



House of Representatives

General Assembly

File No. 310

February Session, 2012

Substitute House Bill No. 5334

House of Representatives, April 10, 2012

The Committee on Public Health reported through REP. RITTER, E. of the 38th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE SALE OR ABANDONMENT OF WATER SUPPLY SOURCES AND ASSOCIATED LAND.

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

1 Section 1. Section 25-33k of the 2012 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective October 1, 2012*):

4 (a) For purposes of this section [, "safe yield"] and section 25-33m, as
5 amended by this act:

6 (1) "Available water" means the maximum amount of water that a
7 public water system can dependably supply, taking into account: (A)
8 Any limitations imposed by hydraulics, treatment, well pump
9 capabilities, reductions of well yield due to clogging that can be
10 corrected with redevelopment, transmission mains, permit conditions,
11 source construction limitations, approval limitations or operational
12 considerations; and (B) the safe yield of active sources and water
13 supplied according to contract, provided the contract is not subject to

14 cancellation or suspension and assures the availability of water
15 throughout a period of drought and that the water supply is reliable;

16 (2) "Commissioner" means the Commissioner of Public Health;

17 (3) "Department" means the Department of Public Health;

18 (4) "Consumer" means any private dwelling, hotel, motel,
19 boardinghouse, apartment, store, office building, institution,
20 mechanical or manufacturing establishment or other place of business
21 or industry to which water is supplied by a water company;

22 (5) "Future water supply source" means any water supply source or
23 potential water supply source necessary to serve areas reasonably
24 expected to require service not later than fifty years after the date of
25 the application for a permit;

26 (6) "Potential water supply source" means a water supply source
27 that is (A) included on the list prepared by the commissioner pursuant
28 to section 25-33q and identified on such list as a potential water supply
29 source; (B) identified in a water supply plan filed with, and approved
30 by, the commissioner pursuant to section 25-32d; (C) identified in a
31 coordinated water system plan filed with the commissioner pursuant
32 to section 25-33h; or (D) identified in any other water supply or water
33 system plan filed with, and approved by, the commissioner;

34 (7) "Safe yield" means the maximum dependable quantity of water
35 per unit of time that may flow or be pumped continuously from a
36 water supply source [of supply] during a critical dry period without
37 consideration of available water limitations;

38 (8) "Public water system" means a system that supplies water to not
39 less than fifteen consumers or not less than twenty-five persons for
40 each day, not less than sixty days per year;

41 (9) "Water company" means any individual, partnership,
42 association, corporation, municipality or other entity, or the lessee of
43 such entity, which owns, controls or employs a system that supplies

44 water to not less than fifteen consumers or not less than twenty-five
45 persons for each day, not less than sixty days per year; and

46 (10) "Water supply source" means any spring, stream, watercourse,
47 brook, river, lake, pond, well or underground waters from which
48 water is taken.

49 (b) No [source of] water supply source that supplies water to a
50 public water system or potential water supply source shall be
51 abandoned, [by a water company or other entity] sold or otherwise
52 alienated without a permit from the [Commissioner of Public Health]
53 commissioner, except the commissioner may waive the requirement
54 for a permit, if, upon review of an application for such permit, the
55 commissioner determines that: (1) The ground water supply source is
56 no longer viable due to physical damage, loss of safe yield or poor
57 water quality; (2) the ground water supply source has been replaced
58 with a newly-constructed ground water supply source, for which plans
59 have been approved by the department pursuant to section 25-33; and
60 (3) such newly-constructed ground water supply source has been
61 constructed not more than two hundred fifty feet from the ground
62 water supply source to be abandoned. A water company or other
63 person or entity having control of a water supply source or potential
64 water supply source shall apply for such permit in the form and
65 manner prescribed by the commissioner.

66 (c) (1) Not later than [thirty] sixty days before filing an application
67 for such permit, the applicant shall notify the commissioner of the
68 applicant's intention to file such application. Not later than thirty days
69 after the commissioner receives such notice, the commissioner shall
70 notify the chief elected official of any municipality and any local health
71 department or district [in which such source of supply is located]
72 health department serving the municipality in which the water supply
73 source or potential water supply source is located of the applicant's
74 intention to file such application. Not later than sixty days after receipt
75 of such notification from the commissioner, the municipality or
76 municipalities and local health departments or [districts] district health

77 departments receiving such notice [, and any water company as
78 defined in section 25-32a,] may submit comments on such application
79 to the commissioner. The commissioner shall take such comments into
80 consideration when reviewing the application.

