



House of Representatives

General Assembly

File No. 352

February Session, 2006

Substitute House Bill No. 5277

House of Representatives, April 4, 2006

The Committee on Environment reported through REP. ROY of the 119th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING PRESERVATION OF RIVERS AND STREAMS.

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

1 Section 1. Section 22a-375 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) The commissioner may periodically investigate and review those
4 diversions which are taking place pursuant to a permit issued in
5 accordance with sections 22a-365 to 22a-378, inclusive. If [he] the
6 commissioner determines that there is any violation of the terms,
7 limitations or conditions of the permit, [he] the commissioner may
8 suspend or revoke said permit in accordance with the provisions of
9 chapter 54 or may request the Attorney General to bring an action to
10 enjoin such violation in accordance with the provisions of subsection
11 (a) of section 22a-376.

12 (b) The commissioner shall prepare an inventory of those diversions
13 registered in accordance with section 22a-368. The commissioner shall
14 prepare a report for the General Assembly which shall be delivered on

15 or before January 1, 2000, and shall include: (1) An inventory of
16 diversion registrations filed on or before July 1, 1983; (2) an inventory
17 of the withdrawal quantities acknowledged for such registration; and
18 (3) an identification of those registrations which are planned to be used
19 by the registrants.

20 (c) The commissioner may periodically investigate and review
21 nonagricultural diversions registered in accordance with section
22 22a-368. If the commissioner determines, after reviewing the applicable
23 data, that there is probable cause that a registered diversion is having,
24 on its own or together with other diversions, a detrimental effect on
25 the environment and natural aquatic life in a basin, the commissioner
26 may, after recognizing and providing for the needs and requirements
27 of public health and safety, water supply and industry, issue an order
28 directing the holder of any such registered diversion to apply for and
29 obtain a permit for such diversion in accordance with sections 22a-365
30 to 22a-378, inclusive, and the regulations of Connecticut state agencies.
31 A person or municipality maintaining such registered diversion may
32 continue to withdraw water at its current quantity, frequency and rate
33 until a decision is made by the commissioner pursuant to section 22a-
34 373.

35 (d) If the holder does not apply for a permit as ordered by the
36 commissioner, the commissioner may issue an order pursuant to this
37 subsection and: (1) A true copy of the order shall be served upon the
38 holder of the diversion by certified mail, return receipt requested, or
39 by a state marshal or indifferent person, with a return of service
40 endorsed thereon and such return receipt or return of service shall be
41 filed with the commissioner, (2) the order shall specify the general
42 location of the diversion and specify a reasonable period of time within
43 which the holder shall make application for and obtain a permit for
44 such diversion in accordance with sections 22a-365 to 22a-378,
45 inclusive, and the regulations of Connecticut state agencies. Such order
46 shall remain in effect unless the commissioner finds the holder of the
47 diversion has surrendered such diversion or that the time frame to
48 apply for and obtain a permit is unreasonable.

49 (e) Unless the holder of the registered diversion who has not
 50 applied for a permit files an answer, in writing, not later than thirty
 51 days after the date of service of the order and requests a hearing before
 52 the commissioner, the order shall be final and shall not be subject to
 53 appeal. The commissioner shall grant a hearing as soon as is
 54 practicable upon receipt of the request.

55 (f) Testimony at the hearing shall be under oath and recorded
 56 stenographically or by a sound recording device. The parties shall not
 57 be bound by the strict rules of evidence in courts of law. After the
 58 hearing, the commissioner shall consider all of the evidence and shall
 59 affirm, revoke or modify the order. At the request of the holder of the
 60 registered diversion, a true and correct copy of the hearing transcript
 61 or any other record of the hearing that was made shall be furnished to
 62 the holder, at the holder's expense.

