



# House of Representatives

General Assembly

**File No. 331**

February Session, 2004

Substitute House Bill No. 5528

*House of Representatives, March 30, 2004*

The Committee on Environment reported through REP. WIDLITZ of the 98th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## **AN ACT CONCERNING MINOR REVISIONS TO THE ENVIRONMENTAL PROTECTION STATUTES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22a-174 of the general statutes, as amended by  
2 sections 125 and 126 of public act 03-6 of the June 30 special session, is  
3 repealed and the following is substituted in lieu thereof (*Effective from*  
4 *passage*):

5 (a) The commissioner, in the manner provided in subdivision (1) of  
6 section 22a-6, as amended by this act, shall have the power to  
7 formulate, adopt, amend and repeal regulations to control and prohibit  
8 air pollution throughout the state or in such areas of the state as are  
9 affected thereby, which regulations shall be consistent with the federal  
10 Air Pollution Control Act and which qualify the state and its  
11 municipalities for available federal grants. Any person heard at the  
12 public hearing on any such regulation shall be given written notice of  
13 the determination of the commissioner.

14 (b) The commissioner shall have the power to employ technical  
15 consultants for special studies, advice and assistance; to consult with  
16 and advise and exchange information with other departments or  
17 agencies of the state.

18 (c) The commissioner shall have the power, in accordance with  
19 regulations adopted by him, (1) to require that a person, before  
20 undertaking the construction, installation, enlargement or  
21 establishment of a new air contaminant source specified in the  
22 regulations adopted under subsection (a) of this section, submit to him  
23 plans, specifications and such information as he deems reasonably  
24 necessary relating to the construction, installation, enlargement, or  
25 establishment of such new air contaminant source; (2) to issue a permit  
26 approving such plans and specifications and permitting the  
27 construction, installation, enlargement or establishment of the new air  
28 contaminant source in accordance with such plans, or to issue an order  
29 requiring that such plans and specifications be modified as a condition  
30 to his approving them and issuing a permit allowing such  
31 construction, installation, enlargement or establishment in accordance  
32 therewith, or to issue an order rejecting such plans and specifications  
33 and prohibiting construction, installation, enlargement or  
34 establishment of a new air contaminant source in accordance with the  
35 plans and specifications submitted; (3) to require periodic inspection  
36 and maintenance of combustion equipment and other sources of air  
37 pollution; (4) to require any person to maintain such records relating to  
38 air pollution or to the operation of facilities designed to abate air  
39 pollution as he deems necessary to carry out the provisions of this  
40 chapter and section 14-164c, as amended; (5) to require that a person in  
41 control of an air contaminant source specified in the regulations  
42 adopted under subsection (a), obtain a permit to operate such source if  
43 the source (A) is subject to any regulations adopted by the  
44 commissioner concerning high risk hazardous air pollutants, (B) burns  
45 waste oil, (C) is allowed by the commissioner, pursuant to regulations  
46 adopted under subsection (a), to exceed emission limits for sulfur  
47 compounds, (D) is issued an order pursuant to section 22a-178, as  
48 amended by this act, or (E) violates any provision of this chapter, or

49 any regulation, order or permit adopted or issued thereunder; (6) to  
50 require that a person in control of an air contaminant source who is not  
51 required to obtain a permit pursuant to this subsection register with  
52 him and provide such information as he deems necessary to maintain  
53 his inventory of air pollution sources and the commissioner may  
54 require renewal of such registration at intervals he deems necessary to  
55 maintain such inventory; (7) to require a permit for any source  
56 regulated under the federal Clean Air Act Amendments of 1990, P.L.  
57 101-549; (8) to refuse to issue a permit if the Environmental Protection  
58 Agency objects to its issuance in a timely manner under Title V of the  
59 federal Clean Air Act Amendments of 1990; and (9) notwithstanding  
60 any regulation adopted under this chapter, to require that any source  
61 permitted under Title V of the federal Clean Air Act Amendments of  
62 1990 shall comply with all applicable standards set forth in the Code of  
63 Federal Regulations, Title 40, Parts 51, 52, 59, 60, 61, 63, 68, 70, 72 to 78,  
64 inclusive, and 82, as amended from time to time.

65 (d) The commissioner shall have all incidental powers necessary to  
66 carry out the purposes of this chapter and section 14-164c, as amended.

67 (e) As used in this subsection, "contiguous" means abutting or  
68 adjoining without consideration of the actual or projected existence of  
69 roadways, walkways, plazas, parks or other minor intervening  
70 features; "indirect source" means any building, structure, facility,  
71 installation or combination thereof, that has or leads to associated  
72 activity as a result of which any air pollutant is or may be emitted. The  
73 commissioner shall not require the submission of plans and  
74 specifications under indirect source regulations adopted pursuant to  
75 subdivisions (1) and (2) of subsection (c) of this section for proposed  
76 construction to be undertaken within a redevelopment area or urban  
77 renewal project, as defined in chapter 130, provided (1) the proposed  
78 construction is pursuant to a plan for such redevelopment area or  
79 urban renewal project adopted pursuant to section 8-127 prior to  
80 October 1, 1974, or to a modification of such plan, (2) the proposed  
81 construction is part of a contiguous, single purpose or multipurpose  
82 development or developments and (3) site clearance or construction

83 had commenced on a portion of the site of such development or  
84 developments prior to October 1, 1974, nor shall the commissioner  
85 issue any order pursuant to subdivision (1) of subsection (c) of this  
86 section pertaining to the enforcement of indirect source regulations  
87 with respect to such proposed construction within such redevelopment  
88 areas and urban renewal projects. In the event that the modification of  
89 any such plan after October 1, 1974, would result in the proposed  
90 construction generating substantially more motor vehicle traffic than  
91 would have been generated prior to such modification, the submission  
92 of plans and specifications shall be required for such proposed  
93 modification. The commissioner shall not require the renewal of an  
94 indirect source operating permit issued in accordance with subsection  
95 (c) of this section unless such indirect source no longer conforms with  
96 plans, specifications or other information submitted to said  
97 commissioner in accordance with said subsection (c).

98 (f) The commissioner shall allow the open burning of brush on  
99 residential property, provided the burning is conducted by the  
100 resident of the property or the agent of the resident and a permit for  
101 such burning is obtained from the local open burning official of the  
102 municipality in which the property is located, and the open burning of  
103 brush in municipal landfills, transfer stations and municipal recycling  
104 centers, provided a permit for such burning is obtained from the fire  
105 marshal of the municipality where the facility is located, except that no  
106 open burning of brush shall occur (1) when national or state ambient  
107 air quality standards may be exceeded; (2) where a hazardous health  
108 condition might be created; (3) when the forest fire danger in the area  
109 is identified by the commissioner as extreme and where woodland or  
110 grass land is within one hundred feet of the proposed burn; (4) where  
111 there is an advisory from the commissioner of any air pollution  
112 episode; (5) where prohibited by an ordinance of the municipality; and  
113 (6) in the case of a municipal landfill, when such landfill is within an  
114 area designated as a hot spot on the open burning map prepared by  
115 the commissioner. A permit for the burning of brush at any municipal  
116 landfill, municipal transfer station or municipal recycling center shall  
117 be issued no more than six times in any calendar year. The proposed

