



**Testimony of Connecticut Fund for the Environment
Before the Environment Committee**
*In Support of H.B. No. 5820, AN ACT CONSERVING NATURAL VEGETATION
NEAR WETLANDS AND WATERCOURSES*

Submitted by Curt Johnson, Senior Staff Attorney
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*Connecticut Fund for the Environment ("CFE"), with a total membership of
approximately 6,000 Connecticut members, uses law and science to defend Connecticut's
air, land and water.*

CFE strongly supports the concept bill H.B. 5820, An Act Conserving Natural Vegetation Near Wetlands and Watercourses. CFE's testimony today specifically supports the concept bill as strengthened by the attached proposed substitute bill language which makes certain amendments to the Connecticut General Statutes § 22a-36 *et seq.* known as the Inland Wetlands and Watercourses Act. The substitute language was drafted with suggestions from the DEP and a collaborative effort involving many groups, most notably: the Rivers Alliance, Trout Unlimited, the Nature Conservancy, the Sierra Club, Tidewater Institute, the association of Soil and Conservation Districts with the advice of several scientists with expertise in river and wetland functioning.

H.B. 5820 is an important bill in furthering the protection of Connecticut's water quality and mitigating the harms of flooding and erosion. This bill is an environmental conservation bill as well as a human welfare bill. First, by incorporating the attached substitute language, H.B. 5820 increases protection of our drinking water by mitigating pollution harms associated with clearing vegetation near water supplies. Second, this language increases protection for vegetation within floodways around our wetlands and watercourses, thereby reducing the impacts of flooding and erosion. The cost of repairing damages from flooding and erosion was estimated at approximately \$6 billion nationally in 2005. Global climate change and associated increase in precipitation are predicted to increase the risks and costs of flooding and erosion. Protecting vegetation around wetlands and watercourses is a cost-effective method of mitigating harms of flooding and erosion. The bill, by protecting property from damage, is fiscally prudent.

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Third, the bill protects general water quality of our rivers and streams and thereby protects our Long Island Sound, into which all our rivers and streams flow. Protection of water quality is vital to a stable, diverse and functioning ecosystem. Fourth, the bill provides ancillary benefits of protecting habitat for Connecticut's diverse species.

The bill's protection of the state's drinking water is, obviously, a necessity in its own right. But, by protecting water quality through pollution prevention, the bill reduces the costs associated with drinking water treatment. A study conducted by the Trust for Public Land and the American Water Works Association found for every 10 percent increase in forest cover in the source area, treatment and chemical costs decreased approximately 20 percent. The best technique for protecting water quality is vegetation surrounding rivers and wetlands. Again, the bill is a fiscally prudent bill.

Research scientists have repeatedly shown that protection of vegetation around wetlands and watercourses is necessary for protecting those resources. That is, protecting wetlands and watercourses is simply not possible unless the riparian area surrounding these resources is also protected. Several of our state's scientists from both the academia and professional worlds are supporting this bill because it will protect the water quality and biological functioning of our wetlands and watercourses. Natural vegetation surrounding our wetlands and watercourses provides important filtering of pollutants reduces erosion and provides a buffer against flooding by reducing flow rates and stabilizing channelization.

The attached substitute language forms an elegantly simple bill. The bill does not create any new regulated areas. The bill does create consistency across the state in how the inland wetland agencies review regulated activities within a minimum review area adjacent to wetlands and watercourses or the 100 year FEMA floodway.

Currently, wetland agencies have the authority to review certain activities upland of the any watercourse or wetland that impact the wetland or watercourse itself. This bill does not alter that authority. Rather, the bill requires inland and wetland agencies to review a minimum area around and protect to the maximum extent possible natural vegetation within that minimum area. Where appropriate, the bill allows for review beyond the minimum area.

The minimum review area in the bill is important for both protection of water quality and mitigation of flood damages. The bill protects the greater of 100 feet or the FEMA Regulated 100 year floodway. Protection out to the 100 year floodway makes this bill a human safety bill as protection of vegetation in this area is needed to reduce the velocity of flood water and associated risks of flooding and erosion. (See related testimony of Professor Peter Patton and Jim MacBroom, Professional Engineer).

Other important aspects of the bill include maintaining existing exemptions of agriculture and forestry activities. In Connecticut, we have a policy of encouraging farming and forestry. This bill is in line with that tradition. As proponents of this bill we have worked closely with representatives of the farming and forestry industries. This working relationship is important in devising this bill and portends a valuable coalition going forward. This bill also has two other key exemptions. First, remediation and restoration activities conducted by the Department of Environmental Protection are exempt. Second, activities solely for natural resource management that further the natural vegetation's functions in maintaining or restoring the biological and ecological integrity of the wetland or watercourse are also exempt. This exemption allows for removal of invasive species where appropriate as well as bank restoration projects that many cities and towns have to perform because of past decisions to remove vegetation surrounding watercourses and wetlands. This exemption, however, is limited to activities that are only for the purpose of furthering the goals of this bill. Activities associated with larger developmental projects do not fall within this exemption.

