

**CONNECTICUT  
RECREATION AND NATURAL HERITAGE TRUST PROGRAM  
&  
OPEN SPACE AND WATERSHED LAND ACQUISITION GRANT PROGRAM**

**I. Overview**

The fourth most densely populated state in the country,<sup>1</sup> the State of Connecticut has instituted two land protection programs to protect its valuable natural diversity and scenic beauty: the Recreation and Natural Heritage Trust Program and the Open Space and Watershed Land Acquisition Grant Program. Envisioning a mixed landscape that provides recreational opportunities, water supply protection, preservation of natural communities, green space for city residents, and healthy land for agriculture, the state has established a goal of owning ten percent of Connecticut's land area as open space additions to the state system of parks, forests, wildlife, fisheries, and natural resource management areas. The state's overarching goal is to have a total of 21 percent of the state's land area preserved as open space in state, municipal, private, nonprofit, water utility, and federal ownership by 2023.<sup>2</sup>

The Recreation and Natural Heritage Trust Program was established by the Connecticut Legislature in 1986. Under the program, the state may expand Connecticut's system of parks, forests, wildlife, and other natural open spaces through land acquisition.<sup>3</sup> In 1998, the Connecticut Legislature created the Open Space and Watershed Land Acquisition Grant Program, an open space matching grant program for municipalities, nonprofit conservation groups, and water companies.<sup>4</sup> Together, the two programs have protected a total of 36,026 acres, with 18,955 acres acquired under the Recreation and Natural Heritage Trust Program and 17,271 acres protected through grants administered by the Open Space and Watershed Land Acquisition Program.<sup>5</sup>

Both programs have legal authority to prioritize land acquisition (or funding for land acquisition) based on biodiversity considerations and do utilize acquisition scoring processes that incorporate biological considerations. Both programs are likely to reference the state's wildlife action plan (formerly known as the Comprehensive State Conservation Strategy) in scoring and prioritizing land acquisitions and open space grants.

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<sup>1</sup> U.S. Census Bureau, *Cumulative Estimates of Population Change for the United States and States, and for Puerto Rico - April 1, 2000 to July 1, 2004*, at [http://www.census.gov/popest/gallery/maps/Maps\\_State2004.xls](http://www.census.gov/popest/gallery/maps/Maps_State2004.xls) (Jul. 1, 2004).

<sup>2</sup> Connecticut Department of Environmental Protection, *Open Space Acquisition*, at <http://dep.state.ct.us/rec/openspace/acquisition.htm> (last visited April 26, 2005).

<sup>3</sup> Connecticut Department of Environmental Protection, *The Recreation and Natural Heritage Trust Program*, at <http://dep.state.ct.us/rec/openspace/rnhtp.htm> (last visited April 26, 2005).

<sup>4</sup> Connecticut Department of Environmental Protection, *Open Space and Watershed Land Acquisition Grant Program*, at <http://dep.state.ct.us/rec/openspace/opensp31.htm> (last updated February 25, 2005).

<sup>5</sup> Letter from Elizabeth Brothers, Assistant Director Land Acquisition and Management, Connecticut Department of Environmental Protection, to Roxanne Thomas, Science & Policy Analyst, Environmental Law Institute (May 2, 2005) (on file with author).

## II. Connecticut's Open Space Programs

Both the Recreation and Natural Heritage Trust Program (Trust Program) and the Open Space and Watershed Land Acquisition Grant Program (Grant Program) are administered by the Connecticut Department of Environmental Protection (CTDEP) Land Acquisition and Management Division. Neither open space program has biologists or ecologists on staff, but both work very closely, particularly in evaluating parcels for acquisition or funding, with multiple divisions within the agency that do staff biologists and ecologists, among other natural resource experts.<sup>6</sup> Connecticut law has also established the Natural Heritage, Open Space and Watershed Land Acquisition Review Board to provide assistance and advisory services for the two programs.<sup>7</sup> Specifically, the board provides comments on selection criteria, policies, and procedures; promotes public participation; provides guidance and conducts review of land protection strategies; reviews and evaluates grant award policies and procedures; provides comment on funding applications; and reports on grant awards and recommendations for the two programs.<sup>8</sup>