81 (2) After receipt of an application to abandon, sell or otherwise
82 alienate a water supply source or potential water supply source, except
83 an application approved in accordance with subdivision (2) of
84 subsection (d) of this section, the commissioner shall identify any
85 water company that may reasonably be expected to utilize the water
86 supply source or potential water supply source that the applicant
87 proposes to abandon, sell or otherwise alienate. The applicant shall
88 provide written notice of the application, by certified mail, return
89 receipt requested, to any water company identified by the
90 commissioner pursuant to this subdivision. The commissioner shall
91 determine the water companies that shall receive notice after
92 consideration of: Public water supply plans filed with, and approved
93 by, the commissioner pursuant to section 25-32d; coordinated water
94 system plans filed with the commissioner pursuant to section 25-33h;
95 other water supply or water system plans filed with, and approved by,
96 the commissioner; and the efficient and effective development of the
97 public water supply in the state. The applicant's notice shall include:
98 (A) Identification of the water supply source or potential water supply
99 source that the applicant proposes to abandon, sell or otherwise
100 alienate; (B) if the applicant intends to sell such water supply source or
101 potential water supply source, the price at which the applicant intends
102 to sell such source; and (C) identification of any land connected with
103 the source that the applicant proposes to sell, lease, assign, reclassify or
104 otherwise dispose of in accordance with section 25-32, as amended by
105 this act.

106 (3) A water company that receives notice under subdivision (2) of
107 this subsection and desires to acquire the water supply source or
108 potential water supply source, shall, not later than sixty days after
109 receipt of such notice, advise the applicant and the commissioner, in
110 writing, by certified mail, return receipt requested, of such desire. A

111 water company that fails to provide notice of a desire to acquire the
112 water supply source or potential water supply source as required
113 under this section shall be deemed to have waived any right to acquire
114 the water supply source or potential water supply source. When two
115 or more water companies desire to acquire the water supply source or
116 potential water supply source and the commissioner approves the
117 application, in whole or in part, for the sale or abandonment of the
118 water supply source or potential water supply source, the
119 commissioner shall determine which water company shall have the
120 right to acquire such water supply source or potential water supply
121 source. In making the determination, the commissioner shall hold a
122 hearing and consider any (A) public water supply plan filed with, and
123 approved by, the commissioner pursuant to section 25-32d; (B)
124 coordinated water system plan filed with the commissioner pursuant
125 to section 25-33h; (C) other water supply or water system plans filed
126 with, and approved by, the commissioner; (D) the needs of each water
127 company; and (E) the efficient and effective development of the public
128 water supply in the state. Not later than one year after the
129 commissioner makes a determination in accordance with this
130 subdivision, the water company awarded the right to acquire the water
131 supply source or potential water supply source that is the subject of
132 the application shall finalize such acquisition. A water company,
133 whose rates are regulated by the Department of Energy and
134 Environmental Protection, that acquires such water supply source or
135 potential water supply source may include the acquisition price in its
136 rate base.

137 [(c)] (d) (1) [In determining whether to] The commissioner shall not
138 approve an application [,] to abandon, sell or otherwise alienate a
139 water supply source or potential water supply source unless the
140 commissioner [shall (A) consider the water supply needs of the water
141 company, the state and any comments submitted pursuant to
142 subsection (b) of this section, and (B) consult with the Commissioner of
143 Energy and Environmental Protection, the Secretary of the Office of
144 Policy and Management and the Public Utilities Regulatory Authority.
145 The Commissioner of Public Health shall not be required to make a

146 consultation pursuant to subparagraph (B) of this subdivision if the
147 commissioner determines the source of water supply to be abandoned
148 is a groundwater source with a safe yield of less than ten gallons per
149 minute and is of poor water quality.] determines that such water
150 supply source or potential water supply source would not (A) in the
151 case of abandonment, (i) be necessary in an emergency, or (ii) be
152 needed by any public water system as a water supply source or future
153 water supply source, and (B) in the case of abandonment, sale or
154 alienation impair the ability of the public water system to provide a
155 pure, adequate and reliable water supply for present and future
156 consumers.

