



STATE OF CONNECTICUT

DEPARTMENT OF ENVIRONMENTAL PROTECTION



Public Hearing – March 8, 2010
Environment Committee

Testimony Submitted by Commissioner Amey W. Marrella
Department of Environmental Protection

Raised Senate Bill No. 123 - AN ACT CONCERNING PRESERVING NATURAL VEGETATION NEAR WETLANDS AND WATERCOURSES

Thank you for the opportunity to present testimony on Raised Senate Bill No. 123, AN ACT CONCERNING PRESERVING NATURAL VEGETATION NEAR WETLANDS AND WATERCOURSES. This bill would amend the Inland Wetlands and Watercourses Act (IWWA), sections 22a-36 through 45 of the Connecticut General Statutes, with a mandate that municipal inland wetlands agencies can only allow the destruction of natural vegetation around wetlands and watercourses in very limited circumstances. The Department interprets the language of the raised bill to apply such mandate to proposed regulated activities and activities that are presently exempt from permitting pursuant to section 22a-40 of the IWWA. (The present language of section 22a-40 describes such exempt activities as "permitted operations and uses.")

In 1997, as a result of the recognition of the importance of areas around wetlands and watercourses, the Department published our guidance document titled "Guidelines, Upland Review Area Regulations, Connecticut's Inland Wetlands & Watercourses Act" (See the Department's website at http://www.ct.gov/dep/lib/dep/water_inland/wetlands/upland_review_document_june1997.pdf).

This document established the Department's recommendation that municipal inland wetlands agencies regulate activities 100 feet from wetlands and watercourses and provided specific regulatory advice to ensure that such regulation would be legally defensible.

The Department supports the concept of riparian corridors and buffers and the legally defensible regulation of activities that affect inland wetlands and watercourses. Naturally vegetated and undisturbed upland areas surrounding wetlands and watercourses function in a number of important ways to protect these natural resources including controlling non-point source pollution, protecting aquatic habitats, providing natural temperature control for coldwater fisheries resources and other aquatic life, providing food sources for aquatic life, and providing continuous corridors for wildlife.

We selected the term "upland review area" instead of riparian corridor or buffer because such term best conveyed the regulatory scheme under the IWWA wherein a municipal inland wetlands agency reviews regulated activities on a case-by-case basis and approves, denies, or limits them on the merits of the proposal. Therefore, municipal inland wetland agencies already have authority to protect vegetation in areas around wetlands and watercourses when circumstances dictate provided such agencies have established upland review authority in their regulations. Should the bill be amended as noted below, we believe that municipal inland wetland agencies would have express statutory authority to protect vegetation in areas around wetlands and watercourses without the need to amend their regulations

As currently drafted, the bill appears to create a mandate that would result in an increase in the regulatory workload for municipal inland wetlands agencies. This is especially noteworthy since many activities associated with sections 22a-40 of the IWWA that are presently exempt from the regulatory permit process will now become regulated activities and require municipal inland wetlands and watercourses permits. Such change in regulatory status would result from the proposed amendment to section 22a-40(a)(1) of the IWWA (section 2 of the bill) and the proposed amendment as noted in section 3(d) of the bill. The Department believes that the present language of section 22a-40 of the IWWA provides for the use of property and the conduct of certain economic activities with protection of wetlands and watercourses. Such uses include the maintenance and enjoyment of property, recreational activities, and the economic and social benefits associated with farming and agriculture.

The Department could support the bill with changes that eliminate the municipal mandate and leave in place existing exemptions found in 22a-40 of the Inland Wetlands and Watercourses Act.

For example, the Committee may wish to consider the following the following changes:

1. Eliminate the proposed amendments to section 22a-40(a)(1) of the IWWA as noted in section 2 of the bill;
2. Eliminate the mandate as noted in section 3 of the bill by changing the proposed language from "...a municipal inland wetland wetlands agency shall not allow..." to "...a municipal inland wetlands agency may not allow..."and
3. Eliminate section 3(d) of the bill.

Thank you for the opportunity to present testimony on this proposal. If you should require any additional information, please contact Robert LaFrance, DEP's legislative liaison, at 424-3401 or Robert.LaFrance@CT.gov.