



Senate

General Assembly

File No. 407

January Session, 2009

Substitute Senate Bill No. 747

Senate, April 2, 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 substitute bill ought to pass.

AN ACT CONCERNING CONSISTENCY IN PERMITTING REQUIREMENTS FOR ALTERNATIVE ON-SITE SEWAGE TREATMENT SYSTEMS, DISCHARGES AND DECENTRALIZED WASTEWATER SYSTEMS AND CONCERNING ENVIRONMENTAL IMPACT EVALUATIONS.

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

1 Section 1. Subsection (b) of section 22a-430 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2009*):

4 (b) The commissioner, [at least thirty days] before approving or
5 denying a permit application for a discharge, shall (1) consider all
6 relevant factors, including, but not limited to: (A) The impact that such
7 discharge may have individually or cumulatively on public health and
8 the environment, (B) the impact that such discharge may have
9 individually or cumulatively on land use patterns, and (C)
10 recommendations regarding responsible growth made to the
11 commissioner by the Secretary of the Office of Policy and Management

12 through the Office of Responsible Growth established by Executive
13 Order No. 15 of Governor M. Jodi Rell, and (2) at least thirty days
14 before such approval or denial, publish once in a newspaper having a
15 substantial circulation in the affected area notice of [(1)] (A) the name
16 of the applicant; [(2)] (B) the location, volume, frequency and nature of
17 the discharge; [(3)] (C) the tentative decision on the application; [] and
18 [(4)] (D) additional information the commissioner deems necessary to
19 comply with the federal Clean Water Act (33 USC 1251 et seq.). There
20 shall be a comment period following the public notice during which
21 period interested persons and municipalities may submit written
22 comments. After the comment period, the commissioner shall make a
23 final determination either that [(A)] (i) such discharge would not cause
24 pollution of any of the waters of the state, in which case he shall issue a
25 permit for such discharge, [or (B)] (ii) after giving due regard to any
26 proposed system to treat the discharge, that such discharge would
27 cause pollution of any of the waters of the state, in which case he shall
28 deny the application and notify the applicant of such denial and the
29 reasons therefor, [or (C)] (iii) the proposed system to treat such
30 discharge will protect the waters of the state from pollution, in which
31 case he shall, except as provided pursuant to subsection (j) of this
32 section, require the applicant to submit plans and specifications and
33 such other information as he may require and shall impose such
34 additional conditions as may be required to protect such water, and if
35 the commissioner finds that the proposed system to treat the
36 discharge, as described by the plans and specifications or such other
37 information as may be required by the commissioner pursuant to
38 subsection (j) of this section, will protect the waters of the state from
39 pollution, he shall notify the applicant of his approval and, when such
40 applicant has installed such system, in full compliance with the
41 approval thereof, the commissioner shall issue a permit for such
42 discharge, or [(D)] (iv) the proposed system to treat such discharge, as
43 described by the plans and specifications, will not protect the waters of
44 the state, in which case he shall promptly notify the applicant that its
45 application is denied and the reasons therefor. No permit shall be
46 issued for an alternative on-site sewage treatment system, as defined in

47 the Public Health Code, in a drinking water supply watershed unless
48 the commissioner determines that [(i)] (I) such system is the only
49 feasible solution to an existing pollution problem and that the
50 proposed system capacity does not exceed the capacity of the failed
51 on-site system, or [(ii)] (II) such system is for the expansion of an
52 existing municipal or public school project or for new construction of a
53 municipal or public school project on an existing municipal or public
54 school site, in a municipality in which a majority of the land is located
55 within a drinking water supply watershed. The commissioner shall, by
56 regulations adopted in accordance with the provisions of chapter 54,
57 establish procedures, criteria and standards as appropriate for
58 determining if [(I)] a discharge would cause pollution to the waters of
59 the state, and [(II)] if a treatment system is adequate to protect the
60 waters of the state from pollution. Such procedures, criteria and
61 standards may include schedules of activities, prohibitions of practices,
62 operating and maintenance procedures, management practices and
63 other measures to prevent or reduce pollution of the waters of the
64 state, provided the commissioner in adopting such procedures, criteria
65 and standards shall consider best management practices. The
66 regulations shall specify the circumstances under which procedures,
67 criteria and standards for activities other than treatment will be
68 required. For the purposes of this section, "best management practices"
69 means those practices which reduce the discharge of waste into the
70 waters of the state and which have been determined by the
71 commissioner to be acceptable based on, but not limited to, technical,
72 economic and institutional feasibility. Any applicant, or in the case of a
73 permit issued pursuant to the federal Water Pollution Control Act, any
74 person or municipality, who is aggrieved by a decision of the
75 commissioner where an application has not been given a public
76 hearing shall have the right to a hearing and an appeal therefrom in
77 the same manner as provided in sections 22a-436 and 22a-437. Any
78 applicant, or in the case of a permit issued pursuant to the federal
79 Water Pollution Control Act, any person or municipality, who is
80 aggrieved by a decision of the commissioner where an application has
81 been given a public hearing shall have the right to appeal as provided

