



House of Representatives

General Assembly

File No. 396

February Session, 2008

House Bill No. 5603

House of Representatives, April 3, 2008

The Committee on Environment reported through REP. ROY, R. of the 119th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING ENHANCEMENTS TO THE INLAND WETLANDS AND WATERCOURSES ACT.

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

1 Section 1. Section 22a-36 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2008*):

3 The inland wetlands and watercourses of the state of Connecticut
4 are an indispensable and irreplaceable but fragile natural resource
5 with which the citizens of the state have been endowed. The wetlands
6 and watercourses are an interrelated web of nature essential to an
7 adequate supply of surface and underground water; to hydrological
8 stability and control of flooding and erosion; to the recharging and
9 purification of groundwater; and to the existence of many forms of
10 animal, aquatic and plant life. Many inland wetlands and watercourses
11 have been destroyed or are in danger of destruction because of
12 unregulated use by reason of the deposition, filling or removal of
13 material, the diversion or obstruction of water flow, the erection of
14 structures and other uses, all of which have despoiled, polluted and

15 eliminated wetlands and watercourses. Such unregulated activity has
16 had, and will continue to have, a significant, adverse impact on the
17 environment and ecology of the state of Connecticut and has and will
18 continue to imperil the quality of the environment thus adversely
19 affecting the ecological, scenic, historic and recreational values and
20 benefits of the state for its citizens now and forever more. The
21 preservation and protection of the wetlands and watercourses from
22 random, unnecessary, undesirable and unregulated uses, disturbance
23 or destruction is in the public interest and is essential to the health,
24 welfare and safety of the citizens of the state. It is [, therefore,] the
25 purpose of sections 22a-36 to 22a-45, inclusive, as amended by this act,
26 to protect the citizens of the state by making provisions for the
27 protection, preservation, maintenance and use of the inland wetlands
28 and watercourses by minimizing their disturbance and pollution;
29 maintaining and improving water quality in accordance with the
30 highest standards set by federal, state or local authority; preventing
31 damage from erosion, turbidity or siltation; preventing loss of fish and
32 other beneficial aquatic organisms, wildlife and vegetation and the
33 destruction of the natural habitats thereof; deterring and inhibiting the
34 danger of flood and pollution; protecting the quality of wetlands and
35 watercourses for their conservation, economic, aesthetic, recreational
36 and other public and private uses and values; and protecting the state's
37 potable fresh water supplies from the dangers of drought, overdraft,
38 pollution, misuse and mismanagement by providing an orderly
39 process to balance the need for the economic growth of the state and
40 the use of its land with the need to protect its environment and ecology
41 in order to forever guarantee to the people of the state, the safety of
42 such natural resources for their benefit and enjoyment and for the
43 benefit and enjoyment of generations yet unborn. It is, therefore,
44 hereby declared to be the public policy of the state to preserve the
45 inland wetlands and watercourses of the state and to prevent the
46 despoliation and destruction of such inland wetlands and
47 watercourses.

48 Sec. 2. Section 22a-42 of the general statutes is repealed and the
49 following is substituted in lieu thereof (*Effective October 1, 2008*):

50 (a) To carry out and effectuate the purposes and policies of sections
51 22a-36 to 22a-45a, inclusive, as amended by this act, it is hereby
52 declared to be the public policy of the state to require municipal
53 regulation of activities affecting the wetlands and watercourses within
54 the territorial limits of the various municipalities or districts, to
55 preserve such wetlands and watercourses and to prevent the
56 despoliation and destruction of such wetlands and watercourses.

57 (b) Any municipality may acquire wetlands and watercourses
58 within its territorial limits by gift or purchase, in fee or lesser interest
59 including, but not limited to, lease, easement or covenant, subject to
60 such reservations and exceptions as it deems advisable.

61 (c) On or before July 1, 1988, each municipality shall establish an
62 inland wetlands agency or authorize an existing board or commission
63 to carry out the provisions of sections 22a-36 to 22a-45, inclusive, as
64 amended by this act. Each municipality, acting through its legislative
65 body, may authorize any board or commission, as may be by law
66 authorized to act, or may establish a new board or commission to
67 promulgate such regulations, in conformity with the regulations
68 adopted by the commissioner pursuant to section 22a-39, as are
69 necessary to protect the wetlands and watercourses within its
70 territorial limits. The ordinance establishing the new board or
71 commission shall determine the number of members and alternate
72 members, the length of their terms, the method of selection and
73 removal and the manner for filling vacancies in the new board or
74 commission. No member or alternate member of such board or
75 commission shall participate in the hearing or decision of such board
76 or commission of which he is a member upon any matter in which he
77 is directly or indirectly interested in a personal or financial sense. In
78 the event of such disqualification, such fact shall be entered on the
79 records of such board or commission and replacement shall be made
80 from alternate members of an alternate to act as a member of such
81 commission in the hearing and determination of the particular matter
82 or matters in which the disqualification arose. For the purposes of this
83 section, the board or commission authorized by the municipality or

84 district, as the case may be, shall serve as the sole agent for the
85 licensing of regulated activities.