157 (2) The commissioner may approve, with any conditions the
158 commissioner deems necessary, an application for a permit to abandon
159 a ground water supply source that the commissioner determines to
160 have a safe yield of less than ten gallons per minute and is of poor
161 water quality without considering any additional factors.

162 [(2)] (3) [The Commissioner of Public Health shall grant a permit
163 upon a finding that any groundwater] The commissioner shall, in
164 determining whether to approve an application for the sale,
165 abandonment or other alienation of any ground water supply source
166 or potential ground water supply source with a safe yield of less than
167 0.75 millions of gallons per day, any reservoir with a safe yield of less
168 than 0.75 millions of gallons per day, any reservoir system with a safe
169 yield of less than 0.75 millions of gallons per day, or any individual
170 water supply source or potential water supply source within a
171 reservoir system when such system has a safe yield of less than 0.75
172 millions of gallons per day, [will not be needed by such water
173 company for present or future water supply and, in the case of a water
174 company required to file a water supply plan under section 25-32d,
175 that such abandonment is consistent with a water supply plan filed
176 and approved pursuant to said section. No permit shall be granted if
177 the commissioner determines that the source would be necessary for
178 water supply by the company owning such source in an emergency or
179 the proposed abandonment would impair the ability of such company

180 to provide a pure, adequate and reliable water supply for present and
181 projected future customers. As used in this section, a future source of
182 water supply shall be considered to be any source of water supply
183 necessary to serve areas reasonably expected to require service by the
184 water company owning such source for a period of not more than fifty
185 years after the date of the application for a permit under this section.]
186 (A) consult with the Commissioner of Energy and Environmental
187 Protection and the Secretary of the Office of Policy and Management;
188 and (B) consider any (i) public water supply plan filed with, and
189 approved by, the commissioner pursuant to section 25-32d; (ii)
190 coordinated water system plan filed with the commissioner pursuant
191 to section 25-33h; and (iii) other water supply or water system plan
192 filed with, and approved by, the commissioner.

193 [(3)] (4) The Commissioner of Public Health shall, [grant a permit
194 upon a finding that any groundwater source] in determining whether
195 to approve an application for the sale, abandonment or other
196 alienation of any ground water supply source or potential ground
197 water supply source with a safe yield of more than 0.75 millions of
198 gallons per day, any reservoir with a safe yield of more than 0.75
199 millions of gallons per day, any reservoir system with a safe yield of
200 more than 0.75 millions of gallons per day, or any individual water
201 supply source or potential water supply source within a reservoir
202 system when such system has a safe yield of more than 0.75 millions of
203 gallons per day and is of a size or condition that makes it unsuitable
204 [for present or future use as a drinking water supply by the water
205 company, other entity or the state. In making a decision, the
206 commissioner shall consider the general utility of the source and the
207 viability for use to meet water supply needs. The commissioner shall]
208 as a water supply source or future water supply source by the
209 applicant's public water system or another public water system, (A)
210 consult with the Commissioner of Energy and Environmental
211 Protection and the Secretary of the Office of Policy and Management;
212 (B) consider any (i) public water supply [plans filed and approved
213 pursuant to sections 25-32d and 25-33h,] plan filed with, and approved
214 by, the commissioner pursuant to section 25-32d; (ii) coordinated water

215 system plan filed with the commissioner pursuant to section 25-33h;
216 and [any] (iii) other water system plan filed with, and approved by, the
217 commissioner; [, and] (C) consider the efficient and effective
218 development of the public water supply in the state; and (D) consider
219 the general utility of any water supply source or potential water
220 supply source and the viability of the use of any such water supply
221 source or potential water supply source to meet water supply needs. In
222 assessing the general utility of the water supply source or potential
223 water supply source, the commissioner shall consider factors
224 including, but not limited to, [(A) the safe yield of the source, (B)] (i)
225 the safe yield of the water supply source or potential water supply
226 source, (ii) the location of the water supply source or potential water
227 supply source relative to other public water [supply] systems, [(C)] (iii)
228 the water quality of the water supply source and the potential for
229 treatment, [(D)] (iv) the water quality compatibility between public
230 water systems and interconnections, [(E)] (v) the extent of water
231 company-owned lands for source protection of the water supply
232 source or potential water supply source, [(F)] (vi) the types of land
233 uses and land use controls in the aquifer protection area or watershed
234 and their potential impact on water quality of the water supply source
235 or potential water supply source, and [(G)] (vii) any physical
236 limitations to water service, system hydraulics and topography.

