



# Senate

General Assembly

**File No. 257**

February Session, 2008

Substitute Senate Bill No. 362

*Senate, March 31, 2008*

The Committee on Environment reported through SEN. MEYER of the 12th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

## ***AN ACT CONCERNING RIVERFRONT PROTECTION.***

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 Section 22a-36 of the general statutes is repealed and the  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 (a) The inland wetlands and watercourses of the state of  
4 Connecticut are an indispensable and irreplaceable but fragile natural  
5 resource with which the citizens of the state have been endowed. The  
6 wetlands and watercourses are an interrelated web of nature essential  
7 to an adequate supply of surface and underground water; to  
8 hydrological stability and control of flooding and erosion; to the  
9 recharging and purification of groundwater; and to the existence of  
10 many forms of animal, aquatic and plant life. Many inland wetlands  
11 and watercourses have been destroyed or are in danger of destruction  
12 because of unregulated use by reason of the deposition, filling or  
13 removal of material, the diversion or obstruction of water flow, the  
14 erection of structures and other uses, all of which have despoiled,  
15 polluted and eliminated wetlands and watercourses. Such unregulated

16 activity has had, and will continue to have, a significant, adverse  
17 impact on the environment and ecology of the state of Connecticut and  
18 has and will continue to imperil the quality of the environment thus  
19 adversely affecting the ecological, scenic, historic and recreational  
20 values and benefits of the state for its citizens now and forever more.  
21 The preservation and protection of the wetlands and watercourses  
22 from random, unnecessary, undesirable and unregulated uses,  
23 disturbance or destruction is in the public interest and is essential to  
24 the health, welfare and safety of the citizens of the state. It is, therefore,  
25 the purpose of sections 22a-36 to 22a-45, inclusive, as amended by this  
26 act, 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.

44 (b) Protected, vegetated riverfront areas provide important public  
45 safety, public health, water purity and ecological benefits to the  
46 citizens of the state and the environment. Riverfront areas and  
47 associated vegetation and soils maintain the biological and ecological  
48 productivity of stream ecosystems, filter polluted stormwater runoff,  
49 protect water quality and public and private drinking water supplies,  
50 prevent erosion and provide sedimentation control, absorb overland

51 water flows in streamside soils, reduce the impact of flooding, and  
52 minimize the loss of property. Such areas and vegetation help preserve  
53 natural stream flow and aquifer recharge capabilities and proper water  
54 temperatures, provide travel corridors, food and cover for numerous  
55 wildlife species, preserve stream ecosystems, and protect fish and  
56 shellfish. These functions provide and enhance important  
57 socioeconomic benefits, including, but not limited to, scenic vistas and  
58 recreational opportunities, a desirable quality of life for the citizens of  
59 the state, increased tourism and attractive settings for waterfront  
60 businesses.

61 Sec. 2. Section 22a-37 of the general statutes is repealed and the  
62 following is substituted in lieu thereof (*Effective October 1, 2008*):

63 Sections 22a-36 to 22a-45, inclusive, as amended by this act, shall be  
64 known and may be cited as the "Inland Wetlands and Watercourses  
65 and Riverfront Protection Act".

66 Sec. 3. Section 22a-38 of the general statutes is repealed and the  
67 following is substituted in lieu thereof (*Effective October 1, 2008*):

68 As used in sections 22a-36 to 22a-45a, inclusive, as amended by this  
69 act:

70 (1) "Commissioner" means the Commissioner of Environmental  
71 Protection;

72 (2) "Person" means any person, firm, partnership, association,  
73 corporation, limited liability company, company, organization or legal  
74 entity of any kind, including municipal corporations, governmental  
75 agencies or subdivisions thereof;

76 (3) "Municipality" means any town, consolidated town and city,  
77 consolidated town and borough, city and borough;

78 (4) "Inland wetlands agency" means a municipal board or  
79 commission established pursuant to and acting under section 22a-42,  
80 as amended by this act;

81 (5) "Soil scientist" means an individual duly qualified in accordance  
82 with standards set by the federal Office of Personnel Management;

83 (6) "Material" means any substance, solid or liquid, organic or  
84 inorganic, including, but not limited to soil, sediment, aggregate, land,  
85 gravel, clay, bog, mud, debris, sand, refuse or waste;

86 (7) "Waste" means sewage or any substance, liquid, gaseous, solid or  
87 radioactive, which may pollute or tend to pollute any of the waters of  
88 the state;

89 (8) "Pollution" means harmful thermal effect or the contamination or  
90 rendering unclean or impure of any waters of the state by reason of  
91 any waste or other materials discharged or deposited therein by any  
92 public or private sewer or otherwise so as directly or indirectly to  
93 come in contact with any waters;

94 (9) "Rendering unclean or impure" means any alteration of the  
95 physical, chemical or biological properties of any of the waters of the  
96 state, including, but not limited to change in odor, color, turbidity or  
97 taste;

98 (10) "Discharge" means the emission of any water, substance or  
99 material into waters of the state whether or not such substance causes  
100 pollution;

101 (11) "Remove" includes, but shall not be limited to drain, excavate,  
102 mine, dig, dredge, suck, bulldoze, dragline or blast;

103 (12) "Deposit" includes, but shall not be limited to, fill, grade, dump,  
104 place, discharge or emit;

105 (13) "Regulated activity" means any operation within or use of a  
106 wetland or watercourse or riverfront area involving removal or  
107 deposition of material, or any obstruction, construction, alteration or  
108 pollution, of such wetlands or watercourses or riverfront areas, but  
109 shall not include the specified activities in section 22a-40, as amended  
110 by this act;

111 (14) "License" means the whole or any part of any permit, certificate  
112 of approval or similar form of permission which may be required of  
113 any person by the provisions of sections 22a-36 to 22a-45a, inclusive, as  
114 amended by this act;

115 (15) "Wetlands" means land, including submerged land, not  
116 regulated pursuant to sections 22a-28 to 22a-35, inclusive, which  
117 consists of any of the soil types designated as poorly drained, very  
118 poorly drained, alluvial, and floodplain by the National Cooperative  
119 Soils Survey, as may be amended from time to time, of the Natural  
120 Resources Conservation Service of the United States Department of  
121 Agriculture;

122 (16) "Watercourses" means rivers, streams, brooks, waterways,  
123 lakes, ponds, marshes, swamps, bogs and all other bodies of water,  
124 natural or artificial, vernal or intermittent, public or private, which are  
125 contained within, flow through or border upon this state or any  
126 portion thereof, not regulated pursuant to sections 22a-28 to 22a-35,  
127 inclusive. Intermittent watercourses shall be delineated by a defined  
128 permanent channel and bank and the occurrence of two or more of the  
129 following characteristics: (A) Evidence of scour or deposits of recent  
130 alluvium or detritus, (B) the presence of standing or flowing water for  
131 a duration longer than a particular storm incident, and (C) the  
132 presence of hydrophytic vegetation;

