



General Assembly

February Session, 2016

Raised Bill No. 141

LCO No. 1423



Referred to Committee on ENVIRONMENT

Introduced by:
(ENV)

AN ACT CONCERNING REVISION OF DEFINITIONAL, TIMING AND PROCEDURAL PROVISIONS OF THE INLAND WETLANDS AND WATERCOURSES ACT.

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

1 Section 1. Subdivision (15) of section 22a-38 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2016*):

4 (15) "Wetlands" means land, including submerged land, not
5 regulated pursuant to sections 22a-28 to 22a-35, inclusive, which
6 consists of any of the soil types designated as poorly drained, very
7 poorly drained, hydric, alluvial, and floodplain by the National
8 Cooperative Soils Survey, as may be amended from time to time, of the
9 Natural Resources Conservation Service of the United States
10 Department of Agriculture;

11 Sec. 2. Subsection (k) of section 22a-39 of the general statutes is
12 repealed and the following is substituted in lieu thereof (*Effective*
13 *October 1, 2016*):

14 (k) Conduct a public hearing [no sooner than thirty days and not
15 later than sixty days] following the receipt by said commissioner of
16 any inland wetlands application, provided whenever the
17 commissioner determines that the regulated activity for which a
18 permit is sought is not likely to have a significant impact on the
19 wetland or watercourse, he may waive the requirement for public
20 hearing after (1) publishing notice, in a newspaper having general
21 circulation in each town wherever the proposed work or any part
22 thereof is located, of his intent to waive said requirement, and (2)
23 mailing or providing by electronic means notice of such intent to the
24 chief administrative officer in the town or towns where the proposed
25 work, or any part thereof, is located, and the chairman of the
26 conservation commission and inland wetlands agency of each such
27 town or towns, except that the commissioner shall hold a hearing on
28 such application upon receipt, not later than thirty days after such
29 notice has been published, sent or mailed, of a petition signed by at
30 least twenty-five persons requesting such a hearing. The commissioner
31 shall (A) publish notice of such hearing [at least once not more than
32 thirty days and not fewer than ten days] not less than thirty days
33 before the date set for the hearing in a newspaper having a general
34 circulation in each town where the proposed work, or any part thereof,
35 is located, and (B) mail or provide by electronic means notice of such
36 hearing to the chief administrative officer in the town or towns where
37 the proposed work, or any part thereof, is located, and the chairman of
38 the conservation commission and inland wetlands agency of each such
39 town or towns. All applications and maps and documents relating
40 thereto shall be open for public inspection at the office of the
41 commissioner. The commissioner shall state upon his records his
42 findings and reasons for the action taken;

43 Sec. 3. Subsection (b) of section 22a-42a of the general statutes is
44 repealed and the following is substituted in lieu thereof (*Effective*
45 *October 1, 2016*):

46 (b) No regulations of an inland wetlands agency [including

47 boundaries of inland wetland and watercourse areas] shall become
48 effective or be established until after a public hearing in relation
49 thereto is held by the inland wetlands agency. Any such hearing shall
50 be held in accordance with the provisions of section 8-7d. A copy of
51 such proposed regulation [or boundary] shall be filed in the office of
52 the town, city or borough clerk as the case may be, in such
53 municipality, for public inspection at least ten days before such
54 hearing, and may be published in full in such paper. A copy of the
55 notice and the proposed regulations or amendments thereto [, except
56 determinations of boundaries,] shall be provided to the commissioner
57 at least thirty-five days before such hearing. Such regulations [and
58 inland wetland and watercourse boundaries] may be from time to time
59 amended, changed or repealed, by majority vote of the inland
60 wetlands agency, after a public hearing in relation thereto is held by
61 the inland wetlands agency, in accordance with the provisions of
62 section 8-7d. Regulations [or boundaries] or changes therein shall
63 become effective at such time as is fixed by the inland wetlands
64 agency, provided a copy of such regulation [, boundary] or change
65 shall be filed in the office of the town, city or borough clerk, as the case
66 may be. Whenever an inland wetlands agency makes a change in
67 regulations [or boundaries] it shall state upon its records the reason
68 why the change was made and shall provide a copy of such regulation
69 [, boundary] or change to the Commissioner of Energy and
70 Environmental Protection no later than ten days after its adoption
71 provided failure to submit such regulation [, boundary] or change shall
72 not impair the validity of such regulation, boundary or change. All
73 petitions submitted in writing and in a form prescribed by the inland
74 wetlands agency, requesting a change in the regulations [or the
75 boundaries of an inland wetland and watercourse area] shall be
76 considered at a public hearing held in accordance with the provisions
77 of section 8-7d. The failure of the inland wetlands agency to act within
78 any time period specified in this subsection, or any extension thereof,
79 shall not be deemed to constitute approval of the petition.

