Senate

General Assembly

File No. 47

February Session, 2012

Substitute Senate Bill No. 107

Senate, March 20, 2012

The Committee on Planning and Development reported through SEN. CASSANO of the 4th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE TIME IN WHICH A REGULATED ACTIVITY MUST BE CONDUCTED UNDER A PERMIT ISSUED BY AN INLAND WETLANDS COMMISSION.

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

Section 1. Subsection (d) of section 22a-42a of the 2012 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2012*):

(d) (1) In granting, denying or limiting any permit for a regulated activity the inland wetlands agency, or its agent, shall consider the factors set forth in section 22a-41, and such agency, or its agent, shall state upon the record the reason for its decision. In granting a permit the inland wetlands agency, or its agent, may grant the application as filed or grant it upon other terms, conditions, limitations or modifications of the regulated activity which are designed to carry out the policy of sections 22a-36 to 22a-45, inclusive. Such terms may include any reasonable measures which would mitigate the impacts of

the regulated activity and which would (A) prevent or minimize pollution or other environmental damage, (B) maintain or enhance existing environmental quality, or (C) in the following order of priority: Restore, enhance and create productive wetland or watercourse resources. Such terms may include restrictions as to the time of year in which a regulated activity may be conducted, provided the inland wetlands agency, or its agent, determines that such restrictions are necessary to carry out the policy of sections 22a-36 to 22a-45, inclusive. No person shall conduct any regulated activity within an inland wetland or watercourse which requires zoning or subdivision approval without first having obtained a valid certificate of zoning or subdivision approval, special permit, special exception or variance or other documentation establishing that the proposal complies with the zoning or subdivision requirements adopted by the municipality pursuant to chapters 124 to 126, inclusive, or any special act. The agency may suspend or revoke a permit if it finds after giving notice to the permittee of the facts or conduct which warrant the intended action and after a hearing at which the permittee is given an opportunity to show compliance with the requirements for retention of the permit, that the applicant has not complied with the conditions or limitations set forth in the permit or has exceeded the scope of the work as set forth in the application. The applicant shall be notified of the agency's decision by certified mail within fifteen days of the date of the decision and the agency shall cause notice of their order in issuance, denial, revocation or suspension of a permit to be published in a newspaper having a general circulation in the town wherein the wetland or watercourse lies. In any case in which such notice is not published within such fifteen-day period, the applicant may provide for the publication of such notice within ten days thereafter.

(2) Any permit issued under this section for the development of property for which an approval is required under **[**section 8-3, 8-25 or 8-26**]** chapter 124, 124b, 126 or 126a shall be valid **[**for five years provided the agency may establish a specific time period within which any regulated activity shall be conducted**]** until the approval granted under such chapter expires or for ten years, whichever is earlier. Any

permit issued under this section for any **[**other**]** activity for which an approval is not required under chapter 124, 124b, 126 or 126a shall be valid for not less than two years and not more than five years. Any such permit shall be renewed upon request of the permit holder unless the agency finds that there has been a substantial change in circumstances which requires a new permit application or an enforcement action has been undertaken with regard to the regulated activity for which the permit was issued, provided no permit may be valid for more than ten years.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*October 1, 2012*	22a-42a(d)

PD *Joint Favorable Subst.*

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 13 $	FY 14 $
Department of Energy and Environmental Protection	GF - Potential Revenue Loss	Minimal	Minimal

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 13 $	FY 14 $
Various Municipalities	Potential Revenue Loss	Minimal	Minimal

Explanation

The bill extends the expiration date of certain permits by up to five years or the length of time the related development's project approval is valid. To the extent that this occurs, the municipality would not collect certain locally established application fees[1], and the Department of Energy and Environmental Protection (DEEP) would not collect a $58 land use application fee.[2] In FY 11, the state had received revenue of $1,306,610 associated with 22,730 land use applications. It is not known at this time how many applications would be impacted by this bill.

The Out Years

[1] Pursuant to Section 8-1c CGS, any municipality may establish a schedule of reasonable fees for the processing of applications by a zoning commission, planning commission, combined planning and zoning commission, zoning board of appeals or inland wetlands commission.

[2] Pursuant to Section 22a-27j, an additional $60 fee is paid by applicants seeking approval from planning and zoning, wetlands and coastal management agencies. $2 of such fee is retained at the local level for administrative costs, with the remaining $58 remitted to DEEP for deposit into the General Fund.

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

OLR Bill Analysis

sSB 107

AN ACT CONCERNING THE TIME IN WHICH A REGULATED ACTIVITY MUST BE CONDUCTED UNDER A PERMIT ISSUED BY AN INLAND WETLANDS COMMISSION.

