



Senate

General Assembly

File No. 354

January Session, 2005

Substitute Senate Bill No. 1294

Senate, April 14, 2005

The Committee on Environment reported through SEN. STILLMAN of the 20th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE MINIMUM WATER FLOW REGULATIONS.

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

1 Section 1. Section 26-141a of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2005*):

3 Whenever any dam or other structure is maintained in this state
4 which impounds, or diverts, the waters of a river or stream [which is
5 stocked with fish by the Commissioner of Environmental Protection,]
6 or which dam or other structure affects the flow of water in such a
7 [stocked] river or stream, the [commissioner] Commissioner of
8 Environmental Protection may promulgate regulations [setting forth
9 standards] concerning the flow of such water in accordance with
10 section 26-141b, as amended by this act.

11 Sec. 2. Section 26-141b of the general statutes is repealed and the
12 following is substituted in lieu thereof (*Effective October 1, 2005*):

13 The Commissioner of Environmental Protection shall, on or before

14 [July 1, 1973] December 31, 2006, and after consultation and
15 cooperation with the Department of Public Health, the Department of
16 Public Utility Control and any other agency, board or commission of
17 the state with which said commissioner shall deem it advisable to
18 consult and after recognizing and providing for the needs and
19 requirements of public health, flood control, industry, public utilities
20 and water supply, and further recognizing and providing for stream
21 and river ecology, the requirements of aquatic life, natural wildlife and
22 public recreation, and after considering the natural flow of water into
23 an impoundment or diversion, and being reasonably consistent
24 therewith, [and also after thirty days' notice in the Connecticut Law
25 Journal and after thirty days' notice sent by certified mail to all
26 persons, firms and corporations known to have a direct interest, hold a
27 public hearing and, not earlier than thirty days thereafter,] shall
28 [promulgate] adopt regulations, in accordance with the provisions of
29 chapter 54, establishing instantaneous minimum flow [standards and]
30 regulations for all [stocked] river and stream systems. Such
31 [instantaneous minimum flow standards and] flow regulations shall:
32 (1) Apply to all river and stream systems within this state; [which the
33 commissioner finds are reasonably necessary to keep a sufficient flow
34 of water to protect and safely maintain the fish placed therein by him
35 pursuant to his stocking program;] (2) preserve and protect the natural
36 aquatic life, including anadromous fish, contained within such waters;
37 (3) preserve and protect the natural and stocked wildlife dependent
38 upon the flow of such water; (4) promote and protect the usage of such
39 water for public recreation; (5) [be consistent with] provide for the
40 needs and requirements of public health, flood control, industry,
41 public utilities, water supply, public safety, agriculture and other
42 lawful uses of such waters; and (6) be based on the best available
43 science and on natural variation of flows and water levels. Such flow
44 regulations may provide special conditions or exemptions for a
45 hardship including, but not limited to, an economic hardship, an
46 extreme circumstance, an agricultural diversion, a river or stream
47 subject to a flow-management plan approved by the Commissioner of
48 Environmental Protection, a water quality certification related to a

49 license by the Federal Energy Regulatory Commissioner or a diversion
 50 that is necessary for a person to comply with the Public Health Code.
 51 Flow regulations adopted pursuant to this section, prior to the effective
 52 date of this section, shall remain in effect until the Commissioner of
 53 Environmental Protection adopts new regulations pursuant to this
 54 section.

