

Legislative History for Connecticut Act

PA 87-533

Act Number:	533	Year:	1987
Bill Number:	SB 862		
House Pages:	10225-10240, 11040-11053, 12006-12024		49
Senate Pages:	3110-3120, 4913-4916		15
Committee:	Environment. 727-731, 737- 738, 769-774, 1374-1382, 1389-1397		31
		Page Total:	95

Note: also 2/11 is a subject matter hearing

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate
and House of Representatives Proceedings

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H-477

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1987

VOL. 30
PART 28
10159-10532

dez

120

House of Representatives

Wednesday, May 27, 1987

If not, will Clerk please return to the call of the Calendar.

CLERK:

Page 11, Calendar 840, Substitute for Senate Bill 862, AN ACT CONCERNING THE INLAND WETLANDS AND WATER-COURSES, As amended by Senate "A", Favorable Report of the Committee on Planning and Development.

REP. MUSHINSKY: (85th)

Mr. Speaker.

DEPUTY SPEAKER LAVINE:

Representative Mushinsky.

REP. MUSHINSKY: (85th)

Thank you, Mr. Speaker. I move acceptance of the Joint Committee's Favorable Report and passage of the Bill in concurrence with the Senate.

DEPUTY SPEAKER LAVINE:

The motion is on acceptance and passage. Will you remark?

REP. MUSHINSKY: (85th)

Thank you. The Clerk has LCO 8011, Labeled Senate "A". The Clerk please call and may I be allowed to summarize?

dez

House of Representatives

Wednesday, May 27, 1987

DEPUTY SPEAKER LAVINE:

The Clerk has LCO 8011, Previously Designated Senate Amendment "A". Would the Clerk please call?

CLERK:

LCO 8011, Previously Designated Senate "A",
offered by Senator Meotti.

DEPUTY SPEAKER LAVINE:

The Representative is seeking permission to summarize. Is there objection? Hearing no objection, you may proceed.

REP. MUSHINSKY: (85th)

Thank you, Mr. Speaker. This amendment specifies at 45 day time limit for inland wetland hearings, shortens the time for decision after public hearing from 65 to 35 days. Eliminates references to the Bill to temporary watercourses and wetlands. Eliminates the requirement that state agencies obtain all approvals before entering into construction contracts.

Changes the time sequencing of inland wetlands and planning and zoning decisions and deletes the alternative access provision.

I would point out that local inland wetland

dez

House of Representatives

Wednesday, May 27, 1987

Commissions still have the option to bring in perenial, vernal or intermittent language on their own at the local level, because of the court decision Aaron vrs. Conservation Commission of Redding. But it will no longer be in this Bill.

I move adoption of the amendment.

DEPUTY SPEAKER LAVINE:

The motion is on adoption. Will you comment? Will you comment. If not, I'll try your minds. All in favor of the amendment, will signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER LAVINE:

Those opposed nay. The motion is adopted and ruled technical. Will you remark further?

REP. MUSHINSKY: (85th)

Thank you, Mr. Speaker. The Bill itself strengthens the inland wetlands law to address several weaknesses that were identified by the Council of Environmental Quality's Report, and by inland wetland commissioners around the state.

Specifically, the Bill does the following:

dez

123

House of Representatives

Wednesday, May 27, 1987

It requires all towns to have local inland wetland commissions. It tightens the farming exemption to limit exempt uses to those that are truly agricultural.

It closes out a grandfather clause for subdivisions approved but never built on. It requires the DEP to develop a comprehensive training program for local officials, so that all local officials understand the law correctly. It requires DEP to develop a standardized reporting system to monitor statewide activity in regulating wetlands.

It establishes a standard that DEP or the local inland wetland agency must find that a feasible and prudent alternative to intrusion on the wetlands does not exist. It establishes a coordinated timetable for planning and zoning and inland wetland agency decisions. It requires notice to the adjoining town for properties that effect the adjoining town.

It permits DEP to revoke local authority in certain cases, if enforcement is not being performed.

Even though this bill has been somewhat watered-down by the Senate, the Bill does provide new tools and training for a more professional inland wetland commission-

dez

124

House of Representatives

Wednesday, May 27, 1987

ers. It closes certain problem loopholes and the Committee believes that it will provide better scrutiny of development in these fragile areas that are so important to flood storage, ground water purification, and fish and wildlife habitat. And I urge your support.

REP. KRAWIECKI: (78th)

Mr. Speaker.

DEPUTY SPEAKER LAVINE:

Will you comment further? Representative Krawiecki.

REP. KRAWIECKI: (78th)

Thank you, Mr. Speaker. The Clerk has an amendment LCO 8233. Will he please call and may I be allowed to summarize?

DEPUTY SPEAKER LAVINE:

Clerk has an amendment 8233, Designated House Amendment "A". The Clerk will please call.

CLERK:

8233, Designated House "A", offered by Representative Krawiecki.

DEPUTY SPEAKER LAVINE:

The gentleman is seeking permission to summarize. Is there objection? Hearing none, you may proceed.

dez

125

House of Representatives

Wednesday, May 27, 1987

REP. KRAWIECKI: (78th)

Thank you, Mr. Speaker. Members of the House, what the amendment will do is simply require the Commissioner of Environmental Protection to prepare and update the so-called "floodplain" maps in the State of Connecticut for each municipality.

I would move adoption of the amendment.

DEPUTY SPEAKER LAVINE:

The motion is on adoption. Will you remark?

REP. KRAWIECKI: (78th)

Yes, Mr. Speaker. I have a fiscal note on the amendment. The fiscal note indicates that there would be no additional cost to the State of Connecticut since the Federal Government presently distributes and prepares these type of maps.

Those of you that are involved in the real estate market can understand that maps have been not updated for many, many years. While I would have preferred to have this amendment with a deadline, and I didn't realize this Bill was coming up so quickly and LCO has not gotten me a revised amendment back, I think it still accomplishes the point that I was after.

I think it's a good amendment. It certainly does not harm the Bill and I would urge adoption.

DEPUTY SPEAKER LAVINE:

Will you remark further?

REP. MUSHINSKY: (85th)

Mr. Speaker.

DEPUTY SPEAKER LAVINE:

Representative Mushinsky.

REP. MUSHINSKY: (85th)

While it's true that the amendment does not harm the Bill, it certainly is not needed. The base flood maps are already available. They are prepared for femor regulations and I think this amendment is simply muddying the waters. The maps are available already to any builder or town officials.

I would urge members to reject the amendment.

DEPUTY SPEAKER LAVINE:

Will you remark further on the amendment.

REP. KRAWIECKI: (78th)

Mr. Speaker. Mr. Speaker.

DEPUTY SPEAKER LAVINE:

Representative Krawiecki.

dez

House of Representatives

Wednesday, May 27, 1987

REP. KRAWIECKI: (78th)

Thank you, Mr. Speaker. The...no pun intended... the amendment is not intended to muddy any water. The problem is that many small communities and, in fact, some of the larger communities have not updated their maps in years and years. And some of them are outdated, frankly, and the information is not accurate.

And all this would do is require the commissioner to update those maps and I...many of them don't keep it in the Town Clerk's office, which is the place that most people go looking for them. I think it's a good amendment. I really think that it coincides with the intent of the underlying legislation which is to upgrade, fine tune and improve our inland wetlands laws in the State of Connecticut.

And one of the areas that seems to be slip-slide and loose is in the area of floodplains and I would urge adoption of the amendment.

DEPUTY SPEAKER LAVINE:

Will you remark further? If not, I will try your minds. All in favor of the amendment, will signify by saying aye.

dez

128

House of Representatives

Wednesday, May 27, 1987

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER LAVINE:

Those opposed, nay.

REPRESENTATIVES:

No.

DEPUTY SPEAKER LAVINE:

The amendment is defeated.

The following is House Amendment Schedule "A":

After line 834 add the following and renumber the remaining section accordingly:

"Sec. 13. The commissioner of environmental protection shall prepare and publish a map that delineates the boundaries of the base flood for each municipality. As used in this section, "base flood" means that flood which has a one per cent chance of being equaled or exceeded in any year, as defined in regulations of the National Flood Insurance Program (44 CFR 59 et.seq.)."

DEPUTY SPEAKER LAVINE:

Will you remark further on the Bill?

REP. DUFFY: (77th)

Mr. Speaker.

DEPUTY SPEAKER LAVINE:

Representative Duffy.

dez

129

House of Representatives

Wednesday, May 27, 1987

REP. DUFFY: (77th)

Mr. Speaker, the Clerk has an amendment, LCO 8157. I'd ask the Clerk to please call and I be given permission to summarize.

DEPUTY SPEAKER LAVINE:

Clerk please call LCO 8157, Designated House Amendment "B". Will the Clerk please call?

CLERK:

LCO 8157, Designated House "B", offered by Representative Duffy, et al.

DEPUTY SPEAKER LAVINE:

Representative Duffy is seeking permission to summarize. Is there objection? Hearing no objection, you may proceed.

REP. DUFFY: (77th)

Thank you, Mr. Speaker. The amendment makes a couple of technical corrections to Section 12 of the file copy by clarifying that a municipal wetlands commission may only be determined not to have authority to act by the commissioner following a hearing and following notice of a hearing in providing for the municipality to have access to appellate rights upon determination that,

dez

House of Representatives

Wednesday, May 27, 1987

it can no longer serve as an appropriate wetlands agency.

I move adoption.

DEPUTY SPEAKER LAVINE:

The motion is on adoption. Will you comment?

REP. MUSHINSKY: (85th)

Mr. Speaker.

DEPUTY SPEAKER LAVINE:

Representative Mushinsky.

REP. MUSHINSKY: (85th)

A hearing before revocation was understood by the committee. If it needs to be so stated, no objection to the amendment.

DEPUTY SPEAKER LAVINE:

Will you comment further?

REP. BELDEN: (113th)

Mr. Speaker.

DEPUTY SPEAKER LAVINE:

Representative Belden.

REP. BELDEN: (113th)

Mr. Speaker, just one question if I might to the proponant.

DEPUTY SPEAKER LAVINE:

dez

131

House of Representatives

Wednesday, May 27, 1987

Will you proceed, sir.

REP. BELDEN: (113th)

During the time that all of this appealing is going on, who is the...who has the wetlands authority in the community. Through you, Mr. Speaker.

DEPUTY SPEAKER LAVINE:

Representative Duffy.

REP. DUFFY: (77th)

Through you, Mr. Speaker. Until the determination has been made that a commission has been determined not to be in compliance, it would remain as the authority. If it were determined to have been removed as a proper authority by the Commissioner, it would be up to the court on a hearing on an application for a stay, to determine who would have the authority to act in the interim while it was on appeal.

DEPUTY SPEAKER LAVINE:

Representative Belden.

REP. BELDEN: (113th)

Through you, Mr. Speaker. Not being very familiar with what the overall process...I think the whole thrust of the file here is to preserve and protect our wetlands

dez

132

House of Representatives

Wednesday, May 27, 1987

on an ongoing basis and I just want to try to make sure that this amendment is not sabotaging that effort in any way.

Through you, Mr. Speaker, the timeframe between when the commissioner might indicate he wanted to take over from a community until this court hearing would occur; what kind of time frame are we talking about? Through you, Mr. Speaker.

DEPUTY SPEAKER LAVINE:

Representative Duffy.

REP. DUFFY: (77th)

Through you, Mr. Speaker. It requires at least a 30 day notice of the intention to revoke and for the commission to show cause why that should not occur; at which point, then, the commissioner would schedule a hearing and would have to make a determination. If the commission feels that it is agrieved by that, it then will have a period of time provided under the Administrative Procedures Act to appeal that.

The problem with the file copy without the amendment is that there is no procedure for that. And any decision that might be made could be challenged by an

dez

133

House of Representatives

Wednesday, May 27, 1987

applicant as to whether or not the agency has the proper authority to be making the decision.

I think this is an essential amendment to preserve the intent of the bill.

DEPUTY SPEAKER LAVINE:

Representative Belden.

REP. BELDEN: (113th)

Thank you, Representative Duffy.

DEPUTY SPEAKER LAVINE:

Will you remark further on the amendment? If not, I'll try your minds. All in favor of the amendment will signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER LAVINE:

Those opposed, nay. The amendment is adopted and ruled technical.

The following is House Amendment Schedule "B":

In line 798, after "determination" insert "after a hearing".

In line 800, after "to" insert "the hearing on".

In line 812, after the period, insert the following:
"Any municipality aggrieved by a decision of the comm-

dez

134

House of Representatives

Wednesday, May 27, 1987

issioner under this section to revoke its authority under said section 22a-42a may appeal therefrom in accordance with the provisions of section 4-183 of the general statutes."

DEPUTY SPEAKER LAVINE:

Will you remark further?

REP. BALDUCCI: (27th)

Mr. Speaker.

DEPUTY SPEAKER LAVINE:

Representative Balducci.

REP. BALDUCCI: (27th)

Thank you, Mr. Speaker. I understand at this time, that there are two amendments pending that have not arrived here in the Chamber.