86 (d) At least one member of the inland wetlands agency or staff of
87 the agency shall be a person who has completed the comprehensive
88 training program developed by the commissioner pursuant to section
89 22a-39. Failure to have a member of the agency or staff with training
90 shall not affect the validity of any action of the agency. The
91 commissioner shall annually make such program available to one
92 person from each town without cost to that person or the town. Each
93 inland wetlands agency shall hold a meeting at least once annually at
94 which information is presented to the members of the agency which
95 summarizes the provisions of the training program. The commissioner
96 shall develop such information in consultation with interested persons
97 affected by the regulation of inland wetlands and shall provide for
98 distribution of video presentations and related written materials which
99 convey such information to inland wetlands agencies. In addition to
100 such materials, the commissioner, in consultation with such persons,
101 shall prepare materials which provide guidance to municipalities in
102 carrying out the provisions of subsection (f) of section 22a-42a, as
103 amended by this act.

104 (e) Any municipality, pursuant to ordinance, may act through the
105 board or commission authorized in subsection (c) of this section to join
106 with any other municipalities in the formation of a district for the
107 regulation of activities affecting the wetlands and watercourses within
108 such district. Any city or borough may delegate its authority to
109 regulate inland wetlands under this section to the town in which it is
110 located.

111 (f) Municipal or district ordinances or regulations may embody any
112 regulations promulgated hereunder, in whole or in part, or may
113 consist of other ordinances or regulations in conformity with
114 regulations promulgated hereunder. Any ordinances or regulations
115 shall be for the purpose of effectuating the purposes of sections 22a-36
116 to 22a-45, inclusive, as amended by this act, and, a municipality or

117 district, in acting upon ordinances and regulations shall incorporate
118 the factors set forth in section 22a-41.

119 (g) Nothing contained in this section shall be construed to limit the
120 existing authority of a municipality or any boards or commissions of
121 the municipality, provided the commissioner shall retain authority to
122 act on any application filed with said commissioner prior to the
123 establishment or designation of an inland wetlands agency by a
124 municipality.

125 Sec. 3. Section 22a-42a of the general statutes is repealed and the
126 following is substituted in lieu thereof (*Effective October 1, 2008*):

127 (a) The inland wetlands agencies authorized in section 22a-42, as
128 amended by this act, shall through regulation provide for (1) the
129 manner in which the boundaries of inland wetland and watercourse
130 areas in their respective municipalities shall be established and
131 amended or changed, (2) the form for an application to conduct
132 regulated activities, (3) notice and publication requirements, (4) criteria
133 and procedures for the review of applications and (5) administration
134 and enforcement.

135 (b) No regulations of an inland wetlands agency including
136 boundaries of inland wetland and watercourse areas shall become
137 effective or be established until after a public hearing in relation
138 thereto is held by the inland wetlands agency. Any such hearing shall
139 be held in accordance with the provisions of section 8-7d of the 2008
140 supplement to the general statutes. A copy of such proposed
141 regulation or boundary shall be filed in the office of the town, city or
142 borough clerk as the case may be, in such municipality, for public
143 inspection at least ten days before such hearing, and may be published
144 in full in such paper. A copy of the notice and the proposed
145 regulations or amendments thereto, except determinations of
146 boundaries, shall be provided to the commissioner at least thirty-five
147 days before such hearing. Such regulations and inland wetland and
148 watercourse boundaries may be from time to time amended, changed
149 or repealed, by majority vote of the inland wetlands agency, after a

