

Legislative History for Connecticut Act

<u>HB5243</u>	<u>PA330 JCAW 1976</u>
<u>Senate</u> : P. 2230	
<u>House</u> : P. 1890-1895	
<u>Environment</u> : P. 97-99	
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Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate and House of Representatives Proceedings

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JOINT  
STANDING  
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HEARINGS

ENVIRONMENT  
PART 1  
INTERIM  
1 - 268

1976  
INDEX

H-176

CONNECTICUT  
GEN. ASSEMBLY  
HOUSE

PROCEEDINGS  
1976

VOL. 19  
PART 5  
1677 - 2154

S-118

CONNECTICUT  
GEN. ASSEMBLY  
SENATE

PROCEEDINGS  
1976

VOL. 19  
PART 6  
2071 - 2626

April 29, 1976 J.G.T. 60

THE CLERK:

File 643, File 465 and 663, Favorable Report of the Committee on Human Services. Substitute for House Bill 5962. AN ACE CONCERNING THE CREATION OF INDIAN HOUSING AUTHORITIES. (As amended by House Amendment Schedule "A").

THE CHAIR:

Senator Lieberman.

SENATOR LIEBERMAN:

Mr. President, I've asked that that matter be marked passed retaining for today.

THE CHAIR:

It may be so marked.

THE CLERK:

Calendar 644, Files 453 and 664, Favorable Report of the Joint Standing Committee on Judiciary. Substitute for House Bill 5243. AN ACT CONCERNING THE AWARDING OF DAMAGES IN ACTIONS BROUGHT UNDER THE INLAND WETLANDS ACT. (As amended by House Amendment Schedule "A").

THE CHAIR:

Senator Neiditz. Last matter on page 5.

SENATOR NEIDITZ:

Yes, I move acceptance and passage and on Consent as amended by House Amendment Schedule "A".

THE CHAIR:

Hearing no objection, so ordered.

THE CLERK:

Turning to page 6 of the calendar please, second item from

House of Representatives

Tuesday, April 13, 1976

96  
ecp

Would the clerk, please, return to the call of the calendar.

THE CLERK:

On page 3. Calendar 515. Substitute for H.B. No. 5887. AN ACT CONCERNING THE DISPOSITION OF CAMPAIGN DEFICITS AND SURPLUSES.

THE GUEST SPEAKER:

Gentleman from the 34th.

REP. WILLIAM O'NEILL (34th):

Mr. Speaker, may that item be passed retaining its place.

THE GUEST SPEAKER:

So ordered. Clerk, please note.

THE CLERK:

Calendar 548. H.B. No. 5885. AN ACT MAKING CERTAIN TECHNICAL CORRECTIONS IN THE LIQUOR CONTROL ACT AND ADDING A CONCESSION PERMIT FOR PUBLIC GOLF COURSES.

THE GUEST SPEAKER:

Gentleman from the 34th.

REP. WILLIAM O'NEILL (34th):

Mr. Speaker, may that item be passed retaining its place.

THE GUEST SPEAKER:

Item passed retained. Clerk please note.

THE CLERK:

Page 3. Calendar 550. Substitute for H.B. No. 5243. AN ACT CONCERNING THE AWARDING OF DAMAGES IN ACTIONS BROUGHT UNDER THE INLAND WETLANDS ACT.

THE GUEST SPEAKER:

Lady from the 86th.

House of Representatives

Tuesday, April 13, 1976

97  
ecp

REP. DOROTHY S. McCLOSKEY (63rd):

Mr. Speaker, I move acceptance of the Joint Committees' favorable report and passage of this bill.

THE GUEST SPEAKER:

Question is on acceptance and passage, will you remark?

REP. DOROTHY S. McCLOSKEY (63rd):

Yes Mr. Speaker. Under the existing statutes, a suit to restrain violations of the Inland Wetland Water Courses Act, may be brought by the Commissioner of DEP; by any municipal; by any group of municipalities, which have formed in the Wetlands Agency, or by any person. All costs, fees, and expenses, in connection with such action, may be assessed as damages against the violator.

This bill would clarify that the fees which may be assessed as damages, include, reasonable attorney's fees. And all amounts assessed as damages must be awarded to the person, municipality, or district, which brought the suit. Finally, the bill would clarify that any fines collected from violators, must be used by DEP to restore the wetlands or water course affected. This bill, strictly, clarifies the intent of the existing law. I urge its passage.

THE GUEST SPEAKER:

Will you remark further. Gentleman from 136th.

REP. ALAN H. NEVAS (136th):

Mr. Speaker, the clerk has an amended LCO 2754, and I would ask that it be called, please.

House of Representatives

Tuesday, April 13, 1976

98  
ecp

THE GUEST SPEAKER:

Clerk, please call the amendment.

THE CLERK:

House Amendment Schedule "A" offered by Mr. Nevas of the 136th.

REP. ALAN H. NEVAS (136th):

Clerk please read, please.

THE CLERK:

In line 47, delete the words "reasonable attorneys' fees".