237 (e) (1) The commissioner shall not approve an application for a
238 permit to abandon, sell or otherwise alienate a water supply source or
239 potential water supply source unless (A) the land connected with such
240 water supply source or potential water supply source will be sold,
241 leased, assigned or otherwise disposed of in accordance with section
242 25-32 and, if sold, leased, assigned or otherwise disposed of, will be
243 acquired by the same water company that purchases the water supply
244 source or potential water supply source, except where the applicant is
245 granted an exemption as provided in this subsection; and (B) in the
246 case of a sale, any protective easement or other land protection
247 connected with the water supply source will be effective after the sale.

248 (2) When the land connected with a water supply source or

249 potential water supply source that is the subject of an application for a
250 permit to abandon, sell or otherwise alienate a water supply source or
251 potential water supply source is connected to another water supply
252 source or potential water supply source, the commissioner shall
253 determine whether the applicant shall be required to sell, lease, assign
254 or otherwise dispose of such land or a portion of such land.

255 (3) A water company that has submitted an application to sell or
256 otherwise alienate a water supply source or potential water supply
257 source may apply for an exemption to the requirement in subdivision
258 (1) of this subsection when such water company determines that some
259 or all of the land connected with the water supply source or potential
260 water supply source that is the subject of the application is necessary
261 to the water company's continued operation. An application for an
262 exemption from such requirement shall be submitted to the
263 commissioner in the form and manner prescribed by the
264 commissioner.

265 (4) A municipality that has submitted an application to sell or
266 otherwise alienate a water supply source or potential water supply
267 source may apply for an exemption to the requirement in subdivision
268 (1) of this subsection when some or all of the land connected with the
269 water supply source or potential water supply source is occupied by a
270 municipal facility or used for municipal purposes, including, but not
271 limited to, a park, beach or playing field. An application for an
272 exemption from such requirement shall be submitted to the
273 commissioner in the form and manner prescribed by the
274 commissioner.

275 (f) The commissioner may establish conditions on the approval of
276 any permit issued for the sale, abandonment or other alienation of a
277 water supply source or potential water supply source.

278 (g) (1) A water company whose application for the sale,
279 abandonment or other alienation of a water supply source or potential
280 water supply source is denied, in whole or in part, may, not later than
281 thirty days after receiving notice of such denial, request that the

282 commissioner hold a hearing and review such decision. Such request
283 shall be made in the form and manner prescribed by the commissioner.
284 The commissioner shall, not later than forty-five days after conclusion
285 of the hearing, issue a final written decision. The decision shall include
286 any findings of fact and conclusions of law necessary to the
287 commissioner's decision.

288 (2) Any water company or other person aggrieved by a final
289 decision of the commissioner may appeal from such decision in
290 accordance with the provisions of section 4-183. Such decision shall be
291 stayed during the pendency of an appeal and the appealing water
292 company or other person shall not take any action pursuant to the
293 application or decision during the pendency of such appeal.

294 (h) The commissioner may adopt regulations in accordance with
295 chapter 54 to implement the provisions of this section.

296 Sec. 2. Section 25-33m of the general statutes is repealed and the
297 following is substituted in lieu thereof (*Effective October 1, 2012*):

298 Notwithstanding the provisions of section 16-50d, any water
299 company given written notice [pursuant to subsection (b) of section 25-
300 33i] of an application for the sale, abandonment or other alienation of a
301 water supply source or potential water supply source that notifies the
302 Commissioner of Public Health of a desire to acquire such water
303 supply source or potential water supply source in accordance with
304 section 25-33k, as amended by this act, shall have priority to acquire [a]
305 such source [,] or potential source [or abandoned source of water] over
306 any municipality in which such source or potential source is located or
307 the Commissioner of Energy and Environmental Protection.

