

H.526

An act relating to the establishment of lake shoreland protection standards

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. LEGISLATIVE FINDINGS AND LEGISLATIVE INTENT

The General Assembly finds and declares that:

(1) Vermont's lakes are among the State's most valuable and fragile economic and natural resources, and the protection of naturally vegetated shorelands adjacent to lakes is necessary to prevent water quality degradation, maintain healthy habitat, and promote flood resilience.

(2) Naturally vegetated shorelands and implementation of best management practices in lands adjacent to lakes function to:

(A) intercept and infiltrate surface water runoff, wastewater, and groundwater flows from upland sources;

(B) remove or minimize the effects of nutrients, sediment, organic matter, pesticides, and other pollutants;

(C) moderate the temperature of shallow water habitat;

(D) maintain the conditions that sustain the full support of aquatic biota, wildlife, and aquatic habitat uses; and

(E) promote stability and flood resilience by protecting shoreline banks from erosion.

(3) Healthy lakes and adjacent shorelands:

(A) support Vermont's tourism economy and promote widespread recreational opportunities, including swimming, boating, fishing, and hunting;

(B) support property values and tax base; and

(C) reduce human health risks.

(4) According to the Agency of Natural Resources Water Quality Remediation, Implementation, and Funding Report in 2013, review of the development, protection, and stabilization of shorelands is necessary because of the importance of shorelands to the health of lakes.

(5) A lake or pond of more than 10 acres is located in 184 of the State's 251 municipalities. However, only 48 municipalities have shoreland zoning that requires vegetative cover. Scientifically based standards for impervious surface and cleared area adjacent to lakes are necessary to protect and maintain the integrity of water quality and aquatic and shoreland habitat, while also allowing for reasonable development of shorelands.

(6) The shorelands of the State owned by private persons remain private property, and this act does not extend the common-law public trust doctrine to private shoreland that is not currently public trust land. The State has an interest in protecting lakes and adjacent shorelands in a manner that respects existing rights of property owners to control access to land they own in lake shorelands, and the regulation of the creation of new impervious surface or

cleared area in the shoreland areas should not and does not affect the ability of property owners to control access to their lands.

(7) In order to fulfill the State's role as trustee of its waters and promote public health, safety, and the general welfare, it is in the public interest for the General Assembly to establish lake shoreland protection standards for impervious surface and cleared area in the shorelands adjacent to the State's lakes.

Sec. 2. 10 V.S.A. chapter 49A is added to read:

CHAPTER 49A. LAKE SHORELAND PROTECTION STANDARDS

§ 1441. PURPOSE

The purposes of this chapter shall be to:

- (1) provide clear standards for the creation of impervious surface or cleared area in lands adjacent to lakes;
- (2) prevent degradation of water quality in lakes and preserve natural stability of shoreline;
- (3) protect aquatic biota and protect habitat for wildlife and aquatic life;
- (4) mitigate, minimize, and manage any impact of new impervious surface and new cleared area on the lakes of the State;
- (5) mitigate, minimize, and manage the damage that floods and erosion cause to development, structures, and other resources in the lands adjacent to lakes;

(6) protect shoreland owners' access to, views of, and use of the State's lakes; and

(7) preserve and further the recreational and economic benefits and values of lakes and their adjacent shorelands.

§ 1442. DEFINITIONS

As used in this chapter:

(1) "Agency" means the Agency of Natural Resources.

(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.

(3) "Cleared area" means an area where existing vegetative cover, soil, tree canopy, or duff is permanently removed or altered. Cleared area shall not include vegetation management conducted in accordance with section 1444 of this title or any activity exempt under section 1446(b)(2)-(7).

(4) "Duff" means leaf litter plus small fragments of plants and organic debris that provide a spongy substrate that absorbs the energy of falling water and allows runoff to infiltrate soil.

(5) "Expansion" means an increase or addition of impervious surface or cleared area.

(6) “Impervious surface” means those manmade surfaces, including paved and unpaved roads, parking areas, roofs, driveways, and walkways, from which precipitation runs off rather than infiltrates.

(7) “Lake” means a body of standing water, including a pond or a reservoir, which may have natural or artificial water level control. Private ponds shall not be considered lakes.

(8) “Mean water level” means the mean water level of a lake as defined in the Mean Water Level Rules of the Agency of Natural Resources adopted under 29 V.S.A. § 410.

