



House of Representatives

General Assembly

File No. 329

February Session, 2000

Substitute House Bill No. 5883

House of Representatives, March 30, 2000

The Committee on Environment reported through REP. STRATTON of the 17th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

An Act Concerning The Open Space Trust Fund.

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

1 Section 1. (NEW) (a) There is established a charter oak open space
2 trust account, within the General Fund, into which shall be deposited
3 thirty-five per cent of any surplus funds from the fiscal years ending
4 June 30, 2000, June 30, 2001, and June 30, 2002, but not more than fifty
5 million dollars in any one year. Once deposited into the trust fund, the
6 funds shall be nonlapsing and shall be separate from bond funds
7 provided for any similar programs or purposes.

8 (b) For the fiscal years ending June 30, 2001, June 30, 2002, and June
9 30, 2003, annual disbursements from the charter oak open space
10 account shall be made as follows: (1) Sixty per cent of the funds shall
11 be deposited into the charter oak open space grant program account
12 established pursuant to section 3 of this act; and (2) forty per cent of
13 the funds shall be deposited in the charter oak state parks and forest
14 account established pursuant to section 6 of this act.

15 Sec. 2. (NEW) (a) There is established a charter oak open space grant
16 program account, within the General Fund, which shall be a separate,
17 nonlapsing account. The account shall consist of any funds required or
18 allowed by law to be deposited into the account including, but not
19 limited to, funds from the charter oak open space account established
20 pursuant to section 1 of this act, gifts or donations received for the
21 purposes of section 7-131d of the general statutes, as amended by this
22 act. Investment earnings credited to the assets of the account shall
23 become part of the assets of the account. Any balance remaining in the
24 account at the end of any fiscal year shall be carried forward in the
25 account for the fiscal year next succeeding. Payments from the account
26 shall be made upon authorization by the Commissioner of
27 Environmental Protection. Neither the proceeds of any general
28 obligation bonds of the state nor the investment earnings of any such
29 proceeds shall be deposited in the account.

30 (b) At least fifty per cent of the funds deposited in the charter oak
31 open space grant program account from the charter oak open space
32 account established pursuant to section 1 of this act shall be used to
33 make grants under the charter oak open space grant program
34 established pursuant to section 3 of this act to municipalities, nonprofit
35 land conservation organizations and water companies, as defined in
36 section 25-32a of the general statutes, provided if fifty per cent of such
37 funds have not been used by municipalities, nonprofit land
38 conservation organizations or water companies prior to July 1, 2003,
39 then after said date expenditures may be made from remaining funds
40 for either the charter oak open space program or the charter oak state
41 parks and forests program established pursuant to section 6 of this act.

42 Sec. 3. (NEW) (a) There is established the charter oak open space
43 grant program. The program shall provide grants to municipalities
44 and nonprofit land conservation organizations to acquire land or
45 permanent interests in land for open space and watershed protection
46 and to water companies, as defined in section 25-32a of the general

47 statutes, to acquire and protect land eligible to be classified as class I or
48 class II land, as defined in section 25-37c of the general statutes, after
49 acquisition. All land or interest in land acquired under this program
50 shall be preserved in perpetuity predominantly in its natural scenic
51 and open condition for the protection of natural resources while
52 allowing for recreation consistent with such protection as specified in
53 subsection (b) of section 7-131d, as amended by this act, and, for lands
54 acquired by water companies, allowing for the improvements
55 necessary for the protection or provision of potable water. No
56 municipality shall be eligible for grants under this section unless the
57 municipality has adopted an open space plan in its plan of
58 development.

59 (b) The Commissioner of Environmental Protection may make
60 grants under the charter oak open space grant program to: (1)
61 Municipalities or nonprofit land conservation organizations (A) in an
62 amount not to exceed ninety per cent of the purchase price of land to
63 be permanently preserved that is eligible to be classified as class II
64 land, as defined in section 25-37c of the general statutes, after
65 acquisition; (B) in an amount not to exceed eighty per cent of the
66 purchase price of land to be permanently preserved that is certified as
67 class II land; and (C) in an amount not to exceed seventy per cent of
68 the purchase price of land to be permanently preserved that (i) is
69 certified as class III land, as defined in section 25-37c of the general
70 statutes, (ii) is owned by a public service company, as defined in
71 section 16-1 of the general statutes other than a water company as
72 defined in section 25-32a of the general statutes or owned by an electric
73 supplier as defined in section 16-1 of the general statutes, or (iii) has a
74 fair market value of not less than one million dollars; and (2) water
75 companies as defined in section 25-32a in an amount not to exceed fifty
76 per cent of the purchase price of land that is eligible to be classified as
77 class II land, as defined in section 25-37c of the general statutes, after
78 acquisition or portion of land that is eligible to be classified class II
79 land after acquisition. Applicants for grants under the program shall

80 provide a copy of the application to the chairperson of the review
81 board established under section 7-131e of the general statutes. The
82 board shall provide comments to the commissioner on pending
83 applications as it deems necessary.

