

Legislative History for Connecticut Act

HB 5296 PA 209 1998

Senate 2649-2652, 2702-2705 (8)

House 917, 1405-1406, 3195-3205 (14)

Environment 13, 15-18, 26-30, 35-36
62 67-68 83-85 (18)

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Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate
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CONNECTICUT

GEN. ASSEMBLY

SENATE

PROCEEDINGS

1998

VOL. 41

PART 9

2607-2824

pat

Senate

May 5, 1998

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:

Have all members voted? If all members have voted, the machine will be locked. The Clerk please take a tally.

THE CLERK:

Motion is on passage of HB5481 in concurrence with the House.

Total number voting, 36; necessary for passage, 19; those voting "yea", 23; those voting "nay", 13. Those absent and not voting, 0.

THE CHAIR:

The bill is passed.

THE CLERK:

Calendar Page 4, Calendar 443, Files 264, 624 and 654, Substitute for HB5296 An Act Concerning Water Resource Programs of the Department of Environmental Protection, Motorboat Noise, A Flood Control System at Lake Phipps and the Brookfield Water Company as amended by House Amendment Schedules "A", "B" and "C". Favorable Report of the Committee on Environment,

pat

44

Senate

May 5, 1998

Public Health and Planning and Development.

THE CHAIR:

Senator Daily.

SEN. DAILY:

Thank you, Madam President. I would move acceptance of the Joint Committee's Favorable Report and passage of the bill.

THE CHAIR:

The question is on passage. Will you remark?

SEN. DAILY:

I'm sorry, passage of the bill in concurrence with the House.

THE CHAIR:

The question is on passage in concurrence. Will you remark?

SEN. DAILY:

Thank you. The bill provides ongoing funding for a lake in West Haven. It controls motorboat noises so the DEP can better regulate and measure those noises.

It acknowledges the ongoing operations of the Brookfield Water Company and addresses other matters within DEP that are more of an administrative nature.

It has to do with their emergency authorization permits, permits for state agencies recovering costs for certain permits.

pat

45

Senate

May 5, 1998

THE CHAIR:

The question is on passage of the bill in concurrence with the House. Will you remark further? Will you remark further? Senator Daily.

SEN. DAILY:

Thank you, Madam President. Hearing no further comments, or without objection.

THE CHAIR:

The Clerk has indicated that there is an amendment filed.

SEN. DAILY:

If there's any amendment in my name, please withdraw it.

THE CHAIR:

The Chamber will stand at ease.

The Chamber please come to order. Perhaps the Chamber will continue to stand at ease.

The Chamber please come to order. Senator Sullivan.

SEN. SULLIVAN:

Thank you, Madam President. We will continue at this point and since I am one of the people whose name is on that amendment, I would request that it be withdrawn.

THE CHAIR:

pat

46

Senate

May 5, 1998

Senator Daily.

SEN. DAILY:

Thank you, Madam President. Hearing no further discussion of the bill without that amendment, I'd move it to the Consent Calendar.

THE CHAIR:

Motion is to refer this item to the Consent Calendar. Without objection, so ordered.

THE CLERK:

Calendar Page 4, Calendar 445, File 465, Substitute for HB5662 An Act Concerning Various Changes Relating to the Assessment and Valuation of Property and Property Taxes. Favorable Report of the Committee on Finance, Revenue and Bonding and Planning and Development. The Clerk is in possession of four amendments.

THE CHAIR:

Senator Looney.

SEN. LOONEY:

Thank you, Madam President. Madam President, I would move acceptance and approval of the Joint Committee's Favorable Report and passage of the bill.

THE CHAIR:

The question is on passage. Will you remark?

SEN. LOONEY:

pat

Senate

May 5, 1998

SEN. FONFARA:

Thank you, Madam President. If there's no objection, I would move this bill be placed on the Consent Calendar.

THE CHAIR:

Motion is to refer this item to the Consent Calendar. Without objection, so ordered.

THE CLERK:

Madam President, I believe that that completes those items previously marked Go.

THE CHAIR:

At this time, Mr. Clerk, would you announce a roll call vote on the Consent Calendar and call those items, please.

THE CLERK:

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

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

Madam President, the first Consent Calendar begins on Calendar Page 3. Calendar 411, HB5281.

Calendar Page 4, Calendar 443, Substitute for HB5296.

pat

Senate

May 5, 1998

Calendar 445, Substitute for HB5662.

Calendar Page 5, Calendar 468, HB5023.

Calendar Page 6, Calendar 481, Substitute for

HB5498.

Calendar 483, Substitute for HB5747. HB5745

Calendar Page 9, Calendar 347, Substitute for

SB539.

Calendar Page 10, Calendar 140, SB200.

Calendar 172, Substitute for SB325.

Calendar 191, SB429.

Calendar Page 11, Calendar 267, SB305.

Calendar 281, Substitute for SB600.

Calendar 282, Substitute for SB601.

Calendar 314, Substitute for SB329.

Calendar Page 12, Calendar 383, HB5740.

Calendar 485, SR29.

Calendar 486, SR30.

Calendar Page 13, Calendar 487, SR32.

Calendar Page 14, Calendar 151, HB5278.

Madam President, that completes the first Consent
Calendar.

THE CHAIR:

Thank you, Mr. Clerk. Would you once again
announce a roll call vote. Senator Bozek.

SEN. BOZEK:

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Senate

May 5, 1998

Madam President, through you, on Page 10, did the Clerk call Calendar 118. Or what was the disposition on 118.

THE CHAIR:

That is in a Committee of Conference, Sir.

SEN. BOZEK:

All right. Thank you very much, Madam President.

THE CHAIR:

You're welcome. Mr. Clerk would you once again announce a roll call vote on the Consent Calendar. The machine will be opened.

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:

Have all members voted? If all members have voted, the machine will be locked. The Clerk please take a tally.

THE CLERK:

Motion is on adoption of Consent Calendar No. 1.

Total number voting, 36; necessary for adoption,

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Senate

May 5, 1998

19; those voting "yea", 36; those voting "nay", 0.

