

Legislative History for Connecticut Act

Public Act: 01-118
Bill Number: 6690
Senate Pages: 2677-2678, 2926-2927
House Pages: 3289-3333
Committee: Environment: 572-573, 650

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3

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Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate
and House of Representatives Proceedings

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CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
2001

VOL. 44
PART 9
2487-2836

002677

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Senate

Wednesday, May 30, 2001

457 is to be passed temporarily.

461 is PR. 477 and 479 are PR.

Page 8, Calendar 484 is PR.

490, HB5914 I move to the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

491 is PR. 492 is PR.

511, HB6709 I move to the Foot of the Calendar.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

Page 9, Calendar 512, I move to the Foot of the
Calendar.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

513 is Go. 514 is PR. 515 is Go. 516 is PR.

Page 10, Calendar 517, HB5923 I move to the Consent
Calendar.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

518 is Go. 519 is PR. 520 HB6690 I move to the
Consent Calendar.

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THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

521 is to be passed temporarily.

The first three items on page 11, Calendars 525, 526, 527 are PR.

528, HB6994 I move to the Foot of the Calendar.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

529 is PR.

Page 12, Calendar 530 is to be marked Go. And I would ask that this item be taken up first as the Order of the Day.

531 is PR.

532, HB6909 I move to the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

533 is PR.

Matters Returned From Committee, Calendar 59 is Go, 149 is PR, 151 is PR. In fact, the balance of page 13, Calendars 160, 168 and 169 are PR.

Calendars 182 and 207 at the top of page 14 are PR.

208 is to be passed temporarily. 217 is PR, 248 is PR.

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Senate

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SB1046.

Calendar page 8. Calendar 490, Substitute for

HB5914.

Calendar page 9. Calendar 513, Substitute for

HB5701.

Calendar 515, Substitute for HB6895.

Calendar page 10. Calendar 517, Substitute for

HB5923.

Calendar 528, Substitute for HB6589.

Calendar 520, Substitute for HB6690.

Calendar 521, Substitute for HB5426.

Calendar page 12. Calendar 532, Substitute for

HB6909.

Calendar page 17. Calendar 340, Substitute for

SB1129.

Calendar 358, Substitute for SB1226.

Calendar page 20. Calendar 450, Substitute for

HB6954.

Madam President, I believe that that completes today's first Consent Calendar.

THE CHAIR:

Thank you, sir. Would you once again announce a roll call vote, the machine will be open.

THE CLERK:

The Senate is now voting by roll call on the

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Senate

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Consent Calendar. Will all Senators please return to the Chamber. The Senate is now voting by roll call on the Consent Calendar. Will all Senators please return to the Chamber.

THE CHAIR:

Have all members voted? If all members have voted, the machine will be locked. Clerk, please announce the tally.

THE CLERK:

Motion is on adoption of Consent Calendar No. 1.

Total Number Voting	36
Those voting Yea	36
Those voting Nay	0
Those absent and not voting	0

THE CHAIR:

The Consent Calendar is adopted.

THE CLERK:

Turning to Calendar page 7. Calendar 457, File No. 212, HB5103 AN ACT CONCERNING THE PENALTY FOR ASSAULT OF CIVILIAN DETENTION OFFICERS. As amended by Senate Amendment Schedule A. Favorable report of the Committee on Judiciary.

SEN. COLEMAN:

Madam President?

THE CHAIR:

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CLERK:

H.B. 6895, as amended by House Amendment Schedule

"A"

Total Number Voting	143
Necessary for Passage	72
Those voting Yea	124
Those voting Nay	19
Those absent and not Voting	7

DEPUTY SPEAKER CURREY:

The bill, as amended passes.

The House will come to order and we will recognize that Representative Keeley has a new toy, among others.

And if we could return to the Calendar. If the Clerk would please call Calendar 331.

CLERK:

On page 35, Calendar 331, Substitute for H.B. 6690,

AN ACT CONCERNING RECORDING FINAL ORDERS ON LAND RECORDS, OPEN BURNING, AND CONSERVATION EASEMENTS OR RESTRICTIONS.

Favorable Report of the Committee on Planning and Development.

DEPUTY SPEAKER CURREY:

Representative Sharkey of the 103rd.

REP. SHARKEY: (103RD)

Thank you, Madam Speaker. I move acceptance of the

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joint committee's favorable report and passage of the bill.

DEPUTY SPEAKER CURREY:

The question before us is on acceptance and passage. Please proceed, sir.

REP. SHARKEY: (103RD)

Madam Speaker, we have an amendment. The Clerk has an amendment, LCO 5750. I would ask that he please call the amendment and I be allowed to summarize.

DEPUTY SPEAKER CURREY:

Will the Clerk please call LCO 5750, designated House "A".

CLERK:

LCO 5750, House "A" offered by Representative Farr.

DEPUTY SPEAKER CURREY:

Representative Sharkey.

REP. SHARKEY: (103RD)

Madam Speaker, thank you. This amendment would strike Section 3 from the bill which eliminates the provision regarding open fires which was something that was --

DEPUTY SPEAKER CURREY:

Excuse me, sir.

REP. SHARKEY: (103RD)

Madam Speaker, excuse me. I inadvertently called

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the wrong LCO number.

DEPUTY SPEAKER CURREY:

So you would like to withdraw that amendment?

REP. SHARKEY: (103RD)

I would, please, Madam Speaker.

DEPUTY SPEAKER CURREY:

We will withdraw LCO 5750, without objection.

Representative Sharkey, if perhaps you would explain the bill first and then we will move to the amendment.

REP. SHARKEY: (103RD)

Madam Speaker, I'd be happy to. This bill makes certain changes to the requirements for filing on land records, notices of conservation easements that property owners down the road will know that they have a conservation easement that is on the property that extends beyond 40 years.

It's similar to what is done with utility easements, as well.

