



Senate

General Assembly

File No. 167

January Session, 2011

Substitute Senate Bill No. 1019

Senate, March 23, 2011

The Committee on Commerce reported through SEN. LEBEAU of the 3rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT EXPEDITING THE STATE PERMITTING PROCESS.

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

1 Section 1. Section 22a-6p of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2011*):

3 (a) Not later than seven days from June 9, 2010, the Commissioner
4 of Environmental Protection shall commence a review of the existing
5 time frames for the review of all individual permits issued by the
6 department. Not later than September 30, 2010, the commissioner shall
7 issue a comprehensive report, in accordance with the provisions of
8 section 11-4a, to the Governor and the joint standing committee of the
9 General Assembly having cognizance of matters relating to the
10 environment that (1) proposes a plan to establish a pilot expedited
11 permitting process for not less than two hundred representative
12 manufacturing or other industrial facilities, (2) prescribes changes to be
13 made to the department's review schedules for individual permits,
14 including reducing the time frames for identifying deficiencies in
15 permit applications and issuing tentative determinations in accordance

16 with subdivisions (2) and (3) of subsection (b) of this section, and (3)
17 indentifies the process improvements, additional resources, staffing
18 and programmatic changes necessary to meet such time frames.

19 (b) The Commissioner of Environmental Protection shall adopt
20 regulations in accordance with the provisions of chapter 54,
21 establishing schedules for timely action for each application for a
22 permit for activity regulated under this title. Such schedules may be
23 based on the lengths of time that the commissioner deems appropriate
24 for different categories of permit applications and permits and may
25 address situations when more than one permit is required for the
26 regulated activity. Each such schedule shall contain the following:

27 (1) A provision that the schedule shall begin when an application is
28 received by the Department of Environmental Protection, any public
29 notice requirements have been fulfilled and the application fee is paid;

30 (2) One or more periods of reasonable length, but not longer than
31 ninety days, based on the nature and complexity of the review
32 required of the department, at the end of which time the department
33 shall issue a decision to grant or deny the permit or identify
34 deficiencies in the application, provided the schedule may also
35 reasonably limit the amount of time in which the applicant may
36 remedy such deficiencies. If, after ninety days, the department has
37 issued no decision, such application shall be deemed approved. All
38 reasonable efforts shall be made by the department to ensure that
39 deficiencies in any application for a permit are identified and the
40 applicant notified in writing of such deficiencies not later than sixty
41 days after the department receives such application;

42 (3) A period of reasonable length, but not longer than ninety days,
43 based on the nature and complexity of the review required of the
44 commissioner, beginning with receipt of materials submitted by the
45 applicant in response to the commissioner's identification of
46 deficiencies, at the end of which time the commissioner shall issue a
47 tentative determination to grant or deny the permit. All reasonable
48 efforts shall be made by the department to issue a tentative

49 determination to grant or deny a permit not later than [one hundred
 50 eighty] ninety days after the department determines that the
 51 application materials are sufficient, provided such [one-hundred-
 52 eighty-day] ninety-day period shall not include any period of time
 53 during which the commissioner has requested, in writing, and is
 54 waiting to receive, additional application materials from an applicant;

55 (4) A period of reasonable length after such tentative determination
 56 and the conclusion of any public hearing held with regard to such
 57 decision;

58 (5) Allowance for applicable state or federal public participation
 59 requirements; and

60 (6) A provision extending the time periods set forth in subdivisions
 61 (2) and (3) of this subsection when action by another state agency or a
 62 federal or municipal agency is required before the commissioner may
 63 act, when (A) judicial proceedings affect the ability of the
 64 commissioner or the applicant to proceed with the application, (B) the
 65 commissioner has commenced enforcement proceedings which could
 66 result in revocation of an existing permit for the facility or regulated
 67 activity that is the subject of the application and denial of the
 68 application, or (C) the applicant provides written assent extending any
 69 applicable time period.

70 (c) The commissioner shall annually compile and report on the
 71 department's Internet web site, by category of permit, instances in
 72 which the schedules for timely action set forth in this subsection were
 73 not achieved and explanations for the department's inability to meet
 74 such time frames.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2011	22a-6p

CE *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 12 \$	FY 13 \$
Department of Environmental Protection	GF - Cost	2,804,000	2,804,000
Comptroller Misc. Accounts (Fringe Benefits) ¹	GF - Cost	666,000	666,000

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill imposes a maximum 90-day limit on the timeframe the Department of Environmental Protection (DEP) commissioner must set for acting on permit applications and specifies that applications are automatically approved if the commissioner takes no action after 90 days. The bill also reduces, from 180 to 90 days the time DEP has to issue a tentative determination of approval or denial for an application that the agency originally found deficient.

