

Act No. 172 (H.526). Conservation and land development; water resources; lakes; shorelands

An act relating to the establishment of lake shoreland protection standards

This act establishes a permit program at the Agency of Natural Resources (ANR) for the creation of new impervious or cleared area within a protected shoreland area adjacent to lakes in the State. "Cleared area" is defined as an area where existing vegetative cover, soil, tree canopy, or duff is permanently removed or altered. "Impervious surface" means manmade surface from which precipitation runs off rather than infiltrates. "Lake" is defined as 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. The "protected shoreland area" is defined as all land located within 250 feet of the mean water level of a lake that is greater than 10 acres in surface area.

Beginning July 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 the act allows existing activities to continue. Permits will be issued for an indefinite term, shall run with the land if recorded in municipal land records, and shall not need to be renewed or reissued every five years.

Except for nonconforming lots, exempt activities, and public recreational areas, ANR shall issue a shoreland permit for creation of impervious surface or cleared area in a protected shoreland area, if: (1) cleared area or impervious surface is located at least 100 feet from the lake; (2) cleared area or impervious surface is located on a site with a slope less than 20 percent or the applicant demonstrates the site has a stable slope; (3) no more than 20 percent of the protected shoreland area of a parcel consists of impervious surface, or the applicant demonstrates best management practices to control erosion from stormwater runoff from additional impervious surface; (4) no more than 40 percent of the protected shoreland area of the parcel consists of cleared area or the applicant demonstrates best management practices to provide functionally equivalent erosion control, bank stability, and habitat; and (5) within 100 feet of the lake, vegetative cover is managed according to specified vegetation management standards.

Under the act, a lot is deemed a nonconforming lot if an applicant cannot meet the 100-foot setback requirement due to parcel size, site characteristics, or application of an existing municipal bylaw and the lot was in existence on July 1, 2014. A permit will be issued on a nonconforming lot, if: (1) for a parcel with no habitable structure, the cleared area or impervious surface is as far as possible from the lake and no less than 25 feet from the lake; (2) for a parcel with a habitable structure, the expansion of the structure is on the side of the structure farthest from the lake, unless expansion on the farthest side is not possible, the expansion will not negatively impact water quality, and the structure is not expanded toward the lake; and (3) the applicant demonstrates compliance with the requirements for slope, maximum amount of impervious surface, and maximum amount of clearing of the parcel summarized above for individual permits. An applicant issued a permit for a nonconforming lot shall not be required to comply with the requirement for maintaining vegetation within 100 feet of the lake.

A permit will be issued for public recreational area projects, if: (1) the recreational activity provides public access to water and promotes public trust use of the water; (2) the impervious surface or cleared area is necessary to achieve the recreational purposes of the project; and (3) the project conforms to best management practices approved by ANR that protect habitat and water quality. Certain small projects within the protected shoreland area do not require a permit but must register with ANR.

The act lists multiple activities in a protected shoreland area that do not require a permit, including: maintenance, but not expansion, of lawns, gardens, landscaped areas, and beaches in existence on July 1, 2014; creation of one footpath per parcel to provide access to the lake; construction within the footprint of an impervious surface in existence on July 1, 2014; silvicultural activities that meet certain requirements; agricultural activities that meet certain requirements; the routine maintenance, emergency repair, repair, and replacement of transportation infrastructure; the repair and replacement of private roads that meet specified standards; wastewater systems and potable water supplies; certain utility projects and utility lines; projects with an Act 250 permit; projects in designated downtowns and village centers; and certain urban and industrial redevelopment.

The act specifies the vegetation management standards that must be maintained in a protected shoreland area of a conforming lot. Within 100 feet of a lake, cutting of trees is allowed, provided that a well-distributed stand of trees and other natural vegetation is maintained. A “well-distributed stand of trees” means maintaining a minimum rating score of 12 in each 25-foot by 25-foot area within 100 feet of the mean water level. The scoring system is based on the diameter of trees in the protected shoreland area.

ANR shall delegate to a municipality the authority to issue a shorelands permit if: (1) the municipality adopted a shoreland bylaw or ordinance regulating construction or creation of impervious surface and cleared area within a protected shoreland area; (2) the municipal bylaw or ordinance is functionally equivalent to the statutory shoreland standards; and (3) the municipality provides adequate resources for administration and enforcement. Delegation shall be by agreement between ANR and the municipality. The delegation agreement shall include terms for revocation. The municipality may agree that ANR may institute enforcement if the municipality cannot enforce the municipal bylaw. The delegation agreement shall require the municipality to take timely and appropriate enforcement actions and commit to reporting annually to ANR.

Under the act, ANR has authority to adopt rules to implement the shorelands permit requirements. The act requires ANR to conduct ongoing education regarding the requirements of the shorelands program, including publication before January 1, 2015, of a citizen’s guide to shoreland protection. The act sets the fee for a shorelands permit at \$125.00 plus \$0.50 per square foot of impervious surface or cleared area constructed or created.

Effective Date: July 1, 2014