82 in section 22a-437. The commissioner may, by regulation, exempt
83 certain categories, types or sizes of discharge from the requirement for
84 notice prior to approving or denying the application if such category,
85 type or size of discharge is not likely to cause substantial pollution.
86 The commissioner may hold a public hearing prior to approving or
87 denying any application if in his discretion the public interest will be
88 best served thereby, and he shall hold a hearing upon receipt of a
89 petition signed by at least twenty-five persons. Notice of such hearing
90 shall be published at least thirty days before the hearing in a
91 newspaper having a substantial circulation in the area affected.

92 Sec. 2. Section 7-247 of the general statutes is repealed and the
93 following is substituted in lieu thereof (*Effective October 1, 2009*):

94 (a) Any municipality by its water pollution control authority may
95 acquire, construct and operate a sewerage system or systems; may
96 enter upon and take and hold by purchase, condemnation or otherwise
97 the whole or any part of any real property or interest therein which it
98 determines is necessary or desirable for use in connection with any
99 sewerage system; may establish and revise rules and regulations for
100 the supervision, management, control, operation and use of a sewerage
101 system, including rules and regulations prohibiting or regulating the
102 discharge into a sewerage system of any sewage or any stormwater
103 runoff which in the opinion of the water pollution control authority
104 will adversely affect any part or any process of the sewerage system
105 except that any such rule or regulation regarding decentralized
106 systems shall be approved by the local director of health before such
107 rule or regulation may be effective; may enter into and fulfill contracts,
108 including contracts for a term of years, with any person or any other
109 municipality or municipalities to provide or obtain sewerage system
110 service for any sewage, and may make arrangements for the provision
111 or exchange of staff services and equipment with any person or any
112 other municipality or municipalities, or for any other lawful services.
113 The water pollution control authority of any municipality planning to
114 acquire, construct or operate a new or additional sewerage system
115 shall consider the feasibility of using the sewage collected by such

116 system as an energy source for the generation of electricity or the
117 production of other energy sources. The water pollution control
118 authority may establish rules for the transaction of its business. It shall
119 keep a record of its proceedings and shall designate an officer or
120 employee to be the custodian of its books, papers and documents. No
121 person shall have a right to a hearing or an appeal in the manner
122 provided in sections 22a-436 and 22a-437 from a decision of a water
123 pollution control authority to deny a permit or issue an order unless
124 such water pollution control authority was delegated authority by the
125 commissioner pursuant to section 22a-430 to make the decision that is
126 the subject of such hearing or appeal.

127 (b) Following approval of an engineering report by the
128 Commissioner of Environmental Protection that includes concurrence
129 with such approval by the Commissioner of Public Health, and in
130 consultation with the local director of health, a municipality, acting in
131 conjunction with its water pollution control authority may, by
132 ordinance, establish geographical areas of decentralized wastewater
133 management districts within such municipality.

134 (1) Prior to adopting any such ordinance on and after January 1,
135 2010, the municipality shall consider all relevant factors, including, but
136 not limited to: (A) The impact that such sewerage system may have
137 individually or cumulatively on public health and the environment, (B)
138 the impact that such sewerage system may have individually or
139 cumulatively on land use patterns, and (C) recommendations
140 regarding responsible growth made to the Commissioner of Public
141 Health by the Secretary of the Office of Policy and Management
142 through the Office of Responsible Growth established by Executive
143 Order No. 15 of Governor M. Jodi Rell.