Those absent and not voting, 0.

THE CHAIR:

The Consent Calendar is adopted.

Senator Jepsen.

SEN. JEPSEN:

Thank you, Madam President. I move immediate transmittal of all items acted upon today to the House, requiring further action to the House of Representatives.

THE CHAIR:

Without objection, so ordered. At this time we have discovered another need for a Committee on Conference for Calendar 436, HB5418 An Act Concerning the Official Weighing Areas. Those appointed to the Committee will be Senator Ciotto, Senator Peters and Senator Scarpetti. If those members would please meet and report back as soon as possible, it would be appreciated.

SEN. CIOTTO:

Madam President.

THE CHAIR:

Senator Ciotto.

SEN. CIOTTO:

For a point of personal privilege, Madam

H-783

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1998

VOL. 41
PART 3
678-1059

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House of Representatives

Wednesday, April 8, 1998

referred to the Appropriations Committee.

SPEAKER RITTER:

So ordered.

Clerk, please call 231.

CLERK:

On page 12, Calendar 231, Substitute for House
Bill Number 5296, AN ACT CONCERNING WATER RESOURCE
PROGRAMS OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION.
Favorable Report of the Committee on Environment.

SPEAKER RITTER:

Representative Stillman.

REP. STILLMAN: (38TH)

Thank you, Mr. Speaker. I move that that be
referred to the Public Health Committee.

SPEAKER RITTER:

So ordered.

Clerk, please call Calendar 232.

CLERK:

On page 12, Calendar 232, Substitute for House
Bill Number 5498, AN ACT CONCERNING REGULATION OF
FOREST PRACTICES. Favorable Report of the Committee on
Environment.

SPEAKER RITTER:

Representative Stillman.

REP. STILLMAN: (38TH)

H-784

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1998

VOL. 41
PART 4
1060-1415

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House of Representatives

April 17, 1998

written expression of agreement between the Majority Leader and the Minority Leader is in the possession of the Clerk.

SPEAKER GERAGOSIAN:

the Chair recognizes Representative Fleischmann of the 18th District.

REPRESENTATIVE FLEISCHMANN: (18th)

Mr. Speaker, I would move the following bills
under House Rule 20(e): to the Committee on
Appropriations H.B. No. 5430, Committee on
Appropriations H.B. No. 5657, Committee on Judiciary
H.B. No. 5281, the Committee on Judiciary H.B. No.
5660, Committee on Commerce H.B. No. 5048, Committee on
Appropriations H.B. No. 5483, Appropriations H.B. No.
5745, Committee on Labor and Public Employees H.B. No.
5116, Committee on Judiciary H.B. No. 5398, Committee
on Government Administration and Elections H.B. No.
5517, Committee on Environment H.B. No. 5466, Committee
on Finance, Revenue and Bonding H.B. No. 5233,
Committee on Appropriations H.B. No. 5402, Committee on
Insurance and Real Estate H.B. No. 5522, Committee on
Insurance and Real Estate H.B. No. 5577, Committee on
Planning and Development H.B. No. 5296, Committee on
Judiciary H.B. No. 5498, Committee on Public Health
H.B. No. 5459, Committee on Judiciary H.B. No. 5495,

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House of Representatives

April 17, 1998

Committee on Appropriations H.B. No. 5054, Committee on
Judiciary H.B. No. 5724, Committee on Planning and
Development H.B. No. 5535, Committee on Judiciary H.B.
No. 5709, Committee on Appropriations H.B. No. 5404,
Committee on Appropriations H.B. No. 5437, Committee on
Government Administration and Elections H.B. No. 5332,
Committee on Planning and Development H.B. No. 5679,
Committee on Public Safety H.B. No. 5635, Committee on
Planning and Development H.B. No. 5747, Committee on
Government Administration and Elections H.B. No. 5614,
Committee on Judiciary H.B. No. 5597, Committee on
Government Administration and Elections H.B. No. 5593,
Committee on Planning and Development H.B. No. 5551.

SPEAKER GERAGOSIAN:

Hearing no objection, so ordered.

THE CLERK:

Mr. Speaker, there's no further business on the Clerk's desk.

SPEAKER GERAGOSIAN:

Representative Fleischmann of the 18th District.

REPRESENTATIVE FLEISCHMANN: (18th)

Mr. Speaker, there being no further business on the Clerk's desk, I move that we adjourn subject to the Call of the Chair.

SPEAKER GERAGOSIAN:

H-790

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1998

VOL. 41
PART 10
3175-3572

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House of Representatives

April 30, 1998

roll call, members to the Chamber.

DEPUTY SPEAKER HYSLOP:

Have all members voted? Have all members voted?
If all members have voted, please check the machine,
make sure your vote is properly recorded. Machine will
be locked. Clerk will take a tally. Clerk will
announce the tally.

THE CLERK:

HB5307 as amended by House Amendment Schedule A.
Total number voting 145, necessary for passage 73.
Those voting yea, 145, those voting nay 0, absent not
voting 6.

DEPUTY SPEAKER HYSLOP:

Bill as amended passes. Clerk, please call
Calendar 231.

THE CLERK:

On page 26, Calendar 231, Substitute for HB5296,
An Act Concerning Water Resource Programs of the
Department of Environmental Protection. Favorable
report of the Committee on Planning and Development.

DEPUTY SPEAKER HYSLOP:

Representative Stratton.

REPRESENTATIVE STRATTON: (17th)

Thank you, Mr. Speaker.

I move acceptance of the joint committee's

gtf

House of Representatives

April 30, 1998

favorable report and passage of the bill.

DEPUTY SPEAKER HYSLOP:

Question on acceptance and passage. Will you remark?

REPRESENTATIVE STRATTON: (17th)

Yes, Mr. Speaker. The Clerk has an amendment, LC05220, if he would call and I be allowed to summarize?

DEPUTY SPEAKER HYSLOP:

Clerk, please call LC05220.

THE CLERK:

LC05220, House A, offered by Representative Stratton.

