



House of Representatives

General Assembly

File No. 311

February Session, 2012

Substitute House Bill No. 5344

House of Representatives, April 10, 2012

The Committee on Commerce reported through REP. BERGER of the 73rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING STREAMLINING THE STATE'S STORMWATER GENERAL PERMITTING PROCESS.

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

1 Section 1. (NEW) (*Effective from passage*) (a) For purposes of this
2 section, "person" shall have the same meaning as in section 22a-423 of
3 the general statutes; and "materially" means in a substantive sense or
4 to a significant degree.

5 (b) The Commissioner of Energy and Environmental Protection,
6 when issuing a general permit for stormwater discharges pursuant to
7 section 22a-430b of the general statutes, may specify or require the
8 submission of a certification by a professional pursuant to this section.
9 When the commissioner specifies or requires such certification, the
10 general permit shall specify: (1) The qualifications deemed necessary
11 by the commissioner for the professional to make the certification,
12 including, but not limited to, relevant education, training, experience
13 and certifications or licenses issued under any other provision of the
14 general statutes or by any organization specified in the general permit;

15 (2) the criteria deemed necessary by the commissioner to establish that
16 the professional qualified pursuant to subdivision (1) of this subsection
17 is independent and does not have a financial interest in the activity
18 that is the subject of the certification, provided reasonable
19 compensation for services rendered in providing a certification shall
20 not be deemed a financial interest; (3) the specific information to be
21 reviewed or inspections to be conducted by such qualified professional
22 as the basis for the certification and retention of documents regarding
23 such review or inspection; (4) that such qualified professional make an
24 affirmative determination regarding the activity or project covered by
25 the certification, including, but not limited to, an affirmative
26 determination regarding plans or other documents or the design,
27 installation, and functioning of wastewater collection and treatment
28 systems, and monitoring or other equipment; and (5) that such
29 qualified professional sign the certification statement in accordance
30 with this section and any conditions for providing such certification.
31 The commissioner may specify in the general permit whether such
32 certification shall be required when the person seeking coverage under
33 a general permit is a federal or state agency or a municipality. Nothing
34 in this section shall authorize a qualified professional to engage in any
35 profession or occupation requiring a license under any other provision
36 of the general statutes without such license.

37 (c) (1) The commissioner shall accept any such certification specified
38 or required pursuant to subsection (b) of this section unless (A) the
39 certification is the subject of an audit pursuant to subsection (d) of this
40 section; (B) the commissioner has reason to believe that such
41 certification was made by a person who did not meet the requirements
42 specified in the general permit; or (C) such certification is otherwise
43 not in compliance with the requirements of state or federal law or the
44 requirements specified in the general permit.

45 (2) If, after providing a certification, a qualified professional learns
46 or, in the normal course of a qualified professional's practice, should
47 have learned, of information that existed when the certification was
48 provided that would have prevented such certification from being

49 submitted or significantly changed such certification, such qualified
50 professional shall promptly notify the following of such information:
51 (A) The person who obtained coverage under the general permit based
52 upon the previous certification; and (B) the commissioner, in writing.

53 (d) (1) The commissioner may audit any certification submitted by a
54 qualified professional pursuant to this section. In conducting any such
55 audit, the commissioner may request, in writing, any information the
56 commissioner deems necessary to carry out such audit, including, but
57 not limited to, any information to demonstrate to the commissioner's
58 satisfaction that such qualified professional meets the qualifications as
59 specified in the general permit or information that formed the basis for
60 the certification provided by a qualified professional. As part of an
61 audit conducted pursuant to this subsection, the commissioner may
62 require that any information reviewed by the qualified professional or
63 prepared in accordance with a general permit be independently
64 certified in accordance with this section by another qualified
65 professional, who meets the qualifications of subdivision (1) of
66 subsection (b) of this section, who does not have any financial interest,
67 other than for the reasonable compensation for the services being
68 rendered, in the project or activity and who did not engage in any
69 activities associated with the development or preparation of such
70 information that is the subject of the certification, and is not under the
71 same employ as any person who engaged in any activities associated
72 with the development or preparation of such information that is the
73 subject of the certification. Such independent certification shall be at
74 the expense of the person seeking coverage under a general permit.
75 The commissioner may charge the reasonable cost of an audit under
76 this subsection to the person seeking or having obtained coverage
77 under a general permit if such audit reveals that a certification filed
78 with the commissioner under this section was based on information
79 that was materially inaccurate, incomplete or misleading.

