
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.

§ 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)