



**Testimony of Connecticut Fund for the Environment
and its bi-state program Save the Sound,
before the Environment Committee on February 27, 2015**



in support of:

**SB 940 – AAC the Sustainability of the Nitrogen Credit Exchange Program
HB 5686 – AAC the Approval of Land Swaps
HB 6047 – AA Providing Proper Funding for State Hatcheries**

in opposition of:

**SB 941 – AA Delaying Implementation of Certain Standards and Sampling Requirements...
SB 363 AA Requiring DEEP to Conduct a Study of Private Property Owners' Water Rights**

and regarding:

HB 5888 – AA Increasing Reimbursement for Municipal Phosphorous Abatement

Dear Sen. Kennedy, Rep. Albis, and members of the Environment Committee,

Thank you for the opportunity to submit comments today. Below, please find the testimony of CFE/Save the Sound outlined by bill number.

SB 363 AA Requiring a Study of Private Property Owners' Water Rights (oppose)

This bill would require DEEP to study private property owners' water rights. CFE/Save the Sound feels that such a study is not needed as water rights are defined by common and case law. Generally speaking, groundwater in Connecticut falls under the "absolute ownership" common law rule, meaning that any private landowner takes ownership of not only the land but also the groundwater that comes with it. Riparian rights—that is, the rights of landowners whose property abuts a river or lake—generally have a right to access the "navigable" portion of that body water. Smaller streams and ponds, on the other hand, can either be owned outright by a single landowner, or divided among abutting landowners. Littoral rights—the rights of landowners whose property abuts a tidal water body such as Long Island Sound—generally own to a line known as "mean high water" and must comply with public access activities under the Public Trust Doctrine. While there are more details available for each of these three branches of water rights, a full study is probably not warranted and as such CFE/Save the Sound is opposed to SB 363.

SB 940 – AAC the Sustainability of the Nitrogen Credit Exchange Program (Support)

This bill significantly reduces costs associated with the nitrogen trading program while preserving its structure for any future nitrogen removal that may be mandated under a new regional reduction plan. Connecticut's innovative Nitrogen Trading Program has served our municipalities, citizens, and Long Island Sound very well over the years. The program has allowed sewage treatment plants across the state to cost-effectively slash nitrogen pollution by more than 60% in the last 15 years. This major success results in a cleaner, healthier Long Island Sound. Having accomplished the vast majority of the nitrogen reductions legally required under this most recent phase of the Nitrogen Total Maximum Daily Load (TMDL), the balance sustained through trading has tilted. The state is now in a position of having an insufficient number of buyers to purchase the significant quantity of "nitrogen credits." This means the state, who by law must buy any credit generated, is losing money on a once financially sustainable program. This bill provides a ratcheting down of state purchases that would remedy the fiscal impact to the state's budget yet keeps the state's options open for any future nitrogen effort; CFE/Save the Sound therefore supports SB 940.

SB 941 – AA Delaying Implementation of Certain Standards and Sampling Requirements upon the Detection of Pollutants Causing Contamination of Soil, Groundwater or Public or Private Drinking Water Wells (Oppose)

If passed, this legislation would delay the implementation of certain amendments that created better “right-to-know” notifications upon the discovery of high concentration or high risk environmental hazards. These provisions are to be implemented effective July 1, 2015 and this bill seeks to delay them until July 1, 2017.

These Significant Environmental Hazard Notification amendments, among other things, require a property owner to notify DEEP and affected property owners if:

1. A pollution plume is within 200 feet in any direction from a public or private drinking water well, or if Non-Aqueous Phase Liquid (such as fuel oil) is detected in a drinking water well;
2. Heavy metals or PCBs are detected in surface soil in an industrial or commercial area at 15 times the Direct Exposure Criteria (DEC), within 300 feet of a daycare, playground, school, park, or residence;
3. Heavy metals or PCBs are detected in surface soil in a residential area at 15 times the DEC;
4. Groundwater within 15 feet of buildings is found to contain greater than 10 times the applicable volatilization criteria (to prevent breathing in harmful vapors that may rise into overlying buildings).

The amendments also include a variety of procedural amendments that make the statute more self-implementing and efficient to administer, and provide a clearer “no exposure” status.

There is no legitimate reason to further delay these critical environmental and public health notification provisions; therefore, CFE/Save the Sound strongly opposes this legislation.

HB 5696 – AAC the Approval of Land Swaps (Support)

If passed, this legislation would require notice, public hearings, and assurances prior to the exchange of land or interest in land that is under the care, custody, or control of the Commissioners of Energy and Environmental Protection and Agriculture. Land under the care, custody, or control of DEEP or the DOA is very often conveyed to these agencies for the purpose of continued conservation and protection from development or adverse use. This bill ensures that if the agency decides to include these lands in a land swap, that the exchange will uphold the wishes of the person or group who conveyed the land to the agency. It also ensures a fair return for the land at issue, both in terms of appraised value and in terms of utility for the purpose of resource management. Finally, this bill ensures that the agency provide notice of the proposed land swap and an opportunity for a public hearing. These assurances are necessary for the continued protection of valuable state owned lands such as open spaces, parks, state forests, and coastal lands. It will also encourage further donation or sale of land to state agencies for the purpose of conservation, by providing assurances that these lands will remain protected in perpetuity; CFE/Save the Sound therefore supports HB 5696.