133 (17) "Feasible" means able to be constructed or implemented  
134 consistent with sound engineering principles;

135 (18) "Prudent" means economically and otherwise reasonable in  
136 light of the social benefits to be derived from the proposed regulated  
137 activity provided cost may be considered in deciding what is prudent  
138 and further provided a mere showing of expense will not necessarily  
139 mean an alternative is imprudent;

140 (19) "Riverfront area" means the area of land situated between the  
141 ordinary high water mark of a river and a parallel line located one  
142 hundred feet away, measured outward horizontally from the ordinary

143 high water mark of the river;

144 (20) "Ordinary high water mark" means the line on the shore of a  
145 river established by the fluctuations of water and indicated by physical  
146 characteristics such as a readily identifiable, natural line impressed on  
147 the river bank or shelving, or by changes in the character of the soil or  
148 absence of terrestrial vegetation;

149 (21) "Vegetation" means naturally occurring shrubs, trees or other  
150 plants but does not include lawns; and

151 (22) "Clear cutting" means removal of more than eighty per cent of  
152 standing vegetation greater than two inches in diameter at breast  
153 height in a riverfront area.

154 Sec. 4. Section 22a-39 of the general statutes is repealed and the  
155 following is substituted in lieu thereof (*Effective October 1, 2008*):

156 The commissioner shall:

157 (a) Exercise general supervision of the administration and  
158 enforcement of sections 22a-36 to 22a-45, inclusive, as amended by this  
159 act;

160 (b) Develop comprehensive programs in furtherance of the  
161 purposes of said sections;

162 (c) Advise, consult and cooperate with other agencies of the state,  
163 the federal government, other states and with persons and  
164 municipalities in furtherance of the purposes of said sections;

165 (d) Encourage, participate in or conduct studies, investigations,  
166 research and demonstrations, and collect and disseminate information,  
167 relating to the purposes of said sections;

168 (e) Retain and employ consultants and assistants on a contract or  
169 other basis for rendering legal, financial, technical or other assistance  
170 and advice in furtherance of any of its purposes, specifically including,  
171 but not limited to, soil scientists on a cost-sharing basis with the

172 United States Soil Conservation Service for the purpose of (1)  
173 completing the state soils survey and (2) making on-site  
174 interpretations, evaluations and findings as to soil types;

175 (f) Adopt such regulations, in accordance with the provisions of  
176 chapter 54, as are necessary to protect the wetlands or watercourses or  
177 any of them individually or collectively;

178 (g) Inventory or index the wetlands and watercourses in such form,  
179 including pictorial representations, as the commissioner deems best  
180 suited to effectuate the purposes of sections 22a-36 to 22a-45, inclusive,  
181 as amended by this act;

182 (h) Grant, deny, limit or modify in accordance with the provisions  
183 of section 22a-42a, as amended by this act, an application for a license  
184 or permit for any proposed regulated activity conducted by any  
185 department, agency or instrumentality of the state, except any local or  
186 regional board of education, (1) after an advisory decision on such  
187 license or permit has been rendered to the commissioner by the  
188 wetland agency of the municipality within which such wetland is  
189 located or (2) thirty-five days after receipt by the commissioner of such  
190 application, whichever occurs first;

191 (i) Grant, deny, limit or modify in accordance with the provisions of  
192 section 22a-42, as amended by this act, and section 22a-42a, as  
193 amended by this act, an application for a license or permit for any  
194 proposed regulated activity within a municipality which does not  
195 regulate its wetlands and watercourses;

196 (j) Exercise all incidental powers including but not limited to the  
197 issuance of orders necessary to enforce rules and regulations and to  
198 carry out the purposes of sections 22a-36 to 22a-45, inclusive, as  
199 amended by this act;

200 (k) Conduct a public hearing no sooner than thirty days and not  
201 later than sixty days following the receipt by said commissioner of any  
202 inland wetlands application, provided whenever the commissioner

203 determines that the regulated activity for which a permit is sought is  
204 not likely to have a significant impact on the wetland or watercourse,  
205 he may waive the requirement for public hearing after (1) publishing  
206 notice, in a newspaper having general circulation in each town  
207 wherever the proposed work or any part thereof is located, of his  
208 intent to waive said requirement, and (2) mailing notice of such intent  
209 to the chief administrative officer in the town or towns where the  
210 proposed work, or any part thereof, is located, and the chairman of the  
211 conservation commission and inland wetlands agency of each such  
212 town or towns, except that the commissioner shall hold a hearing on  
213 such application upon receipt, within thirty days after such notice has  
214 been published or mailed, of a petition signed by at least twenty-five  
215 persons requesting such a hearing. The commissioner shall (1) publish  
216 notice of such hearing at least once not more than thirty days and not  
217 fewer than ten days before the date set for the hearing in a newspaper  
218 having a general circulation in each town where the proposed work, or  
219 any part thereof, is located, and (2) mail notice of such hearing to the  
220 chief administrative officer in the town or towns where the proposed  
221 work, or any part thereof, is located, and the chairman of the  
222 conservation commission and inland wetlands agency of each such  
223 town or towns. All applications and maps and documents relating  
224 thereto shall be open for public inspection at the office of the  
225 commissioner. The commissioner shall state upon his records his  
226 findings and reasons for the action taken;

227 (l) Develop a comprehensive training program for inland wetlands  
228 agency members;

229 (m) Adopt regulations in accordance with the provisions of chapter  
230 54 establishing reporting requirements for inland wetlands agencies,  
231 which shall include provisions for reports to the commissioner on  
232 permits, orders and other actions of such agencies and development of  
233 a form for such reports; [and]

234 (n) The commissioner shall issue a certificate to any member of a  
235 municipal inland wetlands agency or its staff who completes the

236 training program offered annually by the commissioner for such  
237 officials; and

238 (o) Not later than July 1, 2009, the commissioner shall, in  
239 consultation with interested parties and the Commissioner of Public  
240 Health, develop a guidance document designed to assist and educate  
241 municipal inland wetlands agency members regarding the protection  
242 of riverfront areas defined in section 22a-38, as amended by this act.  
243 The guidance document shall identify management practices  
244 associated with activities proposed within such riverfront areas to  
245 ensure compliance with the purposes and provisions of sections 22a-36  
246 to 22a-42a, inclusive, as amended by this act. The Commissioner of  
247 Environmental Protection shall post the guidance document on the  
248 Department of Environmental Protection's Internet web site.

