

Legislative History for Connecticut Act

Act Number:	PA 04-96	
Bill Number:	446	
Senate Pages:	1098, 1204-1205	3
House Pages:	2085-2087	3
Committee:	Environment: 390, 392, 394-395, 460, 480-482, 538, 546-549, 560	14

Page Total:

20

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

Connecticut State Library

Compiled 2015

S-494

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
2004

VOL. 47

PART 4

903-1226

pat

39

001098

Senate

April 14, 2004

Calendar 138, S.B. 219, Madam President, would move to refer this item to the Appropriations Committee.

THE CHAIR:

Without objection, so ordered.

SEN. LOONEY:

Calendar 139, S.B. 446, Madam President, would move to place this item on the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

SEN. LOONEY:

Calendar Page 29, Calendar 140, S.B. 198, Madam President, would move to place this item at the Foot of the Calendar.

THE CHAIR:

Without objection, so ordered.

SEN. LOONEY:

Calendar 141 should be marked PR.

Calendar 144, S.B. 130, Madam President, would move to place this item on the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

SEN. LOONEY:

Calendar 146, S.B. 292, would move to place that item on the Consent Calendar.

THE CHAIR:

pat
Senate

145

001204

April 14, 2004

Calendar 287, S.B. 556.

Calendar 289 S.B. 290.

Calendar Page 11, Calendar 296, Substitute for S.B.
561.

Calendar 302, Substitute for H.B. 5354.

Calendar Page 12, Calendar 303, H.B. 5449.

Calendar 307, H.B. 5437.

Calendar 308, H.B. 5533.

Calendar Page 13, Calendar 328, Substitute for S.B.
596.

Calendar Page 14, Calendar 331, Substitute for S.B.
327.

Calendar Page 16, Calendar 346, S.B. 492.

Calendar Page 17, Calendar 355, S.B. 600.

Calendar Page 18, Calendar 362, S.B. 300.

Calendar Page 26, Calendar 98, S.B. 112.

Calendar 101, Substitute for S.B. 360.

Calendar Page 28, Calendar 127, S.B. 485.

Calendar 139, S.B. 446.

Calendar Page 29, Calendar 144, S.B. 130.

Calendar 146, S.B. 292.

Calendar 152, S.B. 415.

Calendar Page 31, Calendar 175, S.B. 308.

Calendar 184, Substitute for S.B. 26.

And Calendar Page 36, Calendar 262, S.B. 466.

pat

146

001205

Senate

April 14, 2004

Madam President, that completes those items previously placed on the First Consent Calendar.

THE CHAIR:

Thank you, Sir. If all members have voted on the Consent Calendar, if all members have voted, if all members have voted, the machine will be locked. The Clerk please announce the tally.

THE CLERK:

Motion is on adoption of Consent Calendar No. 1.

Total number voting 36; necessary for adoption, 19. Those voting "yea", 36; those voting "nay", 0. Those absent and not voting, 0.

THE CHAIR:

The Consent Calendar is adopted. At this time, the Chair will entertain points of personal privilege or announcements. Senator LeBeau.

SEN. LEBEAU:

Thank you, Madam President. I missed the last vote on H.B. 5545 and I would like to note, the Journal to note that if I were in the Chamber I would have voted in the affirmative.

THE CHAIR:

The Journal will so note, Sir.

SEN. LEBEAU:

Thank you very much.

H-915

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
2004

VOL. 47
PART 7
1892-2241

prh

194

002085

House of Representatives

Thursday, April 22, 2004

Roll Call. Members to the Chamber please.

SPEAKER CURREY:

Have all members voted? Have all members voted?
Please check the board and be sure your vote is properly
cast. If all members have voted, the machine will be
locked. The Clerk will take a tally.

The Clerk will announce the tally.

THE CLERK:

SB 486, as amended by House "A",

Total number voting, 145;

Necessary for passage, 73;

Those voting Yea, 145;

Those voting Nay, 0;

Absent, not voting, 6.

SPEAKER CURREY:

The bill as amended passes.

Will the Clerk please call Calendar 419?

