



House of Representatives

File No. 753

General Assembly

January Session, 2003

(Reprint of File No. 332)

Substitute House Bill No. 6171
As Amended by House
Amendment Schedule "A"

Approved by the Legislative Commissioner
May 22, 2003

**AN ACT CONCERNING FLOODPLAIN MANAGEMENT AND HAZARD
MITIGATION.**

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2003*) (a) As used in this section
2 and section 4 of this act, "floodplain" means that area of a municipality
3 located within the real or theoretical limits of the base flood or base
4 flood for a critical activity, as determined by the municipality or the
5 Federal Emergency Management Agency in its flood insurance study
6 or flood insurance rate map for the municipality prepared pursuant to
7 the National Flood Insurance Program, 44 CFR Part 59 et seq.

8 (b) Whenever a municipality, pursuant to the National Flood
9 Insurance Program, 44 CFR Part 59 et seq., is required to revise its
10 zoning regulations or any other ordinances regulating a proposed
11 building, structure, development or use located in a floodplain, the
12 revision shall provide for restrictions for flood storage and conveyance
13 of water for floodplains that are not tidally influenced as follows:

14 (1) Within a designated floodplain, encroachments resulting from

15 fill, new construction or substantial improvements, as defined in 44
16 CFR Part 59.1, involving an increase in footprint to the structure shall
17 be prohibited unless the applicant provides to the zoning commission
18 certification by a state licensed engineer that such encroachment shall
19 not result in any increase in base flood elevation;

20 (2) The water holding capacity of the floodplain shall not be reduced
21 by any form of development unless such reduction (A) is compensated
22 for by deepening or widening the floodplain, (B) is on-site, unless
23 adjacent property owners grant easements or the municipality in
24 which the development is located authorizes off-site reduction, (C) is
25 within the same hydraulic reach and a volume not previously used for
26 flood storage, (D) is hydraulically comparable and incrementally equal
27 to the theoretical volume of flood water at each elevation, up to and
28 including the hundred year flood elevation, which would be displaced
29 by the proposed project, and (E) has an unrestricted hydraulic
30 connection to the same waterway or water body; and

31 (3) Work within adjacent land subject to flooding, including work to
32 provide compensatory storage, shall not restrict flows resulting in
33 increased flood stage or velocity. Any compensatory storage may be
34 provided off-site if authorized by the municipality.

35 (c) Notwithstanding the provisions of subsection (b) of this section,
36 a municipality may adopt more stringent restrictions for flood storage
37 and conveyance of water for floodplains that are not tidally influenced.

38 Sec. 2. Section 16a-27 of the general statutes is repealed and the
39 following is substituted in lieu thereof (*Effective October 1, 2003*):

40 (a) The secretary, after consultation with all appropriate state,
41 regional and local agencies and other appropriate persons shall prior
42 to March 1, 2003, complete a revision of the existing plan and enlarge it
43 to include, but not be limited to, policies relating to transportation,
44 energy and air. Any revision made after May 15, 1991, shall identify
45 the major transportation proposals, including proposals for mass
46 transit, contained in the master transportation plan prepared pursuant

47 to section 13b-15. Any revision made after July 1, 1995, shall take into
48 consideration the conservation and development of greenways that
49 have been designated by municipalities and shall recommend that
50 state agencies coordinate their efforts to support the development of a
51 state-wide greenways system. The Commissioner of Environmental
52 Protection shall identify state-owned land for inclusion in the plan as
53 potential components of a state greenways system. Any revision made
54 after March 1, 2005, shall (1) take into consideration risks associated
55 with natural hazards, including, but not limited to, flooding, high
56 winds and wildfires; (2) identify the potential impacts of natural
57 hazards on infrastructure and property; and (3) make
58 recommendations for the siting of future infrastructure and property
59 development to minimize the use of areas prone to natural hazards,
60 including, but not limited to, flooding, high winds and wildfires.

61 (b) Thereafter on or before March first in each revision year the
62 secretary shall complete a revision of the plan of conservation and
63 development.

