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## **OLR Bill Analysis**

### **sHB 6441 (as amended by House "A")\***

#### ***AN ACT CONCERNING CLIMATE CHANGE ADAPTATION.***

#### **SUMMARY**

This bill authorizes all municipalities, rather than just certain ones, to establish a municipal stormwater authority. It expands the authorities' powers to assess fees and specifies the process by which municipal legislative bodies approve the fees (§§ 1-3). The bill (1) caps the fees collected on certain hospital-owned properties at 15% of the total fees and allows for the properties to be fully exempt until FY 27; (2) restricts the fees for farm, forest, or open space land, or property owned by state or local governments and their agencies, to impervious surfaces that discharge to a municipal separate storm sewer system; and (3) requires a partial fee reduction for property owners who use certain stormwater best management practices.

The bill broadens the authority of municipal flood and erosion control boards to include flood prevention and climate resilience and allows municipalities to enter into agreements to form joint boards (§§ 4-17).

Thirdly, the bill expands the Connecticut Green Bank's duties to include developing separate programs to finance and otherwise support environmental infrastructure and establishes an Environmental Infrastructure Fund within the Green Bank for this purpose (§§ 19-23).

With respect to the Green Bank, the bill increases, from \$100 million to \$250 million, the amount of bonds the Green Bank may issue that are backed by a special capital reserve fund (SCRF). SCRF-backed bonds are contingent liabilities of the state; if a SCRF is exhausted, the General Fund automatically replenishes it, regardless of the state spending cap (§ 22).

The bill also makes minor, technical, and conforming changes.

\*House Amendment "A" (1) eliminates a provision establishing a municipal option conveyance fee on real property sales; (2) limits to impervious surfaces on farm, forest, and open space land areas that may be subject to the stormwater fee; and (3) adds the stormwater fee provisions for hospital-owned property, property owned by the state or local governments or their agencies, and property owners who use onsite stormwater best management practices.

EFFECTIVE DATE: July 1, 2021

## **§§ 1-3 — MUNICIPAL STORMWATER AUTHORITIES**

### ***Eligible Municipalities***

This bill authorizes all municipalities to establish a municipal stormwater authority, rather than just the three municipalities (New Haven, New London, and Norwalk) that participated in the Department of Energy and Environmental Protection's (DEEP) municipal stormwater authority pilot program (authorized under PA 07-154).

The bill applies to any town, city, borough, consolidated town and city, or consolidated town or borough. It does not apply to local or regional school districts; municipal fire, sewer, fire and sewer, lighting, village, beach, improvement association, or other districts or associations wholly within a town that have the power to levy taxes; metropolitan districts; or other municipal corporations or authorities that may issue bonds, notes, or other obligations.

### ***Fee Assessment***

Under current law, stormwater authorities created under the pilot program must, among other things, recommend to the municipality's legislative body a levy on taxable real property in the stormwater district. The bill instead requires stormwater authorities to recommend a fee to be imposed on all real property in the district except as described below. The bill explicitly requires, rather than authorizes, the authorities to use the revenue generated to carry out any of the

district's powers. It makes conforming changes to an existing provision about a stormwater authority created under the DEEP pilot program and located in a distressed municipality with a population of 28,000 or fewer (i.e., New London).

Under the bill, each stormwater authority must present its budget annually to the municipality's legislative body for approval. The budget must include (1) the specific programs the authority proposes to undertake during the fiscal year, (2) its projected expenditures for the programs, and (3) the fee amount it proposes to levy to pay for the expenditures.

The total fees proposed for the fiscal year may not exceed the total projected expenditures. Under the bill, the legislative body may approve fee amounts that are less than the authority's proposed amounts. In setting fees, the bill requires, rather than allows, authorities to consider (1) the amount of impervious surface generating stormwater runoff, (2) land use types that result in higher concentrations of stormwater pollution, and (3) the property's grand list valuation. The bill additionally requires them to consider land use types that result in lower concentrations of stormwater pollution.

The bill also caps at 15% the amount of the total fees that may be generated from properties owned by hospitals that are parties to the settlement agreement approved by Special Act 19-1, December Special Session (see *Fee Limitations and Restrictions*, below).

### ***Fee Limitations and Restrictions***

***Hospital-Owned Properties.*** The bill caps at 15% the amount of the total stormwater authority fees that may be generated from properties owned by hospitals that are parties to the settlement agreement approved by Special Act 19-1, December Special Session, concerning certain hospital fees and payments. The cap applies until FY 27 and a municipality's legislative body is responsible for ensuring that the approved fees does not exceed the cap. The bill also enables a municipality to fully exempt the hospital properties from the fee until FY 27.

Under the bill, a municipal stormwater authority must, within 30 days after the end of each fiscal year, conduct a review to ensure that not more than 15% of the total collected fees were generated from real property of the covered hospitals in the municipality. If the fees exceed the cap, the bill requires the authority to rebate the excess fees proportionally to the hospitals. Regardless, the stormwater authority must provide the results of its review, in writing, to each hospital.