DEPUTY SPEAKER HYSLOP:

Representative Stratton.

REPRESENTATIVE STRATTON: (17th)

Thank you, Mr. Speaker.

This amendment does three primary things. The first is to narrow the language in the file copy on the types of permits that people who are not parties to those permits would have an opportunity to appeal. This language is pursuant to a requirement by the federal EPA that states redraft their regulations regarding NPDES permits, the water discharge permits, to allow easier appeal of such.

gtf

House of Representatives

April 30, 1998

The second section of the amendment deals with inland wetlands permits and the efforts that this Chamber made two years ago to expedite the dealing with permits that do not have any kind of major impact upon wetlands and would waive the requirement for a public hearing if no notice calls -- if petition has not been filed within 15 days. The language on that amendment makes it clear that if a permit, an application has been submitted, that application may be approved and if no petition is filed within 15 days of that approval, the application is approved and they go forward or the activity may go forward.

And the last section of the amendment deals with requirements to limit the noise level of some rather large motor boats that make large noise and for a further explanation of that, I would like to yield to Representative Concannon.

DEPUTY SPEAKER HYSLOP:

Questions on adoption. You yielded to -- Representative Concannon, you accept the yield? Did you move adoption? Representative Concannon.

REPRESENTATIVE CONCANNON: (34th)

Thank you, Mr. Speaker.

Yes, I would like to speak to Section 18 which does address the noise created by motor boats. And

gtf

House of Representatives

April 30, 1998

coming from Haddam which is divided by the Connecticut River and people in East Hampton who live on Lake Pocatapog, I've had a lot of interest in promoting this bill which would help to correct the noise as presently created, particularly during the summer by these motor boats.

These limits apply to boats, boats when they are stationary and when they are operating. They are in agreement with what has been done in neighboring states and it involves basically having a muffler on the boats. The muffler must stay on the boat and if the boat is sold, it has to be sold with a muffler.

The only exception is for boats that participate in marine races or regattas. And there is a fine of not less than \$100 and not more than \$500 for not abiding by these regulations.

And I support this section and the entire bill,
Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Will you remark further on House A?

REPRESENTATIVE STRATTON: (17th)

Just very briefly, I would urge adoption of the amendment.

DEPUTY SPEAKER HYSLOP:

Will you remark on House A? If not, we'll try

gtf

House of Representatives

April 30, 1998

your minds. All those in favor, signify by saying
"aye".

ASSEMBLY:

Aye

DEPUTY SPEAKER HYSLOP:

Those opposed, "no". The ayes have it. House A
is adopted.

Remark further on the bill as amended.

Representative Dargan?

REPRESENTATIVE DARGAN: (115th)

Thank you, Mr. Speaker.

The Clerk has in his possession LCO4381. Could he
please call and I be allowed to summarize?

DEPUTY SPEAKER HYSLOP:

Clerk, please call LCO4381, be designated House B
and Representative has asked leave to summarize.

THE CLERK:

LCO4381, House B offered by Representative Dargan.

DEPUTY SPEAKER HYSLOP:

Representative Dargan.

REPRESENTATIVE DARGAN: (115th)

Thank you, Mr. Speaker.

Basically what this bill does, it's a cost-sharing
dam project with the state and with the City of West
Haven. I move its adoption.

gtf

House of Representatives

April 30, 1998

DEPUTY SPEAKER HYSLOP:

Question on adoption of House B. Will you remark?
Will you remark on House B? Will you remark on House
B? Representative Powers. Representative Powers.

REPRESENTATIVE POWERS: (151st)

Thank you, Mr. Speaker.

To the proponent of the amendment, please?

DEPUTY SPEAKER HYSLOP:

Proceed.

REPRESENTATIVE POWERS: (151st)

Do we have an approximate idea of how much 60
percent of the total cost will be, is there a fiscal
note on this? Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Dargan.

REPRESENTATIVE DARGAN: (115th)

Thank you very much for that question. There is a
fiscal note, since the project currently on DEP list of
dam projects to be funded through allocated balances,
there will be a minimal increased cost of the state and
a decreased cost to the town or lake association. But
with the understanding right now, DEP does own the
rights to the lake and if they do not deed this back to
the city, it will be a total cost to the State of
Connecticut and DEP.

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House of Representatives

April 30, 1998

DEPUTY SPEAKER HYSLOP:

Representative Powers.

REPRESENTATIVE POWERS: (151st)

Thank you, Mr. Speaker.

Through you, is there a round dollar figure on that?

DEPUTY SPEAKER HYSLOP:

Representative Dargan.

REPRESENTATIVE DARGAN: (115th)

Projected figures of the state allocation was approximately about 600,000 monies that are available within the DEP dam restoration funds at the current time. There is no additional allocation to the -- to DEP.

DEPUTY SPEAKER HYSLOP:

Representative Powers.

REPRESENTATIVE POWERS: (151st)

Thank you, Mr. Speaker. And I thank the Representative.

REPRESENTATIVE DARGAN: (115th)

Thank you.

DEPUTY SPEAKER HYSLOP:

Will you remark further on House B? Will you remark further on House B?

If not, we'll try your minds. All those in favor,

gtf

House of Representatives

April 30, 1998

signify by saying "aye".

ASSEMBLY:

Aye.

DEPUTY SPEAKER HYSLOP:

Those opposed, "no". The ayes have it. House B
is adopted.

Remark further on the bill as amended?

Representative Santa Maria.

REPRESENTATIVE SANTA MARIA: (107th)

Thank you, Mr. Speaker.

Mr. Speaker, the Clerk has in his possession,
LCO4489. Would he please call and I be allowed to
summarize?

DEPUTY SPEAKER HYSLOP:

Clerk, please call LCO4489, be designated House C
and the Representative has asked leave to summarize.

THE CLERK:

LCO4489, House C, offered by Representative Santa
Maria.

DEPUTY SPEAKER HYSLOP:

Representative Santa Maria.

REPRESENTATIVE SANTA MARIA: (107th)

Thank you, Mr. Speaker.

