
OLR Bill Analysis

sHB 6538 (as amended by House "A")*

AN ACT CONCERNING ARBORISTS AND TREE WARDENS.

SUMMARY:

This bill requires arborist businesses to (1) register annually with the Department of Energy and Environmental Protection (DEEP) and pay a \$240 fee and (2) employ at least one licensed arborist at each place of business. Among other things, it: (1) prescribes the manner in which an arborist business must apply for a certificate of registration; (2) allows the DEEP commissioner to deny, revoke, or suspend a registration; (3) requires arborist businesses to keep detailed records for at least five years; and (4) penalizes violators by requiring them to forfeit up to \$5,000 to the state for each day the violation continues.

The bill increases the nonreturnable arborist license application fee from \$50 to \$200. It creates an initial license fee of \$285 and increases the license renewal fee from \$190 to \$285. Certain licensed certified pesticide applicators are exempt from the arborist license fee.

The bill extends, from one year to two, the term length of municipally appointed tree wardens. It generally requires municipal tree wardens to complete certain coursework approved by DEEP within one year after being appointed or reappointed. It allows DEEP to charge a reasonable fee for coursework costs.

The bill exempts from the coursework requirement tree wardens who (1) completed similar coursework and provide evidence of its completion; (2) are licensed arborists; or (3) appoint deputy tree wardens with similar qualifications. The bill requires the wardens to keep coursework records and provide the records upon request to DEEP and the officials who appointed them.

The bill also makes technical changes.

*House Amendment "A" extends the tree warden appointment term length, allows DEEP to delegate responsibility for administering the DEEP-approved tree warden coursework, establishes minimum coursework requirements and allows a reasonable fee to be charged for the coursework, exempts certain tree wardens from the coursework requirement, and makes other minor and technical changes to the tree warden provisions.

EFFECTIVE DATE: October 1, 2013

ARBORIST BUSINESSES

Registration Requirement

The bill requires anyone operating a business that, at least in part, holds itself out for hire to perform arboriculture ("arborist business") to register with DEEP. By law, "arboriculture" includes (1) improving the condition of fruit, shade, or ornamental trees by such things as feeding, fertilizing, pruning, trimming, bracing, or treating cavities or (2) protecting trees from, or curing them of, insect or disease damage by spraying or other methods (CGS § 23-61a). The bill exempts a registered arborist business that engages in pesticide application from also having to register with DEEP as a pesticide application business.

The bill requires arborist businesses operating from more than one place of business in Connecticut or under more than one name to apply for a certificate of registration and pay the application fee for each location and name.

Under the bill, an arborist businesses' "place of business" is a physical location where its functional operations such as financial transactions, contract arrangements and assignments, work assignments, and recordkeeping, regularly occur. It excludes places or buildings used only to store equipment or supplies or for telephone answering services.

Application and Decision Process

Applicants must apply for a certificate of registration on a form the DEEP commissioner prescribes and supply the following information,

together with any other information the commissioner requests:

1. applicant's name and home address;
2. business name, address, and phone number;
3. name and license number of the licensed arborist employed by the business; and
4. business type.

Registrants must notify the commissioner in writing within 30 days after any change in the application information or in its status as an arborist business.

Businesses applying for an initial or renewed certificate of registration must also provide a summary for the previous calendar year of the (1) names and certification numbers of its commercial pesticide application supervisors and operators and (2) kinds and amounts of pesticides it used.

The bill requires the DEEP commissioner to review applications and, if he denies one, inform the applicant of his reasons by certified mail, return receipt requested. Within 30 days after the date of the decision, a denied applicant may request a hearing before the commissioner in accordance with the Uniform Administrative Procedure Act (UAPA).

Fees and Expiration Dates

The application for a certificate of registration or its renewal must include a \$240 fee, but the commissioner may waive the fee for an initial renewal of a registration issued during the three months before its expiration date. The bill specifies that an application is not complete or sufficient until the fee is fully paid.

A registration certificate expires on the August 31st after issuance.

Registration Denial, Suspension, or Revocation

Under the bill, the DEEP commissioner may deny, revoke, or

suspend a certificate of registration in accordance with the UAPA for such reasons as:

1. violating or helping someone avoid the state's pesticide control or arboriculture and public shade trees laws or any regulation, permit, certificate, registration, or order adopted, administered, or issued under them;
2. including false or misleading information in an application or failing to notify the commissioner of a change in application information;
3. including false or misleading information in required records, failing to maintain them, or failing to provide them to the commissioner when requested;
4. using a pesticide in a manner that is inconsistent with its registered label or with state or federal restrictions;
5. applying pesticides generally known in the trade to be ineffective or improper for the intended use;
6. operating faulty or unsafe equipment that may result in improper pesticide application or harm the environment, a worker, or other people;
7. applying pesticide or performing arboriculture in a faulty, careless, or negligent manner;
8. making a false or misleading statement during an inspection or investigation concerning pest infestation, a pesticide application accident, pesticide misuse, or a violation of a law, regulation, certificate, registration, or order;
9. performing arboriculture that does not meet generally accepted industry standards;
10. performing work outside of the arborist's certification, whether or not for compensation; or

11. conviction of a felony.

