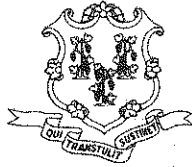


Connecticut General Assembly




OFFICE OF FISCAL ANALYSIS

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November 15, 2011

TO: Senator Andrew Roraback
Representative Tim O'Brien
Co-Chairs, Regulations Review Committee

FROM: Alan Calandro, Director 

SUBJECT: Review of Agenda Items for the November 29, 2011 Meeting

OFA has reviewed the state and municipal fiscal impact of the two resubmitted items on the agenda (items 2010-047c and 2011-022a) for the above meeting.¹ The following table summarizes our review.

Reg. #	Agency	Is Agency Estimate of State Impact Reasonable?	Is Agency Estimate of Municipal Impact Reasonable?	Did Agency Submit a Small Business Impact Statement? ²	Did Agency Submit a Regulatory Flexibility Analysis? ³
2010-047c	DEP	Yes	Yes	Yes	Yes
2011-022a	SDE	Yes	Yes	Yes	No

¹ CGS Section 2-71c(c)(7) requires OFA to prepare "short analyses of the costs and long range projections of ... proposed agency regulations."

² PA 09-19 requires agencies to prepare a small business impact statement on all regulation submittals, effective October 1, 2009.

³ CGS 4-168(a) requires agencies to prepare a regulatory flexibility analysis statement on all regulation submittals when there is an impact on small businesses.

Please contact me if you have any questions or would like additional information.

AC: lmk
Regs-Nov29,11-concur
Office of Fiscal Analysis

AGENCY FISCAL ESTIMATE OF PROPOSED REGULATION

AGENCY SUBMITTING REGULATION: Department of Energy and Environmental Protection

DATE: October 4, 2011

SUBJECT MATTER OF REGULATION: Stream Flow Standards and Regulations

REGULATION SECTION NO.: 22a-141b-1 through 22a-141b-8

STATUTORY AUTHORITY: Section 22a-6 and 22a-141b

OTHER AGENCIES AFFECTED: The major activity during the first three years after regulation adoption will be classification of river and stream segments. The Department of Energy and Environmental Protection (DEEP) will have primary responsibility for classification and will consult with the Department of Public Health on final classification and will seek technical assistance as appropriate from the Office of Policy and Management, Department of Economic and Community Development and Department of Agriculture prior to final classification. The amount of time for agencies other than DEEP is expected to be minimal during the first three years.

EFFECTIVE DATE USED IN COST ESTIMATE: October 4, 2011

ESTIMATE PREPARED BY: Robert Hust TELEPHONE: (860) 424-3718

SUMMARY OF STATE COST AND REVENUE IMPACT OF PROPOSED REGULATION

Agency: Department of Energy & Environmental Protection Fund Affected: None

	1st Year 2012	2nd Year 2013	3rd Year 2014
Number of Positions	0	0	0
Personal Services	0	0	0
Other Expenses	0	0	0
Grants	0	0	0
Total State Cost (Savings)	-	-	-
Estimated Revenue Gain (Loss)	-	-	-
Total Net Cost (Savings)	0	0	0

EXPLANATION OF STATE IMPACT OF REGULATION: Persons who own or operate a dam that impounds or diverts the flow of water in a stream or river system may be required to comply with requirements to provide for in-stream water flows consistent with the flow standards established in the regulation. The DEEP will employ existing staff and other available resources currently dedicated to water management to implement these regulations. The regulations provides phased in requirements over

a ten year period that will allow DEEP to implement these regulations including classifying rivers and stream segments, development of technical assistance documents, forms and web-based tools to assist with compliance. Compliance verification and enforcement will be accomplished with current staff levels.

Impact on state-owned dams is small since most of those dams are operated in "run-of-river" mode which are exempt and will not require structural or operational changes to comply with the new regulations. Of the remaining state-owned dams, only three are consumptive and are also exempt because of naturally small releases and will not require structural or operational modifications to comply with the regulations.

In response to the regulations, regulated entities may seek new or modified approvals or permits from the Department of Public Health and DEEP. It is anticipated that these requests will be spread out over a ten to twenty year compliance phase-in period.