150 public hearing in relation thereto is held by the inland wetlands
151 agency, in accordance with the provisions of section 8-7d of the 2008
152 supplement to the general statutes. Regulations or boundaries or
153 changes therein shall become effective at such time as is fixed by the
154 inland wetlands agency, provided a copy of such regulation, boundary
155 or change shall be filed in the office of the town, city or borough clerk,
156 as the case may be. Whenever an inland wetlands agency makes a
157 change in regulations or boundaries it shall state upon its records the
158 reason why the change was made and shall provide a copy of such
159 regulation, boundary or change to the Commissioner of Environmental
160 Protection no later than ten days after its adoption provided failure to
161 submit such regulation, boundary or change shall not impair the
162 validity of such regulation, boundary or change. All petitions
163 submitted in writing and in a form prescribed by the inland wetlands
164 agency, requesting a change in the regulations or the boundaries of an
165 inland wetland and watercourse area shall be considered at a public
166 hearing held in accordance with the provisions of section 8-7d of the
167 2008 supplement to the general statutes. The failure of the inland
168 wetlands agency to act within any time period specified in this
169 subsection, or any extension thereof, shall not be deemed to constitute
170 approval of the petition.

171 (c) (1) On and after the effective date of the municipal regulations
172 promulgated pursuant to subsection (b) of this section, no regulated
173 activity shall be conducted upon any inland wetland or watercourse
174 without a permit. Any person proposing to conduct or cause to be
175 conducted a regulated activity upon an inland wetland or watercourse
176 shall file an application with the inland wetlands agency of the town or
177 towns wherein the wetland or watercourse in question is located and
178 shall establish, by a preponderance of the evidence, such person is
179 entitled to such permit. The application shall be in such form and
180 contain such information as the inland wetlands agency may prescribe.
181 The date of receipt of an application shall be determined in accordance
182 with the provisions of subsection (c) of section 8-7d of the 2008
183 supplement to the general statutes. The inland wetlands agency shall
184 not hold a public hearing on such application unless the inland

185 wetlands agency determines that the proposed activity may have a
186 significant impact on wetlands or watercourses, a petition signed by at
187 least twenty-five persons who are eighteen years of age or older and
188 who reside in the municipality in which the regulated activity is
189 proposed, requesting a hearing is filed with the agency not later than
190 fourteen days after the date of receipt of such application, or the
191 agency finds that a public hearing regarding such application would
192 be in the public interest. An inland wetlands agency may issue a
193 permit without a public hearing provided no petition provided for in
194 this subsection is filed with the agency on or before the fourteenth day
195 after the date of receipt of the application. Such hearing shall be held in
196 accordance with the provisions of section 8-7d of the 2008 supplement
197 to the general statutes. If the inland wetlands agency, or its agent, fails
198 to act on any application within thirty-five days after the completion of
199 a public hearing or in the absence of a public hearing within sixty-five
200 days from the date of receipt of the application, or within any
201 extension of any such period as provided in section 8-7d of the 2008
202 supplement to the general statutes, the applicant may file such
203 application with the Commissioner of Environmental Protection who
204 shall review and act on such application in accordance with this
205 section. Any costs incurred by the commissioner in reviewing such
206 application for such inland wetlands agency shall be paid by the
207 municipality that established or authorized the agency. Any fees that
208 would have been paid to such municipality if such application had not
209 been filed with the commissioner shall be paid to the state. The failure
210 of the inland wetlands agency or the commissioner to act within any
211 time period specified in this subsection, or any extension thereof, shall
212 not be deemed to constitute approval of the application.

213 (2) An inland wetlands agency may delegate to its duly authorized
214 agent the authority to approve or extend an activity that is not located
215 in a wetland or watercourse when such agent finds that the conduct of
216 such activity would result in no greater than a minimal impact on any
217 wetland or watercourse provided such agent has completed the
218 comprehensive training program developed by the commissioner
219 pursuant to section 22a-39. Notwithstanding the provisions for receipt

220 and processing applications prescribed in subdivision (1) of this
221 subsection, such agent may approve or extend such an activity at any
222 time. Any person receiving such approval from such agent shall,
223 within ten days of the date of such approval, publish, at the applicant's
224 expense, notice of the approval in a newspaper having a general
225 circulation in the town wherein the activity is located or will have an
226 effect. Any person may appeal such decision of such agent to the
227 inland wetlands agency within fifteen days after the publication date
228 of the notice and the inland wetlands agency shall consider such
229 appeal at its next regularly scheduled meeting provided such meeting
230 is no earlier than three business days after receipt by such agency or its
231 agent of such appeal. The inland wetlands agency shall, at its
232 discretion, sustain, alter or reject the decision of its agent or require an
233 application for a permit in accordance with subdivision (1) of
234 subsection (c) of this section, as amended by this act.

