



Senate

General Assembly

File No. 305

February Session, 2024

Senate Bill No. 289

Senate, April 8, 2024

The Committee on Environment reported through SEN. LOPES of the 6th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING THE AUTHORITY OF THE DEPARTMENTS OF ENERGY AND ENVIRONMENTAL PROTECTION AND TRANSPORTATION OVER VEGETATION MANAGEMENT.

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

1 Section 1. (NEW) (*Effective July 1, 2024*) (a) There is established the
2 Beneficial Arbor Retention Commission that shall exercise care, custody
3 and control of all trees, shrubs and vegetation in the state parks and
4 campgrounds of this state. Such commission shall be located within the
5 Department of Energy and Environmental Protection, for
6 administrative purposes only.

7 (b) Such commission shall consist of the following members: (1) One
8 appointed by the Commissioner of Energy and Environmental
9 Protection; (2) two appointed by the Governor, one of whom shall be a
10 representative of the Connecticut Agricultural Experiment Station and
11 one of whom shall be a resident and representative of an environmental
12 justice community, as defined in section 22a-20a of the general statutes;
13 (3) two appointed by the speaker of the House of Representatives, one

14 of whom shall have expertise in tree management, maintenance and the
15 removal of diseased or dead trees and one of whom shall have expertise
16 in landscape architecture; (4) two appointed by the president pro
17 tempore of the Senate, one of whom shall be a licensed arborist and one
18 of whom shall be a representative of a nonprofit organization with the
19 primary mission of supporting the state's state parks and the
20 preservation and retention of the state's tree canopy; (5) one appointed
21 by the majority leader of the House of Representatives who shall have
22 expertise in carbon sink methods; (6) one appointed by the majority
23 leader of the Senate who shall be a patron of the state parks; (7) one
24 appointed by the minority leader of the House of Representatives who
25 shall have expertise in premises liability; and (8) one appointed by the
26 minority leader of the Senate who shall have expertise in the tree laws
27 of this state.

28 (c) (1) Each member shall serve a term that is coterminous with that
29 of the appointing authority for such member. Any vacancy on the
30 commission shall be filled by the appointing authority. No member shall
31 receive any compensation for the performance of such member's duties
32 on the commission. Six members of the commission shall constitute a
33 quorum for the purpose of conducting any business of the commission.
34 Members of the commission shall designate one member to serve as the
35 chairperson of the commission who shall have the authority to call for a
36 meeting of the commission. The commission shall meet not less than
37 once per calendar quarter.

38 (2) Not later than January 1, 2025, the commission shall establish an
39 Internet web site that the Department of Energy and Environmental
40 Protection shall host on its Internet web site.

41 (d) (1) For purposes of this subsection, "arborist" has the same
42 meaning as provided in section 23-61a of the general statutes.

43 (2) The Beneficial Arbor Retention Commission shall appoint an
44 arborist for each state park and campground in the state. Not later than
45 January thirty-first of each calendar year, the commission shall publish
46 a list that identifies the appointed arborist for each state park and

47 campground in the state and post such list on the Internet web site of
48 the commission.

49 (3) Notwithstanding the provisions of section 23-4 of the general
50 statutes, on and after October 1, 2024, prior to authorizing the removal
51 or pruning of any tree, shrub or group of shrubs located in any such
52 state park or campground, the commission shall consult with the
53 arborist identified for such state park or campground, pursuant to
54 subdivision (2) of this subsection, to determine the trees or shrubs that
55 are identified for removal or pruning. Unless the condition of such tree,
56 shrub or group of shrubs constitutes an immediate public hazard, as
57 determined by such arborist in accordance with subdivision (4) of this
58 subsection, the commission shall, not less than ten days prior to the
59 scheduled removal or pruning of any such tree, shrub or group of
60 shrubs, post on each tree, shrub or group of shrubs, as applicable, a
61 notice indicating the commission's intention to remove or prune any
62 such tree, shrub or group of shrubs. If any person, firm or corporation
63 objects to such removal or pruning, such person, firm or corporation
64 may make petition to the commission, in writing, on a form prescribed
65 by the commission. The commission shall suspend the scheduled
66 removal or pruning of any such tree, shrub or group of shrubs and hold
67 a public hearing, in accordance with the provisions of chapter 54 of the
68 general statutes, at a noticed time and place after giving not less than
69 ten days' notice of such public hearing to all persons known by the
70 commission to be interested in such petition and after posting notice of
71 such public hearing on any such tree, shrub or group of shrubs. Not later
72 than ten days following any such public hearing, the commission shall
73 provide notice of the commission's decision concerning the removal or
74 pruning of any such tree, shrub or group of shrubs to any person known
75 by the commission to be interested in such petition.