64 Sec. 3. Subdivision (4) of subsection (a) of section 7-536 of the
65 general statutes is repealed and the following is substituted in lieu
66 thereof (*Effective October 1, 2003*):

67 (4) "Local capital improvement project" means a municipal capital
68 expenditure project for any of the following purposes: (A) Road
69 construction, renovation, repair or resurfacing, (B) sidewalk and
70 pavement improvements, (C) construction, renovation, enlargement or
71 repair of sewage treatment plants and sanitary or storm, water or
72 sewer lines, including separation of lines, (D) public building
73 construction other than schools, including renovation, repair, code
74 compliance, energy conservation and fire safety projects, (E)
75 construction, renovation, enlargement or repair of dams, bridges and
76 flood control projects, (F) construction, renovation, enlargement or
77 repair of water treatment or filtration plants and water mains, (G)
78 construction, renovation or enlargement of solid waste facilities, (H)
79 improvements to public parks, (I) the preparation and revision of local

80 capital improvement plans projected for a period of not less than five
81 years and so prepared as to show the general description, need and
82 estimated cost of each individual capital improvement, (J)
83 improvements to emergency communications systems, (K) public
84 housing projects, including renovations and improvements and energy
85 conservation and the development of additional housing, (L)
86 renovations to or construction of veterans' memorial monuments, (M)
87 thermal imaging systems, (N) bulky waste and landfill projects, (O) the
88 preparation and revision of municipal plans of conservation and
89 development adopted pursuant to section 8-23, provided such plans
90 are endorsed by the legislative body of the municipality not more than
91 one hundred eighty days after adoption by the commission, [and] (P)
92 acquisition of automatic external defibrillators, and (Q) floodplain
93 management and hazard mitigation activities. "Local capital
94 improvement project" means only capital expenditures and includes
95 repairs incident to reconstruction and renovation but does not include
96 ordinary repairs and maintenance of an ongoing nature and
97 "floodplain management" and "hazard mitigation" shall have the same
98 meaning as in section 8 of this act.

99 Sec. 4. (NEW) (*Effective October 1, 2003*) The Commissioner of
100 Environmental Protection shall develop guidelines to be used by
101 municipalities in revising ordinances restricting flood storage and
102 conveyance of water for floodplains, as defined in section 1 of this act,
103 that are not tidally influenced. Such guidelines shall include, but not be
104 limited to, a model ordinance that may be used by municipalities to
105 comply with the provisions of section 1 of this act. The commissioner
106 shall make the guidelines available to the public.

107 Sec. 5. Subsection (d) of section 20-327b of the general statutes is
108 repealed and the following is substituted in lieu thereof (*Effective*
109 *October 1, 2003*):

110 (d) (1) The Commissioner of Consumer Protection, shall, by
111 regulations adopted in accordance with the provisions of chapter 54,
112 prescribe the form of the written residential disclosure report required

113 by this section and sections 20-327c to 20-327e, inclusive. The
 114 regulations shall provide that the form include information concerning
 115 municipal assessments, including, but not limited to, sewer or water
 116 charges applicable to the property. Such information shall include: (i)
 117 Whether such assessment is in effect and the amount of the
 118 assessment; (ii) whether there is an assessment on the property that
 119 has not been paid, and if so, the amount of the unpaid assessment; and
 120 (iii) to the extent of the seller's knowledge, whether there is reason to
 121 believe that the municipality may impose an assessment in the future.

122 (2) Such form of the written residential disclosure report shall
 123 contain the following:

124 (A) A certification by the seller in the following form:

125 "To the extent of the seller's knowledge as a property owner, the
 126 seller acknowledges that the information contained above is true and
 127 accurate for those areas of the property listed. In the event a real estate
 128 broker or salesperson is utilized, the seller authorizes the brokers or
 129 salespersons to provide the above information to prospective buyers,
 130 selling agents or buyers' agents.

T1 (Date) (Seller)
T2 (Date) (Seller)"

131 (B) A certification by the buyer in the following form:

132 "The buyer is urged to carefully inspect the property and, if desired,
 133 to have the property inspected by an expert. The buyer understands
 134 that there are areas of the property for which the seller has no
 135 knowledge and that this disclosure statement does not encompass
 136 those areas. The buyer also acknowledges that the buyer has read and
 137 received a signed copy of this statement from the seller or seller's
 138 agent.

T3 (Date) (Seller)
T4 (Date) (Seller)"

139 (C) A statement concerning the responsibility of real estate brokers
140 in the following form:

141 "This report in no way relieves a real estate broker of the broker's
142 obligation under the provisions of section 20-328-5a of the Regulations
143 of Connecticut State Agencies to disclose any material facts. Failure to
144 do so could result in punitive action taken against the broker, such as
145 fines, suspension or revocation of license."