249 Sec. 5. Section 22a-40 of the general statutes is repealed and the  
250 following is substituted in lieu thereof (*Effective October 1, 2008*):

251 (a) The following operations and uses shall be permitted in  
252 wetlands and watercourses and riverfront areas, as of right:

253 (1) Grazing, farming, nurseries, gardening and harvesting of crops  
254 and farm ponds of three acres or less essential to the farming  
255 operation, and activities conducted by, or under the authority of, the  
256 Department of Environmental Protection for the purposes of wetland  
257 or watercourse or riverfront area restoration or enhancement or  
258 mosquito control. The provisions of this subdivision shall not be  
259 construed to include road construction or the erection of buildings not  
260 directly related to the farming operation, relocation of watercourses  
261 with continual flow, filling or reclamation of wetlands or watercourses  
262 or riverfront areas with continual flow, clear cutting of timber except  
263 for the expansion of agricultural crop land, the mining of top soil, peat,  
264 sand, gravel or similar material from wetlands or watercourses or  
265 riverfront areas for the purposes of sale;

266 (2) (A) For wetlands and watercourses: A residential home (i) for  
267 which a building permit has been issued, or (ii) on a subdivision lot,

268 provided the permit has been issued or the subdivision has been  
269 approved by a municipal planning, zoning or planning and zoning  
270 commission as of the effective date of promulgation of the municipal  
271 regulations pursuant to subsection (b) of section 22a-42a, as amended  
272 by this act, or as of July 1, 1974, whichever is earlier, and further  
273 provided no residential home shall be permitted as of right pursuant  
274 to this subdivision unless the permit was obtained on or before July 1,  
275 1987; (B) for riverfront areas: A residential home (i) for which a  
276 building permit has been issued, or (ii) on a subdivision lot, provided  
277 the permit has been issued or the subdivision has been approved by a  
278 municipal planning, zoning or planning and zoning commission;

279 (3) Boat anchorage or mooring;

280 (4) Uses incidental to the enjoyment and maintenance of residential  
281 property, such property defined as equal to or smaller than the largest  
282 minimum residential lot site permitted anywhere in the municipality,  
283 provided in any town, where there are no zoning regulations  
284 establishing minimum residential lot sites, the largest minimum lot site  
285 shall be two acres. Such incidental uses shall include maintenance of  
286 existing structures and landscaping but shall not include removal or  
287 deposition of significant amounts of material from or onto a wetland  
288 or watercourse or riverfront area or diversion or alteration of a  
289 watercourse or riverfront area;

290 (5) Construction and operation, by water companies as defined in  
291 section 16-1 of the 2008 supplement to the general statutes or by  
292 municipal water supply systems as provided for in chapter 102, of  
293 dams, reservoirs and other facilities necessary to the impounding,  
294 storage and withdrawal of water in connection with public water  
295 supplies except as provided in sections 22a-401 and 22a-403; and

296 (6) Maintenance relating to any drainage pipe which existed before  
297 the effective date of any municipal regulations adopted pursuant to  
298 section 22a-42a, as amended by this act, or July 1, 1974, whichever is  
299 earlier, provided such pipe is on property which is zoned as residential  
300 but which does not contain hydrophytic vegetation. For purposes of

301 this subdivision, "maintenance" means the removal of accumulated  
302 leaves, soil, and other debris whether by hand or machine, while the  
303 pipe remains in place.

304 (b) The following additional uses shall be permitted as of right in  
305 riverfront areas:

306 (1) Forestry activities supervised by a forest practitioner certified  
307 pursuant to section 23-65h, in accordance with a forest management  
308 plan, provided no clear cutting occurs within the riverfront area;

309 (2) The continuous use, repair, maintenance or replacement of any  
310 existing land use, structure, parking, street facility or flood control  
311 structure located in a riverfront area, provided the replacement of the  
312 land use, structure, parking, street facility or flood control structure  
313 does not exceed the footprint of the existing land use, structure,  
314 parking, street facility or flood control structure;

315 (3) Construction, operation or maintenance of a transportation  
316 facility or improvement operated by the state of Connecticut, or the  
317 construction, expansion, repair, replacement, operation or  
318 maintenance of public or private wastewater treatment plants and  
319 their related structures, conveyance systems or facilities, including any  
320 associated utility lines;

321 (4) Construction or maintenance of utility rights-of-way and  
322 facilities, including, but not limited to, electric, gas, water, sewer and  
323 communication lines; and

324 (5) The reuse of riverfront areas containing existing structures,  
325 including, but not limited to, abandoned mills, industrial or  
326 commercial structures, and associated parking and street facilities.

327 [(b)] (c) The following operations and uses shall be permitted, as  
328 nonregulated uses in wetlands and watercourses, provided they do not  
329 disturb the natural and indigenous character of the wetland or  
330 watercourse by removal or deposition of material, alteration or  
331 obstruction of water flow or pollution of the wetland or watercourse:

332 (1) Conservation of soil, vegetation, water, fish, shellfish and  
333 wildlife; and

334 (2) Outdoor recreation, including play and sporting areas, golf  
335 courses, field trials, nature study, hiking, horseback riding, swimming,  
336 skin diving, camping, boating, water skiing, trapping, hunting, fishing  
337 and shellfishing where otherwise legally permitted and regulated.

338 [(c)] (d) Any dredging or any erection, placement, retention or  
339 maintenance of any structure, fill, obstruction or encroachment, or any  
340 work incidental to such activities, conducted by a state agency, which  
341 activity is regulated under sections 22a-28 to 22a-35, inclusive, or  
342 sections 22a-359b to 22a-363f, inclusive, shall not require any permit or  
343 approval under sections 22a-36 to 22a-45, inclusive, as amended by this  
344 act.

