



# Senate

General Assembly

**File No. 465**

January Session, 2009

Senate Bill No. 569

*Senate, April 6, 2009*

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

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

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

1 Section 1. Section 22a-36 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2009*):

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

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

47 Sec. 2. Section 22a-42 of the general statutes is repealed and the  
48 following is substituted in lieu thereof (*Effective October 1, 2009*):

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

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

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

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

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

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

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

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

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

124 Sec. 3. Section 22a-42a of the general statutes is repealed and the  
125 following is substituted in lieu thereof (*Effective October 1, 2009*):

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

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

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

167 (c) (1) On and after the effective date of the municipal regulations  
168 promulgated pursuant to subsection (b) of this section, no regulated  
169 activity shall be conducted upon any inland wetland or watercourse  
170 without a permit. Any person proposing to conduct or cause to be  
171 conducted a regulated activity upon an inland wetland or watercourse  
172 shall file an application with the inland wetlands agency of the town or  
173 towns wherein the wetland or watercourse in question is located. Such  
174 person shall bear the burden of proving that such person is entitled to  
175 such permit. The application shall be in such form and contain such  
176 information as the inland wetlands agency may prescribe. The date of  
177 receipt of an application shall be determined in accordance with the  
178 provisions of subsection (c) of section 8-7d. The inland wetlands  
179 agency shall not hold a public hearing on such application unless the  
180 inland wetlands agency determines that the proposed activity may  
181 have a significant impact on wetlands or watercourses, a petition  
182 signed by at least twenty-five persons who are eighteen years of age or  
183 older and who reside in the municipality in which the regulated

184 activity is proposed, requesting a hearing is filed with the agency not  
185 later than fourteen days after the date of receipt of such application, or  
186 the agency finds that a public hearing regarding such application  
187 would be in the public interest. An inland wetlands agency may issue  
188 a permit without a public hearing provided no petition provided for in  
189 this subsection is filed with the agency on or before the fourteenth day  
190 after the date of receipt of the application. Such hearing shall be held in  
191 accordance with the provisions of section 8-7d. The inland wetlands  
192 agency shall consider all relevant evidence brought before such agency  
193 or its agent by any person or entity, including, but not limited to,  
194 scientific evidence, expert opinion, direct observations made regarding  
195 the proposed regulated activity, environmental reviews, policy letters  
196 or guidance documents provided by or on behalf of an environmental  
197 review team or by the Department of Environmental Protection and  
198 written comments or oral testimony submitted by the Commissioner of  
199 Public Health or by or on behalf of a water company in response to  
200 written notice provided such water company pursuant to section 22a-  
201 42f. If the inland wetlands agency, or its agent, fails to act on any  
202 application within thirty-five days after the completion of a public  
203 hearing or in the absence of a public hearing within sixty-five days  
204 from the date of receipt of the application, or within any extension of  
205 any such period as provided in section 8-7d, the applicant may file  
206 such application with the Commissioner of Environmental Protection  
207 who shall review and act on such application in accordance with this  
208 section. Any costs incurred by the commissioner in reviewing such  
209 application for such inland wetlands agency shall be paid by the  
210 municipality that established or authorized the agency. Any fees that  
211 would have been paid to such municipality if such application had not  
212 been filed with the commissioner shall be paid to the state. The failure  
213 of the inland wetlands agency or the commissioner to act within any  
214 time period specified in this subsection, or any extension thereof, shall  
215 not be deemed to constitute approval of the application.