This is a relatively simple amendment. All it
will do is allow the Brookfield Water Company to move

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House of Representatives

April 30, 1998

forward with their certification process in a more expedient manner through the state system.

I've spoken with the Department of Public Health; they agree. I've spoken with leadership on both sides. We have a situation in Brookfield where the water is extremely contaminated and the water company needs to move forward with the certification process in a more expedient manner.

I move adoption.

DEPUTY SPEAKER HYSLOP:

Question on adoption of House C. Will you remark on House C? Representative Stratton.

REPRESENTATIVE STRATTON: (17th)

Thank you, Mr. Speaker.

I rise in support of this amendment. It seems like an appropriate way to deal with the water situation in Brookfield and I would similarly urge passage of the amendment.

DEPUTY SPEAKER HYSLOP:

Will you remark on House C? Will you remark on House C?

If not, we'll try your minds. All those in favor, signify by saying "aye".

ASSEMBLY:

Aye.

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House of Representatives

April 30, 1998

DEPUTY SPEAKER HYSLOP:

Those opposed, "no".

ASSEMBLY:

No.

DEPUTY SPEAKER HYSLOP:

The ayes have it. House C is adopted.

Remark further on the bill as amended. Remark further on the bill as amended.

If not, staff and guests to the well of the House. Machine will be open.

THE CLERK:

The House of Representatives is voting by roll call, members to the Chamber. Members to the Chamber, the House is taking a roll call vote.

DEPUTY SPEAKER HYSLOP:

Have all members voted? If all members have voted, please check the machine, make sure your vote is properly recorded. Machine will be locked. Clerk will take a tally. Clerk will announce the tally.

THE CLERK:

HB5296, as amended by House A, B and C. Total number voting 137, necessary for passage 69. Those voting yea, 136, those voting nay, no, absent not voting 1.

DEPUTY SPEAKER HYSLOP:

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House of Representatives

April 30, 1998

Bill as amended passes.

Clerk, please call Calendar 299.

THE CLERK:

On page 29, Calendar 299, Substitute for HB5282,
An Act Concerning Notice of Culpability of Child Abuse.
Favorable report of the Committee on Appropriations.

DEPUTY SPEAKER HYSLOP:

Representative Kerensky.

REPRESENTATIVE KERENSKY: (14th)

Thank you, Mr. Speaker.

I move acceptance of the joint committee's
favorable report and passage of the bill.

DEPUTY SPEAKER HYSLOP:

Question on acceptance and passage. Will you
remark?

REPRESENTATIVE KERENSKY: (14th)

Thank you.

Mr. Speaker, this bill requires the Department of
Children and Families to notify parents of children
living with a single parent or a guardian, as well as
the non-custodial parent when it's substantiates that a
child has been abused.

The notice will describe the circumstances of the
abuse as well as telling the family of the availability
of services from the Department and services from the

JOINT
STANDING
COMMITTEE
HEARINGS

ENVIRONMENT
PART 1
1-334

1998
INDEX

cost (inaudible - microphone off).

ED NEWMAN: Yes, ma'am.

REP. STRATTON: Other questions from committee members?
Yes, Representative Mushinsky.

REP. MUSHINSKY: Is it your intention to attach this to
HB5298, that's being heard today?

REP. STRATTON: That would be a possibility.

REP. MUSHINSKY: So it's a single incident amendment?

REP. STRATTON: I'm not sure whether you were here when
they began. The Senator has proposed a bill, a
separate bill, and given the subject matter of
today's hearing, assumed that it was on the
schedule today.

In order to allow the individuals who had come up
to testify, it was certainly germane to this bill,
and could be incorporated (inaudible).

REP. MUSHINSKY: Okay. So this would be for one
incident, or for one situation, a narrowly drawn...

REP. STRATTON: That is there proposal, yes.

ED NEWMAN: Right.

REP. STRATTON: Other questions? Thank you.

ED NEWMAN: We would like to thank the committee for the
time and courtesy.

SEN. GUGLIELMO: Thank you.

ED NEWMAN: Thank you very much.

REP. STRATTON: Okay. Second to testify is Commissioner
Art Rocque.

COMM. ARTHUR ROCQUE: Good morning, Representative
Stratton, Senator Daily, members of the committee.
For those of you who haven't been paying attention,
I guess, I need to introduce myself. I'm Art

involved in the type of police work that our conservation officers engage in.

The second section would allow us to suspend the privilege of hunting or fishing for someone who has those same privileges suspended in another state. It's a reciprocity agreement. It's something that is not uncommonly sought. We have sought before, and seek again.

The third section is the section that deals with operating water craft under the influence of drugs or alcohol. Again, pretty much a motherhood and apple pie kind of issue for us. We think that that kind of stuff is a bad idea in that alcohol or drug abuse appears to be a contributing factor in somewhat more than half of the boating accidents. So we think that's a fairly serious issue.

Section four corrects a section of statute that literally requires a mandatory hearing on water ski slalom and jump ramp permit applications. The intention of the original statute was to allow for an opportunity to seek public input.

And, unfortunately, the way the statute was drafted a couple of years ago, it requires a mandatory hearing. Often these are facilities that have been in place for a couple of decades, and the process throws them into a contested case hearing under the Uniform Administrative Procedures Act, which triggers a whole series of requirements which we think are both burdensome and counterproductive as well as not particularly beneficial. That, section four of that bill would make that change.

And section five, the last section of the bill, would authorize the sale of hunting weapons that have been confiscated from violators. And would allow DEP to retain the funds. Currently those weapons are being held and then turned over for destruction.

The next bill that I would like to address is Raised Bill HB5296, it's AN ACT CONCERNING WATER RESOURCE PROGRAMS OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION. Again, this is part of

our package. Several sections in this bill. Sections one through three are, pertain to the standing to appeal permit decisions.

Under 22a-430, that amendment is sought in order to enable the Department to be consistent with the new minimum requirements for federally authorized permitting programs, under Section 402 of the federal Clean Water Act, which in essence requires a clear provision in the interest of public participation for the review, judicial review of permit decisions.