345 Sec. 6. Section 22a-41 of the general statutes is repealed and the  
346 following is substituted in lieu thereof (*Effective October 1, 2008*):

347 (a) In carrying out the purposes and policies of sections 22a-36 to  
348 22a-45a, inclusive, as amended by this act, including matters relating to  
349 regulating, licensing and enforcing of the provisions related to  
350 wetlands and watercourses thereof, the commissioner shall take into  
351 consideration all relevant facts and circumstances, including but not  
352 limited to:

353 (1) The environmental impact of the proposed regulated activity on  
354 wetlands or watercourses;

355 (2) The applicant's purpose for, and any feasible and prudent  
356 alternatives to, the proposed regulated activity which alternatives  
357 would cause less or no environmental impact to wetlands or  
358 watercourses;

359 (3) The relationship between the short-term and long-term impacts  
360 of the proposed regulated activity on wetlands or watercourses and  
361 the maintenance and enhancement of long-term productivity of such  
362 wetlands or watercourses;

363 (4) Irreversible and irretrievable loss of wetland or watercourse  
364 resources which would be caused by the proposed regulated activity,  
365 including the extent to which such activity would foreclose a future  
366 ability to protect, enhance or restore such resources, and any  
367 mitigation measures which may be considered as a condition of  
368 issuing a permit for such activity including, but not limited to,  
369 measures to (A) prevent or minimize pollution or other environmental  
370 damage, (B) maintain or enhance existing environmental quality, or  
371 (C) in the following order of priority: Restore, enhance and create  
372 productive wetland or watercourse resources;

373 (5) The character and degree of injury to, or interference with,  
374 safety, health or the reasonable use of property which is caused or  
375 threatened by the proposed regulated activity; and

376 (6) Impacts of the proposed regulated activity on wetlands or  
377 watercourses outside the area for which the activity is proposed and  
378 future activities associated with, or reasonably related to, the proposed  
379 regulated activity which are made inevitable by the proposed  
380 regulated activity and which may have an impact on wetlands or  
381 watercourses.

382 (b) (1) In the case of an application which received a public hearing  
383 pursuant to (A) subsection (k) of section 22a-39, as amended by this  
384 act, or (B) a finding by the inland wetlands agency that the proposed  
385 activity may have a significant impact on wetlands or watercourses, a  
386 permit shall not be issued unless the commissioner finds on the basis  
387 of the record that a feasible and prudent alternative does not exist. In  
388 making his finding, the commissioner shall consider the facts and  
389 circumstances set forth in subsection (a) of this section. The finding  
390 and the reasons therefor shall be stated on the record in writing.

391 (2) In the case of an application which is denied on the basis of a  
392 finding that there may be feasible and prudent alternatives to the  
393 proposed regulated activity which have less adverse impact on  
394 wetlands or watercourses, the commissioner or the inland wetlands  
395 agency, as the case may be, shall propose on the record in writing the

396 types of alternatives which the applicant may investigate provided this  
397 subdivision shall not be construed to shift the burden from the  
398 applicant to prove that he is entitled to the permit or to present  
399 alternatives to the proposed regulated activity.

400 (c) For purposes of this section, (1) "wetlands or watercourses"  
401 includes aquatic, plant or animal life and habitats in wetlands or  
402 watercourses, and (2) "habitats" means areas or environments in which  
403 an organism or biological population normally lives or occurs.

404 (d) A municipal inland wetlands agency shall not deny or condition  
405 an application for a regulated activity in an area outside wetlands or  
406 watercourses on the basis of an impact or effect on aquatic, plant, or  
407 animal life unless such activity will likely impact or affect the physical  
408 characteristics of such wetlands or watercourses.

409 (e) Neither the commissioner nor any inland wetland agency shall  
410 approve of any regulated activity located within a riverfront area,  
411 unless the applicant has proven by a preponderance of the evidence  
412 that such regulated activity is both consistent with the provisions of  
413 sections 22a-36 to 22a-42a, inclusive, as amended by this act and will  
414 have no adverse impact on the riverfront area's natural functions in  
415 providing the following benefits:

416 (1) Reducing the likelihood of flooding and the need for flood  
417 controls;

418 (2) Preventing storm damage;

419 (3) Protecting public and private drinking water supplies from  
420 harmful contamination;

421 (4) Preventing erosion and providing sedimentation controls;

422 (5) Preventing nonpoint water pollution, including, but not limited  
423 to, pollution by pathogens, nutrients, heavy metals, pesticides,  
424 herbicides, sediment, hydrocarbons and thermal pollution;

425 (6) Protecting the state's fisheries and shellfish; and

426 (7) Protecting wildlife habitat.

427 (f) Management practices contained in the guidance document  
428 prepared by the Commissioner of Environmental Protection pursuant  
429 to section 22a-39, as amended by this act, shall establish a rebuttable  
430 presumption that such practices will prevent adverse impacts on the  
431 riverfront area's natural functions and benefits identified in section  
432 22a-36, as amended by this act.

433 (g) In the case of an application for activity within a riverfront area  
434 that is denied on the basis of a finding that there are feasible and  
435 prudent alternatives to the proposed regulated activity that have less  
436 adverse impact on the riverfront area, the inland wetlands agency shall  
437 propose on the record and in writing, such feasible and prudent  
438 alternatives. The provisions of this subsection shall not be construed to  
439 shift the burden from the applicant to prove that such applicant is  
440 entitled to the permit or for such applicant to present alternatives to  
441 the proposed regulated activity.

442 Sec. 7. Section 22a-42 of the general statutes is repealed and the  
443 following is substituted in lieu thereof (*Effective October 1, 2008*):

444 (a) To carry out and effectuate the purposes and policies of sections  
445 22a-36 to 22a-45a, inclusive, as amended by this act, it is hereby  
446 declared to be the public policy of the state to require municipal  
447 regulation of activities affecting the wetlands and watercourses within  
448 the territorial limits of the various municipalities or districts and to  
449 regulate riverfront areas to preserve and restore such areas and to  
450 prevent the despoliation and destruction thereof, in order to protect  
451 the private or public drinking water supply, provide flood control,  
452 prevent storm damage, prevent water pollution, protect wildlife  
453 habitat and to protect fisheries and shell fisheries in the state.

454 (b) Any municipality may acquire wetlands and watercourses and  
455 riverfront areas within its territorial limits by gift or purchase, in fee or

456 lesser interest including, but not limited to, lease, easement or  
457 covenant, subject to such reservations and exceptions as it deems  
458 advisable.

459 (c) On or before July 1, 2009, each municipality shall direct its inland  
460 wetlands agency to administer and protect riverfront areas and  
461 authorize such inland wetlands agency to carry out the provisions of  
462 sections 22a-36 to 22a-42a, inclusive, as amended by this act. On or  
463 before July 1, 1988, each municipality shall establish an inland  
464 wetlands agency or authorize an existing board or commission to carry  
465 out the provisions of sections 22a-36 to 22a-45, inclusive, as amended  
466 by this act. Each municipality, acting through its legislative body, may  
467 authorize any board or commission, as may be by law authorized to  
468 act, or may establish a new board or commission to promulgate such  
469 regulations, in conformity with the regulations adopted by the  
470 commissioner pursuant to section 22a-39, as amended by this act, as  
471 are necessary to protect the wetlands and watercourses within its  
472 territorial limits. The ordinance establishing the new board or  
473 commission shall determine the number of members and alternate  
474 members, the length of their terms, the method of selection and  
475 removal and the manner for filling vacancies in the new board or  
476 commission. No member or alternate member of such board or  
477 commission shall participate in the hearing or decision of such board  
478 or commission of which he is a member upon any matter in which he  
479 is directly or indirectly interested in a personal or financial sense. In  
480 the event of such disqualification, such fact shall be entered on the  
481 records of such board or commission and replacement shall be made  
482 from alternate members of an alternate to act as a member of such  
483 commission in the hearing and determination of the particular matter  
484 or matters in which the disqualification arose. For the purposes of this  
485 section, the board or commission authorized by the municipality or  
486 district, as the case may be, shall serve as the sole agent for the  
487 licensing of regulated activities.

