

CHAPTER 476a

FLOOD MANAGEMENT

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Sec. 25-68b. Definitions. As used in sections 25-68b to 25-68h, inclusive:

(1) "Activity" means any proposed state action in a floodplain or any proposed state action that impacts natural or man-made storm drainage facilities that are located on property that the commissioner determines to be controlled by the state;

(2) "Base flood" means that flood which has a one per cent chance of being equaled or exceeded in any year, as defined in regulations of the National Flood Insurance Program (44 CFR 59 et seq.), or that flood designated by the commissioner pursuant to section 25-68c. Any flood so designated by the commissioner shall have at least a one per cent chance of being equaled or exceeded in any year. Such flood may be designated as the A or V zones on maps published by the National Flood Insurance Program. The "base flood for a critical activity" means the flood that has at least a .2 per cent chance of being equaled or exceeded in any year. Such flood may be designated as the B zone on maps published for the National Flood Insurance Program;

(3) "Commissioner" means the Commissioner of Energy and Environmental Protection;

- (4) “Critical activity” means any activity, including, but not limited to, the treatment, storage and disposal of hazardous waste and the siting of hospitals, housing for the elderly, schools or residences, in the .2 per cent floodplain in which the commissioner determines that a slight chance of flooding is too great;
- (5) “Floodplain” means that area located within the real or theoretical limits of the base flood or base flood for a critical activity;
- (6) “Flood-proofing” means any combination of structural or nonstructural additions, changes or adjustments which reduce or eliminate flood damage to real estate or improved real property, to water and sanitary facilities, and to structures and their contents, including, but not limited to, for properties within the coastal boundary, as established pursuant to subsection (b) of section 22a-94, not less than an additional two feet of freeboard above base flood and any additional freeboard necessary to account for the most recent sea level change scenario updated pursuant to subsection (b) of section 25-68o;
- (7) “Freeboard” means a safety factor, expressed in feet above a calculated flood level, that compensates for unknown factors contributing to flood heights greater than the calculated height, including, but not limited to, ice jams, debris accumulations, wave actions, obstructions of bridge openings and floodways, the effects of urbanization on the hydrology of a watershed, loss of flood storage due to development and sedimentation of a watercourse bed;
- (8) “Proposed state action” means individual activities or a sequence of planned activities proposed to be undertaken by a state department, institution or agency, any state or federal grant or loan proposed to be used to fund a project that affects land use, or proposed transfer of real property belonging to the state.

(P.A. 84-536, S. 1; P.A. 05-174, S. 1; P.A. 11-80, S. 1; P.A. 18-82, S. 8.)

History: P.A. 05-174 redefined “activity” in Subdiv. (1) and added Subdiv. (8) re definition of “proposed state action”; pursuant to P.A. 11-80, “Commissioner of Environmental Protection” was changed editorially by the Revisors to “Commissioner of Energy and Environmental Protection” in Subdiv. (3), effective July 1, 2011; P.A. 18-82 redefined “flood-proofing” in Subdiv. (6), effective June 6, 2018.

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Sec. 25-68c. Powers and duties of commissioner. The commissioner shall have the following powers and duties under sections 25-68b to 25-68h, inclusive:

- (1) To coordinate, monitor and analyze the floodplain management activities of state and local agencies;
- (2) To coordinate flood control projects within the state and be the sole initiator of a flood control project with a federal agency;
- (3) To act as the primary contact for federal funds for floodplain management activities sponsored by the state;
- (4) To regulate actions by state agencies affecting floodplains except conversion by The University of Connecticut of commercial or office structures to an educational structure;
- (5) To regulate proposed state actions that impact natural or man-made storm drainage facilities located on property that the commissioner determines to be controlled by the state, including, but not limited to, programs that regulate flood flows within a floodplain and site development that increases peak runoff rates;
- (6) To designate a repository for all flood data within the state;
- (7) To assist municipalities and state agencies in the development of comprehensive floodplain management programs;

- (8) To determine the number and location of state-owned structures and uses by the state in the floodplain and to identify measures to make such structures and uses less susceptible to flooding including flood-proofing or relocation;
- (9) To mark or post the floodplains within lands owned, leased or regulated by state agencies in order to delineate past and probable flood heights and to enhance public awareness of flood hazards;
- (10) To designate the base flood or base flood for a critical activity where no such base flood is designated by the National Flood Insurance Program. The commissioner may add a freeboard factor to any such designation;
- (11) To require that any flood control project be designed to provide protection equal to or greater than the base flood.

