

PA 11-074

SB1112

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**JOINT
STANDING
COMMITTEE
HEARINGS**

**ENVIRONMENT
PART 6
1696 – 2016**

2011



**STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION**



Public Hearing – March 14, 2011
Environment Committee

Testimony Submitted by Acting Commissioner Daniel C. Esty
Department of Environmental Protection

Raised Senate Bill No. 1112 - AN ACT CONCERNING BOATING UNDER THE INFLUENCE

Thank you for the opportunity to present testimony regarding Raised Senate Bill No. 1112 - AN ACT CONCERNING BOATING UNDER THE INFLUENCE.

We appreciate the Committee's willingness to raise this bill at the request of the Department of Environmental Protection (Department). This proposal that we strongly support amends and strengthens various sections of the General Statutes as they pertain to Boating Under the Influence (BUI) prosecutions and Per Se administrative proceedings.

Sections 1 and 2 of this bill make explicit that persons convicted under Sections 15-140l or 15-140n are subject to the boating rights suspensions identified in Sec. 15-133(h). The Department believes that the current construction of the BUI statutes intends for the suspensions identified in 15-133(h) to be applied to the more serious crimes of BUI attributed to Sec. 15-140l and 15-140n, but that intention is articulated only in Sec. 15-133(h).

In the absence of clarity, where a charge is brought under sections 15-140l or 15-140n, the Department has requested that officers also bring a charge under Sec. 15-133 – but this is a cumbersome solution and requires the awareness and cooperation of law enforcement both at the state and municipal level. Where the charges do not include Sec. 15-133, the implementation of boating rights suspension upon conviction under Sections 15-140l or 15-140n appears challengeable. The current proposal is intended to preempt any such challenge by making the link to boating rights suspension upon conviction under Sections 15-140l or 15-140n explicit, as the Department believes was intended.

Sections 3 and 5 of this bill address technical inconsistencies in the statutes brought to light in recent BUI administrative and criminal proceedings. The technical inconsistencies include, variously, failure to incorporate new statutes, failure to properly cross-reference or incorporate by reference new or displaced sections of law, and omission of the results of hospital urine samples as evidence of intoxication subject to seizure by warrant. This bill corrects those inconsistencies.

In Section 4 of this bill the Department proffers a change to the BUI statutes to align them with a 2009 change in Driving Under the Influence (DUI) statutes (PA 09-187). The 2009 change was

made to help expedite the processing of DUI arrests by reducing the mandatory wait time between blood alcohol tests from thirty minutes to ten minutes. The Department now proposes the same standard for BUI cases to eliminate growing confusion for law enforcement officers, provide for consistency in training, and pursuant to the Department's policy and practice to align BUI law with DUI law where possible.

Also in Section 4, the Department proposes to expand the requirements of Sec. 15-140r, which section requires a prosecutor to state openly in court as to why a charge brought under Sec. 15-133(d) is being reduced, nolle, or dismissed to BUI Sections 15-132a, 15-140l and 15-140n. The expansion of the Sec. 15-140r declaration requirement to these statutes is warranted since these are more serious crimes committed while boating under the influence. This, in the interest of consistency in the application of BUI law across all BUI prosecutions and as an acknowledgment of the seriousness of a charge brought under the newly enfranchised sections.

In summary, the Department strongly supports Raised Bill No. 1112 - AN ACT CONCERNING BOATING UNDER THE INFLUENCE to strengthen the State's response to BUI arrests and to correct errors that currently exist in state statutes.

Thank you for the opportunity to present the Department's views on this proposal. If you should require any additional information, please contact the Department's legislative liaison, Robert LaFrance, at (860) 424-3401 or Robert.Lafrance@ct.gov.

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those in favor, please signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER DONOVAN:

Opposed nay. The amendment is adopted. Remark
further, Representative Hennessey?

REP. HENNESSEY (127th):

Mr. Speaker, I move this item to consent.

SPEAKER DONOVAN:

All right. The question is on moving to the Consent
Calendar. Any objection? Hearing none, the bill is
placed on the Consent Calendar.

Will the Clerk please call LCO 623?

THE CLERK:

On page 38, Calendar 623, Substitute for Senate Bill
Number 1112, AN ACT CONCERNING BOATING UNDER THE
INFLUENCE, favorable report of the Committee on Judiciary.

SPEAKER DONOVAN:

Representative Roy.

REP. ROY (119th):

Thank you, Mr. Speaker.