488 (d) At least one member of the inland wetlands agency or staff of  
489 the agency shall be a person who has completed the comprehensive

490 training program developed by the commissioner pursuant to section  
491 22a-39, as amended by this act. Failure to have a member of the agency  
492 or staff with training shall not affect the validity of any action of the  
493 agency. The commissioner shall annually make such program  
494 available to one person from each town without cost to that person or  
495 the town. Each inland wetlands agency shall hold a meeting at least  
496 once annually at which information is presented to the members of the  
497 agency which summarizes the provisions of the training program. The  
498 commissioner shall develop such information in consultation with  
499 interested persons affected by the regulation of inland wetlands and  
500 shall provide for distribution of video presentations and related  
501 written materials which convey such information to inland wetlands  
502 agencies. In addition to such materials, the commissioner, in  
503 consultation with such persons, shall prepare materials which provide  
504 guidance to municipalities in carrying out the provisions of subsection  
505 (f) of section 22a-42a, as amended by this act.

506 (e) Any municipality, pursuant to ordinance, may act through the  
507 board or commission authorized in subsection (c) of this section to join  
508 with any other municipalities in the formation of a district for the  
509 regulation of activities affecting the wetlands and watercourses within  
510 such district. Any city or borough may delegate its authority to  
511 regulate inland wetlands under this section to the town in which it is  
512 located.

513 (f) Municipal or district ordinances or regulations may embody any  
514 regulations promulgated hereunder, in whole or in part, or may  
515 consist of other ordinances or regulations in conformity with  
516 regulations promulgated hereunder. Any ordinances or regulations  
517 shall be for the purpose of effectuating the purposes of sections 22a-36  
518 to 22a-45, inclusive, as amended by this act, and, a municipality or  
519 district, in acting upon ordinances and regulations shall incorporate  
520 the factors set forth in section 22a-41, as amended by this act.

521 (g) Nothing contained in this section shall be construed to limit the  
522 existing authority of a municipality or any boards or commissions of

523 the municipality, provided the commissioner shall retain authority to  
524 act on any application filed with said commissioner prior to the  
525 establishment or designation of an inland wetlands agency by a  
526 municipality.

527 Sec. 8. Section 22a-42a of the general statutes is repealed and the  
528 following is substituted in lieu thereof (*Effective October 1, 2008*):

529 (a) The inland wetlands agencies authorized in section 22a-42, as  
530 amended by this act, shall through regulation provide for (1) the  
531 manner in which the boundaries of inland wetland and watercourse  
532 areas and riverfront areas in their respective municipalities shall be  
533 established and amended or changed, (2) the form for an application to  
534 conduct regulated activities, (3) notice and publication requirements,  
535 (4) criteria and procedures for the review of applications, and (5)  
536 administration and enforcement.

537 (b) No regulations of an inland wetlands agency including  
538 boundaries of inland wetland and watercourse areas and riverfront  
539 areas shall become effective or be established until after a public  
540 hearing in relation thereto is held by the inland wetlands agency. Any  
541 such hearing shall be held in accordance with the provisions of section  
542 8-7d of the 2008 supplement to the general statutes. A copy of such  
543 proposed regulation or boundary shall be filed in the office of the  
544 town, city or borough clerk as the case may be, in such municipality,  
545 for public inspection at least ten days before such hearing, and may be  
546 published in full in such paper. A copy of the notice and the proposed  
547 regulations or amendments thereto, except determinations of  
548 boundaries, shall be provided to the commissioner at least thirty-five  
549 days before such hearing. Such regulations and inland wetland and  
550 watercourse and riverfront area boundaries may be from time to time  
551 amended, changed or repealed, by majority vote of the inland  
552 wetlands agency, after a public hearing in relation thereto is held by  
553 the inland wetlands agency, in accordance with the provisions of  
554 section 8-7d of the 2008 supplement to the general statutes.  
555 Regulations or boundaries or changes therein shall become effective at

556 such time as is fixed by the inland wetlands agency, provided a copy  
557 of such regulation, boundary or change shall be filed in the office of  
558 the town, city or borough clerk, as the case may be. Whenever an  
559 inland wetlands agency makes a change in regulations or boundaries it  
560 shall state upon its records the reason why the change was made and  
561 shall provide a copy of such regulation, boundary or change to the  
562 Commissioner of Environmental Protection no later than ten days after  
563 its adoption provided failure to submit such regulation, boundary or  
564 change shall not impair the validity of such regulation, boundary or  
565 change. All petitions submitted in writing and in a form prescribed by  
566 the inland wetlands agency, requesting a change in the regulations or  
567 the boundaries of an inland wetland and watercourse area and  
568 riverfront area shall be considered at a public hearing held in  
569 accordance with the provisions of section 8-7d of the 2008 supplement  
570 to the general statutes. The failure of the inland wetlands agency to act  
571 within any time period specified in this subsection, or any extension  
572 thereof, shall not be deemed to constitute approval of the petition.

573 (c) (1) On and after the effective date of the municipal regulations  
574 promulgated pursuant to subsection (b) of this section, no regulated  
575 activity shall be conducted upon any inland wetland or watercourse or  
576 riverfront area without a permit. Any person proposing to conduct or  
577 cause to be conducted a regulated activity upon an inland wetland or  
578 watercourse or riverfront area shall file an application with the inland  
579 wetlands agency of the town or towns wherein the wetland or  
580 watercourse or riverfront area in question is located. The application  
581 shall be in such form and contain such information as the inland  
582 wetlands agency may prescribe. The date of receipt of an application  
583 shall be determined in accordance with the provisions of subsection (c)  
584 of section 8-7d of the 2008 supplement to the general statutes. The  
585 inland wetlands agency shall not hold a public hearing on such  
586 application unless the inland wetlands agency determines that the  
587 proposed activity may have a significant impact on wetlands or  
588 watercourses or riverfront area, a petition signed by at least  
589 twenty-five persons who are eighteen years of age or older and who  
590 reside in the municipality in which the regulated activity is proposed,