(9) “Parcel” means a portion of land or a tract of land with defined boundaries created by dividing the land by sale, gift, lease, mortgage foreclosure, court-ordered partition or decree, or filing of a plat, plan, or deed in the town records where the act of division creates one or more lots.

(10) “Private pond” means a body of standing water that is a natural water body of not more than 20 acres located on property owned by one person or an artificial water body of any size located on property owned by one person. A “private pond” shall include a reservoir specifically constructed for one of the following purposes: snowmaking storage, golf course irrigation, stormwater management, or fire suppression.

(11) “Private road” means a road or street other than a highway, as that term is defined in 19 V.S.A. § 1(12), that is owned by one or more persons and

that is used as a means of travel from a highway to more than one parcel of land.

(12) “Project” means an act that results in cleared area or the creation of impervious surface in a protected shoreland area.

(13) “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.

(14) “Slope” means the vertical rise divided by the horizontal run of a plane expressed as a percentage.

(15) “Secretary” means the Secretary of Natural Resources or the Secretary’s duly authorized representative.

(16) “Stormwater runoff” means precipitation and snowmelt that does not infiltrate into the soil, including material dissolved or suspended in it, but does not include discharges from undisturbed natural terrain or wastes from combined sewer overflows.

(17) “Vegetative cover” means mixed vegetation within the protected shoreland area, consisting of trees, shrubs, groundcover, and duff, but not including grass lawns.

§ 1443. IMPERVIOUS SURFACE OR CLEARED AREA IN A

PROTECTED SHORELAND AREA; REGISTRATION AND

PERMIT REQUIREMENTS

(a) Registrations.

(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 pursuant to sections 1445 or 1446 of this title or subsection (b) of this section. If a person plans to create 100 square feet or less of impervious surface or cleared area within 100 feet of the mean water level, the person shall provide a registration to the Secretary documenting that:

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

(2) The Secretary shall develop a form for registration that contains, at a minimum, the name of the property owner, the address of the property on which the project is taking place, and a certification that the project meets the requirements of this subsection for registration and the project meets the requirements of section 1444 of this title.

(3) A registration shall take effect 15 days after filed with the Secretary, unless the Secretary requests that the person registering submit additional

information which the Secretary considers necessary or the Secretary notifies the person registering that an individual permit is required.

(4) Registrations shall be for an indefinite term, provided that the person self certifies compliance with the requirements of this section and takes no action for which an individual permit is required.

(b) Individual permit.

(1) A person shall not create cleared area or impervious surface in a protected shoreland area without first obtaining a permit from the Secretary, except pursuant to sections 1445 or 1446 of this title or subsection (a) of this section. The following standards shall apply to the issuance of permits under this subsection:

(A)(i) All cleared area and impervious surface shall be at least 100 feet from the mean water level except:

(I) For projects on parcels in existence as of July 1, 2014 for which such standard cannot be met upon which there is no habitable structure. For projects on such parcels, projects shall be as far as possible from the mean water level and at a minimum shall be no less than 25 feet from the mean water level.

(II) For projects on parcels in existence as of July 1, 2014 that contain a habitable structure with any portion of such structure located within 100 feet

of the mean water level, all expansions of impervious surface related to such structure shall be on the side of the structure farthest from the lake.

(III) For any project, 100 square feet or less of impervious surface or cleared area within 100 feet of the mean water level.

(ii) Projects that provide public recreational access shall not be required to comply with this subdivision (A).

(B) Any proposed cleared area or area where an impervious surface will be sited must have a slope of less than 20 percent or the applicant must demonstrate that any proposed cleared area within the protected shoreland area will have a stable slope with minimal erosion and minimal negative impacts to water quality;

(C) The protected shoreland area must have less than 20 percent impervious surface or the applicant must demonstrate that best management practices will be used to manage, treat, and control erosion from surface water runoff associated with any impervious surface exceeding 20 percent of the area in the protected shoreland area.

(D) The protected shoreland area must have less than 40 percent of the area cleared, including that area cleared for the purposes of creating impervious surface, or the applicant must demonstrate that best management practices will be used to provide erosion control, bank stability, and wildlife

habitat functionally equivalent to that which would be provided by clearing less than 40 percent of the shoreland protected area.

(E) All vegetation management that takes place within 100 feet of the mean water level shall meet the requirements of section 1444 of this title except for that cleared area pursuant to subdivision (A) of this subdivision.

(2) A person applying for a permit shall do so on a form provided by the Secretary.