H.B. 5820, An Act Conserving Natural Vegetation Near Wetlands and Watercourses, is a smart prudent and important bill for the protection of Connecticut's citizens and natural resources. CFE strongly supports this bill and thanks the Committee for its attention to this critical matter.

AN ACT CONCERNING PRESERVATION OF NATURAL VEGETATION VITAL TO STATE WATER QUALITY

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

1 Section 1. Section 22a-36 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2009*):

3 (a) The inland wetlands and watercourses of the state of
4 Connecticut are an indispensable and irreplaceable but fragile natural
5 resource with which the citizens of the state have been endowed. The
6 wetlands and watercourses are an interrelated web of nature essential
7 to an adequate supply of surface and underground water; to
8 hydrological stability and control of flooding and erosion; to the
9 recharging and purification of groundwater; and to the existence of
10 many forms of animal, aquatic and plant life. Many inland wetlands
11 and watercourses have been destroyed or are in danger of destruction
12 because of unregulated use by reason of the deposition, filling or
13 removal of material, the diversion or obstruction of water flow, the
14 erection of structures and other uses, all of which have despoiled,
15 polluted and eliminated wetlands and watercourses. Such unregulated
16 activity has had, and will continue to have, a significant, adverse
17 impact on the environment and ecology of the state of Connecticut and
18 has and will continue to imperil the quality of the environment thus
19 adversely affecting the ecological, scenic, historic and recreational
20 values and benefits of the state for its citizens now and forever more.
21 The preservation and protection of the wetlands and watercourses
22 from random, unnecessary, undesirable and unregulated uses,
23 disturbance or destruction is in the public interest and is essential to
24 the health, welfare and safety of the citizens of the state. It is, therefore,
25 the purpose of sections 22a-36 to 22a-45, inclusive, as amended by this
26 act, to protect the citizens of the state by making provisions for the
27 protection, preservation, maintenance and use of the inland wetlands
28 and watercourses by minimizing their disturbance and pollution;
29 maintaining and improving water quality in accordance with the
30 highest standards set by federal, state or local authority; preventing
31 damage from erosion, turbidity or siltation; preventing loss of fish and
32 other beneficial aquatic organisms, wildlife and vegetation and the
33 destruction of the natural habitats thereof; deterring and inhibiting the
34 danger of flood and pollution; protecting the quality of wetlands and
35 watercourses for their conservation, economic, aesthetic, recreational
36 and other public and private uses and values; and protecting the state's
37 potable fresh water supplies from the dangers of drought, overdraft,
38 pollution, misuse and mismanagement by providing an orderly
39 process to balance the need for the economic growth of the state and
40 the use of its land with the need to protect its environment and ecology

41 in order to forever guarantee to the people of the state, the safety of
42 such natural resources for their benefit and enjoyment and for the
43 benefit and enjoyment of generations yet unborn.

44 **(b) Vegetated areas around wetland and watercourses provide important public**
45 **safety, public health, water purity and protections for rivers and streams for the**
46 **citizens of the state and the environment. A large body of scientific evidence has**
47 **shown that vegetated areas, cumulatively, maintain the biological and ecological**
48 **integrity of watercourse and wetland ecosystems, filter stormwater runoff,**
49 **protect water quality, prevent erosion and provide sedimentation control, reduce**
50 **the impact of flooding, and minimize the loss of property. Reduction in**
51 **vegetation in and around wetlands and watercourses cumulatively results in**
52 **degradation of water quality. Vegetated areas enhance quality of life and**
53 **provide important socioeconomic benefits, including, but not limited to, scenic**
54 **vistas, recreational opportunities, increased tourism and attractive settings for**
55 **businesses.**

55 Sec. 2. Short title: "Inland Wetlands and Watercourses Act."

56 Sec. 3. Section 22a-38 of the general statutes is repealed and the
57 following is substituted in lieu thereof (*Effective October 1, 2009*):
58 As used in sections 22a-36 to 22a-45a, inclusive, as amended by this
59 act:

60 (1) "Commissioner" means the Commissioner of Environmental
61 Protection;

62 (2) "Person" means any person, firm, partnership, association,
63 corporation, limited liability company, company, organization or legal
64 entity of any kind, including municipal corporations, governmental
65 agencies or subdivisions thereof;

66 (3) "Municipality" means any town, consolidated town and city,
67 consolidated town and borough, city and borough;

68 (4) "Inland wetlands agency" means a municipal board or
69 commission established pursuant to and acting under section 22a-42,
70 as amended by this act;

71 (5) "Soil scientist" means an individual duly qualified in accordance
72 with standards set by the federal Office of Personnel Management;

73 (6) "Material" means any substance, solid or liquid, organic or
74 inorganic, including, but not limited to soil, sediment, aggregate, land,
75 gravel, clay, bog, mud, debris, sand, refuse or waste;

76 (7) "Waste" means sewage or any substance, liquid, gaseous, solid or
77 radioactive, which may pollute or tend to pollute any of the waters of
78 the state;