Section four is a revision to Section 22-840. It would streamline our current permit process for state agency actions. Where structures and dredging permits, or fill permits, are already required, we would delete the duplicative requirement of also requiring an inland wetlands permit.

The standards under both of those permit programs are essentially the same for these projects. And, unfortunately, it's burdensome without any additional benefit.

Section five is a revision to Section 22A-359. It's essentially a technical clarification that codifies Department's existing practice. Simply put, a few recent cases have suggested that the term "navigable waters" means anything that you could float a toothpick with a sail on it.

We don't use too many toothpicks with sails in Connecticut. But, nevertheless, there have been those that have argued that any lake, river, stream, etcetera, that was historically subject to navigation should be subject to DEP regulations.

So this drops back to, officially drops back to the navigable waters that are connected to Long Island Sound and regulates to the high water mark. It's essentially Long Island Sound and its major tributaries, which is what the Department has been doing since approximately 1939.

Section six and seven are revisions to the Stream

Channel Encroachment Line Program. It closes a loophole that currently exists in that program, which makes it non-specific as to whether maintenance requires a permit, maintenance of structures or obstructions and hindrances. We think that that's something that was fully intended by the statute and should be clarified.

Section eight, is again a technical statutory oversight. It allows permitted agricultural uses to be subject to the Stream Channel Encroachment Line Program.

Section nine, is an amendment that will allow us to recover enforcement and restoration costs for knowing and negligent violations of a whole host of DEP statutes under 22a-6a.

Section ten is a revision to the Emergency Authorization Statute, which gives the Commissioner a little bit more flexibility in issuing emergency permits for emergency activities, particularly emergency activities that are designed solely to prevent, abate, and mitigate imminent threats to human health or environment.

These are commonly the type of things that occur in, in or around or during, or as a result of storm events that are technically regulated activities, but it makes sense to move fast, and we think we need clarification there.

Sections eleven and twelve, are revisions to the Aquifer Protection Program. These revisions were suggested by the Bureau of Water Management's advisory committee, which as you know, consists of not only municipal officials and business interests, but environmental groups, water companies, and other state agencies.

The amendments allow the Aquifer Protection Agency in a local town, or the Commissioner, to issue a permit for an expansion of an existing regulated activity, assuming that it is certified that that activity is in compliance with the regulations.

As you know, these regulations are in process. And

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ENVIRONMENT COMMITTEE

February 18, 1998

this program, which has been authorized for some years, has struggled to get the regulations forward for a variety of reasons. Not the least of which are debates over interpretation of what the statute authorizes.

This is one of them, clarifications. And then the second portion is a slightly more realistic methodology for risk assessment, and regulation of agricultural activities in the Level A, aquifer protection areas. The current standards, we think, are a little bit too restrictive.

Sections 13 through 18, are revisions to the Dam Safety Program, cease and desist statutes as well. The changes will facilitate the issuance of repair orders, and streamline the dam construction process which is, I guess I can let the secret out, that it's a little bit archaic given that it was designed during the 1950's and has not been substantially changed.

We are also seeking to have, and this is perhaps the most important portion of this, to have dam repair orders recorded on the land records to ensure the potential buyers of dams are aware of the safety implications of those purchases. That's something that we think is very necessary.

The next bill is Raised Bill HB5297, AN ACT CONCERNING MINOR REVISIONS TO CERTAIN HAZARDOUS WASTE AND SOLID WASTE MANAGEMENT STATUTES. Again, part of the Department's package in a bill of several sections.

The first section allows, we think, for a little bit better management of PCVB waste within the State of Connecticut. The current statutes require that they either be held on site, or shipped fairly immediately out of state.

This would enable us to give generators an on-site storage alternative. I beg your pardon. An alternative to on-site storage within the state. We're trying to get rid of the on-site. I'll get that straight.

regulations. Then the second process is the actual substantive review of the application. We have another procedure there where we give the applicant a 30-day advance notice of our staff's recommendation, which outlines those areas that the staff consider to be incomplete.

That gives the applicant an opportunity to provide whatever information that's necessary to complete their application. The staff will take a look at that information, make a determination whether it should affirm or modify its recommendation. And then it's sent to the Review Board.

SEN. DAILY: Is there any way (inaudible - microphone off) necessary to ...

JACQUE GILBERT: I'm sorry, Senator. I couldn't hear the question.

SEN. DAILY: Is there any way that a (inaudible - microphone off) would be able to know what's necessary to submit...application, when they first apply?

JACQUE GILBERT: Yes, there's a application form that has been approved by the Underground Storage Tank Review Board, which outlines the necessary records and information, along with the regulations that we send out to the application. We send that out in an informational package which outlines those records that are necessary to be submitted.

SEN. DAILY: So, it's still (inaudible - microphone off) application?

JACQUE GILBERT: That's correct.

SEN. FLEMING: Commissioner, on HB5296, in your testimony, you indicate that the changes your, in Section 12, the changes that you're looking for will be to, in some way, streamline the process for permits under the aquifer protection bill?

COMM. ARTHUR ROCQUE: Yes.

SEN. FLEMING: What -- is there a back log there right

now?

COMM. ARTHUR ROCQUE: Is Bob Smith here? I'm in -- he's hiding over here. We'll ask him that question.

BOB SMITH: No. We're developing the regulations. And we're very far along in that regard. And we've gotten some input from municipal officials, water utility officials, and so forth, suggesting that there are ways to streamline a couple of provisions, and that's what we're asking for here.

There are two pieces. Currently, the law would require all farming activities to prepare a farm waste management plan in those areas. There are a lot of really small agricultural activities that don't really warrant that kind of effort.

And, so we want the flexibility to prioritize those and exempt big batches of really small things, that really wouldn't have much affect. And that's, get a lot of people out. People that don't need to be in the process.

We'd preserve the big agricultural activities, and make them do a farm waste management plan. But it would exempt a lot of really small things, that currently are covered. So that in the regulations we'd more fully develop that and a priority system and so forth.