118 permit to burn brush at any municipal landfill, municipal transfer  
119 station or municipal recycling center shall be submitted to the  
120 commissioner by the fire marshal, with the approval of the chief  
121 elected official of the municipality in which the municipal landfill,  
122 municipal transfer station or municipal recycling center is located. The  
123 commissioner shall approve or disapprove the fire marshal's proposed  
124 permitting of burning of brush at a municipal landfill, municipal  
125 transfer station or municipal recycling center within a reasonable time  
126 of the filing of such application. The burning of leaves, demolition  
127 waste or other solid waste deposited in such landfill shall be  
128 prohibited. The burning of nonprocessed wood for campfires and  
129 bonfires is not prohibited if the burning is conducted so as not to create  
130 a nuisance and in accordance with any restrictions imposed on such  
131 burning. Nothing in this subsection or in any regulation adopted  
132 pursuant to this subsection shall affect the power of any municipality  
133 to regulate or ban the open burning of brush within its boundaries for  
134 any purpose. Notwithstanding any other provision of this section, fire  
135 breaks for the purpose of controlling forest fires and controlled fires in  
136 salt water marshes to forestall uncontrolled fires are not prohibited.  
137 Open burning may be engaged in for any of the following purposes if  
138 the open burning official with jurisdiction over the area where the  
139 burning will occur issues an open burning permit: Fire-training  
140 exercises; eradication or control of insect infestations or disease;  
141 agricultural purposes; clearing vegetative debris following a natural  
142 disaster; and vegetative management or enhancement of wildlife  
143 habitat or ecological sustainability on municipal property or on any  
144 privately owned property permanently dedicated as open space. Open  
145 burning for such purposes on state property may be engaged in with  
146 the written approval of the commissioner. Local burning officials  
147 nominated for the purposes of this subsection shall be nominated only  
148 by the chief executive officer of the municipality in which the official  
149 will serve and shall be certified by the commissioner. The chief  
150 executive officer may revoke the nomination. The commissioner may  
151 adopt regulations, in accordance with the provisions of chapter 54,  
152 governing open burning and may authorize or prohibit open burning

153 consistent with this section. The regulations may require the payment  
154 of an application fee and inspection fee and may establish a  
155 certification procedure for local burning officials.

156 (g) The commissioner shall require, by regulations adopted in  
157 accordance with the provisions of chapter 54, the payment of a permit  
158 application fee sufficient to cover the reasonable costs of reviewing  
159 and acting upon an application for, and monitoring compliance with  
160 the terms and conditions of, any state or federal permit, license, order,  
161 certificate or approval required pursuant to this section. Any person  
162 obtaining a permit, pursuant to said regulations, for the construction  
163 or operation of a source of air pollution or for modification to an  
164 existing source of air pollution shall submit a permit fee of twice the  
165 amount of the fee established by regulations in effect on July 1, 1990.  
166 The commissioner shall require the payment of a permit application  
167 fee of two hundred dollars.

168 (h) The commissioner may require, by regulations adopted in  
169 accordance with the provisions of chapter 54, payment of a fee by the  
170 owner or operator of a source of air pollution, sufficient to cover the  
171 reasonable cost of a visual test of an air pollution control device  
172 through the use of a dust compound in the detection of leaks in such  
173 device, or the monitoring of such test, provided such fee may not  
174 exceed the average cost to the department for the conduct or  
175 monitoring of such tests plus ten per cent of such average cost. Except  
176 as specified in section 22a-27g, as amended by this act, all payments  
177 received by the commissioner pursuant to this subsection shall be  
178 deposited in the General Fund and credited to the appropriations of  
179 the Department of Environmental Protection in accordance with the  
180 provisions of section 4-86.

181 (i) Notwithstanding the provisions of subsections (g) and (h) of this  
182 section, no municipality shall be required to pay more than fifty per  
183 cent of any fee established by the commissioner pursuant to said  
184 subsections.

185 [(j) Each source of air pollution shall register with the commissioner

186 biennially. Such registration shall be accompanied by a fee of one  
187 hundred fifty dollars, provided no premise shall pay a registration fee  
188 exceeding seven thousand five hundred dollars.]

189 [(k)] (j) Fees or increased fees prescribed by this section shall not be  
190 applicable to residential property.

191 [(l)] (k) (1) The commissioner may issue a general permit with  
192 respect to a category of new or existing stationary air pollution  
193 sources, except with respect to a source which is already covered by an  
194 individual permit, provided the general permit is not inconsistent with  
195 the federal Clean Air Act, as amended in 1990, 42 USC, Sections 7401 et  
196 seq., and as it may be further amended from time to time. Any person  
197 conducting an activity for which a general permit has been issued shall  
198 not be required to obtain an individual permit under this section,  
199 except as provided in subdivision (5) of this subsection. The general  
200 permit may regulate a category of sources which, whether or not  
201 requiring a permit under the federal Clean Air Act, (A) involve the  
202 same or substantially similar types of operations or substances, (B)  
203 require the same types of pollution control equipment or other  
204 operating conditions, standards or limitations, and (C) require the  
205 same or similar monitoring, and which, in the opinion of the  
206 commissioner, are more appropriately controlled under a general  
207 permit than under an individual permit. The general permit may  
208 require that any person proposing to conduct any activity under the  
209 general permit register such activity, including obtaining approval  
210 from the commissioner, before the general permit becomes effective as  
211 to such activity, and may include such other conditions as the  
212 commissioner deems appropriate, including, but not limited to,  
213 management practices and verification and reporting requirements.  
214 Any such reports shall be made available to the public by the  
215 commissioner. The commissioner shall grant an application for  
216 approval under a general permit without repeating the notice and  
217 comment procedures provided under subdivision (2) of this  
218 subsection, and such a grant shall not be subject to judicial review  
219 under subdivision (4) of this subsection. Registrations and applications

220 for approval under the general permit shall be submitted on forms  
221 prescribed by the commissioner; application forms concerning  
222 activities regulated under the federal Clean Air Act shall require that  
223 the applicant provide such information as may be required by that act.  
224 The commissioner shall prepare, and annually amend, a list of holders  
225 of general permits under this section, which list shall be made  
226 available to the public.

227 (2) Notwithstanding any other procedures in this chapter, any  
228 regulations adopted thereunder, and chapter 54, the commissioner  
229 may issue a general permit in accordance with the following  
230 procedures: (A) The commissioner shall publish in a newspaper,  
231 having a substantial circulation in the affected area or areas, notice of  
232 (i) intent to issue a general permit, (ii) the right to inspect the proposed  
233 general permit, (iii) the opportunity to submit written comments  
234 thereon, and (iv) the right to a public hearing if, within the comment  
235 period, the commissioner receives a petition signed by at least twenty-  
236 five persons provided the notice shall state that the right to a public  
237 hearing may be exercised upon request of any person if the permit  
238 regulates an activity which is subject to provisions of the federal Clean  
239 Air Act; (B) the administrator of the United States Environmental  
240 Protection Agency and any states affected by the general permit shall  
241 be given notice as may be required by the federal Clean Air Act; (C)  
242 the commissioner shall allow a comment period of thirty days  
243 following publication of notice under subparagraph (A) of this  
244 subdivision during which interested persons may submit written  
245 comments concerning the permit to the commissioner; (D) the  
246 commissioner shall not issue the general permit until after the  
247 comment period and the public hearing, if one is held; (E) the  
248 commissioner shall publish notice of any general permit issued in a  
249 newspaper having a substantial circulation in the affected area or  
250 areas; and (F) summary suspension may be ordered in accordance with  
251 subsection (c) of section 4-182. Any person may request that the  
252 commissioner issue, modify, revoke or suspend a general permit in  
253 accordance with this subsection.