55 Sec. 3. Section 26-141c of the general statutes is repealed and the
 56 following is substituted in lieu thereof (*Effective October 1, 2005*):

57 After the [promulgation of the aforesaid minimum flow standards]
 58 adoption of the regulations pursuant to section 26-141b, as amended
 59 by this act, no person, firm or corporation shall maintain any dam or
 60 structure impounding or diverting water within this state except in
 61 accordance with such [standards and] regulations as established by
 62 [said commissioner] the Commissioner of Environmental Protection. If
 63 the commissioner finds that any person, firm or corporation is
 64 violating such [minimum flow standards] water flow regulations, the
 65 commissioner shall issue an order to such person, firm or corporation
 66 to comply with [his] the regulations. The order shall include a time
 67 schedule for the accomplishment of the necessary steps leading to
 68 compliance. If such person, firm or corporation fails thereafter to
 69 comply with the [standards and] regulations concerning minimum
 70 flow of water, the commissioner [is empowered to] may request the
 71 Attorney General to bring an action in the Superior Court to enjoin
 72 such person, firm or corporation from restricting the flow of such
 73 water in accordance with such [standards and] regulations.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2005</i>	26-141a
Sec. 2	<i>October 1, 2005</i>	26-141b
Sec. 3	<i>October 1, 2005</i>	26-141c

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:

Agency Affected	Fund-Effect	FY 06 \$	FY 07 \$
Attorney General	GF - None	None	None
Department of Environmental Protection	GF/Environmental Quality - Cost	Minimal	None

Note: GF=General Fund

Municipal Impact: None

Explanation

The Department of Environmental Protection (DEP) has been working on water flow standards. It is anticipated that the DEP can adopt the required regulations in the timeframe specified in the bill, within existing resources through the diversion of one-half of an analyst away from current duties.

Any potential change in the number or scope of appeals as a result of the bill could be accommodated by the Office of the Attorney General within anticipated budgetary resources.

OLR Bill Analysis

sSB 1294

AN ACT CONCERNING THE MINIMUM WATER FLOW REGULATIONS**SUMMARY:**

Under current law, the Department of Environmental Protection (DEP) commissioner has the authority to set minimum flow standards for rivers and streams (1) where a dam or other structure impounds or diverts the flow, and (2) that she stocks with fish. The bill (1) authorizes her to adopt water flow regulations for all diverted or impounded rivers and streams, regardless of whether she stocks them, and (2) requires her to do so by December 31, 2006.

EFFECTIVE DATE: October 1, 2005

FLOW REGULATIONS

The bill requires that the commissioner base the minimum flow regulations on the best available science, and on natural variation of flows and water levels. As under current law, the regulations also must (1) apply to all state river and stream systems; (2) preserve and protect the natural aquatic life contained within such waters, including fish that travel from salt water to fresh water to spawn; (3) preserve and protect the natural and stocked wildlife dependent on the water flow; and (4) promote and protect water use for public recreation.

The bill replaces the current law's notice and hearing requirements for adopting regulations with those of the Uniform Administrative Procedure Act. It requires that flow regulations already in effect remain so until the commissioner adopts new regulations as the bill requires.

As under current law, the commissioner, in adopting the regulations, must consult with the public health department, department of public utility control, and any other agency, board, or commission with whom she finds it advisable to consult. Current law requires that the regulations, among other things, be consistent with the needs and

requirements of public health, flood control, industry, public utilities, water supply, public safety, agriculture, and other lawful water uses. The bill specifies that the regulations provide for, rather than be consistent with, those needs and requirements.

The bill requires any person, firm, or corporation maintaining a dam or structure to comply with the regulations once adopted. It authorizes the commissioner to order anyone violating the regulations to comply with them according to a specific schedule. The commissioner may ask the attorney general to file a legal action to require any person, firm, or corporation to comply with the regulations.

SPECIAL CONDITIONS OR EXEMPTIONS

The bill authorizes the commissioner to provide in the regulations for special conditions or exemptions for hardships, including (1) economic hardships, (2) extreme circumstances, (3) agricultural diversions, (4) a river or stream subject to a flow management plan the commissioner approves, (5) a water quality certification related to a Federal Energy Regulatory Commission license, and (6) any diversion needed to comply with the Public Health Code. It does not define extreme circumstance.

BACKGROUND

Federal Energy Regulatory Commission

The commission considers environmental impacts when licensing hydropower projects.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 28 Nay 0