
OLR Bill Analysis

sHB 7174

AN ACT CONCERNING RIPARIAN AREAS.

SUMMARY

This bill broadens the applicability of the state's Inland Wetlands and Watercourses Act (IWWA) to include the area immediately adjacent to and extending outward from a wetland or watercourse boundary by at least 100 feet (the "riparian area").

Consequently, the bill correspondingly expands the authority of municipal inland wetlands agencies and the Department of Energy and Environmental Protection (DEEP) to regulate activities in these areas, which generally entails reviewing activity proposals, issuing permits, and conducting enforcement actions. It relatedly requires DEEP to inventory or index riparian areas and adopt any necessary regulations to protect them, as the law already requires it to do for wetlands and watercourses.

The bill also makes the following additional changes to the IWWA:

1. explicitly (a) excludes native vegetation clear cutting in wetland or watercourse areas from an "as of right" use and (b) includes revegetation in riparian areas with native vegetation and removing invasive species as a nonregulated permitted use;
2. adds public drinking water supply areas and cold water habitat streams to the list of things the commissioner must consider when carrying out her responsibilities under the IWWA;
3. allows an inland wetlands agency to deny or condition an application for a regulated activity outside of a wetlands, watercourse, or riparian area if it will likely impact the area's chemical or thermal characteristics, as an agency already may do for the physical characteristics of wetlands or watercourses; and

4. makes many technical and conforming changes, including those to effectuate its application to riparian areas such as, among other things, allowing aggrieved parties to appeal decisions about activities in riparian areas and requiring the applicants for activities in these areas that are within a water company's watershed to notify the company and public health department.

Lastly, the bill requires the DEEP commissioner to prescribe, either by permit or through adopting regulations, conditions for existing fishways built for dams in navigable waters that are not regulated by the Federal Energy Regulatory Authority (i.e. certain hydropower dams) to ensure safe, timely, and effective fish passage and protect aquatic habitat. The conditions must be implemented and paid for by the dam's owner or operator (§ 12).

EFFECTIVE DATE: October 1, 2025, except the provision adding the riparian area definition to the IWWA is effective July 1, 2025.

IWWA EXPANSION — RIPARIAN AREA

The IWWA requires municipalities to regulate activities in inland wetlands and watercourse areas within their boundaries through an inland wetlands agency or empowering another board or commission to carry out its responsibilities. DEEP has the regulatory authority over state actions in these areas and for municipalities without an inland wetlands agency.

The bill expands this oversight to generally include operations within, or use of, a riparian area, including the removal or deposition of material, or any obstruction, construction, alteration, or pollution, of the riparian area.

Updating Regulations

Existing law requires DEEP to adopt regulations to protect wetlands and watercourses. Under the bill, these regulations must also include riparian areas. Similarly, municipal inland wetlands agencies (or the applicable board or commission), as under existing law for wetlands and watercourses, must adopt regulations necessary to protect riparian

areas, either individually, or through districts.

As for wetlands and watercourses, the bill requires the local regulations to prescribe (1) how riparian area boundaries are set or changed, (2) how to apply for a regulated activity in these areas, (3) notice requirements, (4) criteria for and the process of reviewing applications, and (5) administration and enforcement requirements. (It subjects proposed activities in riparian areas to the same statutory application and review requirements and potential penalties for violations as already apply for wetlands and watercourses activities (see BACKGROUND).)

NATIVE VEGETATION

Regulated Activities

The bill explicitly includes an operation in or use of a wetland, watercourse, or riparian area involving native vegetation removal as a “regulated activity” under the IWWA, meaning these activities generally cannot be done without a permit. The bill does not, however, specify what “native vegetation” is.

Permitted Activities

As of Right. By law, certain operations and uses are permitted “as of right” in wetlands and watercourses. Subject to certain exceptions, these include, among other things, (1) grazing, farming, nurseries, gardening, and harvesting crops and certain farm ponds essential to the farming operation; (2) activities DEEP does for restoration, enhancement, or mosquito control; and (3) uses incidental to the enjoyment and maintenance of residential property.

The bill exempts from being an “as of right” use clear cutting native vegetation (1) unless it is to expand agricultural crop land, as is already the case for timber clear cutting, or (2) within 10 feet of a wetlands or watercourse for incidental residential property enjoyment or maintenances uses.

Unregulated Uses. The IWWA also allows certain activities in areas under its jurisdiction (including riparian areas under the bill) as

“nonregulated uses” if they do not disturb the natural and indigenous character of the area by removing or depositing material, altering, or obstructing water flow, or polluting. Examples include conservation of natural resources, outdoor recreation, and dry hydrant installation. The bill specifies that (1) removing or depositing material, for determining if an activity is a nonregulated use, includes native vegetation removal and (2) revegetating riparian areas with native vegetation and removing invasive species is considered natural resource conservation.

BACKGROUND

Inland Wetlands and Watercourses

By law, inland “wetlands” are land areas that consist of any of the soil types designated as poorly drained, very poorly drained, alluvial, and floodplain by the U.S. Department of Agriculture Natural Resources Conservation Service’s National Cooperative Soils Survey, which includes submerged land, but not land bordering or lying beneath tidal waters. “Watercourses” are, in general, rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs, and all other bodies of water, natural or artificial, vernal, or intermittent, public, or private, which are in, flow through, or border the state or any portion of it (CGS § 22a-38).

Permit Application Process

By law, anyone proposing to do a regulated activity on an inland wetland or watercourse must apply for a permit from the inland wetlands agency of the town or towns where the wetland or watercourse is located. Public hearings on these regulated activities may be held, but only if (1) the agency determines the activity may significantly affect wetlands or watercourses, (2) at least 25 people sign a petition requesting a hearing and it is filed with the agency within 14 days after the application is received, or (3) the agency finds that a hearing would be in the public interest.

By law, when an application receives a public hearing or the agency finds that the proposed activity may have a significant impact on wetlands or watercourses, it cannot issue a permit unless the DEEP commissioner finds, on the basis of the record, no feasible and prudent

alternative exists.

When an application is denied on a finding that there may be feasible and prudent alternatives to the proposed regulated activity that would have a less adverse impact on wetlands or watercourses, the commissioner or the agency must propose on the record the types of alternatives that the applicant may investigate.

Enforcement

State law permits municipal inland wetlands agencies, if they determine that a person is violating the IWWA or the associated local ordinance, to issue cease-and-desist orders, impose civil fines of up to \$1,000 per offense, or ask a court to impose issue certain orders or penalties. Higher penalties apply for willful or knowing violations (CGA § 22a-44).

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 24 Nay 9 (03/24/2025)