



General Assembly

Substitute Bill No. 5237

February Session, 2004

* HB05237ENV 031704 *

**AN ACT IMPLEMENTING RECOMMENDATIONS OF THE WATER
PLANNING COUNCIL REGARDING THE CONNECTICUT WATER
DIVERSION POLICY ACT.**

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

1 Section 1. Section 22a-368 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) Any person or municipality maintaining a diversion prior to or
4 on July 1, 1982, shall register on or before July 1, 1983, with the
5 commissioner on a form prescribed by him the location, capacity,
6 frequency and rate of withdrawals or discharges of said diversion and
7 a description of the water use and water system. Any such diversion
8 which is not so registered may be subject to the permit requirements of
9 sections 22a-365 to 22a-378, inclusive.

10 (b) Notwithstanding any other provision of the general statutes or
11 any special act to the contrary, no person or municipality shall, after
12 July 1, 1982, commence to divert water from the waters of the state
13 without first obtaining a permit for such diversion from the
14 commissioner.

15 (c) No permit shall be transferred to another person or municipality
16 without the written approval of the commissioner.

17 (d) (1) Any person or municipality claiming or maintaining a

18 diversion registered in accordance with the provisions of this section
19 shall pay to the commissioner an annual fee of up to ten thousand
20 dollars for each diversion so registered. Not later than October 31,
21 2004, the commissioner shall cause to be published in the Connecticut
22 Law Journal a fee schedule for various classes of diversions that have
23 been registered in accordance with the provisions of this section. In no
24 event shall an annual fee be less than one thousand dollars or greater
25 than ten thousand dollars. Such annual fee shall be due and payable
26 on January thirty-first of each year. The fee required under this
27 subsection shall be deposited into the Environmental Quality Fund
28 established under section 22a-27g and shall be used by the
29 commissioner to carry out the purposes of the Connecticut Water
30 Diversion Policy Act, pursuant to sections 22a-265 to 22a-380,
31 inclusive.

32 (2) Any person or municipality may avoid payment of the annual
33 fee required pursuant to subdivision (1) of this subsection by filing a
34 form with the commissioner that certifies the person or municipality
35 claiming or maintaining such diversion no longer claims or maintains
36 such diversion. The commissioner may require that such diversion be
37 physically altered such that water can no longer be diverted from it.
38 Such person or municipality shall also certify on such form that such
39 person or municipality has never transferred such diversion to any
40 other person, municipality or other entity.

41 (3) Not later than October 31, 2004, the commissioner shall create
42 such form and send it by first class mail to all persons or municipalities
43 known to the commissioner as claiming or maintaining a diversion
44 pursuant to this section. In the event a person or municipality files
45 such form after January thirty-first of any year, the commissioner may,
46 in the commissioner's sole discretion, waive each annual fee, for a
47 single year, for each diversion identified on the form.

48 (4) In the event that a person or municipality fails to pay the annual
49 fee required by this subsection by July first of each year, such person
50 or municipality shall no longer divert water without first obtaining a

51 permit for such diversion from the commissioner pursuant to sections
52 22a-265 to 22a-380, inclusive, and any regulations adopted under
53 sections 22a-265 to 22a-380, inclusive.

54 (e) In the event the commissioner issues a permit to divert waters of
55 the state pursuant to sections 22a-265 to 22a-380, inclusive, and any
56 regulations adopted under sections 22a-265 to 22a-380, inclusive, no
57 person or municipality may claim or maintain such diversion as
58 registered pursuant to this section.

59 Sec. 2. Section 22a-368a of the general statutes is repealed and the
60 following is substituted in lieu thereof (*Effective from passage*):

61 (a) The Commissioner of Environmental Protection shall publish a
62 dated notice of (1) the availability of a form for the reporting of
63 operating data for diversions pursuant to this section, and (2) a
64 deadline for submission of such form. Such form shall be developed by
65 the Commissioner of Environmental Protection, in consultation with
66 the Commissioners of Public Health and Agriculture and the
67 chairperson of the Public Utilities Control Authority.

68 (b) Any person or municipality maintaining a diversion that was
69 registered in accordance with the provisions of section 22a-368, as
70 amended by this act, and which continues to be in use as of July 1,
71 2001, shall report to the Commissioner of Environmental Protection
72 current operating data for such diversion not later than six months
73 after the publication of notice pursuant to subsection (a) of this section.
74 Such data shall be provided on a form developed by the Commissioner
75 of Environmental Protection, in consultation with the Commissioners
76 of Public Health, Public Utility Control and Agriculture. Such data
77 shall include monthly data for the calendar years 1997 to 2001,
78 inclusive, (1) for the actual frequency and actual rate of water
79 withdrawals or discharges of such diversion if such diversion is
80 metered, or (2) that estimates the withdrawals or discharges in the
81 absence of a meter. A person or municipality maintaining a diversion
82 exclusively for agricultural purposes may report estimated water use

83 for the reporting period. The provisions of this subsection shall not
84 apply to an owner or operator of an existing electric generating facility
85 utilizing fossil fuel, provided the diversion is used to comply with
86 state and federal environmental laws, and further provided such
87 owner or operator reports to the Commissioner of Environmental
88 Protection an estimate of future water use necessary to comply with
89 state and federal environmental laws.