84 (c) The program shall expire when twenty-one per cent of the state's
85 land area shall be held by the state as open space land as provided in
86 subsection (b) of section 23-8 of the general statutes. Any moneys
87 remaining in the charter oak open space grant program account at the
88 time the program expires shall revert back to the General Fund.

89 Sec. 4. Section 7-131d of the general statutes is repealed and the
90 following is substituted in lieu thereof:

91 (a) There is established the protected open space and watershed
92 land acquisition grant program. The program shall provide grants to
93 municipalities and nonprofit land conservation organizations to
94 acquire land or permanent interests in land for open space and
95 watershed protection and to water companies, as defined in section 25-
96 32a, to acquire and protect land which is eligible to be classified as
97 class I or class II land, as defined in section 25-37c, after acquisition. All
98 lands or interests in land acquired under this program shall be
99 preserved in perpetuity predominantly in their natural scenic and
100 open condition for the protection of natural resources while allowing
101 for recreation consistent with such protection and, for lands acquired
102 by water companies, allowing for the improvements necessary for the
103 protection or provision of potable water.

104 (b) Grants may be made under the [program] protected open space
105 and watershed land acquisition grant program established under
106 subsection (a) of this section or under the charter oak open space grant
107 program account established under section 3 of this act to match funds
108 for the purchase of land or permanent interests in land which purchase
109 meets one of the following criteria: (1) Protects land identified as being
110 especially valuable for recreation, forestry, fishing, conservation of

111 wildlife or natural resources; (2) protects land which includes or
112 contributes to a prime natural feature of the state's landscape,
113 including, but not limited to, a shoreline, a river, its tributaries and
114 watershed, an aquifer, mountainous territory, ridgelines, an inland or
115 coastal wetland, a significant littoral or estuarine or aquatic site or
116 other important geological feature; (3) protects habitat for native plant
117 or animal species listed as threatened or endangered or of special
118 concern, as defined in section 26-304; (4) protects a relatively
119 undisturbed outstanding example of a native ecological community
120 which is now uncommon; (5) enhances and conserves water quality of
121 the state's lakes, rivers and coastal water; (6) preserves local
122 agricultural heritage; or (7) in the case of grants to water companies,
123 protects land which is eligible to be classified as class I land or class II
124 land after acquisition. The commissioner may make a grant under the
125 [program] protected open space and watershed land acquisition grant
126 program established under subsection (a) of this section or under the
127 charter oak open space grant program account established under
128 section 3 of this act to a distressed municipality or a targeted
129 investment community, as defined in section 32-9p, for restoration or
130 protection of natural features or habitats on open space already owned
131 by the municipality, including, but not limited to, wetland or wildlife
132 or plant habitat restoration or restoration of other sites to a more
133 natural condition, or replacement of vegetation, provided the total
134 amount of grants to such municipalities for such purposes may not
135 exceed twenty per cent of the total amount of grants made in any fiscal
136 year.

137 (c) No grant may be made under the [program] protected open
138 space and watershed land acquisition grant program established under
139 subsection (a) of this section or under the charter oak open space grant
140 program account established under section 3 of this act for: (1) Land to
141 be used for commercial purposes or for recreational purposes
142 requiring intensive development, including, but not limited to, golf
143 courses, driving ranges, tennis courts, ballfields, swimming pools and

144 uses by motorized vehicles, provided trails or pathways for
145 pedestrians or nonmotorized vehicles shall not be considered intensive
146 development; (2) land with environmental contamination over a
147 significant portion of the property provided grants for land requiring
148 remediation of environmental contamination may be made if
149 remediation will be completed before acquisition of the land or any
150 interest in the land and an environmental assessment approved by the
151 Commissioner of Environmental Protection has been completed and
152 no environmental use restriction applies to the land; (3) land which has
153 already been committed for public use; (4) development costs,
154 including, but not limited to, construction of ballfields, tennis courts,
155 parking lots or roadways; (5) land to be acquired by eminent domain;
156 or (6) reimbursement of in-kind services or incidental expenses
157 associated with the acquisition of land. This subsection shall not
158 prohibit the continuation of agricultural activity, the activities of a
159 water company for public water supply purposes or the selling of
160 timber incidental to management of the land which management is in
161 accordance with approved forest management practices provided any
162 proceeds of such timber sales shall be used for management of the
163 land. In the case of land acquired under this section which is
164 designated as a state park, any fees charged by the state for use of such
165 land shall be used by the state in accordance with the provisions of
166 title 23 or section 22a-27h.

