



**Testimony of Connecticut Fund for the Environment
Before the Environment Committee**

*In Support of S.B. No. 123, AN ACT CONSERVING NATURAL VEGETATION NEAR
WETLANDS AND WATERCOURSES*

Submitted by Eric Annes, Legal Fellow
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*Connecticut Fund for the Environment ("CFE"), with a total membership of approximately
6,000 Connecticut members, uses law and science to defend Connecticut's air, land and water.*

CFE strongly supports bill S.B. 123, An Act Conserving Natural Vegetation Near Wetlands and Watercourses. CFE's testimony today specifically supports the bill as amended by the attached proposed substitute bill language which makes certain amendments to the Connecticut General Statutes § 22a-36 *et seq.* known as the Inland Wetlands and Watercourses Act. The substitute language was drafted with suggestions from the DEP and a collaborative effort involving many groups, most notably: the Rivers Alliance, the Nature Conservancy, the Sierra Club, Tidewater Institute, the association of Soil and Conservation Districts with the advice of several scientists with expertise in river and wetland functioning.

S.B. 123 is an important bill in furthering the protection of Connecticut's water quality and mitigating the harms of flooding and erosion. This bill is an environmental conservation bill as well as a human welfare bill. First, by incorporating the attached substitute language, S.B. 123 increases protection of our drinking water by mitigating pollution harms associated with clearing vegetation near water supplies. Second, protection for vegetation around our wetlands and watercourses reduces the impacts of flooding and erosion. The cost of repairing damages from flooding and erosion was estimated at approximately \$6 billion nationally in 2005. Global climate change and associated increase in precipitation are predicted to increase the risks and costs of flooding and erosion. Protecting vegetation around wetlands and watercourses is a cost-effective method of mitigating harms of flooding and erosion. The bill, by protecting property from damage, is fiscally prudent. Third, the bill protects general water quality of our rivers and streams and thereby protects our Long Island Sound, into which all our rivers and streams flow.

Protection of water quality is vital to a stable, diverse and functioning ecosystem. Fourth, the bill provides ancillary benefits of protecting habitat for Connecticut's diverse species.

The bill's protection of the state's drinking water is, obviously, a necessity in its own right. But, by protecting water quality through pollution prevention, the bill reduces the costs associated with drinking water treatment. A study conducted by the Trust for Public Land and the American Water Works Association found for every 10 percent increase in forest cover in the source area, treatment and chemical costs decreased approximately 20 percent. The best technique for protecting water quality is vegetation surrounding rivers and wetlands. Again, the bill is a fiscally prudent bill.

Research scientists have repeatedly shown that protection of vegetation around wetlands and watercourses is necessary for protecting those resources. That is, protecting wetlands and watercourses is simply not possible unless the riparian area surrounding these resources is also protected. Natural vegetation surrounding our wetlands and watercourses provides important filtering of pollutants reduces erosion and provides a buffer against flooding by reducing flow rates and stabilizing channelization.

The attached substitute language forms an elegantly simple bill. The bill does not create any new regulated areas. Rather, the attached language directs local inland wetland agencies to preserve vegetation on any unimproved lot in the first 100 feet around wetlands and watercourses unless the applicant can demonstrate that there would be no adverse impact to the wetland or watercourse. For already improved lots, the proposed language is intended to give commissions discretion to preserve and replant natural vegetation in the first 100 feet around any wetland or watercourse to the extent practical. The attached language also includes provisions concerning the training and hiring of experts we hope and suspect the regulated community will fully support.

Other important aspects of the bill include maintaining and clarifying existing exemptions of agriculture and forestry activities. In Connecticut, we have a policy of encouraging farming and forestry. This bill is in line with that tradition.

S.B. 123, An Act Conserving Natural Vegetation Near Wetlands and Watercourses, is a smart prudent and important bill for the protection of Connecticut's citizens and natural resources. CFE strongly supports this bill and thanks the Committee for its attention to this critical matter.

