



# House of Representatives

General Assembly

**File No. 456**

January Session, 2025

Substitute House Bill No. 6868

*House of Representatives, April 2, 2025*

The Committee on Environment reported through REP. PARKER of the 101st Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## **AN ACT ENHANCING ENVIRONMENTAL PERMITTING PREDICTABILITY.**

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

1 Section 1. Section 22a-6aa of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2025*):

3 The Commissioner of Energy and Environmental Protection may  
4 continue in effect any general permit issued by the commissioner  
5 pursuant to the provisions of this title [for a period of twelve months  
6 beyond the expiration date for such permit] until a new general permit  
7 is issued, or the commissioner makes a determination not to issue a new  
8 general permit, provided the commissioner publishes notice, not later  
9 than one hundred eighty days prior to the expiration date of such  
10 general permit of the intent to renew such general permit in accordance  
11 with any applicable provision of this title. Any such general permit  
12 continued in effect beyond its expiration date shall remain in effect until  
13 the commissioner makes a final decision on the renewal of such general  
14 permit, in accordance with the provisions of this title, [ provided such

15 final decision is made on or before the twelfth month after the expiration  
16 date. If no final decision is made within such time period, such general  
17 permit shall expire.] The commissioner may require the remittance of a  
18 registration fee in an amount not to exceed the existing registration fee  
19 for such general permit whenever a general permit is continued in effect  
20 beyond its expiration date in accordance with the provisions of this  
21 section. Nothing in this section shall affect the obligation of any person  
22 to register for a general permit pursuant to the provisions of this title in  
23 a timely fashion or to comply with any general permit issued by the  
24 commissioner pursuant to the provisions of this title.

25       Sec. 2. (NEW) (*Effective July 1, 2025*) (a) (1) Notwithstanding the  
26 provisions of chapters 440 and 444 of the general statutes and sections  
27 22a-361 and 22a-363b of the general statutes, the Commissioner of  
28 Energy and Environmental Protection may require, as a condition of any  
29 permit issued pursuant to section 22a-32, 22a-42, 22a-361 or 22a-363b of  
30 the general statutes, or as a condition of any certification regarding  
31 water quality pursuant to 33 USC 1341, watershed-level compensatory  
32 mitigation to offset impacts to water resources caused by any regulated  
33 activity (A) that is authorized under permit actions and conducted by  
34 any department, agency or instrumentality of the state, except any local  
35 or regional board of education, or (B) that is authorized under permit  
36 actions for activities within the public trust, including, but not limited  
37 to, impacts to inland wetlands and watercourses, tidal wetlands and  
38 coastal waters.

39       (2) The commissioner may include conditions for any license or  
40 certification referenced in subsection (a) of this section only if the  
41 commissioner determines that the applicant has demonstrated that: (A)  
42 It is not prudent to further minimize impacts of the regulated activity,  
43 and (B) for licensees or certificates that authorize actions for activities  
44 within the public trust, the commissioner additionally determines that  
45 the applicant has demonstrated that the watershed-level mitigation  
46 project will provide substantial public benefit.

47       (3) The commissioner may enter into any contract or agreement with

48 any contractor, state agency or federal agency in order to implement the  
49 provisions of this section.

50 (b) Provided the requirements of subdivision (2) of subsection (a) of  
51 this section are met, the commissioner may require one or both of the  
52 following actions by the permittee: (1) The purchasing of resource  
53 credits to provide compensation, in an amount established by the  
54 commissioner, to fund compensatory mitigation projects, or (2)  
55 participation in a compensatory mitigation project in lieu of a fee  
56 program or mitigation bank that has been approved for use by the  
57 United States Army Corps of Engineers and the Department of Energy  
58 and Environmental Protection.

59 (c) Any land purchase, conservation easement or other protective  
60 instrument used as a compensatory mitigation project pursuant to this  
61 section shall be held by a third party, unless the commissioner  
62 determines it is in the interest of the state for the state to hold the asset.  
63 All lands or interests in land acquired pursuant to this section shall be  
64 preserved in perpetuity for the protection of the wetland and  
65 hydrological functioning.

66 (d) Any watershed-level mitigation project pursued in accordance  
67 with this section shall create, restore or enhance the same or similar  
68 types of water resource to be impacted by the regulated activity and  
69 such compensation shall be proportional to the impacts caused by the  
70 proposed regulated activity.