80 Sec. 4. Subsection (c) of section 22a-42a of the general statutes is
81 repealed and the following is substituted in lieu thereof (*Effective*
82 *October 1, 2016*):

83 (c) (1) On and after the effective date of the municipal regulations
84 promulgated pursuant to subsection (b) of this section, no regulated
85 activity shall be conducted upon any inland wetland or watercourse
86 without a permit. Any person proposing to conduct or cause to be
87 conducted a regulated activity upon an inland wetland or watercourse
88 shall file an application with the inland wetlands agency of the town or
89 towns wherein the wetland or watercourse in question is located. The
90 application shall be in such form and contain such information as the
91 inland wetlands agency may prescribe. The date of receipt of an
92 application shall be determined in accordance with the provisions of
93 subsection (c) of section 8-7d. The inland wetlands agency shall not
94 hold a public hearing on such application unless the inland wetlands
95 agency determines that the proposed activity may have a significant
96 impact on wetlands or watercourses, a petition signed by at least
97 twenty-five persons who are eighteen years of age or older and who
98 reside in the municipality in which the regulated activity is proposed,
99 requesting a hearing is filed with the agency not later than fourteen
100 days after the date of receipt of such application, or the agency finds
101 that a public hearing regarding such application would be in the
102 public interest. An inland wetlands agency may issue a permit without
103 a public hearing provided no petition provided for in this subsection is
104 filed with the agency on or before the fourteenth day after the date of
105 receipt of the application. Such hearing shall be held in accordance
106 with the provisions of section 8-7d. [If the] The inland wetlands
107 agency, or its agent, [fails to] shall act on any application within
108 thirty-five days after the completion of a public hearing or in the
109 absence of a public hearing within sixty-five days from the date of
110 receipt of the application, or within any extension of any such period
111 as provided in section 8-7d. [, the applicant may file such application
112 with the Commissioner of Energy and Environmental Protection who

113 shall review and act on such application in accordance with this
114 section. Any costs incurred by the commissioner in reviewing such
115 application for such inland wetlands agency shall be paid by the
116 municipality that established or authorized the agency. Any fees that
117 would have been paid to such municipality if such application had not
118 been filed with the commissioner shall be paid to the state.] The failure
119 of the inland wetlands agency or the commissioner to act within any
120 time period specified in this subsection, or any extension thereof, shall
121 not be deemed to constitute approval of the application.

122 (2) An inland wetlands agency may delegate to its duly authorized
123 agent the authority to approve or [extend] renew an activity that is not
124 located in a wetland or watercourse when such agent finds that the
125 conduct of such activity would result in no greater than a minimal
126 impact on any wetland or watercourse provided such agent has
127 completed the comprehensive training program developed by the
128 commissioner pursuant to section 22a-39, as amended by this act.
129 Notwithstanding the provisions for receipt and processing
130 applications prescribed in subdivision (1) of this subsection, such agent
131 may approve or [extend] renew such an activity at any time. Any
132 person receiving such approval from such agent shall, within ten days
133 of the date of such approval, publish, at the applicant's expense, notice
134 of the approval in a newspaper having a general circulation in the
135 town wherein the activity is located or will have an effect. Any person
136 may appeal such decision of such agent to the inland wetlands agency
137 within fifteen days after the publication date of the notice and the
138 inland wetlands agency shall consider such appeal at its next regularly
139 scheduled meeting provided such meeting is no earlier than three
140 business days after receipt by such agency or its agent of such appeal.
141 The inland wetlands agency shall, at its discretion, sustain, alter or
142 reject the decision of its agent or require an application for a permit in
143 accordance with subdivision (1) of subsection (c) of this section.