146 (D) A statement that any representations made by the seller on the
147 written residential disclosure report shall not constitute a warranty to
148 the buyer.

149 (E) A statement that the written residential disclosure report is not a
150 substitute for inspections, tests and other methods of determining the
151 physical condition of property.

152 (F) Information concerning environmental matters such as lead,
153 radon, subsurface sewage disposal, flood hazards and such other
154 topics as the Commissioner of Consumer Protection may determine
155 would be of interest to a buyer.

156 (G) A statement that information concerning the residence address
157 of a person convicted of a crime may be available from law
158 enforcement agencies or the Department of Public Safety and that the
159 Department of Public Safety maintains a site on the Internet listing
160 information about the residence address of persons required to register
161 under section 54-251, 54-252, 54-253 or 54-254, who have so registered.

162 Sec. 6. Section 22a-27j of the general statutes is repealed and the
163 following is substituted in lieu thereof (*Effective July 1, 2003*):

164 (a) Any person, firm or corporation, other than a municipality,
165 making an application for any approval required by chapters 124, 126,
166 440 and 444 shall pay a fee of ten dollars, in addition to any other fee
167 which may be required, to the municipal agency or legislative body
168 which is authorized to approve the application. On and after July 1,
169 2003, the fee shall be twenty dollars. Such municipal agency or
170 legislative body shall collect such fees, retaining [one dollar] two
171 dollars of such fee for administrative costs, and shall pay the
172 remainder of such fees quarterly to the Department of Environmental
173 Protection and the receipts shall be deposited into an account of the
174 State Treasurer and credited to the Environmental Quality Fund
175 established pursuant to section 22a-27g. The portion of such fund
176 attributable to the fees established by this section shall be used by the
177 Department of Environmental Protection as follows: (1) Fifty per cent
178 shall be used for the purpose of funding the environmental review
179 teams program of the Bureau of Water Management within said
180 department, the Council on Soil and Water Conservation established
181 pursuant to section 22a-315 and the eight county soil and water
182 conservation districts; and (2) fifty per cent shall be deposited into the
183 hazard mitigation and floodplain management account established
184 pursuant to section 7 of this act and used for grants under section 9 of
185 this act.

186 (b) Not later than three months following the close of each fiscal
187 year starting with fiscal year July 1, 2000, the Department of
188 Environmental Protection shall identify those municipalities that are
189 not in compliance with subsection (a) of this section for the previous
190 fiscal year and shall provide the Office of Policy and Management with
191 a list of such municipalities. The list shall be submitted annually and in
192 such manner as the Office of Policy and Management may require. The
193 Office of Policy and Management, when issuing the first payment from
194 the Mashantucket Pequot and Mohegan Fund established pursuant to
195 section 3-55i, in the fiscal year during which said list is received, shall
196 reduce said payment to a municipality by [five hundred] one thousand
197 dollars for each quarter of the preceding fiscal year that the

198 municipality has not been in compliance with subsection (a) of this
199 section to a maximum of [two] four thousand dollars in each fiscal
200 year. The Office of Policy and Management shall certify to the State
201 Comptroller the amount of any funds withheld under this subsection
202 to be transferred to the Environmental Quality Fund for the uses set
203 forth in subsection (a) of this section, and the State Comptroller shall
204 cause said amount to be transferred to such fund.

205 Sec. 7. (NEW) (*Effective July 1, 2003*) There is established an account
206 to be known as the "hazard mitigation and floodplain management
207 account". The hazard mitigation and floodplain management account
208 shall be an account of the Environmental Quality Fund established
209 under section 22a-27g of the general statutes. Notwithstanding any
210 provision of the general statutes, any moneys required by law to be
211 deposited in the account shall be deposited in the Environmental
212 Quality Fund and credited to the hazard mitigation and floodplain
213 management account. Any balance remaining in the account at the end
214 of any fiscal year shall be carried forward in the account for the fiscal
215 year next succeeding. The account shall be available to the
216 Commissioner of Environmental Protection for the purposes of
217 sections 8 to 12, inclusive, of this act.

