



# House of Representatives

**File No. 884**

General Assembly

January Session, 2013

**(Reprint of File No. 88)**

Substitute House Bill No. 6441  
As Amended by House Amendment  
Schedules "A", "C" and "D"

Approved by the Legislative Commissioner  
May 31, 2013

**AN ACT CONCERNING THE DAM SAFETY PROGRAM AND  
MOSQUITO CONTROL.**

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

1 Section 1. Section 22a-401 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2013*):

3 All dams, dikes, reservoirs and other similar structures, with their  
4 appurtenances, without exception and without further definition or  
5 enumeration herein, which, by breaking away or otherwise, might  
6 endanger life or property, shall be subject to the jurisdiction conferred  
7 by this chapter. The Commissioner of Energy and Environmental  
8 Protection shall formulate all rules, definitions and regulations  
9 necessary to carry out the provisions of this chapter and not  
10 inconsistent therewith. The commissioner or his authorized  
11 representatives may enter upon private property to make such  
12 investigations and gather such data concerning dams, watersheds,  
13 sites, structures and general conditions as may be necessary in the  
14 public interest for a proper inspection, review and study of the design

15 and construction of such structures and of the environmental impact of  
16 such structures on the inland wetlands of the state. The commissioner  
17 may, when necessary, employ or make such agreements with  
18 geologists, other engineers, expert consultants and such assistants as  
19 may be reasonably necessary to carry out the provisions of this  
20 chapter. [The owner of any dam, dike or similar structure under the  
21 jurisdiction conferred by this chapter shall notify the commissioner, by  
22 registered or certified mail return receipt requested, of the transfer of  
23 ownership of any such dam, dike or similar structure not later than ten  
24 days after the date of such transfer.]

25 Sec. 2. Subsection (b) of section 22a-403 of the general statutes is  
26 repealed and the following is substituted in lieu thereof (*Effective*  
27 *October 1, 2013*):

28 (b) The commissioner or his representative, engineer or consultant  
29 shall determine the impact of the construction work on the  
30 environment, on the safety of persons and property and on the tidal  
31 wetlands and inland wetlands and watercourses of the state in  
32 accordance with the provisions of sections [22a-36] 22a-28 to 22a-45,  
33 inclusive, and shall further determine the need for a fishway in  
34 accordance with the provisions of section 26-136, and shall examine the  
35 documents and inspect the site, and, upon approval thereof, the  
36 commissioner shall issue a permit authorizing the proposed  
37 construction work under such conditions as the commissioner may  
38 direct. The commissioner shall send a copy of the permit to the town  
39 clerk in any municipality in which the structure is located or any  
40 municipality which will be affected by the structure. An applicant for a  
41 permit issued under this section to alter, rebuild, repair or remove an  
42 existing dam shall not be required to obtain a permit under sections  
43 [22a-36] 22a-28 to 22a-45a, inclusive, or section 22a-342, 22a-361 or 22a-  
44 368. An applicant for a permit issued under this section to construct a  
45 new dam shall not be required to obtain a permit under sections [22a-  
46 36] 22a-28 to 22a-45a, inclusive, for such construction. An applicant for  
47 a dam safety permit shall not be required to obtain approval of a  
48 certification under section 25-68d.

49 Sec. 3. Section 22a-404 of the general statutes is repealed and the  
50 following is substituted in lieu thereof (*Effective October 1, 2013*):

51 The [commissioner or his representative] dam owner or his or her  
52 representative supervising the work on any dam or other like structure  
53 subject to the commissioner's jurisdiction pursuant to this chapter shall  
54 [inspect the work or cause it] cause the work to be inspected by a  
55 registered professional engineer licensed in the state to the extent  
56 necessary to determine whether the structure will be safe and secure.  
57 [The] For a high or significant hazard dam, or if the commissioner  
58 determines a sensitive ecological condition exists, the commissioner  
59 may [, when in his judgment circumstances warrant,] place a  
60 competent inspector on the work, and the compensation for such  
61 inspector shall be shared equally by the state and by the owner. When  
62 the work has been completed to the satisfaction of the commissioner,  
63 the owner shall file with the commissioner plans and descriptions of  
64 the work as actually constructed, together with any other pertinent  
65 data. Not later than thirty days after the date the work is completed,  
66 the dam owner shall submit to the commissioner a sworn statement  
67 from the engineer who completed such inspection. Such sworn  
68 statement shall (1) attest that such engineer inspected the work and  
69 determined the dam or like structure to be safe within the parameters  
70 of the design of such dam or like structure, (2) attest that all  
71 appurtenances to such dam or like structure were built, repaired,  
72 altered or removed in conformance with plans, specifications and  
73 drawings approved by the commissioner pursuant to a permit for  
74 construction or an order issued pursuant to section 22a-402, and (3)  
75 bear the engineer's professional seal.