So this extends the conservation issues of easements.

DEPUTY SPEAKER CURREY:

Thank you, sir. Would you care to remark further?

REP. SHARKEY: (103RD)

Madam Speaker, the Clerk does have an amendment.

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It's LCO 7134. I would ask that he call the amendment and I be allowed to summarize.

DEPUTY SPEAKER CURREY:

Will the Clerk please call LCO 7134, designated House "B".

CLERK:

LCO Number 7134, House "B" offered by
Representative Godfrey, et al.

DEPUTY SPEAKER CURREY:

Representative Sharkey.

REP. SHARKEY: (103RD)

Thank you, Madam Speaker. This amendment is a minor change in the bill to eliminate Section 3 which deals with the question of open fires. We found that it was unworkable in its current face, so we tried to remove that entirely.

So I move acceptance.

DEPUTY SPEAKER CURREY:

The question before us is on adoption of the amendment.

REP. SHARKEY: (103RD)

Adoption, thank you.

DEPUTY SPEAKER CURREY:

Would you care to remark further on the amendment before us? Would you care to remark on the amendment

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before us?

If not, I'll try your minds.

All those in favor, please signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER CURREY:

All those opposed, no.

The amendment is adopted.

Would you care to remark further on the bill, as amended?

Representative Farr of the 19th.

REP. FARR: (19TH)

Thank you, Madam Speaker. Madam Speaker, through you to Representative Sharkey.

DEPUTY SPEAKER CURREY:

Please proceed, sir.

REP. FARR: (19TH)

Yes. In explaining the bill, you indicated that the intent was to allow people to understand that there is a conservation easement on their property.

But as I understand it, what it really does is exclude the conservation easements from protection under the marketable - permanent provisions of the Marketable Title Act, so that if an individual buys property today and they have a title search done back 40 years and

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there is nothing on that property, there's nothing on the land records within that 40 year period of time, they are assured that they have good, clean marketable title.

But excluding the conservation easements from the protections of the Marketable Title Act, isn't it true that we now say to any purchaser in the State of Connecticut, if you want to make sure that you aren't subject to some sort of conservation easement, you'd better have a search done back to the colonial days to make sure there's nothing on the land records?

Through you, Madam. Speaker to Representative Sharkey.

DEPUTY SPEAKER CURREY:

Representative Sharkey.

REP. SHARKEY: (103RD)

Through you, Madam. Speaker. Yes, I believe that's accurate, but only in those circumstances where the organization that holds the conservation easement would have been defunct over the course of that time period.

Through you, Madam. Speaker.

DEPUTY SPEAKER CURREY:

Representative Farr.

REP. FARR: (19TH)

Thank you, Madam Speaker. Madam Speaker, the Clerk

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has an amendment. Will the Clerk please call LCO Number 7147 and I be allowed to summarize.

DEPUTY SPEAKER CURREY:

Will the Clerk please call LCO 7147, designated House "C".

CLERK:

LCO Number 7147, House "C" offered by
Representative Farr.

DEPUTY SPEAKER CURREY:

Representative Farr.

REP. FARR: (19TH)

Thank you, Madam Speaker. Madam Speaker, what this amendment does is it provides for an exclusion from the Marketable Title Act for conservation easements, but only on the condition that those conservation easements have a map recorded with the town clerk and it requires the town clerk to prepare a map showing all the conservation easements. It requires the individual recording the easement to pay \$100 filing fee to cover the cost of recording and preparing the master map.

Madam Speaker, I would move adoption of the amendment.

DEPUTY SPEAKER CURREY:

The question before us is on adoption. Would you care to remark further?

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REP. FARR: (19TH)

Yes. Thank you, Madam Speaker. This bill, and the issue of how to treat conservation easements has been one that's been debated for a couple of years now, particularly in the Law Revision Commission.

On the one side, we have the consumer who goes out and buys a home and when he buys the home, he gets an attorney, normally, who will do a title search. He'll get, based on that title search, there will be a -- he will receive title insurance coverage and he'll be assured that when he buys a piece of property in Connecticut, that if the search has gone back 40 years, that he's got good title to the property. And the Marketable Title Act says that if you search 40 years back and there's nothing on the land records, and if it has, there have been warranty deeds along the way, you've got good title and you don't have to worry about somebody coming forward and saying 60 years ago I was granted some right to your property.

The results of having the Marketable Title Act has been to give some certainty to the whole real estate practice in Connecticut. The conservation easement concept is one in which in order to preserve open space, -- the conservation easement concept is a device in which we can preserve open space in Connecticut. And

what normally happens is that an individual or a developer will convey an easement with restrictions on the use of this open space.

The underlying land is not conveyed, but just the restrictions, the easement is conveyed generally to a non-profit land -- often times, a land trust.

That trust then has the ability to make sure that that land is kept as open space forever. If you buy property with a conservation easement on it, then what happens is that you are subject to the provisions of that easement and you can't develop that property.

The difficulty is that with the marketable title, if that easement were granted more than 40 years ago and there's no provision and if there's no clause in any of the deeds that notify you that there is an easement, you have no way of knowing that you're subject to the easement.

You rely upon the search that goes back 40 years. You get what you think is clear property and then somebody comes along and says no, you're subject to this easement.

So an attempt was made to preserve that easement by excluding it from the marketable title, but that ends up putting the consumer in the position that they maybe subject to easements that they didn't know existed.

What this amendment does is ultimately try to solve the dilemma and it solves the problem by saying if you want an effective conservation easement, then you have to record a map in the town clerk's office and if you record the map in the town clerk's office, anybody doing the title search will now be charged with having to look at the conservation easement map and making sure that the property that is sold is not within that conservation easement area.

It's very similar to what we do with flood maps. Right now there are flood maps in every town in the State. When somebody does a title search, they have to check the flood map, someone has to make sure that the property is not in a flood zone.

