



General Assembly

January Session, 2007

Committee Bill No. 596

LCO No. 5412

05412SB00596JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

**AN ACT CONCERNING ENVIRONMENTAL LAND USE
RESTRICTIONS AND THE UNIFORM ENVIRONMENTAL COVENANTS
ACT.**

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

1 Section 1. Section 22a-133n of the general statutes is repealed and
2 the following is substituted in lieu thereof (*Effective October 1, 2007*):

3 [For the purposes of sections 22a-133n to 22a-133r, inclusive:
4 "Commissioner" means the Commissioner of Environmental
5 Protection; "person" shall have the same meaning as in section 22a-2;
6 and "environmental use restriction" means a limitation in any
7 instrument executed and recorded as prescribed in section 22a-133o,
8 the purpose of which is to minimize the risk of human exposure to
9 pollutants and hazards to the environment by (1) preventing the use of
10 specified real property for certain purposes or (2) prohibiting certain
11 activities on such property.]

12 As used in sections 22a-133n to 22a-133s, inclusive, as amended by
13 this act, unless the context otherwise requires:

14 (1) "Activity and use limitations" means restrictions or obligations

15 created under sections 22a-133n to 22a-133s, inclusive, as amended by
16 this act, with respect to real property;

17 (2) "Agency" means the Department of Environmental Protection or
18 any other state or federal agency that determines or approves a
19 remediation project pursuant to which an environmental land use
20 restriction is created;

21 (3) "Commissioner" means the Commissioner of Environmental
22 Protection, or the commissioner's designee, or the administrative head
23 of any state or federal agency, other than the Department of
24 Environmental Protection, that determines or approves a remediation
25 project pursuant to which an environmental land use restriction is
26 created, or such administrative head's designee;

27 (4) "Common interest community" means a condominium,
28 cooperative or other real property with respect to which a person, by
29 virtue of the person's ownership of a parcel of real property, is
30 obligated to pay property taxes or insurance premiums on, or for
31 maintenance or improvement of, other real property described in a
32 recorded covenant that creates the common interest community, and
33 includes, but is not limited to, any common interest community
34 created under chapter 828;

35 (5) "Environmental land use restriction" means a servitude arising
36 from activity and use limitations in any instrument executed and
37 recorded as prescribed in section 22a-133o, as amended by this act, the
38 purpose of which is to minimize the risk of human exposure to
39 pollutants and hazards to the environment by (A) preventing the use
40 of specified real property for certain purposes, or (B) prohibiting
41 certain activities on such real property;

42 (6) "Holder" means the grantee of an environmental land use
43 restriction as specified in section 22a-133q, as amended by this act;

44 (7) "Person" has the same meaning as provided in section 22a-2; and

45 (8) "Record" means information that is inscribed on a tangible
46 medium or that is stored in an electronic or other medium and is
47 retrievable in perceivable form.

48 Sec. 2. Section 22a-133o of the general statutes is repealed and the
49 following is substituted in lieu thereof (*Effective October 1, 2007*):

50 (a) An owner of land may execute and record an environmental
51 land use restriction under sections 22a-133n to [22a-133r] 22a-133s,
52 inclusive, as amended by this act, on the land records of the
53 municipality in which such land is located if (1) the [commissioner]
54 Commissioner of Environmental Protection has adopted standards for
55 the remediation of contaminated land pursuant to section 22a-133k
56 and adopted regulations pursuant to [section 22a-133q] subsection (c)
57 of section 22a-133s, as amended by this act, (2) the commissioner, or in
58 the case of land for which remedial action was supervised under
59 section 22a-133y, a licensed environmental professional, determines, as
60 evidenced by his or her signature on such environmental land use
61 restriction, that [it] such environmental land use restriction is
62 consistent with the purposes and requirements of sections 22a-133n to
63 [22a-133r] 22a-133s, inclusive, as amended by this act, and [of] such
64 standards and regulations, and (3) such environmental land use
65 restriction will effectively protect public health and the environment
66 from the hazards of pollution. Such environmental land use restriction
67 shall contain the information required by subsection (g) of this section.