63 (g) By agreement of the commissioner and the person or persons
 64 subject to the order, the commissioner may, after a hearing or at any
 65 time after the issuance of the order, modify the order or extend time
 66 for compliance with the order. Any such modification or extension of
 67 time shall be a revision of the order and shall not constitute a new
 68 order. There shall not be a right to appeal such modification or
 69 extension by agreement. If the person or persons subject to the order
 70 fails to comply with the order, the commissioner shall revoke the
 71 registration that was the subject of the order. If the commissioner
 72 issues an order pursuant to this subsection to two or more persons,
 73 each person shall be jointly and severally liable with respect to such
 74 order.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	22a-375

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 07 \$	FY 08 \$
Department of Environmental Protection	GF/Environmental Quality Cost/Revenue Gain	Minimal	Minimal

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 07 \$	FY 08 \$
Various Municipalities	STATE MANDATE - Cost	See Below	See Below

Explanation

The bill authorizes the Department of Environmental Protection (DEP) to periodically investigate and review certain registered water diversions. It is estimated that this can be done within normal program resources. To the extent that the DEP would use the authority granted in the legislation to require permits on registered diversions under certain circumstances, there would be a minimal increase in fees to the EQ Fund of the DEP offset by a minimal workload increase.

Municipalities which would need to obtain a permit for a registered diversion and pay a fee would incur costs. The exact impact would vary from municipality to municipality, but there is a potential some of these costs would not currently be budgeted for. The permits are less than \$10,000.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future.

OLR Bill Analysis

sHB 5277

AN ACT CONCERNING PRESERVATION OF RIVERS AND STREAMS.

SUMMARY:

This bill authorizes the Department of Environmental Protection (DEP) commissioner to (1) periodically investigate and review non-agricultural registered water diversions and (2) order a registered diversion holder to apply for and obtain a permit if she finds the registered diversion, alone or with other diversions, is having a detrimental effect on the environment and natural aquatic life. The commissioner may issue a second order if the registration holder fails to apply for a permit as directed. The second order is subject to a hearing process, after which the commissioner may affirm, revoke or modify her order. The commissioner must revoke the registration of a registration holder who fails to comply with this final order.

EFFECTIVE DATE: Upon passage

INVESTIGATION AND REVIEW OF REGISTERED DIVERSIONS

Under the bill, the commissioner may order a registered diversion holder to apply for and obtain a permit if, after reviewing the applicable data, she finds probable cause that the diversion, by itself or with other diversions, is having a detrimental effect on the environment and natural aquatic life in a water basin. In issuing such an order, the commissioner must recognize and provide for public health, water supply, public safety, and industrial needs and requirements. The person or municipality holding the registration may continue to withdraw water in the amount, frequency, and rate at which it was withdrawing it when it received the order, until the commissioner rules on the permit application.

Service of the Order and Request for a Hearing

If the registration holder fails to apply for a permit as the commissioner directs, she may issue a second order. A true copy of this order must be served upon the diversion holder by certified mail, return receipt requested, or by a state marshal or indifferent person, with a return of service endorsed on it. The return receipt or return of service must be filed with the commissioner. The order must specify the general location of the diversion and a reasonable time within which the registered diversion holder must apply for, and obtain, a diversion permit. The commissioner's order remains in effect unless the commissioner finds that (1) the diversion holder has surrendered the diversion or (2) there is not enough time for the registration holder to apply for and obtain a permit.

The commissioner's order is final and not subject to appeal unless the registration holder, within 30 days of receiving the order, (1) files an answer in writing and (2) asks for a hearing before the commissioner. The commissioner must grant a hearing as soon as practicable after receiving a request.

Hearing, Modification, and Revocation

Hearing testimony must be given under oath and recorded by a stenographer or sound recording device. The parties are not bound by the rules of evidence. After the hearing, the commissioner must consider all the evidence and affirm, revoke, or modify her order. A true and correct copy of the hearing transcript or any other record of the hearing must be furnished to the registered diversion holder at his request and expense.

By agreement of the commissioner and the person subject to the order, the commissioner may, after a hearing or issuing the order, modify the order or extend the deadline for compliance. Any modification or extension is a revision of the existing order, and is not subject to appeal. The commissioner must revoke the registration of a registered diversion holder who fails to comply with this final order. If the commissioner issues an order to two or more people, each person

is jointly and severally liable with regard to the order.

BACKGROUND

Water Diversions

By law, water diversions include withdrawals of more than 50,000 gallons from wells or surface water in any 24-hour period, and certain other activities. Those who maintained a water diversion before July 1, 1982 had to register with the DEP commissioner by July 1, 1983. There was no registration fee. Since July 1, 1982, any person or municipality maintaining such a diversion must get a DEP water diversion permit, for which the fee varies.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 15 Nay 12 (03/20/2006)