167 (d) Any municipality or group of contiguous municipalities may
168 apply to the Commissioner of Environmental Protection for a grant-in-
169 aid of a program established to preserve or restrict to conservation or
170 recreation purposes the use of open space land. Such grant shall be
171 used for the acquisition of land, or easements, interests or rights
172 therein, or for the development of such land, or easements, interests or
173 rights therein, for purposes set forth in this section, or both, in
174 accordance with a plan of development adopted by the municipal
175 planning commission of the municipality within which the land is
176 located. Any application for a grant-in-aid relating to land located

177 beyond the territorial limits of the applying municipality shall be
178 subject to approval of the legislative body of the municipality within
179 whose territorial limits the land is located. A municipality applying for
180 aid under this section, may designate its conservation commission as
181 its agent to make such application.

182 (e) At closing, a permanent conservation easement, as defined in
183 section 47-42, shall be executed for any property purchased with grant
184 funds, which conservation easement shall provide that the property
185 shall remain forever predominantly in its natural and open condition
186 for the specific conservation, open space or water supply purposes for
187 which it was acquired provided any improvements or changes to the
188 property shall be supportive of such condition or purposes. The
189 permanent conservation easement shall be in favor of the state acting
190 through the Commissioner of Environmental Protection, or his
191 designee, which may be a municipality or a land conservation
192 organization. In the case of land acquired for water supply protection,
193 a water company may hold an easement in conjunction with the state
194 or a nonprofit entity to protect the water supply. Such permanent
195 conservation easement shall also include a requirement that the
196 property be made available to the general public for appropriate
197 recreational purposes, the maintenance of which recreational access
198 shall be the responsibility of the grantee provided such access shall not
199 be required for land which will be classified as class I or class II land
200 by a water company if such access is inconsistent with the provision of
201 pure drinking water to the public. An exception to the provision of
202 public recreational access may be made at the discretion of the
203 Commissioner of Environmental Protection when provision for public
204 access would be unreasonably detrimental to the wildlife or plant
205 habitat or other natural features of the property or, for land where
206 development rights have been purchased, would be disruptive of
207 agricultural activity occurring on the land. Any instrument conveying
208 an interest in land less than fee which interest is purchased under this
209 section shall provide for the permanent preservation of the land and

210 public access consistent with the land's use or protection and with any
211 restrictions prescribed by the Department of Public Health in order to
212 protect a public drinking water source.

213 Sec. 5. Subsection (a) of section 7-131e of the general statutes, as
214 amended by public act 99-58, is repealed and the following is
215 substituted in lieu thereof:

216 (a) Grant award decisions under the protected open space and
217 watershed land acquisition grant program established under section
218 7-131d, as amended by this act, or under the charter oak open space
219 grant program established under section 3 of this act shall be made by
220 the Commissioner of Environmental Protection at least semiannually.
221 All complete and eligible grant applications shall be acted upon by the
222 commissioner as soon as practicable. A single project may receive a
223 grant in more than one grant cycle, subject to future availability of
224 funds and subject to the limitations set forth in this section and
225 sections 23-78, 12-498 and 7-131d, as amended by this act. Up to two
226 per cent of the grant funds may be used for administrative expenses
227 including, but not limited to: (1) Contractors to assist the Department
228 of Environmental Protection in the review and evaluation of grant
229 proposals and baseline data collection for conservation easements; (2)
230 appraisals or appraisal reviews; and (3) preparation of legal and other
231 documents. Administrative expenses may not be used for staff salaries.
232 Not later than September 1, 1998, for the protected open space and
233 watershed land acquisition grant program established under section 7-
234 131d, as amended by this act, and not later than September 1, 2000, for
235 the charter oak open space grant program account established under
236 section 3 of this act, the commissioner shall develop written guidelines
237 and a ranking system for consistency and equity in the distribution of
238 grant awards under [this program] the protected open space and
239 watershed land acquisition grant program established under section 7-
240 131d, as amended by this act, or under the charter oak open space
241 grant program account established under section 3 of this act based on

242 the criteria listed in subsections (b) and (c) of section 7-131d, as
243 amended by this act. Consistent with such criteria, additional
244 consideration shall be given to: (A) Protection of lands adjacent to and
245 complementary to adjacent protected open space land or class I or class
246 II water company lands; (B) equitable geographic distribution of the
247 grants; (C) proximity of a property to urban areas with growth and
248 development pressures or to areas with open space deficiencies and
249 underserved populations; (D) protection of land particularly
250 vulnerable to development incompatible with its natural resource
251 values including the protection of a public water supply source; (E)
252 consistency with the state's plan of conservation and development; (F)
253 multiple protection elements, such as water quality and supply
254 protection, scenic preservation and farmland preservation; (G) the
255 extent to which the presence of already constructed buildings or other
256 manmade improvements diminish or overshadow the natural resource
257 value of a proposed acquisition, or its value relative to its cost; and (H)
258 preservation of forest lands and bodies of water which naturally
259 absorb significant amounts of carbon dioxide.