216 (2) An inland wetlands agency may delegate to its duly authorized  
217 agent the authority to approve or extend an activity that is not located  
218 in a wetland or watercourse when such agent finds that the conduct of

219 such activity would result in no greater than a minimal impact on any  
220 wetland or watercourse provided such agent has completed the  
221 comprehensive training program developed by the commissioner  
222 pursuant to section 22a-39. Notwithstanding the provisions for receipt  
223 and processing applications prescribed in subdivision (1) of this  
224 subsection, such agent may approve or extend such an activity at any  
225 time. Any person receiving such approval from such agent shall,  
226 within ten days of the date of such approval, publish, at the applicant's  
227 expense, notice of the approval in a newspaper having a general  
228 circulation in the town wherein the activity is located or will have an  
229 effect. Any person may appeal such decision of such agent to the  
230 inland wetlands agency within fifteen days after the publication date  
231 of the notice and the inland wetlands agency shall consider such  
232 appeal at its next regularly scheduled meeting provided such meeting  
233 is no earlier than three business days after receipt by such agency or its  
234 agent of such appeal. The inland wetlands agency shall, at its  
235 discretion, sustain, alter or reject the decision of its agent or require an  
236 application for a permit in accordance with subdivision (1) of  
237 subsection (c) of this section.

238 (d) (1) In granting, denying or limiting any permit for a regulated  
239 activity the inland wetlands agency, or its agent, shall consider the  
240 factors set forth in section 22a-41, and such agency, or its agent, shall  
241 state upon the record the reason for its decision. In granting a permit  
242 the inland wetlands agency, or its agent, may grant the application as  
243 filed or grant it upon other terms, conditions, limitations or  
244 modifications of the regulated activity which are designed to carry out  
245 the policy of sections 22a-36 to 22a-45, inclusive, as amended by this  
246 act. Such terms may include any reasonable measures which would  
247 mitigate the impacts of the regulated activity and which would (A)  
248 prevent or minimize pollution or other environmental damage, (B)  
249 maintain or enhance existing environmental quality, or (C) in the  
250 following order of priority: Restore, enhance and create productive  
251 wetland or watercourse resources. No person shall conduct any  
252 regulated activity within an inland wetland or watercourse which  
253 requires zoning or subdivision approval without first having obtained

254 a valid certificate of zoning or subdivision approval, special permit,  
255 special exception or variance or other documentation establishing that  
256 the proposal complies with the zoning or subdivision requirements  
257 adopted by the municipality pursuant to chapters 124 to 126, inclusive,  
258 or any special act. The agency may suspend or revoke a permit if it  
259 finds after giving notice to the permittee of the facts or conduct which  
260 warrant the intended action and after a hearing at which the permittee  
261 is given an opportunity to show compliance with the requirements for  
262 retention of the permit, that the applicant has not complied with the  
263 conditions or limitations set forth in the permit or has exceeded the  
264 scope of the work as set forth in the application. The applicant shall be  
265 notified of the agency's decision by certified mail within fifteen days of  
266 the date of the decision and the agency shall cause notice of their order  
267 in issuance, denial, revocation or suspension of a permit to be  
268 published in a newspaper having a general circulation in the town  
269 wherein the wetland or watercourse lies. In any case in which such  
270 notice is not published within such fifteen-day period, the applicant  
271 may provide for the publication of such notice within ten days  
272 thereafter.

273 (2) Any permit issued under this section for the development of  
274 property for which an approval is required under section 8-3, 8-25 or 8-  
275 26 shall be valid for five years provided the agency may establish a  
276 specific time period within which any regulated activity shall be  
277 conducted. Any permit issued under this section for any other activity  
278 shall be valid for not less than two years and not more than five years.  
279 Any such permit shall be renewed upon request of the permit holder  
280 unless the agency finds that there has been a substantial change in  
281 circumstances which requires a new permit application or an  
282 enforcement action has been undertaken with regard to the regulated  
283 activity for which the permit was issued provided no permit may be  
284 valid for more than ten years.

285 (e) The inland wetlands agency may require a filing fee to be  
286 deposited with the agency. The amount of such fee shall be sufficient  
287 to cover the reasonable cost of reviewing and acting on applications

288 and petitions, including, but not limited to, the costs of certified  
289 mailings, publications of notices and decisions and monitoring  
290 compliance with permit conditions or agency orders.

