



Senate

General Assembly

File No. 281

February Session, 2002

Substitute Senate Bill No. 563

Senate, April 3, 2002

The Committee on Environment reported through SEN. WILLIAMS of the 29th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING LAND AND OPEN SPACE.

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

1 Section 1. Section 12-107e of the general statutes, as amended by
2 section 118 of public act 01-195, is repealed and the following is
3 substituted in lieu thereof (*Effective October 1, 2002*):

4 (a) The planning commission of any municipality in preparing a
5 plan of development for such municipality may designate upon such
6 plan areas which it recommends for preservation as areas of open
7 space land, provided such designation is approved by a majority vote
8 of the legislative body of such municipality. Land included in any area
9 so designated upon such plan as finally adopted may be classified as
10 open space land for purposes of property taxation or payments in lieu
11 thereof if there has been no change in the use of such area which has
12 adversely affected its essential character as an area of open space land
13 between the date of the adoption of such plan and the date of such
14 classification.

15 (b) An owner of land included in any area designated as open space
16 land upon any plan as finally adopted may apply for its classification
17 as open space land on any grand list of a municipality by filing a
18 written application for such classification with the assessor thereof not
19 earlier than thirty days before or later than thirty days after the
20 assessment date, provided in a year in which a revaluation of all real
21 property in accordance with section 12-62 becomes effective such
22 application may be filed not later than ninety days after such
23 assessment date. The assessor shall determine whether there has been
24 any change in the area designated as an area of open space land upon
25 the plan of development which adversely affects its essential character
26 as an area of open space land and, if the assessor determines that there
27 has been no such change, said assessor shall classify such land as open
28 space land and include it as such on the grand list. An application for
29 classification of land as open space land shall be made upon a form
30 prescribed by the Commissioner of Agriculture and shall set forth a
31 description of the land, a general description of the use to which it is
32 being put, a statement of the potential liability for tax under the
33 provisions of section 12-504a to 12-504e, inclusive, as amended by this
34 act, and such other information as the assessor may require to aid in
35 determining whether such land qualifies for such classification.

36 (c) Any land classified as open space pursuant to subsection (b) of
37 this section that a municipality has previously identified as land that
38 such municipality wants to acquire for open space, shall not be sold
39 while so assessed unless the municipality in which such land is located
40 has been notified of the owner's intent to sell. The owner of any such
41 land shall send notice of intent to sell via certified mail to the chief
42 elected official of the municipality in addition to the city council, board
43 of selectmen, board of assessors, planning board and conservation
44 commission of the municipality. For a period of one hundred twenty
45 days subsequent to such notification, said municipality shall have a
46 first refusal option to meet a bona fide offer to purchase said land.
47 After a public hearing, such municipality may assign such option to a
48 nonprofit conservation organization under such terms and conditions
49 as the chief elected official or board of selectmen of such municipality

50 deem appropriate. Such assignment shall be for the purpose of
51 continuing the open space use of the property. Said option period shall
52 run from the day following the latest date of deposit of any such
53 notices in the United States mails. No sale of such land shall be
54 consummated unless and until either the option period shall have
55 expired or the landowner shall have been notified, in writing, by the
56 chief elected official of the municipality or the board of selectmen that
57 the option will not be exercised. Such option may be exercised only by
58 written notice signed by the chief elected official or board of selectmen
59 of the municipality, mailed to the landowner by certified mail at such
60 address as may be specified in the landowner's notice of intention to
61 sell and recorded with the registry of deeds, within the option period.
62 If the option has been assigned to a nonprofit conservation
63 organization, as provided in this section, the written notice shall state
64 the name and address of such organization and the terms and
65 conditions of such assignment.

66 [(c)] (d) Failure to file an application for classification of land as
67 open space land within the time limit prescribed in subsection (b) of
68 this section and in the manner and form prescribed in subsection (b) of
69 this section shall be considered a waiver of the right to such
70 classification on such assessment list.

71 [(d)] (e) Any person aggrieved by the denial by an assessor of any
72 application for the classification of land as open space land shall have
73 the same rights and remedies for appeal and relief as are provided in
74 the general statutes for taxpayers claiming to be aggrieved by the
75 doings of assessors or boards of assessment appeals.