**Proposed Amendments to the Inland Wetlands and Watercourses Act
Sections 22a-36 to 22a-45a**

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

1 Section 1. Section 22a-38 of the general statutes is repealed and the following
2 is substituted in lieu thereof (*Effective October 1, 2010*):

3 As used in sections 22a-36 to 22a-45a, inclusive, **and sections 3 and**
4 **4 of this act:**

5 (1) "Commissioner" means the Commissioner of Environmental
6 Protection;

7 (2) "Person" means any person, firm, partnership, association,
8 corporation, limited liability company, company, organization or legal
9 entity of any kind, including municipal corporations, governmental
10 agencies or subdivisions thereof;

11 (3) "Municipality" means any town, consolidated town and city,
12 consolidated town and borough, city and borough;

13 (4) "Inland wetlands agency" means a municipal board or
14 commission established pursuant to and acting under section 22a-42;

15 (5) "Soil scientist" means an individual duly qualified in accordance
16 with standards set by the federal Office of Personnel Management;

17 (6) "Material" means any substance, solid or liquid, organic or
18 inorganic, including, but not limited to soil, sediment, aggregate, land,
19 gravel, clay, bog, mud, debris, sand, refuse or waste;

20 (7) "Waste" means sewage or any substance, liquid, gaseous, solid
21 or radioactive, which may pollute or tend to pollute any of the waters
22 of the state;

23 (8) "Pollution" means harmful thermal effect or the contamination
24 or rendering unclean or impure of any waters of the state by reason of
25 any waste or other materials discharged or deposited therein by any
26 public or private sewer or otherwise so as directly or indirectly to
27 come in contact with any waters;

28 (9) "Rendering unclean or impure" means any alteration of the
29 physical, chemical or biological properties of any of the waters of the
30 state, including, but not limited to change in odor, color, turbidity or
31 taste;

32 (10) "Discharge" means the emission of any water, substance or
33 material into waters of the state whether or not such substance causes
34 pollution;

35 (11) "Remove" includes, but shall not be limited to drain, excavate,
36 mine, dig, dredge, suck, bulldoze, dragline or blast;

37 (12) "Deposit" includes, but shall not be limited to, fill, grade,
38 dump, place, discharge or emit;

39 (13) "Regulated activity" means any operation within or use of a
40 wetland or watercourse involving removal or deposition of material or
41 any obstruction, construction, alteration or pollution, of such wetlands
42 or watercourses, but shall not include the specified activities in section
43 22a-40, as amended by this act;

44 (14) "License" means the whole or any part of any permit, certificate of
45 approval or similar form of permission which may be required of any
46 person by the provisions of sections 22a-36 to 22a-45a, inclusive;

47 (15) "Wetlands" means land, including submerged land, not
48 regulated pursuant to sections 22a-28 to 22a-35, inclusive, which
49 consists of any of the soil types designated as poorly drained, very
50 poorly drained, alluvial, and floodplain by the National Cooperative
51 Soils Survey, as may be amended from time to time, of the Natural
52 Resources Conservation Service of the United States Department of
53 Agriculture;

54 (16) "Watercourses" means rivers, streams, brooks, waterways,
55 lakes, ponds, marshes, swamps, bogs and all other bodies of water,
56 natural or artificial, vernal or intermittent, public or private, which are
57 contained within, flow through or border upon this state or any
58 portion thereof, not regulated pursuant to sections 22a-28 to 22a-35,
59 inclusive. Intermittent watercourses shall be delineated by a defined
60 permanent channel and bank and the occurrence of two or more of the
61 following characteristics: (A) Evidence of scour or deposits of recent
62 alluvium or detritus, (B) the presence of standing or flowing water for

63 a duration longer than a particular storm incident, and (C) the
64 presence of hydrophytic vegetation;

65 (17) "Natural Vegetation" means naturally occurring trees, shrubs
66 or other plants but not including lawns or manicured grass areas.

67 [(17)] (18) "Feasible" means able to be constructed or implemented
68 consistent with sound engineering principles; and

69 [(18)] (19) "Prudent" means economically and otherwise reasonable
70 in light of the social benefits to be derived from the proposed regulated
71 activity provided cost may be considered in deciding what is prudent
72 and further provided a mere showing of expense will not necessarily
73 mean an alternative is imprudent.