SUMMARY:

This bill makes changes to the law affecting municipal inland wetlands agencies and the permits they issue for regulated activities. By law, a "regulated activity" is any operation within or use of wetlands or watercourses involving (1) removal or deposit of material or (2) any obstruction, construction, alteration, or pollution of wetlands or watercourses.

First, the bill ties the length of time that inland wetlands permits are valid to the length of time that the related development's project approval is valid, which can be up to 10 years. Certain projects approved before July 1, 2011 are excepted (see BACKGROUND).

Next, for projects that require site or subdivision plan approval, it eliminates the ability of an inland wetlands agency, or its agent, to set a specific time within which a regulated activity must be conducted. It applies this elimination to all planning and zoning approvals, including for incentive housing and affordable housing land use appeals procedure.

Finally, the bill specifies that the agency may include terms in a permit restricting the time of year when a regulated activity may be conducted, if the agency, or its agent, determines the restrictions are necessary to protect inland wetlands and watercourses. By law, an inland wetlands agency or its agent may place terms, conditions, limitations, or modifications on the regulated activity to protect inland wetlands and watercourses, including terms to prevent or minimize

pollution or other environmental damage.

EFFECTIVE DATE: October 1, 2012

INLAND WETLANDS PERMITS

Timeframes

By law, municipalities (1) regulate activities affecting inland wetlands and watercourses within their boundaries and (2) issue permits for regulated activities in those areas, including for property development. Property development involving site or subdivision plans also require planning and zoning approval and, as a condition of this approval, must first obtain an inland wetlands permit when inland wetlands are involved.

Under current law, an inland wetlands permit for property development that also requires site or subdivision plan approval is generally valid for up to five years from approval. But a municipal inland wetlands agency can set a specific time period during the five years in which the regulated activity must be completed (i.e., it could be shorter than five years).

The bill eliminates an agency's ability to set a specific time within which the regulated activity must be conducted for these projects and ties the period of validity of these inland wetlands permits to the length of the corresponding project's approval or 10 years, whichever is earlier.

For example, under existing law, a planning and zoning commission may set completion deadline of up to 10 years for a residential site plan for a project with more than 400 units. Under current law, if an inland wetlands permit is required for such a project, it would be valid for up to five years. Under the bill, the inland wetlands permit required for such a project would be valid for the length of time of the project approval or up to 10 years.

In addition to tying inland wetland permits to approvals required under zoning and planning laws, the bill includes projects involving

incentive housing zones and those developed under the affordable housing land use appeals procedure. For any other project approvals under these laws, an inland wetlands permit is valid for the length of the approval or 10 years, whichever is earlier.

Other Activities

Under current law, an inland wetlands permit for an activity that does not involve site and subdivision plan project approval is valid for between two and five years. The bill applies this timeframe to any permit for a regulated activity related to a project that does not require planning and zoning approval including incentive housing and affordable housing projects related to the affordable housing land use appeals procedure.

BACKGROUND

Site and Subdivision Plans and Inland Wetlands Permits Approval Before July 1, 2011

Notwithstanding existing law concerning inland wetlands permits, PA 11-5 extended the initial and extended deadlines that apply to wetlands permits, subdivisions, and small-scale site plans approved before July 1, 2011, on which approval had not expired by the enacting legislation's effective date of May 9, 2011.

By law, inland wetlands permits tied to approved site and subdivision plans, which had not expired by May 9, 2011 and were approved before July 1, 2011, can be extended up to 14 years under PA 11-5 (CGS § 22a-42a(g)).

Incentive Housing Zones

The law provides grants to towns that choose to zone land for developing housing mainly where transit facilities, infrastructure, and complementary uses already exist or have been planned or proposed. A town receives the incentives only after it has established an incentive housing zone and approved incentive housing developments in the zone (CGS § 8-13m et. seq.).

Affordable Housing Land Use Appeals Procedure

The legislature created the procedure to address the state's affordable housing needs by requiring zoning and planning commissions to defend their decisions denying affordable housing projects or approving them with costly conditions. In traditional land use appeals, the developer, not the municipality, must convince the court that the commission acted illegally or arbitrarily or abused its discretion.

A developer may use the procedure in municipalities that do not meet the law's 10% threshold of affordable housing stock only if the proposed project includes units low- and moderate-income households can afford. A household falls into this group if it earns no more than 80% of the median income for the area or the state, whichever is less. It can afford the unit if it costs no more than 30% of the household's annual income (CGS § 8-30g).

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable Substitute
Yea 20 Nay 0 (03/02/2012)