I believe that this is a reasonable compromise. I think it solves the problem, protects the consumer, and yet protects the open space in the State of Connecticut.

And I would urge adoption of the amendment.

DEPUTY SPEAKER CURREY:

The question before us is on adoption of the amendment.

Representative O'Neill of the 69th.

REP. O'NEILL: (69TH)

Yes. Thank you, Madam Speaker. I say that I reluctantly rise to oppose the amendment. It is an

interesting concept and I believe that it is offered very much in good faith as an effort to try to resolve what, in many ways, is a conundrum in so far as land title issues related to conservation easements are concerned, but in looking at the easement, I note that it requires that these A-2 surveys have to be prepared and recorded in the land record in order for the protections of this law to apply to an existing easement and therefore, that all of the existing conservation easements for which an A-2 survey has not been prepared up until now, that those easements would then be subject to the effect of the Marketable Title Act so that land trusts would have to go back and other non-profit organizations would have to go back and have A-2 surveys done of all the property for which they received a conservation easement and I guess I'll try - without necessarily asking a lot of questions of Representative Farr, but it certainly is my impression that an A-2 survey is something that can easily cost thousands of dollars and can, in some case, run the cost as high as tens of thousands of dollars, depending on the size of the parcel of land and the complexity of the survey.

Perhaps Representative Farr, at a later point will disagree with me on the cost to the land trust of having to undertake these surveys.

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In addition, what the bill does is that it requires towns to create a map of conservation easements and, as was earlier mentioned, something similar to a flood plain map or perhaps something similar to a land use usage map, but this would be a new and separate map that would have to be created by all the towns in the State of Connecticut in order for the conservation easements to be plotted on that map and then that map should be kept at the town clerk's office, though it represents, essentially, an unfunded mandate placed upon the towns in the State of Connecticut.

I guess I would ask if Representative Farr could answer if there is a fiscal note associated with the amendment?

DEPUTY SPEAKER CURREY:

Representative Farr.

REP. FARR: (19TH)

Thank you, Madam Speaker. Yes, there is. The Office of Fiscal Analysis notes that any increase in workload to towns, due to additional record keeping would vary from town to town. But the overall impact is anticipated to be minimum and the increase in revenue to town clerks for the \$100 fee is anticipated to be minimum.

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Representative O'Neill.

REP. O'NEILL: (69TH)

Thank you, Madam Speaker. That's a bit less than I anticipated, but that is what Fiscal Analysis has told us, it that it will end up being a minimal cost.

I would perhaps be less inclined to oppose the amendment if, perhaps, we had an opportunity to discuss this with the town clerks, with the various municipal engineers who are going to be called upon to design these maps and make them available to the towns. And to have other people who have an interest in this outcome could have been consulted in connection with the preparation of this amendment, but it is my understanding that none of those groups of people were given a chance to see this language or to discuss even the concept of creating this new mapping system as a way to deal with this issue.

So as I said, Madam Speaker, I reluctantly rise to oppose this amendment. Perhaps, as we go forward with the bill at some later point in time, this can be worked out to include this, but I think at this time I would urge my colleagues to vote no.

Thank you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Sharkey of the 103rd.

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REP. SHARKEY: (103RD)

Thank you, Madam Speaker. I would just rise to oppose the amendment, as well, and I agree with the comments from Representative O'Neill and I'd urge the House to oppose this amendment.

I'm concerned, as well, about the unfunded mandate issue and the cost that this whole amendment will incur on towns.

So, again, I would urge it be voted down.

Thank you.

DEPUTY SPEAKER CURREY:

Thank you, sir.

Representative Belden of the 113th.

REP. BELDEN: (113TH)

Thank you, Madam Speaker. Madam Speaker, it appears that the amendment is attempting to resolve a concern and the bill is attempting to resolve a concern and I don't think either of them resolve the issue.

And if I might, a question, through you, to the proponent of the original file copy, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Belden, we're still on the amendment.

REP. BELDEN: 13TH

I understand that, but I don't know how you can

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deal with this unless you talk about the file and the amendment.

Through you, Madam. Speaker.

DEPUTY SPEAKER CURREY:

Representative Sharkey, prepare yourself.

Please proceed, sir.

REP. BELDEN: (113TH)

Representative Sharkey, you rose and opposed the amendment, but it does appear that Representative Farr has touched upon a point that leaves a void in what happens in our law. And evidently, there's a problem in the current law.

What would happen if neither the amendment nor the file copy were to pass?

Through you, Madam. Speaker.

DEPUTY SPEAKER CURREY:

Representative Sharkey.

REP. SHARKEY: (103RD)

Madam Speaker, through you. What would happen at this point would be that we would continue the law as it is today which is not providing, on our land records, notice to subsequent purchasers that the existence of the conservation easements that are currently not -- and when you do a title search you're not always able to find these things the way we're currently situated with

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the law.

So this simply attends that to conservation easements to help let future owners and future purchasers know that these easements are in existence.

Through you, Madam. Speaker.

DEPUTY SPEAKER CURREY:

Representative Belden.

REP. BELDEN: (113TH)

Thank you, Madam Speaker. Through you, Madam. Speaker. When Representative Farr indicated that the file copy would result in a situation where the information would not be available and that individuals would, perhaps, have to go back to colonial days just to check out the title, is that a fair assumption that he has indicated?

Through you, Madam. Speaker.

DEPUTY SPEAKER CURREY:

Representative Sharkey.

REP. SHARKEY: (103RD)

Through you, Madam. Speaker. Yes. I would agree that the issues that Representative Farr are raising are legitimate issues and it's something that we do have to look at in the future.

The problem is I think it's overkill at this point by creating this type of a system that would impose the

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extensive costs on our town clerks.

So that's the main reason for opposing the amendment.

Through you, Madam. Speaker.