260 Sec. 6. (NEW) (a) There is established a charter oak state parks and
261 forests account, within the General Fund, which shall be a separate,
262 nonlapsing account. The account shall consist of any funds required or
263 allowed by law to be deposited into the account including, but not
264 limited to, funds from the charter oak open space account established
265 pursuant to section 1 of this act, gifts or donations received for the
266 purposes of section 7-131d of the general statutes, as amended by this
267 act. Investment earnings credited to the assets of the account shall
268 become part of the assets of the account. Any balance remaining in the
269 account at the end of any fiscal year shall be carried forward in the
270 account for the fiscal year next succeeding. Payments from the account
271 shall be made upon authorization by the Commissioner of
272 Environmental Protection. Neither the proceeds of any general
273 obligation bonds of the state nor the investment earnings of any such
274 proceeds shall be deposited in the account. Funds in the state parks

275 and forests account shall be expended to acquire land as set forth in
276 subsection (b) of this section.

277 (b) There is established the charter oak state parks and forests
278 program to enable the state to acquire land for open space and
279 watershed protection. All land acquired by the state under this
280 program shall be preserved in perpetuity predominantly in its natural
281 scenic and open condition for the protection of natural resources while
282 allowing for recreation consistent with such protection as specified in
283 subsection (b) of section 7-131d of the general statutes, as amended by
284 this act.

285 (c) The Commissioner of Environmental Protection shall give
286 priority when making expenditures for acquiring land first to land that
287 is eligible to be classified as class II land, as defined in section 25-37c of
288 the general statutes, after acquisition, second to land that is designated
289 as class II land, and third to land that is designated as class III land, as
290 defined in section 25-37c of the general statutes or land that is owned
291 by a public service company or electric supplier, as defined in section
292 16-1 of the general statutes.

293 (d) The program shall expire when twenty-one per cent of the state's
294 land area shall be held by the state as open space land as provided in
295 subsection (b) of section 23-8 of the general statutes. Any moneys
296 remaining in the charter oak open space grant program account at the
297 time the program expires shall revert back to the General Fund.

298 Sec. 7. Section 47 of public act 99-173 is amended by adding
299 subsection (c) as follows:

300 (NEW) (c) A credit that is allowed under this section, with respect to
301 any taxable year commencing on or after January 1, 2000, but is not
302 used by a taxpayer may be carried forward to each of the successive
303 income years until such credit is fully taken. In no case shall a credit
304 that is not used be carried forward for a period of more than ten years.

305 Sec. 8. Section 25-32 of the general statutes, as amended by section
306 63 of public act 99-2 of the June special session, is repealed and the
307 following is substituted in lieu thereof:

308 (a) The Department of Public Health shall have jurisdiction over all
309 matters concerning the purity and adequacy of any source of water
310 supply used by any municipality, public institution or water company
311 for obtaining water, the safety of any distributing plant and system for
312 public health purposes, the adequacy of methods used to assure water
313 purity, and such other matters relating to the construction and
314 operation of such distributing plant and system as may affect public
315 health. The qualifications of the operators of water treatment plants or
316 water distribution systems which treat or supply water used or
317 intended for use by the public shall be subject to the approval of said
318 department pursuant to regulations adopted by the commissioner in
319 accordance with chapter 54.

320 (b) No water company shall sell, lease, assign or otherwise dispose
321 of or change the use of any watershed lands, except as provided in
322 section 25-43c, without a written permit from the Commissioner of
323 Public Health. Said commissioner shall not grant a permit for the sale,
324 lease or assignment of class I land, except as provided in subsection
325 (d), and shall not grant a permit for a change in use of class I land
326 unless the applicant demonstrates that such change will not have a
327 significant adverse impact upon the present and future purity and
328 adequacy of the public drinking water supply and is consistent with
329 any water supply plan filed and approved pursuant to section 25-32d.
330 The commissioner may reclassify class I land only upon determination
331 that such land no longer meets the criteria established by subsection
332 (a) of section 25-37c because of abandonment of a water supply source
333 or a physical change in the watershed boundary. Not more than fifteen
334 days before filing an application for a permit under this section, the
335 applicant shall provide notice of such intent, by certified mail, return
336 receipt requested, to the chief executive officer and the chief elected

337 official of each municipality in which the land is situated.