79 (8) "Pollution" means harmful thermal effect or the contamination or
80 rendering unclean or impure of any waters of the state by reason of
81 any waste or other materials discharged or deposited therein by any
82 public or private sewer or otherwise so as directly or indirectly to
83 come in contact with any waters;

84 (9) "Rendering unclean or impure" means any alteration of the
85 physical, chemical or biological properties of any of the waters of the
86 state, including, but not limited to change in odor, color, turbidity or
87 taste;

88 (10) "Discharge" means the emission of any water, substance or
88 material into waters of the state whether or not such substance causes
89 pollution;

90 (11) "Remove" includes, but shall not be limited to drain, excavate,
91 mine, dig, dredge, suck, bulldoze, dragline or blast;

92 (12) "Deposit" includes, but shall not be limited to, fill, grade, dump,
93 place, discharge or emit;

94 (13) "Regulated activity" means any operation within or use of a
95 wetland, watercourse involving removal or deposition of material,
96 or any obstruction, construction,
97 alteration or pollution, of such wetland or watercourse, but
98 shall not include the specified activities in section 22a-40, as amended
99 by this act;

100 (14) "License" means the whole or any part of any permit, certificate
101 of approval or similar form of permission which may be required of
102 any person by the provisions of sections 22a-36 to 22a-45a, inclusive, as
103 amended by this act;

104 (15) "Wetlands" means land, including submerged land, not
105 regulated pursuant to sections 22a-28 to 22a-35, inclusive, which
106 consists of any of the soil types designated as poorly drained, very
107 poorly drained, alluvial, and floodplain by the National Cooperative
108 Soils Survey, as may be amended from time to time, of the Natural
109 Resources Conservation Service of the United States Department of
110 Agriculture;

111 (16) "Watercourses" means rivers, streams, brooks, waterways,
112 lakes, ponds, marshes, swamps, bogs and all other bodies of water,
113 natural or artificial, vernal or intermittent, public or private, which are
114 contained within, flow through or border upon this state or any
115 portion thereof, not regulated pursuant to sections 22a-28 to 22a-35,
116 inclusive. Intermittent watercourses shall be delineated by a defined
117 permanent channel and bank and the occurrence of two or more of the
118 following characteristics: (A) Evidence of scour or deposits of recent
119 alluvium or detritus, (B) the presence of standing or flowing water for
120 a duration longer than a particular storm incident, and (C) the
121 presence of hydrophytic vegetation;

122 (17) "Feasible" means able to be constructed or implemented
123 consistent with sound engineering principles;

124 (18) "Prudent" means economically and otherwise reasonable in
125 light of the social benefits to be derived from the proposed regulated
126 activity provided cost may be considered in deciding what is prudent
127 and further provided a mere showing of expense will not necessarily

128 mean an alternative is imprudent;
129 (19) **“Natural Vegetation” means naturally occurring shrubs, trees, or other**
130 **plants but does not include lawns or manicured grass areas.**

131 Sec. 4. Section 22a-39 of the general statutes is repealed and the
132 following is substituted in lieu thereof (*Effective October 1, 2009*):

133 The commissioner shall:

134 (a) Exercise general supervision of the administration and
135 enforcement of sections 22a-36 to 22a-45, inclusive, as amended by this
136 act;

137 (b) Develop comprehensive programs in furtherance of the
138 purposes of said sections;

139 (c) Advise, consult and cooperate with other agencies of the state,
140 the federal government, other states and with persons and
141 municipalities in furtherance of the purposes of said sections;

142 (d) Encourage, participate in or conduct studies, investigations,
143 research and demonstrations, and collect and disseminate information,
144 relating to the purposes of said sections;

145 (e) Retain and employ consultants and assistants on a contract or
146 other basis for rendering legal, financial, technical or other assistance
147 and advice in furtherance of any of its purposes, specifically including,
148 but not limited to, soil scientists on a cost-sharing basis with the
149 United States Soil Conservation Service for the purpose of (1)
150 completing the state soils survey and (2) making on-site
151 interpretations, evaluations and findings as to soil types;

152 (f) Adopt such regulations, in accordance with the provisions of
153 chapter 54, as are necessary to protect the wetlands, watercourses or any of
154 them individually or collectively;

155 (g) Inventory or index the wetlands and watercourses in such form,
156 including pictorial representations, as the commissioner deems best
157 suited to effectuate the purposes of sections 22a-36 to 22a-45, inclusive,
158 as amended by this act;

159 (h) Grant, deny, limit or modify in accordance with the provisions
160 of section 22a-42a, as amended by this act, an application for a license
161 or permit for any proposed regulated activity conducted by any
162 department, agency or instrumentality of the state, except any local or
163 regional board of education, (1) after an advisory decision on such
164 license or permit has been rendered to the commissioner by the
165 wetland agency of the municipality within which such wetland is
166 located or (2) thirty-five days after receipt by the commissioner of such
167 application, whichever occurs first;

168 (i) Grant, deny, limit or modify in accordance with the provisions of
169 section 22a-42, as amended by this act, and section 22a-42a, as
170 amended by this act, an application for a license or permit for any
171 proposed regulated activity within a municipality which does not
172 regulate its wetlands and watercourses;