80 (2) The commissioner shall have a goal of auditing up to ten per cent
81 of the permits certified pursuant to this section. Based upon such
82 audits, the commissioner shall, not later than January 1, 2014, in

83 accordance with the provisions of section 11-4a of the general statutes,
84 report (A) the number of certifications that have been audited, (B) the
85 level of compliance of certifications with the requirements of
86 subdivision (1) of subsection (e) of this section, (C) whether such levels
87 of compliance are adequate to fulfill the purposes of section 22a-430b
88 of the general statutes, and (D) the measures necessary to bring
89 compliance to, or maintain compliance at, levels and the resources
90 necessary to implement such measures.

91 (e) (1) A qualified professional shall ensure that any certification
92 submitted under a general permit pursuant to this section is based
93 upon accurate and complete information. No professional may submit
94 any such certification when such professional does not have the
95 requisite qualifications prescribed in the general permit or if the
96 submission of any such certification is based upon information that is
97 materially inaccurate, incomplete or misleading, or does not comply
98 with any of the requirements set forth in the general permit and has
99 not been disclosed, as provided in subdivision (2) of subsection (c) of
100 this section.

101 (2) If the commissioner finds that a certification submitted pursuant
102 to this section is based upon information that is materially inaccurate,
103 incomplete or misleading, including by omission, or if a qualified
104 professional fails to cooperate or provide requested information in
105 connection with an audit by the commissioner pursuant to subsection
106 (d) of this section, the commissioner may (A) deny an application for
107 coverage under a general permit; or (B) revoke, suspend or modify
108 authorization under a general permit, including the approval of any
109 registration issued by the commissioner. The commissioner may take
110 such action even if the person covered by such general permit had no
111 involvement in the preparation or review of the certification submitted
112 pursuant to this section or was unaware of any material inaccuracy,
113 incompleteness or other error in any such certification.

114 (3) In addition to any other penalty or sanction provided for by law,
115 disciplinary action against any professional may be taken for any

116 noncompliance noted in subdivision (1) of this subsection. For any
 117 professional who is required to maintain in effect a certain license
 118 under any other provision of the general statutes, the commissioner
 119 may (A) make a referral to any board or department issuing such
 120 license for disciplinary action, (B) issue a reprimand or warning to
 121 such qualified professional, or (C) prohibit, either temporarily or
 122 permanently, a professional from submitting a certification pursuant to
 123 this section. In addition to any other applicable procedures, subsection
 124 (c) of section 4-182 of the general statutes shall apply to any
 125 disciplinary action taken by the commissioner pursuant to this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section

Statement of Legislative Commissioners:

The cross-reference in section 1(d)(1) was corrected to "subsection (b)" for accuracy.

CE *Joint Favorable Subst.-LCO*

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 13 \$	FY 14 \$
Various State Agencies	Various - Potential Cost	See Below	See Below

Municipal Impact:

Municipalities	Effect	FY 13 \$	FY 14 \$
Various Municipalities	Potential Cost	See Below	See Below

Explanation

The bill, which authorizes the Department of Energy and Environmental Protection (DEEP) to have outside independent consultants certify general storm water permits, may result in a potential cost to the state and municipalities.

However, these costs are unlikely, as DEEP may waive the requirement that state agencies and municipalities obtain certification.

The Out Years

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

OLR Bill Analysis**sHB 5344****AN ACT CONCERNING STREAMLINING THE STATE'S
STORMWATER GENERAL PERMITTING PROCESS****SUMMARY:**

This bill allows the Department of Energy and Environmental Protection (DEEP) commissioner to have independent professionals certify whether stormwater general permits meet state and federal requirements. Under current law, DEEP reviews and certifies the permits, which address activities causing pollution of rain and melted snow that runs off into streams, rivers, lakes, and other water bodies.

