



House of Representatives

General Assembly

File No. 95

February Session, 2010

Substitute House Bill No. 5117

House of Representatives, March 23, 2010

The Committee on Environment reported through REP. ROY, R. of the 119th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING CONSERVATION AND PRESERVATION RESTRICTIONS HELD BY THE STATE.

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

1 Section 1. Section 47-42d of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2010*):

3 (a) For purposes of this section, "state or local land use agency"
4 includes, but is not limited to, a municipal planning commission,
5 municipal zoning commission, combined municipal planning and
6 zoning commission, a municipal zoning board of appeals, municipal
7 inland wetlands and watercourses agency, a municipal historic district
8 commission and any state agency that issues permits for the
9 construction or improvement of real property.

10 (b) No person shall file a permit application with a state or local
11 land use agency or a local building official or director of health, other
12 than for interior work in an existing building or for exterior work that
13 does not expand or alter the footprint of an existing building, relating

14 only to property that is subject to a conservation restriction or a
15 preservation restriction unless the applicant provides proof that the
16 applicant has provided written notice of such application, by certified
17 mail, return receipt requested, to the party holding such restriction,
18 including, but not limited to, any state agency that holds such
19 restriction, not later than sixty days prior to the filing of the permit
20 application. In lieu of such notice, the applicant may submit a letter
21 from the holder of such restriction or from the holder's authorized
22 agent, verifying that the application is in compliance with the terms of
23 the restriction. If the applicant has provided written notice pursuant to
24 this subsection, the holder of the restriction may provide proof to the
25 state or local land use agency or local building official or director of
26 health that granting of the permit application will violate the terms of
27 the restriction and such agency, official or director shall not grant the
28 permit.

29 (c) If the applicant fails to comply with the provisions of subsection
30 (b) of this section, (1) the party holding the conservation or
31 preservation restriction, other than a state agency that holds such
32 restriction, may, not later than fifteen days after receipt of actual notice
33 of permit approval, file an appeal with the state or local land use
34 agency or local building official or director of health, subject to any
35 rules of such agency, official or director relating to appeals. The
36 agency, official or director shall reverse the permit approval upon a
37 finding that the requested land use violates the terms of such
38 restriction; or (2) the state agency that holds such restriction may, not
39 later than thirty days after receipt of actual notice of permit approval,
40 file an appeal with the state or local land use agency or local building
41 official or director of health, subject to any rules of such state or local
42 land use agency, official or director relating to appeals. Such state or
43 local land use agency, official or director shall immediately reverse
44 such permit approval if the commissioner of the state agency that
45 holds such restriction certifies that the land use authorized in such
46 permit violates the terms of such conservation or preservation
47 restriction. The commissioner of the state agency that holds such
48 restriction may impose a civil penalty of not more than: (A) Five

49 thousand dollars for a violation of subsection (b) of this section; and
50 (B) one thousand dollars for each day that such violation continues
51 after the applicant receives an order from such commissioner assessing
52 a civil penalty pursuant to subparagraph (A) of this subsection.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2010	47-42d

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 11 \$	FY 12 \$
Department of Agriculture	GF - Revenue Gain	Potential Minimal	Potential Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill creates a civil penalty of up to \$5,000 for anyone who files a permit application for interior or exterior building work without proof of having provided written notice to the, Department of Agriculture, who holds conservation and preservation restrictions. The bill also creates a fine of \$1,000 per day for any violation continuing beyond the initial penalty.

There are 265 conservation easement restrictions containing over 35,000 acres of farmland soil in the state. The bill may result in a minimal revenue gain, depending on the number of violations from fines. The Department of Agriculture did not collect any revenue for civil penalties of any type in FY 09.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of civil penalties levied on violators of the bill's provisions.

OLR Bill Analysis

sHB 5117

AN ACT CONCERNING CONSERVATION AND PRESERVATION RESTRICTIONS HELD BY THE STATE.

SUMMARY:

By law, anyone seeking a permit from state and local land use agencies, local building officials, and health directors generally must notify holders of conservation or preservation restrictions on the affected property before filing an application, other than for permits for interior work or exterior work not expanding or altering the building's footprint. Where a state agency holds the restriction, this bill increases, from 15 to 30 days, the amount of time the state agency has to appeal the granted permit. It requires the state agency that holds the restriction to comply with the permitting authority's rules regarding appeals.

Under current law, the permitting authority must reverse its permit approval if it finds that the requested land use violates the restriction. The bill requires the permitting authority to immediately reverse its approval if the state agency commissioner, holding a restriction certifies that the land use activity authorized by the permit violates the restriction.

The bill creates a civil penalty of up to \$5,000 for anyone who files a permit application without proof of having provided written notice to the state agency holding the restriction, as well as a fine of \$1,000 per day for violations continuing beyond the initial penalty.

The bill also specifies that it applies only to property subject to a restriction.

EFFECTIVE DATE: October 1, 2010.

BACKGROUND***State and Local Land Use Agency***

Under the law, “state or local land use agency” includes a municipal planning commission, municipal zoning commission, combined municipal planning and zoning commission, a municipal zoning board of appeals, municipal inland wetlands agency, a municipal historic district commission, or any state agency that issues permits for the construction or improvement of real property.

Conservation and Preservation Restrictions

The law prohibits people from filing permit applications relating to property subject to a conservation or preservation restriction unless they show that they provided written notice of the application to the restriction holder at least 60 days before applying. Notice must be sent by certified mail, return receipt requested. In place of the notice, an applicant may submit a letter from the restriction holder, or the holder's authorized agent, verifying that the application complies with the restriction terms. The filing requirements do not apply to permits for (1) interior work in an existing building or (2) exterior work that does not expand or alter the footprint of an existing building.

If the applicant has provided written notice, the restriction holder may provide proof to the state, local land use agency, local building official, or health director that granting the permit will violate the restriction's terms. The agency, official, or director cannot grant the permit when the restriction holder provides such proof.

The restriction holder may, no later than 15 days after receiving the permit approval notice, file an appeal with the appropriate state or local agency or person. The agency, official, or director must reverse the permit approval upon finding that the requested land use violates the terms of the restriction.

Under farm and open space preservation programs, a restriction or an easement is placed in the town land record where the property is located and serves to notify any potential buyer that the land can be

developed only for agricultural purposes or permanently held in its natural condition.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 29 Nay 0 (03/05/2010)