



Senate

General Assembly

File No. 455

January Session, 2003

Senate Bill No. 1094

Senate, April 17, 2003

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

AN ACT CONCERNING WATER QUALITY AND THE UNIVERSITY OF CONNECTICUT.

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

1 Section 1. Section 25-32a of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2003*):

3 As used in this section, sections 25-32, 25-32b to 25-32m, inclusive,
4 as amended by this act, 25-33 and 25-34, "consumer" means any private
5 dwelling, hotel, motel, boardinghouse, apartment, store, office
6 building, institution, mechanical or manufacturing establishment or
7 other place of business or industry to which water is supplied by a
8 water company; "water company" means any individual, partnership,
9 association, corporation, municipality, The University of Connecticut
10 at Storrs, or other entity, or the lessee thereof, who or which owns,
11 maintains, operates, manages, controls or employs any pond, lake,
12 reservoir, well, stream or distributing plant or system that supplies
13 water to two or more consumers or to twenty-five or more persons on

14 a regular basis provided if any individual, partnership, association,
15 corporation, municipality or other entity or lessee owns or controls
16 eighty per cent of the equity value of more than one such system or
17 company, the number of consumers or persons supplied by all such
18 systems so controlled shall be considered as owned by one company
19 for the purposes of this definition.

20 Sec. 2. Subsection (a) of section 25-32d of the general statutes is
21 repealed and the following is substituted in lieu thereof (*Effective*
22 *October 1, 2003*):

23 (a) Each water company [, as defined in section 25-32a, and]
24 supplying water to one thousand or more persons or two hundred fifty
25 or more consumers and any other water company [as defined in said
26 section] requested by the Commissioner of Public Health shall submit
27 a water supply plan to the Commissioner of Public Health for approval
28 with the concurrence of the Commissioner of Environmental
29 Protection. The concurrence of the Public Utilities Control Authority
30 shall be required for approval of a plan submitted by a water company
31 regulated by the authority. The Commissioner of Public Health shall
32 consider the comments of the Public Utilities Control Authority on any
33 plan which may impact any water company regulated by the
34 authority. The Commissioner of Public Health shall distribute a copy
35 of the plan to the Commissioner of Environmental Protection and the
36 Public Utilities Control Authority. A copy of the plan shall be sent to
37 the Secretary of the Office of Policy and Management for information
38 and comment. A plan shall be revised at such time as the water
39 company filing the plan or the Commissioner of Public Health
40 determines or at intervals of not less than three years nor more than
41 five years after the date of initial approval.

42 Sec. 3. Subsection (a) of section 25-32k of the general statutes is
43 repealed and the following is substituted in lieu thereof (*Effective*
44 *October 1, 2003*):

45 (a) Each water company [, as defined in section 25-32a,] serving one
46 thousand or more persons or two hundred fifty or more consumers [,

47 as defined in section 25-32a,] shall, annually, provide to residential
48 customers, without charge, educational materials or information on (1)
49 water conservation, (2) water supply source protection methods,
50 including methods to reduce contamination, and (3) on or before July
51 1, 2002, and annually thereafter, information developed by the
52 Commissioner of Public Health, pursuant to subsection (b) of this
53 section, on the health effects and sources of lead and copper. Every
54 year each public water company shall provide a copy of these
55 educational materials to the Commissioner of Public Health.

56 Sec. 4. Subsection (a) of section 25-32m of the general statutes is
57 repealed and the following is substituted in lieu thereof (*Effective*
58 *October 1, 2003*):

59 (a) Any water company [, as defined in section 25-32a,] may engage
60 in the sale of bottled water or establish an entity under chapter 601 for
61 the purpose of engaging in the sale of bottled water within or outside
62 of its franchise area. The costs and expenses of a water company
63 associated with the sale of bottled water shall be exclusive of the costs
64 and expenses associated with the establishment of rates and charges
65 for the use of the waterworks system pursuant to section 7-239.

66 Sec. 5. Section 22a-354c of the general statutes is repealed and the
67 following is substituted in lieu thereof (*Effective October 1, 2003*):

68 (a) On or before July 1, 1990, each public or private water company
69 serving one thousand or more persons, and The University of
70 Connecticut at Storrs, shall map at level B all areas of contribution and
71 recharge areas for its existing wells located in stratified drift aquifers.
72 Not later than three years after the adoption by the Commissioner of
73 Environmental Protection of a model municipal aquifer protection
74 ordinance under section 22a-354l, each public and private water
75 company serving ten thousand or more persons shall map at level A
76 all areas of contribution and recharge areas for its existing wells
77 located in stratified drift aquifers. The Commissioner of Environmental
78 Protection may map at level A and at level B all areas of contribution
79 and recharge areas for existing wells located in stratified drift aquifers

80 that are used by any public or private water company serving less than
81 one thousand persons.

