



Senate

General Assembly

File No. 146

January Session, 2009

Substitute Senate Bill No. 871

Senate, March 24, 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 INCREASING THE ENFORCEMENT AUTHORITY OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION.

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

1 Section 1. Section 22a-175 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2009*):

3 (a) Any person who [knowingly or] with criminal negligence
4 violates any provision of this chapter, section 22a-6 or 22a-7 or any
5 regulation, order or permit adopted or issued [thereunder except for a
6 violation of subsection (b) of this section] under this chapter, shall be
7 fined not more than twenty-five thousand dollars per day for each day
8 of violation or be imprisoned not more than one year, or both. A
9 subsequent conviction for any such violation shall carry a fine of not
10 more than fifty thousand dollars per day for each day of violation or
11 imprisonment for not more than two years, or both.

12 (b) Any person who knowingly violates any provision of this
13 chapter, section 22a-6 or 22a-7, shall be fined not more than fifty

14 thousand dollars per day for each day of violation or be imprisoned
15 not more than three years, or both. A subsequent conviction for any
16 such violation shall carry a fine of not more than one hundred
17 thousand dollars per day for each day of violation or imprisonment for
18 not more than ten years, or both.

19 [(b)] (c) Any person who (1) knowingly makes any false statement,
20 representation or certification in any application, record, report, plan
21 or other document filed or required to be maintained under this
22 chapter, section 22a-6 or 22a-7, or under any regulation, order or
23 permit adopted or issued [thereunder] under this chapter, [or who] (2)
24 falsifies, tampers with or knowingly renders inaccurate any
25 monitoring device or method required to be maintained under the
26 provisions of this chapter, section 22a-6 or 22a-7, or any regulation,
27 order or permit adopted or issued [thereunder] under this chapter, or
28 (3) wilfully fails to maintain or knowingly destroys, alters or conceals
29 any record required to be maintained under this chapter, section 22a-6
30 or 22a-7, or any regulation adopted, or order or permit issued under
31 this chapter, shall, upon conviction, be fined not more than [ten
32 thousand dollars for each] fifty thousand dollars per day for each day
33 of the violation or imprisoned not more than [six months for each
34 violation] two years, or both. A subsequent conviction for any such
35 violation shall carry a fine of not more than fifty thousand dollars per
36 day for each day of the violation or imprisonment for not more than
37 five years, or both.

38 (d) For the purposes of subsections (b) and (c) of this section,
39 "person" includes any responsible corporate officer or municipal
40 official.

41 Sec. 2. Section 22a-226a of the general statutes is repealed and the
42 following is substituted in lieu thereof (*Effective October 1, 2009*):

43 (a) Any person who knowingly violates any provision of section
44 22a-252, section 22a-208a, section 22a-208c, any permit issued under
45 said section 22a-208a, subsection (c) or (d) of section 22a-250, any
46 regulation adopted under section 22a-209 or 22a-231, or any order

47 issued pursuant to section 22a-225 shall be fined not more than
48 twenty-five thousand dollars per day for each day of violation or
49 imprisoned not more than two years, or both. A subsequent conviction
50 for any such violation shall carry a fine of not more than fifty thousand
51 dollars per day for each day of violation or imprisonment for not more
52 than five years, or both.

53 (b) Any person who with criminal negligence violates any provision
54 of sections 22a-208a, 22a-208c and 22a-252, any permit issued under
55 said section 22a-208a, subsection (c) or (d) of section 22a-250, any
56 regulation adopted under section 22a-209 or 22a-231, or any order
57 issued pursuant to section 22a-225, shall be fined not more than
58 twenty-five thousand dollars per day for each day of violation or
59 imprisoned not more than one year, or both. A subsequent conviction
60 for any such violation shall carry a fine of not more than fifty thousand
61 dollars per day for each day of violation or imprisonment for not more
62 than two years, or both.