I would, at this time, request that we pass temporarily this bill until those amendments arrive. I would also like to indicate to the Chamber that time is moving on. We're one week away from our deadline and everyone has a Calendar.

If you have a need for an amendment, I would suggest that you get to it as quickly as possible before the items are double starred because it's going to become

dez

135

House of Representatives

Wednesday, May 27, 1987

more and more difficult for us to pass retain or pass temporarily items which are on the Calendar that need amendments.

So try to attend to those as quickly as possible. There may be an occasion where an emergency arises but in most cases, it is not. Please...so we don't delay the process and Bills aren't lost...get those so that we can move along with the business of this Chamber.

Thank you very much.

DEPUTY SPEAKER LAVINE:

The motion is to pass temporarily. Is there objection? Hearing none, it is so ordered. Are there points of personal privilege? And I should indicate that this will probably be the last time we will ask for several bills.

Representative Fleming.

REP. FLEMING: (16th)

Thank you, Mr. Speaker. Mr. Speaker, I'd like to introduce to the Chamber some guests that are in the gallery. They are a group of students and teachers and parents here from Saint Mary's School in Simsbury which is the school that I attended.

H-479

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1987

VOL. 30
PART 30
10899-11306

abs

336

House of Representatives

Thursday, May 28, 1987

Bill 862, AN ACT CONCERNING THE INLAND WETLAND AND WATER COURSES. (As amended by Senate "A" and "B"). Favorable Report of the Committee on PLANNING AND DEVELOPMENT.

SPEAKER STOLBERG:

Representative Mary Mushinsky.

REP. MUSHINSKY: (85th)

Thank you, Mr. Speaker. I move acceptance of the Joint Committee's Favorable Report and passage of the bill as amended, in concurrence with the Senate.

SPEAKER STOLBERG:

Will you remark?

REP. MUSHINSKY: (85th)

Thank you, Mr. Speaker. Yesterday, we had adopted Senate "A" and House "B", and then PT'ed the bill. At this time, I would like to yield to Representative Luby for a further amendment.

SPEAKER STOLBERG:

Representative Luby, do you accept the yield?

REP. LUBY: (82nd)

Yes, Mr. Speaker. Mr. Speaker, I would ask that the Clerk call LCO 8095, and I be allowed to summarize.

SPEAKER STOLBERG:

Clerk has an amendment. Will the Clerk please call?

hhm

337

House of Representatives

Thursday, May 28, 1987

CLERK:

LCO 8095 designated House "A" offered by Representative Luby, et al.

SPEAKER STOLBERG:

I believe we have already adopted House Amendment "B".

CLERK:

House Amendment Schedule "C".

SPEAKER STOLBERG:

LCO 8095 is House Amendment Schedule "C", the Clerk has called it, designated "C". Is there objection to summarization? Seeing none, Representative Luby.

REP. LUBY: (82nd)

Thank you, Mr. Speaker. Ladies and gentlemen, this Amendment just makes two changes to the file copy, it file 536. It deletes some language which starting on line 530 of the file copy ending of 533, relating to the right of members of Wetlands Commissions to rely on their knowledge experience and training in making determinations. That was the view of a number of people involved in the development of the legislation that in fact this is already the law. The law is

hhm

House of Representatives

Thursday, May 28, 1987

somewhat complicated, somewhat subtle when it comes to for example the commission's requirement to provide a certain amount of notice when they are going to reject sophisticated expert testimony.

What we felt is that this particular language already reflected what the general rule and the common law is.

Secondly, the purpose of this Amendment with regard to this particular language change is to avoid what we felt was an inappropriate inference that might be drawn from the Senate Amendment, Amendment "A". That may in fact further restrict the right of the commissions to use their knowledge, experience and training.

Thirdly, there is a second change in the file copy specifically on line 581 relating to the fees charged by the Wetlands Commissions. Specifically when fees are charged for monitoring it adds some language to the Bill to make clear what monitoring we are talking about. I would adoption of the Amendment.

hbm

339

House of Representatives

Thursday, May 28, 1987

SPEAKER STOLBERG:

Will you remark further on House "C". Will you remark further.

REP. DUFFY: (77th)

Mr. Speaker.

SPEAKER STOLBERG:

Representative Duffy.

REP. DUFFY: (77th)

Thank you, Mr. Speaker, a question to the proponent.

SPEAKER STOLBERG:

Please frame your question.

REP. DUFFY: (77th)

Could you, Representative Luby summarize the procedure that would entail under the Amendment when an Inland Wetlands Commission would have to look at an application for a zone change or special permit, in an area that has wetlands. Where will the applicant have to go first.

REP. LUBY: (82nd)

My understanding is that it is important that an applicant under this Bill not for example, fill in

hnm

House of Representatives

Thursday, May 28, 1987

any wetland as a result of obtaining a permit prior to obtain the approval of the other land use commissions. That also requires within a certain of time, that an application be filed with the Wetlands Commission and it delays the action is my understanding of the other commissions until there is action by the Wetland Commission.

SPEAKER STOLBERG:

Representative Duffy.

REP. DUFFY: (77th)

Thank you, Mr. Speaker, so what is the substitute change in lines 29 through 35. Does that effectively change it in the file copy regarding the requirement of the wetlands permit be obtained first. This would seem to indicate that one would have to get a zoning permit first. Through you, Mr. Speaker.

REP. LUBY: (82nd)

That is the language not of the Amendment we are proposing, but already in the Bill as proposed, and the Amendment as adopted Senate "A".

REP. KRAWIECKI: (78th)

Mr. Speaker.

abs

341

House of Representatives

Thursday, May 28, 1987

SPEAKER STOLBERG:

Representative Krawiecki.

REP. KRAWIECKI: (78th)

Thanks, Mr. Speaker. A question, through you, to Representative Luby. I would like to follow up on what Representative Duffy was just asking. It is my understanding that under LCO 8095, that the Representative has in fact deleted all of the new language in sub (d), so that I don't think that the requirement that you were just talking about, to go to Wetlands first, any longer applies.

And I may be wrong, but, through you, Mr. Speaker, could the Representative elicit or enlighten me a little more on that?

REP. LUBY: (82nd)

Yes, Mr. Speaker, through you. All we have done with LCO 8095 is to remove one sentence from that subsection (d). If you were to follow it to the conclusion of the first full sentence of subsection (d), line 25 of the amendment, after the phrase " for its decision." (period) there was a line in the file copy of the bill that read as follows: "In rendering a decision

abs

342

House of Representatives

Thursday, May 28, 1987

the members of the agency may rely on their own personal knowledge and experience and training." That is the single line that we are intending to delete.

So, then, the rest of the language would reflect the constinuation of that.

REP. KRAWIECKI: (78th)

Through you, Mr. Speaker. Representative Luby, I think I probably agree with what you are doing, and I guess, then, I am a little concerned about the answer to Representative Duffy's question, which I think was: where does an applicant begin his process. And I don't think that this bill requires you to commence your application process through Inland Wetlands.

Through you, Mr. Speaker.

REP. LUBY: (82nd)

My understanding... Through you, Mr. Speaker, my understanding is it would be a simlaneous process.

REP. KRAWIECKI: (78th)

Thank you, Mr. Speaker. That would be my understanding as well.

SPEAKER STOLBERG:

Will you remark further on House Amendment

House of Representatives

Thursday, May 28, 1987

Schedule "C"? If not, all those in favor of the amendment, please indicate by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER STOLBERG:

All those to the contrary, nay. The amendment is adopted. *****

House Amendment Schedule "C":

Strike subsection (d) of section 6 and insert the following in lieu thereof:

"(d) In granting, denying or limiting any permit for a regulated activity the inland wetlands agency shall consider the factors set forth in section 22a-41, AS AMENDED BY SECTION 4 OF THIS ACT, and such agency shall state upon the record the reason for its decision. In granting a permit the inland wetlands agency may grant the application as filed or grant it upon such terms, conditions, limitations or modifications of the regulated activity, designed to carry out the policy of sections 22a-36 to 22a-45, inclusive, AS AMENDED BY THIS ACT, AND SECTIONS 12 AND 13 OF THIS ACT. NO PERSON SHALL CONDUCT ANY REGULATED ACTIVITY WITHIN AN INLAND WETLAND OR WATERCOURSE WHICH REQUIRES ZONING OR SUBDIVISION APPROVAL WITHOUT FIRST HAVING OBTAINED A VALID CERTIFICATE OF ZONING OR SUBDIVISION APPROVAL, SPECIAL PERMIT, SPECIAL EXEMPTION OR VARIANCE OR OTHER DOCUMENTATION ESTABLISHING THAT THE PROPOSAL COMPLIES WITH THE ZONING OR SUBDIVISION REQUIREMENTS ADOPTED BY THE MUNICIPALITY PURSUANT TO CHAPTER 124 TO 126, INCLUSIVE, OR ANY SPECIAL ACT. The agency may suspend or revoke a permit if it finds after giving notice to the permittee of the facts or conduct which warrant the intended action and after a hearing at which the permittee is given an opportunity to show compliance with the requirements for retention of the permit, that the applicant has not complied with the conditions or limitations set forth in the permit or

abs

344

House of Representatives

Thursday, May 28, 1987

has exceeded the scope of the work as set forth in the application. The applicant shall be notified of the agency's decision by certified mail within fifteen days of the date of the decision and the agency shall cause notice of their order in issuance, denial, revocation or suspension of a permit to be published in a newspaper having a general circulation in the town where the wetland and watercourse lies. [A copy of such permit and order shall be sent to the commissioner of environmental protection no later than ten days after the issuance of the permit and order provided failure to submit such permit and order shall not impair the validity of such permit and order.] "

In line 581, after :monitoring: insert the following: "compliance with permit conditions or agency orders."

SPEAKER STOLBERG:

Will you remark further on the bill? Representative Wollenberg.

REP. WOLLENBERG: (21st)

Mr. Speaker, the Clerk has LCO number 7773 on his desk. Would he please call, and I be allowed to summarize?

SPEAKER STOLBERG:

Clerk has an amendment, LCO 7773, House Amendment Schedule "D". Will the Clerk please call?

CLERK:

LCO 7773, designated House "D", offered by

ned

345

House of Representatives

Thursday, May 28, 1987

Representative Wollenberg.

SPEAKER STOLBERG:

Is there objection to summarization? Seeing none,
Representative Wollenberg.

REP. WOLLENBERG: (21st)

Thank you, Mr. Speaker. Mr. Speaker this amend-
ment is, allows for an appeal on an inland wetlands
application to be considered by the court under the
regulations that were in effect at the time of the
application, and I would like to move adoption.
I move adoption, Mr. Speaker.

SPEAKER STOLBERG:

Will you remark on House "D"?

REP. WOLLENBERG: (21st)

Yes, thank you, Mr. Speaker, the history of
this is that in subdivision and in zoning if you make
application and after the application is made, a board
changes its regulation, you are grandfathered in under
the regulation you applied under. The new regulation
does not affect your application.

It appears a case came down a year or so ago
under inland wetlands after a year and a half or so of

ned

346

House of Representatives

Thursday, May 28, 1987

the appeal process from a local board's decision. The Appellate Court ruled that any decision they might make might be moved because in the meantime the local commission had changed its regulations and the court required that the applicant go back and apply under the new regulations.

Extremely unfair, other appeals subdivision zoning do not take that posture and inland wetlands should not either. It's a bootstrap operation, a commission can blow you out of the water at the last minute after you've appealed for two years and the town has spent the money. A decision should be rendered, they should not be able to do this and I urge adoption of the amendment.

REP. MUSHINSKY: (85th)

Mr. Speaker.

SPEAKER STOLBERG:

Will you remark further? Representative Mushinsky.

REP. MUSHINSKY: (85th)

Thank you, Mr. Speaker, this is a fair amendment, it says we won't change the rules in the middle of an application, not in the middle of the game, so I would urge you to support it.

REP. SAVAGE: (50th)

Mr. Speaker. Mr. Speaker.

ned

347

House of Representatives

Thursday, May 28, 1987

SPEAKER STOLBERG:

Representative Savage.

REP. SAVAGE: (50th)

Thank you Mr. Speaker. I urge support of this amendment having had one of those cases in a nearby community and it certainly is very frustrating and very unfair to have the commission be able to change the rules of the game after an appeal has been taken.

Thank you.

SPEAKER STOLBERG:

Will you remark further on House Amendment Schedule "D"? If not, all those in favor of the amendment indicate by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER STOLBERG:

All those to the contrary nay.

The amendment is adopted.

The following is House Amendment Schedule "D":

After section 13, insert sections 14 and 15 as follows and renumber the remaining sections accordingly:
"Sec. 14. (NEW) No application, request, petition or plan which is filed with a zoning commission or zoning

ned

348

House of Representatives

Thursday, May 28, 1987

board of appeals which is in conformance with the applicable zoning regulations and boundaries as of the time of filing shall be required to comply with any change in such zoning regulations or boundaries taking effect after the filing of such application and no such application, request, petition or plan shall be disapproved for the reason that it does not comply with such changed regulations or boundaries.

