



# Senate

General Assembly

**File No. 190**

February Session, 2010

Substitute Senate Bill No. 123

*Senate, March 30, 2010*

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 CONCERNING THE PRESERVATION OF NATURAL VEGETATION NEAR WETLANDS AND WATERCOURSES AND CERTAIN 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 Section 22a-38 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2010*):

3 As used in sections 22a-36 to 22a-45a, inclusive, as amended by this  
4 act, and section 3 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 as amended by this act;

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

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

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

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

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

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

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

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

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

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

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

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

66 (17) "Natural vegetation" means naturally occurring shrubs, trees or  
67 other plants, but does not include lawns or manicured grass areas;

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

70 [(18)] (19) "Prudent" means economically and otherwise reasonable

71 in light of the social benefits to be derived from the proposed regulated  
72 activity provided cost may be considered in deciding what is prudent  
73 and further provided a mere showing of expense will not necessarily  
74 mean an alternative is imprudent.

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

78 (a) The following operations and uses shall be permitted in  
79 wetlands and 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 been  
94 issued, or [(ii)] (B) on a subdivision lot, provided the permit has been  
95 issued or the subdivision has been approved by a municipal planning,  
96 zoning or planning and zoning commission as of the effective date of  
97 promulgation of the municipal regulations pursuant to subsection (b)  
98 of section 22a-42a or as of July 1, 1974, whichever is earlier, and further  
99 provided no residential home shall be permitted as of right pursuant  
100 to this subdivision unless the permit was obtained on or before July 1,  
101 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, as amended by this act, or July 1, 1974, whichever is  
121 earlier, provided such pipe is on property which is zoned as residential  
122 but which does not contain hydrophytic vegetation. For purposes of  
123 this subdivision, "maintenance" means the removal of accumulated  
124 leaves, soil, and other debris whether by hand or machine, while the  
125 pipe remains in place.

126 Sec. 3. (NEW) (*Effective October 1, 2010*) (a) Except as provided in  
127 subsection (b) of this section, when considering an application for a  
128 proposed regulated activity, a municipal inland wetlands agency may  
129 prohibit the destruction of natural vegetation within (1) one hundred  
130 feet of a wetlands or watercourse, or (2) the distance around the  
131 wetlands or watercourse regulated by the municipality pursuant to  
132 subsection (f) of section 22a-42a of the general statutes if such distance  
133 is less than one hundred feet from such wetlands or watercourse.

134 (b) A municipal inland wetlands agency may allow the removal of  
135 natural vegetation in connection with a proposed regulated activity if

136 (1) the applicant can demonstrate that the removal will have no likely  
137 impact or effect on the soil and water characteristics of such wetlands  
138 or watercourse, or (2) there is no feasible or prudent alternative to the  
139 removal, provided such proposed activity meets all other permitting  
140 requirements and applicable provisions of chapter 440 of the general  
141 statutes.

142 (c) The provisions of this section shall not apply to construction  
143 activities that are ancillary to existing residential uses, including, but  
144 not limited to, the construction of structures such as decks,  
145 outbuildings, fences or walkways. Any such construction activities  
146 shall be subject to all other permitting requirements and applicable  
147 provisions of chapter 440 of the general statutes and any natural  
148 vegetation in proximity to such construction activities shall be  
149 protected or restored to the maximum extent practicable.

150 (d) The as of right uses specified in section 22a-40 of the general  
151 statutes, as amended by this act, shall be permitted in areas of natural  
152 vegetation located within the distance around the wetlands or  
153 watercourse regulated by the municipality in accordance with  
154 subsection (a) of this section.

155 Sec. 4. Section 22a-42 of the general statutes is repealed and the  
156 following is substituted in lieu thereof (*Effective October 1, 2010*):

157 (a) To carry out and effectuate the purposes and policies of sections  
158 22a-36 to 22a-45a, inclusive, as amended by this act, it is hereby  
159 declared to be the public policy of the state to require municipal  
160 regulation of activities affecting the wetlands and watercourses within  
161 the territorial limits of the various municipalities or districts, to  
162 preserve and to prevent the despoliation and destruction of such  
163 wetlands and watercourses.