74 Section 2. Subsection (a) of Section 22a-40 of the general statutes
75 is repealed and the following is substituted in lieu thereof (*Effective*
76 *October 1, 2010*):

77 (a) The following operations and uses shall be permitted in
78 wetlands, [and] watercourses, and areas around wetlands and
79 watercourses, as of right:

80 (1) Grazing, farming, as described in section 1-1, nurseries,
81 gardening and harvesting of crops and farm ponds of three acres or
82 less essential to the farming operation, and activities conducted by, or
83 under the authority of, the Department of Environmental Protection
84 for the purposes of wetland or watercourse restoration or
85 enhancement or mosquito control. The provisions of this subdivision
86 shall not be construed to include road construction or the erection of
87 buildings not directly related to the farming operation, relocation of
88 watercourses with continual flow, filling or reclamation of wetlands or
89 watercourses with continual flow, clear cutting of timber except for the
90 expansion of agricultural crop land, the mining of top soil, peat, sand,
91 gravel or similar material from wetlands or watercourses for the
92 purposes of sale;

93 (2) A residential home [(i)] (A) for which a building permit has
94 been issued or [(ii)] (B) on a subdivision lot, provided the permit has
95 been issued or the subdivision has been approved by a municipal
96 planning, zoning or planning and zoning commission as of the
97 effective date of promulgation of the municipal regulations pursuant
98 to subsection (b) of section 22a-42a or as of July 1, 1974, whichever is

99 earlier, and further provided no residential home shall be permitted as
100 of right pursuant to this subdivision unless the permit was obtained on
101 or before July 1, 1987;

102 (3) Boat anchorage or mooring;

103 (4) Uses incidental to the enjoyment and maintenance of residential
104 property, such property defined as equal to or smaller than the largest
105 minimum residential lot site permitted anywhere in the municipality,
106 provided in any town, where there are no zoning regulations
107 establishing minimum residential lot sites, the largest minimum lot site
108 shall be two acres. Such incidental uses shall include maintenance of
109 existing structures and landscaping but shall not include removal or
110 deposition of significant amounts of material from or onto a wetland
111 or watercourse or diversion or alteration of a watercourse;

112 (5) Construction and operation, by water companies as defined in
113 section 16-1 or by municipal water supply systems as provided for in
114 chapter 102, of dams, reservoirs and other facilities necessary to the
115 impounding, storage and withdrawal of water in connection with
116 public water supplies except as provided in sections 22a-401 and 22a-
117 403; and

118 (6) Maintenance relating to any drainage pipe which existed before
119 the effective date of any municipal regulations adopted pursuant to
120 section 22a-42a or July 1, 1974, whichever is earlier, provided such pipe
121 is on property which is zoned as residential but which does not
122 contain hydrophytic vegetation. For purposes of this subdivision,
123 "maintenance" means the removal of accumulated leaves, soil, and
124 other debris whether by hand or machine, while the pipe remains in
125 place;

126 Section 3. Section 22a-41 of the general statutes is repealed and the
127 following is substituted in lieu thereof (*Effective October 1, 2009*):

128 (a) In carrying out the purposes and policies of sections 22a-36 to
129 22a-45a, inclusive, including matters relating to regulating, licensing
130 and enforcing of the provisions thereof, the commissioner shall take
131 into consideration all relevant facts and circumstances, including but
132 not limited to:

133 (1) The environmental impact of the proposed regulated activity on
134 wetlands or watercourses;

135 (2) The applicant's purpose for, and any feasible and prudent
136 alternatives to, the proposed regulated activity which alternatives
137 would cause less or no environmental impact to wetlands or
138 watercourses;

139 (3) The relationship between the short-term and long-term impacts
140 of the proposed regulated activity on wetlands or watercourses and
141 the maintenance and enhancement of long-term productivity of such
142 wetlands or watercourses;