76 Sec. 2. Subsection (a) of section 12-504a of the general statutes is
77 repealed and the following is substituted in lieu thereof (*Effective*
78 *October 1, 2002*):

79 (a) Any land which has been classified by the record owner thereof
80 as open space land pursuant to section 12-107e, as amended by this act,
81 if sold by him within a period of ten years from the time he first caused
82 such land to be so classified, shall be subject to a conveyance tax

83 applicable to the total sales price of such land, which tax shall be in
84 addition to the tax imposed under sections 12-494 to 12-504, inclusive.
85 Said conveyance tax shall be at the following rate: (1) Ten per cent of
86 said total sales price if sold within the first year following the date of
87 such classification; (2) nine per cent if sold within the second year
88 following the date of such classification; (3) eight per cent if sold
89 within the third year following the date of such classification; (4) seven
90 per cent if sold within the fourth year following the date of such
91 classification; (5) six per cent if sold within the fifth year following the
92 date of such classification; (6) five per cent if sold within the sixth year
93 following the date of such classification; (7) four per cent if sold within
94 the seventh year following the date of such classification; (8) three per
95 cent if sold within the eighth year following the date of such
96 classification; (9) two per cent if sold within the ninth year following
97 the date of such classification; and (10) one per cent if sold within the
98 tenth year following the date of such classification. No conveyance tax
99 shall be imposed on such record owner by the provisions of sections
100 12-504a to 12-504f, inclusive, as amended by this act, following the end
101 of the tenth year after the date of such classification by such record
102 owner. No conveyance tax shall be imposed on such record owner by
103 the provisions of sections 12-504a to 12-504f, inclusive, as amended by
104 this act, upon the sale of such property to the municipality pursuant to
105 the provisions of section 12-107e, as amended by this act.
106 Notwithstanding any other provision of the general statutes, any
107 moneys collected by a municipality pursuant to this subsection shall be
108 used for the purchase of open space within such municipality.

109 Sec. 3. Section 7-131b of the general statutes is repealed and the
110 following is substituted in lieu thereof (*Effective October 1, 2002*):

111 (a) Any municipality may, by vote of its legislative body, by
112 purchase, condemnation, gift, devise, lease or otherwise, acquire any
113 land in any area designated as an area of open space land on any plan
114 of development of a municipality adopted by its planning commission
115 or any easements, interest or rights therein and enter into covenants
116 and agreements with owners of such open space land or interests

117 therein to maintain, improve, protect, limit the future use of or
118 otherwise conserve such open space land.

119 (b) Any owner who encumbers his property by conveying a less
120 than fee interest to any municipality under subsection (a) of this
121 section or to a nonprofit land conservation organization shall, upon
122 written application to the assessor or board of assessors of the
123 municipality in which the property is located, be entitled to a
124 revaluation of such property to reflect the existence of such
125 encumbrance, effective with respect to the next-succeeding assessment
126 list of such municipality. Any such owner shall be entitled to such
127 revaluation, notwithstanding the fact that he conveyed such less than
128 fee interest prior to October 1, 1971, provided no such revaluation shall
129 be effective retroactively.

130 (c) Any owner aggrieved by a revaluation under subsection (b) of
131 this section may appeal to the board of assessment appeals in
132 accordance with the provisions of sections 12-111, as amended, and 12-
133 112 and may appeal from the decision of the board of assessment
134 appeals in accordance with the provisions of section 12-117a.

135 Sec. 4. Subsection (b) of section 7-131g of the general statutes, as
136 amended by section 9 of public act 01-204 and section 73 of public act
137 01-9 of the June special session, is repealed and the following is
138 substituted in lieu thereof (*Effective October 1, 2002*):

139 (b) The Commissioner of Environmental Protection may make
140 grants under the open space and watershed land acquisition program
141 to: (1) Municipalities for acquisition of land for open space under
142 subdivisions (1) to (6), inclusive, of subsection (b) of section 7-131d, as
143 amended, in an amount not to exceed fifty per cent of the fair market
144 value of a parcel of land or interest in land proposed to be acquired; (2)
145 municipalities for acquisition of land for class I and class II water
146 supply protection under subdivision (5) of subsection (b) of said
147 section 7-131d, in an amount not to exceed [sixty-five] fifty per cent of
148 such value; (3) nonprofit land conservation organizations for
149 acquisition of land for open space or watershed protection under