EXPLANATION OF MUNICIPAL IMPACT OF REGULATION: The cost impact on municipalities is limited to those municipalities that provide potable water as a municipal service and own or operate a dam that impounds or diverts the flow of water and may have to comply with the regulations. Flexibility in the regulations has been included to reduce municipal impacts including: exemptions; less stringent requirements for certain small water users; allowing for variances; providing for drought off-ramps; extended compliance provisions; protecting public water supply margin of safety; allowing for site specific releases; and providing for certainty to ensure classifications of streams and rivers and the resulting standards will be reflective of current water use by municipalities. A web-based stream statistics mechanism is available to assist in compliance. Development of tools, guidance and assistance will include an on-line reporting system which will simplify compliance and reporting requirements. There is a ten year period in the regulation before any compliance except reporting is required, although municipalities may need to invest in infrastructure improvements during the ten year period. Then a flexible implementation schedule has been established in the regulation to reduce the impact of full compliance. Although affected municipalities are likely to be already providing some required water reporting and compliance information like all other water utilities, the implementation periods will allow time to assess existing water use, current water supplies, and other management measures in order to comply with the standards. The cost to any individual municipality will be highly variable dependent upon the type of supply, adequacy of their current supplies, water conservation, resources that have been dedicated to maintenance of the system in the past, the condition of existing infrastructure and already planned upgrades and repairs. There is a potential for financial support in the form of low interest loans or grants through the Drinking Water State Revolving Fund to offset some costs to municipalities in the future.

September 6, 2011

**NOTIFICATION FORM
DEPARTMENT OF ENERGY & ENVIRONMENTAL PROTECTION
SMALL BUSINESS REGULATORY IMPACT AND REGULATORY FLEXIBILITY
ANALYSIS**

Title of Regulation Stream Flow Standards and Regulations, RCSA sections 26-141b-1 to 26-141b-8, inclusive

Statutory Authority Sections 22a-6 and 22a-141b

Contact Person Robert Hust, CT DEP (860) 424-3718

The Regulation

The proposed rules establish narrative flow standards for all river and stream systems in the state. There are also new regulatory requirements for certain dam owners and operators. The proposed rules that are being resubmitted will eventually replace the existing requirements found in the Minimum Stream Flow Standards and Regulations of the Connecticut Department of Energy and Environmental Protection (DEEP), RCSA sections 26-141a-1 to 26-141a-8, inclusive. The proposed rules set forth standards and regulations that begin to balance the needs of humans to use water for drinking and domestic purposes, fire and public safety, irrigation, manufacturing, and recreation, with the needs of fish, wildlife and other biota that also rely upon the availability of water to sustain healthy natural communities.

Relationship to Small Business

Some small businesses that own or operate a dam that impounds or diverts the flow of water in a stream or river system may be required to comply with requirements to provide for in-stream water flows consistent with the flow standards of the regulations. In addition, some small businesses that use public water supplies may be indirectly affected by the potential increase in the cost of water as customers of public water suppliers. There is a minimum ten year implementation period built into the regulation before any compliance apart from reporting is required, so there will be little if any fiscal impact to small businesses, directly or indirectly, from these regulations for the first ten years. It should also be noted that this ten year period to comply does not start until after stream classification is completed. However, those few directly affected small businesses will likely need to consider how to invest in potential infrastructure improvements prior to the ten year compliance point. The extended implementation period will allow time for affected businesses to assess the various compliance options and how to most cost-effectively come into compliance. The implementation period also allows the DEEP to use existing staff and other available resources currently dedicated to management of stream flows to facilitate implementation of the regulations by developing technical assistance documents, forms and web-based tools to assist small businesses and public water suppliers with compliance.

Regulatory Flexibility Analysis and Impact Reductions

There was a very high degree regulatory flexibility considered for small businesses. DEEP examined and re-examined flexibility at three distinct points in the regulation development process: during regulation development; during public comment and response; and during the final regulation review. All points included consultation with key stakeholders; culminating in an intense stakeholder process in the spring of 2011. DEEP considered all the methods listed in section 4-168a(b) to reduce the impact of all or part of the requirements contained in the proposed regulation related to small businesses. The measures taken to reduce small business impacts included:

- Narrowing the regulation to include dams only. This approach excludes water supply wells and direct water intakes which make up the majority of all direct diversions by small businesses, and significantly reduces impacts to public water suppliers serving small businesses.
- Extending compliance out ten years from stream classification and providing an additional 10 years for compliance for water systems with inadequate margin of safety.
- Exempting agricultural uses, small water withdrawals (less than 50,000 gallons per day), all diversion permits, golf courses adhering to best management practices, minor withdrawals, and small impoundments.
- Easing release requirements for certain small water users.
- Reducing complexity by eliminating intermediate compliance and variable flow releases except for critical periods and allowing single minimum releases for certain small impoundments.
- Reducing impact on a water supplier's margin of safety and cost of compliance by minimizing releases, reducing water storage impacts, extending compliance time for infrastructure investment and reducing need for new water sources.
- Allowing for variances including drought off-ramps, summer release preservation protocol, and allowing for site specific flow releases to meet standards.
- Increasing certainty by ensuring classifications of streams and rivers and the resulting standards will be reflective of existing water diversions behind dams.
- Simplifying compliance and reporting requirements.
- Providing business assistance by developing compliance tools, guidance and assistance, including a web-based stream statistics mechanism and reporting system.

Expected Direct and Indirect Small Business Impact

Because of the high degree of regulatory flexibility and methods used to eliminate or reduce impacts discussed above, the regulations will have an extremely small direct impact and only a small indirect impact on small businesses. No impacts are expected until after a 10 year period because of the compliance schedule, however those few directly affected small businesses will likely need to consider how to invest in potential infrastructure improvements prior to the ten year compliance point. After that 10 year period, some small business impacts may start to be

felt, however the magnitude is likely to be further reduced by the flexibility in the regulations including exemptions, variances, and compliance times.

There are approximately 97,363 small businesses in Connecticut. It is estimated that only 3 small businesses will potentially be directly subject to the requirements of regulation and directly impacted. Of the 71 water utilities in the state only 1 water utility is defined as a small business that will be directly impacted by the regulation. The indirect impact to small businesses is more difficult to predict as this impact is primarily the result of potential increased water costs on those business served by public water supply. It is estimated that 66% of the total 97,363 small businesses may be served by public water systems affected by the regulation. The potential cost, if any, to individual small businesses served by public water will then be highly variable dependent upon the public water supply source, service area, type of business, and relative water use. It is also dependent on the condition of the public water supply including type of supply, adequacy of their current water supplies, water conservation, resources that have been dedicated to maintenance of the system in the past, and the condition of existing infrastructure. Based on available information it is estimated that 74% of those small businesses that are served by public water will have no or low future water cost increases. Of the remaining 26% that may have potential future water cost increases, it is expected that the flexible provisions in the regulations to help affected public water suppliers preserve current supply yields will further eliminate, reduce, or defer those costs.

There is a potential for financial support in the form of low interest loans or grants through the Drinking Water State Revolving Fund to offset some costs to small water companies in the future, but this is not available to businesses.

Although numerous measures have been taken to minimize negative impacts, the regulation will have some positive impacts related to increases to the efficiency of water use and sustainability of the state water resources. In particular, water conservation and the secondary effects of energy conservation as the result of decreased water use. Also the water infrastructure and operation improvements will create a small number of jobs, including green jobs, of which many may be small businesses.

AGENCY FISCAL ESTIMATE OF PROPOSED REGULATION

Agency Submitting Regulation: State Department of Education Date: April 26, 2011

Subject Matter of Regulation: Ensure that charter schools operate independently and use state and federal funds appropriately

Regulation Section No.: Sections 10-66-1 to 10-66-7, inclusive

Statutory Authority: Section 10-66mm of the Connecticut General Statutes

Other Agencies Affected: Charter School boards of education

Effective Date Used In Cost Estimate: April 26, 2011

Estimate Prepared By: Robert Kelly Telephone No: (860) 713-6574

SUMMARY OF COST AND REVENUE IMPACT OF PROPOSED REGULATION

Agency: State Department of Education Fund Affected: General Fund

Brian Mahoney 4/26/11
 Brian Mahoney, Chief Financial Officer

	First Year(2010)	Second Year (2011)	Full Operation (2012)
Number of Positions			
Personal Services	0	0	0
Other Expenses	0	0	0
Equipment	0	0	0
Grants	0	0	0
Total State Cost or (Savings)	0	0	0
Estimated Revenue Gain or (Loss)			
Total Net State Cost or (Savings)	0	0	0

Explanation of State Impact of Regulation: Using staff and resources currently available, the state will continue to monitor the charter schools to ensure that they operate in compliance with the law, their charter and meet the needs of all students.

Explanation of Municipal Impact of Regulation: State charter schools operate independent of the local or regional school district and will not have a municipal impact.

Explanation of Small Business Impact of Regulation: Not applicable.