Sec. 15. (NEW) No application or petition which is filed with an inland wetlands agency which is in conformance with the applicable inland wetlands regulations and boundaries as of the time of filing shall be required to comply with any change in such inland wetlands regulations or boundaries taking effect after the filing of such application or petition and no such application shall be disapproved for the reason that it does not comply with such changed regulations or boundaries."

SPEAKER STOLBERG:

Will you remark further? If not, will members please be seated, staff and guests to the Well of the House, the machine will be open.

CLERK:

The House is voting by roll call, all members please return to the Chamber. The House is voting by roll call members kindly return to the Chamber immediately.

SPEAKER STOLBERG:

Have all the members voted? Have all the members voted and is your vote properly recorded. If all the

ned

349

House of Representatives

Thursday, May 28, 1987

members have voted and your vote is properly recorded, the machine will be locked, and the Clerk will take a tally. Will the Clerk please announce the tally?

CLERK:

Senate Bill 862 as amended by Senate "A" and House Amendments "B", "C" and "D":

Total number Voting	141
Necessary for Passage	71
Those voting Yea	140
Those voting Nay	1
Those absent and not voting	10

SPEAKER STOLBERG:

The bill as amended is passed.

CLERK:

Please turn to page 9, Calendar 904, Substitute for Senate Bill 1198, AN ACT AUTHORIZING THE COMMISSIONER OF TRANSPORTATION TO ENTER INTO ALL QUALIFIED LEASED PROPERTY LEASES. Favorable Report of the Committee on FINANCE, REVENUE AND BONDING.

REP. LYONS: (146th)

Mr. Speaker

SPEAKER STOLBERG:

Representative Moira Lyons.

H-481

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1987

VOL. 30

PART 32

11695-12025

pt

310

House of Representatives

Monday, June 1, 1987

CLERK:

Please turn to Page 6, Calendar 9, correction, try that again. Page 12, Calendar 840, Substitute for Senate Bill 862, AN ACT CONCERNING THE INLAND WETLANDS AND WATERCOURSES, as amended by Senate "A" and House Amendments "B", "C" and "D". Favorable Report of the Committee on Planning and Development.

REP. MUSHINSKY: (85th)

Mr. Speaker.

SPEAKER STOLBERG:

Rep. Mushinsky.

REP. MUSHINSKY: (85th)

I move acceptance of the Joint Committee's Favorable Report and passage in concurrence with the Senate.

SPEAKER STOLBERG:

Will you remark?

REP. MUSHINSKY: (85th)

Thank you, Mr. Speaker. Members of the House, this is the inland wetlands bill and the Senate rejected House "A" dealing with, well, I should call "C" first, I suppose. That would be a good idea.

If the Clerk would please call LCO 7773 labeled

pt

311

House of Representatives

Monday, June 1, 1987

House "D".

SPEAKER STOLBERG:

The Clerk has an amendment, LCO 7773, House "D".
The Clerk please call.

CLERK:

LCO 7773, designated House "D" offered by Rep.
Wollenberg.

SPEAKER STOLBERG:

Is there objection to summarization? Seeing none,
Rep. Mushinsky.

REP. MUSHINSKY: (85th)

Thank you, Mr. Speaker. Members of the House,
the Senate had rejected House "D" dealing with local
applications and their compliance with new local regula-
tions and boundaries. The Senate has uncovered some real
problems for the inland wetlands law with this amendment.

For example, there might be a rush to file appli-
cations to avoid the stricter law that we are passing.
Another problem, a very real problem, is that the boundaries
of the wetlands map would be the old boundarids under this
amendment for applications pending, and we wish to be able
to let the local commissioners use the soil scientists
to flag the wetlands on the spot. That would be more
accurate than a map which might be outdated or imperfect

pt

312

House of Representatives

Monday, June 1, 1987

so that this amendment might have the opposite effect of using the older information.

So for those reasons which the Senate has picked up on, I would urge rejection of House "D" to put this inland wetlands bill on the Governor's desk.

SPEAKER STOLBERG:

Will you remark further on the motion to reject?
Rep. Wollenberg.

REP. WOLLENBERG: (21st)

Thank you, Mr. Speaker. Mr. Speaker, members of the Chamber, I know standing is futile. It's the end of the Session and things are moving rather rapidly and we don't want to jeopardize bills, but I must speak to this because the reasons given I think are very, very weak ones.

The purpose of this bill, the purpose of the amendment was that people know where they stand when they make application, and when they continue application throughout the court process, and so they don't get down the road two years and a local commission changes the rules of the game. And what Rep. Mushinsky is saying is true. Certainly people are going to rush to put in applications before they change regulations. Certainly people who file

pt

313

House of Representatives

Monday, June 1, 1987

applications go through the process, yet approve and/or denied have appeals taken against them, or take appeals. Certainly they don't want the rules changed while they're on appeal, and local commissions do change the rules. And that's what this amendment was designed to prohibit. It's totally unfair just because they might, the people might file applications. Just because inland wetlands ordinance, and that's what it is, an ordinance in the town, might be changed afterward and the applicant doesn't have to adhere to that new change. It certainly shouldn't be defeated but I know it will be because that's the way we run it here.

But it is totally unfair. It's a good amendment. I ought to pass. It ought to go back up there. We ought to put one of these down their throat. This is a bill they want as much as we want and I think if we put it up there, they'll pass it.

SPEAKER STOLBERG:

Will you remark further on the amendment?
If not, all those in favor of the amendment -- Rep. Krawiecki.

REP. KRAWIECKI: (78th)

Thank you, Mr. Speaker. I'm going to rise to also oppose rejection of the amendment, and I think

pt

314

House of Representatives

Monday, June 1, 1987

Rep. Mushinsky's reasons are inadequate at best.

I think quite frankly, this is a good amendment. I think Rep. Wollenberg's comments are right on the button, and through you, Mr. Speaker, I'd like to ask a question of Rep. Mushinsky, please.

SPEAKER STOLBERG:

Please frame your question.

REP. KRAWIECKI: (78th)

Rep. Mushinsky, can you please advise me if there's an individual who has an application that has been approved by an inland wetlands commission or is in a pending state, but let's do it that way. If there's an application that is presently pending before an inland wetlands commission, today and this law is acted upon today. Let's assume it's signed into law and it goes into effect, the effective date is July 1, and the application is not approved until July 2. Through you, Mr. Speaker, what happens to that application, since the individual has gone through the process completely and on July 2, the inland wetlands in Bristol, for example, is ready to approve an application. Is that application now thrown out because the new law is substantially different than what we here applying for as it exists. Through you, Mr. Speaker.

pt

315

House of Representatives

Monday, June 1, 1987

SPEAKER STOLBERG:

Rep. Mushinsky.

REP. MUSHINSKY: (85th)

Through you, Mr. Speaker, thrown out is too harsh. I would say that if the, if it was a case of an agricultural exemption that in our new rules would not be agricultural exemption that would be one thing but on a procedural change, boundaries that are more accurate in the field, that would be decided by the wetland commission itself.

SPEAKER STOLBERG:

Rep. Krawiecki.

REP. KRAWIECKI: (78th)

Through you, Mr. Speaker, that's not a response to my question. My question was, I've got an application pending before inland wetlands commission. The commission has gone through the process. The sixty-five day period has gone through. They've gone through the public hearing. They've walked the property. They knew where the inland wetlands were at the time the application went in. The application is stalled for whatever reason. The sixty-five days is not up until July 2. The meeting is held on July 2, this law goes into effect on July 1,

pt

316

House of Representatives

Monday, June 1, 1987

what happens to that application? Through you, Mr. Speaker.

SPEAKER STOLBERG:

Rep. Mushinsky.

REP. MUSHINSKY: (85th)

Through you, Mr. Speaker, I guess the same thing would happen when we change zoning laws up here.

SPEAKER STOLBERG:

Rep. Krawiecki.

REP. KRAWIECKI: (78th)

Through you, Mr. Speaker, what will happen?
Through you, Mr. Speaker.

SPEAKER STOLBERG:

Rep. Mushinsky.

REP. MUSHINSKY: (85th)

I think I ought to yield of the Chairman of Planning and Development for that, sir.

REP. KRAWIECKI: (78th)

Mr. Speaker, thank you. Members of the House.
I really do think that Rep. Wollenberg had a very good amendment. I'm going to tell you what's going to happen. The applications are going to get thrown out. Why? Because the law changed, and I think it is grossly unfair, it's not just unfair, it's grossly unfair. In my town,

pt

317

House of Representatives

Monday, June 1, 1987

we have a very good, active, vibrant, you name it, you know the words that everybody in this place who would like the most environmentally sound inland wetlands commission could possibly want. We have one of those. They're excellent. But to change the rules is ridiculous, and to, I can appreciate the fact that perhaps some members might not want to have people coming in with applications quickly in order to get in under the old law. Well, that's going to happen no matter what we do around this place.

This is one area where I think it is grossly unfair, and I would urge this Body to readopt the amendment, put it back to the Senate. Everybody in this place wants to adopt this amendment, this bill. The Senate wants the same thing and I think the reasons are inadequate for rejecting it.

SPEAKER STOLBERG:

Will you remark further?

REP. MUSHINSKY: (85th)

Mr. Speaker.

SPEAKER STOLBERG:

Rep. Mushinsky.

REP. MUSHINSKY: (85th)

Rep. Wollenberg and Sen. Meotti have had a

pt

318

House of Representatives

Monday, June 1, 1987

discussion about this amendment and both agreed to work on this over the summer. For that reason, I think we should let them work on it and reject the amendment. The most troublesome part of this amendment is really the boundarids.

While there may be some merit in talking about changing the rules and the regulations in the middle of the game, there certainly is no justification in working with old boundaries if new boundaries are more scientifically accurate. This is a wetlands law to protect wetlands. We should be using the most scientific mapping we have and not allow use of out of date information that might not accurately reflect where the wetlands are.

So for those reasons, because we do have a commitment from Sen. Meotti to work with Rep. Wollenberg and because this amendment is so sweeping as to include boundaries of wetlands which would harm the accurate mapping of the wetlands, I would urge your rejection of the amendment.

SPEAKER STOLBERG:

Will you remark further on the amendment? Rep. Wollenberg.

REP. WOLLENBERG: (21st)

Mr. Speaker, for the second time, thank you, and it will be short. Mr. Speaker, speaking to the amendment

pt

319

House of Representatives

Monday, June 1, 1987

and not the bill or the effective date of the bill which may be confusing, but as far as the amendment goes, any commission is not doing its job if an application comes before it and they don't have a soil scientist flag the wetlands. So you know when you make application where the wetlands boundaries are. It's no mystery at all. So you make application. You have your public hearing. They deny or they approve it. They take action and then you may appeal if they deny it and if it's appealed by a landowner or someone else, you may defend that appeal. But the boundaries of the wetlands are set.

They're first set by ordinance which are bad. The ordinances weren't very good. That's why they have to send the soil scientist out. There's no incursion on those wetlands. This is a very technical thing that Sen. Meotti is talking about, and yes, we did talk.

Sen. Meotti suggested that he could not think of language to change this at this time and it's too late. Well, I don't think we need any. I would be glad to talk with anyone any time. All through the summer. Did it all last year, but I don't think that this is really significant that we should, significant enough that we

pt

320

House of Representatives

Monday, June 1, 1987

should turn down this amendment. It's a good amendment. It puts everybody on an level playing field, and if the commissions are doing what they should and are going to get this training and they're going to know to do it, they'll know where those boundaries are, and you and I and every one of us here who are interested in applications before in the wetlands, should be able to rely on those boundaries. They are set. We should be able to rely on them and I think it ought to be the law and we ought to pass this.

REP. FRANKEL: (121st)

Mr. Speaker.

SPEAKER STOLBERG:

Rep. Frankel.

REP. FRANKEL: (121st)

Yes, Mr. Speaker, ladies and gentlemen, I suggest you examine the amendment in question quite carefully because there are two sections. One deals with zoning commissions. The other deals with inland wetlands agencies. The first section would appear to apply to all zoning commission regulations, boundaries and rules. And through you, Mr. Speaker, to Rep. Wollenberg, I'm wondering what has been happening over the past 20 odd years or more with zoning commissions under circumstances

pt

321

House of Representatives

Monday, June 1, 1987

which section 14, lines 21 through 28-1/2 affect.

In other words, what has been happening without the benefit of section 14 as contained in those lines.

Through you, Mr. Speaker.

SPEAKER STOLBERG:

Rep. Wollenberg.

REP. WOLLENBERG: (21st)

Thank you very much, Mr. Speaker. Rep. Frankel, the zoning area is a grey area as to whether or not the court would uphold an application if the zone changed. There seems to be two schools of thought on that. Subdivision there's no problem. That is clear. But when we wrote this, we felt as though we should put the tree in and Sen. Meotti, and we mentioned him here several times, indicated to me he has no problem with that. It's only the boundaries that he has a problem with in the inland wetlands and I think they are set, and I think that does not need curing because it's cured.