DEPUTY SPEAKER CURREY:

Representative Belden.

REP. BELDEN: (113TH)

Thank you, Representative Sharkey. I agree with you with regard to the amendment, but I don't agree with you with regard to the bill.

I don't know why we don't fix it once and fix it right. And I don't know why, maybe, we don't create some kind of a conservation easement lien that would be filed on the land records, create that in law and then guess what, it would be there.

So, Madam Speaker, I'm rising to oppose the amendment and also to oppose the file copy.

Thank you.

DEPUTY SPEAKER CURREY:

Thank you, sir.

Would you care to remark further on the amendment before us?

Representative Farr.

REP. FARR: (19TH)

Yes, thank you, Madam Speaker. You know, it's

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ironic that somebody talks about unfunded state mandates because you require somebody to file a map to let you know whether or not they have an interest in your property. I think sometimes we throw terms around here that begin to lose their meaning when we say that a town has to keep a record of conservation easements on a central map and say that somehow we can't do that because you can't mandate things to towns.

We do that - we mandate things to towns all the time and as far as being unfunded, of course, the bill itself provides \$100 fee. So it's not clear that this town is going to absorb a lot of extra costs.

Representative O'Neill suggested that these land surveyors have to go out the first time and survey the area in which they have the easement. I would suggest that it's likely that in a vast majority of cases, there is already the survey. Most people would not convey large amounts of land into a trust without having some way of defining the boundary lines and I would assume that those surveys have been done and in most cases, that they're already there. In some cases, they may be of record. The problem, however, is you might have problems finding them because there are maps that are on file, but in order to find, to index that, you would have to go back to the time that the original owner

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conveyed it to find out whether or not there is a map and if that's more than 40 years back, that would force everybody to start doing unlimited title searches.

I would urge passage of the amendment, and I think it's unfortunate that this issue isn't being addressed today because I think the underlying bill, without some way for the consumer to find out if he's subject to a land trust, is flawed and I think this cures it.

Thank you.

DEPUTY SPEAKER CURREY:

Would you care to remark further on the amendment before us?

Representative Bernhard of the 136th.

REP. BERNHARD: (136TH)

Thank you, Madam Speaker. With regard to both the amendment and the underlying bill, since I think they're intertwined unavoidably, a question first to Representative Sharkey.

Through you, Madam. Speaker.

DEPUTY SPEAKER CURREY:

Please proceed, sir.

REP. BERNHARD: (136TH)

In the debate so far, I'm hearing that the easements that we're concerned about are the ones that have been deeded over to a conservation trust, non-

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profits of some kind. But I'm aware that there are also often conservation easements that are put on the land records that aren't deeded, necessarily to anyone, but are restricted as a matter of public record on the land records. Perhaps there is some title given to the locals of a municipality.

Does the bill that you're proposing that's before us today cover those easements as well?

Through you, Madam. Speaker.

DEPUTY SPEAKER CURREY:

Representative Sharkey.

REP. SHARKEY: (103RD)

Through you, Madam. Speaker. No, it would not intend for municipalities. It only covers those non-profit entities that are holding the conservation easement.

Through you, Madam. Speaker. And land trusts.

DEPUTY SPEAKER CURREY:

Representative Bernhard.

REP. BERNHARD: (136TH)

Through you, Madam. Speaker, again to Representative Sharkey. Does not then the same issue that it's attempting to address with respect to easements given to non-profits simultaneously exists with respect to easements that aren't necessarily given

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to anyone, but are shown as a restriction on a subdivision map? Or in title easements that have been given to local municipalities? And shouldn't we be addressing that issue, as well?

Through you, Madam. Speaker.

DEPUTY SPEAKER CURREY:

Representative Sharkey.

REP. SHARKEY: (103RD)

Through you, Madam. Speaker. I believe with the municipalities, municipalities are in a different set of circumstances than the average non-profit. That's not to say that we shouldn't be looking into that, but I think the issue here is that we're trying to address is that it's a narrow provision for the non-profits that currently are taking the land, otherwise has the right to re-record the easement, but then otherwise, perhaps, might go out of business or go defunct.

So that's the purpose of what this bill is about. Municipalities is another whole set of issues which the bill, admittedly did not address.

Through you, Madam. Speaker.

DEPUTY SPEAKER CURREY:

Representative Bernhard.

REP. BERNHARD: (136TH)

Through you, Madam. Speaker, again to

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Representative Sharkey. If I understood your question or your response a moment ago, you're saying that municipalities are in a different category. I'm not certain I necessarily follow that, but you did say after that, that the not-for-profit land trusts have the ability to re-record the easement.

If I follow that, presumably they have a record of the easement that they've acquired over some period of time and if your statement is correct, they -- and I happen to think it probably is, if they were concerned with regard to the lapse of time and the extinguishment of their easement, they then could re-record the easement to protect for the next 40 years, presumably.

Is that an accurate statement?

Through you, Madam. Speaker.

DEPUTY SPEAKER CURREY:

Representative Sharkey.

REP. SHARKEY: (103RD)

Through you, Madam. Speaker. Yes, provided they are still around. And that's really what this bill is designed to do. It's designed to protect subsequent purchasers from conservation easements that have been granted in favor of the non-profit private land trust or non-profit land holding organization and it goes out of business and no one has a trace of that and therefore,

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it can't be re-recorded within that 40 year period.

Through you, Madam. Speaker.

DEPUTY SPEAKER CURREY:

Representative Bernhard.

REP. BERNHARD: (136TH)

It isn't limited to just that. Although I think that's probably what the bill is designed to go after.

So if we were talking about the land trust, it has a record of all its easements, it can protect itself and apparently this Legislature is prepared to let them protect themselves because they know what their easements are, they're still in business. If we're talking about the land trust which exists and is quite viable, they would have the ability to re-record the easement and protect their own interest in land.