76 (4) In the event that any such tree, shrub or group of shrubs
77 constitutes an immediate public hazard, as determined by the arborist,
78 the commission shall consult with the arborist identified for such state
79 park or campground, pursuant to subdivision (2) of this subsection to
80 determine if such tree, shrub or group of shrubs requires immediate

81 removal. Prior to removing any such tree, shrub or group of shrubs, in
82 determining whether any such tree, shrub or group of shrubs constitutes
83 an immediate public hazard, the arborist shall consider the following:
84 (A) The proximity of such tree, shrub or group of shrubs to the public's
85 utilization of the state park or campground and whether physical
86 changes to the public's utilization of such state park or campground
87 could reasonably change the status of a determination of such tree,
88 shrub or group of shrubs constituting an immediate public hazard; (B)
89 the feasibility of pruning or pesticide application in lieu of the removal
90 of any such tree, shrub or group of shrubs; and (C) the age and history
91 of any such tree, shrub or group of shrubs to determine if there is any
92 social or scenic value to such tree, shrub or group of shrubs.

93 (5) After considering the factors set forth in subparagraphs (A) to (C),
94 inclusive, of subdivision (4) of this subsection, such arborist may
95 determine that any tree, shrub or group of shrubs constitutes an
96 immediate public hazard and the commission may provide for the
97 immediate removal of any such tree, shrub or group of shrubs. The
98 commission shall record the date and location of any such tree, shrub or
99 group of shrubs that are removed as a result of the decision that such
100 tree, shrub or group of shrubs constituted an immediate public hazard.
101 Such record shall also indicate any specific determination made by the
102 arborist in considering the factors described in subdivision (4) of this
103 subsection. The commission shall cause such record to be posted on the
104 Internet web site of the commission not later than three days after the
105 removal of any such tree, shrub or group of shrubs.

106 (e) Not later than December 1, 2025, and each year thereafter, the
107 Beneficial Arbor Retention Commission shall submit a report, in
108 accordance with section 11-4a of the general statutes, to the joint
109 standing committee of the General Assembly having cognizance of
110 matters relating to the environment on state park and campground tree
111 and shrub retention and hazardous tree mitigation efforts undertaken
112 by the commission pursuant to this section and any associated funding
113 needs for the commission.

114 Sec. 2. Section 23-4c of the general statutes is repealed and the
115 following is substituted in lieu thereof (*Effective October 1, 2024*):

116 [(a) Not later than August 1, 2022, the Commissioner of Energy and
117 Environmental Protection shall develop, finalize and publish on the
118 Department of Energy and Environmental Protection's Internet web site
119 a hazardous tree mitigation policy that shall apply to the designation,
120 removal and mitigation of trees located in state parks and campgrounds
121 that are determined to be hazardous by the Department of Energy and
122 Environmental Protection. Such policy shall include criteria for the
123 designation of a tree as hazardous by the department and the scope of
124 applicability for procedures for such designation, removal and
125 mitigation, including, but not limited to, (1) department consultation of
126 a licensed arborist prior to the designation and removal or mitigation of
127 any such hazardous tree; (2) advance notification to the public of the
128 department's hazardous tree removal activities, including, but not
129 limited to, signage and publication of information on the Department of
130 Energy and Environmental Protection's Internet web site; and (3)
131 consideration of replanting and other relevant improvements to offset
132 the aesthetic or ecological value provided by any hazardous tree that is
133 removed. Such policy shall also include provisions for: (A) The
134 maintenance of public safety, (B) ecological and natural resource
135 protection, (C) practices for transparency and public engagement in the
136 process of such designation, removal and mitigation, (D) effective
137 stewardship of department resources, (E) public access to outdoor
138 recreation, (F) fire suppression or protection efforts, (G) state park
139 maintenance and repairs, (H) decorative pruning, (I) trail maintenance,
140 (J) post-storm impact mitigation or clean-up, and (K) removal of
141 invasive species. For the purposes of this section, "arborist" has the same
142 meaning as provided in section 23-61a.]

143 [(b)] (a) The Department of Energy and Environmental Protection, in
144 conjunction with the Beneficial Arbor Retention Commission,
145 established pursuant to section 1 of this act, shall implement a tree
146 replanting demonstration project at Housatonic Meadows State Park, in
147 consultation with state park or forest advocacy groups or organizations.

148 [(c)] (b) Not later than December 1, [2022] 2024, the Commissioner of
149 Energy and Environmental Protection shall submit a report, in
150 accordance with section 11-4a, to the joint standing committee of the
151 General Assembly having cognizance of matters relating to the
152 environment on [state park and campground tree replanting strategies
153 for removed hazardous trees] the project established pursuant to
154 subsection (a) of this section and any associated funding needs.