82 (b) Each public or private water company serving ten thousand or
83 more persons, and The University of Connecticut at Storrs, shall map
84 all areas of contribution and recharge areas for potential wells that are
85 located within stratified drift aquifers identified as future sources of
86 water supply to meet their needs in accordance with the plan
87 submitted pursuant to section 25-33h, (1) at level B two years after
88 approval of such plan, and (2) at level A four years after approval of
89 such plan. The Commissioner of Environmental Protection shall
90 identify and make recommendations for mapping, or shall map, all
91 remaining significant areas of contribution and recharge areas for
92 potential wells located in stratified drift aquifers not identified by a
93 public or private water company as a potential source of water supply
94 within the region of an approved plan. Mapping of any other area of
95 contribution and recharge areas for potential wells located in stratified
96 drift aquifers by the commissioner shall be completed at a time
97 determined by the commissioner.

98 Sec. 6. Section 25-37c of the general statutes is repealed and the
99 following is substituted in lieu thereof (*Effective October 1, 2003*):

100 The Department of Public Health shall adopt, in accordance with
101 chapter 54, regulations establishing criteria and performance standards
102 for the three following classes of water-company-owned land: [.]

103 [(a)] (1) Class I land includes all land owned by a water company or
104 acquired from a water company through foreclosure or other
105 involuntary transfer of ownership or control which is either: [(1)] (A)
106 Within two hundred and fifty feet of high water of a reservoir or one
107 hundred feet of all watercourses as defined in agency regulations
108 adopted pursuant to this section; [(2)] (B) within the areas along
109 watercourses which are covered by any of the critical components of a
110 stream belt; [(3)] (C) land with slopes fifteen per cent or greater
111 without significant interception by wetlands, swales and natural
112 depressions between the slopes and the watercourses; [(4)] (D) within

113 two hundred feet of groundwater wells; [(5)] (E) an identified direct
114 recharge area or outcrop of aquifer now in use or available for future
115 use, or [(6)] (F) an area with shallow depth to bedrock, twenty inches
116 or less, or poorly drained or very poorly drained soils as defined by
117 the United States Soil Conservation Service that are contiguous to land
118 described in [subdivision (3) or (4) of this subsection] subparagraph
119 (C) or (D) of this subdivision and that extend to the top of the slope
120 above the receiving watercourse.

121 [(b)] (2) Class II land includes (A) all land owned by a water
122 company or acquired from a water company through foreclosure or
123 other involuntary transfer of ownership or control which is either [(1)]
124 (i) on a public drinking supply watershed which is not included in
125 class I₂ or [(2)] (ii) completely off a public drinking supply watershed
126 and which is within one hundred and fifty feet of a distribution
127 reservoir or a first-order stream tributary to a distribution reservoir,
128 and (B) notwithstanding any provisions of the general statutes, for
129 lands owned by The University of Connecticut, (i) all level A aquifer
130 protection lands that are mapped, approved and regulated pursuant to
131 chapter 446i that are within a public drinking supply watershed that is
132 not a class I land, or (ii) all land that is completely outside public
133 drinking supply watersheds and that is within one hundred fifty feet
134 from a distribution reservoir or first-order stream tributary to a
135 distribution reservoir.

136 [(c)] (3) Class III land includes (A) all land owned by a water
137 company or acquired from a water company through foreclosure or
138 other involuntary transfer of ownership or control which is
139 unimproved land off public drinking supply watersheds and beyond
140 one hundred and fifty feet from a distribution reservoir or first-order
141 stream tributary to a distribution reservoir, and (B) notwithstanding
142 any provision of the general statutes, for lands owned by The
143 University of Connecticut, (i) unimproved land outside public
144 drinking water supply watersheds and beyond one hundred and fifty
145 feet from a distribution reservoir or first-order stream tributary to a
146 distribution reservoir, and (ii) any land that is neither class I nor class

147 II land.

148 Sec. 7. Subsection (b) of section 25-32 of the general statutes is
 149 repealed and the following is substituted in lieu thereof (*Effective*
 150 *October 1, 2003*):