90 (c) Any person or municipality maintaining a diversion that was
91 eligible for registration in accordance with section 22a-368, as amended
92 by this act, but failed to so register, which diversion continues to be in
93 use as of July 1, 2001, shall report to the commissioner the operating
94 data for such diversion not later than six months after the publication
95 of notice pursuant to subsection (a) of this section. Such data shall be
96 provided on a form developed by the Commissioner of Environmental
97 Protection, in consultation with the Commissioners of Public Health,
98 Public Utility Control and Agriculture. Such data shall include (1) the
99 location, capacity, frequency and rate of withdrawals or discharges of
100 such diversion as of July 1, 1982, (2) a description of the water use and
101 water system on or before July 1, 1982, including information to
102 evidence its operation at that time, and (3) the monthly data for the
103 calendar years 1997 to 2001, inclusive, (A) for the actual frequency and
104 actual rate of water withdrawals or discharges of such diversion if
105 such diversion is metered, or (B) that estimates the withdrawals or
106 discharges in the absence of a meter. A person or municipality
107 maintaining a diversion exclusively for agricultural purposes may
108 report estimated water use for the reporting period in subdivision (3)
109 of this subsection.

110 (d) Any person or municipality maintaining a diversion that was
111 not eligible for registration in accordance with section 22a-368, as
112 amended by this act, and is not currently authorized by permit issued
113 by the commissioner pursuant to said section, which diversion is in
114 use as of July 1, 2001, shall report to the Commissioner of
115 Environmental Protection operating data for the diversion not later
116 than six months after the publication of notice pursuant to subsection

117 (a) of this section. Such data shall be provided on a form developed by
118 the Commissioner of Environmental Protection, in consultation with
119 the Commissioners of Public Health, Public Utility Control and
120 Agriculture. Such data shall include (1) information as to when the
121 diversion was initiated, (2) a description of the water use and water
122 system operation, and (3) the monthly data for the calendar years 1997
123 to 2001, inclusive, (A) for the location, capacity, actual frequency and
124 actual rate of water withdrawals or discharges of said diversion if such
125 diversion is metered, or (B) that estimates the withdrawals or
126 discharges in the absence of a meter. A person or municipality
127 maintaining a diversion used exclusively for agricultural purposes
128 may report estimated water use for the reporting period in subdivision
129 (3) of this subsection.

130 (e) Information reported by a person or municipality for the
131 purposes of subsection (c) or (d) of this section shall not be used by the
132 Commissioner of Environmental Protection to order the payment of
133 civil penalties pursuant to section 22a-6b and subsection (b) of section
134 22a-376 provided the person or municipality has filed a permit
135 application pursuant to section 22a-368, as amended by this act, on or
136 before July 1, 2003. This subsection shall not apply to any information
137 the commissioner can document independent of a submission
138 pursuant to this section. Failure to report the information required in
139 this section may result in civil penalties in accordance with section 22a-
140 6b and subsection (b) of section 22a-376.

141 (f) Any person or municipality that was required to report
142 operating data pursuant to this section, but failed to report such data
143 by February 23, 2003, shall not divert water without obtaining a permit
144 from the commissioner for such diversion pursuant to sections 22a-265
145 to 22a-380, inclusive, and any regulations adopted under sections 22a-
146 265 to 22a-380, inclusive.

147 (g) (1) Except as provided in subdivisions (2) and (3) of this
148 subsection, any person or municipality maintaining a diversion that
149 was registered in accordance with the provisions of section 22a-368, as

150 amended by this act, shall install and maintain a totalizing flow meter
151 to measure the total amount of water withdrawn from each such
152 diversion and shall continuously operate and maintain such meter and
153 shall maintain a daily log of water diverted, hours of operation and
154 configuration of the diversion. In the event of a totalizing flow meter
155 malfunction or breakage, each such person or municipality shall repair
156 or replace the malfunctioning or broken meter not later than seventy-
157 two hours after such malfunction or breakage. Each such meter shall
158 be secured in a manner that ensures such person or municipality
159 controls access to the meter.