REP. FRANKEL: (121st)

Mr. Speaker, ladies and gentlemen. Let me make an observation and I think the last answer clarifies, or at least I think brings this to a fine focus. We have

pt

322

House of Representatives

Monday, June 1, 1987

here areas which we all seem to agree, perhaps are clear cut. Others, which have been in existence for some time, which are grey and haven't really caused a great deal of concern or problems, and we have areas where people have some concern.

And I think for those reasons, we have really more than one amendment. We have something that addresses something grey. Something that addresses something that's relatively clear cut and one that's something more controversial. So it's not so black and white, and quite frankly causes me some concern that we're doing this for zoning commissions. And I'm not really certain that I want to do that with zoning commissions because we're changing the rules relative to them, at least perhaps we are. And I appreciate Rep. Wollenberg's concern but I frankly don't feel at this particular juncture in time that we are in a posture where we absolutely need to address all of these various components as a package, and while I'm sympathetic and agree with some components in this, I would like to see it passed, I don't think I'm particularly enamored of some of the changes that it would make, or at least

pt

323

House of Representatives

Monday, June 1, 1987

would like them examined more. So for those reasons I would support the Chair first and then suggest that we address these different areas contained in section 14 and 15 and there are a number of them in each section. There are regs in this wetlands section as well as boundaries, and regulations as well as boundary changes in the planning and zoning matters. I really think that it's inappropriate at this time to crystalize this and call it a black and white matter, and I think we ought to reject the amendment and keep a relatively high priority important bill in tact.

SPEAKER STOLBERG:

Will you remark further on the motion to reject.
Rep. Blumenthal.

REP. BLUMENTHAL: (145th)

Thank you, Mr. Speaker, hoping not to prolong this debate, which perhaps already has gone too long, I would simply say to Rep. Wollenberg that the concerns that are addressed by this amendment are very serious and worthy concerns. He and I have discussed them and I share his concern about the thrust and the problem that this amendment attempts to address. I can say to him that our committee, Planning and Development

pt

324

House of Representatives

Monday, June 1, 1987

will give the most serious consideration to this proposal, hopefully in bill form during the next Session and we would hope to pass from our committee, a piece of legislation that successfully deals with the problems that this amendment confronts. Thank you, Mr. Speaker.

SPEAKER STOLBERG:

Will you remark further? For the third time, Rep. Wollenberg.

REP. WOLLENBERG: (21st)

For the third time, Mr. Speaker. I'll be very brief.

SPEAKER STOLBERG:

Is there objection? Seeing no objection, please proceed.

REP. WOLLENBERG: (21st)

Mr. Speaker, the other day with the ZBA bill I heard the argument and I didn't like it, that it was the end of the Session and we must hurry on with our business. I'm hearing it today. I think it's that important. Rep. Blumenthal thinks it's that important. Rep. Frankel finds minor things that he doesn't like, but thinks it's important.

pt

325

House of Representatives

Monday, June 1, 1987

I think it's time we stood up and were counted on this very, very important inland wetlands bill, put this amendment on and sit back and say to the Senate, it is important, and this is important, Senate, do the right thing. And the right thing for us to do is get it back there and the right thing for them to do is pass it, and I'm sure the Governor will make it law and the people of the State of Connecticut will be better off for it. Thank you.

SPEAKER STOLBERT:

The motion is rejection of House "D". All those in favor of rejecting House "D", please indicate by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER STOLBERG:

All those to the contrary, nay.

REPRESENTATIVES:

No.

SPEAKER STOLBERG:

The Chair is in doubt and will order an immediate roll call.

pt

326

House of Representatives

Monday, June 1, 1987

All members please be seated. Staff and guests to the well of the House. Yhr msvhinr eill nr oprnrf.
CLERK:

The House of Representatives is voting by roll.
Members to the Chamber please. The House of Representatives is taking a roll call vote. Will members kindly return to the Chamber immediately.

SPEAKER STOLBERG:

The Chair would remind all the members that the motion is rejection for House Amendment Schedule "D". Therefore, in essence a yes is a no and a no is a yes.

Have all the members voted? Have all the members voted? Have all the members voted and is your vote properly recorded? Have all the members voted? If all the members have voted, your vote is properly recorded, the machine will be locked and the Clerk will take a tally. Rep. Fusco.

REP. FUSCO: (81st)

Mr. Speaker, I voted and it cancelled out. In the negative, please.

SPEAKER STOLBERG:

Rep. Fusco of the 81st in the negative. Have all the members now voted and is your vote properly recorded? If all the members have voted and your vote

pt

327

House of Representatives

Monday, June 1, 1987

is properly recorded, the Clerk please announce the tally.

CLERK:

Senate Bill 862, motion to reject House
Amendment "D".

Total number voting	146
Necessary for adoption	74
Those voting yea	74
Those voting nay	72
Those absent and not voting	5

SPEAKER STOLBERG:

The motion to reject House Amendment Schedule "D"
is passed. Will you remark further on the bill? If
not, will members please be seated. Staff and guests to
the well of the House. The machine will be opened.

CLERK:

The House of Representatives is voting by, the
House of Representatives is voting by roll. Members
please return to the Chamber. The House of Represen-
tatives is taking a roll call vote. Will members kindly
return to the Chamber immediately.

SPEKAER STOLBERG:

Have all the members voted? Have all the
members voted and is your vote properly recorded?
Have all the members voted? If all the members have

pt

328

House of Representatives

Monday, June 1, 1987

voted, the machine will be locked and the Clerk will take a tally. Will the Clerk please announce the tally.

CLERK:

Senate Bill 862 as amended by Senate "A" and House Amendments "B" and "C".

Total number voting	144
Necessary for passage	73
Those voting yea	141
Those voting nay	3
Those absent and not voting	7

SPEAKER STOLBERG:

The bill as amended is passed.

REP. FRANKEL: (121st)

Mr. Speaker.

SPEAKER STOLBERG:

Rep. Frankel.

REP. FRANKEL: (121st)

At this time, I would move that all bills that have been acted upon today which require further action by the Senate, that we suspend our rules for the immediate transmittal of those items.

SPEAKER STOLBERG:

Is there objection? Is there objection to

S-270

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1987

VOL. 30
PART 9
3074-3398

WEDNESDAY
MAY 20, 1987

38 3110
tcc

Care since July of 1981 and I really say I'm delighted to see the fact that he's renominated for this fine agency. He's very well-respected. He's very thoughtful, very considerate of the people who appear before him and extremely attentive to the responsibilities of the position and we're lucky to have someone who has had this type of dedication, both at a local level and at a state level. I'd ask adoption of this Resolution and if there's no objection, that it be placed on Consent.

THE CHAIR:

Senator Casey.

SENATOR CASEY:

Again, Mr. President, I'd like to echo Senator Owens' remarks. Mike Fierri is a wonderful person who is serving with extreme distinction on the Commissions of Hospitals and Health Care. He is a retired dentist and he's done a lot of good in the community and for the state.

THE CHAIR:

Further remarks? Without objection, the item is placed on the Consent Calendar.

THE CLERK:

Favorable Reports, Calendar Page 3, Calendar 357, File 536, Substitute for Senate Bill 862, AN ACT CONCERNING

WEDNESDAY
MAY 20, 1987

39 **3111**
tcc

THE INLAND WETLANDS AND WATERCOURSES. Favorable Report of
the Committee on Planning and Development.

THE CHAIR:

also Senator Meotti.

SENATOR MEOTTI:

Thank you, Mr. President. I move adoption of the
Joint Committee's Favorable Report and passage of the
bill.

THE CHAIR:

The Clerk has an amendment.

THE CLERK:

LCO 8011, designated Senate Amendment Schedule "A"
offered by Senator Meotti of the 4th District.

THE CHAIR:

Senator Meotti.

SENATOR MEOTTI:

Mr. President, I move adoption of the amendment.

THE CHAIR:

Do you wish to explain the amendment?

SENATOR MEOTTI:

Yes, Mr. President. We are faced with a rather
significant piece of legislation today and this amendment
is one that deals with several issues that I think makes

WEDNESDAY
MAY 20, 1987

40 3112
tcc

it a much better bill and also deals with some of the legitimate concerns raised by people in the state who are interested in housing development and other issues and also provides a more cogent structure for the local decision making in the inland wetlands area.

Specifically, the major provisions of LCO 8011 are, first, that it would delete the requirement in the bill which deals with access to development of parcels in terms of the feasible and prudent alternative standard. Secondly, it deletes reference to perennial or intermittent watercourses and the definition of watercourse. The Supreme Court decision Aaron versus Conservation Commission of Redding has already dealt with this specific issue and found it within the purview of local regulatory bodies to deal with that issue and, third, the amendment refines the coordinated timetable for decision making in zoning applications which also involves inland wetlands applications which is in the bill.

THE CHAIR:

Further remarks on the amendment? All those in favor of the amendment signify by saying aye.

SENATORS:

Aye.

WEDNESDAY
MAY 20, 1987

41 3113
tcc

THE CHAIR:

Opposed.

The amendment is adopted. Further amendments?

THE CLERK:

LCO 7189, designated Senate Amendment Schedule "B" offered by Senator Eads of the 30th District and Senator Gunther of the 19th District.

SENATOR GUNTHER:

Mr. President, I'd like to withdraw the amendment.

THE CHAIR:

Senate Amendment Schedule "B" is withdrawn. Further amendments?

THE CLERK:

No further amendments.

THE CHAIR:

We're now on the bill as amended by Senate Amendment Schedule "A". Senator Meotti.

SENATOR MEOTTI:

Thank you, Mr. President. As I've already mentioned, Senate Bill 862, AN ACT CONCERNING INLAND WETLANDS AND WATERCOURSES is a major piece of legislation and was one of the top priorities of the Environment Committee in its deliberations this year. I think all of us are

WEDNESDAY
MAY 20, 1987

42 3114
tcc

familiar with the rapid pace of development in the State of Connecticut, whether just as elected officials, passers-by along the state roads and highways, or as many of us have been, local elected officials dealing with zoning and development issues. We now face an era when much of the readily developable land, the old farmland in the river valleys of the state, the nice easy, flat portions of property have been developed for housing and commercial reasons.

We now face an era when more land is sought to be developed for the needs of the people of the state, which stretches into areas where there is more and more conflict with the inland wetlands and the watercourses of the state. We have had for almost 15 years a system in place in which the state delegates its authority in this area to local inland wetlands agencies to deal with the issues that are so close to the residents of this state and in their own neighborhoods and in their own hometowns.

Senate Bill 862 is an attempt to pull together many years of experience and the input of conservation groups, local Commissioners, the Department of Environmental Protection and others involved in development issues in the state, to improve and enhance the existing regulatory

WEDNESDAY
MAY 20, 1987

43
tcc

3115

framework and strengthen it for the protection of inland wetlands.

I'd like to just point out a few of the major provisions of this omnibus legislation. First, and perhaps foremost among it, is the requirement that all towns in the state have local inland wetland commissions. We presently have 156 inland wetlands agencies operating. There are only 13 towns that don't have them. This would require these towns to operate inland wetlands agencies on a local basis by July of 1988 and it would free up the staff of the DEP which is currently consumed with dealing with these 13 towns and instead the staff of the DEP would be available for use to provide technical assistance and training to all of the people of Connecticut and all of the inland wetland agencies in Connecticut.

Secondly, the bill establishes a standard, an explicit standard for the first time for DEP and local inland wetlands agencies' decisions, that they must find that a feasible and prudent alternative to the intrusion of the wetland does not exist. This is a standard which we believe has been used by many agencies and by the Department and goes a long way towards codifying protection of inland wetlands so that they will not be intruded upon as long as a feasible

WEDNESDAY
MAY 20, 1987

44 3116
tcc

and prudent alternative to the intrusion on the wetlands exists and probably the third major provision is the establishment of a coordinated time table for development proposals that involve inland wetlands permits.

In addition, the bill also tightens the farming exemption to limit exempt uses to those that are truly agricultural. It also ends the grandfather clause subdivisions that were approved, but have never been built since the time of the adoption of this act in the early 70's. It will require DEP to develop a comprehensive training program for local officials. It will require the DEP to develop a standardized reporting system to monitor statewide activity. It will require notification to adjoining towns when a permit is sought for a regulated activity in a wetland near another town border and it also permits the Department of Environmental Protection to revoke local authority in certain cases, an authority which the Department has used in four instances in the past and this would codify standards and practices for the revocation of local authority.

I'd urge passage of this bill. I think it is a landmark legislation for inland wetlands protection for the citizens of the state.

WEDNESDAY
MAY 20, 1987

45
tcc

3117

THE CHAIR:

Further remarks? Senator Eads followed by Senator Gunther and Senator Hampton. Senator Eads.

SENATOR EADS:

Thank you, Mr. President, I thoroughly concur with Senator Meotti and I also want to give him my personal thanks because I agonized over the file copy, but I think you've included everything that was to my disliking, so thank you very much. This is a job well done.

THE CHAIR:

Senator Gunther.