151 (b) No water company shall sell, lease, assign or otherwise dispose
 152 of or change the use of any watershed lands, except as provided in
 153 section 25-43c, without a written permit from the Commissioner of
 154 Public Health. The commissioner shall not grant a permit for the sale,
 155 lease or assignment of class I land, except as provided in subsection (d)
 156 of this section, and shall not grant a permit for a change in use of class
 157 I land unless the applicant demonstrates that such change will not
 158 have a significant adverse impact upon the present and future purity
 159 and adequacy of the public drinking water supply and is consistent
 160 with any water supply plan filed and approved pursuant to section
 161 25-32d. The commissioner may reclassify class I land only upon
 162 determination that such land no longer meets the criteria established
 163 by [subsection (a)] subdivision (1) of section 25-37c, as amended by
 164 this act, because of abandonment of a water supply source or a
 165 physical change in the watershed boundary. Not more than fifteen
 166 days before filing an application for a permit under this section, the
 167 applicant shall provide notice of such intent, by certified mail, return
 168 receipt requested, to the chief executive officer and the chief elected
 169 official of each municipality in which the land is situated.

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>
Sec. 2	<i>October 1, 2003</i>
Sec. 3	<i>October 1, 2003</i>
Sec. 4	<i>October 1, 2003</i>
Sec. 5	<i>October 1, 2003</i>
Sec. 6	<i>October 1, 2003</i>
Sec. 7	<i>October 1, 2003</i>

ENV *Joint Favorable*

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:

Agency Affected	Fund-Type	FY 04 \$	FY 05 \$
UConn	GF - Cost	\$100,000	\$100,000
Public Health, Dept.	GF - None	None	None
Department of Environmental Protection	GF - None	None	None

Note: GF=General Fund

Municipal Impact: None

Explanation

This bill results in a cost of approximately \$20,000 to the University of Connecticut (UConn) as it requires them to perform duties above and beyond those currently required of them in the administration of the water supply located at the UConn. These costs involve the creation, printing, and dissemination of free educational materials regarding water conservation, water source protection methods and other water supply related information to its customers, which includes all 23,000 resident students of the university. The funding for this cost is not included in the FY 04 or FY 05 budgets as recommended by the governor.

There is no anticipated fiscal impact upon the Department of Public Health or the Department of Environmental Protection due to this bill as they already have staff in place that administer the provisions contained within the bill.

OLR Bill Analysis

SB 1094

AN ACT CONCERNING WATER QUALITY AND THE UNIVERSITY OF CONNECTICUT**SUMMARY:**

This bill makes the University of Connecticut (UConn) at Storrs a water company, restricting its ability to develop watershed land and making it subject to other laws affecting water companies.

Among other things, UConn must map its well fields by July 1, 1990 – a deadline that has already passed.

EFFECTIVE DATE: October 1, 2003

WATER COMPANY LAND

By law a water company is an individual, partnership, association, corporation, municipality or other entity, aside from state agencies, that supplies water from a water supply it owns, controls, or manages, to two or more premises or more than 25 individuals. Water company lands falls into three classes, and are subject to Department of Public Health (DPH) regulation. The bill makes UConn a water company and subjects its lands to those restrictions.

Class I land, within 250 feet of a reservoir, is the most highly protected land and is subject to the most regulation. Class II and class III land is less restricted. A DPH permit is needed to sell, lease or otherwise dispose of, or change the use of, class I or class II land. A permit is also required, with minor exceptions, to change the use of such land. A water company does not need a permit to sell or transfer class III land (off watershed).

The bill makes UConn land class II and class III land, but does not appear to classify any UConn land as class I land. By law, class II land is land that is either on a public drinking supply watershed that is not included in class I, or completely off a watershed but within 150 feet of a reservoir. The bill specifically includes as UConn's class II land

property the university owns, including (1) all level A aquifer protection land that is mapped, approved and regulated according to law and is within a public drinking water supply that is not a class I land; and (2) land completely outside public drinking supply watersheds that is within 150 feet of a reservoir or first-order stream tributary.

By law, class III land includes all unimproved land off watersheds and more than 150 feet from a reservoir or a stream that feeds it. The bill specifically includes as UConn's class III land all land the university owns that is (1) unimproved land outside public drinking water supply watersheds and more than 150 feet from a reservoir or first-order stream tributary and (2) neither class I nor class II land.

OTHER APPLICABLE WATER UTILITY LAWS

By law, utilities that serve 1,000 or more people must map the areas that contribute to and recharge wells in stratified drift aquifers. Additional requirements apply to utilities serving more than 10,000 people.