So this bill isn't to design to protect them, even though it will protect them. The bill is designed to protect the not-for-profit that's gone out of business, no longer exists.

If that's what we're focusing on, then we're going to have an owner of an easement that doesn't exist. How then do we ever do anything with that property if there's nobody available to address legitimate questions, and other possible uses for the property or is the easement designed in perpetuity even though

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there's no owner of the property?

Through you, Madam. Speaker.

DEPUTY SPEAKER CURREY:

Representative Sharkey.

REP. SHARKEY: (103RD)

Well, through you, Madam Speaker. Obviously, easements will run with the land so that the purpose of this bill is to protect the easement. The fact that the conservation easement has been created in perpetuity to protect land from development in perpetuity.

If the original holder of that easement is no longer in existence, for some reason, the actual easement itself continues to exist.

So what this bill is trying to do, is designed to do, is to protect the land from any confusion about its future purpose beyond the life of that particular non-profit, as well as to protect the parties who are searching the land records for evidence of that easement.

Through you, Madam. Speaker.

DEPUTY SPEAKER CURREY:

Representative Bernhard.

REP. BERNHARD: (136TH)

Through you, Madam. Speaker. At the moment, the present law, as I understand your representation of it,

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is that utility easements do not require re-recording and exists on perpetuity, in perpetuity. How do title searches deal with that now? Do they provide an exemption in the title policy and the owner of the property has to present whether there's a utility easement on the property on his own?

Through you, Madam. Speaker.

DEPUTY SPEAKER CURREY:

Representative Sharkey.

REP. SHARKEY: (103RD)

Through you, Madam. Speaker. I only know from my own professional experience what often times happens here. Title insurance companies will hesitate to grant coverage if there's a protection or a concern that conservation easements may exist and a third party coming into the situation may not be apprised of it.

Now, that's not really what we're focusing on here with this bill. But that's typically what would happen.

It becomes a land mine for title searchers in the situation looking to find out what is burdening the property when a third party becomes involved or looking to acquire.

Through you, Madam. Speaker.

DEPUTY SPEAKER CURREY:

Representative Bernhard.

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REP. BERNHARD: (136TH)

Through you, Madam. Speaker. If, in fact, there are land mines and are they -- I'm trying to decide the equities of who we're going to put the burden on. I'm certainly standing here as a strong advocate for the environment and the protection of open space as anyone in the Chamber. So I would certainly would not want to see these easements lapse by indifference or lapse of -- so I'm certainly instinctively inclined to be in favor of the bill.

I'm hearing, however, from Representative Farr and the little bit of opportunity I've had to look at this bill, that the solution may create other problems, as we often do in this Legislature, for title searchers and perhaps subsequent owners of property who won't necessarily know whether, from their own attorney and their own title search, that goes back only 40 years, whether there is an easement on the property.

So they may develop their property at some peril, although I don't know who is the important one because the not-for-profit we're referring to is out of business.

DEPUTY SPEAKER CURREY:

Representative Sharkey.

REP. BERNHARD: (136TH)

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But I was about to articulate the question, Madam Speaker.

Does the title searcher, at the moment, go back to check for utility easements that are older than 40 years of age? And if so, if that's the regular process that they may or just they could easily check for a conservation easement simultaneously, but if their regular practice, which is what I understand it to be, is that they only go back to 40 years, do the title companies just absorb the land mine, as you referred to it, with respect to utility easements?

Through you, Madam. Speaker.

DEPUTY SPEAKER CURREY:

Representative Sharkey.

REP. SHARKEY: (103RD).

Thank you, Madam Speaker. Through you. I don't know the answer to that question. I really know what, how the title insurance companies usually handle that situation.

So I'm not in a position to be able to answer that question, frankly.

Through you, Madam. Speaker.

DEPUTY SPEAKER CURREY:

Representative Bernhard.

REP. BERNHARD: (136TH)

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Thank you, Madam Speaker. Now a question to Representative Farr with respect to his amendment.

DEPUTY SPEAKER CURREY:

Representative Farr, prepare yourself.

Please proceed, sir.

REP. BERNHARD: (136TH)

Representative Farr, in response to my questions to Representative Sharkey, it seems to be isolating this trying to be addressed with this piece of legislation, the not-for-profit has gone out of business and does not, necessarily be concerned about the not-for-profit that acquires an easement which is still in business and it has the opportunity to re-record its easement on its own.

Do you share his observation of the bill insofar as the nature of the problems that we're trying to address, a limited as he has identified it? And if so, do you feel that your bill, your amendment, necessarily, is a bit of an overkill in response to what seems to be a fairly limited and constrained issue?

Through you, Madam. Speaker.

DEPUTY SPEAKER CURREY:

Representative Farr.

REP. FARR: (19TH)

Thank you, Madam Speaker. No, the problem is that

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even if you were in existence as a non-profit, when he talks about re-recording it, in order to be effective and to make sure that the marketable title doesn't terminate your rights to that easement, you have to record it in the chain of title. And what that means is that if the original owner has conveyed the property and often times you might have an original owner who subdivided the property, they may have conveyed out 30 or 40 lots, each of those owners then would convey the property to other people, and in order for you to record it and get it in the chain of title, you would have to determine the existing owner of each piece of property that is effected by it, so the non-profit land trust that may have the ability to re-record this, may find that it becomes kind of expensive to do that because they've now got to go out, do a title search for every piece of property that's effected, that potentially the easement is on, and record it with the name of the present owner in order to get it back into the chain of title.

So they can't just take the deed that they've got and go re-record that deed. That does them nothing. They've got to go and find out the present owner, record that land trust and get it back in the title.

So in many ways, this amendment, which requires the

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recording of the map, is a one time solution to everybody's problem. It means the land trust records their easement with the map and everybody is then effected by that forever, they don't have to re-record it, they don't have to do any title searches in the future.