291 (f) If a municipal inland wetlands agency regulates activities within  
292 areas around wetlands or watercourses, such regulation shall (1) be in  
293 accordance with the provisions of the inland wetlands regulations  
294 adopted by such agency related to application for, and approval of,  
295 activities to be conducted in wetlands or watercourses and (2) apply  
296 only to those activities which are likely to impact or affect wetlands or  
297 watercourses.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	22a-36
Sec. 2	<i>October 1, 2009</i>	22a-42
Sec. 3	<i>October 1, 2009</i>	22a-42a

**ENV**      *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

***Explanation***

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

***The Out Years***

***State Impact:*** None

***Municipal Impact:*** None

**OLR Bill Analysis****SB 569*****AN ACT CONCERNING ENHANCEMENTS TO THE INLAND WETLANDS AND WATERCOURSES ACT.*****SUMMARY:**

This bill declares it state public policy to preserve inland wetlands and watercourses and prevent them from being spoiled or destroyed. It requires inland-wetland agencies to consider all relevant evidence brought before it when considering whether to issue a permit to conduct a regulated activity in a wetlands or watercourse. It specifies that the person applying for a permit to conduct a regulated activity in a wetlands or watercourse bears the legal burden of proving he or she is entitled to it.

EFFECTIVE DATE: October 1, 2009

**DECLARATION OF PUBLIC POLICY ON INLAND WETLANDS AND WATERCOURSES**

Current law, recognizing that preserving and protecting wetlands and watercourses is in the public interest and essential to the health, welfare, and safety of Connecticut residents, declares that the purpose of the Inland-Wetlands and Watercourses Act (CGS §§ 22a-36 to 22a-45) is to balance economic growth while protecting these resources for the benefit of state residents and their descendants. The bill specifically declares it state public policy to preserve inland wetlands and watercourses and prevent them from being spoiled and destroyed.

It specifically requires municipalities to regulate activities affecting inland wetlands and watercourses to preserve them and prevent them from being spoiled and destroyed.

**RELEVANT EVIDENCE**

By law, a person seeking to conduct an activity that involves removing or depositing material, or obstructing, building in, altering, or polluting a wetland or watercourse (regulated activity), must obtain a permit from a municipal inland-wetlands agency. Current law requires the agency to consider the proposed application's impact on the environment, feasible and prudent alternatives that would have less environmental impact, and several other factors (see BACKGROUND).

The bill requires the agency also to consider all relevant evidence brought before it or its agent by any person or entity, including:

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

## **BACKGROUND**

### ***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 purpose of the proposed activity and whether any prudent and feasible alternatives would cause less or no environmental impact to wetlands or watercourses;
3. the relationship between the short-term and long-term impact of the proposed regulated activity on wetlands or watercourses

- and the maintenance and enhancement of long-term productivity of such wetlands or watercourses;
4. irreversible and irretrievable loss of wetland or watercourse resources that would be caused by the proposed regulated activity, including the extent to which such activity would foreclose a future ability to protect, enhance, or restore such resources, and any mitigation measures that may be considered as a condition of issuing a permit for such activity, including measures to (a) prevent or minimize pollution or other environmental damage, (b) maintain or enhance existing environmental quality, or (c) in the following order of priority: restore, enhance, and create productive wetland or watercourse resources;
  5. the character and degree of injury to, or interference with, safety, health, or the reasonable use of property caused or threatened by the proposed regulated activity; and
  6. impact of the proposed regulated activity on wetlands or watercourses outside the area for which the activity is proposed and future activities associated with, or reasonably related to, the proposed regulated activity that 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 20, 2009, the Environment Committee favorably reported substitute HB 5934, which increases protection for natural vegetation near wetlands and watercourses.

**COMMITTEE ACTION**

Environment Committee

Joint Favorable

Yea 27 Nay 5 (03/18/2009)