SENATOR GUNTHER:

I rise to support the bill. I think the amendment certainly did justice to the bill. I think that as it was in the original file, we all have a bit of difficulty taking and adopting it. Having been here and one of the co-authors of the original inland wetlands bill, I was surprised that the 13 towns did not pick up and set up their own Commissions. One of them happens to be my own hometown in Stratford and it amazed me because we often yelled about home rule and how we want to take and keep home rule in the running of our towns. This requires them to do it and I think this is one of the mandates that

WEDNESDAY
MAY 20, 1987

46 3118
tcc

deserves to be in there. I'm very pleased also with the training because many times, through the political process, we get people on Boards and Commission that don't have the exposure, don't have the background. I think this will give them the background and some training.

I am concerned, though, that when the original bill went through, many of us were concerned that we were going to have a complete stopping of all operations and anything that could be classified as wetlands. To this day I still have that concern that the inland wetlands committees are not cataloging and determining what lands are totally untouchable, what are in gray areas and could conceivably be used in some way and then those areas that definitely could take and be developed into.

When we get that done, and I think this bill might encourage that, because I find too often that when we have a classification we overregulate as we have in many of these areas. So I think that this bill now will certainly make that movement in that direction. I was also concerned that the state be required to take and go through these permit processes and this bill does still retain that. It just takes and allows them to put their contracts out first, but when they are going in and developing things

WEDNESDAY
MAY 20, 1987

47
tcc 3119

in the state agencies, that they are certainly going to have to conform and go through this permit process. I think the amendment is an excellent amendment and we now have a bill that I think we can all accept.

THE CHAIR:

Senator Hampton.

SENATOR HAMPTON:

Mr. President, I believe my question has been answered, so I --.

THE CHAIR:

Do you have further remarks? Senator Barrows.

SENATOR BARROWS:

Mr. President, I also support this amendment and the bill. Coming from urban surroundings, it was a great experience for me to learn more about the wetlands and to be more informed on what those are and besides the City of Hartford, New Haven and Bridgeport and by working with Senator Meotti and also starting to study what goes on outside the City of Hartford, I learned a lot and a lot of interest has shown me that there is life besides Hartford, New Haven and Bridgeport and being on this Committee of Planning and Development, I have grown to love the wetlands. Thank you, Mr. President.

WEDNESDAY
MAY 20, 1987

48
tcc 3120

THE CHAIR:

Further remarks? Senator Meotti.

SENATOR MEOTTI:

Mr. President, for the second time I'd just like to express appreciation for all the kind words to members of the circle and especially their increased love for the wetlands, and as an expression of our love, I hope that we can now place this on the Consent Calendar.

THE CHAIR:

Any objection? Hearing none, so ordered.

THE CLERK:

Calendar Page 4, Calendar 483, File 398 and 697, Substitute for House Bill 5048, AN ACT EXPANDING THE APPLICABILITY OF STATUTORY MANDATES FOR GROUP HEALTH INSURANCE POLICIES, as amended by House Amendment Schedule "A". Favorable Report of the Committee on Insurance and Real Estate.

SENATOR HAMPTON:

Mr. President.

THE CHAIR:

Senator Hampton.

SENATOR HAMPTON:

A Point of Personal Privilege, please, Sir.

S-275

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS

1987

VOL. 30

PART 14

4816-5199

FRIDAY
MAY 29, 1987

98'
tcc **4913**

SENATORS:

Aye.

THE CHAIR:

Opposed. Senate Amendment Schedule "C" is re-adopted.

SENATOR MEOTTI:

Thank you, Mr. President. May this be placed on the Consent Calendar?

THE CHAIR:

The Senate will stand at ease. This places the item, having been rejected to a Committee on Conference, and at this point the Chair would appoint Senator Meotti, Senator DiBella and Senator Smith. The Clerk please call the next item.

THE CLERK:

Calendar No. 357, File 536, Substitute for Senate Bill 862, AN ACT CONCERNING THE INLAND WETLANDS AND WATER-COURSES, as amended by Senate Amendment Schedule "A", House Amendment Schedules "B", "C" and "D". Favorable Report of the Committee on Planning and Development.

THE CHAIR:

Senator Meotti,

SENATOR MEOTTI:

Yes, Mr. President, I'd like to move rejection of

FRIDAY
MAY 29, 1987

99
tcc **4914**

House Amendment Schedule "D".

THE CHAIR:

You may proceed.

SENATOR MEOTTI:

Yes, Mr. President. We're not sure what the intent of the person who made the motion behind House Amendment Schedule "D" is, but one thing is clear that on its face it posses a serious technical flaw and would cause a great difficulty and uncertainty in the enforcement of the inland wetlands statutes of this state if this were adopted.

THE CHAIR:

You may proceed, Senator, I'm sorry. Excuse me.

SENATOR MEOTTI:

I finished my comments, Mr. President and I move to reject House Amendment Schedule "D",

THE CHAIR:

The motion before us is to reject House Amendment Schedule "D". All those in favor signify by saying aye.

SENATORS:

Aye.

THE CHAIR:

Opposed. House Amendment Schedule "D" is rejected.

SENATOR MEOTTI:

I'd like this placed on the Consent Calendar,

FRIDAY
MAY 29, 1987

100 4915
tcc

Mr. President.

THE CHAIR:

Without objection, so ordered. Senator, if you wish to have that item go immediately transmitted to the House, you might want to have a roll call. Was that your intention.

SENATOR MEOTTI:

Yes, Mr. President, I ask for a roll call at this time.

THE CHAIR:

The Clerk please announce an immediate roll call.

THE CLERK:

An immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber. An immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber.

THE CHAIR:

The item before us is Calendar No. 357, Substitute for Senate Bill No. 862. The motion was to reject House Amendment Schedule "D", File No. 36. Your machine is open. Please cast your vote. The roll call is on the bill, as amended by the rejection of House Amendment Schedule "D". Senator Avallone, Senator Spellman. The machine is closed. The Clerk please tally the vote.

FRIDAY
MAY 29, 1987

101
tcc **4916**

The result of the vote:

34 Yea

0 Nay

The bill is adopted. Senator O'Leary.

SENATOR O'LEARY:

Mr. President, I move suspension of the rules for immediate transmittal of the item.

THE CHAIR:

Without objection, so ordered. Senator Spellman.

SENATOR SPELLMAN:

Mr. President, before you transmit it. I was out of the Chamber. Could I please be recorded in the affirmative?

THE CHAIR:

The Clerk will so note. Senator Lovegrove.

SENATOR LOVEGROVE:

Yes, Mr. President. Just a Point of Order. On Calendar 266, I'm a bit confused. Do I understand correctly that a Conference Committee has been appointed without taking a final vote on the bill?

THE CHAIR:

A Conference Committee has been reported and the rules specifically, let me refer to our Joint Rules on 22 -- on Page 173, Section 22, under Committee on Conference.

**JOINT
STANDING
COMMITTEE
HEARINGS**

**ENVIRONMENT
PART 3
727-1038**

1987

1
abs

ENVIRONMENT

Capitol
Room W-54
February 25, 1987
10:00 a.m.

PRESIDING CHARIMAN: Senator Meotti

COMMITTEE MEMBERS PRESENT:

SENATORS: Meotti, Gunther

REPRESENTATIVES: Mushinsky, Anderson, Brown,
Gilbert, Holbrook, Jepsen,
Joyce, Luby, Mazzota, Mor-
dasky, Thompson, Tiffany

SENATOR MEOTTI: I would like to call the Public Hearing to order. We don't have a very extensive list of bills though they do deal with some sensitive areas. The Committee is attempting to hold a Committee Meeting in between this Public Hearing and the afternoon's Public Hearing, and we are going to try to operate in an expeditious fashion and use the five minute rule without necessarily killing substantive discussion of the issues, so I would like to begin first....speakers are Tom Gaffey and Dennis Cunningham from the Department of Environmental Protection.

TOM GAFFEY: Good morning, Mr. Chairman, Members of the Environment Committee. My name is Thomas P. Gaffey, I am the Executive Assistant to the Commissioner Stanley Batt of the Connecticut DEP. With me, today, is Dennis Cunningham of our Water Resources Unit.

We would like to comment on Raised Committee Bill 862, which is the proposed bill from the Department, an act concerning inland wetlands and watercourses. I would like to go briefly section by section with a description of what we are trying to do here.

Section 1 amends 22A39, regarding the duties of the Commissioner. In addition to existing

2
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ENVIRONMENT

February 25, 1987

MR. GAFFEY: (continued)

responsibilities, the Commissioner would be required to establish a training program for local inland wetland agency members. Such a program would serve to provide local board members with the expertise to review certain technical information and identify sources of information and assistance available when necessary. This new program is critical because it will provide lay commission members with the technical credentials necessary to support their decision to grant or deny a wetland permit.

This way the Commissioner's authority to regulate activities in municipalities which do not regulate their wetlands would be deleted in accordance with section 2 of this bill, which mandates municipal regulation of wetlands and watercourses. The proposed changes in section 2 of the bill, amending section 22A-42, subsection F, together with subsection J of 22A-39 clarify DEP's program oversight and enforcement responsibilities.

As I said, section 2 requires rather than encourages municipal regulation of wetlands...all municipalities regulating their own wetlands. I think I described before that enormous amount of time that the DEP staff spends on 13 towns...instead of concentrating on the 169 towns in the State of Connecticut, focusing on a comprehensive program of inland wetlands really isn't warranted. I think we should really be looking at the big picture in the state rather than focusing on 13 towns.

Section 3 amends 22A-42A to clarify that municipal regulations for the administration and enforcement of local wetland programs must establish the policy's standards and criteria the agency will use or follow in managing its program and citing permit and enforcement actions. Number two, it would require timely notification to the Commissioner

3
abs

ENVIRONMENT

February 25, 1987

MR. GAFFEY: (continued)

of DEP of proposed regulations to insure a subsequent timely determination by the Commissioner that a new regulation conforms with state wetland regulations.

DEP frequently has to inform local agencies to redo new regulations because of non-conformity with the wetland act....and three, authorize filing fees to defray costs of processing applications.

Section 4 specifically provides that regulated activities conducted without having received lawful approvals will be deemed public nuisances, subject to all enforcement authorities available to the Commissioner, including injunction and abatement actions brought by the Attorney General. The purpose of this section is to clarify the fact that unpermitted activities are violations of law subject to enforcement authorities.

Section 5 amends 22A-44B to delete language implying criminal penalties and replacing the same with language indicating that violations of the inland wetland act are subject to civil penalties. Although not included in this bill, it is strongly recommended that we amend 22A-44B to fix the limit of potential penalty at \$10,000 per day rather than \$1,000 in the current law, the reason being and Dennis could expand on that thought...that the penalty of \$1,000 per day really may not be sufficient in today's marketplace of deterring an unregulated action in the wetlands.

Basically, I think we should answer any questions with regard to inland wetlands before I move on to comment on the air bill.

SEN. MEOTTI: Yes, I just have one question. Your recommendation on increasing the penalty would of course be a maximum of \$10,000 per day, so that it would be at the discretion of the...the

4
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ENVIRONMENT

February 25, 1987

SEN. MEOTTI: (continued)

penalty would be assessed by whom?

MR. GAFFEY: The court.

SEN. MEOTTI: So, the court would be free, given the circumstance, to assess a \$500 penalty, a \$5.00 penalty, or a \$10,000 penalty per day based on the facts of the case. Correct?

MR. GAFFEY: Correct.

SEN. MEOTTI: Ok, any other questions? Representative Thompson?

REP. THOMPSON: In regards to the training of inland wetlands agency members and agents, I am not familiar with the training programs except what I have heard from other people. But would this preclude....does your training program preclude the possibility of your contracting to community colleges and technical colleges and other higher education institutions from providing this so there would be a broader base and broader opportunity for training across the state?

MR. GAFFEY: I would like to have Dennis comment on that.

DENNIS CUNNINGHAM: What we are proposing would enhance the opportunities that currently exist, and I think, more importantly, provide some coordination amongst all these opportunities such that we can get Commission Members that are.... that have the technical credentials that will stand up in Court. One of the major problems that are attorneys see with increasing frequency is that the courts are questioning the technical competency of Commission Members to make judgments on wetlands, and we feel that by having a good comprehensive program, we can give that competency to the Members such that they can defend their decisions.

5
abs

ENVIRONMENT

February 25, 1987

REP. THOMPSON: But that would include that broader base?

MR. CUNNINGHAM: Yes.

REP. THOMPSON: Thank you.

SEN. MEOTTI: Any other questions?

MR. GAFFEY: Ok, I would also like to comment on House Bill 7194, an act concerning the permit to operate sources of air pollution. This is also a DEP submitted bill. What we would like to do here is for those sources which have been issued an order prior to 1972, we would like to sort of wipe out that black eye and be able to issue them an operating permit.

Right now, if they have an order...if they do have an order on them, it appears on the land records and really if they are in conformance with the standards that we have set, we would rather issue them an operating permit than to keep an order existing on the land records.

Everybody understand?

SEN. MEOTTI: Representative Mordasky?

REP. MORDASKY: Tom, how would you go about doing that?

MR. GAFFEY: Simply write them an operating permit... and wipe out the order.

REP. MORDASKY: Then, what is prohibiting you from doing that right now?

