



Senate

General Assembly

File No. 364

February Session, 2012

Substitute Senate Bill No. 254

Senate, April 11, 2012

The Committee on Environment reported through SEN. MEYER of the 12th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT RESTRICTING THE APPLICATION OF FERTILIZERS THAT CONTAIN PHOSPHATE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2012*) (a) For the purposes of
2 this section:

3 (1) "Established lawn" means any area of ground that is covered
4 with any species of grass for two or more growing seasons and that is
5 customarily kept mowed;

6 (2) "Golf course" means an area solely designated for the play or
7 practice of the game of golf, including, but not limited to, surrounding
8 grounds, trees and ornamental beds; and

9 (3) "Organic lawn fertilizer" means fertilizer made from materials
10 derived from either plant or animal products containing naturally
11 occurring phosphorus.

12 (b) Notwithstanding chapter 427a of the general statutes, no person

13 shall apply fertilizer, as defined in section 22-111b of the general
14 statutes, that contains phosphate to an established lawn, except when:
15 (1) A soil test approved by the Commissioner of Agriculture and
16 performed within the previous one hundred eighty days indicates the
17 soil is lacking in phosphorus and fertilizer containing phosphate is
18 needed for the growth of such lawn, or (2) such fertilizer containing
19 phosphate is used for establishing new grass or repairing such lawn
20 with seed or sod.

21 (c) The provisions of this section shall not apply to: (1) Property
22 classified as agricultural land, as defined in section 22-26bb of the
23 general statutes, (2) a golf course, or (3) the application of organic lawn
24 fertilizer.

25 (d) Notwithstanding subsection (b) of this section, no person shall
26 apply any fertilizer, as defined in section 22-111b of the general
27 statutes, that contains phosphate to any lawn during the period
28 beginning November fifteenth and ending March fifteenth of the
29 following year.

30 (e) Notwithstanding chapters 427a and 441 of the general statutes
31 and subsections (b) and (d) of this section, no person shall apply any
32 fertilizer, as defined in section 22-111b of the general statutes, that
33 contains phosphate to any portion of a lawn that is located twenty feet
34 or less from any brook, stream, river, lake, pond, sound or any other
35 body of water.

36 (f) On and after October 1, 2012, any person who sells fertilizer, as
37 defined in section 22-111b of the general statutes, in a retail
38 establishment, shall separately display fertilizer products that contain
39 phosphate from fertilizer products that do not contain phosphate. Such
40 person shall post a sign at the point of sale for such fertilizer products
41 that states the following: "PHOSPHATE RUNOFF CAN POSE A
42 THREAT TO WATER QUALITY. CONNECTICUT LAW PROHIBITS:
43 (1) THE APPLICATION OF FERTILIZER THAT CONTAINS
44 PHOSPHATE TO AN ESTABLISHED LAWN, SUBJECT TO CERTAIN
45 EXCEPTIONS, (2) THE APPLICATION OF FERTILIZER THAT

46 CONTAINS PHOSPHATE TO ANY LAWN FROM NOVEMBER
47 FIFTEENTH THROUGH MARCH FIFTEENTH, AND (3) THE
48 APPLICATION OF FERTILIZER THAT CONTAINS PHOSPHATE TO
49 ANY PORTION OF A LAWN THAT IS LOCATED WITHIN TWENTY
50 FEET OF ANY BODY OF WATER.". Such sign shall be readily visible
51 to consumers of fertilizer at such retail establishment and shall be
52 printed in black lettering not less than thirty-eight-point type size
53 upon a white background.

54 (g) The Commissioner of Agriculture may adopt regulations, in
55 accordance with chapter 54 of the general statutes, to implement the
56 provisions of this section.

57 (h) Any person who violates subsection (b), (d), (e) or (f) of this
58 section shall be assessed a civil penalty by the Commissioner of
59 Agriculture of five hundred dollars.

60 Sec. 2. Subsection (c) of section 22a-478 of the general statutes is
61 repealed and the following is substituted in lieu thereof (*Effective from*
62 *passage*):

63 (c) The funding of an eligible water quality project shall be pursuant
64 to a project funding agreement between the state, acting by and
65 through the commissioner, and the municipality undertaking such
66 project and shall be evidenced by a project fund obligation or grant
67 account loan obligation, or both, or an interim funding obligation of
68 such municipality issued in accordance with section 22a-479. A project
69 funding agreement shall be in a form prescribed by the commissioner.
70 Eligible water quality projects shall be funded as follows:

71 (1) A nonpoint source pollution abatement project shall receive a
72 project grant of seventy-five per cent of the cost of the project
73 determined to be eligible by the commissioner.

74 (2) A combined sewer project shall receive (A) a project grant of fifty
75 per cent of the cost of the project, and (B) a loan for the remainder of
76 the costs of the project, not exceeding one hundred per cent of the

77 eligible water quality project costs.