338 (c) The Commissioner of Public Health may grant a permit for the
339 sale, lease, assignment or change in use of any land in class II subject to
340 any conditions or restrictions in use which the commissioner may
341 deem necessary to maintain the purity and adequacy of the public
342 drinking water supply, giving due consideration to: (1) The creation
343 and control of point or nonpoint sources of contamination; (2) the
344 disturbance of ground vegetation; (3) the creation and control of
345 subsurface sewage disposal systems; (4) the degree of water treatment
346 provided; (5) the control of watershed land by the applicant through
347 ownership, easements or use restrictions or other water supply source
348 protection measures; (6) the effect of development of any such land;
349 and (7) any other significant potential source of contamination of the
350 public drinking water supply. The commissioner may grant a permit
351 for the sale of class II land to another water company, municipality or
352 land conservation organization provided, as a condition of approval, a
353 permanent conservation easement on the land is entered into to
354 preserve the land in perpetuity predominantly in its natural scenic and
355 open condition for the protection of natural resources while allowing
356 for recreation consistent with such protection and necessary for the
357 protection or provision of safe and adequate potable water.
358 Preservation in perpetuity shall not include permission for the land to
359 be developed for any commercial, residential or industrial uses, nor
360 shall it include permission for recreational purposes requiring intense
361 development, including, but not limited to, golf courses, driving
362 ranges, tennis courts, ballfields, swimming pools and uses by
363 motorized vehicles, provided trails or pathways for pedestrians or
364 nonmotorized vehicles shall not be considered intense development.
365 The commissioner may reclassify class II land only upon
366 determination that such land no longer meets the criteria established
367 by subsection (b) of section 25-37c because of abandonment of a water
368 supply source or a physical change in the watershed boundary.

369 (d) The commissioner may grant a permit for the sale of class I or II
370 land to another water company, to a state agency or to a municipality
371 if the purchasing entity agrees to maintain the land subject to the
372 provisions of this section, any regulations adopted pursuant to this
373 section and the terms of any permit issued pursuant to this section.
374 Such purchasing entity may not sell, lease, assign or change the use of
375 such land without obtaining a permit pursuant to this section.

376 (e) The commissioner shall not grant a permit for the sale, lease,
377 assignment or change in use of any land in class II unless (1) the land
378 in class II is being sold, leased or assigned as part of a larger parcel of
379 land also containing land in class III and use restrictions applicable to
380 the land in class II [will prevent the land in class II from being
381 developed, or (2) the applicant demonstrates that the proposed sale,
382 lease, assignment or change in use will not have a significant adverse
383 impact upon the purity and adequacy of the public drinking water
384 supply and that any use restrictions which the commissioner requires
385 as a condition of granting a permit can be enforced against subsequent
386 owners, lessees and assignees, and (3)] requires the grantor or grantee
387 of the land to enter into a permanent conservation easement in
388 perpetuity as described in subsection (c) of this section and (2) the
389 commissioner determines, after giving effect to any use restrictions
390 which may be required as a condition of granting the permit, that such
391 proposed sale, lease, assignment or change in use will not have a
392 significant adverse effect on the public drinking water supply, whether
393 or not similar permits have been granted.

394 (f) The term "public water supply source" includes all springs,
395 streams, watercourses, brooks, rivers, lakes, ponds, wells or
396 underground waters from which water is taken, and all springs,
397 streams, watercourses, brooks, rivers, lakes, ponds, wells or aquifer
398 protection areas, as defined in section 22a-354h, thereto and all lands
399 drained thereby; and the term "watershed land" means land from
400 which water drains into a public drinking water supply.

401 (g) The Commissioner of Public Health shall adopt and from time to
402 time may amend the following: (1) Physical, chemical, radiological and
403 microbiological standards for the quality of public drinking water; (2)
404 minimum treatment methods, taking into account the costs thereof,
405 required for all sources of drinking water, including guidelines for the
406 design and operation of treatment works and water sources, which
407 guidelines shall serve as the basis for approval of local water supply
408 plans by said commissioner; (3) minimum standards to assure the
409 long-term purity and adequacy of the public drinking water supply to
410 all residents of this state; and (4) classifications of water treatment
411 plants and water distribution systems which treat or supply water
412 used or intended for use by the public. On or after October 1, 1975, any
413 water company which requests approval of any drinking water source
414 shall provide for such treatment methods as specified by the
415 Commissioner of Public Health, provided any water company in
416 operation prior to October 1, 1975, and having such source shall
417 comply with regulations adopted by said commissioner in
418 conformance with The Safe Drinking Water Act, Public Law 93-523,
419 and shall submit on or before February 1, 1976, a statement of intent to
420 provide for treatment methods as specified by said commissioner, to
421 said commissioner for approval.