### *Recreation and Natural Heritage Trust Program*

The Trust Program, established in the Connecticut General Statutes, authorizes the CTDEP to acquire and preserve land with the following attributes: ecological diversity, unusual natural interest, essential habitat for endangered and threatened species, and potential for carbon dioxide offset.<sup>9</sup> The program's purpose is "to ensure the preservation and conservation of such land for recreational, scientific, educational, cultural and aesthetic purposes." Land is generally acquired as additions to the state system of parks, forests, wildlife and fishery management areas, natural areas, and dedicated natural area preserves.<sup>10</sup>

Funding for the program (both acquisition and maintenance of land) is provided through the sale of state bonds.<sup>11</sup> Funding is ultimately approved by the state's Bond Commission,<sup>12</sup> after first receiving approval by the governor and the legislature.<sup>13</sup> In recent years, funding for the Trust Program has been irregular. For example, in Fiscal Year 2004, the program, receiving no newly allocated funds, operated off of a balance remaining from previous years. As such, acquisition

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<sup>6</sup> Telephone Interview with David Stygar, Environmental Analyst, Connecticut Department of Environmental Protection (April 5, 2005).

<sup>7</sup> The board consists of 21 members representing the multiple sectors, including: the Connecticut General Assembly; the Connecticut Office of Policy and Management; the state's business community; investor-owned, municipal, and regional water utilities; experts on public access, real estate law, construction and land development; watershed conservation groups; environmental protection and natural resource conservation nonprofits; and town officials. CONN. GEN. STAT. § 7-131e(c).

<sup>8</sup> CONN. GEN. STAT. §§ 7-131e(b) to 7-131e(d).

<sup>9</sup> CONN. GEN. STAT. §§ 23-74 to 23-80.

<sup>10</sup> *Id.*

<sup>11</sup> Funds received as contributions from governmental or private sources may also be used to support the program. CONN. GEN. STAT. § 23-77.

<sup>12</sup> The State Bond Commission is a ten-member body that is empowered under the Connecticut General Statutes to allocate bond funds to finance specific projects and purposes. The commission is made up of the governor, three state constitutional officers, four state legislators, and two state agency heads. *See* State of Connecticut - Office of the State Comptroller, *Bond Allocation Database*, at <http://www.osc.state.ct.us/finance/members.htm> (last visited April 27, 2005).

<sup>13</sup> Telephone Interview with Beth Brothers, Assistant Director Land Acquisition and Management, Connecticut Department of Environmental Protection (April 11, 2005).

has decreased in recent years also.<sup>14</sup> Since the program's inception in 1986, approximately \$174 million has been expended to protect 18,955 acres.<sup>15,16</sup>

### ***Open Space and Watershed Land Acquisition Grant Program***

The Grant Program, established in a different section of the Connecticut General Statutes, authorizes the CTDEP to provide grants to municipalities and nonprofit land conservation organizations for land acquisition (or the acquisition of permanent interests in land) for open space and watershed protection.<sup>17</sup> The program also provides grants to water companies<sup>18</sup> to acquire Class I or Class II land.<sup>19,20</sup> Grants are provided for the purchase of land (or the purchase of permanent interests in land) that meets criteria defined by the statute: protection of land valuable for recreation, forestry, fishing, conservation of wildlife or natural resources; protection of prime natural features of the state's landscape; protection of habitat for native plant or animal species listed as threatened or endangered or of special concern; protection of a relatively undisturbed, outstanding example of a native ecological community; enhancement and conservation of water quality; preservation of local agricultural heritage; or, in the case of grants to water companies, protection to Class I land or Class II land. Grants can also be made to

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<sup>14</sup> *Id.*

<sup>15</sup> Governor John Rowland set the state's open space goals in 1998, which marked a significant increase in acquisition (18,344 acres at a cost of \$172,777,000 since 1998). However, irregular funding in recent years has led to decreased acquisition. Brothers, *supra* note 13.

<sup>16</sup> Brothers, *supra* note 5.

<sup>17</sup> CONN. GEN. STAT. §§ 7-131d to 7-131k.

