



EXEMPTED AGRICULTURE ACTIVITY IN INLAND WETLANDS AND WATERCOURSES

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INLAND WETLANDS AND WATERCOURSES LAW

The Connecticut Inland Wetlands and Watercourses Act (IWWA) requires the regulation of certain activities that affect the state's wetlands and watercourses (e.g., marshes, swamps, rivers, brooks, ponds, lakes). Examples of regulated activities include clearing, grading, piping, excavating, filling, or constructing.

In general, municipal inland wetland agencies regulate these activities through a permitting process.

The state provides training and regulatory and technical assistance to the local agencies (CGS §§ [22a-36](#) to [22a-45a](#)).

farming, nurseries, gardening and harvesting of crops, farms ponds of three acres or less essential to a farming operation, road or building construction directly related to a farming operation, and clear cutting to expand crop land ([CGS § 22a-40\(a\)\(1\)](#)).

ISSUE

This report summarizes changes to the inland wetlands law's agricultural-related exemptions in [CGS § 22a-40\(a\)\(1\)](#) since the law was enacted in 1972 and the reasons for making them, as stated in the legislative record.

SUMMARY

After enacting the inland wetlands law in 1972, the legislature made changes to clarify and limit the law's "as of right" exemption for certain agricultural activities.

Under the law, certain operations and uses are permitted "as of right" in inland wetlands and watercourse areas, meaning that they are not subject to the law's permitting requirements and regulation (see sidebox). The following agriculture-related activities may currently be conducted as of right in these areas: grazing,



The 1972 law generally exempted “grazing, farming, nurseries, gardening and harvesting of crops and farm ponds, three acres or less” (PA 72-155). The legislative debate on the bill indicates that the legislature intended the exemption to be broadly construed. But subsequent changes suggest that there was uncertainty as to the scope of the exemption.

Changes to the law in 1973 included, among other things, technical changes to make clear the “as of right” status of the exempted activities and that the agricultural exemption’s three acres or less criterion applied solely to farm ponds (PA 73-571).

And almost 15 years after the original law’s enactment, the legislature passed a bill that, among other things, limited the agricultural exemptions (PA 87-533). Specifically, it (1) limited the exemption for farm ponds to those essential to a farming operation and (2) set out a list of activities that are not exempt and must be regulated. During the floor debates, the Environment Committee chairpersons explained that these changes were intended to “limit exempt uses to those that are truly agricultural.”

Three acts made further changes to [CGS § 22a-40\(a\)\(1\)](#). PA [97-289](#) made state efforts to restore wetlands or watercourses and control mosquitoes also exempt activities, and PAs 88-364 and [11-80](#) made technical changes.

LEGISLATIVE HISTORY OF THE AGRICULTURE-RELATED EXCEPTIONS

PA 72-155

When enacted, the state’s inland wetlands law exempted certain agricultural and other activities conducted in wetlands or watercourses, but it included language that seemed to limit the exemption. The exemption applied to the following agricultural activities: “grazing, farming, nurseries, gardening and harvesting of crops and farm ponds, three acres or less.”

PA 72-155 exempted these activities by permitting them as of right, “except as they involve regulated activities.” But the law’s definition of “regulated activity” specifically excluded the activities permitted as of right, thus creating a possible conflict. The legislature subsequently remedied this problem (see PA 73-571, below).

Public Hearing. The bill that became the law (sHB 5257) began in the Environment Committee. The public hearing testimony on the proposed legislation focused primarily on the need to protect inland wetlands areas and conserve other natural resources, particularly from development activity. Only one speaker

referred to possible exemptions, reading from a written statement of William A. Niering, chairman of Connecticut College's biology department, which said, among other things, that agriculture and recreation are the only land uses that should be permitted in floodplains (Hearing Transcript, page 16).

House and Senate Action. The House and Senate considered the bill on April 10 and April 13, respectively.

In the House, Rep. Ciampi described the bill and Rep. Lavine introduced House Amendment "A" that, among other things, revised the list of exempted activities by expanding the geographic criterion applying to agricultural activities from one acre or less to three acres or less, but did not explain the reason for doing so.

After the amendment's adoption, Rep. Lavine explained the amended bill, calling attention to its exempt activities, particularly those related to farming. He said the bill recognizes "that the farming industry is of prime importance to [Connecticut]" and protects "grazing, farming and nursery garden and harvesting." He said that it is the legislative intent to interpret this "in the widest possible way" as "[farmers] are our conservationists, and we want to see them continue their sensible practices" (House Transcript, page 1612).

