



# Senate

General Assembly

**File No. 237**

January Session, 2019

Substitute Senate Bill No. 1030

*Senate, March 28, 2019*

The Committee on Commerce reported through SEN. HARTLEY of the 15th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING THE AUDIT PERIOD FOR THE TRANSFER OF HAZARDOUS WASTE ESTABLISHMENTS.***

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

1 Section 1. Subsection (g) of section 22a-134a of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective*  
3 *October 1, 2019*):

4 (g) (1) (A) Except as provided in subsection (h) of this section, the  
5 certifying party to a Form III shall, not later than seventy-five days  
6 after the receipt of the notice that such form is complete or such later  
7 date as may be approved in writing by the commissioner, submit a  
8 schedule for the investigation of the parcel and remediation of the  
9 establishment. Such schedule shall, unless a later date is specified in  
10 writing by the commissioner, provide that the investigation shall be  
11 completed within two years of the date of receipt of such notice,  
12 remediation shall be initiated not later than three years after the date of  
13 receipt of such notice and remediation shall be completed sufficient to  
14 support either a verification or interim verification within a time frame

15 set forth in subparagraphs (B) and (C) of this subdivision. The  
16 schedule shall also include a schedule for providing public notice of  
17 the remediation prior to the initiation of such remediation in  
18 accordance with subsection (i) of this section. Not later than two years  
19 after the date of the receipt of the notice that the Form III is complete,  
20 unless the commissioner has specified a later day, in writing, the  
21 certifying party shall submit to the commissioner documentation,  
22 approved in writing by a licensed environmental professional and in a  
23 form prescribed by the commissioner, that the investigation has been  
24 completed in accordance with prevailing standards and guidelines.  
25 Not later than three years after the date of the receipt of the notice that  
26 the Form III is complete, unless the commissioner has specified a later  
27 day in writing, the certifying party shall notify the commissioner in a  
28 form prescribed by the commissioner that the remediation has been  
29 initiated, and shall submit to the commissioner a remedial action plan  
30 approved in writing by a licensed environmental professional in a  
31 form prescribed by the commissioner. Notwithstanding any other  
32 provision of this section, the commissioner may determine at any time  
33 that the commissioner's review and written approval is necessary and  
34 in such case shall notify the certifying party that the commissioner's  
35 review and written approval is necessary. Such certifying party shall  
36 investigate the parcel and remediate the establishment in accordance  
37 with the schedule or the schedule specified by the commissioner.

38 (B) For a certifying party that submitted a Form III or Form IV  
39 before October 1, 2009, when remediation of the entire establishment is  
40 complete, the certifying party shall achieve the remediation standards  
41 for the establishment sufficient to support a final verification and shall  
42 submit to the commissioner a final verification by a licensed  
43 environmental professional.

44 (C) For a certifying party that submits a Form III or Form IV after  
45 October 1, 2009, not later than eight years after the date of receipt of  
46 the notice that the Form III or Form IV is complete, unless the  
47 commissioner has specified a later date in writing, the certifying party  
48 shall achieve the remediation standards for the establishment sufficient

49 to support a final or interim verification and shall submit to the  
50 commissioner such final or interim verification by a licensed  
51 environmental professional. Any such final verification may include  
52 and rely upon a verification for a portion of the establishment  
53 submitted pursuant to subdivision (2) of this subsection. Verifications  
54 shall be submitted on a form prescribed by the commissioner. The  
55 certifying party may request a verification or interim verification filing  
56 extension. The commissioner shall grant a reasonable extension if the  
57 certifying party demonstrates to the commissioner's satisfaction that:  
58 (i) Such certifying party has made reasonable progress toward  
59 investigation and remediation of the establishment; and (ii) despite  
60 best efforts, circumstances beyond the control of the certifying party  
61 have significantly delayed the remediation of the establishment.

62 (D) A certifying party who submits an interim verification shall,  
63 until the remediation standards for groundwater are achieved, operate  
64 and maintain the long-term remedy for groundwater in accordance  
65 with the remedial action plan, the interim verification and any  
66 approvals by the commissioner, prevent exposure to the groundwater  
67 plume and submit annual status reports to the commissioner.

