



Senate

General Assembly

File No. 200

February Session, 2004

Substitute Senate Bill No. 445

Senate, March 23, 2004

The Committee on Environment reported through SEN. WILLIAMS of the 29th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING JURISDICTION OF MUNICIPAL INLAND WETLANDS COMMISSIONS.

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

1 Section 1. Section 22a-38 of the general statutes is amended by
2 adding subdivision (19) as follows (*Effective from passage*):

3 (NEW) (19) "Wetland or watercourse resources" means wetlands or
4 watercourses and their related aquatic or wildlife habitats and
5 includes, but is not limited to, the following functions as set forth in
6 section 22a-36: Maintaining an adequate supply of surface and
7 underground water; maintaining hydrological stability and controlling
8 flooding and erosion; recharging and purification of groundwater;
9 maintaining the existence of many forms of animal, aquatic and plant
10 life; maintaining and improving water quality; preventing damage
11 from erosion, turbidity or siltation; providing natural habitats for a
12 diversity of fish, other aquatic organisms, wildlife and vegetation;
13 deterring and inhibiting the danger of flood and pollution; and

14 protecting the state's potable fresh water supplies from the dangers of
15 drought, overdraft, pollution, misuse and mismanagement.

16 Sec. 2. Section 22a-41 of the general statutes is repealed and the
17 following is substituted in lieu thereof (*Effective from passage*):

18 (a) In carrying out the purposes and policies of sections 22a-36 to
19 22a-45a, inclusive, including matters relating to regulating, licensing
20 and enforcing of the provisions thereof, the commissioner shall take
21 into consideration all relevant facts and circumstances, including but
22 not limited to:

23 (1) The environmental impact of the proposed regulated activity on
24 [wetlands or watercourses] wetland or watercourse resources;

25 (2) The applicant's purpose for, and any feasible and prudent
26 alternatives to, the proposed regulated activity which alternatives
27 would cause less or no environmental impact to [wetlands or
28 watercourses] wetland or watercourse resources;

29 (3) The relationship between the short-term and long-term impacts
30 of the proposed regulated activity on [wetlands or watercourses]
31 wetland or watercourse resources and the maintenance and
32 enhancement of long-term productivity of such [wetlands or
33 watercourses] wetland or watercourse resources;

34 (4) Irreversible and irretrievable loss of wetland or watercourse
35 resources which would be caused by the proposed regulated activity,
36 including the extent to which such activity would foreclose a future
37 ability to protect, enhance or restore such resources, and any
38 mitigation measures which may be considered as a condition of
39 issuing a permit for such activity including, but not limited to,
40 measures to (A) prevent or minimize pollution or other environmental
41 damage, (B) maintain or enhance existing environmental quality, or
42 (C) in the following order of priority: Restore, enhance and create
43 productive wetland or watercourse resources;

44 (5) The character and degree of injury to, or interference with,

45 safety, health or the reasonable use of property which is caused or
46 threatened by the proposed regulated activity; and

47 (6) Impacts of the proposed regulated activity on [wetlands or
48 watercourses] wetland or watercourse resources outside the area for
49 which the activity is proposed and future activities associated with, or
50 reasonably related to, the proposed regulated activity which are made
51 inevitable by the proposed regulated activity and which may have an
52 impact on [wetlands or watercourses] wetland or watercourse
53 resources.

54 (b) (1) In the case of an application which received a public hearing
55 pursuant to (A) subsection (k) of section 22a-39, or (B) a finding by the
56 inland wetlands agency that the proposed activity may have a
57 significant impact on [wetlands or watercourses] wetland or
58 watercourse resources, a permit shall not be issued unless the
59 commissioner finds on the basis of the record that a feasible and
60 prudent alternative does not exist. In making his finding the
61 commissioner shall consider the facts and circumstances set forth in
62 subsection (a) of this section. The finding and the reasons therefor shall
63 be stated on the record in writing.

64 (2) In the case of an application which is denied on the basis of a
65 finding that there may be feasible and prudent alternatives to the
66 proposed regulated activity which have less adverse impact on
67 [wetlands or watercourses] wetland or watercourse resources, the
68 commissioner or the inland wetlands agency, as the case may be, shall
69 propose on the record in writing the types of alternatives which the
70 applicant may investigate provided this subdivision shall not be
71 construed to shift the burden from the applicant to prove that he is
72 entitled to the permit or to present alternatives to the proposed
73 regulated activity.

