



2000
ACTS AFFECTING

THE
ENVIRONMENT

Office of Legislative Research



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Connecticut General Assembly

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NOTICE TO READERS

This report provides brief highlights of the 2000 public acts affecting the environment. Not all provisions of the acts are included and not all the acts listed have been signed by the governor. Readers are encouraged to obtain the full text of acts that interest them from the Connecticut State Library or the House Clerk's office. *Highlights of the Revised FY 01 Budget* is available from the Office of Fiscal Analysis. Complete summaries of all public acts passed during the 2000 session will be available in early fall when OLR's Public Act Summary book is published, and some are now available on the OLR website (<http://www.cga.state.ct.us/olr>).

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CAMPFIRES AND OPEN BURNING

The legislature eliminated the requirement that all burning permits be issued by the local fire marshal. Instead, permits for burning brush by residents on their property must be obtained from a local open burning official and permits for towns to burn at their solid waste facilities must be obtained from the local fire marshal.

Local open burning officials may issue permits for: (1) fire training, (2) insect control, (3) natural disaster clean-up, (4) wildlife habitat and vegetation management, and (5) ecological sustainability. The act allows such burns on state property with DEP's written approval. DEP no longer needs to issue written approval for fires used to control forest fires or to reduce the risk of uncontrolled salt marsh fires.

The chief executive officer of the town must nominate the official, who must then be certified by DEP. The chief executive officer may revoke the nomination. DEP may adopt regulations establishing a certification process and governing open burning generally.

The act specifically allows for campfires and bonfires to the extent they do not represent a nuisance and do not conflict with

any other burning restrictions.
(PA 00-1, effective upon passage)

FISCAL ACTS

Bonds for DEP Programs

Last year the legislature authorized \$10 million in bonding for financial assistance to municipalities for various infrastructure purposes and for a grant program to clean up contaminated soil and remove leaking underground storage tanks. This year's bond act increases the authorization by \$2 million and specifies that at least \$4 million, rather than \$2 million, of the total funding must go for grants under the latter program.

The act increases, from \$5 million to \$15 million, the bond authorization for grants to municipalities for improvements to incinerators and landfills, and specifies that the funds can be used for bulky waste landfills.
(PA 00-167, effective July 1, 2000).

Tax Changes

The legislature authorized up to \$500 million in business tax credits for investments in two types of projects. One type of eligible project is the clean up and redevelopment of a contaminated or potentially contaminated site anywhere in the state. A project must generate substantial economic

benefits by itself or in conjunction with related projects. A business can invest the funds directly in a project or through a fund manager. The economic and community development commissioner grants the credits, which can last for up to 10 years. They must repay the credits if the project fails to generate the projected revenue. Municipalities can abate or exempt the taxes on properties receiving investments under certain conditions. The same act exempts cars that get 50 or more miles per gallon of gasoline for two years from the sales tax. It allocates an additional \$1 million in motorboat fuels tax revenue to the fisheries account with the Conservation Fund and specifies how this amount must be spent. **(PA 00-170, effective July 1, 2000)**

The legislature exempted nonprescription drugs for animals from the sales tax and eased requirements for farmers and commercial fishermen to qualify for sales and use tax exemption permits. It made several other minor changes in the sales, motor fuels, and succession taxes that affect farmers and boaters. **(PA 00-174, effective July 1, 2000)**

Staffing the Nuclear Energy Advisory Council

By law, DEP must provide clerical support to the Nuclear Energy Advisory Council. This

act eliminates the restriction that it do so within available appropriations. The council holds public meetings; works with governmental agencies and nuclear power plant operators to ensure the public's health and safety; and communicates concerns about the safety and operations of nuclear power plants to their operators. **(PA 00-155, effective October 1, 2000)**

GROUNDWATER PROTECTION

Phase Out of MTBE

DEP, in conjunction with the Northeast Regional Fuels Task Force, must develop and implement a plan to eliminate methyl tertiary butyl ether (MTBE) as a gasoline additive by October 1, 2003. DEP also must seek a federal Environmental Protection Agency waiver to stop the use of MTBE as a gasoline additive in Connecticut. DEP must report to the Environment Committee on the plan and regional efforts to reduce MTBE levels in gasoline by January 1 in 2001, 2002, and 2003.