And as far as the comment that was made that well, what's different about this versus the utility easement? The vast majority of your easements are open and obvious. They are -- if the utility company has an easement to build a power line, in the vast majority of cases it's going to be there. So there is an opportunity for somebody when they inspect the property to determine whether or not there is an easement on the property.

The uniqueness about a conservation easement is that there is nothing there. Unlike a utility easement, which gives somebody the right to build something on the property, the conservation easement prohibits anybody from building on the property.

So an inspection of the property won't discover anything. It will just describe the opposite of anything. So therefore, unless you know that there is some - unless you do the title search, there's no way from inspection that you're going to find that there was a conservation easement on the property.

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DEPUTY SPEAKER CURREY:

Representative Bernhard.

REP. BERNHARD: (136TH)

Thank you, Madam Speaker. In listening to the responses to my questions, I think I'm much better informed as to how I'm going to vote and in that regard, I would point out I believe the underlying bill is laudable, it's appropriate. It's important that we protect these easements, otherwise, what's the whole point of our aspirations to try to make open space if, in 40 years, they're going to lapse or slip through the cracks.

My concern is that as laudable and as appropriate as it is, it maybe just the enlightening on the take in terms of I don't know whose going to enforce the restriction. If people are only going back 40 years, and they're not-for-profit is out of business, or even necessarily minding the store on property that they own, there maybe construction on the property in any event.

And so, it mind be unmindful of these open space parcels, but I'm not certain that this bill is a solution to the problem and accordingly, I think I'm rising in support of Representative Farr's amendment. At least it will be -- which I was initially opposed to because I do seem some expense involved and certainly

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some headache and some logistical effort.

But if we don't do it, we're putting this land in peril in the future. If we do it once and we bite the bullet and it's done and it now becomes a matter of public record and that anybody and everyone can go to town hall and understand and see where the easements are, it's got to be a good thing, for the State and for the people who are acquiring property.

So I would support the amendment.

Thank you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Fontana of the 87th.

REP. FONTANA: (87TH)

Thank you, Madam Speaker. Through you, a couple of questions to the proponent of the amendment.

DEPUTY SPEAKER CURREY:

Please proceed, sir.

REP. FONTANA: (87TH)

Thank you, Madam Speaker. Through you to the proponent of the amendment. Does the Nature Conservancy or any other group of charitable land organization or land trusts support this amendment?

Through you, Madam. Speaker.

DEPUTY SPEAKER CURREY:

Representative Farr.

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REP. FARR: (19TH)

I do not have an answer to that. Somebody was checking with them and I don't have that answer.

DEPUTY SPEAKER CURREY:

Representative Fontana.

REP. FONTANA: (87TH)

Thank you, Madam Speaker. Through you, Madam Speaker. Does the Connecticut Town Clerks Association support this amendment?

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Farr.

REP. FARR: (19TH)

Again, I do not have that answer.

DEPUTY SPEAKER CURREY:

Representative Fontana.

REP. FONTANA: (87TH)

Thank you, Madam Speaker. And I thank the proponent for the answers to my questions.

The reason I stand to rise in opposition to the amendment, Madam Speaker, is because, as many people in the Chamber know, I actually do this for a living. I am title searching every day, every day we're not in session and I'm very concerned about those logistical issues that this amendment raises.

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I think if we can generalize about the pattern that we've proceeded through over the last several years, we can say with certainty that we've tried to work with charitable land organizations, land trusts, nature conservancies, and the town clerks.

Whenever we try to put forward legislation that will impact them, and as somebody whose in town clerks' offices every day, I can tell you that the town clerks do a heck of a job and they do it with very tight resources and they have quite a number of important duties that they have to coordinate.

I'm concerned because if, in fact, having to put forward an A-2 survey or map is required, it could, in fact place quite a burden on our charitable land trusts.

North Haven, for instance, my town, has a charitable land trust and, in fact, they don't have the resources to, in fact, go through, identify all their conservation easements and pay for A-2 surveys or maps to be drawn to every one of them and to file every one of them.

I can understand Representative Bernhard's comment that we should bite the bullet. However, we should be clear about who it is we're asking to bite the bullet.

Furthermore, I think we should be clear about how we're asking our town clerks to bear this burden. What

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if a town clerk, for whatever reason, fails to keep the separate map section up-to-date? What if there are errors in it. What kind of responsibility does this place people doing title searches, on performing title insurance policies?

I think there are a lot of issues that this amendment raises and I don't think this is the appropriate way to handle it and I think what we need to do is frankly move forward with the Nature Conservancy, with the charitable land trusts and with the Town Clerks' Association to identify any issues that need to be addressed and then to do it in an appropriate fashion. I mean, we can't do it and simply by putting forward an amendment on the basis of one or two hours worth of notice.

So, I would oppose the amendment and I would encourage all my colleagues to do likewise.

Thank you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Thank you, sir.

Would you care to remark further on the amendment before us? Would you care to remark further on the amendment before us?

If not, I'll try your minds.

All those in favor, please signify by saying aye.

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REPRESENTATIVES:

Aye.

DEPUTY SPEAKER CURREY:

All those opposed, no..

REPRESENTATIVES:

No.

DEPUTY SPEAKER CURREY:

The amendment fails.

Would you care to remark further on the bill before us, as amended?

Representative Farr of the 19th.

REP. FARR: (19TH)

Thank you, Madam Speaker. Through you, Madam Speaker, to Representative Sharkey.

Just one question that concerns the issue of what happens to land trusts that were created more than 40 years ago which were not in the chain of title, which, with the passage of this underlying bill? Do they spring back to life? Or has that easement been extinguished?

DEPUTY SPEAKER CURREY:

Representative Sharkey.

REP. SHARKEY: (103RD)

Through you, Madam. Speaker. Those properties that are held with land trusts, prior to the effective date of this, if they have not been recorded within their 40

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years, it will not become retroactive.