78 (3) A construction contract eligible for financing awarded by a
79 municipality on or after July 1, [1999] 2012, as a project undertaken for
80 [nitrogen] nutrient removal shall receive a project grant of thirty per
81 cent of the cost of the project associated with [nitrogen] nutrient
82 removal, a twenty per cent grant for the balance of the cost of the
83 project not related to [nitrogen] nutrient removal, and a loan for the
84 remainder of the costs of the project, not exceeding one hundred per
85 cent of the eligible water quality project costs. [Nitrogen] Nutrient
86 removal projects under design or construction on July 1, [1999] 2012,
87 and projects that have been constructed but have not received
88 permanent, Clean Water Fund financing, on July 1, [1999] 2012, shall
89 be eligible to receive a project grant of thirty per cent of the cost of the
90 project associated with [nitrogen] nutrient removal, a twenty per cent
91 grant for the balance of the cost of the project not related to [nitrogen]
92 nutrient removal, and a loan for the remainder of the costs of the
93 project, not exceeding one hundred per cent of the eligible water
94 quality project costs.

95 (4) If supplemental federal grant funds are available for Clean Water
96 Fund projects specifically related to the clean-up of Long Island Sound
97 that are funded on or after July 1, [2003] 2012, a distressed
98 municipality, as defined in section 32-9p, may receive a combination of
99 state and federal grants in an amount not to exceed fifty per cent of the
100 cost of the project associated with [nitrogen] nutrient removal, a
101 twenty per cent grant for the balance of the cost of the project not
102 related to [nitrogen] nutrient removal, and a loan for the remainder of
103 the costs of the project, not exceeding one hundred per cent of the
104 allowable water quality project costs.

105 (5) A municipality with a water pollution control project, the
106 construction of which began on or after July 1, 2003, which has (A) a
107 population of five thousand or less, or (B) a population of greater than
108 five thousand which has a discrete area containing a population of less
109 than five thousand that is not contiguous with the existing sewerage

110 system, shall be eligible to receive a grant in the amount of twenty-five
111 per cent of the design and construction phase of eligible project costs,
112 and a loan for the remainder of the costs of the project, not exceeding
113 one hundred per cent of the eligible water quality project costs.

114 (6) Any other eligible water quality project shall receive (A) a project
115 grant of twenty per cent of the eligible cost, and (B) a loan for the
116 remainder of the costs of the project, not exceeding one hundred per
117 cent of the eligible project cost.

118 (7) Project agreements to fund eligible project costs with grants from
119 the Clean Water Fund that were executed during or after the fiscal year
120 beginning July 1, 2003, shall not be reduced according to the provisions
121 of the regulations adopted under section 22a-482.

122 (8) On or after July 1, 2002, an eligible water quality project that
123 exclusively addresses sewer collection and conveyance system
124 improvements may receive a loan for one hundred per cent of the
125 eligible costs provided such project does not receive a project grant.
126 Any such sewer collection and conveyance system improvement
127 project shall be rated, ranked, and funded separately from other water
128 pollution control projects and shall be considered only if it is highly
129 consistent with the state's conservation and development plan, or is
130 primarily needed as the most cost effective solution to an existing area-
131 wide pollution problem and incorporates minimal capacity for growth.

132 (9) All loans made in accordance with the provisions of this section
133 for an eligible water quality project shall bear an interest rate of two
134 per cent per annum. The commissioner may allow any project fund
135 obligation, grant account loan obligation or interim funding obligation
136 for an eligible water quality project to be repaid by a borrowing
137 municipality prior to maturity without penalty.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2012	New section

Sec. 2	<i>from passage</i>	22a-478(c)
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ENV *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 13 \$	FY 14 \$
Treasurer, Debt Serv.	GF - Cost	See Below	See Below

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 13 \$	FY 14 \$
Various Municipalities	Savings	See Below	See Below

Explanation

The bill expands the list of nutrients that are eligible for a 30% grant-in-aid under the Clean Water Fund (CWF) Program. This is anticipated to result in an increase of \$17 million over nine years in the amount of future General Obligation bond authorizations needed for the CWF Program, which will result in a debt service cost to the General Fund.

Municipalities are required to comply with the federal mandate that phosphorus as well as nitrogen be removed from waste water. The bill will result in municipal savings of \$17 million over nine years because the state will pay a portion of the cost to meet the federal requirement.

The Out Years

The General Fund fiscal impact identified above would continue into the future for the 20-year term of issuance of General Obligation bonds.

Sources: Office of the State Treasurer

OLR Bill Analysis**sSB 254*****AN ACT RESTRICTING THE APPLICATION OF FERTILIZERS THAT CONTAIN PHOSPHATE.*****SUMMARY:**

This bill establishes certain restrictions on using and selling fertilizer containing phosphate. The bill:

1. prohibits applying fertilizer containing phosphate to an “established lawn” except under certain conditions,
2. creates a seasonal moratorium on applying such fertilizer, and
3. bans applying fertilizer containing phosphate within 20 feet of a water body.

It exempts from these restrictions agricultural land, golf courses, and the application of fertilizer made from materials derived from plant or animal products containing naturally occurring phosphorus (“organic lawn fertilizer”).

The bill requires retail establishments to separately display fertilizer containing phosphate and post a sign about the use restrictions. It establishes a civil penalty of \$ 500 for violating the restrictions or retail requirements and allows the agriculture commissioner to adopt regulations to implement the bill’s fertilizer-related requirements.

