



House of Representatives

General Assembly

File No. 57

February Session, 2022

Substitute House Bill No. 5139

House of Representatives, March 22, 2022

The Committee on Environment reported through REP. GRESKO of the 121st Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING EXTENDED PRODUCER RESPONSIBILITY FOR TIRES.

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

1 Section 1. (NEW) (*Effective October 1, 2022*) (a) For the purposes of this
2 section:

3 (1) "Brand" means a name, symbol, word or mark that attributes a tire
4 to the producer of such tire;

5 (2) "Commissioner" means the Commissioner of Energy and
6 Environmental Protection;

7 (3) "Covered entity" means any permitted transfer station, tire
8 retailer, car dealership, automotive garage or private or public sector
9 fleet maintenance garage;

10 (4) "Department" means the Department of Energy and
11 Environmental Protection;

12 (5) "Discarded tire" means any tire that a consumer discarded or
13 abandoned, or intends to discard or abandon;

14 (6) "Tire" means a product composed primarily of rubber that is
15 mounted on the wheels of all types of passenger and commercial on-
16 road and off-road motorized vehicles, including passenger vehicles,
17 motorcycles, trucks, buses, mobile homes, trailers, noncommercial
18 aircraft and earthmoving, road building, mining, logging, agricultural,
19 industrial and other vehicles to provide mobility. "Tire" does not include
20 any tire from any toy, bicycle, commercial aircraft or personal mobility
21 device;

22 (7) "Tire stewardship organization" means the nonprofit organization
23 created by producers or created by any trade association that represents
24 producers who account for a majority of tire production in the United
25 States and that designs, submits and implements the tire stewardship
26 program;

27 (8) "Tire stewardship program" or "program" means the state-wide
28 program described in this section and implemented pursuant to the tire
29 stewardship plan;

30 (9) "Performance goal" means a metric proposed by the tire
31 stewardship organization to measure, on an annual basis, the
32 performance of the tire stewardship program, taking into consideration
33 technical and economic feasibilities, in achieving continuous,
34 meaningful improvement in the rate of tire recycling in the state and any
35 other specified goal of such program;

36 (10) "Producer" means any person who manufactures a tire that is
37 sold, offered for sale or distributed in this state under the producer's
38 own name or brand. "Producer" includes (A) the owner of a trademark
39 or brand under which a tire is sold, offered for sale or distributed in this
40 state, and (B) any person who imports a tire into the United States that
41 is sold or offered for sale in this state and that is manufactured by a
42 person who does not have a presence in the United States. "Producer"
43 does not include any manufacturer of tires with less than one-tenth of

44 one per cent of the nationally recognized market share;

45 (11) "Recycling" means any process in which discarded tires,
46 components and by-products may lose their original identity or form as
47 they are transformed into new, usable or marketable materials.
48 "Recycling" does not include the use of incineration for energy recovery;

49 (12) "Retailer" means any person who sells or offers for sale tires in
50 this state or offers tires for sale in this state to a consumer; and

51 (13) "Sale" means the transfer of title of a tire for consideration,
52 including, but not limited to, the use of a sales outlet, catalog, Internet
53 web site or similar electronic means.

54 (b) On or before July 1, 2023, each producer, or such producer's
55 designee, shall join the tire stewardship organization and such
56 organization shall submit a plan, for the Commissioner of Energy and
57 Environmental Protection's approval, to establish a state-wide tire
58 stewardship program, as described in this subsection. Retailers may
59 participate in any such tire stewardship organization. Such tire
60 stewardship program shall, to the extent it is technologically feasible
61 and economically practical: (1) Minimize public sector involvement in
62 the management of discarded tires; (2) provide for free, convenient and
63 accessible state-wide opportunities for the receipt of discarded tires
64 from any person in the state with a discarded tire that was discarded in
65 the state, including, but not limited to, participating covered entities that
66 accumulate and segregate a minimum of six cubic yards of discarded
67 tires at one time; (3) provide for free collection of discarded tires from
68 municipal transfer stations that accumulate and segregate fewer than
69 one hundred tires, provided the transfer station requires such collection
70 due to space or permit requirements; (4) provide for producer-financed
71 end-of-life management for discarded tires collected pursuant to
72 subdivisions (2) and (3) of this subsection; and (5) provide suitable
73 storage containers at, or make other mutually agreeable storage and
74 transport arrangements for, permitted municipal transfer stations for
75 segregated, discarded tires, at no cost to such municipality.