173 (j) Exercise all incidental powers including but not limited to the
174 issuance of orders necessary to enforce rules and regulations and to
175 carry out the purposes of sections 22a-36 to 22a-45, inclusive, as
176 amended by this act;

177 (k) Conduct a public hearing no sooner than thirty days and not
178 later than sixty days following the receipt by said commissioner of any
179 inland wetlands application, provided whenever the commissioner
180 determines that the regulated activity for which a permit is sought is
181 not likely to have a significant impact on the wetland or watercourse,
182 he may waive the requirement for public hearing after (1) publishing
183 notice, in a newspaper having general circulation in each town
184 wherever the proposed work or any part thereof is located, of his
185 intent to waive said requirement, and (2) mailing notice of such intent
186 to the chief administrative officer in the town or towns where the
187 proposed work, or any part thereof, is located, and the chairman of the
188 conservation commission and inland wetlands agency of each such
189 town or towns, except that the commissioner shall hold a hearing on
190 such application upon receipt, within thirty days after such notice has
191 been published or mailed, of a petition signed by at least twenty-five
192 persons requesting such a hearing. The commissioner shall (1) publish
193 notice of such hearing at least once not more than thirty days and not
194 fewer than ten days before the date set for the hearing in a newspaper
195 having a general circulation in each town where the proposed work, or
196 any part thereof, is located, and (2) mail notice of such hearing to the
197 chief administrative officer in the town or towns where the proposed
198 work, or any part thereof, is located, and the chairman of the
199 conservation commission and inland wetlands agency of each such
200 town or towns. All applications and maps and documents relating
201 thereto shall be open for public inspection at the office of the
202 commissioner. The commissioner shall state upon his records his
203 findings and reasons for the action taken;

204 (l) Develop a comprehensive training program for inland wetlands
205 agency members;

206 (m) Adopt regulations in accordance with the provisions of chapter
207 54 establishing reporting requirements for inland wetlands agencies,
208 which shall include provisions for reports to the commissioner on
209 permits, orders and other actions of such agencies and development of
210 a form for such reports; and

211 (n) The commissioner shall issue a certificate to any member of a
212 municipal inland wetlands agency or its staff who completes the
213 training program offered annually by the commissioner for such
214 officials.

215 Sec. 5. Section 22a-40 of the general statutes is repealed and the
216 following is substituted in lieu thereof (*Effective October 1, 2009*):

217 (a) The following operations and uses shall be permitted in

218 wetlands and watercourses and **areas around wetlands** as of right:
219 (1) Grazing, farming, nurseries, gardening and harvesting of crops
220 and farm ponds of three acres or less essential to the farming
221 operation.
222 The provisions of this subdivision shall not be construed to include road
223 construction or the erection of buildings not directly related to the farming
224 operation, relocation of watercourses with continual flow, filling or
225 reclamation of wetlands or watercourses with continual
226 flow, clear cutting of timber except for the expansion of agricultural crop
227 land, the mining of top soil, peat, sand, gravel or similar material from
227 wetlands or watercourses for the purposes of sale;
228 (2) A residential home (i) for which a building permit has been issued, or (ii) on a
229 subdivision lot, provided the permit has been issued or the subdivision has been
230 approved by a municipal planning, zoning or planning and zoning
231 commission as of the effective date of promulgation of the municipal
232 regulations pursuant to subsection (b) of section 22a-42a, as amended
233 by this act, or as of July 1, 1974, whichever is earlier, and further
234 provided no residential home shall be permitted as of right pursuant
235 to this subdivision unless the permit was obtained on or before July 1,
236 1987;
237 (3) Boat anchorage or mooring;
238 (4) Uses incidental to the enjoyment and maintenance of residential
239 property, such property defined as equal to or smaller than the largest
240 minimum residential lot site permitted anywhere in the municipality,
241 provided in any town, where there are no zoning regulations
242 establishing minimum residential lot sites, the largest minimum lot site
243 shall be two acres. Such incidental uses shall include maintenance of
244 existing structures and landscaping but shall not include removal or
245 deposition of significant amounts of material from or onto a wetland
246 watercourse, or diversion or alteration of a watercourse;
247 (5) Construction and operation, by water companies as defined in
248 section 16-1 of the 2009 supplement to the general statutes or by
249 municipal water supply systems as provided for in chapter 102, of
250 dams, reservoirs and other facilities necessary to the impounding,
251 storage and withdrawal of water in connection with public water
252 supplies except as provided in sections 22a-401 and 22a-403; and
253 (6) Maintenance relating to any drainage pipe which existed before
254 the effective date of any municipal regulations adopted pursuant to
255 section 22a-42a, as amended by this act, or July 1, 1974, whichever is
254 earlier, provided such pipe is on property which is zoned as residential
256 but which does not contain hydrophytic vegetation. For purposes of
257 this subdivision, "maintenance" means the removal of accumulated
258 leaves, soil, and other debris whether by hand or machine, while the
259 pipe remains in place.
260 (7) **Activities conducted by, or under the authority of, the**
261 **Department of Environmental Protection for the purposes of wetland**

262 restoration and protection;

263 (8) Activities solely for natural resource management that further the natural
264 vegetation's functions in maintaining or restoring the biological and ecological
265 integrity of watercourse and wetland ecosystems, filtering stormwater runoff,
266 protecting water quality, preventing erosion and providing sedimentation
267 control, reducing the impact of flooding, and minimizing the loss of property.

