



Take Note!

NH municipalities do not have "home rule!"

Municipalities have only the authority that is specifically granted to them by the legislature; they cannot exercise authority on their own.



- Modified the tree point system to include a greater range of points awarded for various tree diameters as well as other changes made to the method of tabulating the total tree score and increased flexibility for property owners to remove or replace existing vegetation.
- Loosened the impervious surfaces requirements to allow greater than 30 percent of the lot's area to be impervious with the implementation of a stormwater infiltration system and maintenance of a 50-point tree score in the water-front buffer.
- Replaced the granting variances with a consolidated and expanded waiver process.
- Allowed for expansions of existing nonconforming structures so long as the structure does not expand toward the reference line and the property as a whole is rendered more nearly conforming.
- Reduced the penalty from an amount not to exceed \$20,000 to \$5,000 and eliminated the provisions that would have considered a violation a misdemeanor.

(effective date June 22, 2011)

SB 20 - Shoreland protection permits ~ Chapter Law 141:1-2

Industrial and Commercial redevelopment receiving an Alteration of Terrain Application (RSA 485-A:17) will no longer require separate application for a Shoreland Protection permit. This exclusion was adopted as an amendment to the existing RSA 483-B:5-b, IV exemption for Wetland Permits (RSA 482-A) that would also otherwise require a Shoreland Permit. (effective date August 6, 2011)

SB 21 - Exemptions from State excavation and drainage permits ~ Chapter 195:1-5

These amendments to RSA 482-A:3, IV(b) adds detail to the list of maintenance activities within specified wetland types that do not require a permit. Clarity is also added to the type of man-made wetland types where no permit is required. (effective date August 13, 2011)

SB 38 - Extensions for wetland and shoreland permits ~ Chapter 143:1-5

Wetland and Shoreland permits are now valid for a period of 5 years and may be granted one extension for another five years provided the applicant meets specified criteria. Stipulations for extensions include the permits have not previously been revoked, the applicant is making progress toward completion, the extension would not violate a condition of law or rule, and sufficient protections are in place to protect the wetland or shoreland during the extension period. (effective date August 6, 2011)



For more details on this topic or an overview of the entire iTRaC program, visit www.nashuarpc.org/landuse or contact Camille Pattison, iTRaC Program Manager, at camillep@nashuarpc.org or 603-424-2240 x14.



Developed by the Nashua Regional Planning Commission in partnership with the NH Department of Transportation & the NH Office of Energy and Planning.



Helping Communities face the challenges and impacts of growth while maintaining their character and sense of place.

2011 Legislative Session: Selected Statutes

What is an RSA?

Laws in New Hampshire are called Revised Statutes Annotated, or RSAs. "Annotated" means including notes. RSAs include history, case law, and other relevant explanations at the end of each section. RSAs are organized into 64 Titles from Title 1, "The State and its Government" to Title 64, "Planning and Zoning." Each Title is divided into, and typically cited by, Chapters, Sections, and Paragraphs. Example—RSA 674:4, II refers to Chapter 674, Section 4, Paragraph II.



The following is a partial list of RSAs adopted or amended in the 2011 Legislative Session. The data sources are: NH General Court "Quick Bill Status Search;" NH Municipal Association "2011 Final Legislative Bulletin," August 5, 2010; NH Office of Energy and Planning "Selected 2011 Legislation Relative to Planning and Energy Issues;" and NH Planners Association, "The Granite State Planner: 2011 Legislative Summary," Summer 2011.

To search bills or access the complete documents, click on the following links:

http://gencourt.state.nh.us/bill_status/quick_search.html

http://www.nhlgc.org/attachments/nhma/FinalLegBulletin_11.pdf

http://www.nh.gov/oep/legislation/2011/selected_legislation.htm

http://www.nhlgc.org/affiliate/nhpa/Newsletters/2011/NHPA_News_Summer2011.pdf



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Legal Matters

HB 77 - Amendments to warrant articles ~ Chapter 1:1-2

Simply stated, this bill requires a town that has adopted official ballot voting to retain the substance of the subject matter of a warrant article when it is amended. In other words, a warrant article cannot be amended to entirely eliminate the original subject matter. The one caveat to this is for amendments that change the dollar amount of an appropriation in a warrant article. (effective date February 4, 2011)

Planning and Zoning Changes

HB 2 – Changes to the Office of Energy and Planning ~ Chapter 224:110-122

HB 2 makes a series of changes to the statute that governs the Office of Energy and Planning and the services it provides. Some of the more significant changes include the repeal of the Water Protection Assistance Program and the Housing and Conservation Planning Program, the municipal planning grant established in 2008. In addition, RSA 673:3-a was amended to allow greater flexibility in the methods of local land use board training provided by OEP. Notably, the agency is now required to provide training opportunities only once a year as opposed to every six months as has historically been provided. The last item directly tied to OEP is the amendment of RSA 675:9 to permit local land use boards to submit digital versions of their plans and regulations or simply notify OEP of their adoption through its annual survey of land use regulations. (effective date July 1, 2011)

HB 109 and SB 91 – Municipalities may not require residential fire sprinklers ~ Chapters 203:1-2 and 269:1-2

Amendments to both RSA 674:36, Subdivision Regulations, and RSA 674:51, Power to Amend State Building Code and Establish Enforcement Procedures, prohibit local land use boards, particularly planning boards, from requiring the installation of a fire suppression sprinkler system in proposed one- or 2-family residences as either a regulatory requirement or a condition of approval for a local permit. However, boards are not prohibited from requiring cisterns, dry hydrants, fire ponds or other sources of water for fire suppression. (effective date July 1, 2011)

HB 205 – Planning Board notification of owners of upstream dams ~ Chapter 164:1-3

A 2009 amendment to RSA 676:4 required planning boards to notify upstream dam owners and DES of a proposed development near a stream or river. Given the sensitive nature of identifying dam locations and owners however, compliance was difficult. HB 205 attempts to preserve the original intents of the 2009 legislation while making implementation more feasible.