76 (c) The plan submitted pursuant to subsection (b) of this section shall:
77 (1) Identify each producer participating in the program; (2) describe
78 how the program will be financed; (3) establish performance goals for
79 the first two years of the program; (4) identify proposed facilities to be
80 used by the program; (5) detail how the program follows the solid waste
81 hierarchy, as defined in the state-wide solid waste management plan,
82 and will promote the recycling of discarded tires; and (6) include a
83 description of the public education program that will be used to
84 promote consumer knowledge of such program.

85 (d) Each stewardship organization shall establish and implement a
86 system for financing the tire stewardship program that covers, but does
87 not exceed, the costs of developing the plan described in subsection (c)
88 of this section, operating and administering the program described in
89 subsection (b) of this section and maintaining a financial reserve for six
90 months sufficient to operate the program. Each stewardship
91 organization shall maintain all records relating to the program for a
92 period of not less than three years. Funding of such program may be
93 through a fee structure.

94 (e) The Commissioner of Energy and Environmental Protection shall
95 approve a plan for the establishment of the tire stewardship program,
96 provided such plan meets the requirements of subsections (b) to (d),
97 inclusive, of this section. Prior to making such determination, the
98 commissioner shall post the plan on the department's Internet web site
99 and solicit public comments on the plan. Such solicitation shall not be
100 conducted pursuant to chapter 54 of the general statutes. Not later than
101 ninety days after submission of the plan pursuant to this section, the
102 commissioner shall make a determination whether to approve the plan.
103 In the event that the commissioner disapproves the plan because it does
104 not meet the requirements of subsections (b) to (d), inclusive, of this
105 section, the commissioner shall describe the reasons for the disapproval
106 in a notice of determination that the commissioner shall provide to the
107 tire stewardship organization. Such stewardship organization shall
108 revise and resubmit the plan to the commissioner not later than forty-
109 five days after receipt of the commissioner's notice of disapproval. Not

110 later than forty-five days after receipt of the revised plan, the
111 commissioner shall review and approve or disapprove the revised plan,
112 and provide a notice of determination to the stewardship organization.
113 Such stewardship organization may resubmit a revised plan to the
114 commissioner for approval on not more than two occasions. If the tire
115 stewardship organization fails to submit a plan that is acceptable to the
116 commissioner because it does not meet the requirements of subsections
117 (b) to (d), inclusive, of this section, the commissioner shall modify a
118 submitted plan to make it conform to the requirements of subsections
119 (b) to (d), inclusive, of this section, and approve it. Not later than one
120 hundred twenty days after the approval of a plan pursuant to this
121 section, or one hundred eighty days, in the case of a plan modified by
122 the commissioner, the tire stewardship organization shall implement
123 the tire stewardship program.

124 (f) (1) The tire stewardship organization shall submit any proposed
125 substantial change to the program to the Commissioner of Energy and
126 Environmental Protection for approval. For the purposes of this
127 subdivision, "substantial change" means: (A) A change in the processing
128 facilities to be used for discarded tires collected pursuant to the
129 program, or (B) a material change to the system for collecting tires.

130 (2) Not later than July 1, 2025, the tire stewardship organization shall
131 submit updated performance goals to the commissioner that are based
132 on the experience of the program during the first two years of the
133 program.

134 (g) Each tire stewardship organization shall notify the Commissioner
135 of Energy and Environmental Protection of other material changes to
136 the program on an ongoing basis, without resubmission of the plan to
137 the commissioner for approval. Such changes shall include, but not be
138 limited to, a change in the composition, officers or contact information
139 of the tire stewardship organization.

140 (h) Not later than October fifteenth of each year, each tire stewardship
141 organization shall submit an annual report to the Commissioner of
142 Energy and Environmental Protection, on a form prescribed by the

143 commissioner. The commissioner shall post such annual report on the
144 department's Internet web site. Such report shall include: (1) The
145 tonnage of tires collected pursuant to the program from: (A) Municipal
146 transfer stations, (B) retailers, and (C) all other covered entities; (2) the
147 tonnage of tires diverted for recycling; (3) a summary of the public
148 education program that supports the program; (4) an evaluation of the
149 effectiveness of methods and processes used to achieve performance
150 goals of the program; and (5) recommendations for any changes to the
151 program.

152 (i) Two years after the implementation of the program and every
153 three years thereafter, or upon the request of the Commissioner of
154 Energy and Environmental Protection but not more frequently than
155 once a year, each tire stewardship organization shall cause an audit of
156 the program to be conducted by an auditor selected by the
157 commissioner. Such audit shall review the accuracy of the tire
158 stewardship organization's data concerning the program and provide
159 any other information requested by the commissioner, consistent with
160 the requirements of this section, provided such request does not require
161 the disclosure of any proprietary information or trade or business
162 secrets. Such audit shall be paid for by each tire stewardship
163 organization. Each tire stewardship organization shall maintain all
164 records relating to the program for not less than three years.