63 (c) Any person who, in violation of any provision of sections 22a-
64 208a, 22a-208c and 22a-252, any permit issued under said section 22a-
65 208a, subsection (c) or (d) of section 22a-250, any regulation adopted
66 under section 22a-209 or 22a-231, or any order issued pursuant to
67 section 22a-225: (1) Knowingly makes any false statement,
68 representation or certification in any application, record, report, plan
69 or other document filed or required to be maintained under this
70 chapter, section 22a-6 or 22a-7, or under any regulation adopted, or
71 order or permit issued under this chapter, (2) falsifies, tampers with or
72 knowingly renders inaccurate any monitoring device or method
73 required to be maintained under the provisions of this chapter, section
74 22a-6 or 22a-7, or any regulation adopted, or order or permit issued
75 under this chapter, or (3) wilfully fails to maintain or knowingly
76 destroys, alters or conceals any record required to be maintained
77 under this chapter, section 22a-6 or 22a-7, or any regulation adopted,
78 or order or permit issued under this chapter, shall, upon conviction, be
79 fined not more than fifty thousand dollars per day for each day of the
80 violation or imprisoned not more than two years, or both. A

81 subsequent conviction for any such violation shall carry a fine of not
82 more than fifty thousand dollars per day for each day of the violation
83 or imprisonment for not more than five years, or both.

84 (d) For the purposes of this section, "person" includes any
85 responsible corporate officer or municipal official.

86 Sec. 3. Subsection (a) of section 22a-361 of the general statutes is
87 repealed and the following is substituted in lieu thereof (*Effective*
88 *October 1, 2009*):

89 (a) No person, firm or corporation, public, municipal or private,
90 shall dredge, erect any structure, place any fill, obstruction or
91 encroachment or carry out any work incidental thereto or retain or
92 maintain any structure, dredging or fill, in the tidal, coastal or
93 navigable waters of the state waterward of the high tide line until such
94 person, firm or corporation has submitted an application and has
95 secured from said commissioner a certificate or permit for such work
96 and has agreed to carry out any conditions necessary to the
97 implementation of such certificate or permit.

98 (1) Each application for a permit, except for an emergency
99 authorization, for any structure, filling or dredging which uses or
100 occupies less than five thousand five hundred square feet in water
101 surface area based on the perimeters of the project shall be
102 accompanied by a fee equal to eighty cents per square foot provided
103 such fee shall not be less than five hundred twenty-five dollars.

104 (2) Each application for a permit for any structure, filling or
105 dredging which uses or occupies five thousand five hundred square
106 feet or more but less than five acres in water surface area based on the
107 perimeters of the project shall be accompanied by a fee of three
108 thousand three hundred dollars plus ten cents per square foot for each
109 square foot in excess of five thousand five hundred square feet.

110 (3) Each application for a permit for any structure, filling or
111 dredging which uses or occupies five or more acres in water surface

112 area based on the perimeters of the project shall be accompanied by a
113 fee of nineteen thousand two hundred twenty-three dollars plus five
114 hundred twenty-five dollars per acre for each acre or part thereof in
115 excess of five acres.

116 (4) Each application for a mooring area or multiple mooring facility,
117 regardless of the area to be occupied by moorings, shall be
118 accompanied by a fee of five hundred twenty-five dollars provided
119 that such mooring areas or facilities shall not include fixed or floating
120 docks, slips or berths. Application fees for aquaculture activities shall
121 not be based on areal extent. The commissioner may waive or reduce
122 any fee [payable to him] for [(1)] (A) a tidal wetlands or coastal
123 resource restoration or enhancement activity, [(2)] (B) experimental
124 activities or demonstration projects, [(3)] (C) nonprofit academic
125 activities, or [(4)] (D) public access activities in tidal, coastal or
126 navigable waters, provided no fee shall be waived or reduced for
127 activities required by statute, regulation, permit, order or enforcement
128 action. The application fee for the retention of a structure built in
129 violation of this subsection where such structure is ineligible for a
130 certificate of permission under section 22a-363b shall be four times the
131 fee calculated in accordance with subdivisions (1) to (4), inclusive, of
132 this subsection. The commissioner may lower any such fee based upon
133 the commissioner's finding of significant extenuating circumstances.
134 As used in this section, "resource restoration or enhancement activity"
135 means an action taken to return a wetland or coastal resource to a prior
136 natural condition or to improve the natural functions or habitat value
137 of such resource, but shall not include actions required pursuant to an
138 enforcement action of the commissioner, and "public access activities"
139 means activities whose principal purpose is to provide or increase
140 access for the general public to tidal, coastal or navigable waters,
141 including, but not limited to, boardwalks, boat ramps, observation
142 areas and fishing piers.