DEP must direct petroleum industry groups to develop a public education campaign regarding the proper handling of gasoline. The campaign must be directed at homeowners, marine trades, businesses, and all other gasoline users. It must include (1) a warning about proper handling at the point of sale; (2) instructions regarding proper

handling on portable gasoline containers; and (3) newspaper, radio, and television information advertisements.

Anyone, including a responsible corporate official, who discharges gasoline willfully or with criminal negligence is subject to criminal penalties. The penalty for first-time offenders is a fine up to \$50,000 per day and imprisonment for up to three years. For subsequent offences, the penalty is a fine up to \$100,000 per day and imprisonment for up to 10 years.

The act increases, from \$1,000 to \$5,000, the fine for failing to report the discharge, spillage, uncontrolled loss, seepage, or filtration of gasoline. It increases the fine for the employer of someone who fails to report from \$5,000 to \$10,000. **(PA 00-175, effective July 1, 2000)**

Underground Storage Tank Amnesty Program

Last year the legislature established a program to provide protection from civil liability to the state for residential underground storage tank (UST) owners who remove or replace their tanks between July 1, 1999 and January 1, 2002. The program allows them to recover related remediation expenses from bond funds administered by the UST review board if they employed a contractor registered with DEP.

This year the legislature:

1. expanded the scope of the program;
2. extended the amnesty to future property owners, but made people who violate DEP orders to remove or discontinue use of a tank ineligible for the amnesty;
3. required the review board to develop guidelines for reimbursement decisions and for contractor training and qualifications; and
4. established an appeals process for board decisions.

The act (1) requires additional people to register as contractors, (2) allows DEP to reject applications and revoke registrations for failure to meet certain regulatory standards, and (3) establishes a \$250 registration renewal fee.

DEP must adopt residential UST regulations and contractors must comply with them and meet existing remediation standards. Contractors must clearly inform customers of costs that may not be covered by the program. They must submit all eligible costs to the board for reimbursement and may not bill customers for such costs beyond the first \$500 if they fail to do so, unless they have a separate contract with the customer. They must notify DEP when remediation estimates exceed \$10,000 and DEP must conduct an investigation. The act allows reimbursement of costs above \$50,000 under

certain circumstances. **(PA 00-201, effective upon passage)**

HUNTING AND FISHING

Hunting Safety

This year the legislature established the crimes of negligent hunting and hunting while under the influence or impaired by alcohol. The act imposes enhanced penalties for persistent offenders. It generally requires the person arrested for these crimes to surrender his weapon.

By law, a hunter whose license has been suspended for violation of hunting laws must complete a remedial hunter education course designed by DEP before his license can be reinstated. The act additionally requires him to pass a conservation education/firearms safety course or its equivalent, as specified by DEP. **(PA 00-142, effective October 1, 2000)**

Private Land Deer Permits

DEP must issue free private land deer permits to Indians to hunt on their tribe's reservation lands. The reservation lands must be at least 250 acres for tribal members to be eligible. The permit allows them to hunt deer from November 1 through December 31 using along gun, muzzleloader, or bow and arrow (the same period and fire arms allowed for landowners with

private land deer permits). Members are limited to one permit each year. By law, Indians may hunt on their reservation lands without a license under the same regulations and during the same hunting season as licensed hunters generally.

DEP also must issue free private land deer permits to corporate members or their immediate family of an S-corporation that is a farm. Immediate family means spouses, children, grandchildren, siblings or parents. S-corporations, sometimes called pass-through corporations, are small business corporations that meet the requirements of and elect to be treated differently from other corporations under the Internal Revenue Code. **(PA 00-67, effective October 1, 2000)**

Transfer Of Commercial Lobster Licenses

The legislature allowed, under certain conditions, commercial lobster fisherman (including those using trawls) to transfer their licenses, without compensation, despite the moratorium on commercial fishing license transfers. Specifically, the act allows an active commercial fishermen who: (1) held a license and landed lobsters in at least three of the four calendar years, 1995, 1996, 1997, and 1998 and (2) reported his catches as required by law, to transfer the license

upon notifying DEP commissioner. But, the license holder may not transfer it to anyone who has had his commercial fishing license, registration, or vessel permit suspended in the preceding 12 months or revoked. The transfer must occur before October 1, 2002.