165 (j) Upon implementation of the tire stewardship program described
166 in this section, any covered entity that participates in such program shall
167 not charge for the receipt of discarded tires that are discarded in this
168 state, provided any such covered entity may restrict the acceptance of
169 tires by number, source or condition.

170 (k) Not later than three years after the approval of the tire
171 stewardship plan pursuant to this section, the Commissioner of Energy
172 and Environmental Protection shall submit a report, in accordance with
173 the provisions of section 11-4a of the general statutes, to the joint
174 standing committee of the General Assembly having cognizance of
175 matters relating to the environment. Such report shall provide an

176 evaluation of the tire stewardship program and establish a goal for the
177 amount of discarded tires managed under the program and a separate
178 goal for the diversion of tires for recycling, taking into consideration
179 technical and economic feasibilities.

180 (l) Each producer and the tire stewardship organization shall be
181 immune from liability for any claim of a violation of antitrust law or
182 unfair trade practice, if such conduct is a violation of antitrust law, to
183 the extent such producer or tire stewardship organization is exercising
184 authority pursuant to the provisions of this section.

185 (m) The Commissioner of Energy and Environmental Protection may
186 seek civil enforcement of the provisions of this section pursuant to
187 chapter 439 of the general statutes.

188 (n) Whenever, in the judgment of the Commissioner of Energy and
189 Environmental Protection, any person has engaged in, or is about to
190 engage in, any act, practice or omission that constitutes, or will
191 constitute, a violation of any provision of this section, the Attorney
192 General may, at the request of the commissioner, bring an action in the
193 superior court for the judicial district of New Britain for an order
194 enjoining such act, practice or omission. Such order may require
195 remedial measures and direct compliance with the provisions of this
196 section. Upon a showing by the commissioner that such person has
197 engaged in or is about to engage in any such act, practice or omission,
198 the court may issue a permanent or temporary injunction, restraining
199 order or other order, as appropriate.

200 (o) Any action brought by the Attorney General pursuant to this
201 section shall have precedence in the order of trial, as provided in section
202 52-191 of the general statutes.

203 (p) In the event that another state implements a tire stewardship or
204 recycling program, the tire stewardship organization may collaborate
205 with such state to conserve efforts and resources used in carrying out
206 the tire stewardship program, provided such collaboration is consistent
207 with the requirements of this section.

208 (q) The Commissioner of Energy and Environmental Protection may
209 assess a reasonable fee to the tire stewardship organization, not to
210 exceed ten per cent of total program costs, for administration of the tire
211 stewardship program.

212 (r) Any producer who fails to participate in the tire stewardship
213 program shall not sell or offer for sale tires in this state.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2022	New section

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: None

Municipal Impact:

Municipalities	Effect	FY 23 \$	FY 24 \$
Various Municipalities	Savings	None	See Below

Explanation

The bill requires the establishment of a tire stewardship program for the management of certain discarded tires that must minimize public sector involvement.

It requires tire manufacturers to: (1) establish and join a nonprofit tire stewardship organization with an implementation plan approved by the Department of Energy and Environmental Protection (DEEP) by July 1, 2023; and (2) authorizes DEEP to assess a fee, of up to 10% of program costs, to the stewardship organization for administration. This has no fiscal impact to the state or municipalities, since the fee assessed to producers is structured to cover administration costs.

The bill is expected to result in municipal savings beginning in FY 24 as tires would be removed from the municipal solid waste (MSW) stream and less tires would be subject to rates for shipping MSW out-of-state. The extent of municipal savings would depend on the volume of tires currently being disposed of in the MSW stream and current tip fees for each municipality.

Lastly, the bill allows DEEP to civilly enforce program requirements and establishes audit and reporting requirements. This has no fiscal

impact since it is expected that tire manufacturers will comply with the program, based on experience from existing paint and mattress stewardship programs. There is also no fiscal impact under the audit and reporting requirements since these are the responsibility of private, third-party producers.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the volume of tires removed from the MSW and the rate of tip fees.

OLR Bill Analysis

sHB 5139

AN ACT CONCERNING EXTENDED PRODUCER RESPONSIBILITY FOR TIRES.