422 (h) The Department of Public Health may perform the collection
423 and testing of water samples required by regulations adopted
424 pursuant to this section when requested to do so by the water
425 company. The department shall collect a fee equal to the cost of such
426 collection and testing. Water companies serving one thousand or more
427 persons shall not request routine bacteriological or physical tests.

428 (i) The condemnation by a state department, institution or agency of
429 any land owned by a water company shall be subject to the provisions
430 of this section.

431 (j) The commissioner may issue an order declaring a moratorium on

432 the expansion or addition to any existing public water system that the
433 commissioner deems incapable of providing new services with a pure
434 and adequate water supply.

435 (k) The commissioner may issue, modify or revoke orders as needed
436 to carry out the provisions of part III of this chapter. Except as
437 provided otherwise in this part, such order shall be issued, modified or
438 revoked in accordance with procedures set forth in subsection (b) of
439 section 25-34.

440 (l) The Commissioner of Public Health shall adopt regulations, in
441 accordance with the provisions of chapter 54, to include local health
442 departments in the notification process when a water utility reports a
443 water quality problem.

444 Sec. 9. This act shall take effect July 1, 2000.

ENV Committee Vote: Yea 23 Nay 0 JFS

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: See Explanation Below

Affected Agencies: Department of Environmental Protection,
Department of Public Health

Municipal Impact: See Explanation Below

Explanation

State Impact:

This bill establishes the Charter Oak Open Space Trust Account to fund two new open space acquisition programs. The funding for the programs is to come from 35% of any surplus funds from FY 00, FY 01 and FY 02 but not more than \$50 million in any one year.

Under the budgetary process of recent years, attempts have been made to “spend” most of the projected surplus prior to it actually becoming surplus. Balances of surplus have been left to fill the Budget Reserve Fund, with any additional surplus going to debt retirement.

If the provisions of this bill had been in effect, the FY 97 payment to the Budget Reserve Fund would have been \$50 million less. In FY 98, the balance to retire debt would have been \$100 million less. And in FY 99, the balance to retire debt would have been \$25.1 million less.

(It should be noted that this proposed use of surplus would require

a 3/5ths majority vote of the House and Senate to be in compliance with the constitutional provisions regarding the use of surplus.)

Whether the monies in the Charter Oak Open Space are subject to the spending cap is a matter of interpretation, however, under the current interpretation, the account would not be subject to the spending cap since the account will not be subject to appropriation. This would be consistent with current spending cap calculations.

Pursuant to CGS 2-33a, the spending cap applies to “expenditures from appropriated funds authorized by public or special act.” Since expenditures from the Charter Oak Open Space Trust account do not require appropriation from the General Assembly, the fund would be considered an “off budget” or non-appropriated fund and would be interpreted to be exempt from the spending cap. However, CGS 4-69 subsection (4) defines an appropriation as “an authorization by the General Assembly to make expenditures and incur liabilities.” Under this definition there is no distinction between “on” or “off budget” expenditures. Additionally, the Charter Oak Open Space Trust account is authorized by a public act and on that basis could be interpreted to be subject to the spending cap.

For the purposes of current spending cap calculations only the ten funds appropriated in the budget bill are considered appropriated funds. Treating the Trust account in a manner consistent with current practice, it would not be subject to the spending cap.

The use of the funds in the new trust accounts could reduce the level of future bond authorizations for open space.

The bill allows the Department of Environmental Protection (DEP) to use 2% of the grant funds for specified administrative purposes to implement the program.

The bill modifies statutory language setting forth the criteria which

must be met in order to receive Department of Public Health (DPH) approval for the transfer of class II land. These changes will result in no fiscal impact to the DPH.

The bill allows the open space donation corporate tax credit to be carried forward for up to ten years. To the extent that companies cannot claim credit in the year that they are earned, there would be a revenue loss if the credits are carried forward and taken in future years.

Municipal Impact:

The additional funds available through the Charter Oak Open Space Grant Program could increase funds to certain municipalities.

OLR Bill Analysis

sHB 5883

AN ACT CONCERNING THE OPEN SPACE TRUST FUND.**SUMMARY:**

This bill establishes the Charter Oak Open Space Trust Account to fund two new open space purchase programs and capitalizes it with 35% of the state budget surplus at the end of each of the next three fiscal years starting with the current year, but no more than \$50 million in any one year.