(P.A. 84-536, S. 2; P.A. 95-230, S. 44, 45; P.A. 05-174, S. 2.)

History: P.A. 95-230 amended Subdiv. (4) to add exception for The University of Connecticut, effective June 7, 1995; P.A. 05-174 added new Subdiv. (5) re commissioner's power to regulate proposed state actions that impact natural or man-made storm drainage facilities located on state property and redesignated existing Subdivs. (5) to (10) as Subdivs. (6) to (11).

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Sec. 25-68d. Certification of activity or critical activity within or affecting the floodplain. Application for exemption. Exemptions. (a) No state agency shall undertake an activity or a critical activity within or affecting the floodplain without first obtaining an approval or approval with conditions from the commissioner of a certification submitted in accordance with subsection (b) of this section or exemption by the commissioner from such approval or approval with conditions in accordance with subsection (d) of this section.

(b) Any state agency proposing an activity or critical activity within or affecting the floodplain shall submit to the commissioner information certifying that:

- (1) The proposal will not obstruct flood flows or result in an adverse increase in flood elevations, significantly affect the storage or flood control value of the floodplains, cause an adverse increase in flood velocities, or an adverse flooding impact upon upstream, downstream or abutting properties, or pose a hazard to human life, health or property in the event of a base flood or base flood for a critical activity;
- (2) The proposal complies with the provisions of the National Flood Insurance Program, 44 CFR 59 et seq., and any floodplain zoning requirements adopted by a municipality in the area of the proposal and the requirements for stream channel encroachment lines adopted pursuant to the provisions of section 22a-342;
- (3) The agency has acquired, through public or private purchase or conveyance, easements and property in floodplains when the base flood or base flood for a critical activity is elevated above the increment authorized by the National Flood Insurance Program or the flood storage loss would cause adverse increases in such base flood flows;
- (4) The proposal promotes long-term nonintensive floodplain uses and has utilities located to discourage floodplain development;
- (5) The agency has considered and will use to the extent feasible flood-proofing techniques to protect new and existing structures and utility lines, will construct dikes, dams, channel alterations, seawalls, breakwaters or other structures only where there are no practical alternatives and will implement stormwater management practices in accordance with regulations adopted pursuant to section 25-68h; and

(6) The agency has flood forecasting and warning capabilities consistent with the system maintained by the National Weather Service and has a flood preparedness plan.

(c) The commissioner shall make a decision either approving, approving with conditions or rejecting a certification not later than ninety days after receipt of such certification, except that in the case of an exemption any decision shall be made ninety days after the close of the hearing. If a certification is rejected, the agency shall be entitled to a hearing in accordance with the provisions of sections 4-176e, 4-177, 4-177c and 4-180.