(3) An applicant shall provide notice, on a form provided by the Secretary, to the municipal clerk of the municipality in which the construction of impervious surface or creation of cleared area is located at the time the application is filed with the Secretary. The application shall be posted on the Agency's website.

(4) The Secretary shall provide an opportunity for written comment, regarding whether an application complies with this subsection or any rule adopted by the Secretary, for 30 days following receipt of the application.

(5) The Secretary shall issue a permit under this section if the proposed impervious surface or cleared area meets the requirements of subdivision (1) of this section.

(6) Individual permits shall be for an indefinite term, provided that the permittee complies with the requirements of the permit and takes no additional action for which an individual permit is required.

(c) When the repair, emergency repair, or replacement of a private road or highway, as that term is defined in 19 V.S.A. § 1(2), results in the construction, creation, or expansion of impervious surface or cleared area on a property adjacent to the private road or highway, the impervious surface or cleared area constructed or created on the adjacent property shall not be calculated as square footage of impervious surface or cleared area for purposes of permitting or registration under this section.

(d) Under this chapter, the area of constructed, created, or expanded impervious surface or cleared area shall be the square footage as measured on a horizontal plane.

(e) Recorded permits. A registration or an individual permit issued under this section shall, for purposes of having the registration or permit run with the land, be recorded in the land records of the municipality in which the impervious surface or cleared area is located.

§ 1444. LAKE SHORELAND VEGETATION PROTECTION

STANDARDS

(a) Within 100 feet of the mean water level, selective 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 towards the cleared area on a parcel.

(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.

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

(2) The following shall govern in applying this point system:

(A) 25-foot by 25-foot plots shall be established within 100 feet of the mean water level for vegetation management purposes.

(B) Each successive plot must be adjacent to but not overlap a previous plot.

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

(D) Any plot containing the required points may have vegetation 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 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) Dead, diseased, or unsafe trees shall be allowed regardless of points.

(c) As used in this section, "other natural vegetation" means retaining existing vegetation under three feet in height and other ground cover and retaining at least five saplings less than two inches in diameter at four and one-half feet above ground level for each 25-foot by 25-foot area. If five saplings do not exist, no woody stems less than two inches in diameter can be removed until five saplings have been planted or rooted in the plot.

§ 1445. MUNICIPAL DELEGATION

(a) Municipal shoreland bylaws or ordinances. The Secretary may delegate authority to permit the construction, creation, or expansion of impervious

surface or cleared area under this chapter to a municipality that has adopted a shoreland bylaw or ordinance if:

(1) the municipality adopts a bylaw or ordinance regulating construction of impervious surface or creation of cleared area in a protected shoreland area;

and

(2) the Secretary determines that the municipality adopted a municipal bylaw or ordinance that is at least as stringent as sections 1443, 1444, and 1446 of this title.

(b) Delegation agreement.

(1) Delegation under subsection (a) of this section shall be by agreement between the Secretary and the delegated municipality. The delegation agreement shall set the terms for revocation of delegation.

(2) Under the delegation agreement, the Secretary and the municipality may agree, in instances where a delegated municipality does not or cannot address noncompliance, that the Secretary, after consultation with the municipality, may institute enforcement proceedings under 10 V.S.A chapter 201.

(3) The delegation agreement shall require the municipality to:

(A) have or establish a process for accepting, reviewing, and processing applications and issuing permits for construction of impervious surface or creation of cleared area in protected shoreland areas;

(B) take timely and appropriate enforcement actions;

(C) commit to reporting annually to the Secretary on a form and date determined by the Secretary;

(D) comply with all other requirements of the rules adopted under this chapter; and

(E) cure any defects in such bylaw or ordinance or in the administration or enforcement of such bylaw or ordinance upon notice of a defect from the Secretary.

(4) A municipality that seeks delegation under subsection (a) of this section shall be presumed to satisfy the requirements of this subsection for a permit process and enforcement if the municipality has designated a municipal zoning administrator or other municipal employee or official as responsible for the permitting and enforcement of the construction, creation, or expansion of impervious surface or cleared area within the municipality.