68 (E) The certifying party to a Form IV shall submit with the Form IV  
69 a schedule for the groundwater monitoring and recording of an  
70 environmental land use restriction, as applicable.

71 (2) (A) Notwithstanding the date the Form III or Form IV was  
72 submitted, if a certifying party completes the remediation for a portion  
73 of an establishment, such party may submit a verification or an interim  
74 verification by a licensed environmental professional for any such  
75 portion of an establishment. The certifying party shall be deemed to  
76 have satisfied the requirements of this subsection for that portion of  
77 the establishment covered by any such verification or interim  
78 verification. If any portion of an establishment for which a verification  
79 or interim verification is submitted pursuant to this subdivision is  
80 transferred or conveyed or undergoes a change in ownership before  
81 remediation of the entire establishment is complete that would not

82 otherwise be subject to the provisions of sections 22a-134 to 22a-134e,  
83 inclusive, the certifying party shall provide notice to the commissioner  
84 of such transfer, conveyance or change in ownership not later than  
85 thirty days after any such transfer, conveyance or change in  
86 ownership.

87 (B) Any certifying party who submits an interim verification for a  
88 portion of an establishment on or before December 31, 2014, shall not  
89 be required to record any environmental land use restriction, in  
90 accordance with section 22a-133o, prior to submitting such interim  
91 verification, provided such certifying party shall record such  
92 environmental land use restriction, in accordance with section 22a-  
93 133o, on or before September 1, 2015, or a later date as approved, in  
94 writing, by the commissioner. If such environmental land use  
95 restriction is not recorded on or before September 1, 2015, or such later  
96 date, such interim verification shall be invalid and shall not be  
97 recognized by the commissioner.

98 (3) (A) The commissioner may conduct an audit of any verification  
99 or interim verification submitted pursuant to this section, but shall not  
100 conduct an audit of a final verification of an entire establishment  
101 submitted pursuant to subdivision (1) of this subsection after [~~three~~  
102 sixty days] sixty days have passed since the date of the commissioner's  
103 receipt of such final verification unless an exception listed in  
104 subparagraph (C) of this subdivision applies. Upon completion of an  
105 audit, the commissioner shall send written audit findings to the  
106 certifying party and the licensed environmental professional who  
107 verified. The [~~three-year~~] sixty-day time frame for an audit of a final  
108 verification of an entire establishment shall apply to such final  
109 verifications received by the commissioner after October 1, 2007.

110 (B) The commissioner may request additional information during an  
111 audit. If such information has not been provided to the commissioner  
112 within ninety days of the commissioner's request for such information  
113 or any longer time as the commissioner may determine in writing, the  
114 commissioner may either (i) suspend the audit, which for a final

115 verification shall suspend the running of the [three-year] sixty-day  
116 audit time frame until such time as the commissioner receives all the  
117 information requested, or (ii) complete the audit based upon the  
118 information provided in the verification before the request for  
119 additional information.

120 (C) The commissioner shall not conduct an audit of a final  
121 verification of an entire establishment after [three years] sixty days  
122 from receipt of such verification pursuant to this subdivision unless (i)  
123 the commissioner has reason to believe that a verification was obtained  
124 through the submittal of materially inaccurate or erroneous  
125 information, or otherwise misleading information material to the  
126 verification or that misrepresentations were made in connection with  
127 the submittal of the verification, (ii) a verification is submitted  
128 pursuant to an order of the commissioner pursuant to subsection (j) of  
129 this section, (iii) any post-verification monitoring, or operations and  
130 maintenance, is required as part of a verification and which has not  
131 been done, (iv) a verification that relies upon an environmental land  
132 use restriction was not recorded on the land records of the  
133 municipality in which such land is located in accordance with section  
134 22a-133o and applicable regulations, (v) the commissioner determines  
135 that there has been a violation of sections 22a-134 to 22a-134e,  
136 inclusive, or (vi) the commissioner determines that information exists  
137 indicating that the remediation may have failed to prevent a  
138 substantial threat to public health or the environment.

