



General Assembly

Substitute Bill No. 123

February Session, 2010

* SB00123ENV__031610__ *

**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 Section 22a-38 of the general statutes is repealed and the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.*