143 (4) Irreversible and irretrievable loss of wetland or watercourse
144 resources which would be caused by the proposed regulated activity,
145 including the extent to which such activity would foreclose a future
146 ability to protect, enhance or restore such resources, and any
147 mitigation measures which may be considered as a condition of
148 issuing a permit for such activity including, but not limited to,
149 measures to (A) prevent or minimize pollution or other environmental
150 damage, (B) maintain or enhance existing environmental quality, or
151 (C) in the following order of priority: Restore, enhance and create
152 productive wetland or watercourse resources;

153 (5) The character and degree of injury to, or interference with,
154 safety, health or the reasonable use of property which is caused or
155 threatened by the proposed regulated activity; and

156 (6) Impacts of the proposed regulated activity on wetlands or
157 watercourses outside the area for which the activity is proposed and
158 future activities associated with, or reasonably related to, the proposed
159 regulated activity which are made inevitable by the proposed
160 regulated activity and which may have an impact on wetlands or
161 watercourses;

162 (b) (1) In the case of an application which received a public hearing
163 pursuant to (A) subsection (k) of section 22a-39, or (B) a finding by the
164 inland wetlands agency that the proposed activity may have a
165 significant impact on wetlands or watercourses, a permit shall not be
166 issued unless the commissioner finds on the basis of the record that a
167 feasible and prudent alternative does not exist. In making his finding,
168 the commissioner shall consider the facts and circumstances set forth
169 in subsection (a) of this section. The finding and the reasons therefor
170 shall be stated on the record in writing.

171 (2) In the case of an application which is denied on the basis of a
172 finding that there may be feasible and prudent alternatives to the
173 proposed regulated activity which have less adverse impact on
174 wetlands or watercourses, the commissioner or the inland wetlands
175 agency, as the case may be, shall propose on the record in writing the
176 types of alternatives which the applicant may investigate provided this
177 subdivision shall not be construed to shift the burden from the
178 applicant to prove that he is entitled to the permit or to present
179 alternatives to the proposed regulated activity.

180 (c) For purposes of this section, (1) "wetlands or watercourses"
181 includes aquatic, plant or animal life and habitats in wetlands or
182 watercourses, and (2) "habitats" means areas or environments in which
183 an organism or biological population normally lives or occurs.

184 (d) A municipal inland wetlands agency shall not deny or condition
185 an application for a regulated activity in an area outside wetlands or
186 watercourses on the basis of an impact or effect on aquatic, plant, or
187 animal life unless such activity will likely impact or affect the physical
188 characteristics of such wetlands or watercourses.

189 (e) The municipal inland wetlands agency shall protect natural
190 vegetation in the first 100 feet around any wetland or watercourse,
191 provided, natural vegetation may be removed in the first 100 feet if
192 there is no feasible and prudent alternative, or the applicant can
193 demonstrate there would be no impact on the physical characteristics
194 of such wetland or watercourse. This subsection shall only apply to
195 unimproved lots.

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197 (f) The municipal inland wetlands agency shall, to the extent
198 practicable, require the preservation or replanting of natural
199 vegetation in the first 100 feet around any wetland or watercourse of
200 a previously improved lot.

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202 Section 4. Section 22a-42a of the general statutes is repealed and the
203 following is substituted in lieu thereof (*Effective October 1, 2009*):

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205 (a) The inland wetlands agencies authorized in section 22a-42, as
206 amended by this act, shall through regulation provide for (1) the manner in
207 which the boundaries of inland wetland and watercourse areas in their

208 respective municipalities shall be established and amended or changed, (2) the
209 form for an application to conduct regulated activities, (3) notice and
210 publication requirements, (4) criteria and procedures for the review of
211 applications, and (5) administration and enforcement.

