



STATE OF CONNECTICUT

DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION

Public Hearing – March 12, 2012
Government, Administration and Elections Committee

Testimony Submitted by Commissioner Daniel Esty

Senate Joint Resolution No. 12 – RESOLUTION PROPOSING A CONSTITUTIONAL AMENDMENT CONCERNING THE EXPANSION OF THE PURVIEW OF THE LEGISLATIVE REGULATIONS REVIEW COMMITTEE

Raised Senate Bill No. 390 – AN ACT CONCERNING THE PURVIEW OF THE LEGISLATIVE REGULATION REVIEW COMMITTEE

Thank you for the opportunity to present testimony regarding Senate Joint Resolution No. 12 – RESOLUTION PROPOSING A CONSTITUTIONAL AMENDMENT CONCERNING THE EXPANSION OF THE PURVIEW OF THE LEGISLATIVE REGULATIONS REVIEW COMMITTEE, and Raised Senate Bill No. 390 – AN ACT CONCERNING THE PURVIEW OF THE LEGISLATIVE REGULATION REVIEW COMMITTEE. The Department of Energy and Environmental Protection (DEEP) welcomes the opportunity to offer the following testimony.

DEEP is an administrative agency that expends a significant amount of time and resources on the adoption and amendment of the Regulations of Connecticut State Agencies (RCSA). Adoption or amendment of the RCSA is subject to the approval or rejection by the Legislative Regulation Review Committee (LRRC) through the process set out in Chapter 54 of the general statutes. Given DEEP's extensive interaction with the LRRC, and the RCSA adoption and amendment process, DEEP opposes Senate Joint Resolution 12 as unnecessary, overreaching, and contrary to DEEP's ongoing efforts to reduce regulatory burdens by increasing transparency, efficiency and predictability – and all the while maintaining DEEP's high environmental standards.

Senate Joint Resolution No. 12 seeks the following amendment to the Constitution of the State of Connecticut:

The legislative department may delegate regulatory authority to the executive department; except that [any administrative regulation of any agency of the executive department may be disapproved by the general assembly or a committee thereof] the general assembly or a committee of the general assembly may disapprove any proposed administrative regulation of

any agency of the executive department, or may direct any such agency to amend or repeal any of the agency's administrative regulations in effect, in such manner as shall by law be prescribed.

The constitutional amendment proposed in Senate Joint Resolution No. 12, and the implementing language in Raised Senate Bill No. 390, dramatically expands the authority of the Legislative Branch to the detriment of the Executive Branch. In so doing, Senate Joint Resolution No. 12 and Raised Senate Bill No. 390 detrimentally erode one of the most significant and fundamental aspects of Connecticut's Constitution: the creation of three separate, but equal branches of government. *See* Connecticut Constitution, Article Second. The separation of powers "is one of the fundamental principles of the American and Connecticut Constitutional systems." *Stolberg v. Caldwell*, 175 Conn. 586, 598 (1978). As the Connecticut Supreme Court held in *Massameno v. Statewide Grievance Committee*, 234 Conn. 539 (1995), the separation of powers provision in the Connecticut Constitution performs the dual function of limiting the exercise of power within each branch of government, while ensuring independent exercise of that power by each branch.

The idea that the LRRC, a fourteen member, bi-partisan, bicameral standing committee of the general assembly would be constitutionally empowered to "direct any ... agency to amend or repeal any of the agency's administrative regulations in effect" would place inordinate power into the hands of the LRRC and the Legislative Branch. If the Constitution is amended to grant the LRRC the power to amend or repeal any existing regulation, DEEP's entire regulatory structure would be thrown into doubt. Furthermore, many of DEEP's regulations have been promulgated in order to ensure that the state complies with federal environmental statutes and regulations. If the LRRC amends or repeals one of DEEP's regulations without fully recognizing or understanding the larger federal environmental structure DEEP operates under, the state's compliance with federal law – and in some cases ability to receive federal grants – could be jeopardized.

The proposed Senate Joint Resolution No. 12 and Raised Senate Bill No. 390 also call into question the ability of DEEP to bring its significant scientific expertise to bear on complicated and technical issues the General Assembly or LRRC might identify. DEEP's regulation adoption process allows the agency to work with internal and outside scientific experts, and business and non-governmental stakeholders to develop appropriate standards. If these standards can be repealed or altered by a legislative committee, DEEP would be severely hampered in its attempt to develop meaningful and defensible environmental standards based on sound science and broad-ranging stakeholder input, as we have in the past.

DEEP is concerned that the General Assembly's Committee on Government Administration and Elections is considering this constitutional amendment at this time. Rather than examining ways to streamline the regulatory process and improve efficiency and predictability by modernizing our state's administrative process, this proposal appears to challenge the Executive Branch to an unnecessary constitutional showdown, and insert needless uncertainty and potential delay into the administrative process.

DEEP has been working very hard to improve its efficiency and timeliness in permit processing and in other administrative processes. Recently, the LRRC moved to an electronic submittal process and we applaud them for that effort. DEEP is continually looking for new ways to improve the delivery of state government services to our constituents by streamlining administrative processes wherever possible, while still maintaining high environmental standards. DEEP would welcome the opportunity to work with the Committee and LRRC to improve the efficiency of the regulation adoption process.

In fact, DEEP is currently reviewing the latest revision to the Model State Administrative Procedure Act, which was published by National Conference of Commissioners on Uniform State Laws in 2010.¹ (See http://www.law.upenn.edu/bll/archives/ulc/msapa/2010_final.htm; http://www.law.upenn.edu/bll/archives/ulc/msapa/2010_final.pdf). A summary of this most recent proposal can be found at <http://www.nccusl.org/ActSummary.aspx?title=State%20Administrative%20Procedure%20Act,%20Revised%20Model>. Coordinated review of this Model Act by DEEP, other executive branch agencies, and the LRRC – with a view towards improving transparency, efficiency and predictability into the regulation adoption process – seems a better use of the time of all involved.

Thank you for the opportunity to present testimony on this proposal. If you should require any additional information, please contact DEEP's legislative liaison, Robert LaFrance at 424-3401 or Robert.LaFrance@ct.gov

¹ Chapter 54 of the Connecticut General Statutes is based upon Model State Administrative Procedure Act of 1946 as revised in 1961. The Model Act was compiled by the National Conference of Commissioners on Uniform State Laws and was revised again in 1981.