<sup>18</sup> Connecticut law defines a "water company" as "any individual, partnership, association, corporation, municipality or other entity, or the lessee thereof, who or which owns, maintains, operates, manages, controls or employs any pond, lake, reservoir, well, stream or distributing plant or system that supplies water to two or more consumers or to twenty-five or more persons on a regular basis provided if any individual, partnership, association, corporation, municipality or other entity or lessee owns or controls eighty percent of the equity value of more than one such system or company, the number of consumers or persons supplied by all such systems so controlled shall be considered as owned by one company for the purposes of this definition." CONN. GEN. STAT. § 25-32a.

<sup>19</sup> "Class I" land includes "all land owned by a water company or acquired from a water company through foreclosure or other involuntary transfer of ownership or control which is either: (1) [w]ithin two hundred and fifty feet of high water of a reservoir or one hundred feet of all watercourses as defined in agency regulations . . .; (2) within the areas along watercourses which are covered by any of the critical components of a stream belt; (3) land with slopes fifteen percent or greater without significant interception by wetlands, swales and natural depressions between the slopes and the watercourses; (4) within two hundred feet of groundwater wells; (5) an identified direct recharge area or outcrop of aquifer now in use or available for future use, or (6) an area with shallow depth to bedrock, twenty inches or less, or poorly drained or very poorly drained soils as defined by the United States Soil Conservation Service that are contiguous to land described in subdivision (3) or (4) of this subsection and that extend to the top of the slope above the receiving watercourse." "Class II" land is defined as "all land owned by a water company or acquired from a water company through foreclosure or other involuntary transfer of ownership or control which is either (1) on a public drinking supply watershed which is not included in Class I or (2) completely off a public drinking supply watershed and which is within one hundred and fifty feet of a distribution reservoir or a first-order stream tributary to a distribution reservoir." The statute also includes a "Class III" classification, which includes "all land owned by a water company or acquired from a water company through foreclosure or other involuntary transfer of ownership or control which is unimproved land off public drinking supply watersheds and beyond one hundred and fifty feet from a distribution reservoir or first-order stream tributary to a distribution reservoir." See CONN. GEN. STAT. § 25-37c. Class III lands are not included in the open space grant program criteria.

<sup>20</sup> CONN. GEN. STAT. § 7-131d.

distressed municipalities or targeted investment communities<sup>21</sup> for restoration or protection of open space already owned by the municipality.<sup>22</sup>

According to the statute, the state must hold a conservation easement for any property acquired with grant funds, or the state may designate a municipality or conservation organization to hold the easement. If the land has been acquired for purposes of water protection, a water company may hold the easement in conjunction with either the state or a conservation organization. In most cases, lands must also be accessible by the public.<sup>23,24</sup>

Funding for the Grant Program is also provided through the sale of state bonds.<sup>25,26</sup> The relevant statutes have established an “open space and watershed land acquisition account” where funds in support of the program may be deposited.<sup>27</sup> Funding for the Grant Program has also been irregular in recent years. For fiscal years 1999 to 2002, the state legislature authorized funding that provided for two grant rounds annually. However, during fiscal years 2003 to 2005 the program received funding that provided for only one grant round annually.<sup>28</sup> Since the program’s inception in 1998, approximately \$64 million has been expended to fund the acquisition of 17,271 acres through grants to municipalities, conservation organizations and water companies.<sup>29</sup>

Local municipalities, conservation organizations, and water companies receiving grants for land acquisition are required to provide matches of varying amounts, depending on the type of land to be protected. Table 1 below lists the required matches for grants under the program.

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<sup>21</sup> A “distressed municipality” is “any municipality in the state which, according to the United States Department of Housing and Urban Development meets the necessary number of quantitative physical and economic distress thresholds..., or any town within which is located an unconsolidated city or borough which meets such distress thresholds...” CONN. GEN. STAT. § 32-9p. A “targeted investment community” is “a municipality which contains an enterprise zone [as defined in the Connecticut General Statutes].” CONN. GEN. STAT. § 32-222.

<sup>22</sup> CONN. GEN. STAT. § 7-131d.

<sup>23</sup> Exceptions to this requirement generally include: Class I or Class II lands for which recreational activities would compromise drinking water safety; lands where public access might be detrimental to wildlife habitat or other natural resources; lands where development rights have been purchased; or for lands where public access might interrupt agricultural activities. These cases are reviewed and approved at the discretion of the CTDEP. CONN. GEN. STAT. § 7-131d(e).