(d) Any state agency proposing an activity or critical activity within or affecting the floodplain may apply to the commissioner for exemption from the provisions of subsection (b) of this section. Such application shall include a statement of the reasons why such agency is unable to comply with said subsection and any other information the commissioner deems necessary. The commissioner, at least thirty days before approving, approving with conditions or denying any such application, shall publish once in a newspaper having a substantial circulation in the affected area notice of: (1) The name of the applicant; (2) the location and nature of the requested exemption; (3) the tentative decision on the application; and (4) additional information the commissioner deems necessary to support the decision to approve, approve with conditions or deny the application. There shall be a comment period following the public notice during which period interested persons and municipalities may submit written comments. After the comment period, the commissioner shall make a final determination to either approve the application, approve the application with conditions or deny the application. The commissioner may hold a public hearing prior to approving, approving with conditions or denying any application if in the discretion of the commissioner the public interest will be best served thereby, and the commissioner shall hold a public hearing upon receipt of a petition signed by at least twenty-five persons. Notice of such hearing shall be published at least thirty days before the hearing in a newspaper having a substantial circulation in the area affected. The commissioner may approve or approve with conditions such exemption if the commissioner determines that (A) the agency has shown that the activity or critical activity is in the public interest, will not injure persons or damage property in the area of such activity or critical activity, complies with the provisions of the National Flood Insurance Program, and, in the case of a loan or grant, the recipient of the loan or grant has been informed that increased flood insurance premiums may result from the activity or critical activity. An activity shall be considered to be in the public interest if it is a development subject to environmental remediation regulations adopted pursuant to section 22a-133k and is in or adjacent to an area identified as a regional center, neighborhood conservation area, growth area or rural community center in the State Plan of Conservation and Development pursuant to chapter 297, or (B) in the case of a flood control project, such project meets the criteria of subparagraph (A) of this subdivision and is more cost-effective to the state and municipalities than a project constructed to or above the base flood or base flood for a critical activity. Following approval for exemption for a flood control project, the commissioner shall provide notice of the hazards of a flood greater than the capacity of the project design to each member of the legislature whose district will be affected by the project and to the following agencies and officials in the area to be protected by the project: The planning and zoning commission, the inland wetlands agency, the director of civil defense, the conservation commission, the fire department, the police department, the chief elected official and each member of the legislative body, and the regional council of governments. Notice shall be given to the general public by publication in a newspaper of general circulation in each municipality in the area in which the project is to be located.

(e) The use of a mill that is located on a brownfield, as defined in section 32-760, shall be exempt from the certification requirements of subdivision (4) of subsection (b) of this section, provided the agency demonstrates: (1) The activity is subject to the environmental remediation requirements of the regulations adopted pursuant to section 22a-133k, (2) the activity is limited to the areas of the property where historical mill uses occurred, (3) any critical activity is above the five-hundred-year flood elevation, and (4) the activity complies with the provisions of the National Flood Insurance Program.

(f) The failure of any agency to comply with the provisions of this section or any regulations adopted pursuant to section 25-68c shall be grounds for revocation of the approval of the certification.

(g) The provisions of this section shall not apply to any proposal by the Department of Transportation, the Department of Housing or the Department of Economic and Community Development for a project within a

drainage basin of less than one square mile.

(h) The provisions of subsections (a) to (d), inclusive, and (f) and (g) of this section shall not apply to the following critical activities above the one-hundred-year flood elevation that involve state funded housing reconstruction, rehabilitation or renovation, provided the state agency that provides funding for such activity certifies that it complies with the provisions of the National Flood Insurance Program and the requirements of this subsection: (1) Projects involving the renovation or rehabilitation of existing housing on the Department of Housing's most recent affordable housing appeals list; (2) construction of minor structures to an existing building for the purpose of providing accessibility to persons with disabilities pursuant to the State Building Code; (3) construction of open decks attached to residential structures, properly anchored in accordance with the State Building Code; (4) the demolition and reconstruction of existing housing for persons and families of low and moderate income, provided there is no increase in the number of dwelling units and (A) such reconstruction is limited to the footprint of the existing foundation of the building or buildings used for such purpose, or which could be used for such purpose subsequent to reconstruction, or (B) such reconstruction is on a parcel of land where the elevation of such land is above the one-hundred-year flood elevation, provided there is no placement of fill within an adopted Federal Emergency Management Agency flood zone.

(P.A. 84-536, S. 3; P.A. 88-317, S. 87, 107; P.A. 05-174, S. 3; 05-288, S. 112, 113; P.A. 07-233, S. 9; P.A. 09-141, S. 1; 09-235, S. 1; P.A. 10-139, S. 1; P.A. 13-234, S. 44; 13-247, S. 312; 13-308, S. 21; P.A. 17-202, S. 76.)