308 Sec. 3. Subsection (d) of section 25-32 of the 2012 supplement to the
309 general statutes is repealed and the following is substituted in lieu
310 thereof (*Effective October 1, 2012*):

311 (d) The commissioner may grant a permit for (1) the sale of class I or
312 II land to another water company, to a state agency or to a

313 municipality, (2) the sale of class II land or the sale or assignment of a
314 conservation restriction or a public access easement on class I or class
315 II land to a private, nonprofit land-holding conservation organization,
316 or (3) the sale of class I land to a private nonprofit land-holding
317 conservation organization if the water company is denied a permit to
318 abandon a source not in current use or needed by the water company
319 pursuant to [subsection (c) of] section 25-33k, as amended by this act, if
320 the purchasing entity agrees to maintain the land subject to the
321 provisions of this section, any regulations adopted pursuant to this
322 section and the terms of any permit issued pursuant to this section.
323 Such purchasing entity or assignee may not sell, lease or assign any
324 such land or conservation restriction or public access easement or sell,
325 lease, assign or change the use of such land without obtaining a permit
326 pursuant to this section.

327 Sec. 4. Subsection (e) of section 22a-2d of the 2012 supplement to the
328 general statutes is repealed and the following is substituted in lieu
329 thereof (*Effective October 1, 2012*):

330 (e) Wherever the words "Department of Public Utility Control" are
331 used or referred to in the following sections of the general statutes, the
332 words "Public Utilities Regulatory Authority" shall be substituted in
333 lieu thereof: 1-84, 1-84b, 2-20a, 2-71p, 4-38c, 4a-57, 4a-74, 4d-2, 4d-80, 7-
334 223, 7-233t, 7-233ii, 8-387, 12-81q, 12-94d, 12-264, 12-265, 12-408b, 12-
335 412, 12-491, 13a-82, 13a-126a, 13b-10a, 13b-43, 13b-44, 13b-387a, 15-96,
336 16-1, 16-2, 16-2a, 16-6, 16-6a, 16-6b, 16-7, 16-8, 16-8b, 16-8c, 16-8d, 16-9,
337 16-9a, 16-10, 16-10a, 16-11, 16-12, 16-13, 16-14, 16-15, 16-16, 16-17, 16-18,
338 16-19, 16-19a, 16-19b, 16-19d, 16-19f, 16-19k, 16-19n, 16-19o, 16-19u, 16-
339 19w, 16-19x, 16-19z, 16-19aa, 16-19bb, 16-19cc, 16-19dd, 16-19ee, 16-
340 19ff, 16-19gg, 16-19jj, 16-19kk, 16-19mm, 16-19nn, 16-19oo, 16-19pp, 16-
341 19qq, 16-19tt, 16-19uu, 16-19vv, 16-20, 16-21, 16-23, 16-24, 16-25, 16-25a,
342 16-26, 16-27, 16-28, 16-29, 16-32, 16-32a, 16-32b, 16-32c, 16-32e, 16-32f,
343 16-32g, 16-33, 16-35, 16-41, 16-42, 16-43, 16-43a, 16-43d, 16-44, 16-44a,
344 16-45, 16-46, 16-47, 16-47a, 16-48, 16-49e, 16-50c, 16-50d, 16-50f, 16-50k,
345 16-50aa, 16-216, 16-227, 16-231, 16-233, 16-234, 16-235, 16-238, 16-243,
346 16-243a, 16-243b, 16-243c, 16-243f, 16-243i, 16-243j, 16-243k, 16-243m,