155 Sec. 3. (NEW) (*Effective July 1, 2024*) (a) Not later than thirty days prior
156 to the operation or utilization of any land clearing or grinding
157 machinery or equipment for the purpose of conducting tree and
158 vegetation management or removal in connection with any
159 maintenance or construction project, as described in subsection (a) of
160 section 13b-31h of the general statutes, the owner, lessor or operator of
161 such machinery or equipment shall obtain a Certificate of Limited
162 Effects for Arbor Non-Retainment from the Commissioner of Energy
163 and Environmental Protection. The commissioner may prescribe the
164 form and manner of submission for any such application for such
165 certificate.

166 (b) In determining whether to issue a certificate pursuant to
167 subsection (a) of this section, the commissioner shall consider: (1)
168 Whether the use of such machinery or equipment is consistent with the
169 state's greenhouse gas emissions goals, as set forth in section 22a-200a
170 of the general statutes, (2) the effects of any particulate matter
171 attributable to the operation or utilization of such machinery or
172 equipment, including, but not limited to, any disproportionate effects
173 on residents of environmental justice communities, as defined in section
174 22a-20a of the general statutes, and (3) the likelihood of the spread of
175 any invasive plant species from the use of such machinery or equipment
176 to manage, remove, move, clear, disrupt, grind or dispose of such trees
177 or vegetation given the likelihood of the reuse of such machinery or
178 equipment in any similar future maintenance or construction projects,
179 as described in subsection (a) of section 13b-31h of the general statutes.

180 (c) In issuing a certificate pursuant to subsection (a) of this section,

181 the commissioner may prescribe or require certain conditions,
 182 including, but not limited to, hourly limits on the operation or
 183 utilization of such machinery or equipment, the use of alternate
 184 machinery or equipment that produces lower levels of greenhouse gas
 185 emissions or particulate matter and the implementation of best practices
 186 for the removal and disposal of invasive plant species from such
 187 machinery or equipment. The commissioner may require the inspection
 188 of the proposed site for any such maintenance or construction project by
 189 a licensed arborist for the purpose of undertaking the responsibilities
 190 described in this section.

191 (d) Notwithstanding the provisions of subsection (c) of this section,
 192 no such certificate issued pursuant to this section shall: (1) Authorize
 193 the operation or utilization of such machinery or equipment during
 194 hours other than daylight hours, or (2) be issued prior to the submission
 195 of the guidelines required by subsection (a) of section 13b-31h of the
 196 general statutes by both the maintenance and engineering divisions of
 197 the Department of Transportation.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2024</i>	New section
Sec. 2	<i>October 1, 2024</i>	23-4c
Sec. 3	<i>July 1, 2024</i>	New section

ENV *Joint Favorable*

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 25 \$	FY 26 \$
Department of Energy and Environmental Protection	GF - Cost	Significant	Significant
State Comptroller - Fringe Benefits ¹	GF - Cost	Significant	Significant
Department of Transportation	TF - Potential Cost	See Below	See Below

Note: GF=General Fund; TF=Transportation Fund

Municipal Impact: None

Explanation

The bill creates new oversight processes for vegetation management at state parks and campgrounds, and along state highways. The bill's changes result in significant costs to the state beginning in FY 25, as described below.

Section 1 is expected to result in costs exceeding \$1 million annually, beginning in FY 25. The section establishes the Beneficial Arbor Retention Commission and requires a licensed arborist and the commission to evaluate the proposed removal or pruning of any tree, shrub, or group of shrubs in any of the 142 state parks and 13 state campgrounds.² The bill places the commission within the Department of Energy and Environmental Protection (DEEP) for administrative

¹The 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 41.25% of payroll in FY 25.

² The removal or pruning cannot proceed without commission approval.

purposes only. As DEEP and nonprofit partners are continuously engaged in such vegetation management, it is expected that the commission's cost of arborist evaluations for such work will exceed \$1 million annually beginning in FY 25. The cost is anticipated to be similar whether the commission hires arborists to conduct the evaluations or contracts out. DEEP estimates that the cost of arborist evaluation that meets the requirements of the bill for one tree is \$200.

Due to the volume of tree and shrub evaluations that must be done by the arborists and the commission, it is anticipated that one Environmental Analyst 2 position will be required to staff the commission. The costs of the new position are expected to be approximately \$73,800 in FY 25 (\$48,700 salary and \$5,000 other expenses to DEEP, and fringe benefits of \$20,100) and annualized costs of \$92,700 in FY 26 and beyond (\$64,900 salary and \$1,000 other expenses, and \$26,800 in fringe benefits). FY 25 costs reflect an October 1, 2024 hire date.

