



General Assembly

Substitute Bill No. 569

January Session, 2009

* SB00569JUD__051909__ *

**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 Section 22a-36 of the general statutes is repealed and the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. The
174 application shall be in such form and contain such information as the
175 inland wetlands agency may prescribe. The date of receipt of an
176 application shall be determined in accordance with the provisions of
177 subsection (c) of section 8-7d. The inland wetlands agency shall not
178 hold a public hearing on such application unless the inland wetlands
179 agency determines that the proposed activity may have a significant
180 impact on wetlands or watercourses, a petition signed by at least
181 twenty-five persons who are eighteen years of age or older and who
182 reside in the municipality in which the regulated activity is proposed,
183 requesting a hearing is filed with the agency not later than fourteen
184 days after the date of receipt of such application, or the agency finds
185 that a public hearing regarding such application would be in the

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

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

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

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

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

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

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

JUD *Joint Favorable Subst.*