In line 49, after the word "violator" add the following language: "together with reasonable attorneys' fees, which may be allowed, all of which".

In line 49, delete the word "and".

THE GUEST SPEAKER:

Question is on the amendment. Ruled the amendment Technical. You may proceed.

REP. ALAN H. NEVAS (136th):

Mr. Speaker, the purpose of the amendment is to make the award of the attorneys' fees discretionary with the court hearing the matter.

Under the language in the file it would be mandatory for the court to make an award of attorneys' fees. It is my feeling that while attorneys' fees may be appropriated in many cases it should be within the discretion of the court and thus the amendment. I discussed the amendment with the chairman of the judiciary committee and he found it acceptable.

THE GUEST SPEAKER:

Will you remark further on the amendment? Lady from the 87th.

House of Representatives

Tuesday, April 13, 1976 <sup>99</sup>  
ecp

REP. DOROTHY S. McCLUSKEY (86th). Thank you Mr. Speaker.

I believe that the amendment improves upon a good bill and makes it better and urges its passage.

THE GUEST SPEAKER:

Will you remark further on the amendment? Question on the adoption of the amendment, Mr. Speaker.

UNANNOUNCED

Do you please the question of the proponent for the purpose of legislative history.

THE GUEST SPEAKER:

Will you please state your question?

UNANNOUNCED:

What type of criteria would be taken into account in order to determine whether or not attorneys' fees ought to be awarded?

THE GUEST SPEAKER"

Anyone care to respond? Gentlemen from 136th.

REP. ALAN H. NEVAS (136th)

The gentlemen addressed his question to the proponent and I don't know whether he means the proponent of the amendment or the proponent of the bill? The pro

UNANNOUNCED:

The proponent of the amendment.

REP. ALAN H. NEVAS (136th)

Thank you. Will he repeat the question? Please.

UNANNOUNCED:

I do this for the purpose of getting something into the record and that is if the proponent of the amendment could indicate those

House of Representatives

Tuesday, April 13, 1976

100  
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type of criteria which might enter the decision of the judge in determining whether or not to award attorneys' fees.

REP. ALAN H. NEVAS (136 th)

Basically the purpose for my amendment was to make the matter discretionary with the court. The problem to which Mr. Camp seems to be addressing his question is really the problem that I saw in the language in the file copy and that is to say, where the award of attorneys' fees was absolutely mandatory.

The purpose of the amendment is to make it discretionary and it is just that. It would be within the discretion of the judge hearing the matter, and determining, for example, the merit of the action against the violator whether or not it was done in good faith, the time, money expended by the person making the claim against the violator and basically leaving it up to the trial judge to make that determination.

THE GUEST SPEAKER:

Will you remark further on the amendment? If not, all in favor of the amendment signify by saying "Aye". Opposed ?

Amendment passed. Ruled technical. Would you remark further on the bill as amended by House amendment "A"?

Will the members please be seated. Staff come to the well and the machine will be open. The machine is still open. Has everyone voted? Machine is still open. Has everyone voted? The machine will be locked. Clerk will take a tally.

House of Representatives

Tuesday, April 13, 1976

101  
ecp

THE CLERK:

Total Number Voting .....140  
 Necessary for Passage..... 71  
 Those voting Yes.....140  
 Those voting Nay..... 0  
 Those absent and not Voting..... 11  
 Bill passed as amended.

THE GUEST SPEAKER:

Bill passed as amended.

THE CLERK:

Page 4.

Calendar 553.

THE GUEST SPEAKER:

Gentlemen of the 34th.

REP. WILLIAM A. O'NEILL (34th):

May that item be passed retaining its place.

THE GUEST SPEAKER:

Any objections? If not, so ordered.

THE CLERK:

Calendar 554 Substitute for House Bill No. 5336.

THE GUEST SPEAKER: the 34th

Gentlemen of the 34th.

REP. WILLIAM A O'Neill (34th):

May that item be passed temporarily.

## ENVIRONMENT

FEBRUARY 18, 1976  
2:00 p.m.

neighborhood of ..... Now this applies only to the gasoline part of the equipment.

REP. CIAMPI: Any more questions? Christopher Percy

CHRISTOPHER PERCY: Mr. Chairman, members of the committee, my name is Christopher Percy, I am President of the Connecticut River Watershed Council. I came to speak on Senate Bill 84. Because of what Senator Schneller has presented your questions and his answers, I don't believe I need to add any more to our support for the successful passage by this committee of Senate Bill 84.

I would like to add the need of this bill is never more important than only within the past week, an unlaidd barge traveling down the Connecticut River struck the railroad bridge knocked off huge pieces of concrete which are now in the channel of the river reducing the channel of the river by five feet to an elevation of ten feet. The Coast Guard has put out a Marine warning on this. It is still a tremendous hazard with barges and tankers coming up the Connecticut River at this time. So the hazard we have pointed out with the shipping and ..... products on the river are still there and .....

REP. CIAMPI: Representative Connolly, do you want to speak on any particular bill?