History: P.A. 88-317 added references in Subsec. (c) to Secs. 4-176e, 4-177c and 4-180, effective July 1, 1989, and applicable to all agency proceedings commencing on or after that date; P.A. 05-174 added provisions re approval with conditions and made technical changes in Subsecs. (a), (c) and (d) and replaced former provision re notice and hearing with new provisions re procedural requirements for state agency exemption in Subsec. (d); P.A. 05-288 made technical changes in Subsecs. (a) and (d), effective July 13, 2005; P.A. 07-233 amended Subsec. (d)(4)(A) to specify types of activities considered to be in the public interest, effective July 1, 2007; P.A. 09-141, effective June 25, 2009, and P.A. 09-235, effective July 9, 2009, both added exemption from certification requirements for use of mill located on a brownfield, codified as new Subsec. (e), and redesignated existing Subsecs. (e) and (f) as Subsecs. (f) and (g); P.A. 10-139 made technical changes in Subsecs. (b)(2) and (e)(3), added Department of Economic and Community Development exemption in Subsec. (g) and added Subsec. (h) re exemptions for critical activities above the one-hundred-year flood elevation that involve state funded housing reconstruction, rehabilitation or renovation, effective July 1, 2010; P.A. 13-234 amended Subsec. (g) by adding “, the Department of Housing” and amended Subsec. (h) by substituting “Department of Housing’s” for “Department of Economic and Community Development’s”, effective July 1, 2013; pursuant to P.A. 13-247, “regional planning agency” was changed editorially by the Revisors to “regional council of governments” in Subsec. (d), effective January 1, 2015; P.A. 13-308 amended Subsec. (e) by replacing reference to Sec. 32-9kk with reference to Sec. 32-760, effective July 1, 2013; P.A. 17-202 amended Subsec. (h) by replacing “handicapped accessibility” with “accessibility to persons with disabilities”.

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Sec. 25-68e. Suspension. The provisions of sections 25-68b to 25-68h, inclusive, and any regulations adopted thereunder may be suspended by the commissioner during any disaster emergency proclaimed by the Governor pursuant to section 28-9a or during an emergency declaration or major disaster declaration declared by the President of the United States under Public Law 93-288.

(P.A. 84-536, S. 4.)

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Sec. 25-68f. Floodplain designation. Where more than one flood zone has been designated for an area, the most stringent designation shall be used in fulfilling the provisions of sections 25-68b to 25-68h, inclusive.

(P.A. 84-536, S. 5.)

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Sec. 25-68g. Immunity. The state, any municipality or any officer or employee thereof shall not be liable for any damage resulting from reliance on any decision made pursuant to section 25-68d.

(P.A. 84-536, S. 6.)

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Sec. 25-68h. Regulations. The commissioner shall adopt regulations in accordance with the provisions of chapter 54 to implement the provisions of sections 25-68b to 25-68h, inclusive. Such regulations shall include, but not be limited to, (1) standards for stormwater management and flood flows and (2) procedures for certification or exemption of a proposal in accordance with section 25-68d.

(P.A. 84-536, S. 7.)

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Sec. 25-68i. Guidelines for municipal ordinances re floodplains. The Commissioner of Energy and Environmental Protection shall develop guidelines to be used by municipalities in revising ordinances restricting flood storage and conveyance of water for floodplains, as defined in section 8-21, that are not tidally influenced. Such guidelines shall include, but not be limited to, a model ordinance that may be used by municipalities to comply with the provisions of section 8-21. The commissioner shall make the guidelines available to the public.

(P.A. 04-144, S. 4; P.A. 11-80, S. 1.)

History: Pursuant to P.A. 11-80, “Commissioner of Environmental Protection” was changed editorially by the Revisors to “Commissioner of Energy and Environmental Protection”, effective July 1, 2011.