143 Sec. 4. Subsection (d) of section 22a-438 of the general statutes is
144 repealed and the following is substituted in lieu thereof (*Effective*
145 *October 1, 2009*):

146 (d) Any person who (1) knowingly makes any false statement,
147 representation, or certification in any application, record, report, plan,
148 or other document filed or required to be maintained under this
149 chapter, or section 22a-6 or 22a-7, or [who] under any regulation
150 adopted or order or permit issued under this chapter, (2) falsifies,
151 tampers with, or knowingly renders inaccurate any monitoring device
152 or method required to be maintained under this chapter, or section
153 22a-6 or 22a-7, or under any regulation adopted or order or permit
154 issued under this chapter, or (3) wilfully fails to maintain or knowingly
155 destroys, alters or conceals any record required to be maintained
156 under this chapter, section 22a-6 or 22a-7, or any regulation adopted,
157 or order or permit issued under this chapter, shall upon conviction be
158 fined not more than [twenty-five thousand dollars for each] fifty
159 thousand dollars per day for each day of the violation or imprisoned
160 not more than two years, [for each violation] or both. A subsequent
161 conviction for any such violation shall carry a fine of not more than
162 fifty thousand dollars per day for each day of the violation or
163 imprisonment for not more than five years, or both. For the purposes
164 of this subsection, [person] "person" includes any responsible
165 corporate officer or municipal official.

166 Sec. 5. Section 1-24 of the general statutes is repealed and the
167 following is substituted in lieu thereof (*Effective October 1, 2009*):

168 The following officers may administer oaths: (1) The clerks of the
169 Senate, the clerks of the House of Representatives and the chairpersons
170 of committees of the General Assembly or of either branch thereof,
171 during its session; (2) state officers, as defined in subsection (t) of
172 section 9-1, judges and clerks of any court, family support magistrates,
173 judge trial referees, justices of the peace, commissioners of the Superior
174 Court, notaries public, town clerks and assistant town clerks, in all
175 cases where an oath may be administered, except in a case where the
176 law otherwise requires; (3) commissioners on insolvent estates,
177 auditors, arbitrators and committees, to parties and witnesses, in all
178 cases tried before them; (4) assessors and boards of assessment
179 appeals, in cases coming before them; (5) commissioners appointed by

180 governors of other states to take the acknowledgment of deeds, in the
181 discharge of their official duty; (6) the moderator of a school district
182 meeting, in such meeting, to the clerk of such district, as required by
183 law; (7) the first selectman, in any matter before the board of
184 selectmen; (8) the Chief Medical Examiner, Deputy Medical Examiner
185 and assistant medical examiners of the Office of the Medical Examiner,
186 in any matter before them; (9) registrars of vital statistics, in any matter
187 before them; (10) any chief inspector or inspector appointed pursuant
188 to section 51-286; (11) registrars of voters, deputy registrars, assistant
189 registrars, and moderators, in any matter before them; (12) special
190 assistant registrars, in matters provided for in subsections (b) and (c) of
191 section 9-19b and section 9-19c; (13) the Commissioner of Public Safety
192 and any sworn member of any local police department or the Division
193 of State Police within the Department of Public Safety, in all affidavits,
194 statements, depositions, complaints or reports made to or by any
195 member of any local police department or said Division of State Police
196 or any constable who is under the supervision of said commissioner or
197 any of such officers of said Division of State Police and who is certified
198 under the provisions of sections 7-294a to 7-294e, inclusive, and
199 performs criminal law enforcement duties; (14) judge advocates of the
200 United States Army, Navy, Air Force and Marine Corps, law
201 specialists of the United States Coast Guard, adjutants, assistant
202 adjutants, acting adjutants and personnel adjutants, commanding
203 officers, executive officers and officers whose rank is lieutenant
204 commander or major, or above, of the armed forces, as defined in
205 section 27-103, to persons serving with or in the armed forces, as
206 defined in said section, or their spouses; (15) investigators, deputy
207 investigators, investigative aides, secretaries, clerical assistants, social
208 workers, social worker trainees, paralegals and certified legal interns
209 employed by or assigned to the Public Defender Services Commission
210 in the performance of their assigned duties; (16) bail commissioners
211 employed by the Judicial Department in the performance of their
212 assigned duties; (17) juvenile matter investigators employed by the
213 Division of Criminal Justice in the performance of their assigned
214 duties; (18) the chairperson of the Connecticut Siting Council or the