268 (b) The following operations and uses shall be permitted, as

269 nonregulated uses in wetlands and watercourses,

270 provided they do not disturb the natural and indigenous character of the wetland or

271 watercourse by removal or deposition of material, alteration or

272 obstruction of water flow or pollution of the wetland or watercourse:

273 (1) Conservation of soil, vegetation, water, fish, shellfish and

274 wildlife; and

275 (2) Outdoor recreation, including play and sporting areas, golf

276 courses, field trials, nature study, hiking, horseback riding, swimming,

277 skin diving, camping, boating, water skiing, trapping, hunting, fishing

278 and shellfishing where otherwise legally permitted and regulated.

279 (c) Any dredging or any erection, placement, retention or

280 maintenance of any structure, fill, obstruction or encroachment, or any

281 work incidental to such activities, conducted by a state agency, which

282 activity is regulated under sections 22a-28 to 22a-35, inclusive, or

283 sections 22a-359b to 22a-363f, inclusive, shall not require any permit or

284 approval under sections 22a-36 to 22a-45, inclusive, as amended by this

285 act.

286 Sec. 6. Section 22a-41 of the general statutes is repealed and the

287 following is substituted in lieu thereof (*Effective October 1, 2009*):

288 (a) In carrying out the purposes and policies of sections 22a-36 to

289 22a-45a, inclusive, as amended by this act, including matters relating to

290 regulating, licensing and enforcing of the provisions related to

291 wetlands and watercourses thereof, the commissioner shall take into

292 consideration all relevant facts and circumstances, including but not

293 limited to:

294 (1) The environmental impact of the proposed regulated activity on

295 wetlands or watercourses;

296 (2) The applicant's purpose for, and any feasible and prudent

297 alternatives to, the proposed regulated activity which alternatives

298 would cause less or no environmental impact to wetlands or

299 watercourses;

300 (3) The relationship between the short-term and long-term impacts

301 of the proposed regulated activity on wetlands or watercourses and

302 the maintenance and enhancement of long-term integrity of such

303 wetlands or watercourses;

304 (4) Irreversible and irretrievable loss of wetland or watercourse

305 resources which would be caused by the proposed regulated activity,

306 including the extent to which such activity would foreclose a future
307 ability to protect, enhance or restore such resources, and any
308 mitigation measures which may be considered as a condition of
309 issuing a permit for such activity including, but not limited to,
310 measures to (A) prevent or minimize pollution or other environmental
311 damage, (B) maintain or enhance existing environmental quality, or
312 (C) in the following order of priority: Restore, enhance and create
313 productive wetland or watercourse resources;
314 (5) The character and degree of injury to, or interference with,
315 safety, health or the reasonable use of property which is caused or
316 threatened by the proposed regulated activity; and
317 (6) Impacts of the proposed regulated activity on wetlands or
318 watercourses outside the area for which the activity is proposed and
319 future activities associated with, or reasonably related to, the proposed
320 regulated activity which are made inevitable by the proposed
321 regulated activity and which may have an impact on wetlands or
322 watercourses.

323 (b) (1) In the case of an application which received a public hearing
324 pursuant to (A) subsection (k) of section 22a-39, as amended by this
325 act, or (B) a finding by the inland wetlands agency that the proposed
326 activity may have a significant impact on wetlands or watercourses, a
327 permit shall not be issued unless the commissioner finds on the basis
328 of the record that a feasible and prudent alternative does not exist. In
329 making his finding, the commissioner shall consider the facts and
330 circumstances set forth in subsection (a) of this section. The finding
331 and the reasons therefore shall be stated on the record in writing.

332 (2) In the case of an application which is denied on the basis of a
333 finding that there may be feasible and prudent alternatives to the
334 proposed regulated activity which have less adverse impact on
335 wetlands or watercourses, the commissioner or the inland wetlands
336 agency, as the case may be, shall propose on the record in writing the
337 types of alternatives which the applicant may investigate provided this
338 subdivision shall not be construed to shift the burden from the
339 applicant to prove that he is entitled to the permit or to present
340 alternatives to the proposed regulated activity.

341 (c) For purposes of this section, (1) "wetlands or watercourses"
342 includes aquatic plant or animal life and habitats in wetlands or
343 watercourses, and (2) "habitats" means areas or environments in which
344 an organism or biological population normally lives or occurs.

345 (d) A municipal inland wetlands agency shall not deny or condition
346 an application for a regulated activity in an area outside wetlands or
347 watercourses on the basis of an impact or effect on aquatic, plant, or
348 animal life unless such activity will likely impact or affect the physical
349 characteristics of such wetlands or watercourses.

