



# Senate

General Assembly

**File No. 422**

January Session, 2011

Substitute Senate Bill No. 832

*Senate, April 6, 2011*

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 PROTECTION OF CERTAIN NATURAL VEGETATION NEAR RIVERS.***

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 Section 22a-38 of the general statutes is repealed and the  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, 2011*):

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

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

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

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

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

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

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

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

39 (13) "Regulated activity" means any operation within or use of a  
40 wetland or watercourse involving removal or deposition of material,  
41 or any obstruction, construction, alteration or pollution, of such

42 wetlands or watercourses, but shall not include the specified activities  
43 in section 22a-40, as amended by this act;

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

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

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

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

67 (18) "River" means a body of water flowing naturally throughout the  
68 year that empties into any ocean, estuary, lake or other naturally  
69 flowing body of water and that has a defined permanent channel and  
70 bank;

71 [(17)] (19) "Feasible" means able to be constructed or implemented  
72 consistent with sound engineering principles; and

73 [(18)] (20) "Prudent" means economically and otherwise reasonable  
74 in light of the social benefits to be derived from the proposed regulated  
75 activity provided cost may be considered in deciding what is prudent  
76 and further provided a mere showing of expense will not necessarily  
77 mean an alternative is imprudent.

78 Sec. 2. Subsection (a) of section 22a-40 of the general statutes is  
79 repealed and the following is substituted in lieu thereof (*Effective*  
80 *October 1, 2011*):

81 (a) The following operations and uses shall be permitted in  
82 wetlands and watercourses, as of right:

83 (1) Grazing, farming, as described in section 1-1, nurseries,  
84 gardening and harvesting of crops and farm ponds of three acres or  
85 less essential to the farming operation, and activities conducted by, or  
86 under the authority of, the Department of Environmental Protection  
87 for the purposes of wetland or watercourse restoration or  
88 enhancement or mosquito control. The provisions of this subdivision  
89 shall not be construed to include road construction or the erection of  
90 buildings not directly related to the farming operation, relocation of  
91 watercourses with continual flow, filling or reclamation of wetlands or  
92 watercourses with continual flow, clear cutting of timber except for the  
93 expansion of agricultural crop land, the mining of top soil, peat, sand,  
94 gravel or similar material from wetlands or watercourses for the  
95 purposes of sale;

96 (2) A residential home [(i)] (A) for which a building permit has been  
97 issued, or [(ii)] (B) on a subdivision lot, provided the permit has been  
98 issued or the subdivision has been approved by a municipal planning,  
99 zoning or planning and zoning commission as of the effective date of  
100 promulgation of the municipal regulations pursuant to subsection (b)  
101 of section 22a-42a or as of July 1, 1974, whichever is earlier, and further  
102 provided no residential home shall be permitted as of right pursuant  
103 to this subdivision unless the permit was obtained on or before July 1,  
104 1987;

105 (3) Boat anchorage or mooring;

106 (4) Uses incidental to the enjoyment and maintenance of residential  
107 property, such property defined as equal to or smaller than the largest  
108 minimum residential lot site permitted anywhere in the municipality,  
109 provided in any town, where there are no zoning regulations  
110 establishing minimum residential lot sites, the largest minimum lot site  
111 shall be two acres. Such incidental uses shall include maintenance of  
112 existing structures and landscaping but shall not include removal or  
113 deposition of significant amounts of material from or onto a wetland  
114 or watercourse or diversion or alteration of a watercourse;

115 (5) Construction and operation, by water companies as defined in  
116 section 16-1 or by municipal water supply systems as provided for in  
117 chapter 102, of dams, reservoirs and other facilities necessary to the  
118 impounding, storage and withdrawal of water in connection with  
119 public water supplies except as provided in sections 22a-401 and 22a-  
120 403; and

121 (6) Maintenance relating to any drainage pipe which existed before  
122 the effective date of any municipal regulations adopted pursuant to  
123 section 22a-42a or July 1, 1974, whichever is earlier, provided such pipe  
124 is on property which is zoned as residential but which does not  
125 contain hydrophytic vegetation. For purposes of this subdivision,  
126 "maintenance" means the removal of accumulated leaves, soil, and  
127 other debris whether by hand or machine, while the pipe remains in  
128 place.

129 Sec. 3. (NEW) (*Effective October 1, 2011*) (a) Except as provided in  
130 subsection (b) of this section, when considering an application for a  
131 proposed regulated activity, a municipal inland wetlands agency may  
132 prohibit the destruction of natural vegetation located within one  
133 hundred feet of a river.

134 (b) If a municipal inland wetlands agency prohibits the destruction  
135 of natural vegetation located within one hundred feet of a river  
136 pursuant to subsection (a) of this section, such municipal inland

137 wetlands agency only may allow the removal of natural vegetation  
138 located within one hundred feet of a river in connection with a  
139 proposed regulated activity if the municipal inland wetlands agency  
140 finds that the applicant has shown that the activity will have no  
141 significant impact on the river and there is no feasible or prudent  
142 alternative to such removal, provided: (1) Such proposed activity  
143 meets all other permitting requirements and applicable provisions of  
144 chapter 440 of the general statutes; and (2) in no case shall the  
145 municipal inland wetlands agency allow the removal of natural  
146 vegetation within twenty feet of a river except to create one footpath  
147 that is no wider than six feet and is used for access from and along a  
148 parcel of land fronting on a river.

149 (c) Notwithstanding the provisions of subsections (a) and (b) of this  
150 section, 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 located  
152 within one hundred feet of a river.

153 (d) Nothing in this section shall be deemed to limit the authority  
154 granted to a municipal inland wetlands agency pursuant to sections  
155 22a-36 to 22a-45, inclusive, of the general statutes.

156 Sec. 4. (NEW) (*Effective October 1, 2011*) (a) For purposes of this  
157 section: (1) "Buffer" means an area of natural vegetation located within  
158 one hundred feet of a river; and (2) "development potential" means the  
159 number of residential dwelling units or square footage of  
160 nonresidential building development allowed without a buffer.

161 (b) No municipal zoning regulation shall allow any disturbance of a  
162 buffer.

163 (c) In the event that a buffer reduces the development potential of a  
164 parcel of property, the municipal zoning regulations shall provide a  
165 special permit procedure for buffers to allow a property owner to seek  
166 site-specific relief. Such site-specific relief shall include, but not be  
167 limited to, clustering, reducing setback or sideyard requirements,  
168 allowing increased building height or such other relief that the

169 municipality deems appropriate.

170 (d) Nothing in this section shall be deemed to affect the authority  
171 granted to a municipal inland wetlands agency pursuant to sections  
172 22a-36 to 22a-45, inclusive, of the general statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2011	22a-38
Sec. 2	October 1, 2011	22a-40(a)
Sec. 3	October 1, 2011	New section
Sec. 4	October 1, 2011	New section

**Statement of Legislative Commissioners:**

In section 1, the definition of "River" was restructured for clarity. In sections 3(b) and 4(c), grammatical changes were made for clarity.

**ENV** Joint Favorable Subst.

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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.

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**OFA Fiscal Note**

**State Impact:** None

**Municipal Impact:** None

**Explanation**

The bill establishes certain prohibitions regarding municipal zoning regulations and certain allowances for municipal inland wetland agencies. These provisions are not anticipated to result in a fiscal impact since municipal permit fees would still be remitted under the bill's provisions.

**The Out Years**

**State Impact:** None

**Municipal Impact:** None

**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 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 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)