The bill specifies that an arborist business with a denied, suspended, or revoked certificate of registration is ineligible to reapply until the commissioner allows it to.

Under the bill, in any proceeding on registration denial, suspension, or revocation, the action, omission, or failure to act of a business employee is also deemed to be that of the business.

Record Keeping

The bill requires arborist businesses to maintain the following records for at least five years:

1. for each pesticide application, the (a) name and certification number of the commercial supervisor and operator; (b) kind and amount of pesticide used and the amount of acreage treated, if applicable; (c) date and place of application; (d) pest treated for; and (e) crop or site treated;
2. a list of the names and U.S. Environmental Protection Agency (EPA) registration numbers of pesticides applied by the business;
3. the names and certification numbers of all certified commercial pesticide applicators employed or used as agents by the business and the types of applications each performs;
4. for each location where arboriculture was performed without pesticide use, the (a) type of work performed, (b) date and place of work, (c) name and license number of the supervising arborist, and (d) names of any unlicensed or licensed people working under the supervising licensed arborist.

The bill allows the pesticide name and EPA registration number information to be either kept separately from, or integrated with, the pesticide application records. Integrated records must include the pesticide's full name and registration number on the record of each

application.

If a record is amended, it must be kept for at least five years from the amendment date.

Records Inspections

The bill requires arborist businesses to keep the records at their places of business. It allows the DEEP commissioner to inspect them. If the place of business is located outside of Connecticut, the business must make the records available to the commissioner at a location in the state within 10 days after receiving the commissioner's request to do so.

Arborist businesses must, in response to a customer's written request, provide copies of the records that relate to the arboriculture performed for the customer.

Penalties

Anyone who violates the bill's arborist business provisions must be fined up to \$5,000 for each day of violation. The attorney general must bring a civil action in Hartford Superior Court to recover the fine if the DEEP commissioner requests it. Such suits take precedence over all private civil actions except those taken on probate bonds.

LICENSED ARBORISTS

The law generally requires anyone who advertises, solicits, or contracts to do arboriculture in Connecticut to be licensed by DEEP. Applicants must apply for the license and take an examination.

The bill increases the nonreturnable application fee from \$50 to \$200. It establishes an initial license fee of \$285 and increases the license renewal fee from \$190 to \$285. Certified supervisory pesticide applicators that are also licensed as arborists are exempt from having to pay an arborist license fee if they paid to be licensed as a pesticide applicator. (The license fee for a certified supervisory pesticide applicator is also \$285).

Under current law, an arborist license is valid for five years. The bill

allows the DEEP commissioner to issue licenses (1) for a period of less than five years and prorate the license fee and (2) in a way that causes 20% of the licenses to expire each year.

TREE WARDENS

Appointment Term Length

The bill extends, from one year to two, the term length for municipally appointed tree wardens. By law, the wardens serve for the term and until a successor is appointed and has qualified, and may appoint deputy tree wardens.

Coursework Requirement

The bill requires tree wardens to successfully complete coursework related to the position within one year after their appointment or reappointment. The coursework, approved by the DEEP commissioner, must at least include tree biology, tree maintenance and pruning, urban forest management, and tree laws.

The bill allows the commissioner to administer the coursework or delegate the responsibility to a professional or educational organization that can provide the training. The commissioner or his designee can charge a reasonable fee for coursework costs. The bill requires municipalities to pay the cost for appointed tree wardens who are volunteers.

The bill makes tree wardens who fail to complete the coursework ineligible for reappointment. But it allows a municipal chief elected official to make a written request to DEEP for a six-month extension to complete the coursework.

The bill exempts from the coursework requirement a tree warden who (1) is a DEEP-licensed arborist or (2) successfully completes the Tree Wardens Association of Connecticut (TWAC) coursework before October 1, 2013, if a duly authorized TWAC officer certifies to that fact, in writing, to the DEEP commissioner and the municipal chief elected official by December 31, 2013. It also exempts wardens who appoint deputy tree wardens who (1) successfully complete the required

coursework, (2) successfully complete the TWAC coursework by October 1, 2013 and provide the certification described above, or (c) are DEEP-licensed arborists.

The bill also requires tree wardens to (1) maintain a record of coursework completion and (2) provide, upon request, the records to the DEEP commissioner, or his designee, and the chief elected municipal officials who appointed them.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 20 Nay 8 (03/18/2013)

Finance, Revenue and Bonding Committee

Joint Favorable

Yea 40 Nay 8 (04/19/2013)

Planning and Development Committee

Joint Favorable

Yea 13 Nay 5 (04/29/2013)

Judiciary Committee

Joint Favorable

Yea 22 Nay 18 (05/07/2013)