THE CLERK:

On Page 27, Calendar 419, SB 446, AN ACT CONCERNING
MUNICIPAL CONSERVATION EASEMENTS. Favorable report of
the Committee on Judiciary.

SPEAKER CURREY:

Representative Caruso of the 126th.

REP. CARUSO:

(126th)

Good afternoon, Madam Speaker. Madam Speaker, I

move for acceptance of the joint committee's favorable report and passage of the bill in concurrence with the Senate.

SPEAKER CURREY:

The question before us is on acceptance and passage in concurrence with the Senate. Please proceed, sir.

REP. CARUSO: (126th)

Madam Speaker, in regard to preservation of open space or historical structures, this legislation will provide that the state or municipality may grant a conservation or preservation restriction to charitable corporations or trusts. And I call on my colleagues to support this legislation. Thank you.

SPEAKER CURREY:

Thank you, sir.

Would you care to comment further on the bill before us? Would you care to comment further on the bill before us? If not, staff and guests to the well of the House. The machine will be opened.

THE 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.

SPEAKER CURREY:

Representative McMahon. Representative McMahon?

prh

196

002087

House of Representatives

Thursday, April 22, 2004

Representative Janowski.

Have all members voted? Have all members voted?

Please check the board and be sure your vote is properly cast. If all members have voted, the machine will be locked. The Clerk will take a tally.

The Clerk will announce the tally.

THE CLERK:

SB 446, in concurrence with the Senate,

Total number voting, 145;

Necessary for passage, 73;

Those voting Yea, 145;

Those voting Nay, 0;

Absent, not voting, 6.

SPEAKER CURREY:

The bill passes in concurrence with the Senate.

Will the Clerk please call Calendar 103?

THE CLERK:

On Page 18, Calendar 103, HB 5486, AN ACT
CONCERNING BUILDING OFFICIALS AND INSPECTORS. Favorable
report of the Committee on Legislative Management.

SPEAKER CURREY:

Representative Leone of the 148th.

REP. LEONE:

(148th)

Thank you, Madam Speaker. I move acceptance of the
joint committee's favorable report and passage of the

JOINT
STANDING
COMMITTEE
HEARINGS

ENVIRONMENT
PART 2
379-716

2004

March 1, 2004
11:00 A.M.

car ENVIRONMENT COMMITTEE

PRESIDING CHAIRMEN: Senator Williams
Representative Widlitz

COMMITTEE MEMBERS:

SENATORS: Coleman, McKinney

REPRESENTATIVES: Chapin, Bernhard,
Caruso, Collins,
Davis, Fontana,
Giuliano, Hetherington
Jarmoc, Kalinowski,
Lewis, Megna,
Mushinsky, Piscopo,
Roy, Sharkey,
Urban, Stillman,
Willis, Wilber

SENATOR WILLIAMS: -- if we could close the doors in the back? Is Richard Blumenthal, the Attorney General here? Is Richard Blumenthal here? Our first -- in the first hour we're taking legislators, agency heads, municipal officials -- please, take a seat. We are beginning our Public Hearing. Will folks please take their seats? The Environment Committee is commencing its Public Hearing and take your conversations outside this room, please. Thank you. Attorney General Blumenthal is our first person to testify today.

ATTORNEY GENERAL RICHARD BLUMENTHAL: Good morning, Mr. Chairman, Madame Chairman, members of the Committee. I am here today to testify on a number of bills that are before you.

First, let me speak to SB445, AN ACT CONCERNING JURISDICTION OF MUNICIPAL INLAND WETLANDS COMMISSIONS, and this bill is probably the principal one on which I am here today, although I do want to submit testimony and I will, I have submitted written testimony but very briefly, let me explain that the purpose of this bill is to clarify the legislative intent, to make sure the intent is served by statutory provisions relating

before July 1, 2001. As to SB446, AN ACT CONCERNING MUNICIPAL CONSERVATION EASEMENTS, essentially, this bill provides municipalities with authority, indisputable authority, to grant easements necessary to preserve open space or historical structures.

The current law provides that a person -- any person, may grant a conservation easement or maintain land or water as open space or for agricultural farming or forest use.