76 Sec. 4. Section 22a-409 of the general statutes is repealed and the  
77 following is substituted in lieu thereof (*Effective October 1, 2013*):

78 (a) The commissioner shall cause a survey and maps to be made of  
79 each town showing the location of any dams or similar structures  
80 within such town, and shall file a copy of such map with the town  
81 clerk. On and after October 1, 2007, the owner of real property where a

82 high hazard or significant hazard dam is located shall cause to be  
83 recorded on the land records in the municipality where the property is  
84 located a document that identifies the existence of the dam and  
85 whether the dam is categorized as a high hazard dam or a significant  
86 hazard dam. The commissioner shall publish a standardized form to  
87 be used for such purposes.

88 (b) The owner of any dam or similar structure that, by failing, may  
89 endanger life or property and that is not already registered shall  
90 register on or before ~~[July 1, 1984]~~ October 1, 2015, with the  
91 Commissioner of Energy and Environmental Protection on a form  
92 prescribed by [him] the commissioner, the location and dimensions of  
93 such dam or structure and such other information as the commissioner  
94 may require. Any information reported on such form that the  
95 commissioner cannot otherwise independently obtain shall not be used  
96 by the commissioner to order the payment of a civil penalty pursuant  
97 to section 22a-6d or 22a-407 provided such form is submitted to the  
98 commissioner on or before October 1, 2015. The fee for registration  
99 shall be as follows: (1) Dams or similar structures five feet or more in  
100 height but less than fifteen feet, fifty dollars; (2) dams or similar  
101 structures fifteen feet or more in height but less than twenty-five feet,  
102 one hundred dollars; and (3) dams or similar structures twenty-five  
103 feet or more in height, two hundred dollars. Dams or similar structures  
104 less than five feet in height shall be registered without fee. As used in  
105 this subsection, "height" means the vertical distance from the crest of a  
106 dam or similar structure to the downstream toe of such dam or similar  
107 structure. The owner of any dam or similar structure shall notify the  
108 commissioner by registered or certified mail, return receipt requested,  
109 of a transfer of ownership of such dam or similar structure not later  
110 than ten days after the date of such transfer.

111 (c) The commissioner shall notify the owner of any dam or similar  
112 structure registered pursuant to subsection (b) of this section, in  
113 writing, by certified mail, return receipt requested, not later than  
114 January fifteenth of any year in which inspection of such dam is due.  
115 Such notice shall identify the classification of such dam, as set forth in

116 the regulations adopted pursuant to this subsection, and include a  
117 statement of the frequency for such inspection, as set forth in such  
118 regulations. Upon receipt of such timely notification by the  
119 commissioner, the owner of any such dam or similar structure shall  
120 cause such structure to be inspected in accordance with the regulations  
121 adopted pursuant to this subsection by a registered professional  
122 engineer licensed in the state and shall, not later than March fifteenth  
123 of the following year, submit the results of such inspection to the  
124 commissioner on a form prescribed by the commissioner. The  
125 commissioner shall periodically inspect dams registered pursuant to  
126 subsection (b) of this section for quality assurance when an owner fails  
127 to undertake a regularly scheduled inspection and as necessary after a  
128 flood event. The fee for any such inspection shall be six hundred sixty  
129 dollars until such time as regulations are adopted concerning such  
130 inspection fees. Any dam which impounds less than three acre-feet of  
131 water or any dam which the commissioner finds has a potential for  
132 negligible damage in the event of a failure, after an initial inspection,  
133 shall be exempt from the provisions of this subsection except upon  
134 determination by the commissioner that such dam poses a unique  
135 hazard. The commissioner shall adopt regulations in accordance with  
136 the provisions of chapter 54 establishing (1) a schedule for the  
137 frequency of and procedures for inspection of dams, (2) the inspection  
138 fees for [regularly scheduled] inspections undertaken by the  
139 department, sufficient to cover the reasonable cost of such inspections,  
140 (3) procedures for registration and criteria for waiver of registration  
141 and inspection fees, and (4) criteria for determining whether a dam has  
142 a potential for negligible damage in the event of a failure.