***Farm, Forest, or Open Space Land and Government or Agency Properties.*** Current law authorizes the authorities to reduce or defer stormwater fees for land classified as, or consisting of, farm, forest, or open space. The bill reduces the area of these lands that may be subject to the fee by limiting it to areas with impervious surfaces from which stormwater discharges to a municipal separate storm sewer system.

The bill also applies this limitation to properties owned by the state or local governments, or their respective agencies.

***On-site Stormwater Best Management Practices.*** The bill also requires a stormwater authority to offer a partial fee reduction, as a credit, for property owners in its district who have installed and are operating and maintaining current stormwater best management practices that the authority approves and reduce, retain, or treat stormwater onsite.

***Delinquent Fees***

Under the bill, fees that are not paid in full on or before 30 days after they are due are subject to the same interest rate as delinquent property taxes (i.e., 1.5% per month). Unpaid fees and interest are a lien on the property owner's real or personal property on which the fee was levied and may be recorded and released just like property tax liens.

Under the bill, someone aggrieved by an authority's action has the same rights and remedies for appeal and relief as the law provides for property taxpayers aggrieved by an assessor's or a board of assessment appeal's action.

**§§ 4-17 — FLOOD PREVENTION, CLIMATE RESILIENCE, AND EROSION CONTROL BOARDS*****Scope of Authority***

Current law authorizes municipalities to (1) establish a flood and erosion control board to prevent potential hazards from flooding, stream bank erosion, or beach erosion and (2) establish a separate taxing district for these purposes. These boards may plan, acquire, construct, repair, maintain, and manage a system, which may include such things as dikes, dams, piping, sea walls, jetties, tide-gates, water storage areas, or other structures or facilities.

The bill (1) increases the scope of these boards to include flood prevention and climate resilience; (2) allows them to also operate the systems; and (3) includes nonstructural and nature-based measures (e.g., altering or removing existing structures, maintaining open floodplain, and other less environmentally damaging alternatives) and open space for future accommodations or to establish wetlands or watercourses, as part of the system. It correspondingly renames these boards “flood prevention, climate resilience and erosion control boards.”

The bill extends to the boards’ broader scope of authority existing law’s authorizations related to entering and taking property; issuing bonds; and taxing or assessing property owners, among other things.

The bill allows the boards to (1) apply for and use public or private grant funding; (2) draw upon a municipal Climate Change and Coastal Resilience Reserve Fund; and (3) additionally enter into contracts with municipalities to further the boards’ purposes when related to navigation improvement projects, instead of only with the state and the federal government. The boards may also enter into agreements with the DEEP commissioner to construct projects or systems to prevent climate change impacts, as the current boards may do for their purposes.

***Joint Boards***

The bill allows municipalities to enter into agreements to have joint

boards, but they must be approved by concurrent votes of the municipalities' legislative bodies. A joint board has authority over each municipality that is a party to the agreement.

### ***Biannual Report***

The bill establishes a biannual reporting requirement for flood prevention, climate resilience, and erosion control boards. The report must be published on the website of each municipality that is subject to the board's authority. The report must include the following:

1. an inventory and description of the flood prevention, climate resilience, and erosion control system the board manages;
2. the extent and value of property, infrastructure, and natural resources the system protects;
3. an analysis of how the system prioritizes and protects vulnerable communities, which are populations that may be disproportionately affected by climate change; and
4. the board's revenue and expenses.

### ***Other Provisions***

The bill requires the boards to consider regional and municipal hazard mitigation plans, resilience plans, identified vulnerable communities, and municipal conservation and development plans when planning for and doing their work. It also allows the boards to consult with the Connecticut Institute for Resilience and Climate Adaption for this purpose.

## **§§ 19-23 — CONNECTICUT GREEN BANK**

### ***Environmental Infrastructure***

***Green Bank Authority.*** The Green Bank's current duties include developing programs for, and promoting investment in, clean energy. The bill expands the Green Bank's duties to include (1) developing separate programs to finance and otherwise support environmental infrastructure and (2) promoting investment in the infrastructure.

By law, the Green Bank has standards governing its administration, including rules, policies, and procedures for such things as borrower eligibility, terms, and conditions. The law required these standards to be in place before the bank financially supported clean energy projects and the bill extends this requirement to environmental infrastructure projects. The bill applies existing requirements for clean energy funding to environmental infrastructure projects (e.g., fees, several funding sources).

**Project Types.** The bill expands the types of projects the Green Bank can promote investment in to include environmental infrastructure, which, under the bill, is structures, facilities, systems, services, and improvement projects related to water, waste and recycling, climate adaptation and resiliency, agriculture, land conservation, parks and recreation, and environmental markets such as carbon offsets and ecosystem services.

Under the bill, “carbon offsets” are an activity that compensates for greenhouse gas (GHG) emissions through an emission reduction. “Ecosystem services” are ecosystem benefits such as (1) provisioning services (e.g., food and water), (2) regulating services (e.g., regulating floods, drought, land degradation, and disease), and (3) supporting services (e.g., soil formation and nutrient cycling).