235 (d) (1) In granting, denying or limiting any permit for a regulated
236 activity the inland wetlands agency, or its agent, shall consider the
237 factors set forth in section 22a-41, and [such] shall consider all relevant
238 evidence brought before such agency or agent by any person or entity,
239 including, but not limited to, scientific evidence, expert opinion, direct
240 observations made regarding the proposed regulated activity,
241 environmental reviews, policy letters or guidance documents provided
242 by or on behalf of an environmental review team or the Department of
243 Environmental Protection, and written comments or oral testimony
244 submitted by the Commissioner of Public Health or by or on behalf of
245 a water company in response to written notice provided such water
246 company pursuant to section 22a-42f. Such agency, or its agent, shall
247 state upon the record the reason for its decision. In granting a permit
248 the inland wetlands agency, or its agent, may grant the application as
249 filed or grant it upon other terms, conditions, limitations or
250 modifications of the regulated activity which are designed to carry out
251 the policy of sections 22a-36 to 22a-45, inclusive, as amended by this
252 act. Such terms may include any reasonable measures which would
253 mitigate the impacts of the regulated activity and which would (A)
254 prevent or minimize pollution or other environmental damage, (B)

255 maintain or enhance existing environmental quality, or (C) in the
256 following order of priority: Restore, enhance and create productive
257 wetland or watercourse resources. No person shall conduct any
258 regulated activity within an inland wetland or watercourse which
259 requires zoning or subdivision approval without first having obtained
260 a valid certificate of zoning or subdivision approval, special permit,
261 special exception or variance or other documentation establishing that
262 the proposal complies with the zoning or subdivision requirements
263 adopted by the municipality pursuant to chapters 124 to 126, inclusive,
264 or any special act. The agency may suspend or revoke a permit if it
265 finds after giving notice to the permittee of the facts or conduct which
266 warrant the intended action and after a hearing at which the permittee
267 is given an opportunity to show compliance with the requirements for
268 retention of the permit, that the applicant has not complied with the
269 conditions or limitations set forth in the permit or has exceeded the
270 scope of the work as set forth in the application. The applicant shall be
271 notified of the agency's decision by certified mail within fifteen days of
272 the date of the decision and the agency shall cause notice of their order
273 in issuance, denial, revocation or suspension of a permit to be
274 published in a newspaper having a general circulation in the town
275 wherein the wetland or watercourse lies. In any case in which such
276 notice is not published within such fifteen-day period, the applicant
277 may provide for the publication of such notice within ten days
278 thereafter.

279 (2) Any permit issued under this section for the development of
280 property for which an approval is required under section 8-3 of the
281 2008 supplement to the general statutes, 8-25 of the 2008 supplement to
282 the general statutes or 8-26 of the 2008 supplement to the general
283 statutes shall be valid for five years provided the agency may establish
284 a specific time period within which any regulated activity shall be
285 conducted. Any permit issued under this section for any other activity
286 shall be valid for not less than two years and not more than five years.
287 Any such permit shall be renewed upon request of the permit holder
288 unless the agency finds that there has been a substantial change in
289 circumstances which requires a new permit application or an

290 enforcement action has been undertaken with regard to the regulated
291 activity for which the permit was issued provided no permit may be
292 valid for more than ten years.

293 (e) The inland wetlands agency may require a filing fee to be
294 deposited with the agency. The amount of such fee shall be sufficient
295 to cover the reasonable cost of reviewing and acting on applications
296 and petitions, including, but not limited to, the costs of certified
297 mailings, publications of notices and decisions and monitoring
298 compliance with permit conditions or agency orders.

299 (f) If a municipal inland wetlands agency regulates activities within
300 areas around wetlands or watercourses, such regulation shall (1) be in
301 accordance with the provisions of the inland wetlands regulations
302 adopted by such agency related to application for, and approval of,
303 activities to be conducted in wetlands or watercourses and (2) apply
304 only to those activities which are likely to impact or affect wetlands or
305 watercourses.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2008	22a-36
Sec. 2	October 1, 2008	22a-42
Sec. 3	October 1, 2008	22a-42a

ENV *Joint Favorable*

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 chamber thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

There is no fiscal impact to the state or municipalities to make a declaration about the state's public policy to prevent spoilage or destruction of inland wetlands and watercourses, to require certain parties to meet a burden of persuasion, or to require inland wetlands agencies to consider certain evidence.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**HB 5603*****AN ACT CONCERNING ENHANCEMENTS TO THE INLAND WETLANDS AND WATERCOURSES ACT.*****SUMMARY:**

This bill (1) declares that the state's public policy is to prevent inland wetlands and watercourses from being spoiled or destroyed; (2) requires anyone seeking to conduct a regulated activity in a inland wetland or watercourse to meet a specific burden of persuasion; and (3) requires inland-wetland agencies, when considering an application, to consider all relevant evidence brought before it.