143 Sec. 5. (NEW) (*Effective October 1, 2013*) After the Commissioner of  
144 Energy and Environmental Protection's adoption of regulations  
145 pursuant to this section, the owner of any high or significant hazard  
146 dam or similar structure shall develop and implement an emergency  
147 action plan. The emergency action plan shall be updated every two  
148 years and copies shall be filed with the Commissioner of Energy and  
149 Environmental Protection and the chief executive officer of any

150 municipality that would potentially be affected in the event of an  
151 emergency. The Commissioner of Energy and Environmental  
152 Protection shall adopt regulations, in accordance with the provisions of  
153 chapter 54 of the general statutes, establishing the requirements for  
154 such emergency action plans, including, but not limited to, (1) criteria  
155 and standards for inundation studies and inundation zone mapping;  
156 (2) procedures for monitoring the dam or structure during periods of  
157 heavy rainfall and runoff, including personnel assignments and  
158 features of the dam to be inspected at given intervals during such  
159 periods; and (3) a formal notification system to alert appropriate local  
160 officials who are responsible for the warning and evacuation of  
161 residents in the inundation zone in the event of an emergency.

162 Sec. 6. Section 22a-411 of the general statutes is repealed and the  
163 following is substituted in lieu thereof (*Effective October 1, 2013*):

164 (a) The commissioner may issue a general permit for any minor  
165 activity regulated under sections 22a-401 to 22a-410, inclusive, as  
166 amended by this act, except for any activity covered by an individual  
167 permit, if the commissioner determines that such activity would cause  
168 minimal environmental effects when conducted separately and would  
169 cause only minimal cumulative environmental effects. Such activities  
170 may include routine maintenance and routine repair of any dam, dike,  
171 reservoir or other similar structure or the removal of any dam to  
172 improve fish passage or to provide other ecological benefits. Any  
173 person conducting an activity for which a general permit has been  
174 issued shall not be required to obtain an individual permit under  
175 sections 22a-36 to 22a-45a, inclusive, or section 22a-342, 22a-368 or 22a-  
176 403, as amended by this act, except as provided in subsection (c) of this  
177 section. A general permit shall clearly define the activity covered  
178 thereby and may include such conditions and requirements as the  
179 commissioner deems appropriate, including, but not limited to,  
180 management practices and verification and reporting requirements.  
181 The general permit may require any person conducting any activity  
182 under the general permit to report, on a form prescribed by the  
183 commissioner, such activity to the commissioner before it shall be

184 covered by the general permit. The commissioner shall prepare, and  
185 shall annually amend, a list of holders of general permits under this  
186 section, which list shall be made available to the public.

187 (b) Notwithstanding any other procedures specified in [said]  
188 sections 22a-401 to 22a-410, inclusive, as amended by this act, any  
189 regulation adopted thereunder, and chapter 54, the commissioner may  
190 issue, revoke, suspend or modify a general permit in accordance with  
191 the following procedures: (1) The commissioner shall publish in a  
192 newspaper having a substantial circulation in the affected area or areas  
193 notice of intent to issue a general permit; (2) the commissioner shall  
194 allow a comment period of thirty days following publication of such  
195 notice during which interested persons may submit written comments  
196 to the commissioner and the commissioner shall hold a public hearing  
197 if, within said comment period, he receives a petition signed by at least  
198 twenty-five persons; (3) the commissioner may not issue the general  
199 permit until after the comment period; and (4) the commissioner shall  
200 publish notice of any issued permit in a newspaper having substantial  
201 circulation in the affected area or areas. Any person may request that  
202 the commissioner issue, modify or revoke a general permit in  
203 accordance with the provisions of this subsection.

204 (c) Subsequent to the issuance of a general permit, the commissioner  
205 may require any person to obtain an individual permit under the  
206 provisions of [said] sections 22a-401 to 22a-410, inclusive, as amended  
207 by this act, for all or any portion of the activities covered by the general  
208 permit, if in the commissioner's judgment the purposes and policies of  
209 said sections would be best served by requiring an application for an  
210 individual permit. The commissioner may require an individual  
211 permit under this subsection only if the affected person has been  
212 notified in writing that an individual permit is required. The notice  
213 shall include a brief statement of the reasons for the decision and a  
214 statement that upon the date of issuance of such notice the general  
215 permit as it applies to the individual activity will terminate.