Twenty-one representatives spoke further on the bill, mostly in support, with no further discussion on its exemptions.

In the Senate, Sen. Prete introduced the bill, as amended by "House A," and 11 other Senators spoke on it, with no discussion on its exempt activities.

The amended bill passed both chambers on a voice vote.

Gubernatorial Action. Governor Meskill signed the act into law on May 19, 1972.

PA 73-571

In 1973, the legislature revised several portions of the inland wetlands law, including its exemptions, by passing sHB 9078. Section 1 reorganized and revised the exemptions to, among other things, make clear that the legislature intended to permit, as of right, grazing, farming, nurseries, gardening, harvesting of crops, and farm ponds, by eliminating the law's language "except as they involve regulated activities." It also clarified that the three-acre criterion applied solely to farm ponds.

Public Hearings. The bill began in the Environment Committee, which heard testimony on its proposed changes during several public hearings. Several speakers expressed concern over eliminating the "except as they involve regulated activities"

language from the law's exemptions, stating that doing so would allow the listed activities, such as farming, to be performed with no oversight in wetlands areas, which some said would, in effect, nullify the act. But at the final public hearing, Rep. Lavine explained that this revision was meant to clarify the original law's intent.

House and Senate Action. The House and Senate took action on the bill on May 11 and May 17, respectively.

Rep. Harlow introduced the bill in the House and explained its main provisions. Rep. Post offered an amendment making several "technical revisions" unrelated to the agricultural-related exemptions (House "A"), which the House adopted. Rep. Camp offered a second amendment (House "B") to allow for inland wetlands appeals boards, but it failed.

Twelve representatives spoke on the amended bill. Rep. Ciampi explained that it clarified the types of activities allowed in inland wetlands and Rep. Harlow, responding to a question from Rep. Brainard, confirmed that the "of three acres or less" provision applied specifically to farm ponds (House Transcript, pages 6025 and 6027). Rep. Pearson expressed concern about the number of exempted activities and Rep. Webber received confirmation that the exempted activities are those conducted in inland, and not coastal, areas (House Transcript, pages 6031 to 6033).

In the Senate, Sen. Costello introduced the bill, as amended by the House, and explained that the goal of the bill was to eliminate confusion surrounding, and offer improvements to, the original law, but he did not speak specifically on the changes to the agricultural exemptions. Sen. Petroni offered two amendments: one identical to House "B" on appeals boards (Senate "A") and one about exempt building lots (Senate "B"), each failing to be adopted.

The amended bill passed both chambers unanimously.

Gubernatorial Action. Governor Meskill signed the act into law on June 20, 1973.

PA 87-533

During the 1987 session, the legislature revised the law's agricultural exemptions by (1) limiting the farm pond exemption to ponds that are "essential to the farming operation" and (2) specifying that the following activities are not exempt from the law's regulation:

- a. road or building construction that is not directly related to the farming operation;
- b. relocating watercourses with continual flow;
- c. filling or reclaiming wetlands or watercourses with continual flow;
- d. clear cutting timber for purposes other than expanding agricultural crop land; and
- e. mining top soil, peat, sand, gravel, or similar material for sale purposes.

Public Hearings and Committee Action. The Environment Committee raised the bill (sSB 862) that became the law. There was no public hearing testimony on changes to the inland wetlands law's exemptions.

The committee favorably reported a substitute containing the farm pond limitation and the list of activities that must be regulated and referred it to the Planning and Development Committee, which favorably reported it to the floor.

Senate and House Action. The Senate and House considered and adopted several amendments to the bill, though none involved the exemptions (Senate "A" and House "B" and "C").

During the Senate's May 20 debate on the bill, as amended by Senate "A," Sen. Meotti explained that the bill's changes to the agricultural exemptions were to "limit exempt uses to those that are truly agricultural" (Senate Transcript, page 3116).

During the House debate on the bill, as amended by Senate "A," Rep. Mushinsky also stated that its changes were intended to limit the agricultural exemptions to those that "are truly agricultural" (House Transcript, page 10228). The House passed the bill, as amended by Senate "A" and House "B," "C," and "D," and sent it back to the Senate.

The Senate rejected House "D" and passed the bill, as amended by Senate "A" and House "B" and "C," and sent it back to the House. On June 1, the House rejected House "D" and passed the amended bill, in concurrence with the Senate.

Gubernatorial Action. Governor O'Neill signed the act into law on June 26, 1987.

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