218 Sec. 8. (NEW) (*Effective July 1, 2003*) As used in sections 9 to 12,
219 inclusive, of this act:

220 (1) "Eligible applicant" means any municipality, regional planning
221 agency organized under the provisions of chapter 127 of the general
222 statutes, any regional council of elected officials organized under the
223 provisions of chapter 50 of the general statutes, or any regional council
224 of government organized under the provisions of sections 4-124i to 4-
225 124p, inclusive, of the general statutes;

226 (2) "Hazard mitigation" means activities that include, but are not
227 limited to, actions taken to reduce or eliminate long-term risk to
228 human life, infrastructure and property resulting from natural hazards
229 including, but not limited to, flooding, high winds and wildfires; and

230 (3) "Floodplain management" means activities that include, but are
231 not limited to, actions taken to retain the existing capacity of
232 designated floodplain areas to store and convey flood waters.

233 Sec. 9. (NEW) (*Effective July 1, 2003*) (a) The Commissioner of
234 Environmental Protection shall establish and administer a hazard
235 mitigation and floodplain management grant program to reimburse
236 eligible applicants for costs incurred in the reduction or elimination of
237 long-term risks to human life, infrastructure and property from natural
238 hazards, including, but not limited to, flooding, high winds and
239 wildfires, and in the retention of present capacity of designated
240 floodplain areas to store and convey flood waters. Each grant shall be
241 in an amount equal to ninety per cent of the costs to be incurred for
242 such activities. Application for a grant shall be made in writing to the
243 commissioner in such form as the commissioner may prescribe and
244 shall include a description of the purpose, objectives and budget of the
245 activities to be funded by the grant. If the applicant is a municipality,
246 the chief executive officer of the municipality applying for the grant
247 may designate the town planner, director of public works, police chief,
248 fire chief or emergency management director as the agent to make the
249 application.

250 (b) The Commissioner of Environmental Protection shall establish,
251 by regulations adopted in accordance with chapter 54 of the general
252 statutes, relative priorities for the approval of grants under this section.
253 Such priorities may take into account the differing needs of eligible
254 applicants, the need for consistency and equity in the distribution of
255 grant awards and the extent to which particular projects may advance
256 the purposes of this section. The commissioner shall accord highest
257 priority to projects which involve (1) the preparation or revision of
258 hazard mitigation plans by municipalities, or (2) participation in the
259 community rating system of the National Flood Insurance Program.
260 The commissioner shall accord secondary priority to projects which
261 involve (A) the execution of hazard mitigation projects by
262 municipalities in accordance with approved hazard mitigation plans;
263 or (B) administering and providing financial assistance for the hazard

264 mitigation and floodplain management grant program established
265 under this section. The commissioner may establish further criteria for
266 the approval of grants under this section. Not later than February 1,
267 2004, the commissioner shall develop and disseminate a pamphlet that
268 describes the evaluation process for grant applications under this
269 section. In awarding grants under this section, the commissioner shall
270 consult with any person the commissioner deems necessary.

271 (c) The commissioner shall authorize grant awards under this
272 section on or before July thirty-first and December thirty-first of each
273 fiscal year in which payment of a grant is to be made.

274 (d) The commissioner shall allocate not less than sixty per cent of
275 the moneys in the hazard mitigation and floodplain management
276 account in any fiscal year for grants under this section.

277 Sec. 10. (NEW) (*Effective October 1, 2003*) (a) On and after July 1,
278 2004, the Commissioner of Environmental Protection shall make grants
279 to municipalities under section 9 of this act, from funds in the hazard
280 mitigation and floodplain management account, established under
281 section 7 of this act.

282 (b) If the commissioner finds that any grant awarded pursuant to
283 this section is being used for other purposes or to supplant a previous
284 source of funds, the commissioner may require repayment.

285 Sec. 11. (NEW) (*Effective July 1, 2003*) (a) Recipients of grants under
286 section 9 of this act shall submit a report to the Commissioner of
287 Environmental Protection, in such form as the commissioner
288 prescribes, not later than September first of the fiscal year following
289 the fiscal year such grant was received. Such report shall contain a
290 description of activities paid for with financial assistance under the
291 grant. The chief executive officer of a municipality that receives a grant
292 may designate the town planner, director of public works, police chief,
293 fire chief or emergency management director of that municipality as
294 the agent to make such report.