215 chairperson's designee; (19) the presiding officer at an agency hearing
 216 under section 4-177b; (20) family relations counselors employed by the
 217 Judicial Department and support enforcement officers and
 218 investigators employed by the Department of Social Services Bureau of
 219 Child Support Enforcement and the Judicial Department, in the
 220 performance of their assigned duties; (21) the chairperson, vice-
 221 chairperson, members and employees of the Board of Pardons and
 222 Paroles, in the performance of their assigned duties; [and] (22) the
 223 Commissioner of Correction or the commissioner's designee; and (23)
 224 sworn law enforcement officers, appointed under section 26-5, within
 225 the Department of Environmental Protection, in all affidavits,
 226 statements, depositions, complaints or reports made to or by any such
 227 sworn law enforcement officer.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	22a-175
Sec. 2	<i>October 1, 2009</i>	22a-226a
Sec. 3	<i>October 1, 2009</i>	22a-361(a)
Sec. 4	<i>October 1, 2009</i>	22a-438(d)
Sec. 5	<i>October 1, 2009</i>	1-24

ENV *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Environmental Protection and Judicial Departments	GF - Revenue Gain	Potential	Potential
Department of Environmental Protection	EQ - Revenue Gain	Potential	Potential
Department of Environmental Protection	EC - Savings	See Below	See Below
Judicial Dept. (Probation)	GF - Cost	Potential	Potential

Note: GF=General Fund; EQ=Environmental Quality Fund; EC = Environmental Conservation Fund

Municipal Impact: None

Explanation

The bill could result in a revenue gain to the General Fund from fines and penalties collected by the Department of Environmental Protection (DEP) levied in response to violations of the bill's provisions. In FY 08, DEP collected \$1.9 million for the General Fund from fines and penalties. In FY 09 year-to-date (3/16/09) about \$990,000 has been deposited into the General Fund by DEP from fines and penalties¹.

DEP's Environmental Quality (EQ) fund could also experience a revenue gain since the bill increases the fee for certain structures wrongfully erected to four times the fee for a structure built under approved circumstances².

¹ Revenues collected from fines and penalties range greatly from fiscal year to fiscal year; some years this revenue may be as high as \$5.0 million while other years this revenue is less than \$1.0 million.

² Fees for these structures range from not less than \$525 (for structures less than 5,500 square feet) to \$19,223 plus \$525 per acre, for each acre of part thereof in excess of five acres.

The bill also increases criminal penalties for violations of the state's air pollution and solid waste laws. To the extent that these changes increase the likelihood that offenders would be prosecuted or receive harsher penalties, a potential revenue gain from criminal fines and potential cost for incarceration and/or probation supervision in the community exist. On average, it costs the state \$3,736 to supervise an offender on probation in the community as compared to \$44,165 to incarcerate the offender.

