



General Assembly

February Session, 2004

**Raised Bill No. 365**

LCO No. 1507

\*01507\_\_\_\_\_PRI\*

Referred to Committee on Program Review and Investigations

Introduced by:  
(PRI)

**AN ACT CONCERNING THE CONNECTICUT WATER DIVERSION  
POLICY ACT AND WATER DIVERSIONS.**

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

1 Section 1. Section 22a-365 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2004*):

3 Sections 22a-365 to [22a-378] 22a-380, inclusive, shall be known and  
4 may be cited as the "Connecticut Water Diversion Policy Act".

5 Sec. 2. Section 22a-368a of the general statutes is repealed and the  
6 following is substituted in lieu thereof (*Effective October 1, 2004*):

7 (a) The Commissioner of Environmental Protection shall publish a  
8 dated notice of (1) the availability of a form for the reporting of  
9 operating data for diversions pursuant to this section, and (2) a  
10 deadline for submission of such form. Such form shall be developed by  
11 the Commissioner of Environmental Protection, in consultation with  
12 the Commissioners of Public Health and Agriculture and Consumer  
13 Protection and the chairperson of the Public Utilities Control  
14 Authority.

15 (b) Any person or municipality maintaining a diversion that was  
16 registered in accordance with the provisions of section 22a-368 and  
17 which continues to be in use as of July 1, 2001, shall report to the  
18 Commissioner of Environmental Protection current operating data for  
19 such diversion not later than six months after the publication of notice  
20 pursuant to subsection (a) of this section and annually thereafter. Such  
21 data shall be provided on a form developed by the Commissioner of  
22 Environmental Protection, in consultation with the Commissioners of  
23 Public Health, Public Utility Control and Agriculture and Consumer  
24 Protection and shall be in an electronic format determined by the  
25 Commissioner of Environmental Protection. Such data shall include  
26 monthly data for the calendar years 1997 to 2001, inclusive, and each  
27 subsequent calendar year, (1) for the actual frequency and actual rate  
28 of water withdrawals or discharges of such diversion if such diversion  
29 is metered, or (2) that estimates the withdrawals or discharges in the  
30 absence of a meter. A person or municipality maintaining a diversion  
31 exclusively for agricultural purposes may report estimated water use  
32 for the reporting period. The provisions of this subsection shall not  
33 apply to an owner or operator of an existing electric generating facility  
34 utilizing fossil fuel, provided the diversion is used to comply with  
35 state and federal environmental laws, and further provided such  
36 owner or operator reports to the Commissioner of Environmental  
37 Protection an estimate of future water use necessary to comply with  
38 state and federal environmental laws. The Department of  
39 Environmental Protection may require additional information it deems  
40 necessary for planning and allocation purposes to be reported  
41 pursuant to this subsection, including, but not limited to, water  
42 withdrawal quantities by time of year and the purpose for such  
43 withdrawals.

44 (c) Any person or municipality maintaining a diversion that was  
45 eligible for registration in accordance with section 22a-368 but failed to  
46 so register, which diversion continues to be in use as of July 1, 2001,  
47 shall report to the commissioner the operating data for such diversion  
48 not later than six months after the publication of notice pursuant to

49 subsection (a) of this section. Such data shall be provided on a form  
50 developed by the Commissioner of Environmental Protection, in  
51 consultation with the Commissioners of Public Health, Public Utility  
52 Control and Agriculture and Consumer Protection. Such data shall  
53 include (1) the location, capacity, frequency and rate of withdrawals or  
54 discharges of such diversion as of July 1, 1982, (2) a description of the  
55 water use and water system on or before July 1, 1982, including  
56 information to evidence its operation at that time, and (3) the monthly  
57 data for the calendar years 1997 to 2001, inclusive, (A) for the actual  
58 frequency and actual rate of water withdrawals or discharges of such  
59 diversion if such diversion is metered, or (B) that estimates the  
60 withdrawals or discharges in the absence of a meter. A person or  
61 municipality maintaining a diversion exclusively for agricultural  
62 purposes may report estimated water use for the reporting period in  
63 subdivision (3) of this subsection.

64 (d) Any person or municipality maintaining a diversion that was  
65 not eligible for registration in accordance with section 22a-368 and is  
66 not currently authorized by permit issued by the commissioner  
67 pursuant to said section, which diversion is in use as of July 1, 2001,  
68 shall report to the Commissioner of Environmental Protection  
69 operating data for the diversion not later than six months after the  
70 publication of notice pursuant to subsection (a) of this section. Such  
71 data shall be provided on a form developed by the Commissioner of  
72 Environmental Protection, in consultation with the Commissioners of  
73 Public Health, Public Utility Control and Agriculture and Consumer  
74 Protection. Such data shall include (1) information as to when the  
75 diversion was initiated, (2) a description of the water use and water  
76 system operation, and (3) the monthly data for the calendar years 1997  
77 to 2001, inclusive, (A) for the location, capacity, actual frequency and  
78 actual rate of water withdrawals or discharges of said diversion if such  
79 diversion is metered, or (B) that estimates the withdrawals or  
80 discharges in the absence of a meter. A person or municipality  
81 maintaining a diversion used exclusively for agricultural purposes  
82 may report estimated water use for the reporting period in subdivision

83 (3) of this subsection.