MR. GAFFEY: Right now, it is...writing an operating permit for those sources of pre-1972.

REP. MORDASKY: I understand. In other words, they have corrected...they are all in order and are operating legally, but they still have this blot, you might say, on their land record.

11
abs

ENVIRONMENT

February 25, 1987

SEN. MEOTTI: (continued)

going to move to the public list because we are waiting for the Attorney General and we will take him when he does arrive. Sue Merrow is our first person on the public list.

SUE MERROW: My name is Susan Merrow. I represent the Clean Water Coalition, an organization of 16 environmental groups, and in their behalf, I would like to urge your favorable consideration of several bills on today's agenda.

First, we strongly support SB 862, an act concerning inland wetlands and watercourses. This bill mandates that each municipality regulate its own inland wetlands. As you know from previous testimony, we feel that the time spent by the DEP administering wetland regulation in the 14 towns which have chosen not to do so themselves could be much better spent giving technical assistance which are struggling with the problems of self-regulation.

We very much favor the DEP's initiative for developing a comprehensive training program. While it may not be feasible to require all Commissioners to participate in training, we feel....we hope that you will consider requiring new Commissioners to be trained. We feel that would reinforce the serious nature of the Office of Inland Wetland Commissioner and would result in better prepared Commissioners.

We support the provision that would expand the Commission's ability to require fees from applicants. The provisions in SB 862 in proposed House Bill 5568 and in House Bill 7273, all address the issue of penalties for violations of inland wetland regulations and who may assess them. While we have no trouble with having these penalties be civil rather than criminal in nature, we ask you to consider, if there is any possibility of giving that discretion to the

12
abs

ENVIRONMENT

February 25, 1987

SUE MERROW: (continued)

enforcers.

House Bill 5568 would extend the civil penalty assessment privilege to municipalities. This perhaps...could perhaps be accomplished by requiring the DEP Commissioner to write regulations for administrative civil penalties, and allowing him or her to delegate this power to towns. However, testimony to follow will question whether towns have the ability to carry out the legal responsibilities which go with administrative civil penalty power.

We feel that towns must have ready access to some form of sanctions against violators, whether they exact the penalty themselves or be empowered to have DEP exact them, otherwise inland wetland laws will continue to be toothless.

We support House Bill 7271, an act concerning removal of municipal jurisdiction over inland wetlands and watercourses by the Commissioner of Environmental Protection. It needs to be made clear in the statutes that DEP has the power to revoke a local authority if it is being abused or neglected. We feel that regulations governing use of this power are in order and should make plain that this DEP oversight is intended to be used in cases of chronic or gross abuse of discretion of a local Commission, & not just to second guess a bad decision.

We thank you for your attention to these issues. We appreciate the willingness of this Committee to deal with these much needed improvements in inland wetland laws. With your help, 1987 will be remembered with pride as the year of the wetlands in Connecticut.

Thank you.

43
abs

ENVIRONMENT

February 25, 1987

SEN. MEOTTI: Thank you. Any other questions? Thank you, Mr. Devin . Joey Corcoran.

JOEY CORCORAN: Good morning. My name is Joey Corcoran, and I represent Connecticut Audubon and Environmental Conservation and Education, a conservation organization.

In part responding to your comment, Mary, of earlier this morning regarding DOT, and partly because I want to share with you ideas that I had gleaned from a conference that explored the desirability and the undesirability of mitigation proposals and wetland applications, I would like to propose that an addition be made to Bill 862 to encourage the state to develop a formal policy regarding proposals to create man-made wetlands as a way of mitigating destruction of natural ones.

Wetlands mitigation's proposals on this sort are at best proposals to destroy with a promise, and from what I understood at this conference yesterday, it is a fairly shakey promise. Wetland recreation projects to date have had less than a 50% success rate. There are no long term studies to evaluate whether wetlands' functions are being actually replaced and on-going, and I would like to read to you just a few of the comments that are in the white paper, which you might be interested in getting that was published as a part of this conference.

They mention that in recent years there has been an increasing interest in building artificial wetlands both on behalf of the regulatory community, land developers, and even environmental advocacy groups, for different reasons. The regulatory agencies have an interest in replacing wetlands that are lost due to unavoidable construction projects. Environmental advocacy groups are looking for a way to create wetlands to replace those lost over the years of filling and drainage, and land developers would like to

MS. CORCORANL (continued)

create artificial wetlands in return for being allowed to alter natural wetlands that constrain project design.

At this point, the test of whether replacement wetlands are a valid resource management practice is no longer a test of whether a man-made wetlands will grow aquatic plants, attract ducks or have the initial appearance of the natural wetlands, and I have certainly see some pretty pictures that look like a wetland-had certainly been re-created. But the question, as the scientists at this conference mentioned, is whether or not the artificial wetlands will have a sweep of ecological functions similar to those of the natural wetland it replaces.

What they found....just very briefly is that they find that they do....science is sufficient to engineer the flood storage function of wetlands, and they can model flood desynchronization, but estimating the potential for creating hydrologic functions of wetlands with respect to ground water recharge and discharge requires extensive advance field data on hydrology and soil permeability.

Soils play a major role in the nutrient removal and retention function of wetlands, that are key to the impact of wetlands on water quality. The role of soils in natural wetlands has been the topic of a great deal of study, but largely outside the northeast. Our ability to duplicate these functions in a replacement wetlands is at best rudimentary and involves high risk and much uncertainty.

In summary, they conclude that their deliberations show that the role of wetlands and floor water detention can be estimated and replicated with reasonable certainty and sufficiently low risk

MS. CORCORAN: (continued)

so as to provide useful guidance for replicating this function when wetland losses really are unavoidable. But, the scientific base of knowledge is too incomplete to support assertions that artificial wetlands will provide the other functions of natural wetlands, especially those associated with water supply, water quality and nutrient transformation.

So, on behalf of Connecticut Audubon, I would like to suggest that the State DEP not...DOT or any other private sector developer....should be setting policy regarding building artificial wetlands as a form of mitigation. As we understand the state is currently responding on a case-by-case basis with an emphasis, to their credit, on the functional values of wetlands.

But we feel this is an area of such scientific uncertainty and complex policy questions that the state should formally develop a policy that defines when in the permitting process mitigation or wetlands replacement should be considered, who should evaluate a proposed wetland replacement project and what requirements an applicant should meet in the development of a wetlands replacement proposal.

Thank you.

REP. MORDASKY: Joey, in the cases of road going through...wouldn't they have to...in other words if the soil is really the determining factor, wouldn't they...wouldn't it be likely for them to try and replace it as close to the possible ...as close as possible to the site that they filled in or whatever they did to it, and in that case wouldn't they have to...they would have to consider buying more land? Would...

46
abs

ENVIRONMENT

February 25, 1987

MS. CORCORAN: Well, you asked two question. One is wouldn't they have to use the same soil?

REP. MORDASKY: Correct...

MS. CORCORAN: As exists in the wetland that they are destroying? I think that apparently that is one of the questions in some cases...proposals involve on-site replacement of wetlands and in some cases they involve off-site replacement, so that it doesn't always follow that a wetland replacement will even be in the same drainage.

One question that was raised at the conference yesterday was: without going and destroying other wetlands, where are you going to get the soil, the organic soils that are required in a wetlands creation project?

REP. MORDASKY: That's the whole essence of the thing. You don't want to disturb it, so if you are going to go get that kind of soil and dump it in another area, you are not doing anything, as far as I am concerned.

MS. CORCORAN: Yes, and I think that even in the best possible cases where they have been able to get similar soil or somehow use the soil that the wetland that is proposed to be destroyed for the wetland creation project, there is no guarantee that you are replacing the structure and ultimately the ecological functions of the wetlands.

Many of the scientists indicated that it would be far more desirable to have a wetlands creation project in the place for a certain number of years and be monitored before any wetlands destruction took place. Because there is so much uncertainty in this area.

REP. MORDASKY: Is there any talk of building over the wetland...bridging over then rather than fillinf them in. What effect was that on the wetlands?

MS. CORCORAN: Well, that wasn't a topic at this conference, but I have heard it discussed before that it usually not pursued as an alternative because of the cost. However, wetlands recreation has substantial cost and right now costs which are not being addressed because developers or departments of transportation are usually not required to do the expensive scientific evaluation of the wetlands functions that exist in the exiting natural wetlands that the scientists were proposing really should be done before any wetlands destruction takes place.

REP. MORDASKY: Well, they don't really know what the cost is of creating another.

MS. CORCORAN: Right. It would be expensive.

REP. MUSHINISKY: I have a question. Again, I would ask you to help us come up with some language on the DOT problem. You have made your case quite clearly that replacing wetlands is scientifically a bogus idea. However, we still need some language directing them how to construct.

For example, should we...certain conditions require them to build up piers and not in the wetland itself?

MS. CORCORAN: I guess.....

REP. MUSHINSKY: Wjere can be attack this problem?

MS. CORCORAN: I guess that is why I would suggest that the DEP be given the resources to look at models that have been developed in other states. Massachusetts for example has developed standards for wetlands replication. I think that there are some ideas to be added to their current regulation, but I think that there is material there both from a scientific community and other legislation that the state agency, if

MS. CORCORAN: (continued)

it were given the resources, could right now develop policy, but rather than....I don't think that we are the point right now to suggest language for this legislative session. I think that probably the state agency needs time to look at all the options and come back to the Legislature with a proposal.

That is what I would suggest.

SEN. MEOTTI: Further questions? Thank you, Joey. Paul Begeman? Do we have any other on the sign up list.

PAUL BEGEMAN: My name is Paul Begeman, and I have the privilege of working for Representative Levine here at the Captiol and he had car trouble this morning, so he was not able to get here, I was hoping that he would still make it before the end of this hearing.

He just wanted me to say that he has not forgotten about the two bills that he has before you this morning, and two bills...6555, an act concerning development projects which have regional significance and 5684, on the clouroflourocarbons and that he will be getting written information to the members of the Committee, and if we wait another five minutes , he will be here.

SEN. MEOTTI: Thank you very much, Paul. That concludes the public hearing. We are going to go directly into our Committee meeting, hopefully to have the opportunity to wrap that up.... hopefully we will be able to get this wrapped up before the afternoon session at 2.

JOINT
STANDING
COMMITTEE
HEARINGS

ENVIRONMENT
PART 5
1348-1660

1987

SEN. MEOTTI: (continued)

so concerned with the use of the microphones is that public hearings, just like all the other proceedings of the General Assembly are taped and transcribed and are kept in a permanent file in the State Capitol, so 50 years from now our children and grandchildren can come and read at the state library what was said tonight.

We're at this point going to shift to discussion of the inland/wetlands legislation that's before the Committee and we begin with Mr. Dennis Cunningham.

MR. DENNIS CUNNINGHAM: Thank you, Mr. Chairman. Dennis Cunningham, assistant director of the Department of Environmental Protection's water resources unit. DEP has already testified on Bill 862 concerning inland/wetlands as well as the other bills that are on the agenda this evening.

What I'd like to do is very quickly summarize our position on Bill 863 which is DEP's bill. We feel that the centerpiece of this legislation is the mandating that the 13 communities which are subsidized by DEP by having us regulate their wetlands, establish their own agencies.

This is unique, I think for DEP advocating giving up some of its permitting authority, but I think it's critical if the department is going to provide, or obtain some staff resources to provide education and training and technical services programs to the rest of the communities in the state so they can improve the quality of their decision making.

The legislation that we're advocating also provides for a, or mandates rather, that the local inland/wetlands agencies have regulations that set forth specific standards and criteria for decision making. We see that many towns have difficulty in supporting some of the decisions they wish to make because of defects in their regulations.

Also, we're advocating that the inland/westlands agency be able to have application fees, to in part pay for some of the costs in processing permits.

MR. CUNNINGHAM: (continued)

Lastly, we're suggesting very strongly that the statute be changed to beef up the enforcement capability not only of the department, but the court imposed civil penalties. Right now, there's a sense that what's provided in the statute is more of a criminal penalty. We feel that that should be clarified. Additionally, something came up since the last time I gave a general briefing to the Committee on the inland/wetlands having to do with enforcement.

We had one case, it was in the coastal area, where a developer, knowingly in the face of a federal corps of engineers, civil penalty of \$10,000 went ahead and violated the law anyway because it was cheaper to do that and pay the penalty than it would be to suffer the delay and mobilization costs for his contractor. So he gladly paid \$10,000 to (inaudible) his federal permit.

I feel the inland/wetland law in terms of the court and civil penalty, should be beefed up to a \$10,000 a day civil penalty as described in our earlier testimony.

At this point, I'd like to close and thank you for hearing me again, and I can answer any questions that may arise this evening.

SEN. MEOTTI: Thank you, Dennis. Are there any questions from the members of the Committee. Thank you, Dennis.

MR. CUNNINGHAM: Thank you.

SEN. MEOTTI: Peter Stern, and Karl Wagener.

