



Senate

General Assembly

File No. 168

January Session, 2011

Substitute Senate Bill No. 1020

Senate, March 23, 2011

The Committee on Commerce reported through SEN. LEBEAU of the 3rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING WATER RESOURCES AND ECONOMIC DEVELOPMENT.

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

1 Section 1. Section 26-141b of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2011*):

3 (a) The Commissioner of Environmental Protection shall, on or
4 before December 31, [2006] 2012, [and after consultation and
5 cooperation] in concurrence with the Department of Public Health, the
6 Department of Economic and Community Development, the
7 Department of Agriculture and the Department of Public Utility
8 Control, and after consultation and cooperation with an advisory
9 group convened by the Commissioner of Environmental Protection,
10 and any other agency, board or commission of the state with which
11 said commissioner shall deem it advisable to consult and after
12 recognizing and providing for the needs and requirements of public
13 health, flood control, industry, public utilities, water supply, public
14 safety, agriculture and other lawful uses of such waters and further

15 recognizing and providing for stream and river ecology, the
16 requirements of natural aquatic life, natural wildlife and public
17 recreation, and after considering the natural flow of water into an
18 impoundment or diversion, and being reasonably consistent therewith,
19 shall adopt regulations, in accordance with the provisions of chapter
20 54, establishing flow regulations for all river and stream systems. Such
21 flow regulations shall: (1) Apply to all river and stream systems within
22 this state; (2) preserve and protect the natural aquatic life, including
23 anadromous fish, contained within such waters; (3) preserve and
24 protect the natural and stocked wildlife dependent upon the flow of
25 such water; (4) promote and protect the usage of such water for public
26 recreation; (5) be based, to the maximum extent practicable, on natural
27 variation of flows and water levels while providing for the needs and
28 requirements of public health, flood control, industry, public utilities,
29 water supply, public safety, agriculture and other lawful uses of such
30 waters; and (6) be based on the best available science, including, but
31 not limited to, natural aquatic habitat, biota, subregional basin
32 boundaries, areas of stratified drift, stream gages and flow data,
33 locations of registered, permitted, and proposed diversions and
34 withdrawal data reported pursuant to section 22a-368a, locations
35 where any dams or other structures impound or divert the waters of a
36 river or stream and any release made therefrom, and any other data for
37 developing such regulations or individual management plans. Such
38 flow regulations [may] shall not require any public water system, as
39 defined in subsection (a) of section 25-33d, to comply with reservoir
40 release requirements that will cause a reduction in safe yield, available
41 supply or margin of safety to levels that are not sufficient to meet the
42 public health, safety, agricultural and economic development needs of
43 the state and shall provide special conditions or exemptions including,
44 but not limited to, an extreme economic hardship or other
45 circumstance, an agricultural diversion, a water quality certification
46 related to a license issued by the Federal Energy Regulatory
47 Commission, [or] as necessary to allow a public water system, as
48 defined in subsection (a) of section 25-33d, to comply with the
49 obligations of such system as set forth in the regulations of Connecticut

50 state agencies or where compliance requires the expenditure of
51 resources for the development of new sources of water supplies or
52 storage which is not technically feasible or financially viable. Any flow
53 management plan contained in a resolution, agreement or stipulated
54 judgment to which the state, acting through the Commissioner of
55 Environmental Protection, is a party, or the management plan
56 developed pursuant to section 3 of public act 00-152, is exempt from
57 any such flow regulations. Flow regulations that were adopted
58 pursuant to this section and sections 26-141a and 26-141c prior to
59 October 1, 2005, shall remain in effect until the Commissioner of
60 Environmental Protection adopts new regulations pursuant to this
61 section.

62 (b) The Commissioner of Environmental Protection, in consultation
63 with the Commissioner of Public Health, shall conduct an analysis of
64 all basins in Connecticut using existing data and resources to classify
65 rivers and streams, or segments thereof, according to their current and
66 proposed future use, and establish priorities for compliance with flow
67 regulations for any dam or other structure that impounds or
68 instantaneously diverts a river or stream. In establishing such priorities
69 for compliance, said commissioners shall solicit input from
70 appropriate state agencies and stakeholders and consider the potential
71 impacts of compliance with the flow regulations on economic
72 development, brownfields remediation, the adequacy of public water
73 supplies to meet the current and future public health and safety needs
74 of the communities served, the ability of water companies to maintain
75 an adequate margin of safety, as determined by the Department of
76 Public Health, the impact on water rates and the anticipated
77 environmental benefits from compliance. For purposes of this section,
78 rivers and streams adjacent to or immediately downstream of public
79 water supply sources, or located in areas of significance for economic
80 development shall not be classified in a manner that would prevent
81 human alteration of the natural stream flow consistent with the
82 continued use of such public water supply sources, or economic
83 development.

