

Senate Transcripts, April 29, 2004: Excerpt regarding Public Act 04-209, SB 445:

“THE CLERK:

Calendar page 16, Calendar 156, File 200, substitute for S. B. 445, AN ACT CONCERNING JURISDICTION OF MUNICIPAL INLAND WETLANDS COMMISSION. Favorable report of the Committee on Environment and Planning and Development. The Clerk is in possession of two amendments.

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

Thank you Madam President. I move adoption of the Joint Committee's favorable report and passage of the bill.

THE CHAIR:

Motion is acceptance and adoption. Will you remark further?

SEN. WILLIAMS:

Yes Madam President. I'd like to call an amendment, LCO 4578.

THE CHAIR:

The Clerk is in possession of LCO 4578 to be designated Senate Amendment "A". Will the Clerk please call?

THE CLERK:

LCO 4578 which has been designated as Senate Amendment Schedule "A". It is offered by Senator Williams of the 29<sup>th</sup> District et. al.

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

Madam President, I move adoption.

THE CHAIR:

Motion is adoption. Will you remark?

SEN. WILLIAMS:

Yes. Madam President, this is a strike all amendment and the amendment becomes the bill.

At the outset I would like to just note that what we're attempting to do here is address a State Supreme Court case in a manner that balances on the one hand interests of those who wish to pursue reasonable developments in the State of Connecticut on land that may consist of or in and around certain wetland areas. At the same time balancing those interests with the interests of those who wish to preserve wetlands and to the greatest extent possible, preserve not only the wetlands but habitat, animal and plant life that goes along with the wetlands.

I am happy to report that I believe we have an amendment here that satisfies to the best of our ability both of those interests and both of those folks so that we are somewhat united in wanting to protect wetlands while at the same time having some reasonable predictability in the process of such regulation.

I'd like to thank Senator Sullivan for his efforts. Senator Fonfara, our Chairman of the Planning and Development Committee and Senator Fasano who have all had extensive input into this.

Now, as to the substance of the bill, we address a court case, Avalon Bay Communities vs. the Inland Wetlands of the Town of Wilton. In that State Supreme Court case, the court took a step that many folks interpreted as overturning about 30 years of inland wetland regulation procedure by holding that our statutes, and in particular the Inland Wetland And Water Course Act, protect not wildlife or plant species in wetlands, but only the wetlands and water courses themselves.

What we have worked out is a definition in the statute that governs the jurisdiction of Inland Wetland Commissions, a definition that includes as part of wetlands and water courses the aquatic plant or animal life and habitat so that those are considered protected in the wetlands and water courses.

It also addresses an issue that many have been concerned with as to limitless jurisdiction of inland wetland commissions. How far can they reach to protect wetlands. It specifically sets out that such agencies shall not deny or condition any application for regulated activity in an area outside wetlands or water courses merely on the basis of an impact or effect on such aquatic plant or animal life unless that activity would affect the physical characteristics of such wetland or water course.

So I believe that this is a fair compromise. And again I applaud the efforts of all those who have worked very hard to get us to this point.

Thank you Madam President.

THE CHAIR:

Thank you Senator Williams. Senator Freedman.

SEN. FREEDMAN:

Yes Madam President. Through you to Senator Williams, a question.

THE CHAIR:

Please frame your question.

SEN. FREEDMAN:

I have here some correspondence from a constituent and I'd like to just read a little bit and see if when you answer the question if we're resolving the problem that was created since the court decision.

Currently, I am prohibited from disturbing the designated wetlands and a belt 50 feet wide surrounding the wetlands. Under the proposed legislation, and I believe he's referring to the original bill before this amendment, my right to use land beyond this 50 foot parameter will be in question and entirely up to the regulatory agency to determine.

Through you, is this amendment taking care of that problem that he sees going beyond what had been considered a wetlands?

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

Through Madam President to you. Yes. It does take care of that.

THE CHAIR:

Thank you.

SEN. FREEDMAN:

Thank you.

THE CHAIR:

Will you remark further? Senator Fasano.

SEN. FASANO:

Yes. Thank you Madam President. Through you I have a question for the proponent of the bill.

THE CHAIR:

Please frame your question sir.

SEN. FASANO:

Thank you Madam President. Senator Williams, if there is wildlife in the upland area, i. e. outside the wetland area and outside the water course area and that upland area has activity, in order for that activity to be regulated, isn't it true that there must be a showing of a likely impact or effect upon the physical characteristics of such wetlands and water courses?

Through you.

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

Through you Madam President. Yes. That is correct.

THE CHAIR:

You have the floor Senator Fasano.

SEN. FASANO:

Another question through you Madam President. If this bill becomes law and the facts of the Avalon Bay case were presented today, would it also be true that the salamanders would not be a regulated wildlife under this new bill?

Through you Madam President.

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

Thank you Madam President. Through you to Senator Fasano.

The short answer is yes. But I would just say that under the Avalon Bay case, the answer there should have been or could have been yes as well without the court's holding that wetlands did not protect plant and animal life. In the Avalon Bay case, the salamander was not only outside the immediate wetland area, it was also to my understanding outside the upland review area. And the upland review area is an area that towns may designate by their own regulations.

THE CHAIR:

Thank you sir. Senator Fasano.

SEN. FASANO:

Thank you Madam President. Thank you Senator Williams.

I would like to thank Senator Williams for bringing this bill out. I know it was a difficult bill and I know that he received a lot of emails, phone calls and letters with respect to this matter. But I think he's done a terrific job.

I would also like to thank Senator Sullivan for bringing the parties together and in a not only a bipartisan effort, but in a global land use effort to get a best bill possible to deal with the situation caused by the Avalon Bay situation.