139 Sec. 2. Subsection (p) of section 22a-134e of the general statutes is  
140 repealed and the following is substituted in lieu thereof (*Effective*  
141 *October 1, 2019*):

142 (p) Notwithstanding any other provision of this section, the fee for  
143 filing a Form II or Form IV for an establishment for which the  
144 commissioner has issued a written approval of a remediation under  
145 subsection (d) of section 22a-133x within [three years] sixty days of the  
146 date of the filing of the form shall be the total fee for a Form III  
147 specified in subsection (n) of this section and shall be due upon the

148 filing of the Form II or Form IV.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2019</i>	22a-134a(g)
Sec. 2	<i>October 1, 2019</i>	22a-134e(p)

**Statement of Legislative Commissioners:**

In Section 2, the text of subsection (q) of section 22a-134e was deleted for accuracy.

**CE**      *Joint Favorable Subst. -LCO*

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 20 \$	FY 21 \$
Department of Energy and Environmental Protection	GF - Potential Cost	332,646	344,289
State Comptroller - Fringe Benefits <sup>1</sup>	GF - Potential Cost	137,017	141,812

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill shortens the general audit window for Transfer Act verifications, from three years to 60 days, after a licensed environmental professional (LEP) submits a final verification to the Department of Energy and Environmental Protection (DEEP) stating that an establishment has been remediated according to specific standards.<sup>2</sup> Currently, two DEEP staff reviews an average of approximately 78 verifications annually.

In order to meet the shortened audit timeframe required by the bill, from three years to 60 days, it is expected that DEEP would need to hire five new staff for creation of an audit unit. To this extent, the bill's provisions will result in costs to DEEP of \$332,646 in FY 20 and \$344,289 in FY 21 to hire two Environmental Analysts II positions, two Environmental Analyst III positions, and one Supervising

<sup>1</sup>The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 41.19% of payroll in FY 20 and FY 21.

<sup>2</sup> There is currently 361 LEP's submitting Transfer Act verifications to DEEP.

Environmental Analyst position. There are additional costs of \$137,017 in FY 20 and \$141,812 in FY 21 for fringe benefits associated with the five new positions in the new unit.

***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.



**OLR Bill Analysis****SB 1030*****AN ACT CONCERNING THE AUDIT PERIOD FOR THE TRANSFER OF HAZARDOUS WASTE ESTABLISHMENTS.*****SUMMARY**

This bill shortens the general audit window for Transfer Act verifications, from three years to 60 days, after the submission of a final verification for an entire establishment to the Department of Energy and Environmental Protection (DEEP). A verification is a written opinion by a licensed environmental professional stating that an establishment has been remediated according to specific standards.

As under existing law, the DEEP commissioner may audit a final verification after the audit period under certain conditions, including if she determines that:

1. the verification was based on materially inaccurate, erroneous, or misleading information or that misrepresentations were made when the verification was submitted;
2. required monitoring, operations, or maintenance has not been done; or
3. information exists showing that the remediation may not prevent a substantial threat to public health or the environment (CGS § 22a-134a(g)(3)(C)).

The bill also modifies the fee for filing certain Transfer Act forms. Under current law, if a Form II or Form IV is filed within three years of receiving final approval of remediation from the DEEP commissioner under the state's voluntary remediation program, and a transfer occurs within that time period, then the Form III fee schedule applies. The bill shortens this timeframe from three years to 60 days.

EFFECTIVE DATE: October 1, 2019

**BACKGROUND**

***Transfer Act***

Connecticut’s property transfer law, commonly referred to as the “Transfer Act,” regulates the transfer of certain real properties and business operations in the state (“establishments”). By law, an establishment includes real property on which, or a business operation from which, hazardous waste was generated or processed, or a dry cleaning, furniture stripping, or vehicle body repair business operated. The law generally requires the disclosure of (1) environmental conditions and (2) in some cases, investigation and remediation. It also protects a property transferee by allowing him or her to recover damages from a transferor who fails to comply with the act (CGS §§ 22a-134 to 134e).

**COMMITTEE ACTION**

Commerce Committee

Joint Favorable

Yea 22 Nay 0 (03/14/2019)