Mr. Speaker. I move acceptance of the Joint
Committee's favorable report and passage of the bill.

SPEAKER DONOVAN:

The question is on the acceptance of package -- passage. Remark.

REP. ROY (119th):

Thank you, Mr. Speaker. What the bill does is any person guilty of reckless operation of a vessel can have his or her rights suspended to operate.

We -- the Clerk has an amendment, Mr. Speaker, LCO 8273. I ask that it be called and I be allowed to summarize.

SPEAKER DONOVAN:

Clerk, please call LCO 8273, Designated Senate "A".

THE CLERK:

LCO Number 8273, Senate "A" offered by Senator Williams et al.

SPEAKER DONOVAN:

Question on summarization. Hearing none, Representative, you may proceed.

REP. ROY (119th):

Thank you, Mr. Speaker.

Mr. Speaker, what the amendment does is requires that people who take a blood sample after an incident be qualified to do so.

Mr. Speaker, we have another amendment.

A VOICE:

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Move adoption.

SPEAKER DONOVAN:

One at a time.

REP. ROY (119th):

Oh, I move adoption.

SPEAKER DONOVAN:

The question is on adoption. Remark further on the amendment? Remark further? If not, let me try your minds. All those in favor please signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER DONOVAN:

Opposed nay. The amendment is adopted. Try another one, Representative.

REP. ROY (119th):

Thank you, Mr. Speaker. We have another amendment, LCO 7352, I ask the Clerk call and be -- I be allowed to summarize.

SPEAKER DONOVAN:

Clerk, please call LCO 7532.

THE CLERK:

LCO Number 7352, Senate Bill offered by Senator Meyer, Representatives Roy and (inaudible).

SPEAKER DONOVAN:

Any objection to summarization? Representative,
you may proceed.

REP. ROY (119th):

Thank you, Mr. Speaker.

What Amendment B does is allow environmental
protection conservation officers to administer oaths. I
move adoption.

SPEAKER DONOVAN:

The question is on adoption. Remark further? If
not, let me try your minds. All those in favor, please
signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER DONOVAN:

Opposed nay. The amendment's adopted.
Representative Roy, please.

REP. ROY (119th):

Mr. Speaker, the clerk has another amendment, LCO
8037. I be -- ask that it be called and I be allowed to
summarize.

SPEAKER DONOVAN:

Clerk, please call LCO 8037, designated Senate "C".

THE CLERK:

LCO Number 8037, Senate "C" offered by Senator Meyer,

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Roy -- by Representative Roy, (inaudible) and Miner.

SPEAKER DONOVAN:

Any objection to summarization? Hearing none,
Representative, please proceed.

REP. ROY (119th):

Thank you, Mr. Speaker. What amendments add is
provisions about fishing without a license. I move
adoption.

SPEAKER DONOVAN:

The question is on adoption. Remark further?
Remark further? If not, let me try your minds. All those
in favor, please signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER DONOVAN:

Opposed nay. The amendment's adopted.

Representative Roy.

REP. ROY (119th):

Thank you, Mr. Speaker. I move this to the Consent
Calendar.

SPEAKER DONOVAN:

Motion is to move to Consent Calendar. Any
objection? Hearing none, the bill is placed on the
Consent Calendar.

THE CLERK:

What page is it on?

SPEAKER DONOVAN:

Clerk, please call Calendar 592 which is the beginning of the Consent Calendar.

SB 863 SB 1201
SB 852 SB 888
SB 377 SB 1216
SB 1003 SB 371

THE CLERK:

On page 32, Calendar 592, Substitute for Senate Bill Number 858, AN ACT CONCERNING REVISIONS TO THE HIGHER EDUCATION STATUTES.

SB 1112
SB 881 SB 1076
SB 518 SB 1098

A VOICE:

Mr. Speaker, this represents the Consent Calendar, and I would move that we vote on it as such.

SPEAKER DONOVAN:

There's a Consent Calendar. Staff and guests, please come to the well of the House. Members take their seats. The machine will be opened.

THE CLERK:

The House of Representatives is voting by roll call. Members to the Chamber. The House is voting the Consent Calendar by roll call. Members to the Chamber.

SPEAKER DONOVAN:

Have all the members voted? Have all the members voted? Please check the roll call board. Make sure your vote's been properly cast. If all the members have voted,

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the machine will be locked. The clerk will please take a tally. Clerk please announce the tally.