MR. PETER STERN: Thank you, Senator Meotti and members of the Committee. Thank you for giving us a chance to come up together. You've heard Karl before. Karl's the executive director of the Council on Environmental Quality, and I'm a member of the council. I'm speaking tonight, also as the Chairman of the Glastonbury Conservation Commission of which Karl Wagener is a member. So you can see why we want to appear together.

Karl will be talking about some additional recommendations for inland/wetlands legislation which the Council of Environmental Quality wishes to add to what it included

Inland Wetlands Preservation

MR. STERN: (continued)

in its annual report, copies of which I think all of you have and upon which comments were made by the Chairman of the Council, Mr. Sharp and Karl at an earlier meeting. So perhaps if it's all right with you Karl will speak about two additional pieces of inland/wetlands legislation that are proposed.

I would like to comment upon that from the Glastonbury point of view and with your permission, I would like to add a Glastonbury point of view regarding the groundwater report made earlier this evening.

MR. KARL WAGENER: Thank you. As Peter said, you've have heard from us before on this wetlands issue, but I guess partly because of publicity surrounding those wetlands legislation, citizens have been coming forth and identifying for us some problems that we hadn't really addressed in our regular report.

One of these problems (inaudible-not speaking into the microphone) He was formerly a wetlands commissioner in that town and brought to our attention the statutory definition of water (inaudible) is not necessarily in fact, an area that may have water flowing (inaudible)

And in a lot of areas, the areas that are frequently flooded will have an (inaudible) which by legal definition is a wetland. Some of these frequently flooded areas (inaudible) and (inaudible) soil types then those areas are not wetlands.

But following following some research on our own how othertowns deal with the periodic (inaudible) we found that some towns in their regulations specified (inaudible) including permanent streams (inaudible). Even gulches or gullies that carry water around three months of the year and during rainfalls may appear bone dry in August, and would require (inaudible - terrible buzz on microphone and not picking up the speaker.) very simple language in the regulations that made it clear that permanent or temporary (inaudible) and the state statute and the state regulations (inaudible) and therefore we had some confusion (inaudible).

In the original intent, I'm certain in the 72 legislation was that the intermittent areas would be regulated by the, I think that should be added. We have some suggested

MR. WAGENER: (continued)

language that we feel should be added to make it perfectly clear statewide (inaudible) intermittent water courses should be regulated.

The second point concerns regulation of activity outside the physical boundaries of the wetlands that could adversely affect the wetlands. And we've gone back and forth on this issue because the Supreme Court decision, (inaudible) versus the Town of (inaudible) upholds the town's authority to regulate activities outside the wetland and to see if it's going to affect the wetland. We thought that would give the municipality enough authority. But after further discussion and hearing what people had to say, we concluded that it really is better to put that into statute just to be safe. The towns can incorporate (inaudible) buffer zones around wetlands into the regulations, and also that towns should be authorized to regulate any activities near wetlands that may reasonably be expected to affect the wetlands in an adverse way. And we'd be happy to provide you with some language on that (inaudible).

MR. STERM: I'd like to comment on that latter recommendation.

(inaudible) we have been regulating the 100 foot zone, buffer zone beyond a strict wetland boundaries ever since the passage of the inland/wetlands act and the assumption by Glastonbury of the regulatory powers, under that act, it so happens that that 100 foot zone is part of our zoning, planning and zoning regulations and the authority to regulate that 100 foot belt was delegated by the planning and zoning commission to the conservation commission which is the inland/wetlands agency of Glastonbury to carry out, which means that there are some potentially very confusing situations that if the, if the applicant wishes to appeal a conservation commission decision in the wetlands, he has to go to superior court as the law prescribes.

If on the other hand the applicant wishes to appeal a decision of the conservation commission regarding any permits in the 100 foot zone area, that appeal goes to the planning and zoning commission, and also there is a great deal of duplication, because each time an activity is proposed, there is a wetlands part and there is a buffer part. Two applications, two fees, two proceedings, potentially, two public hearings.

MR. STERN: (continued)

Now other towns have done it differently and as Karl says, the supreme court decision in Aaron vs. Redding, really would give the inlands/wetlands agency other required powers to regulate activities in that buffer area which directly affects the wetlands. But the, at least in Glastonbury, developers and lawyers view that 100 foot belt outside of the wetland as somehow less sensitive than the wetland itself, and whereas no one in Glastonbury would at this time ever propose for example, to put a septic tank or a leeching field, or excuse me, a leeching field within the wetland, that has been dropped for some time. That wouldn't happen in Glastonbury today.

There is still some attempts to somehow push all or part of the primary or secondary or reservoir leeching field into that 100 foot zone because it isn't wetland itself, even though because of slope, because of drainage, what happens in that 100 foot belt affects the wetlands as well.

We have been trying to be as restrictive, especially with respect to pollutants from the leeching field in the buffer zone as in the wetland itself. But just judging from the experience in the Glastonbury Conservation Commission which has this 100 foot belt regulation in it, thinking how difficult it must be for some other towns to deal with this problem, I am personally am much in favor of including in the legislation a buffer definition that can be dealt with.

Now, if I may just take a moment on what was said by the DEP earlier, and other people discussed with respect to groundwater contamination, while Glastonbury is not one of the flag areas of ground or contamination problems, we have had some contaminated wells, but we also have a situation which was highlighted by the reports you have.

First, we have in Glastonbury, probably the largest, or one of the largest undeveloped stratified drift major areas, and they all lie because they really underline Lake Hitchcock, which flags the Connecticut River, they all lie essentially in a belt which parallels and lies to the west of Main Street in Glastonbury, between Main Street and the river.

MR. STERN: (continued)

Now for many reasons historically, there has been relatively little development, certainly no great dense development, west of Main Street. But we now find in the southern part of Glastonbury as a result of 15 to 20 years of excavation by the Balf Company, which is now completed, that there are proposals for reasonably dense residential development in the former excavation pit, and because that development will probably bring sewers to that area extended from the center of South Glastonbury, there is unquestionably going to be additional development and it's going to tie into this major development in the former excavation.

All of this lies in the undeveloped stratified drift aquifer west of Main Street, extending from South Glastonbury center down to the Portland line and to some extent across to Rocky Hill, that's why it's called the Glastonbury/Rocky Hill aquifer.

And I think that because of the fact that Glastonbury has this undeveloped aquifer, one of the highest yielding ones, because it is relatively underdeveloped and threatened by development, because Glastonbury is extremely interested in protecting its groundwater activities, and while we certainly accept and welcome technical assistance from the DEP, we would be prepared as citizens of Glastonbury, as members of the conservation commission, to not only undertake the informational program that's been talked about, but to really make this demonstration program, if we can have one, to discuss and how to deal with and to model this particular aquifer, we could make this into a program that the DEP could carry to other parts of the state. Thank you very much.

SEN. MEOTTI: Rep. Gilbert.

REP. GILBERT: Just one question. Is there a guidelines, is there a set buffer zone distance, set by DEP as far as inland/wetlands/

MR. WAGENER: No, there is not.

REP. GILBERT: It's set by the local planning and zoning boards, then.

33
pt

ENVIRONMENT

March 9, 1987

MR. WAGENER: Right. And some towns have them and some (inaudible).

REP. GILBERT: Don't you think it would be wise if there was some sort of a DEP (inaudible).

MR. WAGENER: Absolutely. Actually, this whole (inaudible-not speaking into the mike) I think it's a good idea to put (inaudible) the towns can do this and then second of all (inaudible).

REP. GILBERT: We have the same problem in West Haven. But there's a little bit more politics involved (inaudible).

SEN. MEOTTI: Any further questions? Rep. Brown.

REP. BROWN: In the areas you just described, who owns that now, is it privately owned?

MR. STERN: It's all privately owned.

REP. BROWN: Okay.

SEN. MEOTTI: Any further questions? Thank you Peter and Karl. Art Glaeser.

Inland wetlands Preservation

MR. ART GLAESER: My name is Art Glaeser. I am Chairperson of the Manchester Conservation Commission and I'm Vice-President of the Connecticut Association of Conservation and Inland/Wetland Commissions.

The Conservation Commission in Manchester is not the inland/wetland commission. The planning and zoning commission is. And so, my remarks on inland/wetlands are based on our experience in reviewing inland/wetlands in developers plans, and also on a meeting that took place on February 26, a regional meeting of Hartford County commissioners, inland/wetland commissioners, conservation commissioners, that was at the Hartford County Water and Soil Conservation District and also co-sponsored by the Connecticut Association of Conservation and Inland/Wetlands Commissions and also by the Department of Environmental Protection.

The concerns, and I will present them in a general way and I will address the legislation as well, were three-fold. The first concern, and this was about 30 people,

MR. GLAESER: (continued)

most of whom were inland/wetland commissioners, was the fact that commissions were changing, that commissioners were changing, and that new personnel were coming on to commissions. As a matter of fact, in many instances almost everyone was new to the inland/wetland commission. And essentially, our discussion was based on the need for education for commissioners.

I know that there is a raised education bill not from the Environment Committee, No. 807, and it calls for the UConn Extension Service to coordinate the programs that are afforded in the State of Connecticut for inland/wetland commissions and we all felt that this was most necessary.

Also, many of these programs are fairly expensive, and my own feeling is that inland/wetland commissioners should be subsidized by the state, that they should not be required to pay or perhaps, only a minimal sum.

Another big issue at the discussion was the frustration of the commissioners in dealing with those who violate inland/wetland statute law, and most of them felt quite helpless. And in particular, I would support myself and I believe they would support Raised Bill 7273. The idea that commissions could assign stiff penalties for violations.

At present I know commissions are using cease and desist orders and they felt that for the most part they were very effective and so I would strongly address my comments to the support of that.

A final part of the discussion is the issue of getting expert help. There are only four members of the staff in the DEP who are in the inland/wetland portion of the DEP, and obviously, especially with the 13 towns for whom the state DEP is the inland/wetlands commission, this is totally inadequate for our services in terms of, we call these people; sometimes we're able to speak to them but in terms of getting them to come and help us with these technical decisions, we find this very difficult. And so, many of us would support the idea of increasing the staff of DEP and in addition to this, much of our information, and this goes not just for the Conservation Commission, but for the staff in Manchester, it comes from the Hartford County Water and Soil Conservation

MR. GLAESER: (continued)

District. And I know they have several pieces of legislation asking for an expansion of their services and I know that we would all appreciate them.

My own personal experiences in looking at inland/wetlands is that when developers map inland/wetlands, and I do walk them because I find that necessary, that for the most part, they are improperly flagged. I often walk inland/wetlands that are in the middle of stream encroachment lines, that are obviously wet year round. I often walk inland/wetlands with vegetation that obviously is vegetation of inland/wetlands. I can't always tell about soil types because my knowledge doesn't go that far. But it is very frustrating as someone dealing with inland/wetlands to realize that you're being given maps, and it's very difficult for us to check on them and you're being told about the nature of inland/wetlands and much of that information coming from developers is unreliable.

It would certainly be very helpful to have a DEP or water and soil conservation district that could come in and give us expert advice and could give us some good direction on some of these inland/wetlands. Thank you for your attention. And thank you for allowing me to testify.

SEN. MEOTTI: Are there any questions from members of the committee? Rep. Thompson.

REP. THOMPSON: There is I believe in the Governor's budget, there is funds for expanding the training capacity of DEP. I'm sure of that. But there is also before the Planning and Development Committee, several proposals to provide technical and training assistance to the local planning inland/wetlands and so on. I think a significant number of organizations are supporting that legislation, so I assume, or presume that you will see some help in this area in June.

MR. GLAESER: It would be much appreciated.

REP. THOMPSON: Thank you.

SEN. MEOTTI: Thank you. Tom Fiorentino.

42
pt

ENVIRONMENT

March 9, 1987

SEN. MEOTTI: Thank you, Mr. Scott. J. Giles. Oh, sorry, Rep. Brown.

REP. BROWN: The previous speaker mentioned that this town had regulations that could monitor development within 100 feet, was it, of the well area. Does your specific town have that regulation?

MR. SCOTT: No.

REP. BROWN: Okay. So would you be in favor of including some type of regulation as he suggested, that might solve your problem of the inter-town well problem.

MR. SCOTT: We're not talking about wells right now. (inaudible)

REP. BROWN: No, but the underground water in the wetlands.

MR. SCOTT: Yes. if we have that extra margin, why (inaudible)

REP. BROWN: Thank you.

SEN. MEOTTI: Thank you, Mr. Scott. Jay Giles.

50.388

MR. JAY GILES: Thank you ladies and gentlemen. My name is Jay Giles. I live at 65 Elm Street in Manchester. I'm here to speak in favor of the bill on the Risley Reservoir. I can't really add too much to what's already been said except I think the issues here of safety (inaudible) or fire in the area and passive recreation. I think my only concern is that \$200,000 may not be enough money. I have been involved in this project soje time ago (inaudible-not speaking into microphone). Thank you.

SEN. MEOTTI: Jay, do you know if the number was derived from any study or something of that sort.

MR. GILES: There had been several studies in the past and I think as I recall, it has been a while since (inaudible-not speaking into microphone).

SEN. MEOTTI: Thank you. Any other questions? Thanks, Jay. Kevin Walsh. Kevin Walsh. Robert Gubala.