254 (3) Any general permit under this subsection shall be issued for a  
255 fixed term. A general permit covering an activity regulated under the  
256 federal Clean Air Act shall be issued for a term of no more than five  
257 years. A general permit covering an activity regulated under the  
258 federal Clean Air Act shall contain such additional conditions as may  
259 be required by that act.

260 (4) Notwithstanding any other provision of this chapter and chapter  
261 54, with respect to a general permit concerning activities regulated  
262 under the federal Clean Air Act, any person who submitted timely  
263 comments thereon may appeal the issuance of such permit to the  
264 superior court in accordance with the provisions of section 4-183. Such  
265 appeal shall have precedence in the order of trial as provided in  
266 section 52-192.

267 (5) Subsequent to the issuance of a general permit, the commissioner  
268 may require a person whose activity is or may be covered by the  
269 general permit to apply for and obtain an individual permit pursuant  
270 to this chapter if he determines that an individual permit would better  
271 protect the land, air and waters of the state from pollution. The  
272 commissioner may require an individual permit under this subdivision  
273 in cases including, but not limited to, the following: (A) The permittee  
274 is not in compliance with the conditions of the general permit; (B) a  
275 change has occurred in the availability of demonstrated technology or  
276 practices for the control or abatement of pollution applicable to the  
277 permitted activity; (C) circumstances have changed since the time the  
278 general permit was issued so that the permitted activity is no longer  
279 appropriately controlled under the general permit, or a temporary or  
280 permanent reduction or elimination of the permitted activity is  
281 necessary; or (D) a relevant change has occurred in the applicability of  
282 the federal Clean Air Act. In making the determination to require an  
283 individual permit, the commissioner may consider the location,  
284 character and size of the source and any other relevant factors. The  
285 commissioner may require an individual permit under this subdivision  
286 only if the person whose activity is covered by the general permit has  
287 been notified in writing that an individual permit is required. The

288 notice shall include a brief statement of the reasons for requiring an  
289 individual permit, an application form, a statement setting a time for  
290 the person to file the application and a statement that the general  
291 permit as it applies to such person shall automatically terminate on the  
292 effective date of the individual permit. Such person shall forthwith  
293 apply for, and use best efforts to obtain, the individual permit. Any  
294 person may petition the commissioner to take action under this  
295 subdivision.

296 (6) The commissioner may adopt regulations, in accordance with the  
297 provisions of chapter 54, to carry out the purposes of this subsection.

298 [(m)] (l) In any proceeding on an application for a permit which is  
299 required under 42 USC 7661a, the applicant, and any other person  
300 entitled under said section to obtain judicial review of the  
301 commissioner's final action on such application may appeal such  
302 action in accordance with the provisions of section 4-183.

303 [(n)] (m) The commissioner shall not issue a permit for an asphalt  
304 batch plant or continuous mix facility under the provisions of this  
305 section until July 1, 2004, unless the commissioner determines that the  
306 issuance of the permit will result in an improvement of environmental  
307 performance of an existing asphalt batch plant or continuous mix  
308 plant. The provisions of this section shall apply to any application  
309 pending on May 5, 1998. Nothing in this section shall apply to  
310 applications for upgrading, replacing, consolidating or otherwise  
311 altering the physical plant of an existing facility provided such  
312 upgrade, replacement, consolidation or alteration results in an  
313 improvement of environmental performance or in reduced total  
314 emissions of air pollutants.

315 Sec. 2. Subsection (g) of section 22a-178 of the general statutes is  
316 repealed and the following is substituted in lieu thereof (*Effective from*  
317 *passage*):

318 (g) When an order issued by the commissioner to any person  
319 pursuant to this chapter becomes final, [the commissioner shall cause]

320 except for an order to create or use emission reduction credits, the  
321 respondent to such order shall file a certified copy or notice of the final  
322 order [to be filed] on the land records in the town [wherein the land]  
323 where the subject property is located, and such certified copy or notice  
324 shall constitute a notice to the owner's heirs, successors and assigns.  
325 Notwithstanding the provisions of this subsection, where the  
326 respondent to a final order does not own the subject property, the  
327 commissioner shall record notice of such order on the land records in  
328 the town where the subject property is located. When the order has  
329 been fully complied with or revoked, the commissioner shall issue a  
330 certificate showing such compliance or revocation, which certificate  
331 the [commissioner shall cause to be recorded] recipient of such  
332 certificate shall record, on the land records in the town wherein the  
333 order was previously recorded. Notwithstanding the provisions of this  
334 subsection, where the recipient of such certificate does not own the  
335 subject property, the commissioner shall record such certificate on the  
336 land records in the town where the subject property is located. A  
337 person filing a notice, a final order or a certificate pursuant to this  
338 subsection shall submit to the commissioner a certified copy of the  
339 filing indicating the volume and page number upon which the notice,  
340 final order or certificate is filed.

341 Sec. 3. Section 22a-186 of the general statutes is repealed and the  
342 following is substituted in lieu thereof (*Effective from passage*):

343 No person required by the provisions of section 22a-174, as  
344 amended by this act, to obtain a [construction] permit [and an  
345 operating permit] for the construction and operation of an air  
346 contaminant source, including, but not limited to, a fume incinerator,  
347 shall [use a construction permit for the operation of] construct and  
348 operate such source, except as authorized by the Commissioner of  
349 Environmental Protection. Any use or operation of such source not  
350 authorized by the commissioner shall be cause for the commissioner to  
351 [deny the issuance of an operating] revoke the subject permit. [to such  
352 person for such source.] The commissioner, as he deems necessary,  
353 may require an emission test of the source [before issuance of an

354 operating] as a condition of such permit. The results of any such test  
355 shall be sent to the legislative body of the municipality in which the  
356 source is located upon request of such legislative body. The  
357 commissioner may require, by regulations adopted in accordance with  
358 the provisions of chapter 54, payment of a fee by the owner or operator  
359 of an air contaminant source sufficient to cover the reasonable cost to  
360 the Department of Environmental Protection of conducting or  
361 monitoring an emission test required pursuant to this section or  
362 section 22a-174, as amended by this act. [Any] The commissioner may  
363 revoke the permit of any person who violates any regulation adopted  
364 by the commissioner pursuant to section 22a-174, as amended by this  
365 act. [may have his operating permit revoked.]

366 Sec. 4. Section 22a-371 of the general statutes is repealed and the  
367 following is substituted in lieu thereof (*Effective from passage*):

368 (a) [Within one hundred twenty days of] After receipt of an  
369 application for a permit, the commissioner shall determine if there is  
370 any additional information that he deems necessary to carry out the  
371 purposes of sections 22a-365 to 22a-378, inclusive. The applicant shall  
372 provide such information to the commissioner upon request. [or may  
373 request that the application be deemed complete as is.]

374 [(b) If the applicant does not furnish the requested information, the  
375 commissioner shall publish notice of his tentative determination on the  
376 application in accordance with section 22a-6h and shall hold or waive  
377 a public hearing in accordance with the provisions of subsection (f) of  
378 this section.]

379 [(c)] (b) If the commissioner finds that an application is complete, he  
380 shall notify the applicant by certified mail, return receipt requested.  
381 The commissioner shall also notify the applicant of the time, date and  
382 location of any public hearing to be held on the application.

383 [(d)] (c) Upon notifying the applicant in accordance with subsection  
384 [(c)] (b) of this section that the application is complete, the  
385 commissioner shall immediately provide notice of the application and

386 a concise description of the proposed diversion to the Governor, the  
387 Attorney General, the speaker of the House of Representatives, the  
388 president pro tempore of the Senate, the Secretary of the Office of  
389 Policy and Management, the Commissioners of Public Health and  
390 Economic and Community Development, the chairperson of the Public  
391 Utility Control Authority, chief executive officer and chairmen of the  
392 conservation commission and wetlands agency of the municipality or  
393 municipalities in which the proposed diversion will take place or have  
394 effect, and to any person who has requested notice of such activities.