144 [(1)] (2) Such ordinance may also include, following the approval of
145 such ordinance by the local director of health pursuant to such
146 director's authority under section 19a-207: (A) Remediation and
147 technical standards for the design and construction of subsurface
148 sewage disposal systems that are more stringent than those imposed

149 by the Public Health Code; (B) authority for the local director of health
150 to order the upgrade of subsurface sewage disposal systems in
151 accordance with such remediation and technical standards; (C)
152 authority for the local director of health to establish criteria for the
153 abandonment of substandard subsurface sewage disposal systems; (D)
154 authority for the local director of health to order the property owner of
155 a substandard subsurface sewage disposal system that does not
156 comply with such remediation standards, technical standards or other
157 criteria to abandon such substandard subsurface sewage disposal
158 system thus allowing the water pollution control authority to order
159 such owner to connect to a sewerage system pursuant to section 7-257;
160 (E) standards established by the local director of health for the effective
161 supervision, management, control, operation and maintenance of
162 managed subsurface sewage disposal systems within such
163 decentralized wastewater management districts; or (F) authority for
164 the water pollution control authority to enact and amend regulations,
165 following the approval of such regulations by the local director of
166 health, that govern the supervision, management, control, operation
167 and maintenance of such decentralized systems.

168 [(2)] (3) Such ordinance shall include remediation standards for the
169 design, construction and installation of alternative sewage treatment
170 systems and standards for the effective supervision, management,
171 control, operation and maintenance of alternative sewage treatment
172 systems within such decentralized wastewater management districts
173 that are consistent with any permit, order or recommendation of the
174 Commissioner of Environmental Protection.

175 (c) Notwithstanding any provision of the general statutes, an area
176 that is designated by ordinance of a municipality as a decentralized
177 wastewater management district shall not be a public sewer for
178 purposes of the Public Health Code.

179 (d) Nothing in this section shall be construed to limit the authority
180 of a local director of health, the Commissioner of Public Health or the
181 Commissioner of Environmental Protection.

182 Sec. 3. (NEW) (*Effective October 1, 2009*) Prior to approving any
183 engineering report submitted on or after January 1, 2010, in accordance
184 with section 7-247 of the general statutes, as amended by this act, the
185 Commissioners of Environmental Protection and Public Health shall
186 consider all relevant factors, including, but not limited to: (1) The
187 impact that such sewerage system may have individually or
188 cumulatively on public health and the environment, (2) the impact that
189 such sewerage system may have individually or cumulatively on land
190 use patterns, and (3) recommendations regarding responsible growth
191 made to the Commissioner of Public Health by the Secretary of the
192 Office of Policy and Management through the Office of Responsible
193 Growth established by Executive Order No. 15 of Governor M. Jodi
194 Rell.

195 Sec. 4. Subsection (b) of section 22a-1f of the general statutes is
196 repealed and the following is substituted in lieu thereof (*Effective July*
197 *1, 2009*):

198 (b) Environmental impact evaluations shall not be required for (1)
199 the Connecticut Juvenile Training School project, as defined in
200 subsection (k) of section 4b-55, and the extension of such project
201 otherwise known as the Connecticut River Interceptor Sewer Project,
202 [or] (2) a project, as defined in subdivision (16) of section 10a-109c,
203 which involves the conversion of an existing structure for educational
204 rather than office or commercial use, or (3) a landside development
205 project at a state owned airport managed by the Connecticut
206 Department of Transportation Bureau of Aviation and Ports. For the
207 purposes of this subsection, "landside development project" means a
208 privately funded project on state owned airport property designated to
209 support aviation infrastructure under an existing approved master
210 plan prepared in accordance with the applicable Federal Aviation
211 Administration Advisory Circular, where such project (A) includes up
212 to two hundred seventy-five thousand square feet of new hanger space
213 and additional related terminal and office space, and (B) was approved
214 by the applicable local land use agency on or before January 1, 2008.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2009</i>	22a-430(b)
Sec. 2	<i>October 1, 2009</i>	7-247
Sec. 3	<i>October 1, 2009</i>	New section
Sec. 4	<i>July 1, 2009</i>	22a-1f(b)

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 House thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

There is no fiscal impact to the Department of Environmental Protection (DEP) to consider certain factors when making decisions affecting decentralized wastewater management districts or new discharge permits.