68 (b) No owner of land may record an environmental land use
69 restriction [on the land records of the municipality in which such land
70 is located unless he simultaneously records] unless the environmental
71 land use restriction is signed by the commissioner or a licensed
72 environmental professional as provided in subdivision (2) of
73 subsection (a) of this section. At the time the owner records such
74 environmental land use restriction, the owner shall simultaneously
75 record documents which demonstrate that each person holding an
76 interest in such land or any part thereof, including, [without

77 limitation] but not limited to, each mortgagee, lessee, lienor and
78 encumbrancer, irrevocably subordinates such interest to the
79 environmental land use restriction, provided the commissioner may
80 waive [such requirement if he] the recording of a document
81 demonstrating the subordination of an interest in such land if the
82 commissioner finds that the interest [in such land] is so minor as to be
83 unaffected by the environmental land use restriction. [An
84 environmental use restriction shall run with land, shall bind the owner
85 of the land and his successors and assigns, and shall be enforceable
86 notwithstanding lack of privity of estate or contract or benefit to
87 particular land.]

88 (c) Within seven days [of executing an environmental use restriction
89 and receiving thereon] after receiving the signature of the
90 commissioner or a licensed environmental professional [, as the case
91 may be] as provided in subdivision (2) of subsection (a) of this section,
92 the owner of [the land involved therein] land shall sign and record
93 [such] the environmental land use restriction and the documents
94 required under subsection (b) of this section on the land records of the
95 municipality in which such land is located and, promptly thereafter,
96 shall [submit] deliver to the commissioner a certificate of title
97 certifying that each interest in such land or any part thereof is
98 irrevocably subordinated to the environmental land use restriction [in
99 accordance with said] to the extent required by subsection (b) of this
100 section.

101 (d) An owner of land with respect to which an environmental land
102 use restriction applies may be released, wholly or in part, from the
103 activity and use limitations of such environmental land use restriction,
104 and an environmental land use restriction may be amended, only with
105 the commissioner's written approval. [which] Any such release or
106 amendment shall be consistent with the requirements of section 22a-
107 133r, as amended by this act, and the regulations adopted pursuant to
108 [section 22a-133q and] subsection (c) of section 22a-133s, as amended
109 by this act. Such release or amendment shall be recorded on the land

110 records of the municipality in which such land is located, provided the
111 commissioner may waive the requirement to record such release or
112 amendment if [he] the commissioner finds that the activity which is the
113 subject of such release or amendment does not affect the overall
114 purpose for which the environmental land use restriction was
115 implemented and does not alter the size of the area subject to the
116 environmental land use restriction. The commissioner shall not
117 approve any such release or amendment unless the owner
118 demonstrates that [he] such owner has remediated the land, or such
119 portion thereof as would be affected by the release or amendment, in
120 accordance with the standards established pursuant to section 22a-
121 133k.

122 [(e) An environmental use restriction shall survive foreclosure of a
123 mortgage, lien or other encumbrance.]

124 (e) An agreement to subordinate an interest in land to an
125 environmental land use restriction under subsection (b) of this section
126 may be contained in the environmental land use restriction or in a
127 separate record. If the environmental land use restriction covers
128 commonly owned property in a common interest community, such
129 record may be signed by any person authorized by the governing
130 board of the unit owners' association.

131 (f) An agreement by a person to subordinate a prior interest in land
132 to an environmental land use restriction under subsection (b) of this
133 section affects the priority of such person's interest but does not by
134 itself impose any affirmative obligation on the person with respect to
135 the environmental land use restriction.