395 [(e)] (d) As used in this section, "municipality" means a city, town or  
396 borough of the state.

397 [(f)] (e) The commissioner shall hold a public hearing before  
398 approving or denying an application, except that, when the  
399 commissioner determines that the proposed diversion (1) is necessary,  
400 (2) will not significantly affect long-range water resource management  
401 or the environment, and (3) will not impair proper management and  
402 use of the water resources of the state, he may waive the requirement  
403 for a hearing after publishing notice of his tentative decision regarding  
404 the application and of his intent to waive the requirement for a hearing  
405 in a newspaper having general circulation in the area where the  
406 proposed diversion will take place or have effect; provided the  
407 commissioner shall hold a hearing upon receipt, within thirty days  
408 after such notice is published or mailed, of a petition signed by at least  
409 twenty-five persons. If a hearing is to be held, the commissioner, at the  
410 applicant's expense, shall (A) cause notice of the time, date and  
411 location of the commencement of the hearing, a concise description of  
412 the proposed diversion, and the commissioner's tentative  
413 determination regarding the application to be published [at least twice  
414 at intervals of not less than two days and] not less than [twenty] thirty  
415 days prior to the commencement of the hearing in a newspaper having  
416 a general circulation in the area where the proposed diversion will take  
417 place or have effect, and (B) provide the same notice to the officials  
418 listed in subsection [(d)] (c) of this section not less than [twenty] thirty  
419 days prior to the commencement of the hearing.

420 Sec. 5. Subsection (a) of section 22a-372 of the general statutes is  
421 repealed and the following is substituted in lieu thereof (*Effective from*  
422 *passage*):

423 (a) The commissioner or the commissioner's designated hearing  
424 officer shall commence a hearing on the application at the time, date  
425 and location specified in the notification required by subsection [(c)]  
426 (b) of section 22a-371, as amended by this act, and may continue the  
427 hearing on such additional dates as may be necessary. Notice of the  
428 continuance shall be by announcement by the commissioner or the  
429 commissioner's designated hearing officer prior to the close of a  
430 scheduled session.

431 Sec. 6. Subsection (c) of section 22a-372 of the general statutes is  
432 repealed and the following is substituted in lieu thereof (*Effective from*  
433 *passage*):

434 (c) The parties to the proceedings shall include: (1) The applicant; (2)  
435 each person receiving notice pursuant to subsection [(d)] (c) of section  
436 22a-371, as amended by this act; and (3) such other persons or  
437 municipalities as the commissioner or the commissioner's designated  
438 hearing officer may deem appropriate at any time prior to the close of  
439 the hearing.

440 Sec. 7. Section 22a-374 of the general statutes is repealed and the  
441 following is substituted in lieu thereof (*Effective from passage*):

442 Any person or municipality aggrieved by the decision of the  
443 commissioner made pursuant to section 22a-373 [or the return of an  
444 application by the commissioner as incomplete pursuant to the  
445 provisions of subsection (b) of section 22a-371,] may appeal to the  
446 Superior Court pursuant to the provisions of section 4-183, except that  
447 the appeal shall be instituted by filing a petition in the superior court  
448 for the judicial district of New Britain.

449 Sec. 8. Subsection (f) of section 22a-430 of the general statutes is  
450 repealed and the following is substituted in lieu thereof (*Effective from*

451 *passage*):

452 (f) The commissioner may, by regulation, establish and define  
453 categories of discharges, including but not limited to, residential  
454 swimming pools, small community sewerage systems, household and  
455 small commercial disposal systems and clean water discharges, for  
456 which he may delegate authority to any other state agency, water  
457 pollution control authority, municipal building official or municipal or  
458 district director of health to issue permits or approvals in accordance  
459 with this section or to issue orders pursuant to sections 22a-428, 22a-  
460 431, 22a-432 and 22a-436. In establishing such categories the  
461 commissioner shall consider (1) whether each discharge in such  
462 category, because of size and character, is likely to cause significant  
463 pollution to the waters of the state; (2) whether knowledge and  
464 training concerning disposal systems for each discharge in such  
465 category is within the expertise of such agency, authority, official or  
466 director; (3) whether the source of each discharge in such category is  
467 likely to be within the jurisdiction of such agency, authority, official or  
468 director for other matters. The commissioner shall establish, by  
469 regulation, minimum requirements for disposal systems for discharges  
470 in such categories. Any permit denied or order issued by any such  
471 agency, authority, official or director shall be subject to hearing and  
472 appeal in the manner provided in sections 22a-436 and 22a-437,  
473 provided such agency, authority, official or director has been duly  
474 delegated authority by the commissioner pursuant to this subsection.  
475 Any permit granted by any such agency, authority, official or director  
476 to which the commissioner has delegated authority pursuant to this  
477 subsection shall thereafter be deemed equivalent to a permit issued  
478 under subsection (b) of this section.

479 Sec. 9. Subsection (a) of section 7-247 of the general statutes, as  
480 amended by section 142 of public act 03-6 of the June 30 special  
481 session, is repealed and the following is substituted in lieu thereof  
482 (*Effective from passage*):

483 (a) Any municipality by its water pollution control authority may

484 acquire, construct and operate a sewerage system or systems; may  
485 enter upon and take and hold by purchase, condemnation or otherwise  
486 the whole or any part of any real property or interest therein which it  
487 determines is necessary or desirable for use in connection with any  
488 sewerage system; may establish and revise rules and regulations for  
489 the supervision, management, control, operation and use of a sewerage  
490 system, including rules and regulations prohibiting or regulating the  
491 discharge into a sewerage system of any sewage or any stormwater  
492 runoff which in the opinion of the water pollution control authority  
493 will adversely affect any part or any process of the sewerage system  
494 except that any such rule or regulation regarding decentralized  
495 systems shall be approved by the local director of health before such  
496 rule or regulation may be effective; may enter into and fulfill contracts,  
497 including contracts for a term of years, with any person or any other  
498 municipality or municipalities to provide or obtain sewerage system  
499 service for any sewage, and may make arrangements for the provision  
500 or exchange of staff services and equipment with any person or any  
501 other municipality or municipalities, or for any other lawful services.  
502 The water pollution control authority of any municipality planning to  
503 acquire, construct or operate a new or additional sewerage system  
504 shall consider the feasibility of using the sewage collected by such  
505 system as an energy source for the generation of electricity or the  
506 production of other energy sources. The water pollution control  
507 authority may establish rules for the transaction of its business. It shall  
508 keep a record of its proceedings and shall designate an officer or  
509 employee to be the custodian of its books, papers and documents. No  
510 person shall have a right to a hearing or an appeal in the manner  
511 provided in sections 22a-436 and 22a-437 from a decision of a water  
512 pollution control authority to deny a permit or issue an order unless  
513 such water pollution control authority was delegated authority by the  
514 commissioner pursuant to section 22a-430, as amended by this act, to  
515 make the decision that is the subject of such hearing or appeal.