164 (b) Any municipality may acquire wetlands and watercourses  
165 within its territorial limits by gift or purchase, in fee or lesser interest  
166 including, but not limited to, lease, easement or covenant, subject to  
167 such reservations and exceptions as it deems advisable.

168 (c) On or before July 1, 1988, each municipality shall establish an  
169 inland wetlands agency or authorize an existing board or commission  
170 to carry out the provisions of sections 22a-36 to 22a-45, inclusive, as  
171 amended by this act. Each municipality, acting through its legislative  
172 body, may authorize any board or commission, as may be by law  
173 authorized to act, or may establish a new board or commission to  
174 promulgate such regulations, in conformity with the regulations  
175 adopted by the commissioner pursuant to section 22a-39, as are  
176 necessary to protect the wetlands and watercourses within its  
177 territorial limits. The ordinance establishing the new board or  
178 commission shall determine the number of members and alternate  
179 members, the length of their terms, the method of selection and  
180 removal and the manner for filling vacancies in the new board or  
181 commission. No member or alternate member of such board or  
182 commission shall participate in the hearing or decision of such board  
183 or commission of which he is a member upon any matter in which he  
184 is directly or indirectly interested in a personal or financial sense. In  
185 the event of such disqualification, such fact shall be entered on the  
186 records of such board or commission and replacement shall be made  
187 from alternate members of an alternate to act as a member of such  
188 commission in the hearing and determination of the particular matter  
189 or matters in which the disqualification arose. For the purposes of this  
190 section, the board or commission authorized by the municipality or  
191 district, as the case may be, shall serve as the sole agent for the  
192 licensing of regulated activities.

193 (d) At least one member of the inland wetlands agency or staff of  
194 the agency shall be a person who has completed the comprehensive  
195 training program developed by the commissioner pursuant to section  
196 22a-39. Failure to have a member of the agency or staff with training  
197 shall not affect the validity of any action of the agency. The  
198 commissioner shall annually make such program available to one  
199 person from each town without cost to that person or the town. Each  
200 inland wetlands agency shall hold a meeting at least once annually at  
201 which information is presented to the members of the agency which  
202 summarizes the provisions of the training program. The commissioner

203 shall develop such information in consultation with interested persons  
204 affected by the regulation of inland wetlands and shall provide for  
205 distribution of video presentations and related written materials which  
206 convey such information to inland wetlands agencies. In addition to  
207 such materials, the commissioner, in consultation with such persons,  
208 shall prepare materials which provide guidance to municipalities in  
209 carrying out the provisions of subsection (f) of section 22a-42a.

210 (e) Any municipality, pursuant to ordinance, may act through the  
211 board or commission authorized in subsection (c) of this section to join  
212 with any other municipalities in the formation of a district for the  
213 regulation of activities affecting the wetlands and watercourses within  
214 such district. Any city or borough may delegate its authority to  
215 regulate inland wetlands under this section to the town in which it is  
216 located.

217 (f) Municipal or district ordinances or regulations may embody any  
218 regulations promulgated hereunder, in whole or in part, or may  
219 consist of other ordinances or regulations in conformity with  
220 regulations promulgated hereunder. Any ordinances or regulations  
221 shall be for the purpose of effectuating the purposes of sections 22a-36  
222 to 22a-45, inclusive, as amended by this act, and [,] a municipality or  
223 district, in acting upon ordinances and regulations, shall incorporate  
224 the factors set forth in section 22a-41.

225 (g) Nothing contained in this section shall be construed to limit the  
226 existing authority of a municipality or any boards or commissions of  
227 the municipality, provided the commissioner shall retain authority to  
228 act on any application filed with said commissioner prior to the  
229 establishment or designation of an inland wetlands agency by a  
230 municipality.