216 (d) Any general permit issued under this section [shall] may require

217 that any person intending to conduct an activity covered by such  
218 general permit [shall, at least sixty days before initiating such activity,]  
219 give written notice of such intention to the inland wetlands agency,  
220 zoning commission, planning commission or combined planning and  
221 zoning commission, and conservation commission of any municipality  
222 which will or may be affected by such activity, and to the department  
223 which shall make such notices available to the public. The general  
224 permit shall specify the information which must be contained in the  
225 notice. [An inland wetlands agency, planning and zoning commission,  
226 conservation commission or any person may submit written comments  
227 to the commissioner concerning such activity no later than twenty-five  
228 days before the date that the activity is proposed to begin.]

229 (e) The commissioner may adopt regulations in accordance with the  
230 provisions of chapter 54 to carry out the purposes of this section.

231 Sec. 7. Section 22a-45d of the general statutes is repealed and the  
232 following is substituted in lieu thereof (*Effective from passage*):

233 (a) The Commissioner of Energy and Environmental Protection, in  
234 consultation with the Commissioners of Public Health and Agriculture  
235 and the Director of the Connecticut Agricultural Experiment Station,  
236 shall establish a [contingency] plan, within available appropriations,  
237 for the [spraying] use or application of larvicide to control mosquitoes,  
238 [in the event of an outbreak of infectious disease in any human or  
239 animal population due to mosquito infestation.]

240 (b) Not later than September 1, 2013, the plan described in  
241 subsection (a) of this section shall be updated to establish: (1) A  
242 prohibition on the use or application of methoprene or resmethrin in  
243 any storm drain or conveyance for water within the coastal boundary,  
244 as described in subsection (b) of section 22a-94 provided such  
245 prohibition shall not apply to any municipality where there was a  
246 documented death of a human being from West Nile virus if such  
247 municipality has a population greater than one hundred thousand  
248 residents; (2) a record-keeping, reporting and Internet posting



249 requirement for the use or application of methoprene or resmethrin for  
250 mosquito control within the coastal area, as described in subsection (a)  
251 of section 22a-94, by any municipality or the state; and (3)  
252 recommendations for a pilot program to evaluate the retail sale and  
253 use of methoprene and resmethrin for mosquito control within the  
254 coastal area, as described in subsection (a) of section 22a-94, that is  
255 labeled for mosquito control in streams, storm drains, storm gutters,  
256 and bird baths to ensure that such methoprene and resmethrin use is  
257 consistent with the labeling requirements of such methoprene or  
258 resmethrin product.

259 (c) Notwithstanding the provisions of subsection (b) of this section,  
260 methoprene or resmethrin may be introduced into a storm drain,  
261 wetland or other body of water where mosquito larvae are found or  
262 suspected if such introduction is recommended by the Commissioner  
263 of Energy and Environmental Protection, in consultation with the  
264 Commissioner of Public Health and the mosquito management  
265 coordinator of the Department of Energy and Environmental  
266 Protection, to prevent an increasing threat of mosquito-borne disease,  
267 based on an evaluation of mosquito and mosquito larvae surveillance  
268 by the Connecticut Agricultural Experiment Station in accordance with  
269 the state's Mosquito Management Program.

270 Sec. 8. Section 22a-45b of the general statutes is repealed and the  
271 following is substituted in lieu thereof (*Effective from passage*):

272 (a) The Commissioner of Energy and Environmental Protection may  
273 make regulations and orders concerning the elimination of mosquitoes  
274 and mosquito-breeding places, and said commissioner or his agent  
275 may enter upon any land, tidal wetland, inland wetland or  
276 watercourse to ascertain if mosquitoes breed thereon or to survey,  
277 drain, fill or otherwise treat, or make any excavation or structure  
278 necessary to eliminate mosquito breeding on such land. When funds  
279 have been provided by appropriation by the state for the elimination  
280 of mosquitoes or mosquito-breeding places, said commissioner may  
281 conduct or cause the conducting of such work provided no filling,

282 draining, excavation, installation or erection of any structure, or any  
283 other permanent alteration of private property shall be conducted  
284 without the consent of the landowner on whose property such work is  
285 to be conducted. The commissioner may take and hold, by purchase,  
286 condemnation or otherwise, any real property or interest in real  
287 property as he determines is necessary to abate a threat of disease to  
288 humans or animals from insect vectors. Whenever the commissioner is  
289 unable to agree with the owner of any such property as to the  
290 compensation to be paid for the taking thereof, the commissioner may  
291 bring condemnation proceedings in accordance with the procedure  
292 provided by part I of chapter 835 for condemnation by municipal  
293 corporations generally. In such case, the court may permit immediate  
294 possession of such property by the commissioner in accordance with  
295 the procedure provided by said part I of chapter 835.