Lastly, Section 5 of the bill also would result in a savings of \$11,070 in FY 10 to DEP's Environmental Conservation (EC) fund since it allows Environmental Conservation (EnCon) officers to administer oaths without being notaries. Savings pertaining to this section are seen in the table below:

Item:	Cost of Item (\$)	Number of EnCon Officers	Savings (\$)
Fee for Notary Application	60	54	3,240
Fee for Date of Expiration Stamp	25	54	1,350
Fee for Raised Seal	120	54	6,480
Total			11,070

The Out Years

The annualized ongoing fiscal impact identified above for the potential revenue gain to the General Fund and the EQ fund would continue into the future subject to the number of violations that occur. The savings to the EC fund would occur every five years, since that is how long a notary term is effective.

OLR Bill Analysis**sSB 871*****AN ACT INCREASING THE ENFORCEMENT AUTHORITY OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION.*****SUMMARY:**

This bill sets, increases, and standardizes Department of Environmental Protection (DEP) fines, fees, and penalties for violations of air pollution, solid waste, and water pollution laws, regulations, orders, and permits. It applies the penalties to violations of environmental standards, orders, regulations, permits, DEP contracts, and cease-and-desist orders the commissioner issues or makes in carrying out her duties and responsibilities in those areas.

It adds sworn DEP law enforcement officers to those officials authorized to administer oaths. They may do so in affidavits, statements, depositions, complaints, and reports made to or by them.

EFFECTIVE DATE: October 1, 2009

AIR POLLUTION LAWS***Knowing Violations***

The bill increases the penalty for knowingly violating air pollution control laws. For first-time offenses, the bill increases the maximum daily fine from \$25,000 to \$50,000, and the maximum prison term from one to three years. For subsequent offenses, it increases the maximum daily fine from \$50,000 to \$100,000, and the maximum prison term from two to 10 years.

It also applies this increased penalty to knowing violations of environmental standards, regulations, permits, orders, DEP contracts, and cease-and-desist orders the commissioner issues in carrying out her duties and responsibilities in enforcing air pollution laws. The bill

specifies that responsible corporate officers and municipal officials are subject to these laws and penalties.

Criminally Negligent Violations

The bill applies the current penalties for criminally negligent violations of air pollution control laws to criminally negligent violations of environmental standards, regulations, orders, permits, DEP contracts, and cease-and-desist orders the commissioner issues or makes in carrying out her duties and responsibilities concerning these violations. These penalties are a maximum daily fine of \$25,000 and up to one year in prison for first time offenses, and a maximum daily fine of \$50,000 and up to two years in prison for subsequent offenses.

False Statements, Tampering, and Other Air Pollution Violations

Under current law, a person who knowingly makes a false statement in any air pollution permit application, record, report, or other document, required to be maintained by law, regulation, order, or permit, or falsifies, tampers with, or knowingly renders inaccurate any air pollution monitoring device or method required to be maintained by law, regulation, order or permit, may be fined up to \$10,000, and imprisoned for up to six months, or both, for each violation. The bill increases the monetary penalty for a first conviction to a maximum of \$50,000 per day for each day of the violation, and increases the maximum prison term to two years. The bill sets a maximum fine of up to \$50,000 per day for each day of the violation, imprisonment for up to five years, or both, for a subsequent conviction. The bill specifies that responsible corporate officers and municipal officials are subject to these laws and penalties.

The bill imposes the same penalties on people, including responsible corporate officers and municipal officials,

1. convicted of willfully failing to maintain or knowingly destroying, altering, or concealing (a) any air pollution record, required to be maintained by law, regulation, order, or permit, or (b) any record filed or required to be maintained under any

air pollution standards, regulations, permits, orders, DEP contracts, and cease-and-desist orders the commissioner issues or makes in carrying out her duties and responsibilities, and

2. who (a) knowingly make a false statement in a document or (b) falsify, tamper with, or knowingly render inaccurate an air pollution monitoring device or method required to be maintained for any air pollution standards, orders, regulations, permits, DEP contracts, and cease-and-desist orders the commissioner issues or makes in carrying out her duties and responsibilities regarding air pollution laws.

