



General Assembly

January Session, 2023

Committee Bill No. 5616

LCO No. 3962



Referred to Committee on ENVIRONMENT

Introduced by:
(ENV)

***AN ACT IMPROVING STANDARDS FOR INLAND WETLAND
COMMISSION AUTHORITY MEMBERSHIP AND ENFORCEMENT.***

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

1 Section 1. Subsections (l) and (m) of section 22a-39 of the general
2 statutes are repealed and the following is substituted in lieu thereof
3 (*Effective October 1, 2023*):

4 (l) Develop a comprehensive training program for inland wetlands
5 agency members. Not later than June 1, 2024, the commissioner shall
6 update such comprehensive training program to include all statutory
7 changes applicable to such inland wetland agencies and any common
8 law developments applicable to the considerations and authority of
9 such agencies. The commissioner shall concomitantly submit a copy of
10 such updated comprehensive training program to the joint standing
11 committee of the General Assembly having cognizance of matters
12 relating to the environment;

13 (m) Adopt regulations in accordance with the provisions of chapter
14 54 establishing reporting requirements for inland wetlands agencies,
15 which shall include provisions for reports to the commissioner on

16 permits, orders and other actions of such agencies and development of
17 a form for such reports. Such reports shall include, but not be limited to,
18 a statement from each inland wetlands agency that confirms that each
19 member of such agency completed the training required pursuant to
20 section 22a-42, as amended by this act; and

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

25 Sec. 2. Section 22a-41 of the general statutes is repealed and the
26 following is substituted in lieu thereof (*Effective October 1, 2023*):

27 (a) In carrying out the purposes and policies of sections 22a-36 to 22a-
28 45a, inclusive, including matters relating to regulating, licensing and
29 enforcing of the provisions thereof, the commissioner shall take into
30 consideration all relevant facts and circumstances, including but not
31 limited to:

32 (1) The environmental impact of the proposed regulated activity on
33 wetlands or watercourses;

34 (2) The applicant's purpose for, and any feasible and prudent
35 alternatives to, the proposed regulated activity which alternatives
36 would cause less or no environmental impact to wetlands or
37 watercourses;

38 (3) The relationship between the short-term and long-term impacts of
39 the proposed regulated activity on wetlands or watercourses and the
40 maintenance and enhancement of long-term productivity of such
41 wetlands or watercourses;

42 (4) Irreversible and irretrievable loss of wetland or watercourse
43 resources which would be caused by the proposed regulated activity,
44 including the extent to which such activity would foreclose a future
45 ability to protect, enhance or restore such resources, and any mitigation

46 measures which may be considered as a condition of issuing a permit
47 for such activity including, but not limited to, measures to (A) prevent
48 or minimize pollution or other environmental damage, (B) maintain or
49 enhance existing environmental quality, or (C) in the following order of
50 priority: Restore, enhance and create productive wetland or
51 watercourse resources;

52 (5) The character and degree of injury to, or interference with, safety,
53 health or the reasonable use of property which is caused or threatened
54 by the proposed regulated activity; and

55 (6) Impacts of the proposed regulated activity on wetlands or
56 watercourses outside the area for which the activity is proposed and
57 future activities associated with, or reasonably related to, the proposed
58 regulated activity which are made inevitable by the proposed regulated
59 activity and which may have an impact on wetlands or watercourses.

60 (b) (1) In the case of an application [which] that received a public
61 hearing pursuant to (A) subsection (k) of section 22a-39, or (B) a finding
62 by the inland wetlands agency that the proposed activity may have a
63 [significant] measurable impact on wetlands or watercourses, a permit
64 shall not be issued unless the commissioner finds on the basis of the
65 record that a [feasible and prudent] reasonable alternative does not
66 exist. In making [his] such finding, the commissioner shall consider the
67 facts and circumstances set forth in subsection (a) of this section. The
68 finding and the reasons therefor shall be stated on the record in writing.

69 (2) In the case of an application [which] that is denied on the basis of
70 a finding that there may be [feasible and prudent] reasonable
71 alternatives to the proposed regulated activity [which] that have less
72 adverse impact on wetlands or watercourses, the commissioner or the
73 inland wetlands agency, as the case may be, shall propose on the record
74 in writing the types of alternatives [which] that the applicant may
75 investigate provided this subdivision shall not be construed to shift the
76 burden from the applicant to prove that [he is entitled] entitlement to
77 the permit or to present alternatives to the proposed regulated activity.

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

82 (d) A municipal inland wetlands agency [shall not] may deny or
83 condition an application for a regulated activity in an area outside
84 wetlands or watercourses on the basis of an impact or effect on aquatic,
85 plant, or animal life or habitat. [unless such activity will likely impact or
86 affect the physical characteristics of such wetlands or watercourses.