591 requesting a hearing is filed with the agency not later than fourteen  
592 days after the date of receipt of such application, or the agency finds  
593 that a public hearing regarding such application would be in the  
594 public interest. An inland wetlands agency may issue a permit without  
595 a public hearing provided no petition provided for in this subsection is  
596 filed with the agency on or before the fourteenth day after the date of  
597 receipt of the application. Such hearing shall be held in accordance  
598 with the provisions of section 8-7d of the 2008 supplement to the  
599 general statutes. If the inland wetlands agency, or its agent, fails to act  
600 on any application within thirty-five days after the completion of a  
601 public hearing or in the absence of a public hearing within sixty-five  
602 days from the date of receipt of the application, or within any  
603 extension of any such period as provided in section 8-7d of the 2008  
604 supplement to the general statutes, the applicant may file such  
605 application with the Commissioner of Environmental Protection who  
606 shall review and act on such application in accordance with this  
607 section. Any costs incurred by the commissioner in reviewing such  
608 application for such inland wetlands agency shall be paid by the  
609 municipality that established or authorized the agency. Any fees that  
610 would have been paid to such municipality if such application had not  
611 been filed with the commissioner shall be paid to the state. The failure  
612 of the inland wetlands agency or the commissioner to act within any  
613 time period specified in this subsection, or any extension thereof, shall  
614 not be deemed to constitute approval of the application.

615 (2) An inland wetlands agency may delegate to its duly authorized  
616 agent the authority to approve or extend an activity that is not located  
617 in a wetland or watercourse or riverfront area when such agent finds  
618 that the conduct of such activity would result in no greater than a  
619 minimal impact on any wetland or watercourse or riverfront area,  
620 provided such agent has completed the comprehensive training  
621 program developed by the commissioner pursuant to section 22a-39, as  
622 amended by this act. Notwithstanding the provisions for receipt and  
623 processing applications prescribed in subdivision (1) of this subsection,  
624 such agent may approve or extend such an activity at any time. Any  
625 person receiving such approval from such agent shall, within ten days

626 of the date of such approval, publish, at the applicant's expense, notice  
627 of the approval in a newspaper having a general circulation in the  
628 town wherein the activity is located or will have an effect. Any person  
629 may appeal such decision of such agent to the inland wetlands agency  
630 within fifteen days after the publication date of the notice and the  
631 inland wetlands agency shall consider such appeal at its next regularly  
632 scheduled meeting provided such meeting is no earlier than three  
633 business days after receipt by such agency or its agent of such appeal.  
634 The inland wetlands agency shall, at its discretion, sustain, alter or  
635 reject the decision of its agent or require an application for a permit in  
636 accordance with subdivision (1) of subsection (c) of this section.

637 (d) (1) In granting, denying or limiting any permit for a regulated  
638 activity the inland wetlands agency, or its agent, shall consider the  
639 factors set forth in section 22a-41, as amended by this act, and such  
640 agency, or its agent, shall state upon the record the reason for its  
641 decision. In granting a permit the inland wetlands agency, or its agent,  
642 may grant the application as filed or grant it upon other terms,  
643 conditions, limitations or modifications of the regulated activity which  
644 are designed to carry out the policy of sections 22a-36 to 22a-45,  
645 inclusive, as amended by this act. Such terms may include any  
646 reasonable measures which would mitigate the impacts of the  
647 regulated activity and which would (A) prevent or minimize pollution  
648 or other environmental damage, (B) maintain or enhance existing  
649 environmental quality, or (C) in the following order of priority:  
650 Restore, enhance and create productive wetland or watercourse or  
651 riverfront area resources. No person shall conduct any regulated  
652 activity within an inland wetland or watercourse or riverfront area  
653 which requires zoning or subdivision approval without first having  
654 obtained a valid certificate of zoning or subdivision approval, special  
655 permit, special exception or variance or other documentation  
656 establishing that the proposal complies with the zoning or subdivision  
657 requirements adopted by the municipality pursuant to chapters 124 to  
658 126, inclusive, or any special act. The agency may suspend or revoke a  
659 permit if it finds after giving notice to the permittee of the facts or  
660 conduct which warrant the intended action and after a hearing at

661 which the permittee is given an opportunity to show compliance with  
662 the requirements for retention of the permit, that the applicant has not  
663 complied with the conditions or limitations set forth in the permit or  
664 has exceeded the scope of the work as set forth in the application. The  
665 applicant shall be notified of the agency's decision by certified mail  
666 within fifteen days of the date of the decision and the agency shall  
667 cause notice of their order in issuance, denial, revocation or suspension  
668 of a permit to be published in a newspaper having a general  
669 circulation in the town wherein the wetland or watercourse lies. In any  
670 case in which such notice is not published within such fifteen-day  
671 period, the applicant may provide for the publication of such notice  
672 within ten days thereafter.

673 (2) Any permit issued under this section for the development of  
674 property for which an approval is required under section 8-3 of the  
675 2008 supplement to the general statutes, 8-25 of the 2008 supplement to  
676 the general statutes or 8-26 of the 2008 supplement to the general  
677 statutes shall be valid for five years provided the agency may establish  
678 a specific time period within which any regulated activity shall be  
679 conducted. Any permit issued under this section for any other activity  
680 shall be valid for not less than two years and not more than five years.  
681 Any such permit shall be renewed upon request of the permit holder  
682 unless the agency finds that there has been a substantial change in  
683 circumstances which requires a new permit application or an  
684 enforcement action has been undertaken with regard to the regulated  
685 activity for which the permit was issued provided no permit may be  
686 valid for more than ten years.

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

693 (f) If a municipal inland wetlands agency regulates activities within

694 areas around wetlands or watercourses or riverfront areas, such  
 695 regulation shall (1) be in accordance with the provisions of the inland  
 696 wetlands regulations adopted by such agency related to application  
 697 for, and approval of, activities to be conducted in wetlands or  
 698 watercourses or riverfront areas, and (2) apply only to those activities  
 699 which are likely to impact or affect wetlands or watercourses or  
 700 riverfront areas. Nothing in sections 1 to 8, inclusive, of this act  
 701 regarding riverfront areas shall be construed to expand or diminish the  
 702 jurisdiction of municipal inland wetlands agencies regarding activities  
 703 located within wetlands or watercourses, as defined in section 22a-38,  
 704 as amended by this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2008</i>	22a-36
Sec. 2	<i>October 1, 2008</i>	22a-37
Sec. 3	<i>October 1, 2008</i>	22a-38
Sec. 4	<i>October 1, 2008</i>	22a-39
Sec. 5	<i>October 1, 2008</i>	22a-40
Sec. 6	<i>October 1, 2008</i>	22a-41
Sec. 7	<i>October 1, 2008</i>	22a-42
Sec. 8	<i>October 1, 2008</i>	22a-42a

**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 chamber thereof for any purpose:

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Department of Environmental Protection	GF - Cost	288,000	296,640
Comptroller Misc. Accounts (Fringe Benefits) <sup>1</sup>	GF - Cost	73,037	173,920
Department of Environmental Protection	GF - Potential Revenue Gain	Minimal	Minimal

Note: GF=General Fund

**Municipal Impact:**

Municipalities	Effect	FY 09 \$	FY 10 \$
Various Municipalities	STATE MANDATE - Cost	Potential Significant	Potential Significant

**Explanation**

The bill would result in a cost to the Department of Environmental Protection (DEP) for six additional Environmental Analyst II positions, at a cost of \$288,000 in FY 09 and \$296,640 in FY 10. This would result in costs of \$73,037 in FY 09 and \$173,920 in FY 10 to the Comptroller for related fringe benefits.

