



General Assembly

January Session, 2005

**Raised Bill No. 6772**

LCO No. 3567

\*03567\_\_\_\_\_ENV\*

Referred to Committee on Environment

Introduced by:  
(ENV)

**AN ACT CONCERNING FLOOD MANAGEMENT AND THE STREAM CHANNEL ENCROACHMENT PROGRAM.**

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

1 Section 1. Section 25-68b of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2005*):

3 As used in sections 25-68b to 25-68h, inclusive, as amended by this  
4 act:

5 (1) "Activity" means any proposed state action in a floodplain or  
6 any proposed state action that impacts natural or man-made storm  
7 drainage facilities; [, including, but not limited to, the following: (a)  
8 Any structure, obstruction or encroachment proposed for  
9 emplacement within the floodplain area; (b) any proposal for site  
10 development which increases peak runoff rates; (c) any grant or loan  
11 which affects land use, land use planning or the disposal of state  
12 properties in floodplains, or (d) any program regulating flood flows  
13 within the floodplain] that are located on property that the  
14 commissioner determines to be controlled by the state;

15 (2) "Base flood" means that flood which has a one per cent chance of  
16 being equaled or exceeded in any year, as defined in regulations of the  
17 National Flood Insurance Program (44 CFR 59 et seq.) or that flood  
18 designated by the commissioner pursuant to section 25-68c. Any flood  
19 so designated by the commissioner shall have at least a one per cent  
20 chance of being equaled or exceeded in any year. Such flood may be  
21 designated as the A or V zones on maps published by the National  
22 Flood Insurance Program. The "base flood for a critical activity" means  
23 the flood that has at least a .2 per cent chance of being equaled or  
24 exceeded in any year. Such flood may be designated as the B zone on  
25 maps published for the National Flood Insurance Program;

26 (3) "Commissioner" means the Commissioner of Environmental  
27 Protection;

28 (4) "Critical activity" means any activity, including, but not limited  
29 to, the treatment, storage and disposal of hazardous waste and the  
30 siting of hospitals, housing for the elderly, schools or residences, in the  
31 .2 per cent floodplain in which the commissioner determines that a  
32 slight chance of flooding is too great;

33 (5) "Floodplain" means that area located within the real or  
34 theoretical limits of the base flood or base flood for a critical activity;

35 (6) "Flood-proofing" means any combination of structural or  
36 nonstructural additions, changes or adjustments which reduce or  
37 eliminate flood damage to real estate or improved real property, to  
38 water and sanitary facilities, and to structures and their contents;

39 (7) "Freeboard" means a safety factor, expressed in feet above a  
40 calculated flood level, that compensates for unknown factors  
41 contributing to flood heights greater than the calculated height,  
42 including, but not limited to, ice jams, debris accumulations, wave  
43 actions, obstructions of bridge openings and floodways, the effects of  
44 urbanization on the hydrology of a watershed, loss of flood storage  
45 due to development and sedimentation of a watercourse bed;

46 (8) "State activity or critical activity" means individual activities or a  
47 sequence of planned activities proposed to be undertaken by a state  
48 department, institution or agency, any state or federal grant or loan  
49 proposed to be used to fund a project that affects the use of real  
50 property, or proposed transfer of real property belonging to the state.

51 Sec. 2. Section 25-68c of the general statutes is repealed and the  
52 following is substituted in lieu thereof (*Effective October 1, 2005*):

53 The commissioner shall have the following powers and duties  
54 under sections 25-68b to 25-68h, inclusive, as amended by this act:

55 (1) To coordinate, monitor and analyze the floodplain management  
56 activities of state and local agencies;

57 (2) To coordinate flood control projects within the state and be the  
58 sole initiator of a flood control project with a federal agency;

59 (3) To act as the primary contact for federal funds for floodplain  
60 management activities sponsored by the state;

61 (4) To regulate actions by state agencies affecting floodplains except  
62 conversion by The University of Connecticut of commercial or office  
63 structures to an educational structure;

64 (5) To regulate proposed state activities or critical activities that  
65 impact natural or man-made storm drainage facilities located on  
66 property that the commissioner determines to be controlled by the  
67 state, including, but not limited to, programs that regulate flood flows  
68 within a floodplain and site development that increases peak runoff  
69 rates;

70 [(5)] (6) To designate a repository for all flood data within the state;

71 [(6)] (7) To assist municipalities and state agencies in the  
72 development of comprehensive floodplain management programs;

73 [(7)] (8) To determine the number and location of state-owned

74 structures and uses by the state in the floodplain and to identify  
75 measures to make such structures and uses less susceptible to flooding  
76 including flood-proofing or relocation;

77 [(8)] (9) To mark or post the floodplains within lands owned, leased  
78 or regulated by state agencies in order to delineate past and probable  
79 flood heights and to enhance public awareness of flood hazards;

80 [(9)] (10) To designate the base flood or base flood for a critical  
81 activity where no such base flood is designated by the National Flood  
82 Insurance Program. The commissioner may add a freeboard factor to  
83 any such designation;

84 [(10)] (11) To require that any flood control project be designed to  
85 provide protection equal to or greater than the base flood.