71 (e) All watershed-level compensation resources acquired pursuant to  
72 this section shall be adequately protected, in perpetuity, to protect the  
73 water resources subject to mitigation under this section.

74 (f) (1) The commissioner shall issue, and may periodically reissue, a  
75 request for proposals for contractors who will develop a watershed-  
76 level mitigation program. Any such selected contractor shall be  
77 responsible for identifying potential watershed-level mitigation project  
78 locations for the commissioner's approval and performing wetland and  
79 water resource creation, restoration or enhancement projects, including

80 providing for such project's long-term management. The request for  
81 proposals may include any elements necessary for operation of the  
82 watershed-level mitigation program, as determined by the  
83 commissioner. In evaluating contractors for selection under any such  
84 request for proposals, the commissioner shall evaluate contractor  
85 qualifications that include, but are not limited to, sufficient financial  
86 resources to monitor and maintain any mitigation project for the  
87 appropriate time periods and sufficient and reliable demonstration of  
88 financial controls to administer the accounts necessary to conduct,  
89 monitor and maintain any such projects. The commissioner may select  
90 one or more contractors to carry out the purposes of this section.

91 (2) Any contractor selected pursuant to subdivision (1) of this  
92 subsection shall seek the commissioner's approval for any project  
93 location or scope before initiating such a compensatory mitigation  
94 project.

95 (3) Each such contractor may accept other federal, state or private  
96 funding for such projects in order to enhance or expand the  
97 compensatory mitigation project.

98 Sec. 3. (NEW) (*Effective from passage*) (a) The Commissioner of Energy  
99 and Environmental Protection shall prepare a report that evaluates  
100 potential improvements to environmental reviews undertaken  
101 pursuant to the state Endangered Species Act. Such report shall include:  
102 (1) Recommendations for improvements to the processing of such  
103 environmental reviews that will increase the efficiency, transparency,  
104 and predictability of such reviews, (2) an assessment of similar  
105 environmental review programs in other states, (3) recommendations  
106 concerning qualifications and proficiencies of third-party consultants  
107 that prepare mitigation plans and other materials required by the  
108 Department of Energy and Environmental Protection's Natural  
109 Diversity Data Base review process, (4) a description of the required  
110 components of a Natural Diversity Data Base review request, (5) the  
111 outcomes of a stakeholder engagement process that compiles public  
112 opinions on Natural Diversity Data Base review program

113 improvements, and (6) a prioritized list of additional scientific and  
114 communications resources that would increase the efficiency and  
115 predictability of the environmental review process.

116 (b) The commissioner may, within existing resources, hire a  
117 consultant to assist in preparing the report or portions thereof.

118 (c) Not later than February 1, 2026, the commissioner shall submit  
119 said report, in accordance with the provisions of section 11-4a of the  
120 general statutes, to the joint standing committee of the General  
121 Assembly having cognizance of matters relating to the environment and  
122 shall post said report on the Department of Energy and Environmental  
123 Protection's Internet web site.

124 Sec. 4. (NEW) (*Effective from passage*) (a) For any license, as defined in  
125 section 4-166 of the general statutes, that requires a hearing upon receipt  
126 of a petition by the Commissioner of Energy and Environmental  
127 Protection pursuant to any provision of title 22a of the general statutes  
128 or section 25-68d of the general statutes, or the regulations of  
129 Connecticut state agencies under the authority of the Department of  
130 Energy and Environmental Protection, such hearing shall be a public  
131 informational hearing and shall not be subject to the requirements of  
132 chapter 54 of the general statutes unless such petition alleges  
133 aggrievement or unreasonable pollution, impairment or destruction of  
134 the public trust in accordance with the provisions of subsection (b) of  
135 this section. At such public informational hearing, the Commissioner of  
136 Energy and Environmental Protection shall accept written and verbal  
137 comments regarding the license that is the subject of such informational  
138 hearing. Before issuing any final decision on a license that is the subject  
139 of such a public informational hearing, the commissioner shall respond  
140 to comments received at such informational hearing by posting a  
141 written response on the Department of Energy and Environmental  
142 Protection's Internet web site.