Two of the positions would be responsible for expansion of the training program for municipal officials. Two would provide technical assistance related to the necessary scientific research and best management practices, since the bill requires DEP to produce a

<sup>1</sup> The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The first year fringe benefit costs for new positions do not include pension costs. The estimated first year fringe benefit rate as a percentage of payroll is 25.36%. The state's pension contribution is based upon the prior year's certification by the actuary for the State

guidance document for municipal inland-wetlands agency members regarding the protection of riverfront areas. Lastly, two Environmental Analysts would provide regulatory review assistance. Under current law, DEP is required to review all municipal regulations concerning riverfronts, and this bill would add a new set of regulations for all municipalities.

It is anticipated that various municipalities would experience an increase in costs of about 28% since the bill adds an area of about 141,319 acres to municipal inland-wetlands jurisdictions<sup>2</sup>. This increase could cause an increase of 1,238 additional enforcement actions per year, over 4,421 actions reported in 2004<sup>3</sup>, which could represent a significant cost increase to affected municipalities<sup>4</sup>. When local enforcement actions result in civil penalties, the revenue from those penalties goes to the state. Since there could be an increase in the number of enforcement actions at the local level, there could be minimal revenues to the General Fund, through DEP, for these revenues.

There is no impact to the Department of Transportation (DOT) since the bill exempts the agency from the additional regulation requirements.

### **The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation and subject to the number

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Employees Retirement System (SERS). The SERS fringe benefit rate is 33.27%, which when combined with the rate for non-pension fringe benefits totals 58.63%.

<sup>2</sup> Based on a US Environmental Protection Agency (EPA) report, [www.epa.gov/305b398report.appenda.pdf](http://www.epa.gov/305b398report.appenda.pdf), there are 5,830 miles of rivers and streams in Connecticut. Each river and stream mile and associated riverfront area represents a 24.24 acre area (5,280 feet per mile x 200' riverfront area width / 43,560 square feet per acre). Since one river or stream represents 24.24 acres, 5,830 of Connecticut river and stream miles equals 141,319.20 total acres which is about a 28% increase over the approximated 510,000 acres of inland wetlands in the state.

<sup>3</sup> 2004 is the most recent year for reported data.

<sup>4</sup> There are 170 municipal inland wetlands agencies (since the City of Groton and the Town of Groton are separate entities and there are 169 municipalities in the state).

of increased enforcement actions.

**OLR Bill Analysis****sSB 362*****AN ACT CONCERNING RIVERFRONT PROTECTION.*****SUMMARY:**

By law, the Department of Environmental Protection (DEP) commissioner and municipal inland-wetlands agencies regulate certain activities that take place in inland wetlands and watercourses, including rivers. This bill recognizes the ecological and public health benefits of land alongside rivers by imposing specific restrictions on development in 100-foot wide corridors running along either side of a river (“riverfront area”), and requiring inland-wetland agencies to regulate activities in these areas.

It requires applicants seeking to conduct regulated activities in riverfront areas to prove, by a preponderance of the evidence, that the proposed activity is consistent with existing law and the bill, and will not have an adverse effect on the riverfront area’s natural functions. It extends, to areas around riverfront areas, the territory in which a municipal inland-wetlands agency may regulate certain activities. It allows certain activities to take place in riverfront areas as of right, and requires the commissioner to develop a guidance document to assist and educate municipal inland-wetland agency members to protect riverfront areas. It makes other changes to conform riverfront area protection to most, but not all, existing inland-wetlands laws. The bill does not affect the existing jurisdiction of inland-wetlands agencies.

EFFECTIVE DATE: October 1, 2008.

**RIVERFRONT AREAS**

Under current law, no one can conduct a regulated activity in a wetlands or watercourse, including a river, without a permit from the

DEP commissioner or municipal inland-wetlands agency. (The commissioner issues permits for regulated activities proposed by state agencies; municipal agencies regulate activities within their territorial limits.) Regulated activities are those that remove or deposit material or that obstruct, build in, alter, or pollute a wetlands or watercourse. The bill specifically requires DEP and municipal agencies to regulate these activities in riverfront areas it defines, and imposes restrictions on activities in these areas.

By law, an agency also may regulate activities in areas around a wetland or watercourse if those activities are likely to affect the wetland or watercourse (CGS § 22a-42 (f)). The bill allows agencies to regulate such activities in areas around a riverfront area.

Under the bill, a riverfront area is the area of land between a river's ordinary high water mark and a line 100 feet away, running parallel to the river on either side. The ordinary high water mark is the line on the shore established by the fluctuation of water, and indicated by such physical characteristics as a readily identifiable natural line impressed on the river bank or shelving, or by changes in the character of the soil or absence of terrestrial vegetation (naturally occurring trees and shrubs, but not lawns). In practice, many of these areas are considered wetlands under current law.

The bill declares that state policy is to regulate riverfront areas to preserve and restore them, and to prevent them from being despoiled and destroyed, to (1) protect the drinking water supply, wildlife habitat, fisheries, and shellfisheries; (2) prevent storm damage and water pollution; and (3) provide flood control.

It requires, by July 1, 2008, each municipality to direct its inland-wetland agency to administer and protect riverfront areas and authorize them to carry out the bill. It specifically authorizes them to buy riverfront areas or receive them as gifts. By law, municipal inland wetlands agencies do not have authority over tidal wetlands and watercourses, which DEP regulates directly under the Tidal Wetlands Act (CGS §§ 22a-28 to 22a-35). It is not clear what effect the bill will

have on DEP jurisdiction in these areas.