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213 (b) No regulations of an inland wetlands agency including boundaries
214 of inland wetland and watercourse areas shall become effective or be
215 established until after a public hearing in relation thereto is held by the inland
216 wetlands agency. Any such hearing shall be held in accordance with the
217 provisions of section 8-7d. A copy of such proposed regulation or boundary
218 shall be filed in the office of the town, city or borough clerk as the case may
219 be, in such municipality, for public inspection at least ten days before such
220 hearing, and may be published in full in such paper. A copy of the notice and
221 the proposed regulations or amendments thereto, except determinations of
222 boundaries, shall be provided to the commissioner at least thirty-five days
223 before such hearing. Such regulations and inland wetland and watercourse
224 boundaries may be from time to time amended, changed or repealed, by
225 majority vote of the inland wetlands agency, after a public hearing in relation
226 thereto is held by the inland wetlands agency, in accordance with the
227 provisions of section 8-7d to the general statutes. Regulations or boundaries or
228 changes therein shall become effective at such time as is fixed by the inland
229 wetlands agency, provided a copy of such regulation, boundary or change
230 shall be filed in the office of the town, city or borough clerk, as the case may
231 be. Whenever an inland wetlands agency makes a change in regulations or
232 boundaries it shall state upon its records the reason why the change was made
233 and shall provide a copy of such regulation, boundary or change to the
234 Commissioner of Environmental Protection no later than ten days after its
235 adoption provided failure to submit such regulation, boundary or change shall
236 not impair the validity of such regulation, boundary or change. All petitions
237 submitted in writing and in a form prescribed by the inland wetlands agency,
238 requesting a change in the regulations or the boundaries of an inland wetland
239 and watercourse area shall be considered at a public hearing held in
240 accordance with the provisions of section 8-7d. The failure of the inland
241 wetlands agency to act within any time period specified in this subsection, or
242 any extension thereof, shall not be deemed to constitute approval of the
243 petition.

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245 (c) (1) On and after the effective date of the municipal regulations
246 promulgated pursuant to subsection (b) of this section, no regulated activity
247 shall be conducted upon any inland wetland or watercourse without a permit.
248 Any person proposing to conduct or cause to be conducted a regulated activity
249 upon an inland wetland or watercourse or riverfront area shall file an
250 application with the inland wetlands agency of the town or towns wherein the
251 wetland or watercourse in question is located. The application shall be in such
252 form and contain such information as the inland wetlands agency may
253 prescribe.

254 The date of receipt of an application shall be determined in accordance with
255 the provisions of subsection (c) of section 8-7d to the general statutes. The
256 inland wetlands agency shall not hold a public hearing on such application
257 unless the inland wetlands agency determines that the proposed activity may
258 have a significant impact on wetlands and watercourses, a petition signed by
259 at least twenty-five persons who are eighteen years of age or older and who
260 reside in the municipality in which the regulated activity is proposed,
261 requesting a hearing is filed with the agency not later than fourteen days after
262 the date of receipt of such application, or the agency finds that a public
263 hearing regarding such application would be in the public interest. An inland
264 wetlands agency may issue a permit without a public hearing provided no
265 petition provided for in this subsection is filed with the agency on or before
266 the fourteenth day after the date of receipt of the application. Such hearing
267 shall be held in accordance with the provisions of section 8-7d supplement to
268 the general statutes. If the inland wetlands agency, or its agent, fails to act on
269 any application within thirty-five days after the completion of a public hearing
270 or in the absence of a public hearing within sixty-five days from the date of
271 receipt of the application, or within any extension of any such period as
272 provided in section 8-7d supplement to the general statutes, the applicant may
273 file such application with the Commissioner of Environmental Protection
274 who shall review and act on such application in accordance with this section.
275 Any costs incurred by the commissioner in reviewing such application for
276 such inland wetlands agency shall be paid by the municipality that established
277 or authorized the agency. Any fees that would have been paid to such
278 municipality if such application had not been filed with the commissioner
279 shall be paid to the state. The failure of the inland wetlands agency or the
280 commissioner to act within any time period specified in this subsection, or any
281 extension thereof, shall not be deemed to constitute approval of the
282 application.