150 subdivisions (1) to (6), inclusive, of subsection (b) of said section 7-
151 131d, in an amount not to exceed fifty per cent of such value; (4) water
152 companies for acquisition of land under subdivision (7) of subsection
153 (b) of said section 7-131d, in an amount not to exceed [forty] fifty per
154 cent of such value provided if such a company proposes in a grant
155 application that it intends to allow access to such land for recreational
156 uses, such company shall seek approval of the Commissioner of Public
157 Health for such access; and (5) distressed municipalities or targeted
158 investment communities, as defined in section 32-9p, as amended, or,
159 with the approval of the chief elected official or governing legislative
160 body of such a municipality or community, to a nonprofit land
161 conservation organization, for acquisition of land within that
162 municipality or community, for open space under subdivisions (1) to
163 (6), inclusive, of subsection (b) of said section 7-131d, in an amount not
164 to exceed sixty-five per cent of such value or for performance of work
165 in the restoration, enhancement or protection of resources in an
166 amount not to exceed fifty per cent of the cost of such work.
167 Applicants for grants under the program shall provide a copy of the
168 application to the chairperson of the review board established under
169 section 7-131e, as amended. The board shall provide comments to the
170 commissioner on pending applications as it deems necessary.

171 Sec. 5. Section 12-504c of the general statutes is repealed and the
172 following is substituted in lieu thereof (*Effective October 1, 2002*):

173 The provisions of section 12-504a, as amended by this act, shall not
174 be applicable to the following: (a) Transfers of land resulting from
175 eminent domain proceedings; (b) mortgage deeds; (c) deeds to or by
176 the United States of America, state of Connecticut or any political
177 subdivision or agency thereof; (d) strawman deeds and deeds which
178 correct, modify, supplement or confirm a deed previously recorded; (e)
179 deeds between husband and wife and parent and child when no
180 consideration is received, except that a subsequent nonexempt transfer
181 by the grantee in such cases shall be subject to the provisions of section
182 12-504a, as amended by this act, as it would be if the grantor were
183 making such nonexempt transfer; (f) tax deeds; (g) deeds releasing any

184 property which is a security for a debt or other obligation; (h) deeds of
185 partition; (i) deeds made pursuant to a merger of a corporation; (j)
186 deeds made by a subsidiary corporation to its parent corporation for
187 no consideration other than the cancellation or surrender of the capital
188 stock of such subsidiary; (k) property transferred as a result of death
189 by devise or otherwise and in such transfer the date of acquisition or
190 classification of the land for purposes of sections 12-504a to 12-504f,
191 inclusive, as amended by this act, whichever is earlier, shall be the date
192 of acquisition or classification by the decedent; (l) deeds to any
193 corporation, trust or other entity, of land to be held in perpetuity for
194 educational, scientific, aesthetic or other equivalent passive uses,
195 provided such corporation, trust or other entity has received a
196 determination from the Internal Revenue Service that contributions to
197 it are deductible under applicable sections of the Internal Revenue
198 Code; (m) land subject to a covenant specifically set forth in the deed
199 transferring title to such land, which covenant is enforceable by the
200 town in which such land is located or by a nonprofit land conservation
201 organization, to refrain from selling or developing such land in a
202 manner inconsistent with its classification as farm land pursuant to
203 section 12-107c, as amended, forest land pursuant to section 12-107d,
204 as amended, or open space land pursuant to section 12-107e, as
205 amended, for a period of not less than eight years from the date of
206 transfer, if such covenant is violated the conveyance tax set forth in
207 this chapter shall be applicable at the rate which would have been
208 applicable at the date the deed containing the covenant was delivered
209 and, in addition, the town or any taxpayer therein may commence an
210 action to enforce such covenant; and (n) land the development rights to
211 which have been sold to the state under chapter 422a. If such action is
212 taken by such a taxpayer, the town shall be served as a necessary
213 party.