So, properties that have not been recorded or even been re-recorded, would, in fact, require it.

REP. FARR: (19TH)

Thank you very much.

DEPUTY SPEAKER CURREY:

Would you care to remark further on the bill before us, as amended?

Representative Spallone of the 36th.

REP. SPALLONE: (36TH)

Thank you, Madam Speaker. Madam Speaker, I rise in support of this bill and I do so because I believe that the preservation - I mean, the protection of these conservation easements is vital to the preservation of open space in the State.

But I also rise to add a slightly different perspective for our colleagues who might be concerned about the effect of exempting conservation easements from the Marketable Title Act.

I would draw the attention of my colleagues to General Statute 47-2 which is ancient charitable law dating from 1584 and that law provides all estates granted for any public purpose, shall forever remain to the uses for which they were granted and to no other use, whatever.

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So I would say that this bill is consistent entirely with this ancient charitable law. So I could see no legal impediment to this bill and I urge my colleague enthusiastically to support it.

Thank you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Blackwell of the 12th.

REP. BLACKWELL: (12TH)

Thank you, Madam Speaker. This bill has a laudable purpose, but I'm concerned, like a number of the speakers here, that the way that it interacts with the Marketable Title Act will hamper that act.

The Marketable Title Act is a carefully worded and carefully worked land use act that provides certainty to land use law.

And the National Conference of Commissioners of Uniform Laws is just about to revisit this issue of conservation easements. They recognize that the current uniform laws on conservation easements needs to be updated.

So, for these reasons, I'm hesitant to support this bill right now and I would prefer that we wait until we see a new national uniform law and I will be voting no.

Thank you, Madam Speaker.

DEPUTY SPEAKER CURREY:

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Thank you, sir.

Representative -- Would you care to remark further on the bill, as amended?

Representative Belden of the 113th.

REP. BELDEN: (113TH)

Thank you, Madam Speaker. Just so I can understand where we're at now. We heard about ancient law and I guess that means that there was a conservation easement filed 50 years ago, that it would come under some ancient law prerequisite.

We have a file copy before us now that essentially say that if it's more than 40 years old, I guess it gets lost, not traceable.

So, through you, Mr. Speaker, to the proponent of the bill, is that the case? Do we have a void, in fact, in an individual who buys or maybe acquires the property now and because the easement is in effect because of the ancient law, that it's more than 40 years and it's not, perhaps, traceable? Is there a void, through you, Mr. Speaker, in the title?

DEPUTY SPEAKER HYSLOP:

Representative Sharkey.

REP. SHARKEY: (103RD)

Through you, Mr. Speaker. The current state of the law is that if an easement is over 40 years old and it

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has not been recorded, it is acquired under the Marketable Title Act.

So all this bill is doing is recognizing the importance of saving these properties for open space and for conservation purposes by allowing them to have the same as utility easements.

DEPUTY SPEAKER HYSLOP:

Representative Belden.

REP. BELDEN: (113TH)

Thank you, Mr. Speaker. During that 40 year period, if there's a quit claim deed, what happens to the conservation easement record?

Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Sharkey.

REP. SHARKEY: (103RD)

Through you, Mr. Speaker. If I may, can I have the question rephrased?

DEPUTY SPEAKER HYSLOP:

Representative Belden, can you rephrase or repeat the question?

REP. BELDEN: (113TH)

Yes, certainly. Through you. We have a conservation easement granted 45 years ago. Thirty years ago, the land was conveyed through a quit claim deed.

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Can I assume that a party acquiring that property today would not know, in fact, that there was a conservation easement by ancient law still valid on the property?

Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Sharkey.

REP. SHARKEY: (103RD)

Well, it would not still be valid. The conservation easement would still not be valid if the easement itself was not re-recorded.

Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Belden.

REP. BELDEN: (113TH)

Through you, Mr. Speaker. I'm talking about if the bill were passed.

DEPUTY SPEAKER HYSLOP:

Representative Sharkey.

REP. SHARKEY: (103RD)

Well, then yes, through you, Mr. Speaker. If this bill passed, the easement would continue in perpetuity.

DEPUTY SPEAKER HYSLOP:

Representative Belden.

REP. BELDEN: (113TH)

Through you, Mr. Speaker. Is it on the land

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records in perpetuity or has it - if there was a quit claim deed filed in the process, would it have disappeared from anybody's view?

Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Sharkey.

REP. SHARKEY: (103RD)

Through you, Mr. Speaker. No, a quit claim deed for the underlying property would not effect the conservation easement. That would be a separate property right that would have its own recorded instrument on the land records.

So the quit claim deed of the underlying property is a total property interest from the interest that's in the conservation easement itself.

Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Belden.

REP. BELDEN: (113TH)

But if a title search was going on and the conservation easement was -- let's say it was 35 years ago and there was a quit claim deed filed 30 years ago, in that case, through you, Mr. Speaker, I believe in the title search that that conservation easement would show up. Is that correct?

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DEPUTY SPEAKER HYSLOP:

Representative Sharkey.

REP. SHARKEY: (103RD)

Through you, Mr. Speaker. Again, if you're searching for the underlying property and that underlying property has been quit claimed or in any other way deeded to a third party, that is independent of the conservation easement which has its own recorded instrument on the land record.

So any searcher should be able to see both, the quit claim deed for the underlying property, as well as for the conservation easement itself.

Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Belden.

REP. BELDEN: (113TH)

Thank you, Mr. Speaker. This is not an area where I have certainly have a lot of expertise. But in my community, like all others, we do have land trusts and conservation easements. Some of them go back. Some of them are fairly new.

I don't see how I can change the status quo unless I can understand what the outcome of changing the status quo is and I think I'm not too sure the outcome is much better than the status quo and I've been trying to get

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at somebody to sell me on an outcome that's going to be better than the current situation, which is not good either.