<sup>24</sup> CONN. GEN. STAT. §§ 7-131d to 7-131k.

<sup>25</sup> Funds received as gifts or donations may also be used to support the program. CONN. GEN. STAT. § 7-131e(e).

<sup>26</sup> Stygar, *supra* note 6.

<sup>27</sup> CONN. GEN. STAT. § 7-131e(e).

<sup>28</sup> In FY 1999, the Grant Program was authorized to receive \$10 million and spent the money in two grant rounds (one in fall and one in the spring). In FY 2000-2002, the Grant Program was authorized annually to receive \$12 million and spent the money in two grant rounds each year. In FY 2003, the program was authorized at \$13 million, but received only \$6.5 million for the fall grant round. In FY 2004, the program received a portion of the remaining funds from the 2003 authorization, \$4.5 million, and conducted one grant round in the spring. (Grant rounds for spring and fall 2003 were not funded.) In FY 2005, the program received \$5.5 million for a spring grant round. (The fall 2004 grant round was not funded.)

<sup>29</sup> Telephone Interview with David Stygar, Environmental Analyst, Connecticut Department of Environmental Protection (June 17, 2005).

Type of Organization Receiving Grant	Type of Land to be Acquired	Required Match
Municipality	Open Space	≥ 50%
Municipality	Class I or Class II Land	≥ 35%
Distressed Municipality or Targeted Investment Community	Open Space	≥ 35%
Distressed Municipality or Targeted Investment Community	Resource Enhancement or Protection	≥ 50%
Nonprofit Land Conservation Organization	Open Space or Watershed Protection	≥ 50%
Nonprofit Land Conservation Organization	Open Space or Watershed Protection within a Distressed Municipality	≥ 35%
Water Company	Class I or Class II Water Supply	≥ 60%

Municipalities applying to the Grant Program are required to demonstrate how proposed acquisitions coordinate with both the state and local conservation and development plans.<sup>31</sup>

### **III. Land Protection Strategies**

#### ***Land Protection Tools***

The Trust Program acquires land on behalf of the state for protection. In most cases, the state acquires land through fee title. Conservation easements may also be acquired, but this occurs infrequently due to the public access requirement in the statutes.<sup>32</sup>

The Grant Program is authorized to fund land acquisition, “or easements, interests or rights therein, or for the development of such land, or easements, interests or rights therein.”<sup>33</sup> However, in most cases, the program has funded fee purchase of land. The program has funded the purchase of development rights on occasion, but these cases occur infrequently due to the public access requirement in the statutes.<sup>34</sup> In any event, a permanent conservation easement is conferred to the state (or a designee of the state) once interest in the land has been permanently acquired.<sup>35</sup>

#### ***Prioritizing Land Protection***

Both Connecticut open space programs may target lands for biodiversity, as well as other purposes enumerated in their respective statutes. Authorizing legislation for the Trust Program

<sup>30</sup> CONN. GEN. STAT. § 7-131g. *See also*: Connecticut Department of Environmental Protection, *supra* note 4.

<sup>31</sup> State statutes require that local planning and zoning commissions “prepare, adopt and amend a plan of conservation and development for the municipality.” The purpose of a Plan of Conservation and Development is to give direction to both public and private development, provide a long-term vision for the community development, and offer guidance for short-term decision-making. CONN. GEN. STAT. § 8-23. Similarly, state law requires Connecticut’s Office of Policy and Management to prepare a state plan of conservation and development on a recurring five-year cycle. The plan serves as a statement of the development, resource management and public investment policies for the State. CONN. GEN. STAT. §§ 16a-24 to 16a-33.

<sup>32</sup> Brothers, *supra* note 13.

<sup>33</sup> CONN. GEN. STAT. § 7-131d(d).

<sup>34</sup> Stygar, *supra* note 6.