84 (e) Information reported by a person or municipality for the  
85 purposes of subsection (c) or (d) of this section shall not be used by the  
86 Commissioner of Environmental Protection to order the payment of  
87 civil penalties pursuant to section 22a-6b and subsection (b) of section  
88 22a-376 provided the person or municipality has filed a permit  
89 application pursuant to section 22a-368 on or before July 1, 2003. This  
90 subsection shall not apply to any information the commissioner can  
91 document independent of a submission pursuant to this section.  
92 Failure to report the information required in this section may result in  
93 civil penalties in accordance with section 22a-6b and subsection (b) of  
94 section 22a-376.

95 (f) The Commissioner of Environmental Protection shall compile a  
96 list of all water diversions in the state and shall adopt regulations, in  
97 accordance with the provisions of chapter 54, to develop key  
98 performance measures for water diversion programs subject to the  
99 provisions of sections 22a-365 to 22a-380, inclusive, and report on the  
100 status of such diversions and the department's progress in meeting  
101 such performance measures to the joint standing committees of the  
102 General Assembly having cognizance of matters relating to public  
103 health, the environment and public utilities and to the Water Planning  
104 Council in accordance with section 11-4a, not later than January 1,  
105 2005, and annually thereafter.

106 Sec. 3. Section 22a-368 of the general statutes is repealed and the  
107 following is substituted in lieu thereof (*Effective October 1, 2004*):

108 (a) Any person or municipality maintaining a diversion prior to or  
109 on July 1, 1982, shall register on or before July 1, 1983, with the  
110 commissioner on a form prescribed by him the location, capacity,  
111 frequency and rate of withdrawals or discharges of said diversion and  
112 a description of the water use and water system. Any such diversion  
113 which is not so registered may be subject to the permit requirements of  
114 sections 22a-365 to [22a-378] 22a-380, inclusive.

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

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

122 (d) Any person or municipality maintaining a diversion registered  
123 in accordance with the provisions of this section shall pay to the  
124 commissioner an annual fee for each diversion so registered. Not later  
125 than October 31, 2005, the commissioner shall adopt regulations, in  
126 accordance with the provisions of chapter 54, regarding a fee schedule  
127 for various classes of diversions that have been registered in  
128 accordance with the provisions of this section. A registration shall be  
129 renewed upon receipt of payment by the commissioner. Such annual  
130 fee shall be due and payable on January thirty-first of each year.  
131 Failure to pay such fee when due shall result in immediate forfeiture of  
132 the registered status of the diversion, requiring a permit issued by the  
133 commissioner for continued operation of the diversion.

134 (e) There is established a water diversion account which shall be a  
135 separate, nonlapsing account within the General Fund. Any moneys  
136 collected under this subsection shall be deposited by the  
137 Commissioner of Environmental Protection into the account. This  
138 account may also receive moneys from public and private sources or  
139 from the federal government. All moneys deposited in the account  
140 shall be used by the Water Planning Council for water planning and  
141 program purposes in accordance with the purposes of the Connecticut  
142 Water Diversion Policy Act, sections 22a-365 to 22a-380, inclusive.

143 Sec. 4. Section 22a-377 of the general statutes, as amended by section  
144 1 of public act 03-141, is repealed and the following is substituted in  
145 lieu thereof (*Effective October 1, 2004*):