160 (2) In the event that any person or municipality maintaining a
161 diversion that was registered in accordance with the provisions of
162 section 22a-368, as amended by this act, can demonstrate to the
163 commissioner's satisfaction that metering of such diversion by use of a
164 totalizing flow meter is not practicable, such person or municipality
165 may request that the commissioner issue an alternative monitoring
166 protocol for a class of diversions. If the commissioner issues such an
167 alternative monitoring protocol for a class of diversions, any person or
168 municipality maintaining such class of diversions shall comply with
169 the requirements of such protocol.

170 (3) If any person or municipality maintaining a diversion that was
171 registered in accordance with the provisions of section 22a-368, as
172 amended by this act, demonstrates to the commissioner's satisfaction
173 that metering of such diversion by use of a totalizing flow meter or by
174 use of an alternative monitoring protocol for a class of diversions is not
175 practicable, such person or municipality may request that the
176 commissioner approve an alternative monitoring protocol for an
177 individual diversion. If the commissioner approves an alternative
178 monitoring protocol for an individual diversion, any person or
179 municipality maintaining such individual diversion shall comply with
180 the requirements of such protocol.

181 (4) If any person or municipality claiming or maintaining a
182 diversion that was registered in accordance with the provisions of

183 section 22a-368, as amended by this act, provides the commissioner a
184 written request for an alternative monitoring protocol for an
185 individual diversion by October 31, 2004, the commissioner may not
186 find such person or municipality in violation of this section until sixty
187 or more days after the commissioner approves or denies such
188 alternative monitoring protocol for an individual diversion.

189 (5) In the event that any person or municipality claims an
190 exemption from the obligation to obtain a permit under sections 22a-
191 265 to 22a-380, inclusive, and any regulations adopted under sections
192 22a-265 to 22a-380, inclusive, the commissioner may issue an order
193 requiring that such person or municipality install and maintain a
194 totalizing flow meter. Such order may also describe the type and
195 frequency of metering, monitoring, record keeping, calibration and
196 reporting requirements.

197 (h) Any person or municipality maintaining a diversion that was
198 registered in accordance with the provisions of section 22a-368, as
199 amended by this act, shall test and calibrate each totalizing flow meter
200 maintained pursuant to subsection (g) of this section every three years
201 or as set forth in an alternative monitoring protocol. Each such
202 totalizing flow meter shall be calibrated for accuracy by a post-
203 calibration test to the following percentages:

204 (1) Within five per cent accuracy for less than two hundred fifty
205 thousand gallons per minute maximum rated capacity;

206 (2) Within three per cent accuracy for between two hundred fifty
207 thousand and one million gallons per minute maximum rated
208 capacity;

209 (3) Within one per cent accuracy for greater than one million gallons
210 per minute maximum rated capacity.

211 (i) (1) Any person or municipality claiming or maintaining a
212 diversion that was registered in accordance with the provisions of
213 section 22a-368, as amended by this act, shall provide an annual report

214 to the Commissioner of Environmental Protection. Such annual report
215 shall be provided to the commissioner not later than January thirty-
216 first of each year. The annual report may be provided on forms
217 provided by the commissioner, but each annual report shall, at a
218 minimum, contain the following information: (A) The name and
219 address of the person or municipality claiming or maintaining the
220 diversion, (B) the name and number of each diversion as previously
221 identified by the commissioner, (C) the total amount of water diverted
222 during the prior calendar year, expressed in gallons per day for each
223 diversion, or expressed in another measure acceptable to the
224 commissioner, (D) a description of the method used to measure the
225 diversion, (E) the results of any post-calibration test performed, and (F)
226 the dates and duration of any meter breakage or malfunction.

227 (2) In the event that any person or municipality fails to file the
228 annual report required by subdivision (1) of this subsection by July
229 first of any year, such person or municipality shall no longer divert
230 water without first obtaining a permit for such diversion pursuant to
231 sections 22a-265 to 22a-380, inclusive, and any regulations adopted
232 under sections 22a-265 to 22a-380, inclusive. If an annual report does
233 not comply with the provisions of this subsection, the commissioner
234 may reject such annual report. The commissioner shall provide written
235 notification to any person or municipality filing the deficient annual
236 report, detailing the reasons for such rejection. Failure to provide an
237 acceptable annual report before thirty days after receipt of such written
238 notification from the commissioner may be considered by the
239 commissioner as failure to provide an annual report.

This act shall take effect as follows:	
Section 1	<i>from passage</i>
Sec. 2	<i>from passage</i>

Statement of Legislative Commissioners:

Subsection (d) of section 1 and subsection (g) of section 2 were reworded for clarity and internal consistency.

ENV *Joint Favorable Subst.-LCO*