SUMMARY

This bill requires the establishment of a statewide stewardship program to manage certain discarded tires that, among other things, must minimize public sector involvement. It prohibits tire producers who fail to participate in the program from selling tires or offering them for sale in Connecticut.

The bill requires tire producers, or their designees, to join a nonprofit stewardship organization that they, or a trade association representing them, establish. The stewardship organization must develop a plan to implement the program which must, in turn, be submitted to the Department of Energy and Environmental Protection (DEEP) for approval.

Among other things, the plan must detail how the program will be financed, which may be through a fee structure. The bill also authorizes the DEEP commissioner to assess a reasonable fee, of up to 10% of the total program costs, on the stewardship organization for program administration.

The bill (1) allows the DEEP commissioner to civilly enforce the program's requirements, (2) establishes auditing and reporting requirements, and (3) provides immunity to producers and organizations from claims of antitrust or unfair trade practice violations under certain circumstances. It also allows an organization to collaborate with another state with a tire stewardship or recycling program.

EFFECTIVE DATE: October 1, 2022

TIRE PRODUCERS

The bill applies to “producers” (manufacturers) of tires sold, offered for sale, or distributed in Connecticut under the producer’s own name or brand. It includes (1) the owner of a trademark or brand under which a tire is sold, offered for sale, or distributed in the state and (2) any person who imports a tire into the United States that is sold or offered for sale in Connecticut and manufactured by a person without a U.S. presence. A “brand” is a name, symbol, word, or mark that attributes a tire to its producer. The bill exempts any tire manufacturer with less than 0.1% of the nationally recognized market share.

Under the bill, a “discarded tire” is a tire a consumer discarded, abandoned, or intended to discard or abandon. Tires covered by the bill include products made primarily of rubber that are mounted on wheels of passenger and commercial motorized vehicles, whether on- or off-road, including passenger vehicles; motorcycles; trucks; buses; mobile homes; trailers; noncommercial aircraft; and earthmoving, road building, mining, logging, agricultural, industrial, and other vehicles providing mobility. The bill excludes tires for toys, bicycles, commercial aircrafts, or personal mobility devices.

A “sale” is the transfer of title of a tire for consideration, including through a sales outlet, catalog, or website or similar electronic means.

PROGRAM PURPOSES AND ESTABLISHMENT

By July 1, 2023, the bill requires producers, or their designees, to join the tire stewardship organization, which is a nonprofit organization to design, submit, and implement the tire stewardship program. The stewardship organization must be created by producers or any trade association that represents the producers who account for the majority of U.S. tire production. The bill allows retailers to participate in the stewardship organization.

Under the bill, the tire stewardship program must, to the extent that it is technologically feasible and economically practical, minimize public

sector involvement in managing discarded tires and provide for the following:

1. free, convenient, and accessible statewide opportunities for receiving discarded tires from anyone in the state with a tire that was discarded in Connecticut, including covered entities (see below) with at least six cubic yards of accumulated and segregated tires at one time;
2. free collection of discarded tires from municipal transfer stations that accumulate and segregate fewer than 100 tires and need collection because of space or permit requirements;
3. producer-financed end-of-life management for collected discarded tires; and
4. suitable storage containers at, or some other mutually agreed-to storage and transport arrangement for, permitted municipal transfer stations for segregated, discarded tires, at no cost to the municipality.

“Covered entities” include permitted transfer stations, retailers, car dealerships, automotive garages, and public or private fleet maintenance garages.

PLAN DEVELOPMENT AND SUBMISSION

By the same date (July 1, 2023), the tire stewardship organization must submit a plan to establish a statewide tire stewardship program to the DEEP commissioner for approval.

The plan must:

1. identify each participating producer,
2. describe program financing,
3. establish performance goals for the program’s first two years,
4. identify proposed program facilities,

5. detail how the program (a) follows the state's solid waste hierarchy (see BACKGROUND) and (b) will promote recycling discarded tires, and
6. describe the program's public education program.

Under the bill, the stewardship organization must establish and implement a system to finance the program that covers, but does not exceed, the costs to (1) develop the plan, (2) operate and administer the program, and (3) maintain a financial reserve sufficient to operate the program for six months. Its proposed annual performance metrics must consider technical and economic feasibilities to achieve continuous, meaningful improvement in state's tire recycling rate and other specified program goals.

PLAN APPROVAL AND IMPLEMENTATION

The bill requires the DEEP commissioner to determine whether to approve the plan for the tire stewardship program within 90 days after its submission, but after she posts the plan on DEEP's website and solicits public comments. The bill specifies that the solicitation is not conducted in accordance with the Uniform Administrative Procedure Act.