The bill also expands the water quality projects eligible for Clean Water Fund moneys to include certain nutrient removal projects, as opposed to only projects for nitrogen removal.

EFFECTIVE DATE: October 1, 2012; except for the provision concerning eligible water quality project funding which is effective

upon passage.

PHOSPHATE FERTILIZER APPLICATION

Fertilizer Definition

By law, fertilizer is any substance containing at least one recognized plant nutrient that is used for its plant nutrient content and designed for use or claimed to promote plant growth. It does not include unmanipulated animal and vegetable manures, marl, lime, limestone, wood, ash, and other products the agriculture commissioner exempts (CGS § 22-111b).

General Prohibition

The bill bans applying fertilizer containing phosphate to an established lawn unless:

1. an agriculture commissioner-approved soil test shows the soil lacks phosphorus, and the fertilizer is necessary for lawn growth or
2. it is used to establish new grass or repair a lawn with seed or sod.

The soil test must be performed during the 180 days before applying the fertilizer.

Under the bill, an “established lawn” is an area covered with a grass species for at least two growing seasons and customarily kept mowed.

Buffer Area Restriction

The bill prohibits applying fertilizer containing phosphate to a portion of lawn that is within 20 feet of a brook, stream, river, lake, pond, sound, or other water body.

Seasonal Restriction

The bill prohibits anyone from applying fertilizer containing phosphate to a lawn from November 15 to March 15 of the next year.

Retail Sales Requirements

Under the bill, beginning October 1, 2012, retail establishments that sell fertilizer must separately display fertilizer products containing phosphate from those that do not. They also must post a sign at the point of sale. It must be readily visible to consumers and printed in black lettering on a white background in at least 38-point type. The sign must state:

“PHOSPHATE RUNOFF CAN POSE A THREAT TO WATER QUALITY. CONNECTICUT LAW PROHIBITS: (1) THE APPLICATION OF FERTILIZER THAT CONTAINS PHOSPHATE TO AN ESTABLISHED LAWN, SUBJECT TO CERTAIN EXCEPTIONS, (2) THE APPLICATION OF FERTILIZER THAT CONTAINS PHOSPHATE TO ANY LAWN FROM NOVEMBER FIFTEENTH THROUGH MARCH FIFTEENTH, AND (3) THE APPLICATION OF FERTILIZER THAT CONTAINS PHOSPHATE TO ANY PORTION OF A LAWN THAT IS LOCATED WITHIN TWENTY FEET OF ANY BODY OF WATER.”

NUTRIENT REMOVAL PROJECT FUNDING

The bill expands the types of water quality projects eligible for Clean Water Fund moneys to include projects for nutrient removal, instead of only nitrogen removal projects. The expansion is effective upon passage but applies to certain projects on and after July 1, 2012. It appears that between those dates no nutrient removal projects will be eligible for funding.

Under the bill, a construction contract awarded by a municipality on or after July 1, 2012 that is eligible for clean water funds as a nutrient removal project must receive (1) a project grant of 30% of the project’s cost associated with nutrient removal, (2) a 20% grant for project costs unrelated to nutrient removal, and (3) a loan for the rest. This is the same allocation formula available for nitrogen removal projects under current law. Nutrient removal projects under design or construction on July 1, 2012 and constructed projects without permanent clean water funding on July 1, 2012 are eligible for funding as specified above. These funds can not exceed 100% of the eligible

water quality project cost.

If additional federal grant funds are available for Long Island Sound clean-up projects funded on or after July 1, 2012, a distressed municipality can receive (1) state and federal grants of up to 50% of nutrient removal project costs, (2) a 20% grant for project costs unrelated to nutrient removal, and (3) a loan for the remainder. The funds cannot exceed 100% of the allowable water quality project cost.

BACKGROUND

Agricultural Land

By law, “agricultural land” means any land in the state which, based on soil types, existing and past use for agricultural purposes, and other relevant factors, is suitable for (1) cultivating plants for production of human food and fiber and other useful and valuable plant products; (2) producing animals, livestock, and poultry useful to people and the environment; and (3) providing economically profitable farm units. It may include adjacent pastures, wooded land, natural drainage areas, and other adjacent open areas (CGS § 22-26bb).

Clean Water Fund

The state’s Clean Water Fund provides financial aid to municipalities through grants and loans for the planning, design, and construction of wastewater treatment facilities. It is financed through a combination of federal and state funding.

Eligible Water Quality Project

By law, an “eligible water quality project” means the planning, design, development, construction, repair, extension, improvement, remodeling, alteration, rehabilitation, reconstruction, or acquisition of a water pollution control facility that the Department of Energy and Environmental Protection (DEEP) commissioner approves (CGS § 22a-475).

Related Bill

sSB 440, reported favorably by the Planning and Development

Committee, adds phosphorus removal to the eligible projects for Clean Water Fund financing and requires the DEEP commissioner, or his designee, to work with several municipalities to develop a state-wide strategy to reduce phosphorus.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 29 Nay 0 (03/23/2012)