An owner of land can grant a preservation easement for preserving a historically significant structure but the law also provides for a governmental entity or charitable organization or trust, to hold such an easement. What remains at issue is whether a municipality seeking to preserve its own land can grant a conservation easement through a charitable organization or trust.

In other words, can a municipality use its own land to make that kind of grant and the answer should be, yes, it would be yes under this law and that's why it's necessary.

I would like to say a final word about a bill that is also before the Committee. I haven't offered written testimony on it but I do want to support SB462, which again, would clarify or correct in our view, a misreading of the law on the part of our State's Supreme Court.

This decision in Waterbury versus Washington, a 2002 case that related to the Shipaug River essentially said that the regulations of the DEP must be followed under all circumstances without exception in determining what constitutes unreasonable pollution or impairment under the Protection Act.

You will hear from others, notably the Connecticut Fund for the Environment, perhaps other groups, that joined us in the lawsuit that related to the Shipaug River and the city of Waterbury, but essentially what this bill would do is make sure that the balance between the predictability and

and underground water and to the existence of many forms of animal, aquatic and plant life, indicated the Legislature's intent to protect not just the water, which is the way the Supreme Court read it, but also the wildlife.

I agree with you, having said all that, there are problems of definition as I indicated in my testimony. We'd be happy to work with members of the Committee in providing a better definition of what "dependent" means, if that's possible, but I think also through legislative history such as we're doing here, the court, both our State Supreme Court and other courts, would be advised that wildlife wandering, leaving, found somewhere else where they would not naturally be, predicted to be, would probably not be covered.

REP. HETHERINGTON: Thank you.

ATTY. GENERAL BLUMENTHAL: Thank you.

SEN. WILLIAMS: Are there further questions?
Representative Sharkey.

REP. SHARKEY: Good morning, Attorney General Blumenthal.

ATTY. GENERAL BLUMENTHAL: Good morning.

REP. SHARKEY: I wanted to first say, thank you for your endorsement of SB446 regarding municipal conservation easements. Probably about ten years ago, now, there was a young land use attorney that -- assistant town attorney in the town of Hamden who was grappling with that very issue and as we later learned, was not -- was unable to come up with a satisfactory solution to that problem of how does a town preserve its own land for future -- from future development and as you know, in Hamden we had to grapple with that issue yet again, recently, so this will help -- hopefully clarify that.

I also wanted to ask you though about your impressions of our courts interpretations of wetland statutes, generally. I was representing a

client in my private practice recently that went to the Supreme Court on an interpretation of the wetlands statutes and found that the Supreme Court's interpretations of those statutes involved in that case, was extremely narrow and I'm seeing that now and it seems to have been a trend with regard to the Wilton case and others, that there is a narrowing of focus on -- particularly with regard to our wetlands statutes, on the part of our courts. I don't know if you share that concern or have found that same kind of a trend, recently?

ATTY. GENERAL BLUMENTHAL: Well, I hesitate to comment, generally, or that generally on the trend of decision-making in our courts on an issue that can be quite complex in the way that it's presented factually in individual circumstances, but I would say that I am sufficiently concerned about this area, that I think a strong, clear statement by the Legislature is vitally needed to protect wildlife, animal species that are dependent on wetlands.

The court perhaps with the best of intentions, has adopted a very constricted, narrow view of the Legislature's intent, contrary to the very broad statement of purpose at the outset of the legislation and I'm very concerned in this instance that protection of wildlife and animal species requires this action.

REP. SHARKEY: Thank you.

ATTY. GENERAL BLUMENTHAL: Thank you.

SEN. WILLIAMS: Further questions? Thank you very much.

ATTY. GENERAL BLUMENTHAL: Thank you.

SEN. WILLIAMS: Next, Representative Janice Giegler to be followed by Representative MaryAnn Carson.

REP. CARSON: We're coming together, if that's okay?

REP. GIEGLER: Good morning. Good morning, Chairman Williams, Chairman Witlitz, ranking members of the Environment Committee. I'm Representative Jan Giegler, representing the 138th District of Danbury

Group and the subcommittees. Basically, everyone involved agrees that the problem is not just broke but needs to be completely scuttled and rebuilt and HB5237, the solution there is to throw a ton of money and a ton of data at the current system and that, I would offer, is not the right solution.