295 (b) On or before January 1, 2006, and annually thereafter, the
 296 Commissioner of Environmental Protection shall prepare a report on
 297 grants made under section 9 of this act for the preceding fiscal year.
 298 Each such report shall include: (1) A description of the grants made,
 299 including the amount, purposes and the municipalities to which they
 300 were made; and (2) any findings or recommendations concerning the
 301 operation and effectiveness of the grant program.

302 Sec. 12. (NEW) (*Effective July 1, 2003*) The Commissioner of
 303 Environmental Protection shall adopt regulations, in accordance with
 304 the provisions of chapter 54 of the general statutes, to implement the
 305 provisions of sections 8 to 11, inclusive, of this act.

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>
Sec. 2	<i>October 1, 2003</i>
Sec. 3	<i>October 1, 2003</i>
Sec. 4	<i>October 1, 2003</i>
Sec. 5	<i>October 1, 2003</i>
Sec. 6	<i>July 1, 2003</i>
Sec. 7	<i>July 1, 2003</i>
Sec. 8	<i>July 1, 2003</i>
Sec. 9	<i>July 1, 2003</i>
Sec. 10	<i>October 1, 2003</i>
Sec. 11	<i>July 1, 2003</i>
Sec. 12	<i>July 1, 2003</i>

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Type	FY 04 \$	FY 05 \$
Department of Environmental Protection	Environmental Quality Spill Account/GF - Cost/Revenue Gain	See Below	See Below
Policy & Mgmt., Off.	GF - Cost	None	None
Consumer Protection, Dept.	GF - Cost	None	None

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 04 \$	FY 05 \$
Various Municipalities	Potential Cost Potential Revenue Gain	See Below	See Below

Explanation

The bill requires the Department of Environmental Protection, (DEP) to develop guidelines to be used by the municipalities in revising ordinances concerning floodplain management, including a model ordinance, work with the municipalities, provide grants for local floodplain and mitigation projects, establish regulations for priorities for the grant funding and to develop a pamphlet. Towns must adopt standards for managing floodplains and reducing hazards when the federal government requires them to do so under the Federal National Flood Insurance Program. It is anticipated that these requirements can be accomplished initially through the increase in the land use application fee established in the bill. The current \$10 fee is increased to \$20. The towns retain an extra dollar for administrative costs for a total of \$2 and will submit the additional \$9 to the DEP to be deposited into a hazard mitigation and floodplain management

account. The doubling of the fee is anticipated to raise approximately \$280,000 a year.

Revenue in this account has been virtually unchanged year to year. The bill requires that 60% of the new revenue be used for grants to towns. This results in a minimum of \$168,000 being available for the grants and potentially \$112,000 for use by the DEP. This will enable the DEP to hire one full-time employee and associated expenses (including fringe benefits), establish regulations and develop a pamphlet. The bill also requires that each grant be equal to 90% of the costs incurred by the municipalities.

In addition, non-compliance with the land use fee provisions results in a reduction of a town's Mashantucket Pequot and Mohegan Fund payments, as is current law. The bill doubles, from \$2,000 to \$4,000 the maximum amount a year that can be withheld. Any potential revenue loss to municipalities due to reduction of their grant payments would vary from town to town. The overall impact is anticipated to be minimal. Transferring the withheld grant payments to the Environmental Quality Fund to be used for the floodplain management program will minimally increase revenue to the program for grants to towns or administrative costs.

To the extent that allowing towns to use Local Capital Improvement Project (LoCIP) funds to specifically manage floodplains and reduce hazards diverts funds from one project to another or increases the potential use of the funds, there will be an increase in debt service costs in future years. The unallocated GO bond fund balance is \$17.5 million as of the March 2003 bond commission meeting.

The bill requires that when the Office of Policy and Management (OPM) revises the State Plan of Conservation and Development, after March 1, 2005, the agency identify how flooding, high winds, wildfire and other natural hazards affect infrastructure and make recommendations to minimize damage from these hazards. It is anticipated that OPM can identify such areas within the agency's

current budgetary resources.

The bill requires the Commissioner of Consumer Protection to adopt regulations and to amend the current Residential Property Disclosure form via regulations. The adoption of regulations and any workload increase can be handled by staff within normal duties and responsibilities.

House "A" is technical and has no fiscal impact.