VIOLATION OF SOLID WASTE LAWS

The bill subjects people, including responsible corporate officers and municipal officials, who commit criminally negligent violations, knowingly make false statements, tamper with monitoring devices, and willfully fail to maintain, or knowingly destroy, alter, or conceal required records under various solid waste laws to a maximum fine of \$25,000 per day for each of the violation, up to one year in prison, or both, for a first offense. A subsequent conviction is punishable by a fine of up to \$50,000 per day for each day of the violation, imprisonment for up to two years, or both. These include violations of solid waste laws, regulations, permits, or orders concerning (1) building, altering, or operating solid waste facilities; (2) receiving, disposing of, processing, or transporting solid waste; (3) asbestos disposal; (4) dumping; and (5) operating resource recovery facilities.

The bill subjects people, including responsible corporate officers and municipal officials, who knowingly make a false statement, tamper with a required monitoring device, or willfully fail to maintain, or knowingly destroy, alter, or conceal records required by these solid waste laws, regulations, orders, or permits, or any environmental standards, regulations, orders, permits, DEP contracts, and cease-and-desist orders the commissioner issues or makes in carrying out her duties and responsibilities concerning the solid waste laws to a fine of up to \$50,000 per day for each day of violation, imprisonment for up to

two years, or both. A subsequent conviction is punishable by a fine of up to \$50,000 per day for each day of the violation, imprisonment for up to five years, or both.

VIOLATION OF WATER POLLUTION AND OTHER RECORD-KEEPING LAWS

Under current law, anyone who knowingly makes a false statement in a water pollution permit application, report, or other document, or falsifies, tampers with, or knowingly renders inaccurate any water pollution monitoring device, may be fined up to \$25,000 and imprisoned for up to two years, or both, for each violation. The bill increases the maximum fine to \$50,000 for each day of the violation, regardless of the number of violations, and limits it to first-time offenders. It imposes a maximum penalty of a \$50,000 fine per day for each day of the violation, five years in prison, or both, for subsequent violations.

The bill also imposes these penalties on anyone who knowingly makes a false statement in a document required to be filed under any water pollution control regulation, order, or permit, or who falsifies, tampers with, or knowingly renders inaccurate a monitoring device required to be maintained under any water pollution control regulation, order, or permit.

The bill imposes the same penalties on people convicted of willfully failing to maintain, or knowingly destroying, altering, or concealing any water pollution control record required to be maintained by law, regulation, order, or permit or any water pollution record that must be maintained under the commissioner's authority to carry out her duties and responsibilities or in the scope of an investigation resulting in a cease and desist order.

By law, unchanged by the bill, anyone, including a responsible corporate officer or municipal official, who commits criminally negligent violations of water pollution control record required to be maintained by law, regulation, order, or permit or any water pollution record that must be maintained under the commissioner's authority to

carry out her duties and responsibilities or in the scope of an investigation resulting in a cease and desist order, may be fined up to \$25,000 for each day of the violation and be imprisoned for up to one year. A subsequent conviction carries a fine of up to \$50,000 for each day of violation, imprisonment for up to two years.

APPLICATION FEES FOR UNPERMITTED STRUCTURES BUILT IN STATE WATERS

The law requires anyone erecting a structure ineligible for a certificate of permission in state tidal, coastal, or navigable waters waterward of the high tide line to obtain a DEP permit. Permit fees vary depending on the structure's type and size. The bill requires anyone seeking to retain a structure built in these waters without the required DEP permit to pay a fee of four times the applicable permit fee. It authorizes the commissioner to reduce the fee if she finds significant extenuating circumstances.

BACKGROUND

DEP Sworn Law Enforcement Officers

DEP has four categories of sworn law enforcement officers: conservation enforcement officers, seasonal special conservation officers, conservation enforcement trainees, and police officers.

Certificate of Permission

By law, the commissioner may issue a certificate of permission for certain activities in state tidal, coastal, or navigable waters, including maintenance and repair of existing structures (CGS § 22a-363b).

Civil Penalties

Criminal violators may also face civil penalties in certain instances.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 27 Nay 0 (03/06/2009)