350 (e) **In carrying out the purposes and policies of sections 22a-36 to**
351 **22a-45a, inclusive, as amended by this act, including matters relating to**

352 regulating, licensing and enforcing of the provisions related to the
353 area around wetlands and watercourses regulated pursuant to section 22a-
354 42a(f) thereof, the commissioner or any inland wetland agency shall require the
355 applicant to establish that any regulated activity is both consistent with the
356 provisions of sections 22a-36 to 22a-45a, inclusive, as amended by this act, and
357 there is cumulatively, over time and area, likely no adverse impact on the area
358 around wetlands and watercourses' natural functions in maintaining the
359 biological and ecological integrity of stream ecosystems, filtering stormwater
360 runoff, protecting water quality, preventing erosion and providing
361 sedimentation control, reducing the impact of flooding, and minimizing the loss
362 of property. The commissioner or any wetland agency shall determine the area
363 subject to review with a minimum goal of preserving to the maximum extent
364 possible the natural vegetation cover in the greater of the first 100 feet around
365 any wetland and watercourse or the FEMA Regulatory 100 Year Floodway and
366 there shall be a rebuttable presumption that removal of natural vegetation is
366 likely to impact or affect a wetland or watercourse. The Commissioner or
wetland agency and shall consider but is not limited to considering the
significance of the wetland or watercourse, the slope around the wetland or
watercourse, the type(s) of soil around the wetland or watercourse, and the existing
or expected development in the area around the wetland or watercourse when
reviewing beyond the minimum 100 feet or FEMA Regulatory 100 Year Floodway.

367 Sec. 7. Section 22a-42 of the general statutes is repealed and the following
368 is substituted in lieu thereof (*Effective October 1, 2009*):

369 (a) To carry out and effectuate the purposes and policies of sections
370 22a-36 to 22a-45a, inclusive, as amended by this act, it is hereby
371 declared to be the public policy of the state to require municipal
372 regulation of activities affecting the wetlands and watercourses within
373 the territorial limits of the various municipalities or districts.

374 (b) Any municipality may acquire wetlands and watercourses and
375 riverfront areas within its territorial limits by gift or purchase, in fee or
376 lesser interest including, but not limited to, lease, easement or
377 covenant, subject to such reservations and exceptions as it deems advisable.

378 (c) On or before July 1, 1988, each municipality shall establish an inland
379 wetlands agency or authorize an existing board or commission to carry
380 out the provisions of sections 22a-36 to 22a-45, inclusive, as amended
381 by this act. Each municipality, acting through its legislative body, may
382 authorize any board or commission, as may be by law authorized to
383 act, or may establish a new board or commission to promulgate such
384 regulations, in conformity with the regulations adopted by the
385 commissioner pursuant to section 22a-39, as amended by this act, as
386 are necessary to protect the wetlands and watercourses within its
387 territorial limits. The ordinance establishing the new board or
388 commission shall determine the number of members and alternate
389 members, the length of their terms, the method of selection and
390 removal and the manner for filling vacancies in the new board or

391 commission. No member or alternate member of such board or
392 commission shall participate in the hearing or decision of such board
393 or commission of which he is a member upon any matter in which he
394 is directly or indirectly interested in a personal or financial sense. In
395 the event of such disqualification, such fact shall be entered on the
396 records of such board or commission and replacement shall be made
397 from alternate members of an alternate to act as a member of such
398 commission in the hearing and determination of the particular matter
399 or matters in which the disqualification arose. For the purposes of this
400 section, the board or commission authorized by the municipality or
401 district, as the case may be, shall serve as the sole agent for the
402 licensing of regulated activities.

403 (d) At least one member of the inland wetlands agency or staff of
404 the agency shall be a person who has completed the comprehensive
405 training program developed by the commissioner pursuant to section
406 22a-39, as amended by this act. Failure to have a member of the agency
407 or staff with training shall not affect the validity of any action of the
408 agency. The commissioner shall annually make such program
409 available to one person from each town without cost to that person or
410 the town. Each inland wetlands agency shall hold a meeting at least
411 once annually at which information is presented to the members of the
412 agency which summarizes the provisions of the training program. The
413 commissioner shall develop such information in consultation with
414 interested persons affected by the regulation of inland wetlands and
415 shall provide for distribution of video presentations and related
416 written materials which convey such information to inland wetlands
417 agencies. In addition to such materials, the commissioner, in
418 consultation with such persons, shall prepare materials which provide
419 guidance to municipalities in carrying out the provisions of subsection
420 (f) of section 22a-42a, as amended by this act.

421 (e) Any municipality, pursuant to ordinance, may act through the
422 board or commission authorized in subsection (c) of this section to join
423 with any other municipalities in the formation of a district for the
424 regulation of activities affecting the wetlands or watercourses within such district.
425 Any city or borough may delegate its authority to regulate inland wetlands under
426 this section to the town in which it is located.

427 (f) Municipal or district ordinances or regulations may embody any
428 regulations promulgated hereunder, in whole or in part, or may
429 consist of other ordinances or regulations in conformity with
430 regulations promulgated hereunder. Any ordinances or regulations
431 shall be for the purpose of effectuating the purposes of sections 22a-36
432 to 22a-45, inclusive, as amended by this act, and, a municipality or
433 district, in acting upon ordinances and regulations shall incorporate
434 the factors set forth in section 22a-41, as amended by this act.