516 Sec. 10. Subdivision (2) of subsection (c) of section 22a-524 of the  
517 general statutes is repealed and the following is substituted in lieu  
518 thereof (*Effective from passage*):

519 (2) Not later than July thirty-first, annually, each publicly-owned  
520 treatment works shall purchase equivalent nitrogen credits necessary  
521 to meet its nitrogen limits. Such purchase shall be paid by [certified  
522 bank] check, or money order or other form of payment acceptable to  
523 the Treasurer made payable to the "nitrogen credit exchange program".  
524 The check, or money order or other such form of payment shall state  
525 on its face "nitrogen credit purchase".

526 Sec. 11. Subsection (c) of section 22a-315 of the general statutes is  
527 repealed and the following is substituted in lieu thereof (*Effective from*  
528 *passage*):

529 (c) The commissioner may, by regulation, adopted pursuant to  
530 chapter 54, establish a council to coordinate the activities of such  
531 boards of such districts with the activities of the Department of  
532 Environmental Protection and other state, regional and local agencies  
533 and propose regulations to said department in matters of soil and  
534 water erosion [control] conservation and to advise and assist the  
535 commissioner in conserving and protecting the land, water and other  
536 natural resources of the state. The council shall be within the  
537 Department of Environmental Protection for administrative purposes  
538 only. Such council shall consist of nine members, five representing the  
539 soil and water conservation districts to be selected by [the boards of  
540 said district, one representing the state Agricultural Stabilization and  
541 Conservation Committee, one representing the state Extension  
542 Advisory Council, and the Commissioners of Environmental  
543 Protection and Agriculture or their designees. One of the  
544 representatives of the soil and water conservation districts shall be a  
545 full-time farmer. The following shall be ex-officio members of the  
546 council: The State Conservationist of the Soil Conservation Service, the  
547 director of the State Extension Service, the executive director of the  
548 Agricultural Stabilization and Conservation Service, the Director of the  
549 Farmers' Home Administration, the director of the Connecticut  
550 Agricultural Experiment Station, the director of the Storrs Agricultural  
551 Experiment Station and the area director of the United States Forest  
552 Service] each of the five districts' boards, the Commissioner of

553 Environmental protection or a designee, the Commissioner of  
554 Agriculture, or a designee, a representative of a nongovernmental  
555 organization appointed by the Governor and a representative of The  
556 University of Connecticut's cooperative extension system. In addition,  
557 the council shall include, but not be limited to, the following at-large  
558 nonvoting members: The State Conservationist or designee of the  
559 Natural Resource Conservation Service, the director of the Connecticut  
560 Agricultural Experiment Station or a designee, the director of the  
561 Storrs Agricultural Experiment Station or a designee, municipal staff  
562 representatives responsible for erosion and sedimentation control, the  
563 State Committee Chairman of the Farm Services Agency and a council  
564 member of a Resource Conservation and Development area. The  
565 commissioner shall have the authority to receive funds from any  
566 source on behalf of the council and shall expend such funds with the  
567 advice and consent of the council for equipment, supplies, and such  
568 full-time and part-time staff and consultants as may be necessary to  
569 carry out the council's duties and any other at-large, nonvoting  
570 members who have expertise to support the duties of the council.

571 Sec. 12. Subsection (b) of section 22a-617 of the general statutes is  
572 repealed and the following is substituted in lieu thereof (*Effective from*  
573 *passage*):

574 (b) Not later than July 1, 2003, the commissioner shall convene a  
575 working group which shall include, but not be limited to, government  
576 representatives from other northeastern states to (1) evaluate advances  
577 in technology and make recommendations regarding the regulation of  
578 mercury-added products that have a mercury content in excess of ten  
579 milligrams or ten parts per million but less than one hundred  
580 milligrams or fifty parts per million and specialized lighting used in  
581 the entertainment industry such as metal halide lights, and (2) evaluate  
582 the uses of lamps that have a mercury content of not less than one  
583 hundred milligrams and not more than one gram and alternatives to  
584 such lamps and make recommendations regarding the regulation of  
585 lamps that have a mercury content of not less than one hundred  
586 milligrams and not more than one gram. Within such working group,

587 the commissioner shall convene a subgroup which shall include, but  
588 not be limited to, industry trade groups for mercury-containing lamps  
589 to develop a plan in accordance with section 22a-620, as amended, to  
590 provide for the collection of such lamps. The working group shall  
591 finalize [such] its recommendations regarding subdivision (1) of this  
592 subsection and the subgroup shall make its recommendations not later  
593 than July 1, 2004. The working group shall make its recommendations  
594 regarding subdivision (2) of this subsection not later than January 1,  
595 2005.

596 Sec. 13. Subsection (a) of section 14-49b of the general statutes, as  
597 amended by section 150 of public act 03-6 of the June 30 special  
598 session, is repealed and the following is substituted in lieu thereof  
599 (*Effective from passage*):

600 (a) For each new registration or renewal of registration of any motor  
601 vehicle with the Commissioner of Motor Vehicles pursuant to this  
602 chapter, the person registering such vehicle shall pay to the  
603 commissioner a fee of ten dollars for registration for a biennial period  
604 and five dollars for registration for an annual period, except that any  
605 individual who is sixty-five years of age or older on or after January 1,  
606 1994, may, at the discretion of such individual, pay the fee for either a  
607 one-year or two-year period. The provisions of this section shall not  
608 apply with respect to any motor vehicle which is not self-propelled,  
609 which is electrically powered, or which is exempted from payment of a  
610 registration fee. This fee may be identified as the "federal Clean Air Act  
611 fee" on any registration form provided by the commissioner. Payments  
612 collected pursuant to the provisions of this section shall be deposited  
613 as follows: (1) Fifty-seven and one-half per cent of such payments  
614 collected shall be deposited into the Special Transportation Fund  
615 established pursuant to section 13b-68, as amended, and (2) forty-two  
616 and one-half per cent of such payments collected shall be deposited in  
617 a treasurer's account and credited to a separate, nonlapsing federal  
618 Clean Air Act account which shall be established by the Comptroller  
619 within the General Fund. The federal Clean Air Act account may be  
620 used to pay any costs to state agencies of implementing the

621 requirements of the federal Clean Air Act Amendments of 1990 that  
622 are not otherwise met by the fees collected pursuant to section [22a-  
623 174a] 22a-174, as amended by this act, and any funds transferred to the  
624 account pursuant to section 22a-27m, as amended, may additionally be  
625 used by the Commissioner of Environmental Protection to carry out  
626 the provisions of chapter 446c. All moneys deposited in this account  
627 are deemed to be appropriated for this purpose. The fee required by  
628 this section is in addition to any other fees prescribed by any other  
629 provision of this title for the registration of a motor vehicle.