**Environmental Infrastructure Fund Purpose.** The bill requires the Green Bank’s comprehensive plan to include growth, development, commercialization, and, where applicable, preservation of environmental infrastructure and related enterprises. Current law requires similar planning for clean energy purposes. The bill allows the bank to use the Environmental Infrastructure Fund to pay for expenses to promote environmental infrastructure investment, but not projects eligible for Clean Water Fund funding.

The bill allows an environmental infrastructure project to receive financing support from the Green Bank if the bank determines that the amount it and other nonequity financing sources provide does not exceed 100% of the project’s cost.

As it does under existing law for clean energy, the bill requires the Green Bank to (1) develop separate programs to finance and support environmental infrastructure investment in residential, municipal, small business, and larger commercial projects, and others the Green Bank determines and (2) support financing or other expenses that promote environmental infrastructure investment, which must be done according to its comprehensive plan.

The expenses may include costs related to such things as:

1. low-cost financing and credit enhancement mechanisms for projects and technologies;
2. grants;
3. contracts or other actions to support research, development, manufacture, commercialization, deployment, and installation of environmental infrastructure;
4. actions to expand the expertise of individuals, businesses, and lending institutions regarding environmental infrastructure;
5. direct or equity investments;
6. reimbursements of operating expenses; and
7. disbursements to develop and carry out the Green Bank's comprehensive plan.

Under the bill, operating expenses may include the Green Bank's (1) administrative expenses, (2) capital costs related to fund operation, (3) plan implementation, and (4) other permitted activities.

**Funding Sources.** The bill's expansion of the Green Bank's duties enables the bank to use its existing bonding authority to provide financing for environmental infrastructure projects (see *Bonding*, below). As is available under existing law for clean energy projects, similar funding sources are available for financing environmental infrastructure, including such things as:

1. charitable gifts, grants, contributions, and loans from individuals, corporations, university endowments, and philanthropic foundations;
2. earnings and interest from financing support activities backed by the Green Bank; and
3. private sources, pursuant to contract.

The bill also allows the fund to receive any (1) amount required by law to be deposited into the fund and (2) federal funds that may become available to the state for environmental infrastructure investments. But it explicitly prohibits from being deposited into the fund: (1) ratepayer or Regional Greenhouse Gas Initiative funds that under existing law are used for clean energy projects, (2) funds in the state's Clean Water Fund account or that must be deposited into the account, and (3) funds collected from water companies.

The bill also prohibits the Green Bank from applying for federal clean water or safe drinking water grants without approval from the state treasurer and the DEEP or public health commissioners, respectively.

***Audits and Certified Statements.*** The bill requires the Environmental Infrastructure Fund, like the existing Clean Energy Fund, to be annually audited. Entities receiving environmental infrastructure project funding, unless exempt under existing law (i.e., certain residential projects), must provide annual certified statements to the Green Bank's Board of Directors.

### ***Other Provisions***

***Board Membership.*** The bill adds the Office of Policy and Management secretary, or her designee, as a voting member of the Green Bank's Board of Directors.

***Bonding.*** The bill limits the term of bonds secured by the Green Bank's SCRF to 25 years. The bill generally (1) increases, from 20 to 25 years, the maximum term of bonds issued for clean energy projects

and (2) sets the maximum term of bonds issued for environmental infrastructure projects at 50 years. But in neither case can the bond's maturity date exceed an underlying project's expected useful life.

**Funding Qualification.** The bill allows any eligible project, including environmental infrastructure projects (see above), to receive financing support from the Green Bank if the bank determines that the amount it and other nonequity financing sources provide does not exceed 100% of the project's cost. Current law restricts funding for clean energy projects to those for which the Green Bank and other nonequity sources provide no more than 80% of the cost.

**Quasi-Public Subsidiaries.** Current law prohibits Green Bank subsidiaries from being deemed quasi-public agencies with the bank's privileges, immunities, and tax and other exemptions. The bill creates an exception from this prohibition for single member limited liability companies (LLCs) that are disregarded as entities separate from their owner.

**Reporting.** The bill adds the Banking and Environment committees to the legislative committees to which the Green Bank's board must submit its annual activity report, instead of only the Energy and Technology and Commerce committees.

## **BACKGROUND**

### ***Related Bills***

sSB 971 (File 559), favorably reported by the Planning and Development Committee, authorizes municipalities to invest their Climate Change and Coastal Resiliency Reserve Funds in any trust fund administered, held, or invested by the state treasurer.

HB 6497 (File 205), favorably reported by the Environment Committee, also authorizes all municipalities to have a stormwater authority, but limits the available fee exemptions to pervious farm, forest, or open space land.

## **COMMITTEE ACTION**

Environment Committee

Joint Favorable Substitute

Yea 21 Nay 11 (03/29/2021)