Again, I would point you to the Program Review and Investigation Committee's bills as well, I did attach a copy of our presentation on those two bills. We think those are a much more sensible approach and we would support, with some relatively minor changes, those bills. With that, I'll conclude and be glad to try and answer any questions you may have.

SEN. WILLIAMS: Thank you. Are there questions? Thank you. Tom O'Dell to be followed by Ann Letendre then Michael Aurella, Adam Moore and Derek Murrous.

THOMAS O'DELL: Good afternoon, Senator Williams, other members of the Environment Committee. My name is Tom O'Dell. I'm president of the Connecticut Association of Conservation and Inland Wetlands Commissions, better known as CACIWC.

CACIWC is today is testifying in support of SB445, SB462 and SB446, the latter two are being submitted in separate testimony. CACIWC as a member of the Connecticut Inland Wetlands Working Group, the group working with the DEP to -- on this legislation, which Deputy Commissioner Stahl referred to in the DEP's testimony.

We strongly support the -- excuse me, the intent of this legislation and purpose of this legislation but do believe that it can be strengthened perhaps using the language that the DEP submitted with their testimony.

The group has been working with DEP to develop that language. Based on legislative findings in Connecticut's Inland Wetlands and Watercourses Act, for 30 plus years, municipal inland wetlands agencies have considered as part of their jurisdiction, impacts to fish and other beneficial aquatic organisms, wildlife and vegetation that

MARTIN MADOR: Good afternoon, Representative Widlitz and members of the Committee. I'm Marin Mador and past president of the Quinnipiac River Water Shed Association. I'm currently treasurer of the statewide Rivers Alliance. I'm treasurer of the Mill River Water Shed Association, a member of the Hamden Natural Resources and Open Space Commission, which is Hamden's Conservation Commission, and I hold a graduate degree from the Yale School of Forestry in Environmental Studies.

I want to talk to you about SB446, but I want to digress for just a few seconds to mention HB5237, the Water Planning. I think it's absolutely critical that the state commence some significant state water planning activities.

There's now a bill before you. There's some issues as to how exactly that bill should be written. Let me urge you, as strongly as I can, to pass some bill this session to start the water planning process which is absolutely mandatory for the state to start addressing all the water issues that we have.

Now, I'm mainly here to talk about SB446, the act about municipal conservation easements. After Hamden took a portion of a municipal golf course in the center of town to build a sorely needed middle school, some of us started looking for a way to permanently protect the remaining open space.

The Mayor, who is become a strong supporter of environmental quality of life priorities, agreed that some way must be found to do this. I spoke with many legal authorities around the state. We discussed various types of easements, deed restrictions, town charter revisions and so on.

Not a single person I spoke to could point to a strategy, which would unquestionably protect this municipally owned open space. The issue has passed the Attorney General's Office when I spoke to them last fall with a request that we look for an appropriate legal mechanism to protect municipal open space.

This is open space that the town, itself, wants to protect and preserve as open space. SB446 is the result of these efforts. As always, the Attorney General proved a valuable friend. Conservation easements have been recognized in every state in the U.S., as an effective tool for preserving open space.

Connecticut established conservation easements no later than 1971, when they passed Public Act 173. The present bill does nothing more than add language to that Act which is been here for 30 years, providing the conservation easements given by municipalities and any other political subdivisions of the state on lands which they own are explicitly recognized by state statute.

This is not a mandate, it has no fiscal implications whatsoever, to my knowledge nobody is even here testifying against the bill today. It simply says, if a town wishes on its own to protect open space by giving a conservation easement, the state by statute authorizes the town to do so and this will help that conservation easement stand if someone challenges it in court somewhere down the road.

Now, attached to my statement is a letter from Hamden Mayor, Carl Amento, in support of this bill. I won't bother reading the letter. It's worded for itself, self-evident. The Hamden Natural Resources and Open Space Commission has endorsed the bill, as well. I thank the Committee for raising the bill this session and I urge its passage.

REP. WIDLITZ: Thank you. Good bill, ought to pass, no opposition. Representative Sharkey.