283 (2) An inland wetlands agency may delegate to its duly authorized agent the
284 authority to approve or extend an activity that is not located in a wetland or
285 watercourse when such agent finds that the conduct of such activity would
286 result in no greater than a minimal impact on any wetland or watercourse,
287 provided such agent has completed the comprehensive training program
288 developed by the commissioner pursuant to section 22a-39, as amended by
289 this act. Notwithstanding the provisions for receipt and processing
290 applications prescribed in subdivision (1) of this subsection, such agent may
291 approve or extend such an activity at any time. Any person receiving such
292 approval from such agent shall, within ten days of the date of such approval,
293 publish, at the applicant's expense, notice of the approval in a newspaper
294 having a general circulation in the town wherein the activity is located or will
295 have an effect. Any person may appeal such decision of such agent to the
296 inland wetlands agency within fifteen days after the publication date of the
297 notice and the inland wetlands agency shall consider such appeal at its next
298 regularly scheduled meeting provided such meeting is no earlier than three
299 business days after receipt by such agency or its agent of such appeal. The

300 inland wetlands agency shall, at its discretion, sustain, alter or reject the
301 decision of its agent or require an application for a permit in accordance with
302 subdivision (1) of subsection (c) of this section.
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304 (d) (1) In granting, denying or limiting any permit for a regulated
305 activity the inland wetlands agency, or its agent, shall consider the factors set
306 forth in section 22a-41, as amended by this act and such agency, or its agent,
307 shall state upon the record the reason for its decision. In granting a permit the
308 inland wetlands agency, or its agent, may grant the application as filed or
309 grant it upon other terms, conditions, limitations or modifications of the
310 regulated activity which are designed to carry out the policy of sections 22a-
311 36 to 22a-45, inclusive, as amended by this act. Such terms may include any
312 reasonable measures which would mitigate the impacts of the regulated
313 activity and which would (A) prevent or minimize pollution or other
314 environmental damage, (B) maintain or enhance existing environmental
315 quality, or (C) in the following order of priority: Restore, enhance and create
316 productive wetland or watercourse resources. No person shall conduct any
317 regulated activity within an inland wetland, watercourse or area around a
318 wetland or watercourse which requires zoning or subdivision approval without
319 first having obtained a valid certificate of zoning or subdivision approval,
320 special permit, special exception or variance or other documentation
321 establishing that the proposal complies with the zoning or subdivision
322 requirements adopted by the municipality pursuant to chapters 124 to 126,
323 inclusive, or any special act. The agency may suspend or revoke a permit if it
324 finds after giving notice to the permittee of the facts or conduct which warrant
325 the intended action and after a hearing at which the permittee is given an
326 opportunity to show compliance with the requirements for retention of the
327 permit, that the applicant has not complied with the conditions or limitations
328 set forth in the permit or has exceeded the scope of the work as set forth in the
329 application. The applicant shall be notified of the agency's decision by
330 certified mail within fifteen days of the date of the decision and the agency
331 shall cause notice of their order in issuance, denial, revocation or suspension
332 of a permit to be published in a newspaper having a general circulation in the
333 town wherein the wetland or watercourse lies. In any case in which such
334 notice is not published within such fifteen-day period, the applicant may
335 provide for the publication of such notice within ten days thereafter.

336 (2) Any permit issued under this section for the development of property for
337 which an approval is required under section 8-3, 8-25 or 8-26 shall be valid
338 for five years provided the agency may establish a specific time period within
339 which any regulated activity shall be conducted. Any permit issued under this
340 section for any other activity shall be valid for not less than two years and not
341 more than five years. Any such permit shall be renewed upon request of the
342 permit holder unless the agency finds that there has been a substantial change
343 in circumstances which requires a new permit application or an enforcement
344 action has been undertaken with regard to the regulated activity for which the
345 permit was issued provided no permit may be valid for more than ten years.

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(e) The inland wetlands agency may require a filing fee to be deposited with the agency. The amount of such fee shall be sufficient to cover the reasonable cost of reviewing and acting on applications and petitions, including, but not limited to, the costs of certified mailings, publications of notices and decisions, training of inland wetland agency members, and monitoring compliance with permit conditions or agency orders. The inland wetlands agency may charge an additional fee sufficient to cover the costs of hiring retaining experts to analyze, review, and report on issues requiring such experts. The inland wetlands agency or its duly authorized agent shall estimate this additional fee which shall be paid within 15 days of the applicant's receipt of notice of such estimate. Any portion of the additional fee in excess of the actual cost shall be refunded to the applicant no later than 15 days after publication of the agency's decision.

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