THE CLERK:

On today's Consent Calendar:

Total number voting 139

Necessary for passage 70

Those voting Yea 139

Those voting Nay 0

Those absent and not voting 12

SPEAKER DONOVAN:

The Consent Calendar's passed.

Any announcements or introductions?

Representative Piscopo.

REP. PISCOPO (78th):

Good morning, Mr. Speaker. For a general rotation.

SPEAKER DONOVAN:

Please proceed, sir.

REP. PISCOPO (78th):

Will the general please notes that Representatives Kokoruda and Noujaim missed votes ue to you illness in the family. Representative Rigby missed votes due to business in the district. Will the transcript please note that Representatives Candelora, Wood and Williams

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Mr. President, if there is no other comment or opposition, I'd like to put this on Consent.

THE CHAIR:

Without objection, so ordered.

SENATOR PRAGUE:

Thank you.

THE CHAIR:

The Senate will stand at ease.

(Chamber at ease.)

THE CHAIR:

Mr. Clerk.

THE CLERK:

Calendar page Number 39, Calendar Number 272, File Number 454, substitute for Senate Bill 1112, AN ACT CONCERNING BOATING UNDER THE INFLUENCE; Favorable Report of the Committee on Environment, and Judiciary.

The Clerk is in possession of amendments.

THE CHAIR:

Senator Meyer.

SENATOR MEYER:

Excuse me. Nice to see you, Mr. President.

THE CHAIR:

Thank you, sir.

SENATOR MEYER:

I move acceptance of the Committee's Joint and Favorable Report and move passage of this bill.

THE CHAIR:

On acceptance and passage, will you remark?

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SENATOR MEYER:

Mr. -- Mr. President, there's a strike-all amendment, which is LCO 8273, and I'd ask that it be called, please.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO 8273, which will be designated Senate Amendment Schedule "A." It is offered by Senator Meyer, of the 12th District, et al.

THE CHAIR:

Senator Meyer.

SENATOR MEYER:

I move it, Mr. President, and ask permission to summarize.

THE CHAIR:

On adoption, will you remark?

SENATOR MEYER:

Colleagues, this -- this bill deals with drunken boat driving, and it arises out of a horrible accident, of sorts, in my district, in the Town of Guilford, when on Labor Day evening, 2009, a man was driving a boat in Guilford with four people in the boat. And it turns out, as the evidence later showed, that he had an alcohol level of four times the legal level, and at a high rate of speed, he drove the boat directly into a sea wall. And one of his friends and passengers on the boat, a resident of the Town of Guilford, was thrown out of the boat, head first into the stone wall, and was killed immediately.

And -- and consequently, the General Assembly started focusing more -- much more seriously on drunk driving and boating, as we have on drunken driving of motor cars.

What this bill does is something that we should have done a long time ago. While we have penalties now for drunken driving of boats, believe it or not, we never took away the boat license, the boat registration.

I don't know about you all, but about two years ago, my wife and I went down and we took a -- an all-day course and we got a -- a registration to be able to drive a boat or sail a boat. We have never -- if you're drunk and driving on a boat, you're going to get penalized, but there's nothing in our current law that would take away your registration. This bill, the first thing this bill does is take -- is take away your registration.

The second thing this bill does is -- is deal with the issue of the blood and urine samples, the testing to find out if the driver was, indeed, exceeding the legal alcohol limit. And -- and this -- this bill expands the times in which you can take the tests; and two tests are required.

Right now, until we amend this law, you could only take the blood or urine sample at a hospital. And the authorities came back to us and said, no, we need to be able to take it early. We need to be able to take it at the scene of the accident, if necessary, or at least in the car or ambulance on the way to the

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hospital. So -- so this bill amends and gives us the right to take the blood or urine sample at an earlier time.

The bill also deals with the fact that there can be two, there have to be two tests of -- of alcohol and -- and this bill makes the two tests consistent with the motor vehicle law. And -- and the tests can be taken within ten minutes of each other. That's the change that was made in the motor vehicle law, and we're now doing that in this law. So that is the -- the strike-all amendment.

I have two other, small amendments to offer, afterwards. And, Mr. President, I ask that we -- we go, we move this particular strike-all amendment.

THE CHAIR:

Thank you, Senator.

Senator Kane.

SENATOR KANE:

Thank you, Mr. President.

Through you, just a couple, quick questions to the proponent of the bill.

THE CHAIR:

Senator Meyer.

SENATOR KANE:

Thank you, Mr. President.

Through you to Senator Meyer.

