
OLR Bill Analysis

sSB 238

AN ACT CONCERNING REVISIONS TO CERTAIN ENVIRONMENT RELATED STATUTES.

SUMMARY

This bill makes the following changes to environment-related statutes:

1. eliminates the Department of Energy and Environmental Protection (DEEP) commissioner's role in approving municipal noise ordinances (§ 3);
2. allows Connecticut to exchange forest fire protection and control resources with states beyond New England and New York (§ 6);
3. authorizes the commissioner to (a) grant a 60-day extension to renew a commercial forest practitioner certification and (b) certify additional forest practitioners without examination (§ 8);
4. changes the continuing education requirements and associated reporting requirements for forest practitioners (§§ 8 & 9);
5. requires the commissioner to notify certified pesticide applicators about an upcoming certification expiration (§ 10);
6. authorizes the commissioner to renew certifications for pesticide applicators whose certifications have lapsed for less than one year without reexamination, but with payment of a late fee (§ 10);
7. authorizes the commissioner to register pesticides either on an annual basis or, as under current law, for five-year periods (§ 11);
8. prohibits registration fee refunds for pesticide products that are voluntarily withdrawn or cancelled before the registration period ends (§ 11);

9. limits the examination requirement for class III and IV wastewater treatment plant operator certification applicants to the standardized national examination (§ 1);
10. as part of Connecticut’s shift to “agreement state status” with the U.S. Nuclear Regulatory Commission (NRC), (a) allows the commissioner to enter into agreements with NRC and certain other governmental agencies for inspections or other radiation control functions and (b) specifies that existing licenses that will become subject to state oversight will have a like-license until their expiration (§§ 14 & 15);
11. applies existing penalties for failing to file registrations or certain documents or disposing of, discharging, or demitting material or electromagnetic radiation to violations of the state’s radiation and radiation materials laws (§ 16);
12. exempts certain aquaculture structures in tidal, coastal, or navigable waters from a DEEP permitting requirement (§ 2); and
13. authorizes the commissioner to require air pollution sources that are permitted under federal law (i.e., Title V of the Clean Air Act Amendments of 1990) to comply with applicable federal standards for incineration (40 C.F.R. Part 62), which have already been incorporated into state air regulations (Conn. Agencies Regs. § 22a-174-1 et seq.) (§ 4).

Lastly, the bill makes technical and conforming changes, and a minor change to clarify that the state’s forest fire warden has the authority to supplement state forest fire control personnel with specially trained temporary emergency workers to help fight a forest fire in a state with which Connecticut has agreed to provide reciprocal aid, rather than only for in-state fires (§ 5).

EFFECTIVE DATE: Upon passage, except technical changes to a radiation statute and the provisions on the Forest Practice Advisory Board and forest practitioner certification take effect October 1, 2021, and the pesticide registration provision takes effect January 1, 2023.

§ 3 — NOISE REGULATION

By law, municipalities may adopt and enforce a noise control ordinance that includes certain elements set in statute, including noise levels and implementation procedures. Current law requires (1) that an ordinance conform to applicable federal and state noise standards or regulations (e.g., Conn. Agencies Regs. § 22a-69-1 et seq.) and (2) the commissioner's approval before the ordinance can take effect.

The bill (1) eliminates the commissioner's approval requirement and (2) requires municipal noise ordinances to be at least as stringent as applicable federal and state noise standards or regulations.

§§ 6-9 — FOREST PRACTICES***Interstate Forest Fire Resources (§ 6)***

The bill expands the applicability of the Northeastern Interstate Forest Fire Protection Compact's interstate aid provisions by allowing aid to or from any state that belongs to a regional forest fire protection compact, if that state's legislature agrees to the provisions. In doing so, it allows Connecticut to exchange forest fire protection and control resources with up to 43 other states, instead of only member states. (Members of the northeastern compact include the New England states and New York.)

By law, the compact's interstate aid provisions seek to help control, fight, or prevent forest fires and address issues such as the powers and rights of responding forces, liability, and repayment for services.

Forest Practices Advisory Board (§ 7)

By law, the Forest Practices Advisory Board consists of the state forester, who also serves as the board's chair, and nine members appointed by the governor and legislative leaders.