347 16-243n, 16-243p, 16-243q, 16-243r, 16-243s, 16-243t, 16-243u, 16-243v,
 348 16-243w, 16-244a, 16-244b, 16-244c, 16-244d, 16-244e, 16-244f, 16-244g,
 349 16-244h, 16-244i, 16-244k, 16-244l, 16-245, 16-245a, 16-245b, 16-245c, 16-
 350 245e, 16-245g, 16-245l, 16-245p, 16-245q, 16-245s, 16-245t, 16-245u, 16-
 351 245v, 16-245w, 16-245x, 16-245aa, 16-246, 16-246e, 16-246g, 16-247c, 16-
 352 247j, 16-247l, 16-247m, 16-247o, 16-247p, 16-247t, 16-249, 16-250, 16-
 353 250a, 16-250b, 16-256b, 16-256c, 16-256h, 16-256k, 16-258a, 16-258b, 16-
 354 258c, 16-259, 16-261, 16-262a, 16-262c, 16-262d, 16-262i, 16-262j, 16-262k,
 355 16-262l, 16-262m, 16-262n, 16-262o, 16-262q, 16-262r, 16-262s, 16-262v,
 356 16-262w, 16-262x, 16-265, 16-269, 16-271, 16-272, 16-273, 16-274, 16-275,
 357 16-276, 16-278, 16-280a, 16-280b, 16-280d, 16-280e, 16-280f, 16-280h, 16-
 358 281a, 16-331, 16-331c, 16-331e, 16-331f, 16-331g, 16-331h, 16-331i, 16-
 359 331j, 16-331k, 16-331n, 16-331o, 16-331p, 16-331q, 16-331r, 16-331t, 16-
 360 331u, 16-331v, 16-331y, 16-331z, 16-331aa, 16-331cc, 16-331dd, 16-331ff,
 361 16-331gg, 16-332, 16-333, 16-333a, 16-333b, 16-333e, 16-333f, 16-333g,
 362 16-333h, 16-333i, 16-333l, 16-333n, 16-333o, 16-333p, 16-347, 16-348, 16-
 363 356, 16-357, 16-358, 16-359, 16a-3b, 16a-3c, 16a-7b, 16a-7c, 16a-13b, 16a-
 364 37c, subsection (b) of section 16a-38n, 16a-38o, 16a-40b, 16a-40k, 16a-41,
 365 16a-46, 16a-46b, 16a-46c, 16a-47a, 16a-47b, 16a-47c, 16a-47d, 16a-47e,
 366 16a-48, 16a-49, 16a-103, 20-298, 20-309, 20-340, 20-340a, 20-341k, 20-
 367 341z, 20-357, 20-541, 22a-174l, 22a-256dd, 22a-266, 22a-358, 22a-475,
 368 22a-478, 22a-479, 23-8b, 23-65, 25-33a, 25-33h, 25-33k, as amended by
 369 this act, [25-33l,] 25-33p, 25-37d, 25-37e, 26-141b, 28-1b, 28-24, 28-26, 28-
 370 27, 28-31, 29-282, 29-415, 32-80a, 32-222, 33-219, 33-221, 33-241, 33-951,
 371 42-287, 43-44, 49-4c and 52-259a.

372 Sec. 5. Section 25-33l of the general statutes is repealed. (*Effective*
 373 *October 1, 2012*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2012</i>	25-33k
Sec. 2	<i>October 1, 2012</i>	25-33m
Sec. 3	<i>October 1, 2012</i>	25-32(d)
Sec. 4	<i>October 1, 2012</i>	22a-2d(e)
Sec. 5	<i>October 1, 2012</i>	Repealer section

Statement of Legislative Commissioners:

In section 1(a)(5) "a water supply source" was changed to "any water supply source" and "to serve an area" was changed to "to serve areas" for clarity and in section 1(e)(1) "25-32f" was changed to "25-32" for accuracy.

PH *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 Department of Public Health (DPH) associated with certain changes to the sale or abandonment of water supply sources and connected land. While the bill does require DPH to hold a hearing when two or more water companies seek to acquire the same water supply source, it is anticipated this situation will occur infrequently and does not require additional agency resources.

The Out Years**State Impact:** None**Municipal Impact:** None

OLR Bill Analysis**sHB 5334*****AN ACT CONCERNING THE SALE OR ABANDONMENT OF WATER SUPPLY SOURCES AND ASSOCIATED LAND.*****SUMMARY:**

This bill combines two separate processes within the Department of Public Health (DPH) for the sale and abandonment of potential and actual water supply sources. Current law requires a water company (including municipal and regional water utilities) or other entity seeking to abandon a water supply source to apply to the DPH commissioner for an abandonment permit. Water companies seeking to sell a current, potential, or abandoned water supply source must follow a separate procedure notifying DPH and other water companies the department determines could reasonably be expected to use the source to give them the right of first refusal to acquire it.