Can you just describe to me what reckless operation of a -- a vessel in the first degree is, and then, if you may, reckless operation of a vessel in the second degree?

Through you.

THE CHAIR:

Senator Meyer.

SENATOR MEYER:

I -- through -- through you, Mr. President.

I have to confess I don't -- I'm not a criminal -- Connecticut criminal defense lawyer. I do not know the difference between first and second degree, but I do know what -- what reckless means. And reckless means operating either a car or a boat in a way that endangers property or a person of somebody else.

THE CHAIR:

Senator Kane.

SENATOR KANE:

Thank you, Mr. President.

Well, let me ask you, I guess, a -- a different question. These penalties that are listed here, are they the same, tougher, less than what we have on the books for operating a motor vehicle in that same manner?

Through you.

SENATOR MEYER:

Through you, Mr. President.

THE CHAIR:

Senator Meyer.

SENATOR MEYER:

What we've endeavored to do in this strike-all amendment is make them consistent between driving a motor car and driving a boat.

THE CHAIR:

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Senator Kane.

SENATOR KANE:

Through you, Mr. President.

I think that was my question. Are they consistent with what's in motor vehicle or is this stronger?

Through you.

THE CHAIR:

Senator Meyer.

SENATOR MEYER:

The DEP -- it's a DEP bill, and they've represented to me that -- that they're consistent, that they're the same.

THE CHAIR:

Senator Kane.

SENATOR KANE:

Okay. Thank you, Mr. President.

I thank Senator Meyer for his answers.

THE CHAIR:

Thank you, Senator.

Will you remark further on the amendment? Will you remark further on the amendment?

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

SENATORS:

Aye.

THE CHAIR:

All those opposed, nay.

The ayes have it. The amendment is adopted.

SENATOR MEYER:

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Thank you.

THE CHAIR:

Will you remark further on the bill as amended?

SENATOR MEYER:

Yes, Mr. President.

The Clerk has in his possession another amendment, LCO 7352, and I ask that it be called and I be given permission to summarize.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO 75 -- seventy --

SENATOR MEYER:

Seventy -- 7352; 7-3-5-2.

THE CHAIR:

7-3-5-2, Mr. --

THE CLERK:

LCO --

THE CHAIR:

-- Clerk.

THE CLERK:

-- 7352, which will be designated Senate
Amendment Schedule "B." It is offered by Senator
Meyer, of the 12th district.

THE CHAIR:

Senator Meyer.

SENATOR MEYER:

I move it and ask permission to summarize.

THE CHAIR:

Will you remark?

Senator Meyer.

SENATOR MEYER:

Colleagues, and Mr. President, DEP -- this is A DEP bill, and they just -- they've reported to the Environment Committee that currently environment law -- law officials, law enforcement -- I'm sorry -- environment law enforcement officers have no power to administer an oath. And we have existing law in Connecticut that gives many officers a power to administer an oath, an oath, for example, in a -- in a legal proceedings, an oath in an affidavit, something like that. All this amendment does is add to those people who are authorized to administer oaths; it adds Law Enforcement Officers of the Department of Environment Protection. That's the sum, substance of this amendment.

And, again, I ask your support.

THE CHAIR:

Thank you, Senator.

Will you remark on the amendment? Will you remark on the amendment?

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

SENATORS:

Aye.

THE CHAIR:

Opposed, nay?

The ayes have it. The amendment is adopted.

Remark further on the bill as amended?

Senator Meyer.

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SENATOR MEYER:

Thank you, Mr. President.

And, finally, I'd ask the Clerk kindly to call
LCO 8037.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO 8037, which will be designated Senate
Amendment Schedule "C." It is offered by Senator
Meyer, of the 12th District, et al.

THE CHAIR:

Senator Meyer.

SENATOR MEYER:

Thank you.

I move -- I move this amendment and ask
permission to -- to summarize.

THE CHAIR:

On adoption, who will remark?

Senator Meyer.

SENATOR MEYER:

I would.

This amendment, like other portions of this bill,
by the way, has been actively supported by my
colleague, Senator Roraback, as well as several
members of the -- of the House of Representatives,
including Representative Roy, Representative Chapin,
and Representative Miner.

This particular amendment, Mr. President, has two
parts to it. The first part says that if you're
arrested for -- for fishing without a license, without

the required license in Connecticut, if you get the license, that fishing license before you're fined for failure to have a license, you won't be fined. So it -- it gives -- it gives -- it gives fishermen a second chance, that if -- if you're -- if it happens, if you're -- if you're arrested without a license and you get your license quickly, before the fine is imposed, you won't have a fine. That's the first part, and it has a -- a great deal of support, as you could imagine, from the sportsmen's coalition and others.

