
OLR Bill Analysis**sSB 832*****AN ACT CONCERNING THE PROTECTION OF CERTAIN NATURAL VEGETATION NEAR RIVERS.*****SUMMARY:**

This bill prohibits municipal zoning regulations from allowing disturbances to areas of natural vegetation within 100 feet of a river but allows such regulations to provide a special permit procedure for site-specific relief under certain circumstances.

The bill explicitly allows municipal inland wetland agencies to prohibit natural vegetation destruction within 100 feet of a river when considering regulated activity permit applications.

The bill states that it does not limit inland wetlands agencies' authority concerning activities in wetland or watercourses. It also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2011

BUFFER AREAS

By law, a municipality's zoning commission is authorized to regulate the use, size, height, and location of buildings and other structures, among other things. The law grandfathers the continuance of nonconforming uses, buildings, or structures in existence when a regulation is adopted or amended.

The bill prohibits municipal zoning regulations from allowing buffer disturbances (the bill does not define a "disturbance") but requires such regulations to provide property owners with a special permit procedure for site-specific relief in circumstances where a buffer reduces a property's development potential. Site-specific relief must include clustering, reducing setback or sideyard requirements, increased building height, or other appropriate relief.

The bill defines “buffer” as an area of natural vegetation located within 100 feet of a river and “development potential” as the number of residential dwelling units or square footage of nonresidential building development allowed without a buffer.

PERMITTING REGULATED ACTIVITIES IN WETLAND AREAS

By law, municipal inland wetland agencies must regulate certain activities affecting inland wetlands and watercourses. No regulated activity can take place in a wetland without a permit.

The law also requires that any regulated activity conducted within an inland wetland or watercourse (including rivers) requiring zoning or subdivision approval must obtain a valid certificate of zoning or subdivision approval, special permit, or special exception or variance, showing compliance with municipal zoning or subdivision requirements. It must be obtained prior to conducting such regulated activity.

The bill explicitly allows municipal inland wetlands agencies to prohibit destroying natural vegetation within 100 feet of a river when considering permit applications for regulated activities. Agencies prohibiting such destruction may allow removal of natural vegetation within 100 feet of a river if (1) the applicant shows that the activity will have no significant impact the river; (2) there is no feasible or prudent alternative; (3) the proposed activity meets all other permitting requirements; and (4) removal within 20 feet of a river is only for creating a footpath no wider than six feet used for access from and along a riverfront land parcel. “As of right” uses must be allowed in areas located within 100 feet of a river.

The bill defines “natural vegetation” as naturally occurring shrubs, trees, and other plants growing around wetlands or watercourses, not including lawns or manicured grass areas. It defines a “river” for purposes of the inland wetlands statutes as a body of water flowing naturally throughout the year that (1) empties into any ocean, estuary, lake, or other naturally flowing body of water and (2) has a defined permanent channel and bank. By law, all rivers are watercourses (see

below).

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, such an agency cannot hold a public hearing on an application to conduct a regulated activity in a wetland unless (1) it determines 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 agency within 14 days after the application is received; or (3) the agency 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 14th 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 no feasible and prudent alternative exists.

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.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 20 Nay 7 (03/18/2011)