And part two is expansions of existing facilities, nonconforming uses. We want the specific legislative authority to allow like licensed environmental professionals, or professional engineers to do the certification, and that would streamline that process so that they didn't all have to come to the DEP for our staff to do a review. And that, again, was a recommendation of our Advisory Committee.

SEN. FLEMING: Three questions on the language. I'm looking in lines, around 420 in the bill. Procedures for all study impacts from the expansion or modification of non-compliant regulated activities. What would these offsetting impacts be? Give me some examples.

BOB SMITH: An example would be that you have a non-conforming use, something that could pose a hazard to the aquifer. But in their expansion plan, they're proposing to expand that activity that's a threat.

But they've also included with that, comprehensive measures that more than compensate for the risk. In other words, yes, they're going to have another tank of chemicals, but along with that, they're proposing to move the tanks inside, put berms around it, and secure them in a fashion that provides better protection than the existing facility actually does.

So the concept is, yeah a nonconforming use could expand, provided you're more than compensating for the additional risk. And, you know, I'm not reading, that's just an example rather than, but that's what the intention is there.

SEN. FLEMING: Okay. And then the other question I would have is, Commissioner, in your testimony you say you would allow a certified professional engineer and facility owner they have to certify that they're in compliance with the regs.

The bill calls it a certification of a qualified person. Other than, who else would be a qualified person other than, as the Commissioner has testified, a professional engineer?

BOB SMITH: Possibly the new licensed environmental professionals. We purposely had that language broader so that in our regulations, we can describe not only professionals engineers, after all, that includes electrical engineers, but we would probably try to include professional engineers in that field.

Probably environmental professionals, that's a newly licensed group of people that have direct expertise in this area. And perhaps some others. So that's why it was written broadly.

SEN. FLEMING: Okay. Thank you.

COMM. ARTHUR ROCQUE: I think Senator, we're responding to some of the commentary that we received on these draft regulations as they've gone around. Not only from our Advisory Committee, but from elsewhere, and are trying to eliminate some of the potential problems that we foresee coming up with that program.

SEN. FLEMING: Keep in mind, they're all drinking well water up in my district.

COMM. ARTHUR ROCQUE: Yes. As they are where I live.

REP. STRATTON: Representative Collins.

REP. COLLINS: Thank you Madam Chairman. Good morning, Commissioner.

COMM. ARTHUR ROCQUE: Good morning.

REP. COLLINS: On Raised Bill SB238.

COMM. ARTHUR ROCQUE: Yes, sir.

REP. COLLINS: On first reading, I support all of this. The only question I have is, have you or anybody from the Department talked with Representative Tulisano or Lawlor regarding Section 3?

COMM. ARTHUR ROCQUE: I believe we have. I guess, the answer is, not directly.

REP. COLLINS: I think you should.

COMM. ARTHUR ROCQUE: Indeed, indeed, I would agree. I will have Mr. Tyler get to that quickly.

REP. COLLINS: Then on HB5296, Section five, it would be my understanding, or thinking, that right now local inland, wetlands, or zoning commissions are issuing permits. Does this mean that someone would have to get a permit from the DEP as well as?

COMM. ARTHUR ROCQUE: No, it's exactly the opposite, in fact. There have been those who have suggested that. DEP should be regulating these areas, particularly if there are "navigable" water bodies.

And you're absolutely correct that most of them are regulated directly by municipal commissions. We see no advantage, quite frankly, to have the Department of Environmental Protection involved in that level of permitting.

And, quite frankly, it is has not been departmental practice. So, we're just trying to respond to recent court interpretations which would extend our jurisdiction.

REP. COLLINS: Okay. The hair went up a little bit reading the definition of "ordinary high water mark" which is not in agreement, or at least not the same as the definition for a high water mark when it states that it is not storm surges when there's a departure from the normal or particular reach of the tide. Is that by intention, or don't you think that they should read similarly?

COMM. ARTHUR ROCQUE: I think that what we are attempting to do here, Representative Collins, I think is we're attempting to make sure that the definition of statutory jurisdiction is consistent among all of our statutes.

Normally, and also consistent with federal definitions which generally do not account for periodic, or a periodic short term event that the ordinary high water mark, or the line of jurisdiction, is part of a rolling average that includes spring tides and things like that, and spring high water marks. But does it on a 19 year average, I think, so that you don't get extraordinarily far reaching jurisdiction due to unusual circumstance.

REP. COLLINS: Okay.

COMM. ARTHUR ROCQUE: And that's certainly what the intent is there.

REP. COLLINS: Okay. Thank you. Thank you, Madam Chair.

REP. STRATTON: Representative Maddox.

REP. MUSHINSKY: I'm sure you will be the Commissioner.

COMM. ARTHUR ROCQUE: Thank you.

REP. MUSHINSKY: On HB5296, the self-certification provision. The one nagging doubt I have on this is, what if anything, will we have for penalties for a false statement of compliance?

I can envision a situation where a municipality hard-pressed to save money might mis-state its compliance record. So, what would happen to municipality, or a permit holder, if that happened?

COMM. ARTHUR ROCQUE: I don't think we're anticipating that. I don't know, do you have a response to that?

REP. MUSHINSKY: We had, historically we had problems with sewage treatment compliance by some municipalities, and so it could happen.

COMM. ARTHUR ROCQUE: I'm sorry, I don't think the bill is with me.

REP. MUSHINSKY: HB5296, what is the penalty if someone self-certifies that the facility is in compliance, but in fact, it's not?

BOB SMITH: This is, are you on -- I'm sorry, I'm trying...

REP. MUSHINSKY: Recommendations from the Advisory Committee.

BOB SMITH: Aquifer protection, the aquifer protection?

COMM. ARTHUR ROCQUE: Yeah, right.

BOB SMITH: There are general statutory provisions that, if anybody falsely states or provides erroneous information and, to the DEP in general, I think there's broad statutory provision already in the law that covers false statements.