146 (a) The following diversions are exempt from the provisions of  
147 sections 22a-365 to [22a-378a] 22a-380, inclusive: (1) One or more wells  
148 joined in one system whose combined maximum withdrawal will not  
149 exceed fifty thousand gallons of water during any twenty-four-hour  
150 period; (2) the maximum withdrawal of fifty thousand gallons of  
151 surface water during any twenty-four-hour period; (3) discharges  
152 permitted under the provisions of section 22a-430, as amended; (4) a  
153 storm drainage system which collects the surface water runoff of an  
154 area of less than one hundred acres; (5) water for fire emergency  
155 purposes; (6) diversions within, extensions and relocation of water  
156 supply system distribution mains; (7) roadway crossings or culverts  
157 which allow for continuous flow or passage of an existing watercourse;  
158 (8) diversions directly related to routine maintenance and emergency  
159 repairs of dams; and (9) diversions by a water company, as defined in  
160 section 25-32a, that are necessary to protect the security of public water  
161 supplies, including: (A) A diversion from a back-up well where a  
162 primary well is out of service, provided (i) the back-up well is located  
163 within two hundred fifty feet of such primary well, (ii) the total  
164 quantity of water withdrawn does not result in an increase in the rate  
165 or quantity of a diversion registered or permitted by the commissioner  
166 pursuant to section 22a-368 or 22a-378a, as amended, and (iii) not later  
167 than January thirtieth of each year, the commissioner is supplied a  
168 written annual report, for the prior year, that identifies the location of  
169 each back-up well, the construction type of each back-up well, the date  
170 of installation and the daily water use from each primary well and  
171 each back-up well for those days on which the back-up well operated;  
172 or (B) a transfer of water from one distribution system to another  
173 during a water supply emergency declared pursuant to section 22a-378  
174 or 25-32b or otherwise declared according to law, provided the transfer  
175 (i) is limited to the period during which the emergency exists, (ii) does  
176 not result in an increase in the rate or quantity of a diversion registered  
177 or permitted by the commissioner pursuant to section 22a-368 or 22a-  
178 378a, as amended, (iii) is accomplished through existing, authorized,  
179 installed capacity to transfer or through temporary equipment that is

180 removed within thirty days after the last day of the water supply  
181 emergency, and (iv) the commissioner is notified, in writing, of any  
182 such transfer and its location within three days of the transfer and the  
183 commissioner is provided a written report of the daily transfer of  
184 water that occurred during the emergency and any other related  
185 information the commissioner may request.

186 (b) The commissioner may, by regulations adopted in accordance  
187 with the provisions of chapter 54, define and establish additional  
188 exempt categories or classes of diversions which would not by  
189 themselves or in combination with each other have a substantial effect  
190 on the long-range planning for and allocation of the water resources of  
191 the state.

192 (c) The commissioner shall adopt regulations in accordance with the  
193 provisions of chapter 54 establishing procedures for retiring unused or  
194 abandoned water diversions and establishing the database, criteria and  
195 policies to be used by the commissioner to insure the proper planning,  
196 management, allocation and use of the water resources of the state and  
197 to fulfill the provisions of sections 22a-365 to [22a-378] 22a-380,  
198 inclusive.

199 Sec. 5. Section 26-141b of the general statutes is repealed and the  
200 following is substituted in lieu thereof (*Effective October 1, 2004*):

201 The Commissioner of Environmental Protection shall, on or before  
202 July 1, 1973, and after consultation and cooperation with the  
203 Department of Public Health, the Department of Public Utility Control  
204 and any other agency, board or commission of the state with which  
205 said commissioner shall deem it advisable to consult and after  
206 recognizing and providing for the needs and requirements of public  
207 health, flood control, industry, public utilities and water supply, and  
208 further recognizing and providing for stream and river ecology, the  
209 requirements of aquatic life, natural wildlife and public recreation, and  
210 after considering the natural flow of water into an impoundment or  
211 diversion, and being reasonably consistent therewith, and also after

212 thirty days' notice in the Connecticut Law Journal and after thirty days'  
213 notice sent by certified mail to all persons, firms and corporations  
214 known to have a direct interest, hold a public hearing and, not earlier  
215 than thirty days thereafter, shall [promulgate] adopt regulations, in  
216 accordance with the provisions of chapter 54, requiring operators  
217 subject to minimum streamflow release regulation to annually submit  
218 compliance data to the commissioner, as determined by the  
219 commissioner, and establishing instantaneous minimum flow  
220 standards and regulations for all stocked river and stream systems.  
221 Such instantaneous minimum flow standards and regulations shall: (1)  
222 Apply to all river and stream systems within this state which the  
223 commissioner finds are reasonably necessary to keep a sufficient flow  
224 of water to protect and safely maintain the fish placed therein by him  
225 pursuant to his stocking program; (2) preserve and protect the natural  
226 aquatic life, including anadromous fish, contained within such waters;  
227 (3) preserve and protect the natural and stocked wildlife dependent  
228 upon the flow of such water; (4) promote and protect the usage of such  
229 water for public recreation; (5) be consistent with the needs and  
230 requirements of public health, flood control, industry, public utilities,  
231 water supply, public safety, agriculture and other lawful uses of such  
232 waters.

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| This act shall take effect as follows: |                        |
| Section 1                              | <i>October 1, 2004</i> |
| Sec. 2                                 | <i>October 1, 2004</i> |
| Sec. 3                                 | <i>October 1, 2004</i> |
| Sec. 4                                 | <i>October 1, 2004</i> |
| Sec. 5                                 | <i>October 1, 2004</i> |

**Statement of Purpose:**

To require information concerning water diversions to be reported to the Department of Environmental Protection, the General Assembly and the Water Planning Council, to establish a water diversion account, to establish regulations relating to retiring water diversions, and to require diversion operators subject to minimum stream flow

regulations to submit release data to the Department of Environmental Protection.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*