OLR Bill Analysis

sHB 6171 (File 332, as amended by House "A")*

AN ACT CONCERNING FLOODPLAIN MANAGEMENT AND HAZARD MITIGATION**SUMMARY:**

This bill requires towns and the state to adopt standards for managing floodplains and reducing potential hazards. The towns must do this when the federal government requires them to revise their land use regulations. The revisions must meet the bill's minimum standards for restricting flood storage and conveying water in floodplains not influenced by ocean or river tides. But towns can adopt stricter ones. The state likewise must consider ways to reduce flooding and other natural hazards when it revises the State Plan of Conservation and Development after March 1, 2005.

The bill also requires the Department of Environmental Protection (DEP) to provide grants for local and regional projects and plans to minimize flooding and other natural hazards, beginning October 1, 2004. It may require recipients to repay the grants if they use them for other purposes or to supplant funds from other sources.

The bill uses an existing fee to fund the grants. Beginning July 1, 2003, it (1) increases the state fee on local land use applications, (2) dedicates half the fee revenue to fund the grants, and (3) increases the amount towns keep to cover the cost of collecting the fee and remitting the revenue to the state. The bill increases, from \$2,000 to \$4,000, the total annual amount by which the Office of Policy and Management (OPM) secretary can reduce a town's Mashantucket Pequot and Mohegan Fund payments for failing to remit the fee revenue. The state uses the fund to (1) make payments in lieu of property taxes for property owned by the state, private higher education institutions, and nonprofit general hospitals and (2) pay for local property tax relief.

The bill specifically allows towns to use Local Capital Improvement Program (LoCIP) funds to manage floodplains and reduce hazards. Current law allows them to use the funds for constructing, renovating,

enlarging, or repairing flood control projects.

Lastly, the bill specifically requires residential property condition reports to disclose information about flood hazards. Current law already requires these reports to include information about lead, radon, subsurface sewage disposal, and other environmental information the consumer protection commissioner believes would interest buyers. By law, people offering residential real estate for sale, exchange, or lease must give prospective buyers the report before completing the transaction.

*House Amendment "A" makes technical changes. It specifies that a state licensed engineer, not a registered professional engineer, must certify that a proposed increase in a structure's ground floor area (i.e., the footprint) will not increase the base flood elevation before the town can allow the increase under the required flood plain regulations. (Connecticut licenses engineers, it does not register them.) The bill also specifies that its definitions of "floodplain," "floodplain management," and "hazard mitigation," apply to the way those terms are used throughout the bill.

EFFECTIVE DATE: October 1, 2003, except for most provisions establishing the grant program, which take effect July 1, 2003.

LAND USE REGULATION AND POLICIES

Local Land Use Regulations

The bill requires towns to adopt regulations or ordinances for restricting flood storage and conveying water to floodplains. A floodplain is an area within the real or theoretical limits of the base flood or base flood for a critical activity, as determined by the town or the Federal Emergency Management Agency in its flood insurance study or flood insurance rate map for the town.

Towns must adopt floodplain regulations when they are required to revise zoning or other regulations under the federal National Flood Insurance Program. Federal law requires states and municipalities to adopt regulations for managing floodplains if the federal insurance administrator notifies them that they contain areas susceptible to flooding, mudslides, or other flood-related erosion hazards. The federal government will not fund any development project in these

areas until the jurisdiction revises the regulations, which must meet federal standards (44 CFR 59 *et. seq.*).

The bill requires the revised regulations to restrict encroachments in the designated floodplain. They must prohibit those that increase a structure's ground floor area (i.e., the footprint) unless a state licensed engineer certifies that it will not increase the base flood elevation. This restriction applies to any encroachment resulting from fill, new construction, or substantial improvements exceeding 50% of a structure's market value before the improvement.

The regulations must prohibit projects from reducing a floodplain's capacity to hold water, unless the reduction:

1. is compensated for by deepening or widening the floodplain;
2. is onsite, the town allows offsite reductions to be made off-site, or adjacent property owners grant easements allowing the reduction to be made on their properties;
3. is within the same hydraulic reach and a volume not previously used for storage area;
4. is hydraulically comparable and incrementally equal to the theoretical volume of flood water at each elevation, up to and including the 100-year flood elevation, which would be displaced by the proposed project; and
5. has an unrestricted hydraulic connection to the same waterway or water body.