435 (g) Nothing contained in this section shall be construed to limit the
436 existing authority of a municipality or any boards or commissions of

437 the municipality, provided the commissioner shall retain authority to
438 act on any application filed with said commissioner prior to the
439 establishment or designation of an inland wetlands agency by a municipality.

440 Sec. 8. Section 22a-42a of the general statutes is repealed and the
441 following is substituted in lieu thereof (*Effective October 1, 2009*):

442 (a) The inland wetlands agencies authorized in section 22a-42, as
443 amended by this act, shall through regulation provide for (1) the
444 manner in which the boundaries of inland wetland and watercourse
445 areas in their respective municipalities
446 shall be established and amended or changed, (2) the form for an
447 application to conduct regulated activities, (3) notice and publication
448 requirements, (4) criteria and procedures for the review of applications,
449 and (5) administration and enforcement.

450 (b) No regulations of an inland wetlands agency including
451 boundaries of inland wetland and watercourse areas shall become effective or
452 be established until after a public hearing in relation thereto is held by the inland
453 wetlands agency. Any such hearing shall be held in accordance with the
454 provisions of section 8-7d. A copy of such proposed regulation or boundary
455 shall be filed in the office of the town, city or borough clerk as the case may
456 be, in such municipality, for public inspection at least ten days before such
457 hearing, and may be published in full in such paper. A copy of the notice and
458 the proposed regulations or amendments thereto, except determinations of
459 boundaries, shall be provided to the commissioner at least thirty-five
460 days before such hearing. Such regulations and inland wetland and
461 watercourse boundaries may be from time to time amended, changed or
462 repealed, by majority vote of the inland wetlands agency, after a public
463 hearing in relation thereto is held by the inland wetlands agency, in accordance
464 with the provisions of section 8-7d to the general statutes. Regulations or
465 boundaries or changes therein shall become effective at such time as is
466 fixed by the inland wetlands agency, provided a copy of such regulation,
467 boundary or change shall be filed in the office of the town, city or borough
468 clerk, as the case may be. Whenever an inland wetlands agency makes a
469 change in regulations or boundaries it shall state upon its records the reason
470 why the change was made and shall provide a copy of such regulation, boundary
471 or change to the Commissioner of Environmental Protection no later than ten
472 days after its adoption provided failure to submit such regulation, boundary or
473 change shall not impair the validity of such regulation, boundary or change.
474 All petitions submitted in writing and in a form prescribed by the inland wetlands
475 agency, requesting a change in the regulations or the boundaries of an inland
476 wetland and watercourse area shall be considered at a public hearing held in
477 accordance with the provisions of section 8-7d. The failure of the inland wetlands
478 agency to act within any time period specified in this subsection, or any
479 extension thereof, shall not be deemed to constitute approval of the petition.
482 (c) (1) On and after the effective date of the municipal regulations
483 promulgated pursuant to subsection (b) of this section, no regulated

484 activity shall be conducted upon any inland wetland or watercourse without a
485 permit. Any person proposing to conduct or cause to be conducted a regulated
486 activity upon an inland wetland or watercourse or riverfront area shall file an
487 application with the inland wetlands agency of the town or towns wherein the
488 wetland or watercourse in question is located. The application shall be in such
489 form and contain such information as the inland wetlands agency may prescribe.
490 The date of receipt of an application shall be determined in accordance with the
491 provisions of subsection (c) of section 8-7d to the general statutes. The inland
492 wetlands agency shall not hold a public hearing on such application unless the
493 inland wetlands agency determines that the proposed activity may have a
494 significant impact on wetlands and watercourses, a petition signed by at least
495 twenty-five persons who are eighteen years of age or older and who reside in
496 the municipality in which the regulated activity is proposed, requesting a hearing
497 is filed with the agency not later than fourteen days after the date of receipt of
498 such application, or the agency finds that a public hearing regarding such
499 application would be in the public interest. An inland wetlands agency may
500 issue a permit without a public hearing provided no petition provided for in this
501 subsection is filed with the agency on or before the fourteenth day after the date
502 of receipt of the application. Such hearing shall be held in accordance with the
503 provisions of section 8-7d supplement to the general statutes. If the inland
504 wetlands agency, or its agent, fails to act on any application within thirty-five
505 days after the completion of a public hearing or in the absence of a public
506 hearing within sixty-five days from the date of receipt of the application, or
507 within any extension of any such period as provided in section 8-7d supplement
508 to the general statutes, the applicant may file such application with the
509 Commissioner of Environmental Protection who shall review and act on such
510 application in accordance with this section. Any costs incurred by the
511 commissioner in reviewing such application for such inland wetlands agency
512 shall be paid by the municipality that established or authorized the agency.
513 Any fees that would have been paid to such municipality if such application had
514 not been filed with the commissioner shall be paid to the state. The failure
515 of the inland wetlands agency or the commissioner to act within any time period
516 specified in this subsection, or any extension thereof, shall not be deemed to
517 constitute approval of the application.