231 Sec. 5. Subsection (c) of section 22a-42a of the 2010 supplement to  
232 the general statutes is repealed and the following is substituted in lieu  
233 thereof (*Effective October 1, 2010*):

234 (c) (1) On and after the effective date of the municipal regulations

235 promulgated pursuant to subsection (b) of this section, no regulated  
236 activity shall be conducted upon any inland wetland or watercourse  
237 without a permit. Any person proposing to conduct or cause to be  
238 conducted a regulated activity upon an inland wetland or watercourse  
239 shall file an application with the inland wetlands agency of the town or  
240 towns wherein the wetland or watercourse in question is located. The  
241 application shall be in such form and contain such information as the  
242 inland wetlands agency may prescribe. The date of receipt of an  
243 application shall be determined in accordance with the provisions of  
244 subsection (c) of section 8-7d. The inland wetlands agency shall not  
245 hold a public hearing on such application unless the inland wetlands  
246 agency determines that the proposed activity may have a significant  
247 impact on wetlands or watercourses, a petition signed by at least  
248 twenty-five persons who are eighteen years of age or older and who  
249 reside in the municipality in which the regulated activity is proposed,  
250 requesting a hearing is filed with the agency not later than fourteen  
251 days after the date of receipt of such application, or the agency finds  
252 that a public hearing regarding such application would be in the  
253 public interest. An inland wetlands agency may issue a permit without  
254 a public hearing provided no petition provided for in this subsection is  
255 filed with the agency on or before the fourteenth day after the date of  
256 receipt of the application. Such hearing shall be held in accordance  
257 with the provisions of section 8-7d. The inland wetlands agency shall  
258 consider all relevant evidence brought before such agency or its agent  
259 by any person or entity, including, but not limited to, scientific  
260 evidence, expert opinion, direct observations made regarding the  
261 proposed regulated activity, environmental reviews, policy letters or  
262 guidance documents provided by or on behalf of an environmental  
263 review team or by the Department of Environmental Protection and  
264 written comments or oral testimony submitted by the Commissioner of  
265 Public Health or by or on behalf of a water company in response to  
266 written notice provided to such water company pursuant to section  
267 22a-42f. If the inland wetlands agency, or its agent, fails to act on any  
268 application within thirty-five days after the completion of a public  
269 hearing or in the absence of a public hearing within sixty-five days

270 from the date of receipt of the application, or within any extension of  
271 any such period as provided in section 8-7d, the applicant may file  
272 such application with the Commissioner of Environmental Protection  
273 who shall review and act on such application in accordance with this  
274 section. Any costs incurred by the commissioner in reviewing such  
275 application for such inland wetlands agency shall be paid by the  
276 municipality that established or authorized the agency. Any fees that  
277 would have been paid to such municipality if such application had not  
278 been filed with the commissioner shall be paid to the state. The failure  
279 of the inland wetlands agency or the commissioner to act within any  
280 time period specified in this subsection, or any extension thereof, shall  
281 not be deemed to constitute approval of the application.

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

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2010</i>	22a-38
Sec. 2	<i>October 1, 2010</i>	22a-40(a)
Sec. 3	<i>October 1, 2010</i>	New section
Sec. 4	<i>October 1, 2010</i>	22a-42
Sec. 5	<i>October 1, 2010</i>	22a-42a(c)

**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:*** None

***Municipal Impact:*** None

***Explanation***

The bill, which conforms statutes to existing practices of municipal inland wetland agencies, does not result in a fiscal impact.

***The Out Years***

***State Impact:*** None

***Municipal Impact:*** None

---

---

**OLR Bill Analysis****sSB 123****AN ACT CONCERNING THE PRESERVATION OF NATURAL VEGETATION NEAR WETLANDS AND WATERCOURSES AND CERTAIN ENHANCEMENTS TO THE INLAND WETLANDS AND WATERCOURSES ACT.****SUMMARY:**

This bill allows municipal inland wetlands agencies to deny a permit if the proposed activity would destroy natural vegetation within 100 feet maximum of a wetlands or watercourse. It also requires an inland wetlands agency to consider all relevant evidence brought before it when considering whether to issue a permit to conduct a regulated activity in a wetlands or watercourse. The bill also clarifies the activities permitted in wetlands and watercourses "as of right."