136 (g) An environmental land use restriction shall:

137 (1) State that the instrument is an environmental land use restriction
138 executed pursuant to sections 22a-133n to 22a-133s, inclusive, as
139 amended by this act;

140 (2) Contain a legally sufficient description of the real property
141 subject to the environmental land use restriction;

142 (3) Describe the activity and use limitations on the real property;

143 (4) Identify each holder and the holder's address;

144 (5) Be signed by the agency, each holder and, unless waived by the
145 agency, each fee simple owner of the real property subject to the
146 environmental land use restriction; and

147 (6) Contain all other information required by the regulations
148 adopted pursuant to subsection (c) of section 22a-133s, as amended by
149 this act.

150 (h) In addition to the information required by subsection (g) of this
151 section, an environmental land use restriction may contain other
152 information, restrictions and requirements agreed to by the persons
153 who signed it, including, but not limited to, any:

154 (1) Requirements for notice following transfer of a specified interest
155 in, or concerning proposed changes in use of, applications for building
156 permits for, or proposals for any site work affecting the contamination
157 on, the real property subject to the environmental land use restriction;

158 (2) Requirements for periodic reporting describing compliance with
159 the environmental land use restriction;

160 (3) Rights of access to the real property granted in connection with
161 the implementation or enforcement of the environmental land use
162 restriction;

163 (4) Brief narrative description of the contamination and remedy,
164 including the contaminants of concern, the pathways of exposure, the
165 limits on exposure and the location and extent of the contamination;

166 (5) Limitation on the release or amendment of the environmental
167 land use restriction in addition to the limitations contained in section

168 22a-133r, as amended by this act; and

169 (6) Rights of the holder in addition to the holder's right to enforce
170 the environmental land use restriction pursuant to section 22a-133q, as
171 amended by this act.

172 (i) An environmental land use restriction shall run with land, shall
173 bind the owner of the land and such owner's successors and assigns
174 and shall be enforceable notwithstanding that:

175 (1) There is lack of privity of estate or contract or benefit to
176 particular land;

177 (2) It is not appurtenant to an interest in real property;

178 (3) It can be or has been assigned to a person other than the original
179 holder;

180 (4) It is not of a character that has been recognized traditionally at
181 common law;

182 (5) It imposes a negative burden; or

183 (6) It imposes an affirmative obligation on a person having an
184 interest in the real property or on the holder.

185 (j) An instrument that creates restrictions or obligations with respect
186 to real property that would qualify as activity and use limitations
187 except for the fact that the instrument was recorded before the effective
188 date of this section is not invalid or unenforceable because of any of
189 the limitations on enforcement of interests described in subsection (i)
190 of this section or because it was identified as an easement, servitude,
191 deed restriction or other interest.

192 (k) Sections 22a-133n to 22a-133s, inclusive, as amended by this act,
193 do not invalidate or render unenforceable any interest, whether
194 designated as an environmental land use restriction or other interest,
195 that is otherwise enforceable under the law of this state.

196 Sec. 3. Section 22a-133p of the general statutes is repealed and the
197 following is substituted in lieu thereof (*Effective October 1, 2007*):

198 (a) The Attorney General, at the request of the commissioner, shall
199 institute a civil action in the superior court for the judicial district of
200 Hartford or for the judicial district [wherein] in which the subject land
201 is located for injunctive or other equitable relief to enforce an
202 environmental land use restriction or to recover a civil penalty
203 pursuant to subsection (e) of this section.

204 (b) The commissioner may issue orders pursuant to sections 22a-6
205 and 22a-7 to enforce an environmental land use restriction.

206 (c) In any administrative or civil proceeding instituted by the
207 commissioner to enforce an environmental land use restriction, any
208 other person may intervene as a matter of right.

209 (d) In any civil or administrative action to enforce an environmental
210 land use restriction, the owner of the subject land, and any lessee
211 [thereof] of such land, shall be strictly liable for any violation of such
212 environmental land use restriction and shall be jointly and severally
213 liable for abating such violation.

