



PA 21-115—sHB 6441
Environment Committee

AN ACT CONCERNING CLIMATE CHANGE ADAPTATION

SUMMARY: This act 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 act (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 act broadens the authority of municipal flood and erosion control boards to include flood prevention and climate resilience and allows municipalities to form joint boards (§§ 4-17).

Thirdly, the act 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 act 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 act also makes minor, technical, and conforming changes.

EFFECTIVE DATE: July 1, 2021

§§ 1-3 — STORMWATER AUTHORITIES

Eligible Municipalities

The act 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 act 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

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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 prior law, stormwater authorities created under the pilot program had to, among other things, recommend a levy on taxable real property in the stormwater district to the municipality's legislative body. The act instead requires stormwater authorities to recommend a fee on all real property in the district except as described below. The act explicitly requires, rather than authorizes, the authorities to use the revenue generated to carry out any of the district's powers. It also 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 act, each stormwater authority must annually present its budget 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 act, the legislative body may approve fee amounts that are less than the authority's proposed amounts but cannot approve fee amounts greater than the amounts proposed. In setting fees, the act 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 act additionally requires them to consider land use types that result in lower concentrations of stormwater pollution.

The act 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 (SA) 19-1, December Special Session (see *Fee Limitations and Restrictions*, below).

Fee Limitations and Restrictions

Hospital-owned Properties. The act 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 hospital settlement agreement approved by SA 19-1, December Special Session, concerning certain fees and payments. The cap applies until FY 27 and a municipality's legislative body is responsible for ensuring that the approved fees do not exceed the cap. The act also authorizes municipalities to fully exempt the hospital properties from the fee until FY 27.

Under the act, 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 act requires the authority to rebate

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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. Prior law authorized the authorities to reduce or defer stormwater fees for farm, forest, or open space land. The act limits the area of these lands that may be subject to the fees to areas with impervious surfaces from which stormwater discharges to a municipal separate storm sewer system. The act also applies this limitation to properties owned by the state or local governments, or their respective agencies.

On-site Stormwater Best Management Practices. The act requires a stormwater authority to offer a partial fee reduction, as a credit, for property owners in its district who have, 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 act, 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.

Aggrieved Parties

The act gives someone aggrieved by an authority's action 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

Prior law authorized 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 taxing district for these purposes. These boards could plan, acquire, construct, repair, maintain, and manage a system, which could include things like dikes, dams, piping, sea walls, jetties, tide-gates, water storage areas, or other structures or facilities.

The act (1) increases the scope of these boards to include flood prevention and climate resilience; (2) explicitly allows them to also operate the systems; and (3) expands the types of measures these systems can include to cover 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

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or watercourses. It correspondingly renames these boards “flood prevention, climate resilience and erosion control boards.”

The act 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.

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

Joint Boards

The act 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 act establishes a biannual reporting requirement for flood prevention, climate resilience, and erosion control boards. The report must (1) be published on the website of each municipality subject to the board’s authority and (2) 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 act 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 allows them to consult with the Connecticut Institute for Resilience and Climate Adaption for this purpose.

Under the act, if an improvement or protection project or system exists within two or more municipalities, the municipalities’ individual or joint boards, as applicable, may work together, with each board’s cost set by mutual agreement of the municipalities involved. Prior law required the DEEP commissioner to

determine the cost.

§§ 19-23 — CONNECTICUT GREEN BANK

Environmental Infrastructure

Green Bank Authority. By law, the Green Bank’s duties include developing programs for, and promoting investment in, clean energy. The act expands its 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 act extends this requirement to environmental infrastructure projects.

The act requires the Green Bank’s comprehensive plan to include growth, development, commercialization, and, where applicable, preservation of environmental infrastructure and related enterprises. Existing law requires similar planning for clean energy purposes.

Project Types. The act expands the types of projects the Green Bank can promote investment in to include environmental infrastructure which the act defines as 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 act, “carbon offsets” are an activity that compensates for greenhouse gas 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’s Establishment and Purpose. The act establishes the Environmental Infrastructure Fund within the Connecticut Green Bank and requires the bank to administer the fund. It 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 act 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 act 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.

These environmental infrastructure expenses may include costs related to such

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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, as described below; and
7. disbursements to develop and carry out the Green Bank's comprehensive plan.

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

Funding Sources. The act's expansion of the Green Bank's duties enables the bank to use its existing bonding authority to finance 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 act allows the Environmental Infrastructure 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 it, and (3) funds collected from water companies.

The act 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 act requires the Environmental Infrastructure Fund, like the existing Clean Energy Fund, to be audited annually. 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 act adds the Office of Policy and Management

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secretary, or her designee, as a voting member of the Green Bank's Board of Directors.

Bonding. The act limits the term of bonds secured by the Green Bank's SCRF to 25 years. The act 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 act 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. Prior law restricted 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. Prior law prohibited Green Bank subsidiaries from being deemed quasi-public agencies with the bank's privileges, immunities, and tax and other exemptions. The act creates an exception from this prohibition for single member limited liability companies (LLCs) that are disregarded as entities separate from their owner.

Reporting. The act 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.