143 (b) For purposes of subsection (a) of this section, a petition alleges  
144 aggrievement or unreasonable pollution, impairment or destruction of  
145 the public trust if the petition sets forth specific facts that: (1)

146 Demonstrate that the legal rights, duties or privileges of at least one  
147 person who signed the petition will be, or may reasonably be expected  
148 to be, affected by the decision, or (2) allege that the proceeding involves  
149 conduct that has, or is reasonably likely to have, the effect of  
150 unreasonably polluting, impairing or destroying the public trust in the  
151 air, water or other natural resources of the state. The commissioner shall  
152 provide a copy of any such petition to the person seeking such license  
153 not later than ten business days after receipt of such petition. Such  
154 person may object to such petition on the basis that such petition fails to  
155 contain the specific factual demonstration required by this subsection.  
156 Not later than thirty days after a petition is submitted pursuant to  
157 subsection (a) of this subsection that purports to allege aggrievement or  
158 unreasonable pollution or destruction of such public trust, the  
159 commissioner shall determine whether the petition satisfies the  
160 requirements of this section and send notice of such determination, in  
161 writing, to the person seeking such license. If such petition request is  
162 granted by the commissioner, the petitioner shall be granted intervening  
163 party status and a hearing shall be held pursuant to the requirements of  
164 chapter 54 of the general statutes.

165 (c) No provision of subsection (a) or (b) of this section shall be  
166 construed to require a public informational hearing or contested case  
167 hearing in lieu of the public hearing prerequisites established in  
168 subdivisions (1) and (2) of subsection (b) of section 22a-32 of the general  
169 statutes, subdivisions (2) and (3) of subsection (k) of section 22a-39 of  
170 the general statutes, subdivisions (2) and (3) of subsection (b) of section  
171 22a-361 of the general statutes or subdivisions (3) and (4) of subsection  
172 (d) of section 25-68d of the general statutes.

173 (d) No provision of this section shall be construed to prevent the  
174 commissioner from holding a hearing prior to approving or denying  
175 any application if the commissioner determines that the public interest  
176 will be best served by holding a hearing and if another provision of the  
177 general statutes provides the commissioner the discretion to hold such  
178 a hearing. Any hearing held pursuant to this subsection shall not be  
179 subject to the requirements of chapter 54 of the general statutes.

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

Section 1	<i>October 1, 2025</i>	22a-6aa
Sec. 2	<i>July 1, 2025</i>	New section
Sec. 3	<i>from passage</i>	New section
Sec. 4	<i>from passage</i>	New section

***Statement of Legislative Commissioners:***

In Section 4(c), reference to section "25-68" was changed to "25-68d", for accuracy.

***ENV***      *Joint Favorable Subst. -LCO*

*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 makes various procedural changes for petitioned hearings on Department of Energy and Environmental Protection (DEEP) licenses and aligns Connecticut's compensatory mitigation process with federal requirements. Additionally, the bill requires DEEP to submit a report evaluating potential improvements to its Endangered Species Act environmental reviews. None of the changes contained within the bill result in a fiscal impact as DEEP has the staff and expertise necessary to complete the tasks.

**The Out Years****State Impact:** None**Municipal Impact:** None



**OLR Bill Analysis****sHB 6868****AN ACT ENHANCING ENVIRONMENTAL PERMITTING PREDICTABILITY.****SUMMARY**

This bill changes procedural requirements for petitioned hearings on Department of Energy and Environmental Protection (DEEP) licenses (permits and other approvals). For most DEEP-issued licenses, existing law allows people to request a public hearing by submitting a petition according to the law's requirements. Under the bill, these petitioned hearings are public informational hearings not subject to the Uniform Administrative Procedures Act (UAPA; see BACKGROUND), except for certain petitions alleging aggrievement or unreasonable pollution, impairment, or destruction of the public trust.

Additionally, the bill authorizes DEEP to:

1. require "watershed-level compensatory mitigation" (i.e. compensation to offset impacts to water resources) for certain regulated activities and
2. extend a general permit's expiration date until a new permit is issued, or until DEEP declines to issue a new permit, rather than extend them for one year past the expiration date as current law allows.

Finally, the bill requires DEEP to (1) prepare a report evaluating potential improvements to its Endangered Species Act environmental reviews and (2) submit it to the Environment Committee and post it on the department's website by February 1, 2026.

**EFFECTIVE DATE:** Upon passage, except the general permit provision is effective October 1, 2025, and the mitigation provision is effective July 1, 2025.