<sup>35</sup> CONN. GEN. STAT. § 7-131d(e).

states, “In determining whether sites shall be acquired, the department shall consider whether the site is: (1) [i]dentified as having high priority recreation, forestry, fishery, wildlife or conservation value...; (2) a prime natural feature of the Connecticut landscape, such as a major river, its tributaries and watershed, mountainous territory, an inland or coastal wetland, a significant littoral or estuarine or aquatic site or any other important geologic feature; (3) habitat for native plant or animal species listed as threatened or endangered or of special concern ...; (4) a relatively undisturbed outstanding example of a native ecological community which is now uncommon; or (5) threatened with conversion to incompatible uses or contains sacred sites or archaeological sites of state or national importance.”<sup>36</sup> The Grant Program’s authorizing legislation includes prioritization based on biodiversity considerations implicitly, stating, “In making grants-in-aid for open space land acquisition or development, ...[CTDEP] shall...[s]eek to achieve a reasonable balance among all parts of the state in the relative adequacy of present areas devoted to recreational and conservation purposes and the relative anticipated future needs for additional areas devoted to recreational and conservation purposes...”<sup>37</sup>

The two programs utilize separate but similar scoring processes to assess and prioritize land acquisition and grants for land acquisition. Under each scoring process, a potential land or grant application is sent to multiple divisions within the CTDEP for evaluation. Division staff rate the application according to their expertise (for example, the Wildlife Division scores the application based on its expertise in species and habitat, while the Division of Forestry scores the application based on the land parcel’s forestry interests). Each division uses different tools (e.g., GIS, institutional expertise) and its own available data to assess and evaluate applications.<sup>38</sup>

Once each division has provided scoring and comments on potential land or grant applications, the two programs select projects somewhat differently. The Trust Program tallies scoring and prioritizes lands based on the rankings of each project.<sup>39</sup> The Grant Program uses scores to assemble multiple granting scenarios, which it then presents to the Review Board. The Review Board may make recommendations to the CTDEP Commissioner, who then has the final say on selected projects and funding levels.<sup>40</sup>

*Trust Program’s Scoring System.* The Trust Program’s scoring process, developed with assistance from the University of Connecticut, includes multiple criteria that relate to each of the evaluating division’s interests:<sup>41</sup> forest uses; property size; recreational opportunities; topography; water use; location and accessibility; correspondence to state and local conservation and development plans; watershed or aquifer protection; scenic or historic attributes; urban greenspace potential; status of ecological diversity; potential for education and research; importance of habitat; presence, type, and condition of wetlands; presence, status, and type of wildlife populations; proximity to existing protected parcels or trails; fish and water access; and

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<sup>36</sup> CONN. GEN. STAT. § 23-75.

<sup>37</sup> CONN. GEN. STAT. § 7-131f.

<sup>38</sup> Brothers, *supra* note 13.

<sup>39</sup> *Id.*

<sup>40</sup> Stygar, *supra* note 6.

<sup>41</sup> Brothers, *supra* note 13.

geologic and landform features.<sup>42</sup> The Trust Program has compiled a topographic map that depicts all reviewed projects, which is referenced in making final land acquisition decisions.<sup>43</sup>

*Grant Program's Scoring System.* The Grant Program's scoring system, drawn directly from the corresponding statute, contains three areas of evaluation: natural resources, administrative, and planning/development/local issues.<sup>44</sup> As described above, multiple divisions within the agency provide scoring and comment on the resource evaluation of a grant application, which includes criteria for recreation, open space, forestry, fisheries management, wildlife conservation and threatened or endangered species, habitat, ecological diversity, presence of natural or uncommon communities, proximity to significant habitats or other protected lands, farmland preservation, soil preservation, risk of development, preservation or enhancement of watersheds or water quality, and other natural features. Administrative criteria include municipality status (e.g. distressed or targeted), cooperation, funding availability, cost, survey and appraisal availability, property acquisition status, maintenance and operations cost estimates, and availability of stewardship funding. Local/development/planning criteria include: correspondence to the municipal and state plans of conservation and development; vulnerability to development, local/regional approval and cooperation, proximity to other protected land, percent of land parcel within the sponsoring agency's territorial limit, and concurrence with local and state open space goals.<sup>45</sup> Scoring is cumulative, with resource evaluation comprising 60 percent of the overall score. Each division's score is weighed equally.<sup>46</sup>

