



STATE OF CONNECTICUT

DEPARTMENT OF TRANSPORTATION

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Office of the
Commissioner

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Public Hearing – February 13, 2009 Environment Committee

Testimony Submitted by Commissioner Joseph Marie Department of Transportation

S.B. 567- An Act Limiting Liability for Environmental Permit Violations.

The Department of Transportation (DOT) is opposed to S.B. 567, AA Limiting Liability for Environmental Permit Violations and offers the following comments.

Under S.B. 567, the commissioner of the Department of Environmental Protection (DEP) is prohibited from taking an enforcement action against a contractor that fails to comply with a DEP permit, even where the contractor is contractually required to perform all work in compliance with such permits. The result is bad for the environment, bad for the budget, and bad for the timely completion of State construction projects.

Currently DOT's construction contracts incorporate DEP permits into them and require contractors to comply with all terms and conditions of the permits. This link between construction and environmental permit compliance is essential to ensure that the contractor, the one that is affecting the environment through its activities, is responsible for environmental permit compliance. Under S.B. 567, a critical incentive to comply with DEP permits -- namely an enforcement action by DEP -- is lost. It is possible that a slight filling of a wetland that is not supposed to be filled, an encroachment into a waterbody that is prohibited by permit, or the damage or destruction to critical wildlife habitat could result by eliminating this incentive for environmental permit compliance.

While under the above scenario, the DOT would have a breach of contract action against a contractor that failed to comply with the environmental permits, S.B. 567 would force DEP to bring an enforcement action against DOT that would result in an economic penalty to DOT (the State), that DOT would then have to try to recoup from the contractor. As you know, litigation is never swift; typically requiring expert witnesses (cost to the State), diverting staff, including DEP staff, from their core work functions and tying them up in discovery, depositions, and trial; all with adverse consequences to the budget and State programs. If DOT staff are tied up in enforcement actions brought by DEP, and tied up in litigation to recoup DOT's damages, those staff are not advancing other work that needs to get done in order for transportation projects to be completed.

For all the reasons discussed above, the Department of Transportation is opposed to S.B. 567.

For further information or questions, please contact Pam Sucato, Legislative Program Manager for the Department of Transportation, at (860) 594-3013.