It is estimated that DEP would require 51 additional positions; 40 program staff, five legal staff, and six information technology (IT) staff in order to meet the permit processing deadlines. The estimated annual salaries are: \$51,500 for the 40 program positions; \$66,500 for the five attorneys; and \$68,500 for the six IT positions. Therefore, the

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller on an actual cost basis. The following is provided for estimated costs associated with changes in personnel. The estimated non-pension fringe benefit rate as a percentage of payroll is 23.76%. Fringe benefit costs for new positions do not initially include pension costs as the state's pension contribution is based upon the 6/30/10 actuarial valuation for the State Employees Retirement System (SERS) which certifies the contribution for FY 12 and FY 13. Therefore, new positions will not impact the state's pension contribution until FY 14 after the next scheduled certification on 6/30/2012.

annualized cost to hire the 51 positions is estimated to be \$2.8 million in both FY 12 and FY 13. The fringe benefit costs for the 51 positions are estimated to be \$666,000 in both FY 12 and FY 13. The total cost is \$3.5 million in both FY 12 and FY 13.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis

sSB 1019

AN ACT EXPEDITING THE STATE PERMITTING PROCESS.

SUMMARY:

This bill imposes a maximum 90-day deadline for the Department of Environmental Protection (DEP) to act on environmental permit applications and specifies that applications are automatically approved if DEP does not issue a decision after 90 days.

The bill also sets a maximum 90-day deadline for the DEP commissioner to make a tentative decision on an application that DEP originally found deficient, and requires DEP to make all reasonable efforts to issue a tentative determination within 90, rather than 180, days after determining that the applicant submitted sufficient material in response to identified deficiencies.

By law, DEP regulations must include provisions extending these deadlines in certain situations when action by another government agency is required before the DEP commissioner may act.

EFFECTIVE DATE: July 1, 2011

DEADLINE FOR DEP DECISION AND AUTOMATIC APPROVAL

By law, the DEP commissioner, by regulation, must establish schedules for timely action on environmental permit applications. Among other requirements, the schedules must contain one or more reasonable deadlines, based on the nature and complexity of DEP's required review, for DEP to make a decision or identify deficiencies in the application. (The schedule can reasonably limit the time the applicant has to fix these deficiencies.) The bill limits these deadlines to 90 days, and specifies that an application is deemed approved if DEP has not issued a decision on it after 90 days.

By law, DEP must make all reasonable efforts to identify an application's deficiencies and notify the applicant about them within 60 days after receiving the application.

DEADLINE FOR DEP DECISION AFTER IDENTIFYING DEFICIENCIES

Current law requires the DEP commissioner to issue a tentative decision on a permit application within a reasonable period after receiving material the applicant submits in response to the commissioner's identified deficiencies in the application. This time frame is based on the nature and complexity of DEP's required review. The bill sets a maximum 90-day period for such decisions.

Current law also requires DEP to make all reasonable efforts to issue a tentative determination on a permit within 180 days after it determines that the applicant submitted sufficient material in response to the identified deficiencies. The bill shortens this period to 90 days. The 90-day period does not include the time during which the applicant is compiling the information.

By law, when the commissioner determines, based on a project's size, novelty, complexity, or technical difficulty, that work cannot be completed within the deadline that applies to a permit he initially found deficient, he must (1) notify the applicant of this within 30 days of receiving the application and (2) set an alternative schedule for timely action within 45 days of providing this notice.

BACKGROUND

Extensions for Actions by Other Government Entities

By law, the DEP commissioner's regulations setting schedules for timely action on environmental permit applications must include a provision extending the deadlines described above if the following conditions are met:

1. another state, federal, or municipal agency must act before the commissioner may act and

2. (a) judicial proceedings affect the commissioner's or applicant's ability to proceed with the application, (b) the commissioner has begun enforcement proceedings that could result in the revocation of an existing permit for the facility or regulated activity that is the subject of the application and denial of the application, or (c) the applicant agrees in writing to extend an applicable deadline.

COMMITTEE ACTION

Commerce Committee

Joint Favorable Substitute

Yea 14 Nay 3 (03/08/2011)