



Strategies for a Sustainable Future

Environment Committee

Public Hearing – March 7, 2011

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Raised Bill No. 6505: An Act Concerning Stream Flow Regulations

Position: CBIA opposes Raised Bill No. 6505 as it would exponentially exacerbate the already flawed statute it seeks to revise, and would perpetuate the misguided policy premise that DEP has both the resources to regulate the flow of water in every stream and river in the state as well as the right to unilaterally control growth in the manner contemplated.

Good morning. My name is Eric Brown and I serve as associate counsel with the Connecticut Business & Industry Association (CBIA). CBIA represents roughly ten thousand small and large businesses throughout Connecticut employing hundreds of thousands of Connecticut citizens who rely on a safe, affordable and reliable supply of water and who treasure our precious streams and rivers.

While CBIA was not directly involved in the original negotiations for passage of what is now Section 26-141b of the Connecticut General Statutes in 2005, we have participated in the subsequent 6-year, unsuccessful effort to develop regulations that strive to meet the requirements of that flawed statute to the satisfaction of all interested stakeholders. As I believe you are all aware, that process has constituted an immense resource drain on all involved, most predominantly the Department of Environmental Protection (DEP).

This and other committees of the General Assembly are keenly aware that DEP has been the subject of scrutiny and criticism regarding its ability to effectively and efficiently manage its workload. Many blame a lack of resources, while others point to the agency's well-meaning, but resource-intensive propensity to rely on command-and-control strategies and a quest to achieve near-zero risk -- not only with respect to public health, but also with respect to criticism from environmental activists, the media and even lawmakers.

In our view, the DEP must have the flexibility to enact a new, more strategic and priority-driven approach to managing our environment and the precious resources we hold so dear. And the legislature needs to help them in that endeavor. The adoption of C.G.S. 26-141b back in 2005 is a classic example of a well-intentioned measure – but one that will (and already has – even

without regulations) precipitated significant additional costs and burdens on the DEP and the regulated community while the environmental need for such a vast program is undocumented, at best.

The “bottom line”, if you will, of C.G.S. 26-141b is this: that the DEP “shall adopt regulations . . . establishing flow regulation for all river and stream systems.” Essentially, the statute directs the DEP to regulate flow in every river and stream in Connecticut.

Now, six years later, such an immensely sweeping directive to an agency already struggling to manage its existing responsibilities at a time of fiscal austerity seems to us, unreasonable and unfair to the agency. More significantly, we believe the current scientific evidence strongly suggests that such a vast expansion of a currently modest and manageable regulatory program is environmentally unnecessary – at least at this time.

Records on file at the DEP and at the federal Environmental Protection Agency suggest that less than half of 1% of our rivers and streams are impaired due to low flows. Some suggest that this number is not truly representative of actual conditions. Indeed, we have heard anecdotal evidence that the “criteria” for rivers and streams being listed as “impaired” is less than scientific – to the point where a single “drive-by” observation by a member of the public could result in the river or stream segment being listed as “impaired”. Further, concerned citizens and organizations worry that demand on our public waters will increase over the coming years and decades and that the effects of climate change will put additional strain on the quantity of water, not only in our rivers and streams, but in our major water supply aquifers as well.

These are all valid concerns and CBIA is ready and willing to work with state agencies and other stakeholders to address them. But we think the legislature’s effort to address them in 2005 through the adoption of 26-141b was misguided. Let’s consider a different approach based on the following:

1. Let’s address the issue of the “impaired waters” not being well-founded in science. The legislature, perhaps through its Program Review and Investigations Committee or through a directive directly to the DEP, could require a report on how this list is currently created and ask for recommendations for improving the procedures to insure that a broader number of rivers and streams are assessed in a manner that better reflects the current “health” of these water bodies with respect to water quantity.
2. Let’s assume the current assessment that less than 1/2 of 1% of our rivers and streams are currently impaired due to insufficient flow under-represents reality by a factor of 10. This would mean that about 4% of the rivers and streams in the state are currently impaired in this manner. What if the legislature directed or gave the DEP the latitude to

focus on these narrow set of stream/river segments – determine where they are, what combination of factors are causing the impairment, and exercise its current discretionary authority to work with the municipalities and others involved to solve the problem?

3. With respect to concerns about future demand, Connecticut already has several mechanisms in place that are designed to plan for future demand for public water supplies, including the Water Utility Coordinating Committee process, commonly known as the “Wok” process. Also, there is a good deal of work being done to address demand for water, especially during summer months, by finding market-based strategies to achieve further success in the area of water conservation. To the extent these current processes and strategies are insufficient to effectively plan for future water needs and reduce demand, the legislature should explore additional measures with agencies and stakeholders.

We suggest that the current, “full-blown,” massive, statewide regulatory proposal contemplated in C.G.S. 26-141b -- requiring the DEP to regulate flow in every river and stream in the state be converted to a more strategic and priority-focused action plan similar to the one we have just outlined.

We respectfully submit that doing so would provide a much more effective, efficient and achievable blueprint for successfully insuring that our citizens will have abundant quantities of waters flowing in our rivers and streams for generations to come.

Raised Bill No. 6505, on the other hand, would have the opposite effect of greatly worsening the well-intentioned but misguided approach of the current statute.

CBIA urges your rejection of Raised Bill No. 6505.

Thank you for this opportunity to share our perspective.