630 Sec. 14. Subsection (a) of section 22a-6 of the general statutes, as  
631 amended by section 151 of public act 03-6 of the June 30 special  
632 session, is repealed and the following is substituted in lieu thereof  
633 (*Effective from passage*):

634 (a) The commissioner may: (1) Adopt, amend or repeal, in  
635 accordance with the provisions of chapter 54, such environmental  
636 standards, criteria and regulations, and such procedural regulations as  
637 are necessary and proper to carry out his functions, powers and duties;  
638 (2) enter into contracts with any person, firm, corporation or  
639 association to do all things necessary or convenient to carry out the  
640 functions, powers and duties of the department; (3) initiate and receive  
641 complaints as to any actual or suspected violation of any statute,  
642 regulation, permit or order administered, adopted or issued by him.  
643 The commissioner shall have the power to hold hearings, administer  
644 oaths, take testimony and subpoena witnesses and evidence, enter  
645 orders and institute legal proceedings including, but not limited to,  
646 suits for injunctions, for the enforcement of any statute, regulation,  
647 order or permit administered, adopted or issued by him; (4) in  
648 accordance with regulations adopted by him, require, issue, renew,  
649 revoke, modify or deny permits, under such conditions as he may  
650 prescribe, governing all sources of pollution in Connecticut within his  
651 jurisdiction; (5) in accordance with constitutional limitations, enter at  
652 all reasonable times, without liability, upon any public or private  
653 property, except a private residence, for the purpose of inspection and  
654 investigation to ascertain possible violations of any statute, regulation,

655 order or permit administered, adopted or issued by him and the  
656 owner, managing agent or occupant of any such property shall permit  
657 such entry, and no action for trespass shall lie against the  
658 commissioner for such entry, or he may apply to any court having  
659 criminal jurisdiction for a warrant to inspect such premises to  
660 determine compliance with any statute, regulation, order or permit  
661 administered, adopted or enforced by him, provided any information  
662 relating to secret processes or methods of manufacture or production  
663 ascertained by the commissioner during, or as a result of, any  
664 inspection, investigation, hearing or otherwise shall be kept  
665 confidential and shall not be disclosed except that, notwithstanding the  
666 provisions of subdivision (5) of subsection (b) of section 1-210, as  
667 amended, such information may be disclosed by the commissioner to  
668 the United States Environmental Protection Agency pursuant to the  
669 federal Freedom of Information Act of 1976, (5 USC 552) and  
670 regulations adopted thereunder or, if such information is submitted  
671 after June 4, 1986, to any person pursuant to the federal Clean Water  
672 Act (33 USC 1251 et seq.); (6) undertake any studies, inquiries, surveys  
673 or analyses he may deem relevant, through the personnel of the  
674 department or in cooperation with any public or private agency, to  
675 accomplish the functions, powers and duties of the commissioner; (7)  
676 require the posting of sufficient performance bond or other security to  
677 assure compliance with any permit or order; (8) provide by notice  
678 printed on any form that any false statement made thereon or  
679 pursuant thereto is punishable as a criminal offense under section 53a-  
680 157b; (9) construct or repair or contract for the construction or repair of  
681 any dam or flood and erosion control system under his control and  
682 management, make or contract for the making of any alteration, repair  
683 or addition to any other real asset under his control and management,  
684 including rented or leased premises, involving an expenditure of five  
685 hundred thousand dollars or less, and, with prior approval of the  
686 Commissioner of Public Works, make or contract for the making of  
687 any alteration, repair or addition to such other real asset under his  
688 control and management involving an expenditure of more than five  
689 hundred thousand dollars but not more than one million dollars; (10)

690 by regulations adopted in accordance with the provisions of chapter 54  
691 require the payment of a fee sufficient to cover the reasonable cost of  
692 the search, duplication and review of records requested under the  
693 Freedom of Information Act, as defined in section 1-200, and the  
694 reasonable cost of reviewing and acting upon an application for and  
695 monitoring compliance with the terms and conditions of any state or  
696 federal permit, license, registration, order, certificate or approval  
697 required pursuant to subsection (i) of section 22a-39, subsections (c)  
698 and (d) of section 22a-96, subsections (h), (i) and (k) of section 22a-424,  
699 and sections 22a-6d, 22a-32, 22a-134a, as amended, 22a-134e, as  
700 amended, 22a-135, as amended, 22a-148, as amended, 22a-150, as  
701 amended, 22a-174, as amended by this act, [22a-174a,] 22a-208, 22a-  
702 208a, 22a-209, 22a-342, as amended, 22a-345, 22a-354i, 22a-361, as  
703 amended, 22a-363c, as amended, 22a-368, 22a-372, as amended by this  
704 act, 22a-379, as amended, 22a-403, 22a-409, as amended, 22a-416, 22a-  
705 428 to 22a-432, inclusive, 22a-449, as amended, and 22a-454 to 22a-  
706 454c, inclusive, as amended, and Section 401 of the federal Clean Water  
707 Act, (33 USC 1341). Such costs may include, but are not limited to the  
708 costs of (A) public notice, (B) reviews, inspections and testing  
709 incidental to the issuance of and monitoring of compliance with such  
710 permits, licenses, orders, certificates and approvals, and (C) surveying  
711 and staking boundary lines. The applicant shall pay the fee established  
712 in accordance with the provisions of this section prior to the final  
713 decision of the commissioner on the application. The commissioner  
714 may postpone review of an application until receipt of the payment.  
715 Payment of a fee for monitoring compliance with the terms or  
716 conditions of a permit shall be at such time as the commissioner deems  
717 necessary and is required for an approval to remain valid; and (11) by  
718 regulations adopted in accordance with the provisions of chapter 54,  
719 require the payment of a fee sufficient to cover the reasonable cost of  
720 responding to requests for information concerning the status of real  
721 estate with regard to compliance with environmental statutes,  
722 regulations, permits or orders. Such fee shall be paid by the person  
723 requesting such information at the time of the request. Funds not  
724 exceeding two hundred thousand dollars received by the

725 commissioner pursuant to subsection (g) of section 22a-174, as  
726 amended by this act, during the fiscal year ending June 30, 1985, shall  
727 be deposited in the General Fund and credited to the appropriations of  
728 the Department of Environmental Protection in accordance with the  
729 provisions of section 4-86, and such funds shall not lapse until June 30,  
730 1986. In any action brought against any employee of the department  
731 acting within his scope of delegated authority in performing any of the  
732 above-listed duties, the employee shall be represented by the Attorney  
733 General.

734 Sec. 15. Subsection (b) of section 22a-27g of the general statutes is  
735 repealed and the following is substituted in lieu thereof (*Effective from*  
736 *passage*):

737 (b) Notwithstanding any provision of the general statutes, [to the  
738 contrary,] on and after July 1, 1990, the amount of any fee received by  
739 the Department of Environmental Protection which is attributable to  
740 the provisions of sections 22a-6, as amended by this act, 22a-6d, 22a-  
741 27i, as amended by this act, 22a-134e, as amended, 22a-135, as  
742 amended, 22a-148, as amended, 22a-150, as amended, 22a-174, as  
743 amended by this act, [22a-174a,] 22a-208a, 22a-342, as amended, 22a-  
744 363c, as amended, 22a-372, as amended by this act, 22a-379, as  
745 amended, 22a-409, as amended, 22a-430, as amended, 22a-449, as  
746 amended, 22a-454 to 22a-454c, inclusive, as amended, and 22a-361, as  
747 amended, or any regulation adopted or amended pursuant to section  
748 22a-6, as amended by this act, or pursuant to any other provision of  
749 this title, shall be deposited directly into the Environmental Quality  
750 Fund established by subsection (a) of this section and credited to the  
751 environmental quality account. The Commissioner of Environmental  
752 Protection shall annually certify to the Treasurer, with respect to each  
753 such fee received on and after July 1, 1990, the amount of such fee  
754 which shall be credited to the General Fund.

755 Sec. 16. Section 22a-27i of the general statutes is repealed and the  
756 following is substituted in lieu thereof (*Effective from passage*):

757 Notwithstanding the provisions of sections 22a-6, as amended by

758 this act, 22a-6d, 22a-26g, 22a-26h, 22a-134e, as amended, 22a-135, as  
759 amended, 22a-148, as amended, 22a-150, as amended, 22a-174, as  
760 amended by this act, [22a-174a,] 22a-208a, 22a-342, as amended, 22a-  
761 363c, as amended, 22a-372, as amended by this act, 22a-379, as  
762 amended, 22a-409, as amended, 22a-430, as amended, 22a-449, as  
763 amended, 22a-454 to 22a-454c, inclusive, as amended, and 22a-361, as  
764 amended, for the period beginning July 1, 1990, and ending June 30,  
765 1991, any fee to be charged to a municipality in accordance with said  
766 sections shall be the fee in effect on June 30, 1990.