87 Sec. 3. Subsection (d) of section 22a-42 of the general statutes is
88 repealed and the following is substituted in lieu thereof (*Effective October*
89 *1, 2023*):

90 (d) [At least one] Each member of the inland wetlands agency [or]
91 and staff of the agency shall be a person who has completed the
92 comprehensive training program developed by the commissioner
93 pursuant to section 22a-39 not less than every other year. [Failure to
94 have a member of the agency or staff with training shall not affect the
95 validity of any action of the agency.] The commissioner shall annually
96 make such program available to one person from each town without
97 cost to that person or the town. Each inland wetlands agency shall hold
98 a meeting [at least] not less than once annually at which information [is]
99 shall be presented to the members of the agency [which] that
100 summarizes the provisions of the training program. The commissioner
101 shall develop such information in consultation with interested persons
102 affected by the regulation of inland wetlands and shall provide for
103 distribution of on-line video presentations and related written materials
104 [which] that convey such information to inland wetlands agencies. In
105 addition to such materials, the commissioner, in consultation with such
106 persons, shall prepare materials [which] that provide guidance to
107 municipalities in carrying out the provisions of subsection (f) of section
108 22a-42a.

109 Sec. 4. Section 22a-44 of the general statutes is repealed and the

110 following is substituted in lieu thereof (*Effective October 1, 2023*):

111 (a) If the inland wetlands agency or its duly authorized agent finds
112 that any person is conducting or maintaining any activity, facility or
113 condition which is in violation of sections 22a-36 to 22a-45, inclusive, or
114 of the regulations of the inland wetlands agency, the agency or its duly
115 authorized agent [may] shall issue a written order, by certified mail, to
116 such person conducting such activity or maintaining such facility or
117 condition to cease immediately such activity or to correct such facility
118 or condition. [~~Within~~] Not later than ten days [of] after the issuance of
119 such order the agency shall hold a hearing to provide the person an
120 opportunity to be heard and show cause why the order should not
121 remain in effect. The agency shall consider the facts presented at the
122 hearing and [~~within~~] not later than ten days [of] after the completion of
123 the hearing notify the person by certified mail that the original order
124 remains in effect, that a revised order is in effect, or that the order has
125 been withdrawn. The original order shall be effective upon issuance and
126 shall remain in effect until the agency affirms, revises or withdraws the
127 order. The issuance of an order pursuant to this section shall not delay
128 or bar an action pursuant to subsection (b) of this section. The agency
129 may file a certificate of such order in the office of the town clerk of the
130 town in which the land is located and the town clerk shall record such
131 certificate on the land records of such town. Such certificate shall be
132 released upon compliance with such order. The commissioner may
133 issue orders pursuant to sections 22a-6 to 22a-7, inclusive, concerning
134 an activity, facility or condition (1) which is in violation of said sections
135 22a-36 to 22a-45, inclusive, if the municipality in which such activity,
136 facility or condition is located has failed to enforce its inland wetlands
137 regulations, or (2) for which an approval is required under sections 22a-
138 36 to 22a-45, inclusive, and for which such approval has not been
139 obtained.

140 (b) Any person who commits, takes part in, or assists in any violation
141 of any provision of sections 22a-36 to 22a-45, inclusive, including
142 regulations adopted by the commissioner and ordinances and

143 regulations promulgated by municipalities or districts pursuant to the
144 grant of authority herein contained, shall be assessed a civil penalty of
145 not more than [one] five thousand dollars for each offense. Each
146 violation of said sections shall be a separate and distinct offense, and, in
147 the case of a continuing violation, each day's continuance thereof shall
148 be deemed to be a separate and distinct offense. The Superior Court, in
149 an action brought by the commissioner, municipality, district or any
150 person, shall have jurisdiction to restrain a continuing violation of said
151 sections, to issue orders directing that the violation be corrected or
152 removed and to assess civil penalties pursuant to this section. All costs,
153 fees and expenses in connection with such action shall be assessed as
154 damages against the violator together with reasonable attorney's fees
155 which may be allowed, all of which shall be awarded to the
156 commissioner, municipality, district or person [which] that brought
157 such action. All penalties collected pursuant to this section shall be used
158 solely by the Commissioner of Energy and Environmental Protection (1)
159 to restore the affected wetlands or watercourses to their condition prior
160 to the violation, wherever possible, (2) to restore other degraded
161 wetlands or watercourses, (3) to inventory or index wetlands and
162 watercourses of the state, including, but not limited to, updates to the
163 natural diversity database of the Department of Energy and
164 Environmental Protection, (4) to implement and update a
165 comprehensive training program for inland wetlands agency members
166 and staff.

167 (c) Any person who wilfully or knowingly violates any provision of
168 sections 22a-36 to 22a-45, inclusive, shall be fined not more than [one]
169 ten thousand dollars for each day during which such violation continues
170 or be imprisoned not more than [six months] one year or both. For a
171 subsequent violation, such person shall be fined not more than [two]
172 fifteen thousand dollars for each day during which such violation
173 continues or be imprisoned not more than [one year] two years or both.
174 For the purposes of this subsection, "person" shall be construed to
175 include any responsible corporate officer.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2023</i>	22a-39(l) and (m)
Sec. 2	<i>October 1, 2023</i>	22a-41
Sec. 3	<i>October 1, 2023</i>	22a-42(d)
Sec. 4	<i>October 1, 2023</i>	22a-44

Statement of Purpose:

To strengthen inland wetland and watercourse protections to better protect communities and Long Island Sound from the impacts of climate change.

[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.]

Co-Sponsors: REP. SMITH F., 118th Dist.

H.B. 5616