REP. SHARKEY: Yes, I'd echo that, Madame Chair. Marty, thanks for testifying today. As I alluded to the - - with the Attorney General earlier this morning, this is a problem that actually I dealt with as an assistant town attorney about ten years ago with the town and we really, when we first were looking at this problem on this particular property in town, and there was really no mechanism, it proved, actually when the middle school issue came along in

Hamden, we needed a new place for it, there were the protections we put in place ten years ago weren't really sufficient to kind of keep it the way it is. Have you heard from other towns, though, about their interest in this legislation and their ability and also, what are the properties in Hamden, for example, could we look at for this kind of protection?

MARTIN MADOR: Yes, I have talked to people in other towns and met with the same response I get from everybody. Nobody really knows how to do this. There is significant -- the interest in doing this, sometimes easements are placed on towns at the time that there's a title transfer or when perhaps there's a subdivision application and part of the subdivision area is reserved for open space.

But, the issue of towns taking space -- land, they currently own and putting some sort of protection on it, to insure that in the future that it remains open space, is something that no town I've talked to has been able to find a good solution for, so I think there is interest in other towns. In fact, I think this bill will serve to encourage towns to think about putting permanent protections on open space they already have.

REP. WIDLITZ: Thank you for your testimony. Raphael Podolsky followed by Gary VanNoordenen, Noordenen.

RAPHAEL PODOLSKY: Representative Widlitz and members of the Committee. Thank you very much. My name is Raphael Podolsky. Contrary to the way I signed the sign-in sheet, I'm here on behalf of the Hartford Preservation Alliance of which I'm a board member.

The Hartford Preservation Alliance is an urban preservation group that advocates for the revitalization of the city of Hartford by using its historic architecture as its key asset rather than by tearing down buildings and demolishing them.

We're interested -- I'm here to testify on SB462, which we're interested in because the Environmental Protection Act includes the protection of historic buildings and historic districts as part of the



Connecticut Association of Conservation and Inland Wetlands Commissions, Inc.

23

P.O. Box 2373 • Vernon, CT 06066-1773
 860-96-4731 • 860-399-1807
www.caciwc.org

ENVIRONMENT COMMITTEE HEARING

Monday, March 1, 2004

Raised Bill (S.B.) No. 445

AN ACT CONCERNING JURISDICTION OF MUNICIPAL INLAND WETLANDS COMMISSIONS

Testimony Presented by Tom Odell, President

CACIWC is a non-profit organization working to protect Connecticut's wetlands and watercourses and other natural resources through information and education of the 2000+ volunteers and staff that carry out the responsibilities of Connecticut's Conservation and Inland Wetlands Commissions. CACIWC, representing 170-member commissions state wide, works with municipalities and environmental groups to promote public support for the judicious management and conservation of Connecticut's natural resources.

CACIWC is testifying today in support of: **S.B. 445** An Act Concerning Jurisdiction of Municipal Inland Wetlands Commissions; **S.B. 462** An Act Concerning Environmental Regulation and a Presumption Against Unreasonable Impairment or Destruction of the Public Trust in Natural Resources; and **S.B. 446** An Act Concerning Municipal Conservation Easements.

CACIWC, as a member of the CT Inland Wetland Act Working Group (CIWA), a grass roots coalition of environmental organizations, **strongly supports the intent and purpose of S.B. 445**, which would **restore** the authority of Municipal Inland Wetlands and Watercourse Agencies to consider impacts of development to the wildlife and other biological characteristics of wetlands and watercourses which were effectively eliminated by the Connecticut's Supreme Court Decision in *AvalonBay Communities, Inc. vs Inland Wetlands Commission of the Town of Wilton*.

Based on the legislative findings of Connecticut's Inland Wetlands and Watercourses Act for 30+ years Municipal Inland Wetlands Agencies have considered as part of their jurisdiction impacts to fish and other beneficial aquatic organisms, wildlife and vegetation, that depend upon such wetlands and watercourses for their existence. The Court's ruling took away that jurisdiction and instilled considerable confusion in the land use decision process.