(d) Historic and urban development. In a municipality that does not qualify for delegation under subsection (a) of this section, construction, creation, or expansion of impervious surface or cleared area within a protected shoreland area shall not require a permit under this chapter if:

(1) the area in which the impervious surface or cleared area will be constructed, created, or expanded has been designated by municipal bylaw for:

(A) development according to historic development patterns; or

(B) redevelopment of land that has been subject to construction of impervious surface or to clearing prior to the July 1, 2014 by industrial or urban development; and

(2) the municipality has adopted a shoreland bylaw or ordinance or has implemented best management practices intended to prevent degradation of water quality in lakes; to minimize or mitigate disturbances in lands adjacent to lakes; or to minimize or mitigate damage from floods and erosion.

§ 1446. AGRICULTURE; SILVICULTURE; TRANSPORTATION; AND
ELECTRIC UTILITY PROJECTS; DEVELOPMENT AND
SUBDIVISION

(a) Vegetation management conducted in compliance with section 1444 of this title shall not require registration or a permit under section 1443 of this title.

(b) The following activities in a protected shoreland area do not require a registration or a permit under section 1443 of this title and do not require compliance with section 1444 of this title:

(1) De minimis activities.

(A) The maintenance, but not the enlargement, of lawns, gardens, landscaped areas, and beaches in existence as of January 1, 2014.

(B) The creation of one footpath per parcel with a width of no greater than six feet that provides access to the mean water level;

(C) Construction within the footprint of an impervious surface, existing as of January 1, 2014, that does not result in a net increase in the amount of impervious surface on a parcel.

(D) The creation of 500 square feet or less of impervious surface, cleared area, or a combination of impervious surface and cleared area, provided the impervious surface or cleared area is at least 100 feet from the mean water level and:

(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.

(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;

(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.

(3) Agricultural activities. Agricultural activities in protected shoreland areas if:

(A) the agricultural activities comply with the Secretary's rules under section 754 of this title for agricultural activities in a flood hazard area;

(B) the agricultural activities comply with the rules adopted by the Secretary of Agriculture, Food and Markets under 6 V.S.A. chapter 215 regarding agricultural water quality, including accepted agricultural practices, best management practices, medium and small farm operation, and large farm operation; and

(C) any proposed expansion or modification to a farm structure, as that term is defined in the accepted agricultural practices, in a protected shoreland area shall be reviewed by the Secretary of Agriculture, Food and Markets in coordination with the Secretary of Natural Resources under a memorandum of understanding.

(4) Transportation infrastructure and private roads. The maintenance, emergency repair, repair, and replacement of:

(A) transportation infrastructure by the Vermont Agency of Transportation or by a municipality; or

(B) a private road that does not require a permit under section 1264 of this title, provided that emergency repair, repair, and replacement of the private road shall comply with the applicable water quality best management practices within the Vermont Agency of Transportation town road and bridge standards for controlling stormwater runoff and direct discharges to state waters. The requirement to comply with the water quality best management practices shall apply even if the municipality in which the private road is located has not adopted the town road and bridge standards. Under this subdivision, expansion of a private road in order to allow for passage of emergency vehicles shall be considered repair that does not require a permit under section 1443 of this title.

(5) Wastewater systems and potable water supplies. Installation, maintenance, repair, or replacement of a wastewater system or potable water supply pursuant to chapter 64 of this title.

(6) Stormwater treatment. Discharges of stormwater, stormwater treatment facilities or practices, including repair or maintenance, permitted by the Agency of Natural Resources under section 1264 of this title.

(7) Electric utility projects and utility lines.

(A) The construction of electric utility projects that are subject to 30 V.S.A. § 248, chapter 151 of this title, or a vegetation management plan approved by the Agency.

(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.

(8) Act 250 permit. Projects which have received a permit pursuant to chapter 151 of this title.

(9) Designated downtowns and village centers. Projects in downtowns and village centers designated pursuant to 24 V.S.A. chapter 76A.

§ 1447. COORDINATION OF AGENCY OF NATURAL RESOURCES'

PERMITTING OF ACTIVITIES IN PROTECTED SHORELAND

AREAS

(a) Coordination of permitting in protected shoreland area. 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 permit under this chapter, the Agency division issuing the wastewater system, potable water supply, stormwater discharge, or stormwater treatment facility permit shall consult with the Agency's Lakes and Ponds Section regarding practices or activities that could reduce the impact of the proposed activity on the protected shoreland area or water quality of lakes adjacent to the protected shoreland area.

(b) Agency guidance or procedure. The Agency may formalize the consultation process required by this section in a guidance document or internal agency procedure.

(c) Agency lands. All lands held by the Agency within a protected shoreland area shall be managed according to the requirements of this chapter when consistent and not in conflict with applicable federal requirements for the management of a parcel of land held by the Agency.