It allocates 40% of the funds to a program for state land acquisitions to buy lands owned by a water company or a public utility or lands that protect a water supply (class II -type lands). It allocates the remaining 60% to a matching grant program for municipal, nonprofit, and water company land acquisitions. It requires the lands to meet the criteria and use limits of the existing protected open space and watershed land acquisition program. Land acquired under either program must be permanently preserved by a conservation easement. The Department of Environmental Protection (DEP) commissioner may authorize expenditures from the accounts for the programs.

The programs expire when the state holds 21% of the state's total land area as open space. At that time, any balance remaining in the two accounts reverts to the General Fund.

The bill requires the Department of Public Health (DPH) commissioner to require permanent conservation easements on the sale of certain water company lands and narrows the factors he may consider when approving the transfer of a parcel containing watershed and non-watershed land.

Beginning with the tax year starting January 1, 2000, the bill allows the open space donation corporate tax credit to be carried forward for up to 10 years.

EFFECTIVE DATE: July 1, 2000

THE CHARTER OAK OPEN SPACE PROGRAM

The Charter Oak Open Space Trust Account

The bill establishes the Charter Oak Open Space Trust Account capitalized with 35% of the state budget surplus for fiscal years 1999-00, 2000-01, and 2001-02, but no more than \$50 million in any one year. The account is a non-lapsing account of the General Fund and must be held separate from any bond funds for open space purposes.

The trust account must make annual disbursements to two program accounts for the acquisition of open space land by (1) the state and (2) municipalities, nonprofit land conservation organizations, and water companies respectively, as follows:

1. 40% to the Charter Oak State Parks and Forest Account and
2. 60% to the Charter Oak Open Space Grant Program.

The disbursements must be made in each of the fiscal years following the three years of surplus fund deposits listed above.

Both program accounts may receive other funds as allowed by law such as gifts or donations for the purposes described in the existing protected open space and watershed land acquisition program (See COMMENT). The accounts are separate, non-lapsing accounts of the General Fund and investment earnings of each account must be credited to the fund but neither may receive proceeds or investment earnings on proceeds of general obligation bonds.

Charter Oak State Parks and Forest Account

The bill establishes the Charter Oak State Parks and Forest Account to be used for state acquisition of open space and watershed land.

All lands acquired using the fund must be permanently preserved in the land's natural scenic and open condition, while allowing recreation consistent with protecting the resource as specified in the existing

protected open space and watershed land acquisition program.

When purchasing land with account funds DEP must give priority to parcels as follows:

1. Water company land eligible to be classified as class II after acquisition (See COMMENT),
2. water company land already classified as class II, and
3. water company land not protective of the water supply (class III) or land owned by public service companies or electric suppliers.

(The bill does not establish criteria for deciding between parcels within the same priority level, and it is unclear whether DEP could use the account for other types of open space or watershed lands.)

Charter Oak Open Space Grant Program and Account

The bill establishes the Charter Oak Open Space Grant Account to provide grants to (1) municipalities and nonprofit land conservation organizations to acquire land or permanent interests in open space or watershed protection land and (2) water companies to acquire and protect lands class I and class II lands. Municipalities may not receive funds unless they have an open space plan as part of their development plan.

To be eligible the lands must meet the criteria and limitations established in the existing protected open space and watershed land acquisition program (See BACKGROUND).

Municipalities, nonprofit land conservation organizations and water companies may receive matching grants based on purchase price as follows:

<i>Maximum Grant</i>	<i>To...</i>	<i>For...</i>
90%	Towns Nonprofits	Water company land eligible to be classified as class II land after acquisition (see COMMENT)
80%	Towns Nonprofits	Class II land (generally owned by water companies)

70%	Towns Nonprofits	<ul style="list-style-type: none"> • Class III lands (non-watershed lands) • Lands owned by a public service company (other than a water company) or an electric supplier • Lands with a fair market value of \$1 million or greater
50%	Water Companies	Land eligible to be classified as class II or with a portion of the parcel eligible to be class II

All land acquired under the program must have a permanent conservation easement in favor of the state through DEP or its designee, which may include municipalities or land conservation organizations and, in the case of watershed protection land, a water company in conjunction with the state. The lands must be permanently preserved in their natural scenic and open condition and must allow recreation consistent with protecting the resource as specified in the existing protected open space and watershed land acquisition program. Water companies may make improvements necessary to protect and provide potable water.

The bill also authorizes DEP to use the account to provide a grant to distressed municipalities or targeted investment communities for restoration or protection of natural features or habitat on open space land already owned by the municipality or community.