The bill requires UConn to map its well fields. By July 1, 1990, it must map all areas that contribute to and recharge wells in stratified drift aquifers. It requires UConn to map for potential wells it identifies as future water sources according to the coordinated water system plan prepared for its public water supply management area.

The bill requires UConn to submit a water supply plan to DEP for its approval with DEP's concurrence. The plan must evaluate the water supply needs in the area UConn serves and is subject to DPH regulations. If a utility (including UConn under the bill) submits a plan that involves the forecast of or actual land sales, abandonment or a supply source, or reclassification of its land, it must the notify the local municipality and various land conservation organizations. The plan must be revised when the university or the health commissioner determines, or every three to five years.

The bill requires the university annually to provide residential customers free educational material on (1) water conservation, (2) water supply source protection methods, including ways to reduce contamination, and (3) information developed by DPH on the health effects and sources of lead and copper. It must annually provide the

health commissioner with copies of these materials.

It permits the university to sell bottled water, the costs and expenses for which must be kept separate from the water rates charged customers.

The bill subjects UConn to the law governing water supply emergencies. By law, the DPH commissioner, in consultation with the environmental protection commissioner and the department of public utility commissioners, can declare such an emergency. The DPH commissioner can order water companies, including UConn under the bill, to connect their water mains temporarily to permit the sale or transfer of water. By law, a violation of these orders is subject to a civil fine of up to \$5,000 a day, with each day considered a separate violation.

It also subjects the university to civil penalties for violating certain drinking laws and regulations and DPH orders to discontinue or correct immediate threats to the public water supply.

BACKGROUND

Attorney General's Opinion on DPH Regulation of UConn lands

In response to a UConn request, the attorney general held on November 29, 2000, that statutes including those governing water companies, do not apply to state agencies unless they are specifically included in them. He held that while some statutes, notably those regulating drinking water quality, refer and apply to state agencies, UConn and other agencies are not subject to the laws restricting land transactions.

UConn's Water Supply

According to the university, its water supply system serves 23,000 users, about 90% of whom are from the university. It also serves the Mansfield Town Hall, E.O. Smith High School, a state prison, and about 15 commercial and more than 100 residential users.

Restrictions on Class I and Class II Land

A water company cannot assign or lease class I land, and can only sell it to the state, a municipality, or another water company. The buyer

must agree to maintain the land subject to the restrictions in the law and those imposed by the DPH permit. The buyer cannot sell, lease, assign, or change the use of the land without a permit.

In addition, the utility can only change the land's use if it demonstrates that the change (1) will not harm the purity and adequacy of water supply, now or in the future, and (2) is consistent with a DPH-approved water supply plan filed by the utility. If DPH believes the proposal may significantly harm water supply, it may refer the application to an outside consultant for a detailed review, at the utility's expenses.

Somewhat less restrictive provisions apply to class II land. DPH cannot grant a permit for a transaction involving class II land or a change of its use unless the utility demonstrates that its proposal will not significantly harm the purity and adequacy of water supply and that any use restriction DPH imposes can be enforced against subsequent owners, lessees, and assignees. In considering the impact on water supply, DPH is not bound by its precedent.

In the case of the sale, lease, or transfer of land, DPH can only grant a permit if (1) the class II land is part of a larger parcel that includes class III land and (2) there are use restrictions that will prevent the class II land from being developed. In cases involving transactions with another water utility, municipality, or a land conservation organization, DPH can only grant a permit if there is a permanent conservation easement on the land. The easement must preserve the land in perpetuity, with most of it remaining in its natural condition. The easement must protect natural resources and water supply, while allowing for appropriate recreational uses and the development of improvements needed to provide for or protect water supply. The land cannot be developed for residential, commercial, or industrial purposes, or for specified recreational purposes such as golf courses. This last condition does not apply to class II land needed to provide access to class III land that is part of a sale. It appears that this exception applies only if the land is sold to an entity other than a water utility, municipality, or a land conservation organization.

In approving class II land transactions, DPH can subject the permit to conditions or restrictions it considers necessary to safeguard water supply. In doing so, DPH must consider the potential the proposal has for contaminating the water supply, the disturbance of vegetation, the

utility's future ability to control the land through devices such as easements or use restrictions, and several other factors

DPH also can reclassify Class I or II land if it determines that the land no longer meets the statutory criteria because of the abandonment of a water supply source or a physical change in the watershed boundary.

COMMITTEE ACTION

Environment Committee

Joint Favorable Report
Yea 22 Nay 5