MR. ROBERT GUBALA: Good evening ladies and gentlemen. I'm Robert Gubala. I'm Chairman of the Rocky Hill inland/wetlands commission and I want to speak on some of the legislation that is before you.

March 9, 1987

MR. GUBALA: (continued)

SB862
We in Rocky Hill are in full favor of the 13 towns that are not being regulated by (inaudible) to be regulated by town commissions. We believe that that will iehgten the load on DEP personnel and I believe as in Rocky Hill, there are good people in these other communities that will rise to the occasion and will staff inland/wetlands agencies if given the opportunity.

SB862
The second thing I would like to bring to your attention is that one of the bills calls for allowing an appeal of the local agency's denial to the DEP commissioner. We are not in support of that (inaudible). We believe that the place for recess of a local wetlands agency denial permit is in the courts in the judicial branch of government, not in another executive branch of government. We believe that having such a second appeal to the DEP commissioner will discourage this (inaudible) from serving in our local courts.

We have just finished a denial of a permit in the Town of Rocky Hill. We spent nine hours at that public hearing, two nights on that hearing both the pros and the cons. We did all of our deliberations in open sessions. We gave our reasons, our public record as to the denial. Yes, the developer was aggrieved and yes he went to superior court for redress and that's the place that it should be handled not in the DEP commissioner's conference room.

(HB7271)
The next item I'd like to talk about is that another bill calls for the DEP commissioner to revoke an inland/wetlands agency ability to function if he finds that they are not functioning in a proper way. We don't have a problem with that. We think there are some inland/wetland agencies that don't have the support of their selectman or their mayors. We do in Rocky Hill. We're very happy about it. But if there has to be new clause in the inland/wetlands statute, I would ask that due process be also incorporated in that there be a hearing in which the local wetlands agency could be heard as to how they did their stewardship of the wetlands statutes before the commissioner could in fact (inaudible) their license. I'd be happy to answer any questions.

SEN. MEOTTI: Thank you. Any questions? Rep. Brown.

REP. BROWN: When you go to court, do you have the staff available to you to go to court when this decision is appealed. Does Rocky Hill provide you with that staff attorney?

MR. GUBALA: Our corporation counsel in the Town of Rocky Hill will, it has already gone to court on this matter and we are fortunate in Rocky Hill in having an excellent enforcement agency, out of our public works department, and a public works engineer who will also go in as staff. And we would also. We feel strongly in our opinions and we do follow due process with these permit applications. As I said, we spent nine hours on the one overlooking the Connecticut River in the Town of Rocky Hill, which was going to get involved with the Great Meadows and we denied it and we denied it for cause (inaudible-not speaking into mike) put his condos there. I think the place for him to see that we were arbitrary and capricious is in the courts of Connecticut, not the DEP commissioner's office. And I do see that creeping in on this legislation. I would ask for you to cut it out of the legislation.

REP. THOMPSON: In an earlier hearing on the same subject they, another member of a local inland/wetlands commission came before the Committee and testified about his concern about being challenged in court as to his technical expertise. Does that phase you at all as a lay person?

MR. GUBALA: Well (inaudible)

REP. THOMPSON: Well, you're the exception, I guess.

MR. GUBALA: We have citizens on our commission (inaudible) college degrees and who don't have college degrees. We walk every one of these wetlands before they come up before us for a permit. Now, two weeks ago in the snow, we were out in the Great Meadows looking at a possible violation (inaudible). We know the lay of the land. We have our town engineer with us on these trips in the field. We don't do it from maps and we (inaudible) expertise. We have in the past when we felt the need and no, we don't feel that we're going to be so challenged in court that we won't (inaudible).

45
pt

ENVIRONMENT

March 9, 1987

REP. THOMPSON: I think he was making a case at that particular hearing for more training as Mr. Glaeser mentioned.

MR. GUBALA: We're all for that. We're all for that. In fact, some of our members (inaudible) are going to Waterbury to a wetlands session that's going to be done very soon. Some of us have taken (inaudible) We would be happy to take more training and we would even do it on our own time at our own expense. We feel strongly enough and (inaudible) and we feel that (inaudible-still not speaking into the microphone).

REP. THOMPSON: Thank you.

MR. GUBALA: Thank you.

SEN. MEOTTI: Thank you, Mr. Gubala. The next name I'm having a little difficulty making out, but I believe it's Leonard, it looks like it may be P-U-? Parla?

MR. LEONARDO PARLA: Leonardo Parla.

SEN. MEOTTI: Sorry, Mr. Parla.

SB388

MR. PARLA: Leonardo A. Parla, 55 Bruce Road, Manchester, Connecticut. I'd just like to mention as far as Risley Reservoir, or protecting the ponds around Manchester, water is just about one of the most important assets that Manchester has to offer people and that's good clean water and the water from Risley enters the Manchester aquifer and is probably a source of maintaining and providing a good asset for Manchester, a good water supply for Manchester. And that's not just for Manchester. It's for Manchester, the State of Connecticut and all of the surrounding towns, because some day as you well know that the different wells are contaminated in the towns around there, they're going to be looking for water from the places that have clean water supplies. This is one of them. This is one of the most important things that you have to consider in trying to protect the water that we have.

And the Manchester Land Conservation Trust has probably the cleanest supplies of water in the area, and that's Salter's Pond and Risley Reservoir and you're not going to find any finer fish or cleaner water for fish in the area. Many retired senior citizens, especially would vouch for that. This is something that you'd want to

MR. PARLA: (continued)

probably protect for future generations and I think the Governor, and I think the Legislature has, they're just obligated to provide this for the State of Connecticut. I mean, and like I say, with the other towns in the area having these contaminated wells or contaminated water supplies, I mean, your house goes to zilch if you've got a bad well. And if there's no way of getting water in, you just ask people that have to carry water into a house to provide water to drink and to bathe without PCBs or any contaminates in it.

And I think this is an obligation that the Legislature and the Governor has to the people of the State of Connecticut that have elected them. Thank you.

SEN. MEOTTI: Thank you. Carolyn Gibrone. Elliot Fish. Ann Letendre.

MS. ANN LETENDRE: My name is Ann Letendre. I'm representing the Conservation Commission in Vernon which also regulates wetlands.

I just will make several points very briefly. First, we support bonding for the Risley Reservoir for two reasons. One, that Vernon needs the fire protection, the water from that reservoir for fire protection and because it's a unique passive recreation area that we'd like to keep protected.

Two, we support beefing up of enforcement of inland/wetlands in any way that you could possibly do it. We need that help.

Three, we support training for commissioners. There hasn't been a good program that's in place since the commission, inland/wetlands was instituted in 73 or 74. I've been on the commission since we had an inland/wetlands instituted which I think was in 74 and that's one of the reasons I've been on it for so long is because we don't get, the new people that have come on aren't well trained and they don't have a good knowledge base.

Four, I think there ought to be a regional approach both to aquifer protection and to inland/wetlands regulation.

MS. LETENDRE: (continued)

It does us no good to take a conservative approach and protect the Hockanum River, for example in Vernon when it flows into Manchester and an 18 acre site will be filled. I think, I've thought of several ways to do that, but you could for example, in bordering communities when a wetlands crosses both towns, that it could go before a third party such as for example, CROG goes before, CROG overlooks zoning questions between two towns. There could be an agency such as that set up.

Or there could be notification of the town downstream if you're making a decision on a wetlands that will flow, that will flow downstream to the next town, there should be some sort of notification to that town. We're making a decision, would you like to come to the hearing sort of thing. But there are several mechanisms that could be instituted and and I think it makes no sense to consider wetlands regulations guided by town borders because that's just not the way the water flows.

Thirdly, oh, another point I'd like to make. We think that regulation of wetlands should be done in the communities that are the size such as Vernon, Manchester, by an agency that is separate and apart from the planning, for example, that is not another agency that does not wear another hat. In Manchester, planning and zoning regulates wetlands. I can't see how they can possibly do both without having some conflict of interest, nor the time to adequately address wetlands. I know the time it takes us in Vernon to address our wetlands. I think it should be done by one agency.

Lastly, I'd like to say that aquifer protection I think should be the main focus of the Environment Committee this Session. We're at sixes and nines with this. Our planning department feels as though we need a drainage study, for example, and every time we bring this up we feel as though we can't go with it. We don't have a good source of knowledge. I know there isn't a good knowledge base there. Whatever you can do to provide help, to provide staffing, to provide information to towns to help us in aquifer protection regulations would be appreciated.

MS. LETENDRE: (continued)

That gives them, especially in a town such as Vernon, where we have probably one third of our water supply is on a public well system. Thank you.

SEN. MEOTTI: Thank you Ann. Questions? Thank you. Gordon Macfarlane.

MR. GORDON MACFARLANE: Good evening. My name is Gordon Macfarlane, and I'm the Chairman of the Inland/Wetlands Commission in East Hartford. I'm here to speak very briefly to several of the bills that are pending. I won't get into anything on the water problems with aquifer. We have MDC water and it's not a particular problem to us.

However, we support the efforts being made to protect the aquifer, obviously.

SB862

We support provisions in the various amendments here with respect to training, to the extent that it's not made mandatory, but I think it ought to be made more frequent and a bit more convenient than it is now.

We support the idea of every town having its own commission. The 13 towns in Connecticut that don't presently have one, certainly ought to. We certainly support the civil penalties. That problem in East Hartford with illegal dumping and we've issued cease and desist orders which have been ignored. We've had to call in the local police to effect an arrest and things like that. We've got a couple of court cases pending in superior court now.

Somewhat in the same context as others have spoken, where the penalties for ignoring the cease and desist orders are just worthwhile, and civil action in court may last a number of years before anything happens. So fortunately we've been able to bring things to a halt, but it probably could have been affected much sooner if we had been able to impose fines, \$20 per day, that kind of thing.

We support the provisions in one of the amendments that would enable interested developers who wish to give parcels of land to the town without, without strings or with strings, either way. We don't have a mechanism in East Hartford right now for that. Anybody who wants to donate a tract of land to the town has to go before the town

MR. MACFARLANE: (continued)

council and if they want stipulations indicating that the land has to remain undeveloped and that sort of thing, it's up to the council to decide whether or not they want to do that. And if they don't, we either get the land with no strings or we don't get the land.

So I think if there were some mechanism in the inland/wetlands regulations, it would make it a lot easier for the local agencies, the inland/wetland agencies to act in that capacity. It would certainly be helpful.

We're all in favor of getting other towns involved when there is downstream effects, such as Manchester doing something with the Hockanum River that might affect East Hartford. Or South Windsor and Glastonbury doing something in wetlands that borders on our wetlands. I think rather than turning it over to the state to adjudicate it, that perhaps the regulations ought to make it mandatory for the affected towns to get involved and perhaps if they can't resolve whatever, you can appeal it to a higher agency such as DEP. But I think it ought to be mandatory that the affected towns get involved.

As the amendment here was worded with respect to DEP taking over for a town who in some, way, shape or form doesn't appear to be doing its job properly, we would not be in favor of that regulation, or amendment as it is stated. It's far too vague and it doesn't mean anything at this point. The concept may be okay, but I reserve judgment on that. I'm particularly in favor of home rule.

Some of the points that weren't covered by amendment, but have been brought up and I'd like to make some comment, too. Buffer zone. We have some buffer zones in our own regulations in town. We're constantly reminded by developers and representatives that this isn't always the case in each and every town and it's very confusing to them and so on, so I think if the regulations were to define buffer zones and layouts and criteria for how they're to be established and so forth, it would be very helpful. It would be helpful to the people who do the land developing, too.

MR. MACFARLANE: (continued)

A subject that is particularly sore with us is remapping. We have had some problems in town with what constitutes a wetlands. We have our maps that were done in 1974 and it's 1987. Wetlands that used to be are no longer and areas that didn't used to be now are. We, however, do not have the authority to regulate areas that are not on our mapes, even though it may, look, smell and taste like a wetland, if it's not on our map, we don't have any authority over it.

And we don't like to get involved in protracted discussions of what is a wetlands or how big is it and put ourselves and our citizens to needless expense in having it remapped and go out and hire soil scientists and so forth to do this. We're trying to convince our town council to appropriate sufficient funds for us so we can have our town remapped and bring everything up to date. But I think if the regulations were to mandate periodic remapping, every 10 years or something like that, it would take it a little bit out of the hands of the town council that controls the purse strings. It's quite easy for them to say no. If it were required by law wouldn't have a choice. And I think it would work.

I'm not in favor, as the gentleman from Rocky Hill mentioned, allowing applicants whose application has been denied to appeal to the state for a different decision. I think the existing court system works quite well. We have no qualms about defending our actions in court. We're not experts but we listen to expert testimony and we make a decision and in our opinion, we don't act in an arbitrary or capricious manner and if the court feels otherwise, that's their province. That's the way I think it works, and it works well. Thank you.

SEN. MEOTTI: Thank you. Any questions? That concludes the list of individuals who have signed up for the hearing that I have, and therefore concludes the public hearing for this evening. Thank you very much for coming.