84 Sec. 2. (NEW) (*Effective July 1, 2011*) The Department of Public
 85 Utility Control shall provide ratemaking mechanisms that allow for the
 86 timely recovery of costs of compliance with the flow regulations
 87 proposed pursuant to section 26-141b of the general statutes, as
 88 amended by this act, and shall amend existing regulations to allow a
 89 water company to include in such company's rate base new facilities
 90 and improvements to facilities necessary to comply with the flow
 91 regulations and to allow the affected water company to implement a
 92 rate surcharge for such costs of compliance until such time as the
 93 company files its next general rate case.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2011</i>	26-141b
Sec. 2	<i>July 1, 2011</i>	New section

Statement of Legislative Commissioners:

In section 1(b) the phrase "in consultation with the Commissioner of Public Health" in the first sentence was moved to the beginning of the sentence for consistency and to conform with the intent of the committee, and the word "screening" was changed to "analysis" for clarity. In section 2, after "26-141b" the phrase "of the general statutes" was added for consistency with drafting conventions.

CE *Joint Favorable Subst.-LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

There is no fiscal impact to the Departments of Public Health (DPH), Economic and Community Development (DECD), Agriculture (DAG), and Public Utility Control (DPUC) to concur with the Department of Environmental Protection (DEP) on certain exemptions of public water systems from river and stream flow regulations.

It is assumed that these departments would not be required to conduct independent data collection related to these exemptions, but, instead, would review information from DEP and the public water systems seeking exemption in order to make their decision on concurrence using existing data.

The bill also requires DPUC to establish ratemaking mechanisms to allow a private water company to recover the costs of complying with the flow regulations in a timely fashion. As the agency already sets rates for regulated water companies, there are no anticipated costs for the agency to comply with this provision.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis

sSB 1020

AN ACT CONCERNING WATER RESOURCES AND ECONOMIC DEVELOPMENT.

SUMMARY:

This bill extends to December 31, 2012, the deadline the Department of Environmental Protection (DEP) commissioner has to adopt river and stream flow regulations and (1) modifies the process for developing the proposed regulations and (2) their contents. Under current law, DEP had to adopt these regulations by December 31, 2006 (see BACKGROUND).

The bill requires the DEP commissioner to adopt the flow regulations in concurrence, rather than in consultation and cooperation, with the departments of Public Health (DPH) and Public Utility Control (DPUC). It also adds to those that must concur the departments of Economic and Community Development and Agriculture. The bill does not change the current requirement that the DEP commissioner also must consult and cooperate with an advisory group he convenes and other state entities the commissioner deems it advisable to consult.

The bill prohibits flow regulations requiring public water systems (see BACKGROUND) to comply with reservoir release requirements that will reduce the safe yield, available supply, or margin of safety to levels insufficient for the state's public health, safety, agricultural, and economic development needs.

The bill requires special conditions or exemptions when compliance requires spending resources to develop new sources for supplying or storing water, and doing so is not technically feasible or financially viable. The bill also requires, rather than allows, special conditions or

exemptions in other circumstance, but only as needed to allow a public water system to comply with regulations.

The bill requires the DEP commissioner, in consultation with the DPH commissioner, to (1) classify rivers and streams based on their current and proposed future uses and (2) set priorities for dams and other similar structures to comply with flow regulations.

The bill also requires DPUC to (1) provide ratemaking mechanisms for private water companies allowing for the timely recovery of flow regulation compliance costs and (2) amend regulations for specified purposes related to private water company compliance with flow regulations.