She must approve a plan if it meets the bill's program, plan, and financing requirements. If the commissioner disapproves the plan, she must provide the stewardship organization with a notice of determination describing her reasons. The organization must revise and resubmit its plan within 45 days after receiving the disapproval notice. The commissioner must review and either approve or disapprove a revised plan within 45 days after receiving it and provide a notice of determination to the organization. The bill restricts resubmitting a revised plan for approval to no more than two occasions. If the organization fails to provide an acceptable plan, the commissioner must modify its submitted plan to conform with the requirements.

The bill requires the stewardship organization to implement the tire stewardship program within (1) 120 days after plan approval or (2) 180

days after a DEEP-modified plan is approved.

CHANGES TO A PLAN

The bill requires the stewardship organization to submit substantial proposed plan changes to the DEEP commissioner for approval. Under the bill, a “substantial change” is a (1) change in the processing facilities used for collected discarded tires or (2) material change to the system for collecting them. The bill provides no deadline by which the commissioner must approve a substantial change by the stewardship organization.

The bill also requires an organization to notify the commissioner of other material program changes on an ongoing basis and without resubmitting the plan for approval. These changes include such things as changing the organization’s composition, officers, or contact information.

The bill requires the organization to submit updated performance goals to the commissioner by July 1, 2025. The updated goals must be based on the program’s experience during its first two years, but it is unclear that the program will have been implemented for two years by this date.

TIRE COLLECTION FEES

Once the program is implemented, the bill prohibits participating covered entities from charging for the receipt of tires discarded in Connecticut. However, it allows them to refuse tires by number, source, or condition.

AUDIT REQUIREMENTS

Program Audits

Two years after program implementation, and then every three years, an organization must pay for a program audit by a commissioner-selected auditor. The bill also allows the commissioner to request an audit no more than once per year. The audit must (1) review the accuracy of the organization’s program data and (2) provide any other

program-related information the commissioner requests, but not any proprietary information or trade or business secrets.

The bill requires an organization to maintain all program records for at least three years.

Audited Financial Statements

Existing law requires any product stewardship organization operating in the state to, annually by May 1, submit to DEEP certified audited financial statements and the name of any contractor or organization that has a contract with it valued at \$2,000 or more. DEEP must post and maintain the information on its website (CGS § 22a-905g). This requirement applies to the tire stewardship organization.

REPORTING REQUIREMENTS

Stewardship Organization

Annually by October 15, the bill requires a stewardship organization to submit a report to the DEEP commissioner on a form she prescribes. The report must then be posted on DEEP's website. Under the bill, the report must include the following information:

1. tonnage of tires collected from municipal transfer stations, retailers, and other covered entities;
2. tonnage of tires diverted for recycling;
3. a summary of the program's public education efforts;
4. an evaluation of the effectiveness of methods and processes used to achieve program performance goals; and
5. recommendations for any program changes.

DEEP

Within three years after the plan's approval, the DEEP commissioner must submit a report to the Environment Committee that evaluates the program. The report must also establish goals for (1) the amount of discarded tires managed under the program and (2) diverting tires for

recycling, considering technical and economic feasibilities. The bill specifies that recycling does not include incinerating tires for energy recovery.

CIVIL PENALTIES

The bill authorizes the DEEP commissioner to enforce the program's requirements under her existing authority.

It allows the commissioner to ask the attorney general to bring an action for injunctive relief in New Britain Superior Court if she believes that a person has engaged in, or is about to engage in, any act, practice, or omission that violates the program's requirements. It permits the court to issue a permanent or temporary injunction, restraining order, or other appropriate order, including remedial measures and directing compliance. The bill requires that these actions by the attorney general take precedence over other actions in the order of trial.

LIABILITY PROTECTION

Under the bill, to the extent a producer or an organization is exercising authority according to the bill's provisions, it is immune from liability for any antitrust or unfair trade practice claim based on a violation of antitrust law.

INTERSTATE COLLABORATION

The bill allows a stewardship organization to collaborate with another state that has a similar tire stewardship or recycling program to conserve efforts and resources. However, the collaboration must be consistent with the bill's requirements.

BACKGROUND

Solid Waste Hierarchy

Connecticut's Comprehensive Materials Management Strategy (i.e., the revised statewide Solid Waste Management Plan) has a hierarchy as a guide for solid waste management efforts. The hierarchy emphasizes source reduction, recycling, composting, and energy recovery. It lists landfilling and incineration as last resorts for solid waste disposal.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 29 Nay 2 (03/04/2022)