296 (b) The Commissioner of Energy and Environmental Protection, in  
297 coordination with the Commissioner of Public Health and local health  
298 departments, shall survey land, tidal wetlands, inland wetlands or  
299 watercourses in any municipality with a population over one hundred  
300 thousand where there has been a documented death of a human from  
301 West Nile virus, to ascertain if mosquitoes breed thereon and may  
302 conduct any work, as provided for in subsection (a) of this section,  
303 necessary to eliminate mosquito breeding on such land.

304 (c) No private property, in any municipality with a population over  
305 one hundred thousand where there has been a documented death of a  
306 human from West Nile virus, may contain standing water that the  
307 Commissioner of Energy and Environmental Protection determines, in  
308 consultation with the Commissioner of Public Health and local health  
309 departments, creates a risk of mosquito-borne illness. The  
310 Commissioner of Energy and Environmental Protection shall enforce  
311 the provisions of this subsection.

312 (d) The Commissioner of Energy and Environmental Protection, in  
313 coordination with the Commissioner of Public Health and local health  
314 departments, shall encourage public outreach programs instructing

315 residents and private property owners of the risks of standing water  
316 and the signs and symptoms of West Nile virus.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2013</i>	22a-401
Sec. 2	<i>October 1, 2013</i>	22a-403(b)
Sec. 3	<i>October 1, 2013</i>	22a-404
Sec. 4	<i>October 1, 2013</i>	22a-409
Sec. 5	<i>October 1, 2013</i>	New section
Sec. 6	<i>October 1, 2013</i>	22a-411
Sec. 7	<i>from passage</i>	22a-45d
Sec. 8	<i>from passage</i>	22a-45b

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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### ***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

### ***Explanation***

The bill requires owners of a high or significant hazard dam to develop and implement an emergency action plan. There is no fiscal impact, as the state and municipalities have already developed emergency action plans.

The bill also makes other changes which are not anticipated to result in a fiscal impact to the state or municipalities.

House "A" makes changes to environmental laws concerning dams that are not anticipated to result in a fiscal impact.

House "C" requires the commissioner of the Department of Energy and Environmental Protection (DEEP) to establish recommendations for a pilot program concerning the use of certain larvicide (methoprene and resmethrin) under certain conditions. The requirement to develop recommendations is also not anticipated to result in a fiscal impact

Lastly, House "D" requires the commissioner of DEEP to coordinate with the commissioner of Public Health and local health departments to conduct a survey of certain standing water areas that are determined to be a risk, and requires the agency to enforce certain provisions concerning mosquitos. DEEP is also required to encourage public outreach regarding the risks of standing water and West Nile Virus. There is also no fiscal impact associated with this requirement.

***The Out Years***

***State Impact:*** None

***Municipal Impact:*** None

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**OLR Bill Analysis****sHB 6441 (as amended by House “A,” “C,” and “D”)\******AN ACT CONCERNING THE DAM SAFETY PROGRAM.*****SUMMARY:**

By law, the Department of Energy and Environmental Protection (DEEP) commissioner has jurisdiction over dams, dikes, and similar structures whose failure might endanger life or property.

This bill requires owners of certain unregistered dams or similar structures to register them by October 1, 2015. It generally shifts, from the commissioner to the owners of dams or similar structures, regularly scheduled inspection and reporting requirements. The bill also makes owners generally responsible for supervising and inspecting construction work and establishes new reporting requirements for owners when the work is completed.

Under the bill, the commissioner must consider tidal wetland impact when deciding to issue a dam construction permit and exempts these permit applicants from additional permit requirements.

The bill also allows the commissioner to issue a general permit for dam removal projects that provide certain ecological benefits and it eliminates a provision allowing for written comments on a proposed activity to be conducted under a general permit.

It requires owners of high or significant hazard dams or similar structures to develop and implement an emergency action plan. The commissioner must adopt regulations that include requirements for (1) regularly scheduled dam inspections, (2) independent inspections conducted during audits, and (3) emergency action plans.