Applicants must submit an application to the Natural Heritage, Open Space and Watershed Land Acquisition Land Review Board’s chairperson. The board may comment on the applications to the DEP commissioner. The commissioner must make grant award decisions at least twice a year.

By September 1, 2000, the commissioner must develop written guidelines and a ranking system to ensure consistency and equity in the program grants. DEP’s grant award decisions must consider the selection criteria of the existing protected open space and watershed land acquisition program. (see BACKGROUND)

If a least 50% of the balance of the Charter Oak Open Space Grant Program Account has not been spent by July 1, 2003 the funds in the

account may also be used for the Charter Oak State Parks and Forests Program.

DPH APPROVAL OF CLASS II LAND TRANSFERS

By law, water companies and state agencies and towns that own class II lands cannot transfer them without a DPH permit.

Under the bill, the DPH commissioner must require a conservation easement when approving the transfer of class II land from a water company to a municipality, a land conservation organization, or another water company. (The bill does not specify in whose favor the easement must be made.)

The easement must ensure that the land is preserved in its natural scenic and open condition while allowing recreation consistent with protecting the resource and necessary to protect or provide safe, adequate potable water. It must prohibit use for commercial, residential, industrial, or recreational purposes that require intense development including:

1. golf courses,
2. driving ranges,
3. tennis courts,
4. ball fields,
5. swimming pools, and
6. use by motorized vehicles.

Under the bill, Pathways for pedestrians and non-motorized vehicles are not considered intensive development.

The bill requires Class II land sold as part of a parcel containing Class III land to be protected by the same type of conservation easement required above. Under current law, such sales may be approved by DPH if (1) the land carries use restrictions that will prevent it from being developed or (2) the applicant demonstrates that the transfer of the land will not significantly and adversely impact the purity and adequacy of the water supply and that any use restrictions required by DPH are enforceable against successors in interest.

BACKGROUND

Related Bill

sSB 508, favorably reported by the Environment Committee, defines the use value of land donated under the tax credit provision.

Land Criteria and Limitations

Municipal and non-profit acquisitions must:

1. protect land especially valuable for recreation, forestry, fishing, or conservation of wildlife or natural resources;
2. protect land that includes or contributes to a prime, natural feature of the state's landscape such as shorelines, rivers, tributaries, watersheds, aquifers, mountainous areas, ridgelines, wetlands, or other important geological features;
3. protect habitat for threatened or endangered native plant or animal species or those of special concern;
4. protect relatively undisturbed outstanding examples of uncommon native ecological communities;
5. enhance and conserve lakes, rivers, and coastal water quality; or
6. preserve local agricultural heritage.

Water company land acquisitions must protect class I and II lands.

Program grants may not be used for:

1. acquiring land for commercial or recreational purposes requiring intensive development such as golf courses, driving ranges, tennis courts, ball fields, swimming pools, or motorized vehicle use (but pathways for pedestrians or non-motorized vehicles are allowed);
2. acquiring property with contamination over a significant portion, unless the remediation is complete before acquisition and the use of the land is not restricted for environmental reasons;
3. protecting land already committed for public use;
4. paying development costs such as ball fields, tennis courts, parking lots, or roadways;
5. acquiring land by eminent domain; or
6. reimbursing in-kind services or incidental expenses related to land acquisition.

Grant Selection

In making grant decisions, the DEP must consider, in addition to the land criteria:

1. whether the land is adjacent or complementary to public lands or class I or class II water company lands;
2. equitable geographic distribution of fund awards;
3. proximity to urban areas or areas with open space shortages and underserved populations;
4. whether the land is particularly vulnerable to incompatible development;
5. the state's conservation and development plan (developed by the Office of Policy and Management) and approved by the General Assembly;
6. whether the land protects more than one category of resource such as farmlands, water, or scenery;
7. the extent to which existing manmade improvements may diminish or overshadow the resource or its value relative to the acquisition costs;
8. whether the land (or water body) is a sink for carbon dioxide (a "greenhouse gas"); and
9. timely comments received from the 21-member review board.

COMMENT***State Acquisition Account Not Consistent with Gifts and Donations for Local Acquisition Program***

The bill authorizes the Charter Oak State Parks and Forests Account to accept gifts and donations for the purposes of the existing protected open space and watershed land acquisition program. The existing open space program is for local land acquisitions (towns, nonprofits, and water companies) while the parks and forest account is for the purpose of state land acquisitions.

Land Must be Held by a Water Company to be Eligible as Class II

The bill allows for matching grants to towns and nonprofits to buy land "eligible to be classified as class II land...after acquisition".

is only eligible to be classified as Class II land when it is held by a water company.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 23 Nay 0