Since the Court's decision in October 2003 CACIWC has received numerous calls from Inland Wetland Commissioners with examples of how the Court's decision has negatively impacted their decision process and have requested CACIWC to assist in restoring the jurisdiction wetland agencies had prior to the Court's decision. We believe S.B. Bill 445 is a big step toward restoring previous jurisdiction and urge your support.

Please note that separate testimony has been submitted for S.B. 446 and S.B. 442.

(3)



CARL J. AMENTO
Mayor

TOWN OF HAMDEN

Natural Resources and Open Space Commission

Hamden Government Center
2750 Dixwell Ave.
Hamden, CT 06518
(203) 287-7100

Environment Committee

March 1, 2004

Testimony of

Martin Mador, 130 Highland Ave., Hamden, CT 06518

In Support of

SB 446 AAC Municipal Conservation Easements

I am past President of the Quinnipiac River Watershed Association, Treasurer of both the statewide Rivers Alliance and the Mill River Watershed Association, a member of the Hamden Natural Resources and Open Space Commission, and a member of the Connecticut Green Building Council. I am also a graduate of the Yale School of Forestry and Environmental Studies.

After Hamden took a portion of a municipal golf course in the center of town to build a sorely needed middle school, some of us started looking for a way to permanently protect the remaining open space. The mayor, who has become a strong support of environmental quality of life priorities, agreed that some way must be found to do this.

I spoke with many legal authorities around the state. We discussed various types of easements, deed restrictions, town charter revisions, etc. Not a single person could point to a strategy which would unquestionably protect our open space parcel. This issue was passed to the Attorney General's office, with a request that we find an appropriate legal mechanism to protect municipally owned open space.

SB 446 is the result of those inquiries. As always, the Attorney General proved a valuable friend. Conservation easements have been recognized in every state as an effective tool for preserving open space. Connecticut established them no later than 1971, via P.A. 173. SB 446 does nothing more than add language providing that conservation easements given by municipalities and other political subdivisions of the state on lands they own are explicitly recognized by state statute. This is not a mandate. It has no fiscal implications whatsoever. It simply says, if a town wishes to protect open space by giving a conservation easement, it may do so.

Attached to my testimony is a letter from Hamden Mayor Carl Amento in support of this bill. The Hamden Natural Resources and Open Space Commission has endorsed it as well.

I thank the committee for raising SB 446 this year, and urge its passage.



Carl J. Amento
Mayor

TOWN OF HAMDEN
OFFICE OF THE MAYOR

Hamden Government Center
2750 Dixwell Avenue
Hamden, Connecticut 06518
Tel: (203) 287-7100
Fax: (203) 287-7101

MEMORANDUM

To: General Assembly Environment Committee

From: Mayor Carl Amento *Carl Amento*

Re: SB 446, An Act Concerning Municipal Conservation Easements

Date: March 1, 2004

I support passage of SB 446, An Act Concerning Municipal Conservation Easements. The Act would provide needed clarification that a municipality has the authority to grant a conservation easement on municipally-owned real property in order to preserve and protect it as open space. The Town of Hamden would like to grant such an easement to preserve and protect some 65 acres in the center of our Town, once used as Meadowbrook Golf Course, as open space, to be used as a Town Center Park. We would like to be assured that this grant of a conservation easement could not be questioned later on a legal or technical basis.

41

LAND WETLAND
COMMISSION
Telephone (203) 563-0180
Fax (203) 563-0284



TOWN HALL
238 Danbury Road
Wilton, Connecticut 06897

March 1, 2004

Environment Committee
Legislative Office Building
Hartford, CT

RE: SB#446 concerning the protection of wetland dependent wildlife

Dear Committee Members:

I hold a B.S. in environmental biology and have been a practicing wetland scientist for nearly twenty years. The last 11 of those years I have served as the Director of Environmental Affairs for the Town of Wilton. I am intimately familiar with the AvalonBay vs. Wilton case and the issues that the Supreme Court raised in its decision.

The decision far too narrowly defines the scope of wetland protection in their opinion that the Inland Wetlands and Watercourses Act covers only the physical elements of the wetlands or watercourses and not their biology. The Court concluded that conservation of wildlife was a secondary benefit of protecting the physical wetland or watercourse. This conclusion is bad science and arguably bad law in that this conclusion disregards the Purpose of the Act as written.