I'd also like to thank Senator Fonfara because when the bill was in front of P&D, it had a fairly good chance of being killed and Senator Fonfara assured that the bill would be worked on after Committee and he saw through that effort and made sure we got what we have here today.

The Avalon Bay case did two things. First, it went too far when it said that the Wetland Commission did not have jurisdiction of wildlife that was in the wetland. And I think that struck a nerve. And this bill that is in front of us has the jurisdiction back in the hands of the Wetland Commission that habitat in the wetland has a nexus to the wetland and therefore it has jurisdiction -- the Wetlands Commission does.

Outside the wetlands, if we find that the activity affects that wildlife and there is a showing that that impacts or has an effect adversely to the physical characteristics of the wetlands and water courses, not the aesthetics, but the physical, measurable characteristics such as water flow or pollution or obstruction, then the Wetlands Commission does have jurisdiction.

This is a good amendment. It is not a clarification of the existing law. It is a new statute that will assert what this Legislature believes should be the powers of the Inland Wetland Commission.

I think Senator Williams has gone about it in the right method and I think the legislators and the parties that helped negotiate this bill did so with the understanding that we need to balance the protection of the wetlands with the rights of individual property owners. I thank you Madam President.

THE CHAIR:

Thank you Senator Fasano. Will you remark further? Senator Nickerson.

SEN. NICKERSON:

Thank you very much Madam President. If I may through you, a question to the proponent.

THE CHAIR:

Please frame your question sir.

SEN. NICKERSON:

A rather general question and obviously the answer may be equally general. But I wonder if you could describe how you might feel that the delineation of the regulation of wetlands and water courses, particularly in the second paragraph of this section, might differ from or be parallel to the understanding of those who practiced in this area, members of water courses commissions.

The general understanding of the area. How would this bill align with that? Would it be slightly broader, slightly narrower or about where practitioners thought that regulatory boundaries were.

Through you Madam President.

THE CHAIR:

Thank you. Senator Williams, you have the floor.

SEN. WILLIAMS:

Thank you Madam President. Through you to Senator Nickerson.

The goal of the legislation is to bring us to the point where most practitioners believed that we were prior to Avalon Bay. I think most folks recognize that what the Inland Wetland Commission did in the Avalon Bay case went well beyond what the understood jurisdiction of Inland Wetland Commissions was. So by defining wetlands and water courses as including the aquatic plant and animal life and habitats within those water courses and wetlands and by recognizing that beyond the wetlands, there should not be a denial of an application unless it affects the wetlands or water courses themselves, it's my belief that essentially we go back to where we were before.

SEN. NICKERSON:

Thank you --

THE CHAIR:

You have the floor Senator Nickerson.

SEN. NICKERSON:

Thank you very much. I certainly welcome and accept that answer and join with others in recommending adoption.

THE CHAIR:

Thank you. Will you remark further on Senate "A"? Representative Roraback, you have the floor -- Senator Roraback.

SEN. RORABACK:

Thank you --

THE CHAIR:

I'm harkening back to other days.

SEN. RORABACK:

Thank you Madam Speaker -- I mean Madam President.

THE CHAIR:

You got it.

SEN. RORABACK:

Madam President, through you to -- a question to Senator Fasano. As I'm reading the language of the bill, Madam President, as I read Subsection D here which talks about unless such activity will likely impact or affect the physical characteristics of such wetlands or water courses, through you Madam President to Senator Fasano, am I reading that correctly? The physical characteristics pertaining to the water quality in the wetlands or water courses, is that what that's intended to mean?

Through you Madam President.

THE CHAIR:

Senator Fasano.

SEN. FASANO:

Through you Madam President. Yes. We're talking about the physical characteristics of the wetlands -- water flow, pollution, things of that nature.

THE CHAIR:

Senator Roraback.

SEN. RORABACK:

So we're not talking about plants or animals when we're talking about the physical characteristics of the wetlands itself.

SEN. FASANO:

With respect to that --

THE CHAIR:

Senator Fasano.

SEN. FASANO:

Sorry. Through you Madam President. With respect to that section, no we are not.

THE CHAIR:

You have the floor.

SEN. RORABACK:

Thank you Madam President. I want to thank Senator Williams, Senator Fasano and all of the people who have worked so hard to restore to the Wetlands Commission a measure and an appropriate measure of jurisdiction over those plants and animals which depend on these sensitive habitats for their life cycles and for their well being.

And Madam President, I think that this amendment represents a responsible balance and I know that's come after a lot of hard work and I urge support. Thank you.

THE CHAIR:

Thank you sir. Will you remark further on Senate Amendment "A"? Senator Williams.

SEN. WILLIAMS:

Thank you Madam President. I would just like to add an addendum to that particular question. I believe that it would affect not only water quality, whether the water is polluted or the extent of the purity of the water, but certainly if there were activity that affected physical characteristics such as shrinking the wetlands or water courses and therefore harming in the process the aquatic plant and animal life that is in the wetlands or water courses, then that also would apply.

THE CHAIR:

Thank you Senator Williams. Will you remark further on Senate Amendment "A"? If not, I will try your minds.

All those in favor please indicate by saying aye.

SENATORS:

Aye.

THE CHAIR:

Those opposed, nay. The ayes have it. The amendment is adopted.

Will you remark further on the bill as now amended? Senator Williams.

SEN. WILLIAMS:

Thank you Madam President. If there is no objection, I would move this to the Consent Calendar.

THE CHAIR:

Motion is to move to Consent Calendar. Seeing no objection, so ordered.”