The bill changes permit requirements and extends existing (1) abandonment permit requirements to sales of potential and actual water sources and (2) notification requirements for water source sales to abandonments of current and potential sources. It also removes existing notification requirements for abandoned source sales. It:

1. requires an entity to obtain a DPH permit if abandoning a potential water supply source instead of only an actual source;
2. requires a permit applicant to notify the department of its intention to apply 60 days before filing the application;
3. eliminates the ability of water companies to submit comments on permit applications;
4. generally prohibits the commissioner from approving a permit application unless the land connected to the water source is sold,

leased, or otherwise disposed of in accordance with DPH's permitting process for water company lands;

5. requires any such land that is sold to retain any connected protective easement or other land protection after the sale; and
6. allows an applicant denied a permit by DPH to appeal to the Superior Court.

The bill allows the DPH commissioner to adopt regulations to implement the permit process.

It also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2012

§ 1 – DEFINITIONS

A “public water system” means one that supplies water to at least 15 consumers or 25 people each day for at least 60 days per year. A “water company” is any individual, partnership, association, corporation, municipality, other entity or entity's lessee that owns, controls, or employs a public water system. The bill's definition is more narrow than what normally applies to the utilities DPH regulates.

§§ 1-3 – DPH PERMIT PROCESS

Current law requires a water company or other entity that abandons a water supply source to apply to obtain a DPH permit. The bill expands the abandonment permit requirement to (1) potential water supply sources and (2) sales and other alienation of current and potential sources.

The bill defines “potential water supply source” as one that is identified (1) as a potential source on the DPH commissioner's annual list of the state's potential and actual water sources that need protection, (2) in a water company's supply plan filed with and approved by DPH, (3) in a coordinated water system plan filed with DPH by a water utility coordinating committee, or (4) any other water

supply or water system plan filed with and approved by DPH. Persons other than water companies may own these potential sources, and the bill thus brings them under DPH's jurisdiction when they sell or abandon them. The bill does not specify what constitutes abandonment of a potential source.

Notification to Towns and Local Health Departments

The bill requires the permit applicant, 60 days before filing the application, to notify the commissioner of its intention to do so. The bill requires the commissioner, rather than the permit applicant, to notify the (1) local or district health department and (2) chief elected official in each town in which the source is located at least 30 days before the application is filed. By law, notified towns and health departments may submit comments to the commissioner within 60 days after receiving notice. The bill removes the ability of water companies to submit their comments.

Notification to Water Companies

Under current law, once a water company notifies the DPH commissioner of its intent to sell any abandoned, present, or potential water source, the commissioner must identify any water company reasonably expected to use the source for notification by the seller. When making this determination, she must consider DPH-approved water company supply plans, other water system plans, and the state's efficient and effective development of public water supply. The bill requires the commissioner to do this for all permit applications, rather than only for water source sales.

Current law requires the seller to notify the identified water companies, by certified mail, return receipt requested, of its intention to sell and at what price. The bill extends this notification requirement to all permit applicants and requires the notice to also identify any land connected to the water supply source it intends to sell, lease, assign, reclassify, or otherwise dispose of.

The bill expands to all permit applications, the requirement that a

notified water company interested in acquiring the source notify the applicant and the commissioner by certified mail, return receipt requested. It requires the company to do this within 60 rather than 90 days of receiving the notice. By law, if a water company does not make such a notification, it loses its priority right.

By law, any water company notified of the sale of an actual, potential, or abandoned source has priority to acquire the source over (1) any municipality where the source is located or (2) the Department of Energy and Environmental Protection (DEEP) commissioner. The bill extends this priority to water companies notified of the abandonment or alienation of a source.

Acquisition of Water Supply Sources

The bill extends to abandonments, sales, or other alienations the following provisions that apply only to sales of current and potential sources under current law.

By law, if the commissioner approves a permit application to sell or abandon an actual or potential water supply source and two or more notified water companies want to acquire it at the offer price, the commissioner must determine which company may do so. The bill requires the commissioner to also consider companies that wish to acquire the source below the offer price.

In making this determination, the commissioner must hold a hearing and consider the same factors she uses when identifying water companies to be notified of permit applications (see above), as well as each water company's needs.