It is anticipated that the Office of Policy and Management can make recommendations on responsible growth to the DEP commissioner within the agency's normal budgetary resources.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sSB 747*****AN ACT CONCERNING CONSISTENCY IN PERMITTING REQUIREMENTS FOR ALTERNATIVE ON-SITE SEWAGE TREATMENT SYSTEMS, DISCHARGES AND DECENTRALIZED WASTEWATER SYSTEMS AND CONCERNING ENVIRONMENTAL IMPACT EVALUATIONS.*****SUMMARY:**

This bill requires municipalities, the Department of Public Health (DPH) and the Department of Environmental Protection (DEP) to consider similar factors relating to public health, the environment, land use, and responsible growth when making decisions affecting decentralized wastewater management districts (in the case of DEP, DPH, and municipalities), and new discharge permits (in DEP's case).

It exempts the construction of a 275,000 square-foot airport hangar from Connecticut Environmental Policy Act (CEPA) requirements.

EFFECTIVE DATE: October 1, 2009, except for the CEPA exemption, which takes effect July 1, 2009.

WATER DISCHARGE PERMITS

The bill requires the DEP commissioner to consider, in deciding whether to approve or deny a new discharge permit application, the:

1. individual and cumulative impact the discharge may have on public health, the environment, and land use patterns; and
2. recommendations on responsible growth made to the DEP commissioner by the Office of Policy and Management (OPM) secretary through the Office of Responsible Growth established by Gov. Rell's Executive Order No. 15.

DECENTRALIZED WASTEWATER MANAGEMENT DISTRICTS

Current law allows a municipality, after consulting the local health director, and in conjunction with its water pollution control authority, to adopt an ordinance establishing a decentralized wastewater management district. It may do so following DEP and DPH approval of an engineering report.

The bill requires, starting January 1, 2010, that, before adopting an ordinance establishing a decentralized wastewater management district, a municipality consider the (1) individual and cumulative impact the sewerage system may have on public health, the environment, and land use patterns, and (2) the OPM secretary's recommendations on responsible growth made to the DPH commissioner through the Office of Responsible Growth.

It requires DEP and DPH to consider the same impact and recommendations before approving an engineering report submitted on and after January 1, 2010 authorizing the creation of a decentralized wastewater management district.

CEPA EXEMPTION FOR AIRPORT CONSTRUCTION

Under CEPA, a state agency must make a detailed written evaluation of environmental impact (environmental impact evaluation) when recommending or initiating an action that may significantly affect the environment. The agency must prepare the evaluation before deciding whether to approve the action.

The bill exempts from the environmental impact evaluation requirement a "landside development project" at a state-owned airport managed by the Connecticut Department of Transportation Bureau of Aviation and Ports. Under the bill, "landside development project" means a privately-funded project on state-owned airport property designated to support aviation infrastructure under an approved master plan prepared according to the applicable Federal Aviation Administration Advisory circular, where the project (1) includes up to 275,000 square feet of new hangar space and additional related terminal and office space, and (2) was approved by the applicable local

land use agency on or before January 1, 2008.

BACKGROUND

Alternative On-site Sewage Treatment Systems

By law, DPH regulates alternative sewage treatment systems with a daily capacity of 5,000 gallons or less. DEP regulates these systems with larger daily capacities.

The law requires DPH to consider, when establishing and defining discharge categories and setting minimum requirements for the systems:

1. the individual and cumulative impact the system and discharges may have on public health, the environment, and land use patterns; and
2. recommendations for responsible growth made to the DPH commissioner by the OPM secretary through the Office of Responsible Growth established by Gov. Rell's Executive Order No. 15 (CGS § 19a-35a (b)).

By law, these systems (1) serve at least one building on a single piece of property, (2) are alternatives to a septic system, and (3) discharge domestic sewage to state ground waters (CGS § 19a-35a).

Decentralized Wastewater Management Districts

By law, a decentralized wastewater management district is an area of a municipality designated through a municipal ordinance when an engineering report has determined that the existing subsurface sewage disposal systems may be detrimental to public health or the environment, and that decentralized systems are required.

Connecticut Environmental Policy Act (CEPA)

CEPA identifies and evaluates the impact of proposed state actions that could significantly affect the environment. It requires that certain information be available to decision makers and the public, and that this information be considered in deciding whether and how to

proceed with the project. It does not mandate a particular outcome or prohibit certain activities (CGS § 22a-1b through 1h).

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 24 Nay 8 (03/18/2009)