EFFECTIVE DATE: October 1, 2008

INLAND WETLANDS AND WATERCOURSES PUBLIC POLICY

Recognizing that preserving and protecting wetlands and watercourses is in the public interest and essential to the health, welfare, and safety of Connecticut residents, the law declares that the purpose of the Inland-Wetlands and Watercourses Act (CGS §§ 22a-36 to 22a-45) is to balance the state's economic growth and the use of its land by protecting these resources, so that state residents and their descendants may enjoy and benefit from them. The bill specifically declares it state public policy to prevent inland wetlands and watercourses from being spoiled and destroyed.

Current law requires municipalities to regulate activities affecting inland wetlands and watercourses. The bill specifically requires municipalities to regulate these activities to preserve such areas and stop them from being spoiled and destroyed.

BURDEN OF PERSUASION

By law, a person seeking to conduct an activity that involves removing or depositing material, or obstructing, building in, altering, or polluting a wetland or watercourse (regulated activity), must obtain a permit from a municipal inland-wetlands agency. The law requires the agency to consider the proposed application's impact on the environment, feasible and prudent alternatives that would have less environmental impact, and several other factors (see BACKGROUND). The bill requires a person proposing to conduct a regulated activity in an inland wetland or watercourse to establish, by a preponderance of the evidence, that he or she is entitled to the permit. Preponderance of the evidence is the burden of persuasion in a civil trial. Current law does not require an inland-wetlands agency to apply a particular burden of persuasion when considering an application.

Relevant Evidence

In addition to the factors the agency must consider by law, the bill requires it to consider all relevant evidence brought before it by any person or entity, including:

1. scientific evidence and expert opinion;
2. direct observations of the proposed regulated activity;
3. environmental reviews, policy letters, and guidance documents provided by, or on behalf of, an environmental review team or the Department of Environmental Protection (DEP);
4. written comments or oral testimony submitted by the public health commissioner, or by or on behalf of, a water company responding to written notice it received according to law.

BACKGROUND

Preponderance of the Evidence

This is the burden of proof in a civil trial, in which the judge instructs the jury to find for the party that, on the whole, has the stronger evidence, however slight the edge might be. It is the greater weight of evidence, or superior evidentiary weight that, though not

sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other (*Black's Law Dictionary, Seventh Edition, 1999*).

Factors an Inland-Wetland Agency Must Consider

By law, in deciding whether to grant a permit an agency must consider:

1. the environmental impact of the proposed regulated activity on wetlands or watercourses;
2. the purpose of the proposed activity and whether any prudent and feasible which alternatives would cause less or no environmental impact to wetlands or watercourses;
3. the relationship between the short-term and long-term impacts of the proposed regulated activity on wetlands or watercourses and the maintenance and enhancement of long-term productivity of such wetlands or watercourses;
4. irreversible and irretrievable loss of wetland or watercourse resources that would be caused by the proposed regulated activity, including the extent to which such activity would foreclose a future ability to protect, enhance, or restore such resources, and any mitigation measures that may be considered as a condition of issuing a permit for such activity including measures to (a) prevent or minimize pollution or other environmental damage, (b) maintain or enhance existing environmental quality, or (c) in the following order of priority: restore, enhance, and create productive wetland or watercourse resources;
5. the character and degree of injury to, or interference with, safety, health, or the reasonable use of property caused or threatened by the proposed regulated activity; and
6. impact of the proposed regulated activity on wetlands or

watercourses outside the area for which the activity is proposed and future activities associated with, or reasonably related to, the proposed regulated activity which are made inevitable by the proposed regulated activity and which may have an impact on wetlands or watercourses (CGS § 22a-41).

Related Bill

SB 362, reported favorably by the Environment Committee, requires that an applicant establish, by a preponderance of the evidence, that he is entitled to conduct a regulated activity in a riverfront area, which the bill creates.

COMMITTEE ACTION

Environment Committee

Joint Favorable

Yea 21 Nay 9 (03/14/2008)