Under HB 205, applications to the planning board for a structure or building site that is within 500 feet of a river, stream, lake or pond, requires notice be sent to DES by first class mail at the same time as abutter notifications are sent out. The Dam Bureau at DES will solely use these notifications to determine whether or not a proposed plat will impact the hazard classification of a dam. This notification does not give DES abutter status nor does the failure to provide notice to DES constitute a defect of notice. (effective date August 13, 2011)

HB 316 - Restoration of involuntary merger of lots or parcels ~ Chapter 206:4

Following on 2010's SB 406, this bill clarifies the status of previously involuntarily merged lots and state's that they shall, at the request of the owner, be restored to their previously unmerged status. There are, however, two provisions that may limit the ability to be "unmerged." First, the request must be submitted to the town's governing body by December 31, 2016. Second, the current, or any previous owners within the chain of title, cannot have approved or accepted the merged status of the lots. This approval or acceptance ("voluntary merger") includes any overt action or conduct that indicates an owner regarded said lots as merged such as, but not limited to, abandoning a lot line. It may also be assumed that if the owners relied upon the merged status of the lots to gain permit approvals, they accepted the merger, losing the ability to unmerge. The restoration of the lots to their pre-merger status does not cure a non-conformity with existing local land use ordinances.

Municipalities must post notice by January 1, 2012 informing residents that any involuntarily merged lots may be restored to premerger status upon the owner's request. Notice must also be published in the 2011 through 2015 annual reports. Consult the full text of RSA 674:39-aa for complete notice requirements. The NH Municipal Association has prepared a sample notice that may be used by municipalities. It can be found on their website under NHMA, Ongoing Topics of Interest or directly accessed at: http://www.nhlgc.org/attachments/nhmq/HB-316_notice.doc. (effective date July 24, 2011)

HB 409 - Planning board members ~ Chapter Law 190:1-2

In an effort to recognize that volunteers for municipal boards are often difficult to come by, RSA 673:7 was amended to relax the restriction on 2-or more planning board serving on other boards or commissions. Effective August 13, 2011,



boards and commissions where there is not a perceived conflict of interest in multiple planning board members serving together, they may do so. However, the amendments still limit municipalities to only one planning board member serving on the conservation commission, local governing body, or other local land use boards defined in 672:7. (effective date August 13, 2011)

SB 97 - Community revitalization tax relief changes ~ Chapter 237:1-5

This bill adds onto the definition of qualifying structure under RSA 79-E to allow for buildings that have been destroyed by fire or other act of nature to be eligible for the community revitalization tax relief incentive. Additional provisions are included specifying that the structure must have been destroyed within 15 years prior to the municipality's adoption of the 79-E provisions and other requirements for application of the tax relief provisions to such structures. (effective date July 5, 2011)

SB 104 – Protecting agricultural operations through zoning and prohibiting Planning Boards from regulating timber harvesting ~ Chapter 85:2-4

In addition to encouraging the preservation of agricultural lands and buildings, the preservation of agricultural operations to support agricultural lands and buildings is now identified as one of the purposes of zoning under RSA 674:17, I (i). Other revisions made by HB 104 focused on RSA 674:1, VI, duties of the planning board, and clarified that the Planning Board may not regulate timber-harvesting operations that are not part of a subdivision application or a development project subject to a site plan review. (effective date July 15, 2011)

SB 144 - Site plan and subdivision approvals ~ Chapter 215

This bill follows up on 2009's SB093, which provided a temporary extension for site plan and subdivision applicants to achieve "active and substantial development" or "substantial completion." As the time period for this extension provided for in RSA 674:39, V has expired, SB 144 repeals this paragraph.

However, recognizing that there may still be a need to allow greater time than the law originally provided for in RSA 674:39, and that state environmental permits are valid for 5 years, the bill changes the standard 4-year exemption to 5-years. Additionally, the time limit to achieve active and substantial development has been permanently extended from 12 months to 24 months. (effective date June 27, 2011)



Environmental Zoning Changes

HB 2 – Changes to the Shoreland Protection Act ~ Chapter 224:382-412

Comprehensive Shoreland Protection Act: Much of the content originally found in SB 154, relative to the Comprehensive Shoreland Protection Act (CSPA), was appended to HB 2. Notable amendments to the CSPA are as follows:

- Renamed the program to the Shoreland Water Quality Protection Act.
- Modified the purpose to specify that the intent is to "Control building sites, placement of structures, and land uses that may potentially damage the public waters."
- Required that DES provide written notification to property owners prior to entering private property for oversight or enforcement reasons.
- Established statutory standards for a permit by notification system.
- Required DES to return permit fees to applicants that were denied a permit after "relying on the recommendations of the department."
- Reduced DES' time frame respond to applicants under certain application situations and increasing the applicant's time to respond to requests for more information from 60 to 120 days.
- Replaced the specification that only low phosphate, slow release nitrogen fertilizer or limestone be utilized 25 feet beyond the reference line with "slow or controlled release fertilizer, as defined by rules adopted by department."
- Amended the former prohibition against removing rocks and stumps within the waterfront buffer to allow for their removal when it will improve runoff control or be replaced with "pervious surfaces, new trees or other woody vegetation."