### ***Protection in Perpetuity***

The Trust Program purchases all lands in perpetuity, as specified in Connecticut's statutes on land and land titles.<sup>47</sup> The Grant Program's authorizing statutes also stipulate permanent protection, stating that "land acquired under this program shall be preserved in perpetuity predominantly in their natural scenic and open condition for the protection of natural resources while allowing for recreation consistent with such protection and, for lands acquired by water companies, allowing for the improvements necessary for the protection or provision of potable water." The state may obtain a permanent conservation easement over these lands to ensure this protection.<sup>48</sup> The state legislature may enact special legislation to allow for an exchange in property; however, this occurrence is extremely rare.<sup>49</sup>

Connecticut law includes funding provisions for long-term stewardship of land acquired by the state under the Trust Program.<sup>50</sup> Statutes provide for a "stewardship account" to "ensure the proper management of land acquired..." funded by the same source that provides for land acquisition. Up to 20 percent of the appraised value of acquired land may be deposited into the

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<sup>42</sup> Connecticut Department of Environmental Protection, Recreation and Natural Heritage Trust Program Scoring Sheet (on file with author).

<sup>43</sup> Brothers, *supra* note 13.

<sup>44</sup> Stygar, *supra* note 6.

<sup>45</sup> Connecticut Department of Environmental Protection, Open Space and Watershed Land Acquisition Grant Program Scoring Sheet (on file with author).

<sup>46</sup> Stygar, *supra* note 6.

<sup>47</sup> CONN. GEN. STAT. § 47-38 *et seq.*

<sup>48</sup> CONN. GEN. STAT. § 7-131d(a). *See also:* Connecticut Department of Environmental Protection, *supra* note 4.

<sup>49</sup> Brothers, *supra* note 13.

<sup>50</sup> CONN. GEN. STAT. § 23-77(b).

stewardship account for long-term management. CTDEP may also name an outside party as primary manager of the land, which can include payments for management expenses.<sup>51</sup> Irregular funding to the Trust Program in recent years has resulted in a suspension of funding for the stewardship account.<sup>52</sup> Long-term management of lands acquired under the Grant Program is the responsibility of the funded organization, municipality, or water company.<sup>53</sup>

#### **IV. State Wildlife Action Plan**

CTDEP's Wildlife Division is leading the task of developing the state's wildlife action plan (formerly known as the Comprehensive State Conservation Strategy). CTDEP envisions that the plan will aid in the integrated management of natural resources, help build valuable partnerships, and support regional and national efforts to secure long-term funding for wildlife conservation. The wildlife action plan identifies species of greatest conservation need and their affiliated habitats and includes conservation actions to address those needs. Various stakeholders were involved in analyzing data and providing scientific recommendations for the development of plan.<sup>54</sup>

Because the Wildlife Division reviews and provides input for all parcels of land and land protection grants under consideration by the two open space programs, CTDEP staff do anticipate that the wildlife action plan will be utilized in land acquisition and grant making decisions.<sup>55</sup>

#### **V. Summary**

Authorized by Connecticut statutes, the Recreation and Natural Heritage Trust Program and the Open Space and Watershed Land Acquisition Grant Program conserve open space primarily to protect natural areas and biodiversity. Purposes listed in the statute include, generally, the preservation of forestland, wildlife, and watersheds, as well as the preservation of farmland and, in the case of the Trust Program, the offset of carbon dioxide emissions.<sup>56</sup> Both programs have a strong recreational focus and require protected land to be accessible to the public. Evaluation processes used to select lands for protection reflect this authority. Connecticut's wildlife action plan will likely be utilized during land and grant evaluations for the two open space programs in the future.

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<sup>51</sup> CONN. GEN. STAT. § 23-79.

<sup>52</sup> Brothers, *supra* note 13.

<sup>53</sup> Stygar, *supra* note 6.

<sup>54</sup> Connecticut Department of Environmental Protection, *Connecticut's Comprehensive Conservation Wildlife Strategy*, at <http://dep.state.ct.us/burnatr/wildlife/geninfo/fedaid/cwcs/home.htm> (last visited April 27, 2005).

<sup>55</sup> Stygar, *supra* note 6; Brothers, *supra* note 13.

<sup>56</sup> CONN. GEN. STAT. §§ 7-131d(b), 23-74.