The bill requires the DEEP commissioner, in consultation with the Department of Agriculture (DoAg) and Department of Public Health (DPH) commissioners and the Connecticut Agricultural Experiment Station (CAES) director, to (1) establish a plan for using or applying larvicide to control mosquitoes and (2) update the plan by September 1, 2013 to restrict the use or application of methoprene or resmethrin in the state's coastal boundary and for other specified purposes. It allows the introduction of methoprene or resmethrin into certain storm drains, wetlands, or other water bodies if the DEEP commissioner recommends it to prevent an increasing threat of mosquito-borne illness.

The bill requires the DEEP commissioner to take certain steps to prevent West Nile virus, including (1) coordinating with the DPH commissioner and local health departments to survey certain lands for the presence of mosquitoes, (2) enforcing a prohibition on standing water on private property, and (3) encouraging public outreach programs on standing water risks and West Nile virus symptoms.

It also makes minor and technical changes.

\*House Amendment "A":

1. specifies that unregistered dams or similar structures that could endanger life or property if they failed must be registered by October 1, 2015, instead of all unregistered dams;
2. prohibits the DEEP commissioner from using information in timely filed registrations that he cannot otherwise independently obtain to order payment of certain penalties;
3. requires the commissioner to provide written notice of dam inspection requirements to dam and similar structure owners; and
4. removes the provision allowing the commissioner to audit dam inspection reports and require independent inspections.

\*House Amendment "C" adds the provisions on methoprene and resmethrin.

\*House Amendment "D" adds the provisions on West Nile virus prevention.

EFFECTIVE DATE: October 1, 2013, except the provisions on the use of methoprene and resmethrin and West Nile virus prevention take effect upon passage.

## **DAM SAFETY**

### **§§ 1 & 4 — Dam Registration and Transfer Notification**

The bill gives owners of unregistered dams or similar structures that could endanger life or property if they failed until October 1, 2015 to register them with the DEEP commissioner on a form he prescribes. By law, the owner must report the location and dimensions of the dam or structure and any other information the commissioner requires. Current law specifies that any dam or similar structure had to be registered by July 1, 1984, but it provides no registration requirement for dams established after that date.

Under the bill, as long as the form is submitted to the commissioner by October 1, 2015, he cannot use information it contains that he cannot otherwise independently obtain to order payment of a civil penalty for violating (1) the dam and reservoirs law or (2) a law concerning payment of costs associated with DEEP administrative hearing recordings and transcripts (see BACKGROUND). (Presumably, the bill should refer to the statute authorizing the commissioner to impose civil penalties, CGS § 22a-6b as opposed to CGS § 22a-6d).

The bill also removes a requirement that a dike (an embankment for controlling floodwaters or erosion) owner notify the DEEP commissioner within 10 days after a transfer of ownership.

### **§§ 3 & 4 — Dam Inspection**

**Regularly Scheduled Inspection.** Current law requires the DEEP



commissioner to periodically inspect registered dams. The bill requires instead that an owner of a registered dam or similar structure:

1. have it inspected by a Connecticut-licensed registered professional engineer and
2. submit the inspection results to the commissioner on a form he prescribes by March 15 of the year after the inspection.

Under the bill, by January 15 of any year when an inspection is due, the commissioner must provide written notice to the owner of a registered dam or similar structure by certified mail, return receipt requested. The notice must identify the dam's classification and state the frequency for inspection, as provided in regulations. Once the owner receives the notice, he or she must cause the dam or structure to be inspected.

The bill requires the commissioner to periodically conduct inspections (1) for quality assurance when an owner fails to undertake a regularly scheduled inspection or (2) when it is necessary after a flood. It retains the current \$660 inspection fee until superseding regulations are adopted.

Current law requires the DEEP commissioner to set in regulations, among other things, (1) an inspection frequency schedule and (2) fees for regularly scheduled inspections. The bill requires these regulations to include (1) dam inspection procedures and (2) fees for DEEP-conducted inspections, instead of fees for regularly scheduled inspections.

**Construction Inspection.** The bill requires a dam owner, or its representative supervising work on a dam or similar structure under DEEP's jurisdiction, to have it inspected by a Connecticut-licensed registered professional engineer to determine if it will be safe and secure. Current law specifies that the DEEP commissioner or his representative supervises the work and requires him or his representative to inspect or have the dam or similar structure

inspected.

The bill allows the commissioner to place a competent inspector on construction work of a dam or similar structure if (1) it involves a high or significant hazard dam (see BACKGROUND) or (2) he determines a sensitive ecological condition exists. Current law allows him to do so when he believes circumstances warrant it. By law, unchanged by the bill, the cost of such inspector is shared equally by the state and the owner.