So, if somebody self-certifies falsely, it isn't here, but it's somewhere else in the statutes that

28
kmg

ENVIRONMENT COMMITTEE

February 18, 1998

provides enforcement for that. It's a violation to do that. It could be criminal if they knowingly do it.

REP. MUSHINSKY: Okay.

BOB SMITH: So, I think we're covered.

REP. MUSHINSKY: Thank you. My other question is on HB5298. Some critics of the bill feel that, in effect, this bill is restricting the access to the fund with a window deadline. Is that what you're doing?

COMM. ARTHUR ROCQUE: I think that that's a reasonably fair, if harsh, viewpoint. We are trying to suggest that once the federal rules are fully in effect, there should not be inadvertent releases from tanks.

Tanks should be monitored. They should be carefully installed, and all of the provisions, the safety provisions, should be in effect. So, it's essentially a grandfather up to the point of, and then a sunset provision. That's, in essence, what we're getting in here.

REP. MUSHINSKY: Yeah, but will happen after that window goes by and we start getting complaints from the district. Someone just bought a property and they're going to find this old incident.

COMM. ARTHUR ROCQUE: Well, again...

REP. MUSHINSKY: How will we deal with that?

COMM. ARTHUR ROCQUE: The requirement is to certify that it occurred prior to the cut off. If it occurred after the cut off, then it means either somebody was not in compliance with the requirements, or there was a responsible party that loused up. I mean, it isn't an inadvertent release at that point.

REP. MUSHINSKY: Okay. So if they can show that it did, that the actual leak happened historically...

process. Indeed, I think they would feel like, and possibly justifiably, that they're not doing their jobs. If they were to take an application, read it start to finish and say, I have no questions.

Every single piece of information that I can think of, is in here. I think these applications raise very complex issues of, across the board.

ATTY EARL PHILLIPS: Both environmental and financial, I think.

ATTY BRIAN FREEMAN: Correct. With environmental and financial. Inevitably, there will be points where staff will seek clarification. I throw up the question, is that to be considered incomplete at that point?

Again, there are two levels then to that question. Generally, it's known in advance what issues you need to discuss. It's never known in advance, and can't be until the end of a negotiation, what information is required to address those issues. Thank you.

SEN. DAILY: Thank you. The next speaker is Dave Evans, followed by Morgan Seelye.

DAVID EVANS: Madam Chairman, members of the Committee, my name is David Evans, with Evans and Associates. We're legislative consultants to the Connecticut Water Works Association.

As most of you know, the Water Works Association is an association of water supply utilities serving Connecticut. Members of the association is open to all water utilities, investor owned, municipal and regional utilities.

There are approximately 18 publicly owned, and 17 investor owned water utilities in the association. Combined these water system serve more than 500,000 customers, or a population of approximately 2-1/2 million people throughout the state.

I'd like to comment briefly on three bills this morning. The first one is HB5297. We've submitted

by Mr. Evans, the bill is very blank, blank pressure. Berlin is hilly. And we do have extreme, you know, situations where we'd be reducing pressure, then turning right around and pumping it up again. Talk about conservation, maybe it would help the shareholders in Northeast Utilities if we did that.

I think that's basically my comment. If, DOHS or DEP staff feels this is significant, and your Committee agrees, then it show go forward. I would certainly at the very least, give the DOH Commissioner, you know, some discretionary area.

And I would say that where the bill, in Section B, which is the change in the bill, says that the plans will, or the plans submitted will include plans to meter all public water supply customers, I would like to have the language that they would say that they could consider the inclusion of these plans.

That the water authorities consider these issues, but not make it a mandate. And, one very briefly if I could, I'd like to speak on HB5296. I'm a member of the Aquifer Protection Advisory Committee, basically representing our town and the Council of Small Towns.

And I speak in support of Section 11 changes which does allow more flexibility in the administration of expanded pre-existing facilities that are, fall under the so-called non-conforming part of the regulation. So, I'd be glad to answer any questions. But, I again repeat, please do not pass SB237. Thank you.

REP. STRATTON: Thank you very, Mr. Seelye. And I think you well know that these are works in progress. That's why we're soliciting input. So, thank you for coming up today.

MORGAN SEELYE: Thank you.

REP. STRATTON: Gian Carl Casa, followed by Ernie Cohen.

GIAN CARL CASA: Good morning, Madam Chairman, Senator

60
kmg

ENVIRONMENT COMMITTEE

February 18, 1998

Daily, members of the Committee. My name is Gian Carl Casa, I'm Manager of Legislative Services for the Connecticut Conference of Municipalities. And I'll beat your three-minute deadline.

Just want to talk briefly on two bills before you. We've submitted testimony to you in support of Section 11 of HB5296, the bill just addressed by Mr. Seelye, and spoken about earlier by the Commissioner of DEP.

What it would do is provide a measure of relief of the 87 municipalities that are covered by the Aquifer Protection Act, by allowing applicants for expansions for non-conforming uses to certify that they're in compliance.

And it would relieve municipalities of having to do an arduous examination of each of those applications. And I also want to lend our voice of concern to those, those that were raised earlier on SB237, from the perspective of impacts it could have on the municipally owned water companies. Thank you.

REP. STRATTON: Thank you. Ernie Cohen.

ERNIE COHEN: Alright, can I use a little of his time too?

REP. STRATTON: You have four minutes (inaudible - microphone off).

ERNIE COHEN: Four minutes. Members of the Environmental Committee, when I came here this morning, I thought there were just going to be one bill to talk on, and that was this Act No. 237. But I see there's a lot more being discussed here. I'd like to...

REP. STRATTON: Let me say that you can always submit written testimony on other bills.

ERNIE COHEN: Alright, alright.

REP. STRATTON: Thank you.



STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION



Public Hearing --February 18, 1998
Environment Committee

Testimony Submitted by Commissioner Arthur J. Rocque, Jr.
Department of Environmental Protection

Raised Bill #5296,
AAC Water Resource Programs of the Department of Environmental Protection

The Department of Environmental Protection supports this bill, as it make several important changes to various programs in the Water Bureau of the agency.