In the natural world when one entity depends on another, the dependence is reciprocated. That is to say, the physical aspects of wetlands and watercourses are equally dependent on the presence of the biological world to shape their existence. For example, vegetation continually takes and replenishes organic nutrients, and wildlife cycles nutrients and alters soils through burrowing, etc.

For the Supreme Court only to allow for the remote potential that the biological elements influence the physical element in a footnote displays an ignorance of science. SB#445 appropriately seeks to clarify the intent of the Act and incorporates basic principles of ecology.

Res ectfull submitted,

Patricia Sesto
Director of Environmental Affairs

000549


RICHARD BLUMENTHAL
ATTORNEY GENERAL



55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120

Office of The Attorney General
State of Connecticut

*TESTIMONY OF
ATTORNEY GENERAL RICHARD BLUMENTHAL
BEFORE THE ENVIRONMENT COMMITTEE
MARCH 1, 2004*

I appreciate the opportunity to speak in support of Senate Bill 446, An Act Concerning Municipal Conservation Easements.

Senate Bill 446 will provide municipalities with indisputable authority to grant easements necessary to preserve open space or historical structures.

Current law provides that any person may grant an conservation easement to maintain land or water as open space, or for agricultural, farming or forest use. Similarly, any owner of land can grant a preservation easement to preserve an historically significant structure or site. The law also presently provides that any government entity or charitable corporation or trust may hold such easement.

What remains unclear is whether a municipality seeking to preserve its own land can grant a conservation easement to a charitable organization or trust. A member of a local open space commission approached my office seeking a legal opinion on whether municipalities have such authority. The law's current ambiguity should be dispelled, and cities and towns should have the authority to grant such easements to preserve land for future generations.

I urge the committee's favorable consideration of Senate Bill 446.



Connecticut Association of Conservation and Inland Wetlands Commissions, Inc.

23

000560

P.O. Box 2373 • Vernon, CT 06066-1773
860 876-4731 • 860 366-1907
www.caciwc.org

ENVIRONMENT COMMITTEE HEARING Monday, March 1, 2004

Raised Bill No. 462

AN ACT CONCERNING ENVIRONMENTAL REGULATION AND A PRESUMPTION AGAINST UNREASONABLE IMPAIRMENT OR DESTRUCTION OF THE PUBLIC TRUST IN NATURAL RESOURCES

CACIWC is a non-profit organization working to protect Connecticut's wetlands and watercourses and other natural resources through information and education of the 2000+ volunteers and staff that carry out the responsibilities of Connecticut's Conservation and Inland Wetlands Commissions. CACIWC, representing 170-member commissions state wide, works with municipalities and environmental groups to promote public support for the judicious management and conservation of Connecticut's natural resources.

The Connecticut Association of Conservation and Inland Wetlands Commissions, Inc., a member of the CEPA Working Group, a grassroots environmental coalition, strongly supports Raised Bill No. 462 as a means to clarify that the Connecticut Environmental Protection Act may be used to protect Connecticut's environment in instances where existing statutes and/or regulations are found to be inadequate to do so.

The need for this clarification was demonstrated in a 2002 Connecticut Supreme Court decision. In Waterbury v. Washington the Court held that existing regulations must govern the Court's determination as to what constitutes unreasonable pollution or impairment under the Protection Act even when it is demonstrated that such regulations are not sufficient to protect the environment. Thus, the court determined that what constituted an adequate flow level for the Shepaug River was governed by DEP regulations even though DEP had testified that the 20 year old regulations were not ecologically based and were not sufficient to protect the health of the river.

Raised Bill 462 will allow the Court to consider new evidence of what constitutes unreasonable pollution or impairment in addition to existing regulations. CACIWC urges the Environment Committee to approve this Bill.

Raised Bill No. 446

AN ACT CONCERNING MUNICIPAL CONSERVATION EASEMENTS

CACIWC supports Raised Bill No. 446 as a means of providing municipalities with a mechanism for protecting important conservation lands, creating opportunity for conservation stewardship and promoting partnerships with conservation organizations such as land trusts. We urge the Environment Committee to support RB No. 446.