The bill requires a dam owner to submit a sworn statement from the inspecting engineer to the commissioner within 30 days after work is completed. The statement must attest that (1) the engineer inspected the work and determined the dam or similar structure to be safe within its design parameters and (2) all appurtenances were built, repaired, altered, or removed according to the plans, specifications, and drawings approved by the commissioner under a permit or order. It must bear the engineer's professional seal.

### **§§ 2 & 6 — Dam Permits**

**Individual Permit Requirements.** By law, anyone seeking to construct, alter, rebuild, substantially repair, add to, replace, or remove a dam or similar structure must obtain a DEEP permit.

The bill requires the commissioner or his representative, engineer, or consultant to determine the proposed construction's impact on tidal wetlands before issuing a permit, in addition to determining its impact on (1) the environment; (2) the safety of people and property; and (3) inland wetlands and watercourses, as current law requires.

**Exemptions.** Under the bill, a permit applicant seeking to alter, rebuild, repair, or remove an existing dam no longer needs to obtain separate permits for (1) conducting a regulated activity in tidal wetlands or (2) dredging, erecting structures, or placing fill, obstructions, or encroachments in tidal, coastal, or navigable waters. The law already exempts such permit applicants from obtaining a

stream channel encroachment, diversion, or inland wetland and watercourse regulated activity permit.

The bill also grants an additional exemption for new dam construction applicants. Existing law exempts them from obtaining a permit to conduct a regulated activity in an inland wetland or watercourse. Under the bill, they no longer need a permit to conduct a regulated activity in a tidal wetland.

Additionally, if an applicant is a state agency, it no longer needs to obtain DEEP's permission or a waiver to engage in certain activities within or affecting a floodplain.

**General Permit for Dam Removal.** By law, the DEEP commissioner can issue a general permit for any minor dam activity he determines would have minimal environmental effects, unless it is covered by an individual permit (see BACKGROUND). The bill expands the activities that may be covered under general permits to include dam removal that (1) improves fish passage or (2) provides other ecological benefits. Existing law allows them to cover routine maintenance and repairs.

The law generally exempts people conducting minor dam activity under a general permit from obtaining an individual permit for (1) inland wetland or watercourse regulated activity, (2) stream channel encroachment, (3) diversion, and (4) dam construction. The bill extends this exemption to dam removal for improving fish passage or providing other ecological benefits.

Under current law, people intending to do work under a minor dam activity general permit must provide 60 days' written notice to the (1) inland wetlands agency, zoning commission, planning commission or combined planning and zoning commission, and conservation commission of any municipality that will or may be impacted by the activity and (2) departments that make such notices publicly available. The bill instead requires notice only when mandated by the general permit. It also eliminates current law's provision allowing any person

or an inland wetlands agency, planning and zoning commission, or conservation commission to submit written comments on an activity covered by such a general permit to the DEEP commissioner at least 25 days before the activity starts.

### **§ 5 — Emergency Action Plan**

The bill requires the owner of a high or significant hazard dam or similar structure to develop and implement an emergency action plan after the DEEP commissioner adopts regulations establishing plan requirements. The requirements must include:

1. criteria and standards for inundation (i.e., flood) studies and zone mapping;
2. procedures for monitoring the dam or structure during heavy rainfall and runoff periods, such as (a) personnel assignments and (b) dam features to be inspected at given intervals; and
3. notice to alert appropriate local officials responsible for warning and evacuating residents in the inundation zone during an emergency.

The bill requires dam owners to file a copy of their emergency action plan with the DEEP commissioner and chief executive officer of any potentially affected municipality. The plan must be updated biennially.

### **§ 7 — METHOPRENE AND RESMETHRIN**

Current law requires the DEEP commissioner, in consultation with the DoAg and DPH commissioners, to establish a contingency plan for spraying larvicide to control mosquitoes if there are outbreaks of mosquito-borne human or animal infectious disease.

The bill requires the DEEP commissioner to also consult with the CAES director and instead develop a plan for using and applying larvicide to control mosquitoes, regardless of a related infectious disease outbreak. As under current law, he must develop the plan

within available appropriations.