Sections 1,2 and 3. Standing to appeal permit decisions.

The Department has proposed this section of the bill in order to enable the State to comply with new minimum requirements for federally authorized State permitting programs under Section 402 of the Federal Clean Water Act. Amended Environmental Protection Agency requirements (40 C.F.R. §123.30) now mandate that States which administer a program under Section 402 provide an opportunity for judicial review of final decisions to grant or deny a permit. This review must be sufficient to provide for, encourage, and assist public participation in the permitting process. Currently, only persons who are aggrieved by a water pollution decision of the DEP may appeal such decision and appeals can only be filed if the DEP denies a permit. This proposal would meet new Federal requirements by amending C.G.S 22a-430 to expand standing to appeal, to persons other than the applicant, and on the issue of DEP's granting of a permit.

Section 4. Revision of Section 22a-40

This provision would streamline permit processes for state agency actions affecting inland wetlands. Where a structures, dredging and fill permit is already required pursuant to sections 22a-359 through 22a-363f for a state agency project (e.g., a DOT bridge improvement), an inland wetland permit under sections 22a-36 through 22a-45 would no longer be required, thereby eliminating a duplicative review process. The statutory standards for review under the two programs are similar, and therefore create substantial overlap of efforts. The proposed provision corresponds to an existing exclusion of activities already regulated under the Tidal Wetlands Act, sections 22a-28 through 22a-35, and would not affect municipal inland wetland jurisdiction in any way.

Section 5. Revision of Section 22a-359

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HB 5296

DEP Testimony - Page 2

February 18, 1998

The proposed amendment to section 22a-359 is a technical clarification which will serve only to codify the Department's existing practice. While the Department has never asserted jurisdiction under the structures and dredging statutes to inland lakes and streams without a tidal connection, the existing language of section 22a-359 suggests that the Department could regulate all navigable waters, inland as well as coastal. In addition, it is often difficult or inappropriate in a technical sense to determine a "high tide line" (a 1987 legislative amendment) on the upper reaches of river systems such as the Connecticut and its tributaries. In these situations, the concept of the "ordinary high water mark" (equivalent to the elevation of the one-year frequency flood event) is more practical in determining a jurisdictional line. The proposed amendment defines "navigable waters" as waterbodies physically capable of supporting navigation, and with a direct connection to Long Island Sound, up to the ordinary high water mark.

Sections 6 and 7. Revisions to Stream Channel Encroachment Line Program

The proposed amendments in these sections would close a loophole in the stream channel encroachment statutes and would clarify that maintenance, as well as placement of obstructions, encroachments or hindrances requires a permit and is subject to enforcement action if done without a permit. These sections will also make the use of the term "person" consistent with its definition in 22a-2(c).

Section 8 will correct a technical statutory oversight and allow permitted agricultural uses as specified in section 22a-349 to be subject to stream channel encroachment program regulations authorized under section 22a-347.

Section 9 amends 22a-6a, and allows the Department to recover enforcement and restoration costs for knowing or negligent violations of a number of Department statutes. This section would add the tidal wetlands, inland wetlands, water diversion, stream channel encroachment and dam safety statutes to the provisions of 22a-6a.

Section 10. Revision to the Emergency Authorization Statute

Section 22a-6k empowers the Commissioner of Environmental Protection to expeditiously grant permits for emergency activities which would otherwise require a permit, when necessary to prevent, abate or mitigate imminent threats to human health or the environment and when not inconsistent with federal law. This proposal would create additional regulatory flexibility by allowing the Commissioner to grant appropriate emergency authorizations within areas regulated under the inland wetland statutes, prior to the thirty-five days following the Commissioner's receipt of the application or receipt of a municipal advisory decision

Sections 11 and 12. Revisions to the Aquifer Protection Program

The Department has raised these sections of the bill as a result of the valuable input from the Bureau of Water Management's Advisory Committee which includes municipal officials,

HB 5296

DEP Testimony - Page 3
February 18, 1998

business interests, environmental groups, water companies and other state agencies .

The first portion of the recommended changes are to make it clear that our proposed land use regulations may allow a municipal Aquifer Protection Agency or the Commissioner to issue a permit for the expansion or modification of an existing regulated activity based on a certification by a professional engineer, and the facility owner, that the operation is in full compliance with the regulations. This is intended to streamline the process in an appropriate and protective manner. Nothing in this proposal will interfere with a municipality or the Commissioner's authority to take an application through a complete permit process, including a public hearing if they so choose.

The second portion provides a more realistic methodology of risk assessment and regulation of agricultural activities located in level A aquifer protection areas. At present the Statutes require that any agricultural activity in an aquifer protection area which generates more than \$300.00 in gross sales must prepare and implement a farm resources management plan. This task would overwhelm federal and State technical services agencies, with no regard to the actual risk that the operation presents. The proposed revision would allow the use of a national agricultural risk assessment program, tailored for Connecticut farms, to assign a priority for management planning and implementation. This will concentrate available resources on actual risks.

Both of these proposals streamline the program for aquifer protection and allow it to focus on those activities which pose the greatest threat to ground water quality.

Section 13 - 18. Revisions to Dam Safety Program & Cease and Desist Statute

The Department is proposing changes to Chapter 446j, Dams and Reservoirs, to facilitate the issuance of dam repair orders and streamline the dam construction permit process. We are also seeking to have dam repair orders recorded on land records to ensure potential purchasers of dams are made aware of any outstanding safety issues. Additional changes have been proposed to make statutory language within the entire chapter consistent with previously enacted legislation (P.A. 96-145). This legislation defined "person" and deleted redundant references to entities subsumed within the definition. In addition, Section 22a-405 has been amended to make dam owners responsible for requesting DEP Certificates of Approval for completed dam repairs. Lastly, to allow the Department to promptly respond to dam emergencies, Chapter 446j has been added to Section 22a-7a cease and desist order authority. (Chapter 441 Pesticide Control, was also added to the Section 22a-7a cease and desist order authority in order to facilitate the DEP's response to pesticide related emergencies).