



General Assembly

Amendment

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LCO No. 4328

HB0532404328HRO

Offered by:
REP. MILLER, 122nd Dist.

To: Subst. House Bill No. 5324 File No. 228 Cal. No. 132

"AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE STUDY OF REGIONAL PLANNING ORGANIZATIONS."

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. Section 22a-36 of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective October 1, 2008*):

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

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

50 Sec. 502. Section 22a-42 of the general statutes is repealed and the
51 following is substituted in lieu thereof (*Effective October 1, 2008*):

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

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

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

83 commission in the hearing and determination of the particular matter
84 or matters in which the disqualification arose. For the purposes of this
85 section, the board or commission authorized by the municipality or
86 district, as the case may be, shall serve as the sole agent for the
87 licensing of regulated activities.

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

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

113 (f) Municipal or district ordinances or regulations may embody any
114 regulations promulgated hereunder, in whole or in part, or may
115 consist of other ordinances or regulations in conformity with

116 regulations promulgated hereunder. Any ordinances or regulations
117 shall be for the purpose of effectuating the purposes of sections 22a-36
118 to 22a-45, inclusive, as amended by this act, and, a municipality or
119 district, in acting upon ordinances and regulations shall incorporate
120 the factors set forth in section 22a-41.

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

127 Sec. 503. Section 22a-42a of the general statutes is repealed and the
128 following is substituted in lieu thereof (*Effective October 1, 2008*):

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

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

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

173 (c) (1) On and after the effective date of the municipal regulations
174 promulgated pursuant to subsection (b) of this section, no regulated
175 activity shall be conducted upon any inland wetland or watercourse
176 without a permit. Any person proposing to conduct or cause to be
177 conducted a regulated activity upon an inland wetland or watercourse
178 shall file an application with the inland wetlands agency of the town or
179 towns wherein the wetland or watercourse in question is located and
180 shall establish, by a preponderance of the evidence, such person is
181 entitled to such permit. The application shall be in such form and

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

215 (2) An inland wetlands agency may delegate to its duly authorized

216 agent the authority to approve or extend an activity that is not located
217 in a wetland or watercourse when such agent finds that the conduct of
218 such activity would result in no greater than a minimal impact on any
219 wetland or watercourse provided such agent has completed the
220 comprehensive training program developed by the commissioner
221 pursuant to section 22a-39. Notwithstanding the provisions for receipt
222 and processing applications prescribed in subdivision (1) of this
223 subsection, such agent may approve or extend such an activity at any
224 time. Any person receiving such approval from such agent shall,
225 within ten days of the date of such approval, publish, at the applicant's
226 expense, notice of the approval in a newspaper having a general
227 circulation in the town wherein the activity is located or will have an
228 effect. Any person may appeal such decision of such agent to the
229 inland wetlands agency within fifteen days after the publication date
230 of the notice and the inland wetlands agency shall consider such
231 appeal at its next regularly scheduled meeting provided such meeting
232 is no earlier than three business days after receipt by such agency or its
233 agent of such appeal. The inland wetlands agency shall, at its
234 discretion, sustain, alter or reject the decision of its agent or require an
235 application for a permit in accordance with subdivision (1) of
236 subsection (c) of this section, as amended by this act.

237 (d) (1) In granting, denying or limiting any permit for a regulated
238 activity the inland wetlands agency, or its agent, shall consider the
239 factors set forth in section 22a-41, and [such] shall consider all relevant
240 evidence brought before such agency or agent by any person or entity,
241 including, but not limited to, scientific evidence, expert opinion, direct
242 observations made regarding the proposed regulated activity,
243 environmental reviews, policy letters or guidance documents provided
244 by or on behalf of an environmental review team or the Department of
245 Environmental Protection, and written comments or oral testimony
246 submitted by the Commissioner of Public Health or by or on behalf of
247 a water company in response to written notice provided such water
248 company pursuant to section 22a-42f. Such agency, or its agent, shall
249 state upon the record the reason for its decision. In granting a permit

250 the inland wetlands agency, or its agent, may grant the application as
251 filed or grant it upon other terms, conditions, limitations or
252 modifications of the regulated activity which are designed to carry out
253 the policy of sections 22a-36 to 22a-45, inclusive, as amended by this
254 act. Such terms may include any reasonable measures which would
255 mitigate the impacts of the regulated activity and which would (A)
256 prevent or minimize pollution or other environmental damage, (B)
257 maintain or enhance existing environmental quality, or (C) in the
258 following order of priority: Restore, enhance and create productive
259 wetland or watercourse resources. No person shall conduct any
260 regulated activity within an inland wetland or watercourse which
261 requires zoning or subdivision approval without first having obtained
262 a valid certificate of zoning or subdivision approval, special permit,
263 special exception or variance or other documentation establishing that
264 the proposal complies with the zoning or subdivision requirements
265 adopted by the municipality pursuant to chapters 124 to 126, inclusive,
266 or any special act. The agency may suspend or revoke a permit if it
267 finds after giving notice to the permittee of the facts or conduct which
268 warrant the intended action and after a hearing at which the permittee
269 is given an opportunity to show compliance with the requirements for
270 retention of the permit, that the applicant has not complied with the
271 conditions or limitations set forth in the permit or has exceeded the
272 scope of the work as set forth in the application. The applicant shall be
273 notified of the agency's decision by certified mail within fifteen days of
274 the date of the decision and the agency shall cause notice of their order
275 in issuance, denial, revocation or suspension of a permit to be
276 published in a newspaper having a general circulation in the town
277 wherein the wetland or watercourse lies. In any case in which such
278 notice is not published within such fifteen-day period, the applicant
279 may provide for the publication of such notice within ten days
280 thereafter.

281 (2) Any permit issued under this section for the development of
282 property for which an approval is required under section 8-3 of the
283 2008 supplement to the general statutes, 8-25 of the 2008 supplement to

284 the general statutes or 8-26 of the 2008 supplement to the general
285 statutes shall be valid for five years provided the agency may establish
286 a specific time period within which any regulated activity shall be
287 conducted. Any permit issued under this section for any other activity
288 shall be valid for not less than two years and not more than five years.
289 Any such permit shall be renewed upon request of the permit holder
290 unless the agency finds that there has been a substantial change in
291 circumstances which requires a new permit application or an
292 enforcement action has been undertaken with regard to the regulated
293 activity for which the permit was issued provided no permit may be
294 valid for more than ten years.

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

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