144 Sec. 5. Section 22a-42 of the general statutes is amended by adding
145 subsection (h) as follows (*Effective October 1, 2016*):

146 (NEW) (h) Any person may maintain an action in the superior court
147 against a municipality for failure to perform its duties pursuant to this
148 section. The court may grant temporary or permanent equitable relief
149 or may impose such conditions on the defendant as are required to
150 fulfill the requirements of this section.

151 Sec. 6. Subsection (a) of section 22a-43 of the general statutes is
152 repealed and the following is substituted in lieu thereof (*Effective*
153 *October 1, 2016*):

154 (a) The commissioner or any person aggrieved by any regulation,
155 order, decision or action made pursuant to sections 22a-36 to 22a-45,
156 inclusive, by the commissioner, a district or municipality, any person
157 aggrieved by an inland wetlands agency or its agent for failure to act
158 on an application pursuant to subsection (c) of section 22a-42a, as
159 amended by this act, or any person owning or occupying land which
160 abuts any portion of land within, or is within a radius of ninety feet of,
161 the wetland or watercourse involved in any regulation, order, decision
162 or action made pursuant to said sections may, within the time
163 specified in subsection (b) of section 8-8, from the publication of such
164 regulation, order, decision or action, or from the final date by which
165 the inland wetlands agency or its agent is required to act on an
166 application, appeal to the superior court for the judicial district where
167 the land affected is located, and if located in more than one judicial
168 district to the court in any such judicial district. Such appeal shall be
169 made returnable to the court in the same manner as that prescribed for
170 civil actions brought to the court, except that the record shall be
171 transmitted to the court within the time specified in subsection (i) of
172 section 8-8. If the inland wetlands agency or its agent does not provide
173 a transcript of the stenographic or the sound recording of a meeting
174 where the inland wetlands agency or its agent deliberates or makes a
175 decision on a permit for which a public hearing was held, a certified,
176 true and accurate transcript of a stenographic or sound recording of
177 the meeting prepared by or on behalf of the applicant or any other
178 party shall be admissible as part of the record. Notice of such appeal

179 shall be served upon the inland wetlands agency and the
180 commissioner, provided, for any such appeal taken on or after October
181 1, 2004, service of process for purposes of such notice to the inland
182 wetlands agency shall be made in accordance with subdivision (5) of
183 subsection (b) of section 52-57. The commissioner may appear as a
184 party to any action brought by any other person within thirty days
185 from the date such appeal is returned to the court. The appeal shall
186 state the reasons upon which it is predicated and shall not stay
187 proceedings on the regulation, order, decision or action, but the court
188 may on application and after notice grant a restraining order. Such
189 appeal shall have precedence in the order of trial.

190 Sec. 7. Subsection (a) of section 22a-44 of the general statutes is
191 repealed and the following is substituted in lieu thereof (*Effective*
192 *October 1, 2016*):

193 (a) If the inland wetlands agency or its duly authorized agent finds
194 that any person is conducting or maintaining any activity, facility or
195 condition which is in violation of sections 22a-36 to 22a-45, inclusive,
196 or of the regulations of the inland wetlands agency, the agency or its
197 duly authorized agent may issue a written order, by certified mail, to
198 such person conducting such activity or maintaining such facility or
199 condition to cease immediately such activity or to correct such facility
200 or condition. Within ten days of the issuance of such order the agency
201 shall hold a hearing to provide the person an opportunity to be heard
202 and show cause why the order should not remain in effect. The agency
203 shall consider the facts presented at the hearing and within ten days of
204 the completion of the hearing notify the person by certified mail that
205 the original order remains in effect, that a revised order is in effect, or
206 that the order has been withdrawn. The original order shall be
207 effective upon issuance and shall remain in effect until the agency
208 affirms, revises or withdraws the order. The issuance of an order
209 pursuant to this section shall not delay or bar an action pursuant to
210 subsection (b) of this section. The agency may file a certificate of such
211 order in the office of the town clerk of the town in which the land is

212 located and the town clerk shall record such certificate on the land
213 records of such town. Such certificate shall be released upon
214 compliance with such order. [The commissioner may issue orders
215 pursuant to sections 22a-6 to 22a-7, inclusive, concerning an activity,
216 facility or condition (1) which is in violation of said sections 22a-36 to
217 22a-45, inclusive, if the municipality in which such activity, facility or
218 condition is located has failed to enforce its inland wetlands
219 regulations, or (2) for which an approval is required under sections
220 22a-36 to 22a-45, inclusive, and for which such approval has not been
221 obtained.]