Lastly, the regulations must keep work on flood-prone land adjacent to a floodplain from restricting the flow of water so that its speed or the flood stage increases. This restriction includes work intended to compensate for a reduction in the floodplain's water holding capacity. The town must approve this type of work anywhere outside of the floodplain.

The bill requires the DEP commissioner to develop and make available to the public guidelines towns can use when revising their regulations and ordinances. He must include a model ordinance towns can adopt to comply with the bill.

State Plan of Conservation and Development

When revising the five-year State Plan of Conservation and Development, the bill requires the OPM secretary to (1) identify how flooding, high winds, wildfire, and other natural hazards affect infrastructure and property and (2) recommend how the state can minimize siting future infrastructure and property in areas prone to natural hazards. He must do this for revisions made after March 1, 2005. By law, state-funded development projects must be consistent with the plan. The current plan expires in 2003 and the new plan will be in effect for 2004-2008.

HAZARD MITIGATION AND FLOODPLAIN MANAGEMENT PROGRAM

Funding Mechanism

The bill funds this program by doubling, from \$ 10 to \$ 20, the state-imposed land use application fee, which currently funds state environmental review teams and the Council on Soil and Water Conservation and its districts. It creates a nonlapsing hazard mitigation and floodplain management account in the Environmental Quality Fund and requires half the revenue from the increased fee to go into the account.

Grants for Reducing or Mitigating Natural Hazards

Towns and regional planning agencies, councils of elected officials, and councils of governments qualify for grants, which must reimburse them for projects that preserve the capacity of designated floodplain to store and convey floodwaters or that reduce or eliminate the long-term risks flooding, high winds, and other natural hazards pose to people, infrastructure, and property. The commissioner must use at least 60% of the funds in the above-mentioned account for this purpose. The grants must cover 90% of the project costs.

Towns and regional organizations can apply for funds on applications the DEP commissioner provides. The applications must describe the activities they want to fund, their objectives, and the cost. A town's chief executive officer can submit the application or assign this task to the town planner, public works director, police or fire chief, or

emergency management director.

The commissioner must adopt regulations to implement the grant program and specifically to establish relative priorities for awarding grants based on the differing needs of towns and regions, the need to be consistent and fair in awarding grants, and the extent to which proposed projects advance the bill's purposes. He may establish other criteria and, in awarding grants, may consult with anyone he deems necessary.

By February 1, 2004, the commissioner must also publish and disseminate a pamphlet describing DEP's process for evaluating applications.

The commissioner must begin awarding grants on or after July 1, 2004. He must do so twice a year, with the first round occurring by July 31 and the second by December 31 during each fiscal year he awards grants.

Application Rating Criteria

In awarding grants, the commissioner must give the highest priority to projects involving the preparation or revision of hazard mitigation plans or participation in the National Flood Insurance Program's community rating system. He must give secondary priority to projects that implement an approved plan and that cover the cost of administering and providing financial assistance for hazard mitigation and floodplain management. He can require grant recipients to repay a grant if they use it for other purposes or to supplant funds from other sources.

By January 1, 2006, and annually thereafter, the commissioner must report on the activities he funded during the previous fiscal year. The report must identify each grant recipient, the grant amount, and what the grants were for. It must also include the commissioner's findings and recommendations on this program's operation and effectiveness. The bill does not specify who receives the report.

Municipal Report

Towns and regional organizations getting grants must report annually to the commissioner on how they use them. They must submit these

reports by September 1 of the fiscal year following the one in which they received the grant. A town's chief executive officer can have the report prepared by any of the same officials he can charge with preparing the grant applications.

BACKGROUND

Legislative History

The House referred the bill to (1) the General Law Committee on April 22, which reported it favorably on April 23; (2) the Appropriations Committee on May 6, which reported it favorably on May 12; and (3) the Finance, Revenue and Bonding Committee on May 14, which reported it favorably on May 15.

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable Change of Reference
Yea 16 Nay 0

Environment Committee

Joint Favorable Substitute
Yea 24 Nay 1

General Law Committee

Joint Favorable Report
Yea 17 Nay 0

Appropriations Committee

Joint Favorable Report
Yea 36 Nay 7

Finance, Revenue and Bonding Committee

Joint Favorable Report
Yea 40 Nay 0