The plan must be updated by September 1, 2013 to:

1. prohibit the use or application of methoprene or resmethrin in any storm drain or water conveyance in the state's coastal boundary, except in a city with at least 100,000 people and a documented death from West Nile virus (i.e., New Haven, see below) (see BACKGROUND);
2. establish a record-keeping, reporting, and Internet posting requirement for the state and towns using or applying methoprene or resmethrin for mosquito control in the coastal area (see BACKGROUND); and
3. establish recommendations for a pilot program to evaluate the retail sale and use of methoprene and resmethrin in the coastal area to control mosquitoes in streams, storm drains, storm gutters, and bird baths to ensure their use is consistent with labeling requirements.

Notwithstanding the above prohibition, the bill allows the introduction of methoprene or resmethrin into a storm drain, wetland, or other water body where mosquito larvae is found or suspected if the DEEP commissioner, in consultation with the DPH commissioner and DEEP's mosquito management coordinator, recommends it to prevent an increasing threat of mosquito-borne disease. This recommendation must be based on CAES' surveillance in accordance with the state's mosquito management program.

## **§ 8 — WEST NILE VIRUS PREVENTION**

The bill requires the DEEP commissioner to coordinate with the DPH commissioner and local health departments to survey for the presence of breeding mosquitoes on land, wetlands, and watercourses in any city with a population over 100,000 (i.e., Bridgeport, Hartford, New Haven, Stamford, and Waterbury) where there has been a documented death from West Nile virus. (From 2000 to 2012, there

have been three West Nile deaths in Connecticut, including one in New Haven.) The bill allows him to conduct any work needed to eliminate the breeding.

The bill bans on private property in any such city, standing water that the DEEP commissioner determines, in consultation with the DPH commissioner and local health departments, creates a risk of mosquito-borne illness. The DEEP commissioner must enforce the ban and coordinate with the DPH commissioner and local health departments to encourage public outreach programs that instruct residents and private property owners of the (1) risks of standing water and (2) West Nile virus signs and symptoms.

## **BACKGROUND**

### ***Dam Safety Law Penalties***

By law, the DEEP commissioner may issue a warning notice for certain violations of the dam safety laws and bring an enforcement action to correct them (CGS § 22a-6s). Violating the dam safety laws or an order or permit issued under them also subjects a violator to a fine of up to \$1,000 for each offense, as determined by the court. The attorney general may bring an action to enjoin the violation, require its correction, and collect the fine, if the commissioner requests it (CGS § 22a-407).

### ***High or Significant Hazard Dam***

State regulations classify dams by the hazards they would pose if they fail. A high hazard dam is one whose failure would result in (1) probable loss of life; (2) major damage to habitable structures, homes, hospitals, convalescent homes, or schools; (3) damage to main highways; or (4) great economic loss.

A significant hazard dam is one whose failure would result in (1) possible loss of life; (2) minor damage to habitable structures, homes, hospitals, convalescent homes, or schools; (3) damage to, or interruption of, utility service; (4) damage to primary roadways or railroads; or (5) significant economic loss (Conn. Agencies Reg. § 22a-

409-2(d)).

### **General Permit**

DEEP uses both individual and general permits to regulate activities. Individual permits are issued directly to an applicant, while general permits authorize similar minor activities by one or more applicants. The authorization of an activity under a general permit is governed by that general permit.

### **Methoprene and Resmethrin**

Methoprene is a larvicide introduced into still water to combat mosquito larvae. Resmethrin is a broad-spectrum insecticide with many uses, including controlling adult mosquitoes.

### **Coastal Boundary**

The “coastal boundary,” within the state’s costal area, is the furthest inland of (1) the 100-year-frequency coastal flood zone, (2) a 1,000-foot linear setback from the mean high-water mark, or (3) a 1,000-foot linear setback from the inland boundary of the tidal wetlands (CGS § 22a-94(b)).

### **Coastal Area**

The state’s “coastal area” includes land and water within the area delineated by the westerly, southerly, and easterly limits of the state’s jurisdiction in Long Island Sound and the towns of Branford, Bridgeport, Chester, Clinton, Darien, Deep River, East Haven, East Lyme, Essex, Fairfield, Greenwich, Groton, Guilford, Hamden, Ledyard, Lyme, Madison, Milford, Montville, New Haven, New London, North Haven, Norwalk, Norwich, Old Lyme, Old Saybrook, Orange, Preston, Shelton, Stamford, Stonington, Stratford, Waterford, West Haven, Westbrook, and Westport (CGS § 22a-94(a)).

## **COMMITTEE ACTION**

Environment Committee

Joint Favorable Substitute

Yea 26 Nay 1 (03/04/2013)