REP. CONNOLLY: Thank you very much. I would like to lend my support to House Bill 5243. I am speaking not only for myself, but for the Board of Selectmen in Simsbury and I understand there are other towns looking forward to consideration of this bill as a remedy for problems which they have run into because of the lack of oversight, overview of the implementation of the legislation. Inland wetlands Commissions were appointed in the various towns and under the statutes of 75-387. Most of these are new bodies feeling their way along and one of the hazards which they have run into is the inability to pursue a violation of the inland wetlands bill through support through the court violation because they do not have as new commissions attorneys nor funds to pursue any action in court. Actually this bill amounts to an amendment to the inland wetlands act requesting that towns be reimbursed if the violation has to be pursued to court asking for reimbursement of legal fees and court fees out of the fine which the environmental protection department does collect as a part of the violation or until the violation is corrected. A very simple amendment, but I think it would certainly be more equitable, I think it would go a long way also in preserving inland wetlands because it would en-

ENVIRONMENT

FEBRUARY 18, 1976  
2:00 p.m.

courage towns to pursue things too to preserve the wetlands.

REP. CIAMPI: Any questions from the committee?

REP. McCLUSKEY: QUESTION INAUDIBLE.

REP. CONNOLLY: Under the present legislation, Representative McCluskey, the Department of Environmental Protection collects this fee under current legislation and holds it and I understand the fine is up to \$1000. a day, there can be a fine of \$1000. a day. That makes no provision, the money goes back, which is collected from that fine, goes to the Department of Environmental Protection.

REP. McCLUSKEY: QUESTION INAUDIBLE.

REP. CONNOLLY: That's correct, presumably that's what the language says. However, in line 50 I think you will see all costs, fees and expenses in connection with such action shall be assessed as damages against the violator and shall be awarded only costs, fees and expenses, it does not say the total amount of that \$1000. Perhaps you would like the committee would like to clarify this language so the municipalities would recover only their court costs and I think that's all there.

REP. McCLUSKEY: QUESTION INAUDIBLE.

REP. CONNOLLY: Not at all no, I think if the town can recover the portion lost on legal fees, we will be quite happy.

REP. McCLUSKEY: TESTIMONY INAUDIBLE.

REP. CONNOLLY: I think it is quite proper that the remainder of the fees go to the Department of Environmental Protection to restore the wetlands.

REP. McCLUSKEY: TESTIMONY INAUDIBLE.

REP. CONNOLLY: I would think it would be .....itself.....I think if all the towns are looking forward to be able to recover it their costs.

REP. METRO: TESTIMONY INAUDIBLE. MECHANICAL DIFFICULTY

I think we have a much larger problem here, but this is something that should be considered, but in the interim I think the town, we would have a better response of preserving our wetlands if we decided the town was going to have this protection for the town. Right now, many of them are not pursuing it because they don't have .....and I don't think anybody is going to go as far as the Supreme Court without .....

REP. McCLUSKEY: TESTIMONY INAUDIBLE.

## ENVIRONMENT

FEBRUARY 18, 1976  
2:00 p.m.

REP. CONNOLLY: We have one right now that is possibly pending a Senate hearing where the Commission has requested from the Board of Selectmen financial assistance to carry their support. The Board of Selectmen has no money designated for this particular purpose. There's a question in my mind whether the Commission will pursue it when they do not have the money to pursue it.

REP. McCLUSKEY: QUESTION INAUDIBLE.

REP. CONNOLLY: That's correct.

REP. McCLUSKEY: TESTIMONY INAUDIBLE.

REP. CONNOLLY: I think that there's language in here which clarifies the intent. I don't think that this inland wetlands act would pass if it intended to impose any financial difficulty on the town. These problems are going to come up since we do not have legislative overview to want bills as they are in the .....and this is a problem that has surfaced in several towns, not peculiar to Simsbury I don't believe, but we are going to, I think, protect more inland wetlands if the towns know they can recover their legal fees for the purposes intended. I think maybe this is implied in the bill, but I think it should be spelled out in clearer language.

REP. CIAMPI: Eaymond Langfield.

RAYMOND LANGFIELD: Good afternoon, my name is Raymond Langfield. I am chairman of the Legislative committee, a member of the Board of Directors, and a former president of the Independent Connecticut Petroleum Association. I am also a registered professional engineer and as a small independent businessman, I operate the Spicer Fuel Company of Groton, Connecticut.

I appear here today in opposition to Bill No. 84 on behalf of the 350 members of our association. The members of our association are small independent businessmen, Connecticut residents, and for the most part family-owned and operated companies. We buy our oil from the major oil company refiners and although our trucks may carry the big oil name on them, that's about where the similarity ends. We are on the tail end of the distribution chain, which probably accounts for our close identity with the customers we serve. We serve the home-owners, we serve all businesses in the state.

Bill No. 84, which would establish a Connecticut River Conservation Cooperative under state administration may be very well intended. Our association, however, is certainly opposed to the method of funding this project by taxing all fuel oil entering the Connecticut River at the rate of one-half cent a barrel.