The second part is -- is really good news. It -- it gives the Department of Environmental Protection the power to designate one day in every calendar year when no fishing license will be required; one day.

And there's no fiscal note, by the way, on either of these things. They -- the OFA has said that these are fiscally neutral. So that's the second amendment and, again, I urge its support.

THE CHAIR:

Thank you, Senator.

Senator Roraback.

SENATOR RORABACK:

Thank you, Mr. President.

I rise in strong support of the amendment and to express my gratitude to Senator Meyer for all of his hard work, not just on this particular amendment but on this whole, underlying bill.

It is more and more important that we insist that there be conformity between drunken driving laws and drunken boating laws, and never should one think that

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it's safer or more appropriate to be behind the wheel at sea in an inebriated state than it is to be behind the wheel on land in an inebriated state. And this bill will ensure that the sanctions are the same.

On the amendment, Mr. President, I think all of us can appreciate why it is we want to ensure compliance with our fishing license laws but also how it could come to pass that someone would inadvertently -- no, not inadvertently, but be out with a friend at somebody's house with a fishing pole in their hand and they are brought to the attention of law enforcement. I think it's a much better cure to ask that person to spend their money on procuring a fishing license and continuing to enjoy the sport rather than to spend their money underwriting the criminal justice system in the form of a fine to the Court.

So it's a good amendment, and I thank Senator Meyer for all of his work in bringing it before us.

Thank you, Mr. President.

THE CHAIR:

Thank you, Senator.

Oh, Senator Meyer.

SENATOR MEYER:

Mr. President, I -- I appreciate that, and -- and I think Senator Roraback stated the purpose of this extremely well.

I move it.

THE CHAIR:

Thank you, Senator.

Will you remark further on the amendment? Will

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you remark further on the amendment?

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

SENATORS:

Aye.

THE CHAIR:

Opposed, nay?

The ayes have it. The amendment is adopted.

Who will remark further on the bill as amended?

Will you remark further on the bill --

SENATOR MEYER:

Mr. --

THE CHAIR:

-- as amended?

SENATOR MEYER:

Mr. President.

THE CHAIR:

Senator Meyer.

SENATOR MEYER:

That -- that is the bill, the strike-all
amendment plus the two other amendments. And if there
are no other questions, I'd ask that it go on the
Consent Calendar.

THE CHAIR:

Without objection, so ordered.

Mr. Clerk.

THE CLERK:

Calendar page 44, File Number 380 -- correction
-- it's 376. Calendar page 44, Calendar Number 376,
File Number 607, Senate Bill 1148, AN ACT ESTABLISHING

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If we might stand at ease for a moment,
Mr. President.

THE CHAIR:

The Senate will stand at ease.

(Chamber at ease.)

SENATOR LOONEY:

Mr. President?

THE CHAIR:

The Senate will come back to order.

Senator Looney.

SENATOR LOONEY:

Yes. Thank you, Mr. President.

If we might call the First Consent Calendar, at
this time.

THE CHAIR:

Mr. Clerk, please call the First Consent
Calendar.

THE CLERK:

Immediate roll call -- 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.

Mr. President, the items that were placed on the
First Consent Calendar begin on Calendar page 4,
Calendar Number 222, substitute for Senate Bill 973;
Calendar page 13, Calendar Number 490, substitute for

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Senate Bill 929; and, Calendar page 39, Calendar Number 272, substitute for Senate Bill 1112. In Calendar page 41, Calendar Number 322, substitute for the Senate Bill 970.

Mr. President, that completes the items placed on the First Consent Calendar.

THE CHAIR:

The machine will be open.

THE CLERK:

The Senate is voting by roll call on the Consent Calendar. Will all Senators please return to the Chamber. The Senate is voting by roll on the Consent Calendar. Will all Senators please return to the Chamber.

THE CHAIR:

Have all Senator voted? Have all Senators voted?

Please check the board to make sure your vote is accurately recorded. If all Senators voted, the machine will be closed.

And the Clerk will take the tally.

THE CLERK:

Motion is on adoption of Consent Calendar Number One.

Total number voting	36
Those voting Yea	36
Those voting Nay	0
Those absent and not voting	0

THE CHAIR:

The Consent Calendar passes.

The Senate will stand at ease.