

---

---

## **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)