214 Sec. 6. Subsection (a) of section 23-75 of the general statutes is
215 repealed and the following is substituted in lieu thereof (*Effective*
216 *October 1, 2002*):

217 (a) The Commissioner of Environmental Protection shall acquire

218 land by purchase, gift or devise for the purposes set forth in section 23-
219 74. The title to any land acquired pursuant to sections 23-73 to 23-79,
220 inclusive, shall be vested in the state. In determining whether sites
221 shall be acquired, the department shall consider whether the site is: (1)
222 Identified as having high priority recreation, forestry, fishery, wildlife
223 or conservation value, including, but not limited to, the conservation of
224 grasslands and as being consistent with the state comprehensive plan
225 for outdoor recreation and the state plan of conservation and
226 development; (2) a prime natural feature of the Connecticut landscape,
227 such as a major river, its tributaries and watershed, mountainous
228 territory, an inland or coastal wetland, a significant littoral or estuarine
229 or aquatic site or any other important geologic feature; (3) habitat for
230 native plant or animal species listed as threatened or endangered or of
231 special concern in the data base or pursuant to the program established
232 under section 26-305, particularly areas identified as essential habitat
233 for such species; (4) a relatively undisturbed outstanding example of a
234 native ecological community which is now uncommon; or (5)
235 threatened with conversion to incompatible uses or contains sacred
236 sites or archaeological sites of state or national importance. In
237 acquiring a site that has been identified as having a high priority
238 recreation value, the department shall give priority to sites near
239 population centers.

240 Sec. 7. Subsection (f) of section 25-32 of the general statutes is
241 repealed and the following is substituted in lieu thereof (*Effective July*
242 *1, 2002*):

243 (f) Nothing in this section shall prevent the lease or change in use of
244 water company land to allow for recreational purposes that do not
245 require intense development or improvements for water supply
246 purposes, for leases of existing structures, or for radio towers or
247 telecommunications antennas on existing structures. For purposes of
248 this subsection, intense development includes golf courses, driving
249 ranges, tennis courts, ballfields, swimming pools and uses by
250 motorized vehicles, provided trails or pathways for pedestrians,
251 motorized wheelchairs or nonmotorized vehicles shall not be

252 considered intense development. In executing a lease of an existing
 253 structure in accordance with this subsection, a water company may
 254 grant an easement, declaration of covenant or a declaration of
 255 preservation restriction to the state, through the Connecticut Historical
 256 Commission or any state agency, to effect a preservation restriction, as
 257 defined in section 47-42a, that is required as a condition to granting the
 258 lessee a grant-in-aid pursuant to section 10-320d or similar subsequent
 259 grant-in-aid program. A water company may grant the state a lien on
 260 such leased structures to secure repayment of any grant-in-aid upon
 261 the failure by the lessee to fulfill the terms of the grant.

This act shall take effect as follows:	
Section 1	<i>October 1, 2002</i>
Sec. 2	<i>October 1, 2002</i>
Sec. 3	<i>October 1, 2002</i>
Sec. 4	<i>October 1, 2002</i>
Sec. 5	<i>October 1, 2002</i>
Sec. 6	<i>October 1, 2002</i>
Sec. 7	<i>July 1, 2002</i>

ENV *Joint Favorable Subst.*

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:

Fund-Type	Agency Affected	FY 03 \$	FY 04 \$
GO Bond Fund	Department of Environmental Protection	See Below	See Below
Revenue Loss	Department of Revenue Services	Minimal	Minimal

Municipal Impact:

Effect	Municipalities	FY 03 \$	FY 04 \$
Potential Revenue Loss	All	See Below	See Below

Explanation

Giving a municipality a right of first refusal on land it has indentified for open space use is not anticipated to result in additional costs or savings to a town.

There is a minimal revenue loss to the state and municipalities as a result of section 2 of the bill exempting sales of open space land to municipalities from the Real Estate Conveyance Tax. The section also earmarks any real estate conveyance tax collected by municipalities on the sale of open space to be used for the purchase of open space as opposed to being deposited into a town's operating or general fund.

Changing the grant amounts that the Department of Environmental Protection (DEP) can award to municipalities for certain types of acquisitions (from 65% to 50% of land value) and non-profits (from 40% to 50% of land value) could decrease funds to certain municipalities. The overall impact is anticipated to be minimal. There is \$15 million in GO bond funds authorized under the state's program

for grants-in-aid for acquisition of open space for FY 03.