EFFECTIVE DATE: July 1, 2011

CHANGES TO EXISTING SPECIAL CONDITIONS OR EXEMPTIONS

Current laws allows the DEP commissioner to include in the flow regulations provisions for special conditions or exemptions for (1) extreme economic hardships or other circumstances, (2) agricultural diversions, (3) water quality certifications related to a Federal Energy Regulatory Commission (FERC) license (see BACKGROUND), or (4) allowing a public water system to meet its obligations under state regulations. The bill makes them mandatory and applies #4 above as a condition to the other special conditions or exemptions. Thus, the bill requires the commissioner to provide in the regulations for special conditions or exemptions, but only as needed to allow a public water system to meet its obligations under state regulations, for (1) extreme economic hardships or other circumstances, (2) agricultural diversions, and (3) water quality certifications related to a FERC license.

CLASSIFICATION BASED ON USE

The bill requires the DEP commissioner, in consultation with the DPH commissioner, to analyze all basins in the state to classify rivers and streams (or their segments) based on their current and proposed future use. This analysis must be done using existing data and resources.

The bill specifies that the commissioners must not classify rivers and streams that are adjacent to or immediately downstream of public water supply sources, or located in areas of significance for economic development, in a way that would prevent (1) people from altering the natural stream flow consistent with the sources' continued use or (2) economic development.

COMPLIANCE PRIORITIES

The bill also requires the DEP commissioner, in consultation with the DPH commissioner, to set priorities for dams and other structures that impound or instantaneously divert a river or stream to comply with flow regulations.

In setting compliance priorities, the commissioners must solicit input from unspecified appropriate state agencies and stakeholders. They must also consider the potential impacts of compliance on (1) economic development; (2) brownfields remediation; (3) adequate public water supplies to meet the current and future public health and safety needs of the communities served; (4) water companies' ability to maintain an adequate margin of safety, as determined by DPH; (5) water rates; and (6) the anticipated environmental benefits of compliance.

DPUC RATEMAKING MECHANISMS AND REGULATIONS

The bill requires DPUC to establish ratemaking mechanisms allowing a private water company to recover the costs of complying with the flow regulations in a timely fashion. DPUC must also amend existing regulations to allow a private water company to (1) include in its rate base new facilities and facility improvements needed to comply with the flow regulations and (2) implement a rate surcharge for compliance costs until the company files its next general rate case.

BACKGROUND

Stream Flow Regulations

PA 05-142 and Regulation Review Committee. Public Act 05-142 required DEP to develop new stream flow regulations for all rivers and

streams by December 31, 2006, and made various changes to the previous requirements for the regulations.

DEP published its proposed stream flow regulations in October 2009. DEP later revised the regulations and submitted final proposed regulations to the General Assembly's Regulation Review Committee for approval in August 2010. On October 26, 2010, the Regulation Review Committee rejected the final proposed regulations without prejudice and asked DEP to revise them.

DEP revised its proposal, which was again rejected without prejudice by the Regulation Review Committee on December 21, 2010.

On February 22, 2011, the Regulation Review Committee granted DEP a two-month extension to submit another revised proposal.

Other Requirements for Existing Flow Regulations. By law, river and stream flow regulations apply to all of the state's river and stream systems. The regulations must provide for the needs of public health, flood control, industry, public utilities, water supply, public safety, agriculture, and other lawful water uses. The regulations must be based, to the greatest extent possible, on natural variations in water flow and water level, while providing for these needs. The regulations must also provide for the needs of stream and river ecology, aquatic life, wildlife, and public recreation. The regulations must consider the natural flow of water into an impoundment or diversion.

The regulations must also (1) preserve and protect aquatic life contained within the state's rivers and streams, including fish that travel from salt water to fresh water to spawn; (2) preserve and protect the natural and stocked wildlife dependent on the water flow; (3) promote and protect water use for public recreation; and (4) be based on the best available science as specified.

The law exempts from the flow regulations (1) a flow management plan in a resolution, agreement, or stipulated judgment to which the state, acting through the DEP commissioner, is a party and (2) the

management plan for the Lake Whitney Water Treatment plant.

The law provides that flow regulations already in effect remain so until the commissioner adopts new regulations.

Public Water System

By law, a public water system is a private, municipal, or regional utility providing water to 15 or more service connections or 25 or more people.

FERC Licensing of Dams

Under federal law, FERC licenses non-federal hydroelectric dams, and can order these dam owners to engage in mitigation efforts that affect stream flow.

COMMITTEE ACTION

Commerce Committee

Joint Favorable

Yea 15 Nay 2 (03/08/2011)