So I guess I'll wait to see if anybody can really explain to myself and perhaps the Chamber, how the outcome with this bill is going to be better than the current law.

DEPUTY SPEAKER HYSLOP:

Would you remark further on the bill, as amended?
Would you remark further on the bill, as amended?

If not, staff and guests to the Well of the House.
The machine will be opened.

CLERK:

The House of Representatives is voting by roll call. Members, to the Chamber. The House is taking a roll call vote. Members to the Chamber.

DEPUTY SPEAKER HYSLOP:

Have all the members voted? Have all members voted?
If all the members have voted, please check the board to make sure your vote is properly recorded.

The machine will be locked and the Clerk will take a tally.

Representative Reinoso, why do you rise? Well, why are you waving to me?

Representative Reinoso, for what reason do you

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rise? Push the button, please.

REP. REINOSO: (130TH)

Mr. Chairman, I would like to be recorded in the positive.

DEPUTY SPEAKER HYSLOP:

Representative Reinoso from the negative to the affirmative.

The Clerk will announce the tally.

CLERK:

H.B. 6690, as amended by House Amendment Schedule

"B"

Total Number Voting	144
Necessary for Passage	73
Those voting Yea	129
Those voting Nay	15
Those absent and not Voting	6

DEPUTY SPEAKER HYSLOP:

The bill, as amended passes.

Clerk, please call Calendar 397.

CLERK:

On page 38, Calendar 397, Substitute for H.B. 7022,

AN ACT CONCERNING BIRTH OUTCOMES AND THEIR RELATION TO DOMESTIC VIOLENCE.

Favorable Report of the Committee on Legislative Management.

JOINT
STANDING
COMMITTEE
HEARINGS

ENVIRONMENT
PART 2
365-657

2001

company who has part of its mission as in the development -- needs to develop classrooms, academic facilities and dormitories to conduct its mission.

So it's a mismatch, I think, between -- a mismatch between what's currently in place with respect to statute and regulations and what squares with the University's experience.

SEN. WILLIAMS: Thank you.

Are there further questions?

Thanks very much.

TOM CALLAHAN: Thank you.

SEN. WILLIAMS: Next, Commissioner Arthur Rocque from the Department of Environmental Protection.

COMMISSIONER ROCQUE: Thank you, Senator Williams, HB 6688 HB 6757
Representative Stratton, committee members. Good HB 6756
morning. I'm here to testify on several of the bills that you have raised. Thank you. Since they are ideas that we have brought to you. I wish that they could be innovative and interesting and new programs. But, unfortunately, they're largely in the genre of trying to repair and promote and improve upon what we already have.

The first is HB 6690, which is AN ACT CONCERNING RECORDING FINAL ORDERS ON LAND RECORDS. This bill has two purposes. The first is to allow the coastal regulatory programs final orders to be filed on Land Records, bringing them parity with those other regulatory programs the Department has under its jurisdiction.

And the second purpose of the bill is to clarify that the existing statutory authority that I just referred to for other DEP programs applies only to final orders.

And this is, in part, a consumer protection issue in that many times there are enforcement provisions that are placed on coastal properties that are not

brought to the attention of the buyer. the reason that this statute -- (interruption in taping - changing tape) -- coastal regulatory provisions is simply an accident of history. Those coastal regulatory laws, by and large, predated the environmental regulatory programs that we administer by about 30 years. So since they were an earlier time, that statutory provision was not there. It would be very useful for both future buyers as well as for the Department in its enforcement activities.

I would also point out that when the order is complied with, that the Department is required under this proposed statutory change to make that known on the Land Records as well.

The second bill is HB 6688, which is an Act concerning a whole host of revisions to the solid waste statutes. This is a bill that actually was proposed by the Department. Many of these provisions have been before you before. They are designed to streamline the cancellation of claims, to limit the placement of liens on public rights-of-way, promote segregation of recyclables, streamline landfill operations, revise toxics and packaging program, modify the management of universal waste under State law so they're consistent with Federal law and to coordinate the date of filing for toxic release information with Federal and State requirements.

The first section of this bill is with respect to potable drinking water as required under statute for affected residents where water supplies have been contaminated. This proposal will assist us in streamlining the cancellation of costs associated with short-term provision of potable water that are deemed uncollectible.

We have a fairly convoluted process that we have to go through. And this would actually streamline that process substantially where there are uncollectible costs where it's an accident for which there is no easily attached responsible party.

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STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION



Public Hearing - February 21, 2001
Environment Committee

Testimony Submitted by Commissioner Arthur J. Rocque, Jr.
Department of Environmental Protection

House Raised Bill No. 6690
An Act Concerning Recording Final Orders on Land Records

The Department of Environmental Protection strongly supports the concepts contained in Raised Bill no. 6690, An Act Concerning Recording Final Orders on Land Records.

Section One of this proposal would allow the Office of Long Island Sound Programs to file final orders issued under the Tidal Wetlands and Structures, Dredging and Fill coastal regulatory programs on town land records, thereby placing this enforcement program on an equal footing with the Waste, Water, and Air Bureaus, which already have the statutory authority to make such recordings. Recording of orders would enhance coastal enforcement efforts by educating property owners and real estate professionals, and provide innocent purchasers with fair warning of existing violations. Finally, I would like to point out that this proposal will apply such notice only to orders which have become final after opportunity for appeal, and that the Department is required to file an additional notice once the order is complied with.

Section Two of the bill simply follows up to clarify that existing statutory authority for other DEP programs to file orders on land records applies only to final orders of the Department.

Unfortunately, there are some discrepancies in the statutory citations in the raised bill, which my staff will be happy to work with Committee staff to resolve. Attached to my testimony is a technical amendment to correct this issue.

Thank you for the opportunity to comment. If you should require any additional information, please contact Tom Tyler, the DEP legislative liaison, at 424-3001.

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