By law, preservation of wetlands and watercourses is state policy. The bill specifically requires municipalities to regulate activities affecting inland wetlands and watercourses to that end.

EFFECTIVE DATE: October 1, 2010

**§ 3 — REGULATED ACTIVITY OUTSIDE WETLANDS OR WATERCOURSES**

The law requires municipal wetland agencies to regulate certain activities affecting inland wetlands and watercourses. No regulated activity can take place in a wetland without a permit (see BACKGROUND). Agencies can also regulate activities in upland areas outside of the wetland, but only if in practice they are likely to affect the wetland.

The bill allows such agencies to deny a permit if the proposed activity would destroy natural vegetation within (1) 100 feet of a

wetlands or watercourse or (2) the distance set by the municipality, if the distance is less than 100 feet.

The bill defines “natural vegetation” as naturally occurring shrubs, trees, or other plants growing around wetlands or watercourses, not including lawns or manicured grass areas.

By law, a municipal inland wetlands agency may not deny or condition an application for a regulated activity in an area outside wetlands or watercourses based on an the activity’s or effect on aquatic, plant, or animal life unless the activity will likely impact or affect the physical characteristics of the wetlands or watercourses. The bill authorizes municipal wetlands agencies to allow the removal of natural vegetation if (1) the applicant can prove removal will not affect soil or water characteristics or (2) there is no feasible or prudent alternative, provided the proposed activity meets all other permitting requirements.

The bill does not apply to constructing ancillary structures to existing residential uses, including decks, outbuildings, fences, or walkways, all of which are subject to other permitting requirements. The bill requires natural vegetation in proximity to the construction of ancillary structures to be protected or restored to the maximum extent practicable.

## **§ 5 — CONSIDERATION OF EVIDENCE**

By law, a person seeking to conduct an activity that involves removing from or depositing material on, or obstructing, building in, altering, or polluting a wetlands or watercourse, must obtain a permit from a municipal inland wetlands agency. The law requires the agency to consider the proposed application’s impact on the environment, feasible and prudent alternatives that would have less environmental impact, and several other factors (see BACKGROUND).

The bill requires the agency also to consider all relevant evidence brought before it or its agent by any person or entity, including:

1. scientific evidence and expert opinion;
2. direct observations concerning the proposed regulated activity;
3. environmental reviews, policy letters, and guidance documents provided by, or on behalf of, an environmental review team or the Department of Environmental Protection (DEP); and
4. written comments or oral testimony submitted by the public health commissioner or, by or on behalf of, a water company responding to written notice it received according to law because the proposed activity is in the company's watershed.

## **§ 2 — PERMITTED ACTIVITIES**

By law, certain operations and uses are permitted “as of right” in wetlands and watercourses. These include (1) grazing, farming, nurseries, gardening, and harvesting crops and farm ponds that are three or less acres essential to the farming operation; (2) activities DEP conducts for wetland or watercourse restoration or enhancement or mosquito control; (3) boat anchoring or mooring; and (4) uses incidental to the enjoyment and maintenance of residential property, among other things.

The bill expands the definition of farming to reflect an existing statutory definition of agriculture and farming. This includes soil cultivation, dairying, forestry, and raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and managing livestock. Livestock includes horses, bees, poultry, fur-bearing animals, and wildlife. These terms also include:

1. the raising or harvesting of oysters, clams, mussels, other molluscan shellfish or fish (aquaculture);
2. the operation, management, conservation, improvement, or maintenance of a farm and its buildings, tools, and equipment, or salvaging timber or cleared land of brush or other debris left

- 
- by a storm, as an incident to such farming operations;
3. the production or harvesting of maple syrup, maple sugar, or any agricultural commodity, including lumber, as an incident to ordinary farming operations;
  4. the harvesting of mushrooms;
  5. the hatching of poultry;
  6. the construction, operation, or maintenance of ditches, canals, reservoirs, or waterways used exclusively for farming purposes; and
  7. handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage, market, or a carrier for transportation to market, or for direct sale (a) any agricultural or horticultural commodity as an incident to ordinary farming operations, or (b) in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market or direct sale (CGS § 1-1(q)).