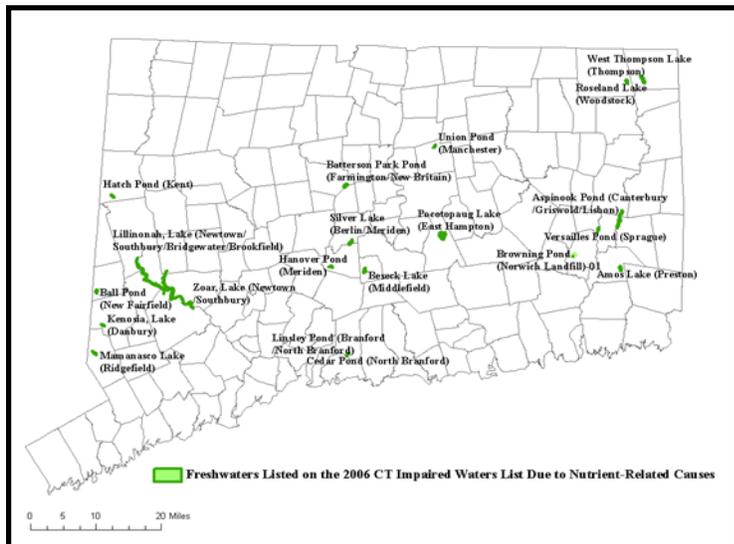
HB 5888 – AA Increasing Reimbursement for Municipal Phosphorous Abatement

1) Excess phosphorous impairs water quality

Nitrogen has long been a pollutant targeted for reduction at Connecticut’s wastewater treatment facilities. Impacts of the nutrient on Long Island Sound are well established and publicized. Phosphorus, on the other hand, has not acquired the same level of focus.

Nutrients like nitrogen and phosphorus are essential to plants and animals. But, increased inputs from agriculture and lawn care fertilizers can cause excessive algae growth. This leads to decreased oxygen, making it difficult or even impossible for fish and other wildlife to survive. Excess algae also limit

recreational fishing, boating, and swimming. The United States Environmental Protection Agency (EPA) has declared excess nutrients to be one of the leading causes of water quality impairment in our country's rivers, lakes, and estuaries, and has required states to develop water quality criteria.



DEEP has identified 20 waterbodies throughout the state that are currently impaired. These waterbodies do not meet water quality standards, the foundation of pollution control under the federal Clean Water Act, and are listed on Connecticut's 303d list.

Additionally, while phosphorus' effect on freshwater systems is known, concerns about its impact on Long Island Sound are growing. For example, phosphorus inputs to Long Island Sound salt marshes could be accelerating decomposition, reducing the accumulation of organic matter, and contributing to salt marsh drowning.

2) Phosphorous, the Clean Water Fund, and HB 5888

DEEP has identified 34 Water Pollution Control Facilities that will require phosphorous upgrades; these range from minor to major projects. We appreciate that DEEP and the municipalities are moving forward to begin implementing the phosphorous limits as required by the Clean Water Act; and we agree funding must be made available to keep costs reasonable for the local communities. To assist with upgrade efforts, CFE/Save the Sound has consistently advocated that the state provide 30/70 grant and low-interest loan support through the Clean Water Fund. This is the same ratio that has worked well for similarly mandated nitrogen upgrades in the state.

The difficulties with HB 5888 and the related phosphorous bill HB 5291 are two-fold. First, the ratio of 50% grant to 50% loan is the highest granting allotment under the Clean Water Fund, and it is typically reserved for the issue that is both cost prohibitive and a serious human health hazard: combined sewer overflows (CSO). Nutrients, while critically important to limit and control, are a second tier pollutant when compared to raw sewage.

Second, funding those nutrient treatments must be carefully balanced with the funding impacts on CSO projects, which are already decades behind schedule. The Clean Water Fund is a complex mix of state and federal funds, a wide variety of projects (from planning to construction, traditional capacity upgrades to treatment projects, and sea-level rise to green infrastructure), a number of different grant-to-loan ratios, and a delicate balance of general obligation bonds and revenue bonds contributions. Increasing granting for phosphorous without a commiserate increase in general obligation bonds within the budget could create significant problems—ousting, or at the very least significantly diminishing, priority projects that have been in the works for years.

HB 6047 – AA Providing Proper Funding for State Hatcheries (support)

Recreational fishing is underrated asset of Connecticut's well-being. Economically, recreational fishers contribute hundreds of millions of dollars to the state's economy. Environmentally, strong and diverse fish stocks provide for vibrant river, lake, and coastal ecosystems. Existentially, spending time in nature can cleanse the soul, steady the mind, and work the body. Recreational fishing is a valuable part of life in Connecticut, and our state hatcheries are essential to its continued existence and future growth.

Year after year, however, budgets look to trim funding for hatcheries or eliminate them entirely. This bill would create the “Connecticut Fish Hatcheries and Recreational Fisheries account.” By establishing a separate account dedicated to helping fund our three state hatcheries, HB 6047 provides a common-sense solution to a solvable problem.

HB 6047 would also establish a task force to study the sustainability of the state’s recreational fisheries, the issues affecting them, and a means of funding the new hatcheries account. The purpose and direction of the task force is excellent, and would provide much-needed fisheries management information. However, we would like to see specificity when it comes to the task force members. As written, anyone could be appointed. In order for the fisheries task force to be effective, its members should represent various stakeholders with access to a broad and diverse range of knowledge. Ideally, there should be individuals from DEEP Department of Fisheries, a scientist or two from UConn, an inland fishermen group, a marine fishermen group, a river/watershed stakeholder group, a lake/pond stakeholder group, etc.

With the right membership assembled, the task force will really have a chance of being successful and producing meaningful results and recommendations. As written now, the task force lacks strength. CFE/Save the Sound supports the ideals and objectives of this bill; however we ask that it be improved.

Thank you again for the opportunity to submit comments today. We look forward to working with members of the Committee and the Legislature as these and other bills move forward this spring.

Sincerely,



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