The bill (1) allows the state forester to designate someone to serve in his place on the board and (2) designates qualifications to the board's appointed members, as shown in Table 1, below. Current law provides qualifications, generally, for six appointments; it does not specify the qualifications for each appointment. Under the bill, the current board

member's terms expire on October 1, 2022.

Table 1: Forest Practices Advisory Board Member Qualifications

<i>Appointing Authority</i>	<i>Designated qualifications</i>
Governor	<ul style="list-style-type: none"> • an officer of an environmental organization headquartered in Connecticut that is concerned mainly with forests* • a representative of an environmental organization not mainly concerned with forests* • an inland wetlands agency member*
House Speaker	<ul style="list-style-type: none"> • an owner of at least 10, but no more than 250, forest land acres*
Senate President Pro Tempore	<ul style="list-style-type: none"> • a professional forester in private practice*
House Majority Leader	<ul style="list-style-type: none"> • a forest products industry representative
Senate Majority Leader	<ul style="list-style-type: none"> • a professor of forestry or natural resources from a college or university in Connecticut*
House Minority Leader	<ul style="list-style-type: none"> • a member of the public
Senate Minority Leader	<ul style="list-style-type: none"> • a member of the public

*denotes a qualification generally listed in current law

By law, the advisory council's responsibilities are (1) reviewing and recommending changes to regulations on forest practices or certifying forest practitioners; (2) reviewing and recommending changes to DEEP's programs and policies about forests, forest health, and forest practices; and (3) advising the DEEP commissioner about certifying technically proficient forest practitioners and revoking or suspending certifications.

Forest Practitioner Certification and Continuing Education (§§ 8 & 9)

60-Day Extension for Renewals. The bill allows the DEEP commissioner to grant a certified forest practitioner a 60-day extension to submit a renewal application if he or she did not do so before the certification expired. A practitioner granted an extension must (1) submit a complete application within the 60-day period and (2) pay a fee the commissioner sets in addition to the \$235 renewal fee (Conn. Agencies Regs. § 23-65h-1(r)). The bill specifies that the practitioner is not required to retake the certification examination.

By law, there are three classifications of certified forest practitioners: forester, supervising forest products harvester, and forest products harvester. Certifications must be renewed every four years (Conn. Agencies Regs. § 23-65h-1(k)).

Alternative Certification. The bill allows the DEEP commissioner to certify a forest practitioner without examination if he or she is certified through an examination given by the Society of American Foresters or a similar organization. The commissioner may do this only if the (1) organization's certification qualifications are substantially similar to Connecticut's and (2) practitioner can show knowledge of Connecticut's forestry laws to the commissioner's satisfaction.

The law already allows the commissioner to certify forest practitioners without examination if they are certified in another state with substantially similar certification qualifications and that state grants similar privileges to Connecticut residents.

Continuing Education. By law, certified forest practitioners must participate in continuing education programs to improve or maintain their professional forestry skills. Existing regulations provide that these practitioners must obtain continuing education credits, ranging from six to 12 credits depending on the certification involved, to renew their credential every four years (Conn. Agencies Regs. § 23-65h-1(k) & (q)).

The bill eliminates a requirement that practitioners participate in continuing education programs on a biennial basis, thus allowing them to fulfill their education requirements at any time during the four-year term. It requires practitioners to meet these requirements according to a schedule to be set out in regulations.

The bill also requires the practitioners to attest to, rather than provide evidence of, their participation in continuing education programs as part of their annual forest practice activity reports to DEEP. But, if the DEEP commissioner requests it, practitioners must provide proof of program participation, in keeping with the regulations' set schedule.

§ 10 — PESTICIDE APPLICATOR CERTIFICATION RENEWAL

Notice and Certification Lapse

The bill requires the DEEP commissioner to provide a certified pesticide applicator, at least 60 days before his or her certification expires, notice of the upcoming expiration and a renewal application.

Under the bill, a certification lapses if the commissioner does not receive a signed renewal application with the applicable renewal fee by midnight on the expiration date or midnight on the next business day if the expiration date is on a weekend or legal holiday. But failing to receive the notice and application from DEEP does not prevent a certification's lapse.