§ 1448. MUNICIPAL ZONING BYLAW OR ORDINANCE

(a) Construction of impervious surface or creation of cleared area occurring outside protected shoreland areas. Construction of impervious surface or creation of cleared area occurring outside a protected shoreland area shall

conform to duly adopted municipal zoning bylaws and applicable municipal ordinances and shall not be subject to regulation by the Secretary of Natural Resources under this chapter.

(b) Existing municipal bylaws and ordinances. The shoreland protection standards adopted by the Secretary of Natural Resources under sections 1443 and 1444 of this title are in addition to existing municipal bylaws and ordinances, and proposed construction of impervious surface or creation of cleared area within the protected shoreland area shall comply with all relevant, existing municipal, state, and federal requirements.

§ 1449. RULEMAKING AUTHORITY

The Secretary may adopt rules to implement the requirements of this chapter.

Sec. 3. 10 V.S.A. § 8003(a) is amended to read:

(a) The ~~secretary~~ Secretary may take action under this chapter to enforce the following statutes:

* * *

(22) 10 V.S.A. chapter 164A, collection and disposal of mercury-containing lamps; ~~and~~

(23) 24 V.S.A. § 2202a, relating to a municipality's adoption and implementation of a solid waste implementation plan that is consistent with the state solid waste plan; and

(24) 10 V.S.A. chapter 49A, relating to lake shoreland protection standards.

Sec. 4. 10 V.S.A. § 8503 is amended to read:

§ 8503. APPLICABILITY

(a) This chapter shall govern all appeals of an act or decision of the ~~secretary~~ Secretary, excluding enforcement actions under chapters 201 and 211 of this title and rulemaking, under the following authorities and under the rules adopted under those authorities:

(1) The following provisions of this title:

* * *

(R) chapter 32 (flood hazard areas).

(S) chapter 49A (lake shoreland protection standards).

* * *

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

(32) For projects taking place in protected shoreland areas: \$75.00 per project that requires a registration and \$500.00 per project that requires an individual permit.

* * * Transport of Aquatic Plants and Aquatic Nuisance Species * * *

Sec. 6. 4 V.S.A. § 1102 is amended to read:

(a) A judicial bureau is created within the judicial branch under the supervision of the supreme court.

(b) The judicial bureau shall have jurisdiction of the following matters:

* * *

(24) Violations of 10 V.S.A. § 1454(a) relating to the transport of aquatic plants and aquatic nuisance species.

* * *

(d) Three hearing officers appointed by the court administrator shall determine waiver penalties to be imposed for violations within the judicial bureau's jurisdiction, except:

(1) Municipalities shall adopt full and waiver penalties for civil ordinance violations pursuant to 24 V.S.A. § 1979. For purposes of municipal violations, the issuing law enforcement officer shall indicate the appropriate full and waiver penalty on the complaint.

(2) [Deleted.]

(3) The Agency of Natural Resources shall determine full and waiver penalties for violations of 10 V.S.A. § 1454(a) (transport of aquatic plants and aquatic nuisance species) through rulemaking conducted pursuant to 10 V.S.A. § 1460. The issuing entity shall indicate the appropriate full and waiver penalties on the complaint.

Sec. 7. 10 V.S.A. § 1454 is amended to read:

(a) No person shall transport an aquatic plant or aquatic plant part, zebra mussels (*Dreissena polymorpha*), quagga mussels (*Dreissena bugensis*), or

other aquatic nuisance species identified by the secretary by rule to or from any Vermont waters on the outside or, without an exception granted pursuant to subsection (b) of this section, on the inside of a vehicle, boat, personal watercraft, trailer, or other equipment. This section shall not restrict proper harvesting or other control activities undertaken for the purpose of eliminating or controlling the growth or propagation of aquatic plants, zebra mussels, quagga mussels, or other aquatic nuisance species.

(b) The secretary may grant exceptions to persons to allow the transport of aquatic plants, zebra mussels, quagga mussels, or other aquatic nuisance species for scientific or educational purposes. When granting exceptions, the secretary shall take into consideration both the value of the scientific or educational purpose and the risk to Vermont surface waters posed by the transport and ultimate use of the specimens. A letter from the secretary authorizing the transport must accompany the specimens during transport.

Sec. 8. EFFECTIVE DATE

This act shall take effect on July 1, 2014.