86 Sec. 3. Section 25-68d of the general statutes is repealed and the  
87 following is substituted in lieu thereof (*Effective October 1, 2005*):

88 (a) No state agency shall undertake [an] a state activity or a critical  
89 activity within or affecting the floodplain without first obtaining  
90 approval from the commissioner of a certification submitted in  
91 accordance with subsection (b) of this section or exemption by the  
92 commissioner from such approval in accordance with subsection (d) of  
93 this section.

94 (b) Any state agency proposing [an] a state activity or critical  
95 activity within or affecting the floodplain shall submit to the  
96 commissioner information certifying that:

97 (1) The proposal will not obstruct flood flows or result in an adverse  
98 increase in flood elevations, significantly affect the storage or flood  
99 control value of the floodplains, cause an adverse increase in flood  
100 velocities, or an adverse flooding impact upon upstream, downstream  
101 or abutting properties, or pose a hazard to human life, health or  
102 property in the event of a base flood or base flood for a critical activity;

103 (2) The proposal complies with the provisions of the National Flood  
104 Insurance Program (44 CFR 59 et seq.), and any floodplain zoning  
105 requirements adopted by a municipality in the area of the proposal  
106 and the requirements for stream channel encroachment lines adopted  
107 pursuant to the provisions of section 22a-342;

108 (3) The agency has acquired, through public or private purchase or  
109 conveyance, easements and property in floodplains when the base  
110 flood or base flood for a critical activity is elevated above the  
111 increment authorized by the National Flood Insurance Program or the  
112 flood storage loss would cause adverse increases in such base flood  
113 flows;

114 (4) The proposal promotes long-term nonintensive floodplain uses  
115 and has utilities located to discourage floodplain development;

116 (5) The agency has considered and will use to the extent feasible  
117 flood-proofing techniques to protect new and existing structures and  
118 utility lines, will construct dikes, dams, channel alterations, seawalls,  
119 breakwaters or other structures only where there are no practical  
120 alternatives and will implement stormwater management practices in  
121 accordance with regulations adopted pursuant to section 25-68h; and

122 (6) The agency has flood forecasting and warning capabilities  
123 consistent with the system maintained by the National Weather  
124 Service and has a flood preparedness plan.

125 (c) The commissioner shall make a decision either approving or  
126 rejecting a certification [within] not later than ninety days [of] after  
127 receipt of such certification, except that in the case of an exemption any  
128 decision shall be made [within] after ninety days [of] after  
129 the hearing. If a certification is rejected, the agency shall be entitled to a  
130 hearing in accordance with the provisions of sections 4-176e, 4-177, 4-  
131 177c and 4-180.

132 (d) Any state agency proposing [an] a state activity or critical

133 activity within or affecting the floodplain may apply to the  
134 commissioner for exemption from the provisions of subsection (b) of  
135 this section. Such application shall include a statement of the reasons  
136 why such agency is unable to comply with said subsection and any  
137 other information the commissioner deems necessary. The  
138 commissioner, [after public notice of the application and an  
139 opportunity for a public hearing in accordance with the provisions of  
140 chapter 54,] at least thirty days before approving, approving with  
141 conditions or denying any such application, shall publish once in the  
142 Environmental Monitor and once in a newspaper having a substantial  
143 circulation in the affected area notice of: (1) The name of the applicant;  
144 (2) the location and nature of the requested exemption; (3) the tentative  
145 decision on the application; and (4) additional information the  
146 commissioner deems necessary to support the decision to approve,  
147 approve with conditions or deny the application. There shall be a  
148 comment period following the public notice during which period  
149 interested persons and municipalities may submit written comments.  
150 After the comment period, the commissioner shall make a final  
151 determination to either approve the application, approve the  
152 application with conditions or deny the application. The commissioner  
153 may hold a public hearing prior to approving, approving with  
154 conditions or denying any application if in the discretion of the  
155 commissioner the public interest will be best served thereby, and the  
156 commissioner shall hold a public hearing upon receipt of a petition  
157 signed by at least twenty-five persons. Notice of such hearing shall be  
158 published at least thirty days before the hearing in a newspaper  
159 having a substantial circulation in the area affected. The commissioner  
160 may approve or approve with conditions such exemption if [he] the  
161 commissioner determines that [(1)] (A) the agency has shown that the  
162 activity or critical activity is in the public interest, will not injure  
163 persons or damage property in the area of such activity or critical  
164 activity, complies with the provisions of the National Flood Insurance  
165 Program, and, in the case of a loan or grant, the recipient of the loan or  
166 grant has been informed that increased flood insurance premiums may