Section 3 requires the Department of Transportation (DOT), or its contractor, to get a certificate from DEEP within 30 days of operating machinery or equipment for vegetation management at both its maintenance and construction projects. This potentially requires DOT to apply for several thousand certificates a year which, to the extent that it leads to project delays, results in a cost to DOT. The actual cost will depend on the process developed by DEEP and the length of any delays.

When evaluating whether to issue each certificate, DEEP must consider multiple factors. This evaluation may result in significant annual costs to DEEP beginning in FY 25, associated with the requirements to consider whether the equipment's use is consistent with state emissions goals and the effects of particulate matter associated with its use. It is unclear whether it would be possible to use other entities' test results for equipment emissions and particulate matter. If so, DEEP will require a significant number of additional staff, given the volume of certificates expected. If emissions and particulate data are unavailable, the cost to develop such information by in-house testing of

equipment could exceed \$100 million, based on a similar program executed by California. The costs would include building a testing laboratory, purchasing and maintaining specialized testing equipment, and hiring new staff qualified to use the testing equipment.

DEEP's evaluation for the certificate must also consider how the planned vegetation management would impact the spread of invasive species, and prescribe how to mitigate such spread. To implement this aspect of the certification requirements, DEEP will hire two additional staff - a Forester 1 and a Wildlife Biologist 1 - at a total estimated cost to the state of \$208,300 in FY 25 and \$188,300 in FY 26 (and annually thereafter). The annual cost components are: (1) salaries totaling \$129,800 (\$64,900 for each); (2) fringe benefits of \$53,500; and (3) other expenses of \$25,000 in FY 25 (including a vehicle) and \$5,000 in FY 26, and annually thereafter.

The Out Years

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

OLR Bill Analysis**SB 289*****AN ACT CONCERNING THE AUTHORITY OF THE DEPARTMENTS OF ENERGY AND ENVIRONMENTAL PROTECTION AND TRANSPORTATION OVER VEGETATION MANAGEMENT.*****SUMMARY**

This bill creates an 11-member Beneficial Arbor Retention Commission that must exercise care, custody, and control of all trees, shrubs, and vegetation in state parks and campgrounds (§ 1). It places the commission within the Department of Energy and Environmental Protection (DEEP) for administrative purposes.

The bill requires the commission to appoint a DEEP-licensed arborist for each state park and campground. It establishes standards and processes that the commission must follow before authorizing any tree or shrub removal or pruning, including public notice of proposed work unless a tree's or shrub's condition constitutes a public hazard, in which case it may be removed or pruned immediately.

The bill also requires DEEP to work with the commission to implement the tree replanting demonstration project at Housatonic Meadows State Park that is required under existing law. Under the bill, DEEP must report to the Environment Committee by December 1, 2024, on the project and any associated funding needs (§ 2).

Lastly, the bill requires the owner, lessor, or operator of land clearing or grinding machinery or equipment used for vegetation management or removal at a Department of Transportation (DOT) maintenance or construction project to get a Certificate of Limited Effects for Arbor Non-Retainment from DEEP within 30 days before using the machinery or equipment at the project (§ 3). The bill outlines what DEEP may consider

when deciding to issue a certificate, and allows DEEP to place conditions on the machinery’s or equipment’s use (e.g., to lower greenhouse gas emissions and manage invasive species). The bill requires that work done under a certificate must be performed during daylight hours.

EFFECTIVE DATE: July 1, 2024, except for the provisions related to the Housatonic Meadows State Park tree replanting project, which take effect October 1, 2024.

§ 1 — BENEFICIAL ARBOR RETENTION COMMISSION

Commission Membership

Under the bill, the governor, legislative leaders, and DEEP commissioner must appoint the commission’s members, most of whom must meet specified qualifications. The appointing authorities must fill any vacancies. The appointments are as shown in the below table.

Table: Beneficial Arbor Retention Commission Members

<i>Appointing Authority</i>	<i>Appointee Qualifications</i>
Governor (2)	One Connecticut Agricultural Experiment Station representative One environmental justice community resident
House speaker (2)	One with expertise in tree management, maintenance, and removal of dead or diseased trees One with landscape architecture expertise
Senate president pro tempore (2)	One licensed arborist One representative of a nonprofit with the primary mission of supporting the state’s parks and preserving and retaining the state’s tree canopy
House majority leader (1)	One with expertise in carbon sink methods
Senate majority leader (1)	One state parks patron
House minority leader (1)	One with premises liability expertise
Senate minority leader (1)	One with Connecticut tree law expertise
DEEP commissioner (1)	None specified

Members must (1) serve without compensation for a term that is coterminous with their appointing authority and (2) designate a member to be chairperson, who can call meetings. The commission must

meet at least once quarterly. Six members constitute a quorum to conduct business.

