

New Hampshire Council on Resources and Development

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New Policies for Leasing State Owned Land on the Shores of Public Waters: Summary of SB 107, Chapter 254, Laws of 2009 Effective January 1, 2010

New restrictions have been created in order to limit the leasing of state owned lands on the shores of public waters as defined by [RSA 271:20](#). These limitations were proposed in the [Final Report](#) of the Commission to study such leasing practices ([HB 710, Chapter 254:1, Laws of 2007](#)). The Commission sought to protect the State's water quality and resources for the public while simultaneously addressing the interests of individual property owners separated from public waters by state owned property. Through the creation of a new section in statute ([RSA 4:39-d](#)), and the amendment of another ([RSA 228:57-a](#)), a fundamental policy was established, applicable to ALL state lands on the shores of public waters whether they be associated with railroads or other uses. This new policy applies regardless of the agency that controls the land. A few additional provisions were placed upon railroad leases given the specific safety risks associated with leasing these lands.

Leasing State owned land on the shores of public waters is limited to lessees who are:

1. Adjacent, residentially developed property owners for private, non-commercial use, or
2. Persons who can demonstrate the intent to provide a public use or benefit.

Adjacent, residentially developed property is defined as:

1. A lot that currently includes a fully constructed home, or homes, or
2. A lot, upon which the owner can demonstrate vested development rights as follows:
 - a. An approved building permit issued prior to January 1, 2011, or
 - b. At a minimum, a concrete foundation, or its equivalent, for the primary structure installed prior to January 1, 2011.

If an eligible party wishes to lease State owned property on the shores of public waters, they must file a written request with the agency controlling the property. If more than one individual, for example a condominium association, owns the adjacent property, it must be the association as a single entity that requests the lease.

The process for leasing state owned land, be it on the shores of public water or elsewhere, remains unchanged by these new statutory provisions. As always, the decision to initiate the surplus land review process lies with the agency controlling that property. For more information on the surplus land request process please see CORD's online "[Surplus Land Review Process](#)" and "[Surplus Land Review Flow Chart](#)."

Terms and conditions placed on leases of State owned land on the shores of public waters:

- Leases have a maximum term of 5 years.
- No more than one access point to the leased property is allowed.

- Leases may be renewed for a maximum term of 5 years, regardless of their date of origin, provided that:
 - The use of the leased property remains noncommercial and private,
 - Payments have been made by the lessee according to the lease,
 - All statutory conditions are met, and
 - The lessee is compliant with all state and federal permit requirements.
- Leases may be extended beyond 5 years with authorization of the Long Range Capital Planning and Utilization Committee and the Governor and Council.

Additional *new* requirements for leasing railroad land on the shores of public waters:

- All lease agreements for railroad lands, that are for the sole purpose of installing a dock or mooring, are contingent upon the lessee's successful acquisition of either a dock permit from the Department of Environmental Services or a mooring permit from the Department of Safety.
- If the lessee's dock or mooring permit is denied or revoked, the lease shall be terminated.
- New and renewal leases will have their lease fee increased from \$25 per running foot to \$30 per foot. This price will be adjusted by the Department of Transportation every 5 years according to the Consumer Price Index.

Links to more information embedded in this document:

- SB 107, Chapter 254, Laws of 2009
<http://www.gencourt.state.nh.us/legislation/2009/SB0107.html>
- HB 710, Chapter 254, Laws of 2007
<http://www.gencourt.state.nh.us/legislation/2007/HB0710.html>
- Report of the Commission to Study Leasing State-Owned Real Estate on Public Waters
<http://www.nh.gov/oep/programs/CORD/leasingcommission.htm>
- RSA 271:20 – Defining Public Waters
<http://www.gencourt.state.nh.us/rsa/html/XXII/271/271-20.htm>
- RSA 4:39-40 – Leasing of State-Owned Real Estate on Public Waters & Disposal of Real Estate
<http://www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-I-4.htm>
- RSA 228:57-a – Leasing Certain Portions of Railroad Properties
<http://www.gencourt.state.nh.us/rsa/html/XX/228/228-57-a.htm>
- CORD Surplus Land Review Online Information
<http://www.nh.gov/oep/programs/CORD/surpluslandreview.htm>
 - “Surplus Land Review Process”
<http://www.nh.gov/oep/programs/CORD/documents/slrprocess.pdf>
 - “Surplus Land Review Flow Chart”
<http://www.nh.gov/oep/programs/CORD/documents/slrflowchart110206.pdf>