222 Sec. 8. Subsection (a) of section 1-2b of the 2016 supplement to the
223 general statutes is repealed and the following is substituted in lieu
224 thereof (*Effective October 1, 2016*):

225 (a) For purposes of sections 1-100oo, 1-206, 2-71r, 4-176, 4-180, 4-183,
226 4a-52a, 4a-60q, 4a-63, 4a-100, 4e-34, 4e-35, 7-65, 7-148w, 7-247a, 7-473c,
227 7-478e, 8-3b, 8-3i, 8-7d, 8-26b, 8-169r, 8-293, 9-388, 9-608, 9-623, 10a-22c,
228 10a-22i, 10a-34a, 10a-109n, 12-35, 12-157, 12-242ii, 12-242jj, 13a-80, 13a-
229 123, 15-11a, 16-41, 16-50c, 16-50d, 17a-103b, 19a-87, 19a-87c, 19a-209c,
230 19a-332e, 19a-343a, 19a-486a, 19a-486c, 19a-486d, 19a-497, 19a-507b, 20-
231 205a, 20-325a, 21-63, 21-80, 22-7, 22a-6b, 22a-6u, 22a-30, [22a-42d,] 22a-
232 42f, 22a-66d, 22a-137, 22a-178, 22a-225, 22a-228, 22a-250, 22a-354p, 22a-
233 354s, 22a-354t, 22a-361, 22a-371, 22a-401, 22a-403, 22a-433, 22a-436, 22a-
234 449f, 22a-449l, 22a-449n, 22a-504, 22a-626, 23-46, 23-65j, 23-65i, 23-65p,
235 25-32, 25-32e, 25-331, 25-34, 25-204, 25-234, 29-108d, 31-57c, 31-57d, 31-
236 355, 32-613, 33-663, 33-929, 33-1053, 33-1219, 34-521, 35-42, 36a-50, 36a-
237 51, 36a-52, 36a-53, 36a-82, 36a-184, 36a-493, 36b-62, 36b-72, 38-323a,
238 38a-344, 38a-676, 38a-724, 38a-788, 42-158j, 42-161, 42-181, 42-182, 42-
239 186, 42-271, 45a-716, 46b-115w, 46b-128, 47-42d, 47-74f, 47-88b, 47-236,
240 47-284, 47a-11b, 47a-11d, 47a-13a, 47a-14h, 47a-56b, 49-2, 49-4a, 49-8,
241 49-8a, 49-10b, 49-31b, 49-51, 49-70, 51-90e, 52-57, 52-59b, 52-63, 52-64,
242 52-195c, 52-350e, 52-351b, 52-361a, 52-362, 52-565a, 52-605, 52-606, 53-
243 401, 53a-128, 53a-128d, 53a-207 and 54-82c and chapter 965, any
244 reference to certified mail, return receipt requested, shall include mail,

245 electronic, and digital methods of receiving the return receipt,
246 including all methods of receiving the return receipt identified by the
247 Mailing Standards of the United States Postal Service in Chapter 500 of
248 the Domestic Mail Manual or any subsequent corresponding
249 document of the United States Postal Service.

250 Sec. 9. Section 22a-42d of the general statutes is repealed. (*Effective*
251 *October 1, 2016*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2016</i>	22a-38(15)
Sec. 2	<i>October 1, 2016</i>	22a-39(k)
Sec. 3	<i>October 1, 2016</i>	22a-42a(b)
Sec. 4	<i>October 1, 2016</i>	22a-42a(c)
Sec. 5	<i>October 1, 2016</i>	22a-42
Sec. 6	<i>October 1, 2016</i>	22a-43(a)
Sec. 7	<i>October 1, 2016</i>	22a-44(a)
Sec. 8	<i>October 1, 2016</i>	1-2b(a)
Sec. 9	<i>October 1, 2016</i>	Repealer section

Statement of Purpose:

To revise certain definitions and timing provisions of the Inland Wetlands and Watercourses Act and delineate rights and responsibilities of municipalities and the Department of Energy and Environmental Protection under said act.

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