767 Sec. 17. Subsection (a) of section 22a-27m of the general statutes, as  
768 amended by section 149 of public act 03-6 of the June 30 special  
769 session, is repealed and the following is substituted in lieu thereof  
770 (*Effective from passage*):

771 (a) There is established within the Environmental Quality Fund  
772 established under section 22a-27g, as amended by this act, an account  
773 to be known as the "air emissions permit operating fee account".  
774 Notwithstanding the provisions of section 22a-27g, as amended by this  
775 act, any moneys collected in accordance with section [22a-174a] 22a-  
776 174, as amended by this act, shall be deposited in the Environmental  
777 Quality Fund and credited to the air emissions permit operating fee  
778 account. Any balance remaining in the account at the end of any fiscal  
779 year shall be carried forward in the account for the fiscal year next  
780 succeeding. The account shall be used by the Commissioner of  
781 Environmental Protection for the purpose of covering the direct and  
782 indirect costs of administering the program set forth in Title V of the  
783 federal Clean Air Act Amendments of 1990.

784 Sec. 18. Section 22a-450a of the general statutes, as amended by  
785 section 1 of public act 03-122, is amended by adding subsection (e) as  
786 follows (*Effective from passage*):

787 (NEW) (e) Notwithstanding the provisions of this section, any  
788 marina or recreational or commercial boating facility may sell or  
789 provide gasoline that contains MTBE for use by watercraft, including,  
790 but not limited to, a boat, ship, vessel, barge or other floating craft,

791 provided such gasoline was purchased and stored on site by the  
792 subject marina or boating facility prior to January 1, 2004.

793 Sec. 19. Section 7-131d of the general statutes is amended by adding  
794 subsection (f) as follows (*Effective from passage*):

795 (NEW) (f) Upon approval by the Commissioner of Environmental  
796 Protection, land acquired by a municipality under the protected open  
797 space and watershed land acquisition grant program established under  
798 subsection (a) of this section or under the Charter Oak open space  
799 grant program established under section 7-131t may be wholly or  
800 partially converted into land used for recreational purposes requiring  
801 intense development, including, but not limited to, golf courses,  
802 driving ranges, tennis courts, ballfields, swimming pools and uses by  
803 motorized vehicles other than vehicles needed by water companies to  
804 carry out their purposes, provided the municipality provides  
805 replacement land in accordance with this subsection. The subject  
806 municipality shall apply to the commissioner for approval to convert  
807 the protected open space, which application shall (1) provide evidence  
808 that alternative lands were considered and an explanation of why such  
809 alternatives were not acceptable; (2) provide appraisals acceptable to  
810 the commissioner for the protected open space and the replacement  
811 land; and (3) provide maps acceptable to the commissioner of the  
812 protected open space and the replacement land. The commissioner  
813 may not approve an application pursuant to this section unless the  
814 commissioner determines that the replacement land is of equal or  
815 greater monetary, recreational and natural resource conservation value  
816 as the protected open space. Upon approval, a permanent conservation  
817 easement shall be executed for the replacement land in accordance  
818 with subsection (e) of this section and the conservation easement for  
819 the original protected land shall be modified to allow the recreational  
820 purposes requiring intense development.

821 Sec. 20. (*Effective from passage*) Section 22a-174a of the general  
822 statutes, as amended, is repealed.

|  |                     |
|--|---------------------|
| This act shall take effect as follows: |                     |
| Section 1                              | <i>from passage</i> |
| Sec. 2                                 | <i>from passage</i> |
| Sec. 3                                 | <i>from passage</i> |
| Sec. 4                                 | <i>from passage</i> |
| Sec. 5                                 | <i>from passage</i> |
| Sec. 6                                 | <i>from passage</i> |
| Sec. 7                                 | <i>from passage</i> |
| Sec. 8                                 | <i>from passage</i> |
| Sec. 9                                 | <i>from passage</i> |
| Sec. 10                                | <i>from passage</i> |
| Sec. 11                                | <i>from passage</i> |
| Sec. 12                                | <i>from passage</i> |
| Sec. 13                                | <i>from passage</i> |
| Sec. 14                                | <i>from passage</i> |
| Sec. 15                                | <i>from passage</i> |
| Sec. 16                                | <i>from passage</i> |
| Sec. 17                                | <i>from passage</i> |
| Sec. 18                                | <i>from passage</i> |
| Sec. 19                                | <i>from passage</i> |
| Sec. 20                                | <i>from passage</i> |

**ENV**      *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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**OFA Fiscal Note**

**State Impact:**

| Agency Affected                        | Fund-Effect                        | FY 05 \$  | FY 06 \$  |
|--|------------------------------------|-----------|-----------|
| Department of Environmental Protection | Environmental Quality/GF - Savings | See Below | See Below |

**Municipal Impact:**

| Municipalities         | Effect | FY 05 \$  | FY 06 \$  |
|------------------------|--------|-----------|-----------|
| Various Municipalities | None   | See Below | See Below |

**Explanation**

Provisions of the bill repeal an outdated Department of Environmental Protection (DEP) air pollution source registration fee and has no fiscal impact.

Modifying filing requirements for certain DEP air pollution orders will result in a minimal administrative workload savings due to less required recordings.

Combining the construction and operating permits for air pollution sources into a single permit is not anticipated to result in a change in net revenue.

Sections of the bill eliminating a public hearing requirement concerning incomplete applications could result in a minimal administrative savings to DEP.

Any additional evaluations and recommendations required of the the working group on mercury products will be handled by the resources of the group.

Other changes clarify current practice and/or are technical and have no fiscal impact.

Allowing municipalities to use land acquired for preservation with state funding to be used for recreational purposes, provided the municipality replaces the land and the DEP commissioner approves, is anticipated to have no net impact.

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**OLR Bill Analysis**

sHB 5528

**AN ACT CONCERNING MINOR REVISIONS TO THE ENVIRONMENTAL PROTECTION STATUTES****SUMMARY:**

This bill:

1. allows towns to use open space land for golf courses, ball fields and other forms of intensive recreation if the town replaces the land and the Department of Environmental Protection (DEP) commissioner approves;
2. requires a study of, and recommendations regarding, the regulation of mercury-containing lamps scheduled to be banned starting July 1, 2006;
3. eliminates the ability of water diversion permit applicants to obtain a hearing when the commissioner rejects an application as incomplete, and makes other changes in the hearing process;
4. requires DEP to hold hearings on certain decisions by municipal water pollution control authorities and other agencies only when the commissioner has delegated authority for those decisions to those agencies, and restricts appeals to Superior Court;
5. modifies filing requirements for certain DEP air pollution orders, and exempts orders to create or use emission reduction credits from these filing requirements;
6. allows marinas and recreational or commercial boating facilities to sell gasoline containing methyl tertiary butyl ether (MTBE) to boats, ships, vessels, barges and other floating craft as long as the seller bought and stored the gasoline on site before January 1, 2004, when the state banned the use of MTBE in gasoline;
7. expands the methods of payment for nitrogen credits;
8. changes the composition and expands the responsibilities of a council concerned with soil conservation and water erosion control;
9. combines separate construction and operating permits for air pollution sources into a single permit; and
10. repeals outdated air pollution source registration and annual

fees.