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**§ 4 — PUBLIC INFORMATIONAL HEARING REQUIREMENTS*****Covered Petitions***

The bill's requirements apply to any DEEP license (i.e. permit, certificate, approval, registration, charter, or license) for which people can petition the DEEP commissioner for a hearing. This includes petitions authorized under the state's environmental protection laws, law on regulated activities in floodplains, or DEEP regulations. Under the bill, these petitioned hearings are public informational hearings not subject to the UAPA, except as described below for petitions alleging aggrievement or unreasonable pollution, impairment, or destruction of the public trust.

The DEEP commissioner must (1) accept written and verbal comments at these public informational hearings and (2) post a written response to the comments on the department's website before issuing a final decision on the underlying license.

***Petitions Alleging Aggrievement or Unreasonable Pollution, Impairment, or Destruction of the Public Trust***

Under the bill, to allege aggrievement or unreasonable pollution, impairment, or destruction of the public trust, the petition must present specific facts:

1. demonstrating that at least one signatory's legal rights, duties, or privileges will or may be reasonably expected to be, affected by the decision or
2. alleging that the proceeding involves conduct that has or is reasonably likely to unreasonably pollute, impair, or destroy the public trust in the state's air, water, or other natural resources.

The commissioner must give a copy of the petition to the license applicant within 10 business days of receipt, who may then object to the petition for failing to have the specific facts required above. The commissioner must decide within 30 days after receiving the petition if it meets the above requirements and must give the license applicant written notice about her determination. If she grants the petition

request, the petitioner must be given intervening party status and DEEP must hold a hearing subject to the UAPA.

### ***Public Hearings for Certain Transportation Capital Projects***

The bill specifies that these provisions must not be construed as requiring a public informational hearing or contested case hearing instead of the public hearing requirements established under existing law for certain transportation capital projects. The law establishes the circumstances under which the DEEP commissioner must hold a hearing for these projects. (It generally requires petitioners to satisfy similar requirements as described above.)

### ***Additional Hearings***

The bill specifies that its provisions do not prevent the DEEP commissioner from holding a hearing before she approves or denies an application if (1) she determines it is in the public's best interest to do so and (2) another statute gives her this discretion. It exempts these additional hearings from the UAPA.

## **§ 2 — WATERSHED-LEVEL COMPENSATORY MITIGATION**

The bill authorizes the commissioner to require “watershed-level compensatory mitigation” (mitigation) as a condition of issuing certain permits and a specified water quality certification. This mitigation is designed to offset impacts to water resources caused by regulated activities that are authorized under a permit and (1) conducted by any state department, agency, or instrumentality, other than local or regional boards of education, or (2) involves areas of public trust, including impacts to inland wetlands and watercourses, tidal wetlands, and coastal waters. (The U.S. Army Corps of Engineers requires similar compensatory mitigation to offset specified permitted activities (see BACKGROUND).)

The commissioner may only require these conditions if the applicant demonstrates that it is not prudent to further minimize the regulated activity's impact. For licenses and certificates for activities within public trust areas, the commissioner must also determine that the applicant has

demonstrated that the watershed-level mitigation project will result in a substantial public benefit. The bill authorizes the commissioner to enter contracts or agreements with any contractor or state or federal agency to implement these provisions.

***Applicable Permits and Certifications***

Under the bill, the commissioner may require this mitigation as a condition of the following:

1. permits for regulated activities in tidal wetlands (CGS § 22a-32);
2. permits for regulated activities in wetlands and watercourses (CGS § 22a-42);
3. permits for dredging, erecting structures, placing fill, obstructions, encroachments, or related work in the state's tidal, coastal, or navigable waters waterward of the coastal jurisdiction line (CGS § 22a-361);
4. certificates of permission for certain activities involving dredging, building structures, and maintaining fill in the state's tidal, coastal, or navigable waters (CGS § 22a-363b); and
5. water quality certifications for applicants for a federal license or permit seeking to conduct an activity that may result in discharge into the state's navigable waters (33 U.S.C. § 1341).

***Mitigation Requirements for Permittees***

Under the bill, DEEP may require permittees to do one, or both, of the following:

1. purchase resource credits, in an amount determined by DEEP, to fund compensatory mitigation projects or
2. participate in a compensatory mitigation project instead of a fee program or a mitigation bank that the U.S. Army Corps of Engineers and DEEP have approved for use.