Commission Duties

The bill requires the commission to set up a website, hosted on DEEP's website, by January 1, 2025. The commission must also appoint a DEEP-licensed arborist for each state park and campground and, by January 31 annually, post the assignments on its website. The bill establishes standards and processes that the commission must follow before authorizing any tree or shrub removal or pruning (see below).

Annually, beginning by December 1, 2025, the commission must report to the Environment Committee on its (1) state park and campground tree and shrub retention and hazardous tree mitigation efforts and (2) funding needs.

Authorizing Work; Public Notice and Hearing

Beginning October 1, 2024, before the commission authorizes any tree or shrub removal or pruning in a state park or campground, it must consult with the assigned arborist for the area. If the tree's or shrub's condition is an immediate public hazard in the arborist's opinion based on specified criteria (see below), the commission may have the tree or shrub removed or pruned immediately after consulting with the arborist.

If not an immediate public hazard, the commission must post on each affected tree or shrub, at least 10 days before the proposed work, the intention to remove or prune it. If anyone objects to the proposed work, they may petition the commission in writing on a commission-prescribed form, in which case the commission must suspend the proposed work and hold a public hearing under the Uniform Administrative Procedure Act. The commission must (1) give at least 10 days' notice of the hearing date and time to anyone the commission knows is interested in the petition and (2) post the hearing notice on each affected tree or shrub.

Within 10 days after the hearing, the commission must give notice of

its decision about the removal or pruning to anyone it knows is interested in the petition.

Arborist Considerations for Public Hazard Determination

When determining if a tree or shrub is an immediate public hazard, the bill requires that the assigned arborist for the state park or campground consider the:

1. tree's or shrub's proximity to the public's use of the park or campground, and if physical changes to their use could reasonably change the determination of an immediate public hazard;
2. feasibility of pruning or applying pesticide instead of removing a tree or shrub; and
3. tree's or shrub's age and history to determine if it has social or scenic value.

Public Hazard Tree or Shrub Removal Records

The bill requires the commission to record the (1) date and location of each tree or shrub removed based on the arborist's decision that it was an immediate public hazard and (2) arborist's specific determination after considering the above factors. The commission must post this record on its website within three days after the tree or shrub removal.

§ 3 — CERTIFICATE OF LIMITED EFFECTS FOR ARBOR NON-RETAINMENT

The bill requires the owner, lessor, or operator of land clearing or grinding machinery or equipment used for vegetation management or removal at a DOT maintenance or construction project to get a certificate from DEEP within 30 days before using the machinery or equipment at the project.

Under the bill, DEEP may consider the following when deciding to issue a certificate:

1. if use of the machinery or equipment is consistent with the state's greenhouse gas emissions goals;
2. the effects of any particulate matter connected with operating or using the machinery or equipment, including any disproportionate effects on environmental justice communities; and
3. the likelihood of spreading invasive plants from one project site to another from the use and reuse of the machinery or equipment.

The bill allows DEEP to set conditions for the use of the machinery or equipment under a certificate, including the following:

1. hourly limits for the use of the machinery or equipment (as long as all work is done during daylight hours);
2. the use of alternative machinery or equipment that results in lower greenhouse gas emissions or particulate matter;
3. implementing best practices for the removal and disposal of invasive species from the machinery or equipment; and
4. inspection of the proposed work site by a licensed arborist.

The bill also prohibits DEEP from issuing any certificate before DOT's maintenance and engineering divisions submit their vegetation management guidelines to the Environment and Transportation committees. (PA 23-135, § 33, required DOT to develop, and revise as needed, guidelines for tree and vegetation management, removal, and replacement along state highways for employees and contractors to use for maintenance and construction projects. The guidelines were due to the committees by January 1, 2024. DOT submitted them on March 8, 2024.)

BACKGROUND

Related Bill

HB 5484, favorably reported by the Transportation Committee,

requires DOT to submit its vegetation management guidelines to the Environment and Transportation committees for approval (or deemed approval if no committee action is taken within 30 days) before the guidelines can take effect. It also prohibits DOT from removing any trees or vegetation during maintenance or construction projects until the guidelines are approved, unless removal is needed for public safety or due to a weather-related civil preparedness emergency.

COMMITTEE ACTION

Environment Committee

Joint Favorable

Yea 33 Nay 1 (03/20/2024)