214 (e) Any owner of land with respect to which an environmental land
215 use restriction applies, and any lessee of such land, who violates any
216 provision of such environmental land use restriction shall be assessed
217 a civil penalty under section 22a-438. The penalty provided in this
218 subsection shall be in addition to any injunctive or other equitable
219 relief.

220 (f) In addition to any enforcement action taken by the commissioner
221 under sections 22a-133n to 22a-133s, inclusive, as amended by this act,
222 a civil action for injunctive or other equitable relief for a violation of an
223 environmental land use restriction may be maintained by:

224 (1) A party to the environmental land use restriction;

225 (2) Any person to whom the environmental land use restriction
226 expressly grants power to enforce;

227 (3) A person whose interest in the real property or whose collateral
228 or liability may be affected by the alleged violation of the
229 environmental land use restriction; or

230 (4) A municipality or other unit of local government in which the
231 real property subject to the environmental land use restriction is
232 located.

233 (g) A person is not responsible or subject to liability for
234 environmental remediation solely because such person has the right to
235 enforce an environmental land use restriction.

236 Sec. 4. Section 22a-133q of the general statutes is repealed and the
237 following is substituted in lieu thereof (*Effective October 1, 2007*):

238 [The commissioner shall adopt regulations, in accordance with the
239 provisions of chapter 54, to carry out the purposes of sections 22a-133n
240 to 22a-133r, inclusive. Such regulations may include, but not be limited
241 to, provisions regarding the form, contents, filing procedure for, and
242 release from, environmental use restrictions.]

243 (a) Any person, including a person that owns an interest in the real
244 property, the agency or a municipality or other unit of local
245 government, may be a holder. An environmental land use restriction
246 shall identify one, and may identify more than one, holder. The
247 interest of a holder is an interest in real property.

248 (b) A right of an agency under sections 22a-133n to 22a-133s,
249 inclusive, as amended by this act, or under an environmental land use
250 restriction, other than a right as a holder, is not an interest in real
251 property.

252 (c) Except for an assignment undertaken pursuant to a
253 governmental reorganization or an agreement to remove and replace a

254 holder under subdivision (3) of subsection (d) of this section,
255 assignment of an environmental land use restriction to a new holder is
256 an amendment under subsection (d) of section 22a-133o, as amended
257 by this act.

258 (d) Except as otherwise provided in an environmental land use
259 restriction:

260 (1) A holder may enforce an environmental land use restriction in
261 accordance with its terms, as provided in subsection (f) of section 22a-
262 133p, as amended by this act;

263 (2) A holder may not assign such holder's interest without consent
264 of the other parties; and

265 (3) A holder may be removed and replaced by agreement of the
266 other parties specified in subsection (f) of section 22a-133r, as amended
267 by this act.

268 (e) A court of competent jurisdiction may fill a vacancy in the
269 position of holder.

270 (f) An environmental land use restriction that is otherwise effective
271 is valid and enforceable even if: (1) The holder dies, ceases to exist,
272 resigns or is replaced; or (2) the owner of an interest subject to the
273 environmental land use restriction and the holder are the same person.

274 Sec. 5. Section 22a-133r of the general statutes is repealed and the
275 following is substituted in lieu thereof (*Effective October 1, 2007*):

276 [In the event that a court of competent jurisdiction finds for any
277 reason that an environmental use restriction is void or without effect
278 for any reason, the owner of the subject land, in accordance with a
279 schedule prescribed by the commissioner, shall promptly abate
280 pollution thereon consistently with standards adopted under section
281 22a-133k for remediation of land used for residential or recreational
282 purposes.]