By law, the water company awarded the right to acquire the source must do so within one year of the commissioner's decision. If the company's rates are regulated by DEEP, it may include the acquisition price in its rate base. A water company can appeal the commissioner's decision to the Superior Court under the Uniform Administrative Procedure Act (UAPA).

§§ 1 & 3 – PERMIT APPROVALS

Under current law, in deciding whether to permit abandonment, the DPH commissioner must consult with DEEP, the Public Utilities Regulatory Authority (PURA), and the Office of Policy and Management (OPM). She is not required to make this consultation for groundwater sources with poor water quality that have a safe yield of less than ten gallons per minute. The bill eliminates the latter provision and instead allows her to approve the abandonments of such sources without considering any additional factors, imposing any condition she considers necessary. The bill eliminates the requirement that DPH consult with PURA for all permit applications.

Under current law, the commissioner can permit an abandonment of any source that has a safe yield of less than 750,000 gallons per day (gpd) if she finds that the company would not need the source in an emergency or for present or future water supply. The bill (1) extends this provision to abandonments of current and potential sources, regardless of size; (2) requires the commissioner to consider the current needs of all public water supply systems, rather than just those of the applicant water company; and (3) expands the consideration of future needs to address the needs of the area, rather than just the applicant.

The bill (1) modifies and expands the other factors DPH must consider for other abandonment applications and (2) requires DPH to consider these factors for applications to sell or otherwise alienate current and potential water sources. Under current law, the commissioner cannot grant an abandonment permit for a source that has a safe yield of less than 750,000 gpd if she finds that doing so would impair the applicant's ability to provide a pure, adequate, and reliable water supply for present and future consumers. The bill extends this provision to apply to all applications, regardless of the source's size. The bill requires the commissioner to consider the applicant's coordinated water system plan for all permit applications, rather than just applications to abandon a source with a safe yield of more than 750,000 gpd.

Land Connected to a Water Source

The bill prohibits the commissioner from approving a permit application unless (1) the land connected to the potential or actual water supply source will be sold, leased, assigned, or disposed of in accordance with DPH's permitting process for Class I and Class II water company lands; (2) the land will be acquired by the same water company that purchases the source unless exempt (see below); and (3) if it is sold, any connected protective easement or other land protection remains in effect after the sale. (The bill's definition of "water company" is more narrow than that used for the water company lands permit.)

If the land is also connected to another potential or actual water supply source, the commissioner must determine if the applicant must sell, lease, assign, or dispose of all or part of that land.

§ 1 – EXEMPTIONS***Permits For Groundwater Supply Sources***

The bill allows the DPH commissioner to waive the permit requirement if the application involves a current ground water supply source that she determines:

1. is no longer viable due to physical damage, loss of safe yield, or poor water quality;
2. has been replaced with a newly-constructed ground water supply source whose plans have been approved by the department; and
3. is within 250 feet from the newly constructed source.

Purchase of Connected Land

The bill allows certain water companies and municipalities to apply to the commissioner, in the form and manner she prescribes, for an exemption from the requirements regarding the purchase of connected land (see above). A water company that applies to sell or alienate a current or potential water supply source can apply for such a waiver if

it determines that part or all of the land connected with the source is necessary to its continued operation. The waiver does not apply to source abandonments.

A municipality can apply for a waiver when part or all of the land connected to the source is occupied by a municipal facility or used for municipal purposes including a park, beach, or playing field.

§ 1 – PERMIT DENIALS; APPEALS

If the commissioner denies all or part of a water company’s permit application, the company can request that the commissioner hold a hearing and review the decision. The request must be made in the form and manner the commissioner prescribes within 30 days of receiving notice of the denial. The commissioner must issue a final written decision within 45 days of the hearing, including any necessary findings of fact and conclusions of law. The bill does not allow permit applicants other than water companies to make this request.

The bill authorizes a water company or other person aggrieved by a final decision to appeal to the Superior Court under the UAPA. (Current law does not allow a permit applicant to do this.) The decision is stayed while the appeal is pending. It prohibits a water company or individual appealing the decision from taking any action regarding the application or decision while the appeal is pending.

COMMITTEE ACTION

Public Health Committee

Joint Favorable

Yea 18 Nay 6 (03/23/2012)