167 result from the activity or critical activity, or [(2)] (B) in the case of a  
168 flood control project, such project meets the criteria of [subdivision (1)]  
169 subparagraph (A) of this subdivision and is more cost-effective to the  
170 state and municipalities than a project constructed to or above the base  
171 flood or base flood for a critical activity. Following approval for  
172 exemption for a flood control project, the commissioner shall provide  
173 notice of the hazards of a flood greater than the capacity of the project  
174 design to each member of the legislature whose district will be affected  
175 by the project and to the following agencies and officials in the area to  
176 be protected by the project: The planning and zoning commission, the  
177 inland wetlands agency, the director of civil defense, the conservation  
178 commission, the fire department, the police department, the chief  
179 elected official and each member of the legislative body, and the  
180 regional planning agency. Notice shall be given to the general public  
181 by publication in a newspaper of general circulation in each  
182 municipality in the area in which the project is to be located.

183 (e) The failure of any agency to comply with the provisions of this  
184 section or any regulations adopted pursuant to section 25-68c, as  
185 amended by this act, shall be grounds for revocation of the approval of  
186 the certification.

187 (f) The provisions of this section shall not apply to any proposal by  
188 the department of transportation for a project within a drainage basin  
189 of less than one square mile.

190 Sec. 4. Section 22a-349 of the general statutes is repealed and the  
191 following is substituted in lieu thereof (*Effective October 1, 2005*):

192 (a) The provisions of sections 22a-342 to 22a-348, inclusive, shall not  
193 be deemed to restrict agricultural or farming uses of lands located  
194 within the stream channel encroachment lines including the building  
195 of fences, provided this section shall not apply to farm buildings and  
196 farm structures.

197 (b) The following operations and uses shall be permitted within

198 stream channel encroachment lines, as of right: (1) Lawns, gardens or  
199 vegetative plantings, (2) split rail fences, (3) open decks attached to  
200 residential structures, properly anchored in accordance with the  
201 Uniform Construction Code and applicable local building codes, (4)  
202 construction of minor structures to an existing facility for the purpose  
203 of providing handicap accessibility pursuant to the Uniform  
204 Construction Code and applicable local building codes, (5) temporary  
205 greenhouses or hoopouses constructed without permanent  
206 foundations and anchored pursuant to the Uniform Construction Code  
207 and applicable local building codes, (6) placement of fish habitat  
208 enhancement devices performed by or approved by the Commissioner  
209 of Environmental Protection, (7) demolition of an existing structure, (8)  
210 backfilling of foundations, (9) flood-proofing of existing structures,  
211 including, but not limited to, elevating structures in accordance with  
212 Federal Emergency Management Agency standards, (10) repair or  
213 installation of septic systems, (11) construction of irrigation systems,  
214 (12) installation of water monitoring structures performed by or  
215 approved by the Commissioner of Environmental Protection, (13)  
216 installation of dry hydrants, (14) driveway and roadway repair and  
217 maintenance that does not raise the existing road grade more than  
218 three inches, or (15) patios or walkways constructed at grade.

219 Sec. 5. Subsection (d) of section 22a-349a of the general statutes is  
220 repealed and the following is substituted in lieu thereof (*Effective*  
221 *October 1, 2005*):

222 (d) Any general permit issued under [this] subsection (a) of this  
223 section [shall] may require that any person, firm or corporation  
224 intending to conduct an activity covered by such general permit [shall,  
225 at least sixty days before initiating such activity,] give written notice of  
226 such intention to the inland wetlands agency, zoning commission,  
227 planning commission or combined planning and zoning commission  
228 and conservation commission of any municipality which will or may  
229 be affected by such activity. [, and to the department which shall make  
230 such notices available to the public.] The general permit shall specify

231 the information [which must] required to be contained in the notice.  
232 [An inland wetlands agency, planning and zoning commission,  
233 conservation commission or any person may submit written comments  
234 to the commissioner concerning such activity not later than twenty-five  
235 days prior to the date that the activity is proposed to begin.]

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2005</i>	25-68b
Sec. 2	<i>October 1, 2005</i>	25-68c
Sec. 3	<i>October 1, 2005</i>	25-68d
Sec. 4	<i>October 1, 2005</i>	22a-349
Sec. 5	<i>October 1, 2005</i>	22a-349a(d)

**Statement of Purpose:**

To amend the flood management statutes to clarify the types of state action subject to the provisions of such statutes, to specify procedural hearing requirements pursuant to such statutes, to amend the stream channel encroachment line statutes to streamline the permitting requirements for activities with stream channel encroachment areas and to specify exemptions for low impact activities.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*