This act shall take effect as follows:	
Section 1	<i>from passage</i>
Sec. 2	<i>from passage</i>

Statement of Legislative Commissioners:

In subsection (b) of section 2, "wetlands or watercourses" was bracketed and "wetland or watercourse resources" was inserted for consistency with changes made in section 1 of the bill.

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:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

OLR Bill Analysis

sSB 445

AN ACT CONCERNING JURISDICTION OF MUNICIPAL INLAND WETLANDS COMMISSIONS**SUMMARY:**

This bill requires the Department of Environmental Protection (DEP) commissioner and municipal inland wetlands agencies, when regulating, licensing, and enforcing regulated activities under the Inland Wetlands and Watercourses Act, to consider the proposed activities' impact on wetland and watercourse resources, which the bill defines, as well as their impact on the wetlands and watercourses themselves.

It bars the commissioner, or an agency, from issuing a permit for a proposed activity that may have a significant impact on wetland or watercourse resources, instead of the wetlands and watercourses themselves, unless they find there is no feasible or prudent alternative. They must consider the facts and circumstances the bill requires and state their findings and reasons in writing. In denying an application after finding there may be feasible and prudent alternatives with less adverse impact on wetland or watercourse resources, the commissioner or agency, as under current law, must propose in writing the types of alternatives that the applicant may investigate. The burden remains on the applicant to prove he is entitled to the permit or to present alternatives to the proposed regulated activity.

EFFECTIVE DATE: Upon passage

WETLAND OR WATERCOURSE RESOURCES

Under the bill, "wetlands or watercourse resources" are wetlands or watercourses and their related aquatic or wildlife habitats. They include:

1. maintaining an adequate supply of surface and ground water;

2. maintaining hydrological stability and flooding and erosion control;
3. maintaining the existence of many forms of animal, aquatic, and plant life;
4. maintaining and improving water quality;
5. recharging and purifying groundwater;
6. preventing erosion, turbidity, or siltation;
7. providing natural habitats for a diversity of fish, other aquatic organisms, wildlife, and vegetation;
8. deterring and inhibiting flood and pollution danger; and
9. protecting the state's potable fresh water supplies from drought, overdraft, pollution, misuse, or mismanagement.

CONSIDERATION OF WETLAND OR WATERCOURSE RESOURCES

The bill requires the commissioner and local inland wetlands agencies, when regulating, licensing, and enforcing activities under the Inland Wetlands and Watercourses Act, to consider:

1. the proposed activity's environmental impact on wetland or watercourse resources ;
2. the applicant's purpose for, and any feasible and prudent alternatives to, the proposed activity, that would cause less or no environmental impact on wetland or watercourse resources;
3. the relationship between the short- and long-term impacts of the proposed activity on wetland or watercourse resources and the maintenance and enhancement of their long-term productivity;
4. impacts of the proposed activity on wetland or watercourse resources outside the area for which the activity is proposed; and

5. future activities associated with, or reasonably related, to the proposed activity which are made inevitable by the proposed activity and which may have an impact on wetland or watercourse resources.

BACKGROUND

Regulated Activities

By law, a regulated activity is any operation within or use of a wetland or watercourse involving removal or deposit of material, or any obstruction, construction, alteration, or pollution of wetlands or watercourses. The law exempts certain agricultural, residential, and other activities.

Related Court Case

In *Avalonbay Communities, Inc. v. Wilton Inland Wetlands Commission*, (266 Conn. 150 (2003)), the developer, denied an inland wetlands permit by the town of Wilton, claimed that the Inland Wetlands and Watercourses Act (CGS § 22a-36 et seq.) protects wetlands from physical damage or intrusion, but not wildlife that might rely on the wetlands for a portion of its life cycle. The Supreme Court agreed. Noting that statutory definitions “are narrowly drawn and limited to physical characteristics,” the court ruled that the act “protects the physical characteristics of wetlands and watercourses and not the wildlife, including wetland obligate species, or biodiversity.” The court specifically noted that while the act requires the commission to consider “irreversible and irretrievable loss of wetland or watercourse resources,” it does not define “resources.”

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 22 Nay 0