The bill requires the permit to specify the criteria a professional must meet. The professional must be licensed to engage in any profession or occupation needed to certify the permit.

The bill specifies the professional's duties and obligations, which include certifying permits based on accurate and complete information. It allows the commissioner to audit a certification, specifies the grounds for rejection, and specifies how he can enforce the bill's provisions.

EFFECTIVE DATE: Upon passage

CONDITIONS FOR USING PROFESSIONALS***Criteria***

If the DEEP commissioner allows a professional to certify a permit, he must specify in the permit the conditions and criteria the professional must meet. The permit must specify:

1. the professional's qualifications, including relevant education, training, experience, certifications, and licenses;

2. the information that the professional must review and inspect as part of the certification; and
3. the documents he or she must retain supporting the certification.

The permit must also specify the criteria the commissioner must use to determine if the professional has no connection with the permitted activity or project and has no financial stake in it beyond compensation for the certification services.

The permit must require the professional to affirm that the activity or project meets the permit's requirements. The affirmation applies to plans or other documents; the design, installation, and functioning of the wastewater collection and treatment systems; and the method or equipment used for waste water monitoring. The permit must also require the professional to sign a certification statement based on the bill's requirements and any conditions the permit imposes.

Lastly, the permit may indicate whether certification is required when the permittee is a government agency.

Professionals' Duties and Obligations

A certified professional must (1) meet the permit's criteria and (2) base the certification on accurate and complete information. He or she cannot base the certification on information that is (1) materially inaccurate, incomplete, or misleading or (2) fails to meet the permit's requirements and has not been disclosed.

After certifying the permit, the professional must notify the permittee and the commissioner about any information the professional learns or should have learned in the course of his or her practice that would have prevented the permit's certification or significantly changed it.

ENFORCEMENT

Grounds for Rejection

The bill requires the commissioner to accept the certification unless (1) he is auditing the certification (see below), (2) has reason to believe the professional did not satisfy the bill's requirements, or (3) the certification does not comply with federal or state law or the general permit's requirements.

Enforcement Powers

The bill specifies the steps the commissioner may take if a professional (1) bases the certification on materially incomplete or misleading information, including omitted information, or (2) fails to cooperate with an audit. In such cases, the commissioner may deny the permit application or revoke, suspend, or modify the actions it authorizes, including the approval of any registration he issued. He can do these things even if the permittee was not involved in preparing or reviewing the certification or was unaware that it was based on inaccurate or incomplete information or other error.

The bill allows the commissioner to take any disciplinary action against the professional in addition to any penalty or sanction the law imposes. If the law requires the professional to maintain a license, the commissioner can refer the professional to the appropriate licensing board or department, issue a reprimand or warning to the professional, or temporarily or permanently prohibit him or her from submitting certifications for stormwater general permits.

When taking action against a professional's license, the commissioner must provide notice to the professional of the facts supporting his intended action and allow the professional to show he or she is in compliance.

AUDITING

Scope

The bill allows the commissioner to audit each certification. When doing so, he can request in writing any information he needs to conduct the audit, including information supporting the certification and documenting the professional's qualifications.

As part of the audit, the commissioner can have another qualified professional independently certify the information supporting the certification. This professional must also meet the permit's qualifications and have no financial stake in the activity or project other than being compensated for his or her services. Further, the professional must have played no role in certifying the permit or be employed by the professional who initially certified it. The commissioner must charge the permittee for this independent certification.

He may also charge the permittee for the audit if it finds that the certification was based on materially inaccurate, incomplete, and misleading information.

Compliance Report

The bill imposes the goal that the commissioner audit at least 10% of the permits. It also requires him to report specific information based on these audits by January 1, 2014, but does not specify to whom he must submit the report. The report must:

1. indicate the number of certifications he audited,
2. the degree to which the permits complied with the bill's requirements,
3. the degree to which the permits meet the law's purposes, and
4. the steps and resources needed to maintain or increase compliance.

COMMITTEE ACTION

Commerce Committee

Joint Favorable
Yea 18 Nay 0 (03/22/2012)