### **DEP GUIDANCE DOCUMENT**

By law, the DEP commissioner supervises, administers, and enforces the Inland-Wetlands and Watercourses Act (CGS §§ 22a-36 - 45d). The bill extends this responsibility to riverfront areas. It requires the commissioner, by July 1, 2009, to develop a guidance document to assist and educate municipal inland-wetland agency members regarding the protection of riverfront areas. The document must identify management practices that ensure compliance with the bill's purposes and provisions. The commissioner must consult with interested parties and the public health commissioner in developing the document and must post it on the DEP website.

Under the bill, management practices in DEP's guidance document are presumed to prevent adverse impacts to a riverfront area's natural functions and benefits. This presumption can be rebutted by contrary evidence. This provision apparently applies when the applicant proposes to employ these management practices.

### **REGULATED ACTIVITIES**

By law, the permission of a municipal inland-wetlands agency is needed to conduct a regulated activity in a wetlands or watercourse, including a river. In deciding whether to grant a permit, the agency must 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 that people proposing regulated activities in riverfront areas show, by a preponderance of the evidence, that (1) the regulated activity is consistent with existing law and (2) it will not harm the riverfront area's natural functions. "Preponderance of the evidence" is the burden of proof in a civil trial (see BACKGROUND). Current law does not require inland-wetlands agencies to apply a particular burden of persuasion when considering an application.

Under the bill, a riverfront area's natural functions include:

1. reducing the likelihood of flooding and the need for flood controls;
2. preventing storm damage;
3. protecting public and private drinking water supplies from harmful contamination;
4. preventing erosion and providing sedimentation controls;
5. preventing nonpoint water pollution, including pollution by pathogens, nutrients, heavy metals, pesticides, herbicides, sediment, hydrocarbons, and thermal pollution; and
6. protecting fisheries, shellfish, and wildlife habitat.

The bill requires an inland-wetland agency that denies a riverfront area application because it finds there are feasible and prudent alternatives with fewer adverse effects, to state, on the record and in writing, what those alternatives are.

The bill explicitly states that the applicant has the burden of proving he is entitled to the permit.

#### **OPERATIONS PERMITTED AS OF RIGHT**

The law allows people to conduct certain activities in wetlands and watercourses without an inland-wetlands agency permit. These include certain agricultural activities, and activities conducted by or under DEP authority to restore or enhance wetland or watercourses, or control mosquitoes. The bill allows these activities in riverfront areas. But, as under existing law for wetlands and watercourses, it does not allow, as of right; (1) road construction or the erection of buildings not related to a farming operation; (2) relocation of watercourses with continual flow; (3) filling or reclamation of waterfront areas with continual flow; (4) clear cutting of timber except to expand crop land; or (5) the mining, for sale, of topsoil, peat, sand, gravel, or similar material from riverfront areas. The bill defines clear cutting in a riverfront area as removing more than 80% of standing vegetation

more than two inches in diameter at breast height, apparently from the entire riverfront area.

It specifically allows as of right, in riverfront areas, a home (1) which has received a building permit, or (2) in a subdivision, provided the home has received a building permit, or a planning, zoning, or planning and zoning commission has approved the subdivision. By law, a home in a wetland or watercourse is not permitted as of right unless it received building permit on or before July 1, 1987. Under the bill, there is no such restriction for homes in riverfront areas.

It allows in riverfront areas, as in wetlands and watercourses, uses incidental to the enjoyment and maintenance of a residential property, except for removal or deposit of significant amounts of material from or onto a riverfront area, or diversion or alteration of a riverfront area. In addition, the bill allows the following uses as of right specifically in riverfront areas:

1. forestry activities supervised by a certified forest practitioner, according to a forest management plan, provided there is no clear cutting;
2. the continuous use, repair, maintenance, or replacement of any existing land use, structure, parking, street facility or flood control structure in a riverfront area, provided the replacement of the land use, structure, parking, street facility, or flood control structure does not exceed its former footprint;
3. building, operating, or maintaining a state-operated transportation facility or improvement;
4. building, expanding, repairing, replacing, operating, or maintaining a public or private wastewater treatment plant and related structure, conveyance system or facilities, including associated utility lines;
5. building or maintaining utility rights-of-way and facilities, including electric, gas, water, sewer and communication lines;

and

6. re-using riverfront areas containing existing structures, including abandoned mills, industrial or commercial structures, and associated parking and street facilities.

But the bill does not exempt from regulation in riverfront areas certain activities the law allows as non-regulated uses in wetlands and watercourses. These uses include outdoor recreation and the conservation of soil, vegetation, water, fish, shellfish, and wildlife, as long as these uses do not remove or deposit material, alter the flow of water, or pollute the wetland or watercourse.

The law also allows as a non-regulated use in wetlands and watercourses the building, placing, or maintaining of structures, fill, obstructions, or encroachments by a state agency regulated under other state laws, as long as these uses do not remove or deposit material, alter the flow of water, or pollute the wetland or watercourse. It is not clear whether the bill exempts these uses from regulation in riverfront areas.

### **OTHER PROVISIONS**

The bill makes a number of changes to conform regulation of riverfront areas to laws already governing wetlands and watercourses. These include laws concerning regulation of riverfront area boundaries, public hearings, permits, and delegation of authority. The bills also:

1. requires inland wetlands agencies, when considering whether to issue a permit for a regulated activity, apparently in any wetland or watercourse, to consider mitigation measures that include requiring the applicant to take reasonable measures to restore, enhance, and create productive riverfront areas; and
2. require anyone conducting a regulated activity in a riverfront area that requires zoning approval to have valid documentation showing he has complied with the zoning requirements.

By law, a municipal inland wetlands agency must regulate activities within a wetlands or watercourse according to its regulations. The bill specifically applies this to riverfront areas.

Finally, the bill explicitly states that it does not expand or diminish the jurisdiction of inland wetlands agencies regarding activities in wetland or watercourses.

## **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 Wetlands 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 applicant's purpose for, and any feasible and prudent alternatives to, the proposed regulated activity 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 the proposed regulated activity would cause,

including the extent to which such activity would foreclose a future ability to protect, enhance or restore such resources, and any mitigation measures which 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 which is caused or threatened by the proposed regulated activity; and
6. impacts 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***

On March 14, 2008, the Environment Committee reported HB 5603, which declares that the state's public policy, and that of municipal inland wetlands agencies, is to preserve inland wetlands and watercourses, and to prevent them from being spoiled or destroyed. It requires anyone seeking to conduct a regulated activity in a wetland or watercourse to establish, by a preponderance of the evidence, that he is entitled to a permit, and requires inland-wetland agencies, when considering an application to conduct a regulated activity, to consider all relevant evidence brought before it by any person or entity.

### **COMMITTEE ACTION**

Environment Committee

Joint Favorable Substitute

Yea 22 Nay 5 (03/12/2008)

