The Department of Forest, Parks, and Recreation made the following recommendation. This is to correct an oversight (reference to a rule not in existence) from the H.526:

(2) 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 rules adopted by the Secretary under section 754 of this title for silvicultural activities in a flood hazard area; and~~

~~(C) the accepted management practices adopted by the Commissioner of Forests, Parks and Recreation under section 2622 of this title.~~

8. p. 23. The Committee asked DEC to propose a different fee structure. DEC recommends the following:

Sec. 5. 3 V.S.A. § 2822(j)(32) is added to read:

(32) For projects taking place in protected shoreland areas **that require a registration or individual permit: \$75.00 per project that requires a registration and \$500.00 per project that requires an individual permit \$0.50 per square foot of impervious cover or cleared area.**