- 283 (a) An environmental land use restriction is perpetual unless it is:
- 284 (1) By its terms limited to a specific duration or terminated by the
285 occurrence of a specific event;
- 286 (2) Terminated by consent pursuant to subsection (f) of this section;
- 287 (3) Terminated pursuant to subsection (b) of this section; or
- 288 (4) Terminated or modified in an eminent domain proceeding, but
289 only if: (A) The agency that signed the environmental land use
290 restriction is a party to the proceeding; (B) all persons identified in
291 subsection (f) of this section are given notice of the pendency of the
292 proceeding; and (C) the court determines, after hearing, that the
293 termination or modification will not adversely affect human health or
294 the environment.
- 295 (b) If the agency that signed an environmental land use restriction
296 has determined that the intended benefits of the environmental land
297 use restriction can no longer be realized, a court, under the doctrine of
298 changed circumstances, in an action in which all persons identified in
299 subsection (f) of this section have been given notice, may terminate the
300 environmental land use restriction or reduce its burden on the real
301 property subject to the environmental land use restriction.
- 302 (c) Except as otherwise provided in subsections (a) and (b) of this
303 section, an environmental land use restriction may not be
304 extinguished, limited or impaired through issuance of a tax deed,
305 foreclosure of a tax lien or application of the doctrine of adverse
306 possession, prescription, abandonment, waiver, lack of enforcement or
307 acquiescence, or a similar doctrine.
- 308 (d) An environmental land use restriction may not be extinguished,
309 limited or impaired by application of sections 47-33b to 47-33l,
310 inclusive, or sections 47-33m to 47-33t, inclusive.
- 311 (e) An environmental land use restriction shall survive foreclosure

312 of a mortgage, lien or other encumbrance.

313 (f) An environmental land use restriction may be released or
314 amended by consent only if the release or amendment is signed by:

315 (1) The agency;

316 (2) Unless waived by the agency, the current fee simple owner of the
317 real property subject to the environmental land use restriction;

318 (3) Each person that originally signed the environmental land use
319 restriction, unless the person waived in a signed record the right to
320 consent or a court finds that the person no longer exists or cannot be
321 located or identified with the exercise of reasonable diligence; and

322 (4) Except as otherwise provided in subdivision (3) of subsection (d)
323 of section 22a-133q, as amended by this act, the holder.

324 (g) If an interest in real property is subject to an environmental land
325 use restriction, the interest is not affected by an amendment of the
326 environmental land use restriction unless the current owner of the
327 interest consents to the amendment or has waived in a signed record
328 the right to consent to amendments.

329 Sec. 6. Section 22a-133s of the general statutes is repealed and the
330 following is substituted in lieu thereof (*Effective October 1, 2007*):

331 (a) Nothing in sections 22a-133n to [22a-133r] 22a-133s, inclusive, as
332 amended by this act, shall be construed to affect the commissioner's
333 authority under any other provision of law to abate or prevent
334 pollution or to enforce any statute, requirement, order or permit issued
335 or administered by [him] the commissioner.

336 (b) In the event that a court of competent jurisdiction finds for any
337 reason that an environmental land use restriction is void or without
338 effect for any reason, the owner of the subject land, in accordance with
339 a schedule prescribed by the commissioner, shall promptly abate

340 pollution on such land consistently with standards adopted under
341 section 22a-133k for remediation of land used for residential or
342 recreational purposes.

343 (c) The Commissioner of Environmental Protection shall adopt
344 regulations, in accordance with the provisions of chapter 54, to carry
345 out the purposes of sections 22a-133n to 22a-133s, inclusive, as
346 amended by this act. Such regulations may include, but not be limited
347 to, provisions regarding the form and contents of, filing procedure for,
348 amendment of and release from environmental land use restrictions.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2007	22a-133n
Sec. 2	October 1, 2007	22a-133o
Sec. 3	October 1, 2007	22a-133p
Sec. 4	October 1, 2007	22a-133q
Sec. 5	October 1, 2007	22a-133r
Sec. 6	October 1, 2007	22a-133s

Statement of Purpose:

To integrate existing state law concerning environmental land use restrictions with the provisions of the Uniform Environmental Covenants Act.

[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.]

Co-Sponsors: SEN. HARRIS, 5th Dist.

S.B. 596