518 (2) An inland wetlands agency may delegate to its duly authorized
519 agent the authority to approve or extend an activity that is not located
520 in a wetland or watercourse when such agent finds that the conduct of such activity
521 would result in no greater than a minimal impact on any wetland or watercourse,
522 provided such agent has completed the comprehensive training program developed
523 by the commissioner pursuant to section 22a-39, as amended by this act.
524 Notwithstanding the provisions for receipt and processing applications prescribed
525 in subdivision (1) of this subsection, such agent may approve or extend such an
526 activity at any time. Any person receiving such approval from such agent shall,
527 within ten days of the date of such approval, publish, at the applicant's expense,
528 notice of the approval in a newspaper having a general circulation in the
529 town wherein the activity is located or will have an effect. Any person

530 may appeal such decision of such agent to the inland wetlands agency
531 within fifteen days after the publication date of the notice and the
532 inland wetlands agency shall consider such appeal at its next regularly
533 scheduled meeting provided such meeting is no earlier than three
534 business days after receipt by such agency or its agent of such appeal.
535 The inland wetlands agency shall, at its discretion, sustain, alter or
536 reject the decision of its agent or require an application for a permit in
537 accordance with subdivision (1) of subsection (c) of this section.
538 (d) (1) In granting, denying or limiting any permit for a regulated
539 activity the inland wetlands agency, or its agent, shall consider the
540 factors set forth in section 22a-41, as amended by this act and such
541 agency, or its agent, shall state upon the record the reason for its
542 decision. In granting a permit the inland wetlands agency, or its agent,
543 may grant the application as filed or grant it upon other terms,
544 conditions, limitations or modifications of the regulated activity which
545 are designed to carry out the policy of sections 22a-36 to 22a-45,
546 inclusive, as amended by this act. Such terms may include any
547 reasonable measures which would mitigate the impacts of the
548 regulated activity and which would (A) prevent or minimize pollution
549 or other environmental damage, (B) maintain or enhance existing
550 environmental quality, or (C) in the following order of priority:
551 Restore, enhance and create productive wetland or watercourse or
552 riverfront area resources. No person shall conduct any regulated
553 activity within an inland wetland, watercourse or area around a wetland
554 or watercourse which requires zoning or subdivision approval without first having
555 obtained a valid certificate of zoning or subdivision approval, special
556 permit, special exception or variance or other documentation
557 establishing that the proposal complies with the zoning or subdivision
558 requirements adopted by the municipality pursuant to chapters 124 to
559 126, inclusive, or any special act. The agency may suspend or revoke a
560 permit if it finds after giving notice to the permittee of the facts or
561 conduct which warrant the intended action and after a hearing at
562 which the permittee is given an opportunity to show compliance with
563 the requirements for retention of the permit, that the applicant has not
564 complied with the conditions or limitations set forth in the permit or
565 has exceeded the scope of the work as set forth in the application. The
566 applicant shall be notified of the agency's decision by certified mail
567 within fifteen days of the date of the decision and the agency shall
568 cause notice of their order in issuance, denial, revocation or suspension
569 of a permit to be published in a newspaper having a general
570 circulation in the town wherein the wetland or watercourse lies. In any
571 case in which such notice is not published within such fifteen-day
572 period, the applicant may provide for the publication of such notice
573 within ten days thereafter.
574 (2) Any permit issued under this section for the development of
575 property for which an approval is required under section 8-3, 8-25 or 8-26

576 shall be valid for five years provided the agency may establish
577 a specific time period within which any regulated activity shall be
578 conducted. Any permit issued under this section for any other activity
579 shall be valid for not less than two years and not more than five years.
580 Any such permit shall be renewed upon request of the permit holder
581 unless the agency finds that there has been a substantial change in
582 circumstances which requires a new permit application or an
583 enforcement action has been undertaken with regard to the regulated
584 activity for which the permit was issued provided no permit may be
585 valid for more than ten years.

586 (e) The inland wetlands agency may require a filing fee to be
587 deposited with the agency. The amount of such fee shall be sufficient
588 to cover the reasonable cost of reviewing and acting on applications
589 and petitions, including, but not limited to, the costs of certified
590 mailings, publications of notices and decisions and monitoring
591 compliance with permit conditions or agency orders.

592 (f) **Municipal inland wetlands agencies shall regulate activities within
593 areas around wetlands and watercourses in the following manner:**

594 (1) **at a minimum, the greater of 100 feet as measured from the outer boundary
595 of any wetland and watercourse or the FEMA Regulatory 100 Year Floodway
596 area shall be reviewed in accordance with section 22a-41(e);**

597 (2) **in accordance with the provisions of the inland wetlands regulations adopted
598 by such agency related to application for, and approval of, activities to be
599 conducted in wetlands watercourses or areas around wetlands and
600 watercourses, and**

601 (3) **apply only to those activities which are likely to impact or affect wetlands or
602 watercourses in the immediate vicinity of the regulated activity or throughout
603 the watershed of such wetland or watercourse.**