Renewal Without Reexamination

The bill allows the DEEP commissioner to renew a pesticide applicator's certification that has lapsed for less than one year if the applicator (1) submits a signed renewal application and (2) pays both the renewal fee and any late fee. By law, renewal fees range from \$80 to \$285, depending on the certification level. Under the bill, the late fee is equal to 10% of the renewal fee, plus 1.25% per month or part of a month, dating from when the certification lapsed.

Under the bill, anyone whose certification lapses for one year or more must retake the examination. By law, pesticide applicator certifications are valid for five years.

§ 1 — WASTEWATER TREATMENT PLANT OPERATOR CERTIFICATION

The bill limits the exam requirement for class III and class IV wastewater treatment plant operator certification applicants to the standardized national exam prepared by the Association of Boards of Certification for Wastewater Treatment Facility Operators. Current law requires them to also pass additional questions from the DEEP commissioner. The bill also allows the commissioner to designate an agent to administer and proctor the exam.

The bill authorizes the commissioner to adopt regulations on wastewater treatment plant operators' certification, application,

renewal, and continuing education requirements. Current law allows her to adopt regulations on a regular state-certified training course for operators. The bill also requires the commissioner or her designated agent, in consultation with the state's operator certification advisory board, to approve continuing education and associated courses. The board advises and assists with administering the certification program (Conn. Agencies Regs. § 22a-416-10).

§§ 12-16 — RADIATION REGULATION

PA 21-2, June Special Session, §§ 40-50, requires the DEEP commissioner to adopt regulations to secure "agreement state status" with the NRC. This status authorizes states to assume NRC responsibility for regulating and licensing byproduct material (radioisotopes), source materials (uranium and thorium), and certain amounts of special nuclear materials. (NRC remains responsible for regulating nuclear power plants; uses of nuclear material, such as in nuclear medicine; and nuclear waste.)

The bill makes several minor and technical changes to carry out the state's shift to agreement state status and obtain additional oversight of radiation and radioactive materials. Among these changes, the bill:

1. specifies that NRC keeps regulatory oversight over certain materials and activities that federal law and regulations reserves to it (e.g., operation of uranium enrichment facilities; import or export of byproduct, sources, or special nuclear materials; disposing of certain products in the ocean; and storing spent fuel and radioactive waste);
2. requires the licenses (either with NRC or with another agreement state) in existence before the effective date of Connecticut's agreement with NRC to be like-licenses with Connecticut until (a) the license's expiration date or (b) 90 days after the licensee is notified by DEEP that the license will be expired; and
3. allows the DEEP commissioner to enter into any agreement with NRC or any other federal governmental agency, state, or

interstate agency for the state to perform inspections or other radiation sources control functions.

The bill applies to the state's radiation and radioactive materials law (or a regulation, order, or permit adopted under it), the penalties under existing law for failing to (1) file a required registration (other than a general permit), plan, report, record, permit application, or other document; (2) obtain a certification; or (3) display a registration, permit, or order. The penalty is a fine of up to \$1,000 for a violation, plus up to \$100 for each day that the violation continues.

The bill similarly applies to this law (and associated regulations, orders, or permits) existing law's penalties for (1) depositing, placing, removing, disposing, discharging, or emitting any material, substance, or electromagnetic radiation or (2) causing, engaging in, or maintaining a condition or activity that violates certain specified statutes. The penalty for these violations is up to a \$25,000 fine for each day a violation continues.

Existing law, unchanged by the bill, imposes criminal penalties (fines, imprisonment, or both) for criminally negligent violations of the radiation and radioactive materials law and knowingly making false statements in associated documents.

§ 2 — AQUACULTURE STRUCTURES

Existing law requires a DEEP certificate or permit in order to conduct certain work, including erecting and maintaining structures, in the state's tidal, coastal, or navigable waters, waterward of the coastal jurisdiction line.

The bill exempts from this permitting requirement individual structures used for aquaculture in leased or designated shellfish areas that (1) have a federal Army Corps of Engineers permit and (2) do not interfere with navigation in designated or customary boating or shipping areas. It eliminates current law's exemption for the structures that do not need an Army Corps permit and are in these areas.

Aquaculture includes the controlled rearing, cultivation, and harvest

of aquatic plants and animals. Aquaculture structures include things like racks, cages, bags, and buoys.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 31 Nay 0 (03/21/2022)