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Sec. 25-68j. Hazard mitigation and floodplain management grant program: Definitions. As used in sections 25-68k to 25-68n, inclusive:

- (1) “Eligible applicant” means any municipality or any regional council of governments organized under the provisions of sections 4-124i to 4-124p, inclusive;
- (2) “Hazard mitigation” means activities that include, but are not limited to, actions taken to reduce or eliminate long-term risk to human life, infrastructure and property resulting from natural hazards including, but not limited to, flooding, high winds and wildfires; and
- (3) “Floodplain management” means activities that include, but are not limited to, actions taken to retain the existing capacity of designated floodplain areas to store and convey flood waters.

(P.A. 04-144, S. 8; P.A. 13-247, S. 302.)

History: P.A. 04-144 effective July 1, 2004; P.A. 13-247 amended Subdiv. (1) to redefine “eligible applicant” by deleting references to regional planning agency and regional council of elected officials and changing “government” to “governments”, effective January 1, 2015.

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Sec. 25-68k. Hazard mitigation and floodplain management grant program: Administration by Commissioner of Energy and Environmental Protection. (a) The Commissioner of Energy and Environmental Protection shall establish and administer a hazard mitigation and floodplain management grant program to reimburse eligible applicants for costs incurred in the reduction or elimination of long-term risks to human life, infrastructure and property from natural hazards, including, but not limited to, flooding, high winds and wildfires, and in the retention of present capacity of designated floodplain areas to store and convey flood waters. Each grant shall be in an amount equal to ninety per cent of the costs to be incurred for such activities. Application for a grant shall be made in writing to the commissioner in such form as the commissioner may prescribe and shall include a description of the purpose, objectives and budget of the activities to be funded by the grant. If the applicant is a municipality, the chief executive officer of the municipality applying for the grant may designate the town planner, the director of public works, the police chief, the fire chief or the emergency management director of such municipality as the agent to make the application.

(b) The Commissioner of Energy and Environmental Protection shall establish, by regulations adopted in accordance with chapter 54, relative priorities for the approval of grants under this section. Such priorities may take into account the differing needs of eligible applicants, the need for consistency and equity in the distribution of grant awards and the extent to which particular projects may advance the purposes of this section. The commissioner shall accord highest priority to projects which involve (1) the preparation or revision of hazard mitigation plans by municipalities, or (2) participation in the community rating system of the National Flood Insurance Program. The commissioner shall accord secondary priority to projects which involve (A) the execution of hazard mitigation projects by municipalities in accordance with approved hazard mitigation plans; or (B) administering and providing financial assistance for the hazard mitigation and floodplain management grant program established under this section. The commissioner may establish further criteria for the approval of grants under this section. Not later than February 1, 2005, the commissioner shall develop and disseminate a pamphlet that describes the evaluation process for grant applications under this section. In awarding grants under this section, the commissioner shall consult with any person the commissioner deems necessary.

(c) The commissioner shall authorize grant awards under this section on or before July thirty-first and December thirty-first of each fiscal year in which payment of a grant is to be made.

(d) The commissioner shall allocate not less than sixty per cent of the moneys in the hazard mitigation and floodplain management account in any fiscal year for grants under this section.

(P.A. 04-144, S. 9; P.A. 11-80, S. 1.)

History: P.A. 04-144 effective July 1, 2004; pursuant to P.A. 11-80, "Commissioner of Environmental Protection" was changed editorially by the Revisors to "Commissioner of Energy and Environmental Protection", effective July 1, 2011.

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Sec. 25-68l. Awarding of grants. (a) On and after July 1, 2005, within available appropriations, the Commissioner of Energy and Environmental Protection shall make grants to municipalities under section 25-68k.

(b) If the commissioner finds that any grant awarded pursuant to this section is being used for other purposes or to supplant a previous source of funds, the commissioner may require repayment.

(P.A. 04-144, S. 10; June Sp. Sess. P.A. 09-3, S. 483; P.A. 11-80, S. 1.)