***Mitigation Projects***

Under the bill, third parties must hold any land purchase, conservation easement, or other protective instrument used as a mitigation project unless the commissioner determines it is in the state's best interest to assume ownership. Lands or land interests acquired in this way must be preserved indefinitely to protect the wetland and hydrological functioning.

Mitigation projects must be preserved in perpetuity and must create, restore, or enhance the same or similar water resources negatively impacted by the proposed regulated activities and the compensation must be proportional to the activities' impact. Any watershed-level compensation resources acquired must be adequately protected indefinitely to preserve the underlying water resource.

***Requests for Proposals for Contractors to Develop the Program***

Under the bill, the commissioner must issue, and may periodically reissue, a request for proposals (RFP) for one or more contractors to develop the mitigation program. The RFP may include any elements the commissioner determines the program needs. When selecting a contractor, the commissioner must evaluate the contractor's qualifications, including if it has (1) sufficient financial resources to monitor and maintain the project and (2) demonstrated financial controls to administer the accounts needed to conduct, monitor, and maintain the projects.

Any contractor that constructs a project must seek the commissioner's approval for the project's scope and location before starting it. Contractors may accept funds from private, state, or federal sources to enhance or expand the project.

**§ 1 — GENERAL PERMIT EXTENSIONS**

Under current law, the DEEP commissioner may extend the expiration date for a general permit by one year. The bill instead authorizes her to extend the permit until (1) a new general permit is issued or (2) she determines not to issue another permit. In doing so, it

eliminates the current requirement that a general permit automatically expire if the commissioner makes no decision on it within one year.

As under existing law, the commissioner must publish notice of her intent to renew the permit at least 180 days before the permit's expiration date and may charge a fee for extending the expiration date, but not more than the amount of the permit's current fee.

### **§ 3 — ENVIRONMENTAL REVIEW DEEP REPORT**

The bill requires the commissioner to prepare a report evaluating potential improvements to environmental reviews done according to the state Endangered Species Act. By law, these reviews are determinations of whether state agency actions threaten the existence of any protected species or result in the destruction or degradation of its habitat. The report must include:

1. recommendations for improving environmental review processing to increase their efficiency, transparency, and predictability;
2. an assessment of similar environmental review programs in other states;
3. recommendations on qualifications and proficiencies of third-party consultants that prepare mitigation plans and other materials required by DEEP's natural diversity data base review process;
4. a description of the required components of a review request;
5. the outcomes of a stakeholder engagement process (i.e. a compilation of public opinions on program improvements); and
6. a prioritized list of additional scientific and communications resources that would increase the efficiency and predictability of the environmental review process.

DEEP may hire a consultant within existing resources to help with

the report. By February 1, 2026, the commissioner must submit the report to the Environment Committee and post it on DEEP's website.

## **BACKGROUND**

### ***Intervening Parties and Intervenors in UAPA Contested Cases***

The UAPA sets procedural requirements for "contested cases," which are proceedings in which the legal rights, duties, or privileges of a party must be determined by an agency after an opportunity for a hearing or in which a hearing is held. Under these requirements, the presiding officer must grant a person status as a party in a contested case if the officer finds that the (1) person submitted a written petition to the agency and gave proper notice and (2) petition states facts demonstrating that the petitioner's legal rights, duties, or privileges are specifically affected by the agency's decision in the contested case.

The UAPA also allows the presiding officer to give a petitioner intervenor status in a contested case if the petition states facts that demonstrate that their participation is in the interest of justice and will not impair the proceeding's orderly conduct. An intervenor may participate in the hearing process, but the presiding officer may set specified limits on their participation (e.g., inspecting and copying records and introducing evidence (CGS § 4-177a)).

### ***U.S. Army Corps of Engineers Compensatory Mitigation***

Compensatory mitigation is generally required when there are unavoidable adverse impacts to wetlands, streams, or other aquatic resource functions caused by activities permitted by the U.S. Army Corps of Engineers. Compensatory mitigation can take the form of individual projects, mitigation banks, or other consolidated mitigation efforts that restore, create, enhance, or preserve aquatic resources.

## **COMMITTEE ACTION**

Environment Committee

Joint Favorable

Yea    27    Nay    5    (03/14/2025)