OLR Bill Analysis

sSB 563

AN ACT CONCERNING LAND AND OPEN SPACE**SUMMARY:**

This bill:

1. gives a town first refusal on land it has previously identified for open space use and wants to acquire by imposing restrictions on how such land is sold;
2. prohibits a town from imposing a conveyance tax on land sold within 10 years after it was classified as open space land, when it is sold to the town where it is located;
3. requires a municipality to use all money it collects from conveyance tax on land classified as open space that the owner sells to someone other than the town in which it is located before 10 years after its classification to purchase open space;
4. allows a landowner to have open space land revalued when it is designated as open space by a nonprofit land conservation organization as well as a town;
5. changes grant amounts that the environmental protection commissioner may award to municipalities and nonprofit agencies for certain land acquisitions to 50% of the land's value;
6. adds nonprofit land conservation organizations to the entities that must enforce restrictions on land deeded to them by contract for open space use, as farmland, or as forest;
7. adds conservation of grasslands to the factors the environmental protection commissioner must consider when deciding whether to acquire certain land; and
8. allows water companies to give an easement, declaration of covenant, or a declaration of preservation to the state to preserve land when executing the lease of an existing structure.

EFFECTIVE DATE: October 1, 2002, except for the provision on water company leases, which is effective July 1, 2002.

ACQUISITION OF LAND FOR OPEN SPACE USE

First Refusal Option

Under the bill, if a landowner has land that a town has previously identified as wanting for open space, the town has the option of first refusal when the owner plans to sell it. The bill (1) requires a landowner intending to sell the land to notify the town in which it is located before putting it up for sale, (2) sets a 120-day period during which the town may choose to meet any bona fide offer to purchase the land, and (3) prohibits the owner from selling the land until either he receives no offer from the town within 120 days after notification or he receives written notice from the chief elected official of the municipality or board of selectman that the municipality will not exercise the option. A town must give written notice to the owner of its intent to buy the land.

Notice Requirements

The bill requires the landowner to give written notice of his intent to sell the land by certified mail to the following municipal officials:

1. chief elected official,
2. city council or board of selectmen,
3. board of assessors,
4. planning board, and
5. conservation commission.

The 120-day period starts when an official listed above receives the notice with the latest postmark.

Assignment Option to Nonprofit Organizations

Under the bill, municipality may assign its first refusal option to a nonprofit organization that would ensure open space use of the property, but it must notify the owner in writing, including the nonprofit's name, address, and the terms and conditions of the assignment.

CONVEYANCE TAX

Current law imposes a sliding scale conveyance tax for selling open space land before a 10-year period passes after it was so designated. The bill requires towns to use all the revenue they receive from the

sliding scales to buy open space. It also bars a town from imposing the tax if the owner sells the land to the municipality where it is located.

OPEN SPACE PRIVATE PROPERTY REVALUATION

Under current law, an owner who encumbers his property by agreeing to maintain it as open space may apply to the assessor or board of assessors for revaluation of the property. The revaluation reflects the existence of such an encumbrance that becomes effective at the time of the municipality's next assessment list. The bill makes such an agreement with a nonprofit land conservation organization an encumbrance for which an owner may also request revaluation.

The bill also specifies that the assessor or board of assessors performing the revaluation must be from the municipality where the property is located.

LAND ACQUISITION GRANTS

The bill changes grant amounts that the environmental protection commissioner may award to municipalities and nonprofit agencies for certain types of land acquisition. Under current law, (1) municipalities acquiring land for class I or class II water supply protection may receive grants of 65% of the land's value and (2) water companies may receive grants of 40% of the land's value when acquiring land they intends to allow access to for recreational use. The bill changes both these grant amounts to 50% of the land's value.

NONPROFIT LAND CONSERVATION ORGANIZATION

By law, a town must enforce conditions of a contract on land that has been set forth in a deed transferring title for use as farmland, forest, or open space. The land is subject to a retroactive conveyance tax if the contract is violated (i.e., if it is sold or developed in a manner inconsistent with its open space or farmland classification) within eight years after its classification. The bill allows nonprofit land organizations to also enforce such contracts.

WATER COMPANY LAND LEASE

The bill allows water companies to give an easement, declaration of covenant, or a declaration of preservation to the state to preserve land (through the Connecticut Historical Society or any state agency) when

leasing an existing structure. The lessee must honor preservation restrictions to qualify for state grant-in-aid programs that allow for a maximum of 50% of available federal money for the restoration and maintenance of historical structures. The bill allows a water company to grant the state a lien on such leased structures to secure repayment of any grant-in-aid when the lessee fails to fulfill the terms of the grant.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute
Yea 22 Nay 5