History: June Sp. Sess. P.A. 09-3 amended Subsec. (a) to add “within available appropriations” and to delete reference to hazard mitigation and floodplain management account; pursuant to P.A. 11-80, “Commissioner of Environmental Protection” was changed editorially by the Revisors to “Commissioner of Energy and Environmental Protection” in Subsec. (a), effective July 1, 2011.

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Sec. 25-68m. Reports re activities paid for under grant. (a) Recipients of grants under section 25-68k shall submit a report to the Commissioner of Energy and Environmental Protection, in such form as the commissioner prescribes, not later than September first of the fiscal year following the fiscal year such grant was received. Such report shall contain a description of activities paid for with financial assistance under the grant. The chief executive officer of a municipality that receives a grant may designate the town planner, the director of public works, the police chief, the fire chief or the emergency management director of such municipality as the agent to make such report.

(b) On or before January 1, 2007, and annually thereafter, the Commissioner of Energy and Environmental Protection shall prepare a report on grants made under section 25-68k for the preceding fiscal year. Each such report shall include: (1) A description of the grants made, including the amount and purposes and the municipalities to which they were made; and (2) any findings or recommendations concerning the operation and effectiveness of the grant program.

(P.A. 04-144, S. 11; P.A. 05-288, S. 114; P.A. 11-80, S. 1.)

History: P.A. 05-288 made a technical change in Subsec. (b), effective July 13, 2005; pursuant to P.A. 11-80, “Commissioner of Environmental Protection” was changed editorially by the Revisors to “Commissioner of Energy and Environmental Protection”, effective July 1, 2011.

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Sec. 25-68n. Regulations. The Commissioner of Energy and Environmental Protection shall adopt regulations, in accordance with the provisions of chapter 54, to implement the provisions of sections 25-68j to 25-68m, inclusive.

(P.A. 04-144, S. 12; P.A. 11-80, S. 1.)

History: P.A. 04-144 effective July 1, 2004; pursuant to P.A. 11-80, “Commissioner of Environmental Protection” was changed editorially by the Revisors to “Commissioner of Energy and Environmental Protection”, effective July 1, 2011.

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Sec. 25-68o. Consideration of sea level change scenarios re municipal evacuation and hazard mitigation plans. Publishing of sea level change scenarios. (a) On and after October 1, 2019, in the preparation of any municipal evacuation plan or hazard mitigation plan, such municipality shall consider the most recent sea level change scenario updated pursuant to subsection (b) of this section.

(b) Within available resources and not less than once every ten years, the Marine Sciences Division of The University of Connecticut shall publish a sea level change scenario for the state based upon the sea level change scenarios published by the National Oceanic and Atmospheric Administration in Technical Report OAR CPO-1 and other available scientific data necessary to create a scenario applicable to the state coastline. Within available resources and not less than ninety days prior to publishing such sea level change scenario by said

Marine Sciences Division, the division and the Department of Energy and Environmental Protection shall conduct not less than one public hearing concerning such update. Not later than sixty days after the last public hearing, the Commissioner of Energy and Environmental Protection shall publish the sea level change scenario for the state on the Internet web site of the Department of Energy and Environmental Protection along with a notice that any previous updates are superseded.

(P.A. 13-179, S. 6; P.A. 18-82, S. 9.)

History: P.A. 18-82 amended Subsec. (a) by replacing “October 1, 2013” with “October 1, 2019”, replacing reference to sea level change scenarios published by the National Oceanic and Atmospheric Administration with reference to most recent sea level change scenario updated pursuant to Subsec. (b), and amended Subsec. (b) by replacing provision re update of sea level change scenarios with provision re publishing sea level change scenario for the state based upon sea level change scenarios published by National Oceanic and Atmospheric Administration in technical report and other available scientific data necessary to create scenario applicable to the state coastline, adding reference to Department of Energy and Environmental Protection, adding provision re publication of sea level change scenario for the state on the Internet web site of the department with notice that previous updates are superseded, and made conforming changes, effective June 6, 2018.

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