#### **§ 4 — MUNICIPAL REGULATION**

Current law recognizes that preserving and protecting wetlands and watercourses is in the public interest and essential to the health, welfare, and safety of Connecticut residents. It declares that the purpose of the Inland-Wetlands and Watercourses Act (CGS §§ 22a-36 to 22a-45) is to balance economic growth while protecting these resources for the benefit of state residents and their descendants. The bill specifically requires municipalities to regulate activities affecting inland wetlands and watercourses to preserve them and prevent them from being spoiled and destroyed.

#### **BACKGROUND**

##### ***Inland Wetlands and Watercourses***

By law, “inland wetlands” are land areas that consist of any of the soil types designated as poorly drained, very poorly drained, alluvial,

and floodplain by the U.S. Department of Agriculture Natural Resources Conservation Service's National Cooperative Soils Survey, which includes submerged land, but not land bordering or lying beneath tidal waters. "Watercourses" are, in general, rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs and all other bodies of water, natural or artificial, vernal or intermittent, public or private, which are in, flow through, or border the state or any portion of it.

### ***Applying for a Wetlands Permit***

By law, anyone proposing to conduct or cause to be conducted a regulated activity on an inland wetland or watercourse must apply for a permit from the inland wetlands agency of the town or towns where the wetland or watercourse is located. By law, a wetlands commission cannot hold a public hearing on a application to conduct a regulated activity in a wetland unless (1) it determines that the activity may significantly affect wetlands or watercourses, (2) at least 25 people sign a petition requesting a hearing and it is filed with the commission within 14 days after the application is received, or (3) the commission finds that a hearing would be in the public interest.

An inland wetlands agency may issue a permit without a public hearing if no one files a petition with the agency by the 14<sup>th</sup> day after the agency received the application.

When an application received a public hearing or the agency found that the proposed activity may have a significant impact on wetlands or watercourses, it cannot issue permit unless the DEP commissioner finds, on the basis of the record, that a feasible and prudent alternative does not exist.

When an application is denied on a finding that there may be feasible and prudent alternatives to the proposed regulated activity that would have a less adverse impact on wetlands or watercourses, the commissioner or the inland wetlands agency, as the case may be, must propose on the record, in writing the types of alternatives that

the applicant may investigate.

***Factors an Inland Wetlands Agency Must Consider***

By law, in deciding whether to grant a permit, an agency must consider:

1. the environmental impact of the proposed regulated activity on wetlands or watercourses;
2. the purpose of the proposed activity and whether any prudent and feasible alternatives would cause less or no environmental impact to wetlands or watercourses;
3. the relationship between the short-term and long-term impact of the proposed regulated activity on wetlands or watercourses and the maintenance and enhancement of long-term productivity of such wetlands or watercourses;
4. irreversible and irretrievable loss of wetland or watercourse resources that would be caused by the proposed regulated activity, including the extent to which the activity would foreclose a future ability to protect, enhance, or restore these resources, and any mitigation measures that may be considered as a condition of issuing a permit for such activity, including measures to (a) prevent or minimize pollution or other environmental damage, (b) maintain or enhance existing environmental quality, or (c) in the following order of priority: restore, enhance, and create productive wetland or watercourse resources;
5. the character and degree of injury to, or interference with, safety, health, or the reasonable use of property caused or threatened by the proposed regulated activity; and
6. the impact of the proposed regulated activity on wetlands or watercourses outside the area for which the activity is proposed and future activities associated with, or reasonably related to,

the proposed regulated activity that are made inevitable by the activity and that may have an impact on wetlands or watercourses (CGS § 22a-41).

**COMMITTEE ACTION**

Environment Committee

Joint Favorable Substitute

Yea 23 Nay 6 (03/15/2010)