EFFECTIVE DATE: Upon passage

### **OPEN SPACE USE**

Under current law, land acquired under the Open Space and Watershed Land Acquisition program or under the Charter Oak Open Space program must be preserved forever in its predominantly natural and open condition. The land cannot be used for recreational purposes requiring intensive development, such as golf courses or ball fields. The bill allows such land to be wholly or partially converted for such intensive recreational development, including golf courses, driving ranges, tennis courts, ball fields, swimming pools, and use by motor vehicles.

Towns seeking to convert open space land must replace the protected open space land, and obtain approval from the DEP commissioner. They must provide the commissioner with (1) evidence they considered alternative lands and reasons why such alternatives were not acceptable; (2) appraisals acceptable to the commissioner for the protected open space and replacement land; and (3) maps of the open space and replacement land acceptable to the commissioner.

The commissioner may not approve an application unless he finds the replacement land has at least as much monetary, recreational, and natural conservation value as the original protected open space. If he approves the application, a permanent conservation easement must be executed for the replacement land according to law, and the conservation easement for the original protected land must be modified to allow the recreational use requiring intensive development.

### **STUDY OF MERCURY-CONTAINING LAMPS**

The law bans the sale of most products containing more than one gram of mercury starting July 1, 2004. It bans most products containing more than 100 milligrams of mercury starting July 1, 2006. Current law requires a working group convened by the commissioner to make recommendations by July 1, 2004 regarding the regulation of products that contain between 10 and 100 milligrams of mercury and for specialized lighting, such as metal halide lamps. The bill requires the

working group, which includes representatives of other northeastern states, to evaluate (1) the uses of lamps with a mercury content of between 100 milligrams and one gram, and (2) alternatives to those lamps, and make recommendations regarding the regulation of lamps with a mercury content of between 100 milligrams and one gram by January 1, 2005.

### **WATER DIVERSION PERMIT HEARING PROCESS**

Current law authorizes the commissioner to seek additional information from an applicant for a water diversion permit within 120 days of its receipt. The applicant may either provide the information or ask the commissioner to regard the application as complete. In the latter case, the commissioner may make a tentative determination based on the information before him, and may hold or waive a hearing according to law. An applicant aggrieved either by the commissioner's decision or the return of an incomplete application may appeal to Superior Court.

The bill eliminates the provisions concerning consideration of incomplete applications. Under the bill, an applicant who submits an incomplete application must provide the additional information the commissioner requests. He may no longer ask the commissioner to deem it complete, nor may he appeal the return of an incomplete application. The bill eliminates (1) the 120-day deadline for the commissioner to determine if he needs additional information, (2) the requirement that he publish notice of his tentative determination based on an incomplete application, and (3) his option to hold a hearing on it. The bill also eliminates a requirement that notice of any hearing on a water diversion permit application and of the commissioner's tentative determination on it be published twice, at least two days apart. Instead, it requires the commissioner to be publish notice 30, rather than 20 days, before the hearing date, and also increases from 20 to 30 days the amount of notice the commissioner must provide various state and local officials.

### **DELEGATION OF AUTHORITY TO WATER POLLUTION CONTROL AUTHORITIES**

Current law allows the commissioner to delegate authority to state and municipal agencies for the regulation of various water discharges. It authorizes parties aggrieved by municipal agency decisions to seek a hearing before the commissioner and to appeal to Superior Court. The

bill specifies that such hearings and appeals can only occur if the commissioner has duly delegated authority to the agency according to law. It specifically eliminates the right to a hearing or appeal from a decision of a water pollution control authority (WPCA) to deny a permit or issue an order unless the commissioner delegated the WPCA authority to make the decision being appealed. However, state zoning law still allows appeals of certain WPCA decisions to Superior Court.

### **FILING OF DEP AIR POLLUTION ORDERS**

Current law requires the commissioner to file certified copies of his final orders to correct air pollution violations on the land records of the town where the violation occurred. The bill instead requires the order's recipient to file the certified copy of those final orders. It also requires the recipient, rather than the commissioner, to file on the land records notice that the order has been fully complied with or revoked. But the commissioner must still file the certified copy or notice if the recipient is not the owner of the property where the violation occurred. The bill requires the person filing the notice, final order, or certificate to submit a certified copy of it to the commissioner, indicating the volume and page number of the land records where it was filed. The bill apparently exempts from filing requirements an order to create or use emission reduction credits. It is not clear whether such orders need not be filed, or if the commissioner must still file them.

### **AIR POLLUTION SOURCE FEES**

The bill makes a technical change by repealing obsolete laws setting biennial registration fees and annual fees for air pollution sources, and authorizing the commissioner to adopt regulations. However, the commissioner retains broad authority to adopt regulations necessary and proper to carry out his functions, powers and duties. More specifically, he has authority to adopt regulations requiring the payment of fees sufficient to cover the reasonable cost of reviewing and acting upon an application for, and monitoring compliance with, the terms and conditions of any state or federal permit, license, registration, order, certificate or approval required to control air pollution. The law specifically authorizes him to require permits for any source regulated under Title V of the federal Clean Air Act Amendments of 1990, and to require that such sources comply with federal regulations.

**CONSTRUCTION AND OPERATION PERMITS**

The bill eliminates the requirement that anyone seeking to build and operate an air pollution source obtain separate permits for construction and for operation, instead requiring a single permit for both construction and operation. It authorizes the commissioner to require an emission test as a condition of the combined permit, rather than the operating permit, and authorizes him to revoke the construction and operation permit of anyone who violates any air pollution regulation or operates the source in an unauthorized manner.

**SOIL AND WATER EROSION CONTROL COUNCIL**

Under current law, a nine-member council coordinates DEP activities and proposes regulations in matters of soil and water erosion control. The bill expands its duties to include matters of soil and water erosion conservation, rather than control, and also requires it to advise and assist the commissioner in conserving and protecting the land, water and other state natural resources.

It replaces representatives of the Agricultural Stabilization and Conservation committee and Extension Advisory Council with a representative of a nongovernmental organization appointed by the governor and a representative of the University of Connecticut Cooperative Extension System. It retains as members representation of the five soil and water conservation district boards and the commissioners of agriculture and environmental protection or their designees.

The council now has seven ex-officio members: (1) the state conservationist, (2) Connecticut Agricultural Experiment Station director, (3) Storrs Agricultural station director, (4) state extension service director; (5) Agricultural Stabilization and Conservation Service executive director; (6) Farmer's Home Administration director and (7) U.S. Forest Service director. The bill replaces these ex-officio members with at-large, nonvoting members. It retains the first three and replaces the remaining four with new members: municipal staff representatives responsible for erosion and sedimentation control, the state committee chairman of the Farm Services Agency, and a council member of a resource conservation and development area. The bill does not specify the number of municipal staff representatives responsible for erosion and sedimentation control that the council

must have.

By law, the commissioner may spend money he receives on behalf of the council on equipment, supplies, staff, and consultants. The bill authorizes him to also spend it as needed for other at-large, nonvoting members with expertise to support the duties of the council.

**NITROGEN CREDIT PAYMENTS**

By law, municipal sewage treatment plants must buy nitrogen credits to meet their nitrogen limits under the nitrogen credit exchange program established by PA 01-180. By law, they must pay for the credits with certified bank checks or money orders. The bill also authorizes payment by other methods acceptable to the treasurer, made payable to the nitrogen credit exchange program” as long as the form of payment states “nitrogen credit purchase” on its face.

**COMMITTEE ACTION**

Environment Committee

Joint Favorable Substitute

Yea 27      Nay 0