The person to whom the license is transferred can only fish the number of pots the transferor fished and reported during the 1995-1998 period. But a transferee who already holds a license may choose to fish the number of pots actively fished under his own license or under the newly acquired one, whichever is greater. **(PA 00-189, effective October 1, 2000)**

Taking of Menhaden

The legislature prohibited fishing for menhaden with any size purse seine (a type of net) or similar device. Under existing law, fishermen are already prohibited from using purse seines to take other fish. Using large purse seines for menhaden was prohibited until July 1, 2001. The act also eliminates corresponding permit requirements and fees for boats using purse seines. **(PA 00-16, effective upon passage)**

Purse Seines

As noted above, the law already prohibited most uses of purse seines and PA 00-16 bars

their use in taking menhaden. The legislature also repealed the permits for their use, **(PA 00-196, effective October 1, 2000)**

Emergency Regulations Regarding Marine Resources

By law, emergency regulations are valid for up to 120 days and may be renewed for up to 60 days (180 days total). The act allows DEP to extend certain marine resource and fisheries emergency regulations an additional 60 days (240 days total) with approval of the Legislative Regulations Review Committee. The regulations must be necessary to comply with orders of the Atlantic States Marine Fisheries Commission or to address an unforeseen marine resource issue. DEP may request approval of the extension when it submits the initial emergency regulation or any time up to 10 days before the first 60-day extension expires. If the committee fails to act on an extension request within 10 days, it is deemed approved. **(PA 00-62, effective October 1, 2000)**

LAND USE

Adriaen's Landing and UConn Stadium

In approving the Adriaen's Landing project, the legislature broadened the exemptions the project has from various laws. In lieu of the public hearings

required by law, the DEP commissioner must adopt a master administrative process that requires that, the extent practicable, one hearing is held for the stadium and one for the convention center and parking facilities at Adriaen's Landing. The act exempts the convention center, parking facilities, and related private developments from the requirement that state agencies submit their construction plans to the Council of Environmental Quality for review. It specifies that the environmental evaluations required by law in connection with private developments do not have to be completed before the projects are funded or contracts awarded. **(PA 00-140, effective upon passage)**

Determining the Fair Market Value Of Brownfields

The legislature required that the determination of the value of property taken by eminent domain by a municipal redevelopment agency and certain other agencies take into account any evidence of its fair market value, including its environmental condition and the cost of environmental remediation, when the valuation is challenged. A number of court cases have held that evidence of environmental contamination or cost estimates of remediation cannot be considered in eminent domain proceedings. The act entitles the property owner to a

setoff of such costs in any pending or subsequent suit to recover remediation costs for the property. Thus, for example, if the referee determined that clean-up costs reduced a property's fair market value by \$200,000, the owner could deduct this amount if he were sued for property clean-up costs. **(PA 00-89, effective October 1, 2000; PA 00-192 makes this act effective upon passage)**

Brownfield Remediation

The legislature:

1. authorized the Department of Economic and Community Development (DECD) to provide funds to eligible brownfield redevelopers to buy remediation insurance and for deductible payments on such insurance;
2. specifically allowed the DECD commissioner to provide loans from the Special Contaminated Property Remediation and Insurance Fund (SCPRIF) for eligible projects that include lead and asbestos removal or abatement costs;
3. added to the events that trigger SCPRIF loan principal repayment and permitted DECD to seek partial repayment in some situations, and
4. permitted DECD to set different interest rates, within limits, for SCPRIF

loans to municipalities than for loans to private entities.

(PA 00-171, effective October 1, 2000)

Uncollected Land Use Fees and Grants to Municipalities

By law, towns must collect a \$10 land use fee in addition to any town fees from applicants for a zoning, subdivision, wetland, or coastal zone permit or approval. They may keep \$1 of the fee and must submit the remaining \$9 to DEP to be used to fund the Environmental Review Teams Program, the Council on Soils and Water Conservation, and soil and water conservation districts.

DEP must submit to the Office of Policy and Management (OPM) a quarterly list of towns that are not sending fees to DEP. OPM must reduce payments to such towns from the Mashantucket Pequot and Mohegan Fund by \$500 for each of the preceding four quarters that they failed to collect the fee, up to \$2,000 per fiscal year. OPM must deposit the withheld funds in the Environmental Quality Fund to be used for the same purposes as the land use fees. **(PA 00-102, effective July 1, 2000; PA 00-196, effective October 1, 2000, modifies this act by (1) requiring DEP to submit the list to OPM annually rather than quarterly, and (2) having the comptroller, rather than OPM make the transfer)**

Siting Fuel Cells and Other Generating Facilities

The legislature made it easier to build or modify certain electric generating facilities. The law requires a Siting Council certificate to build or modify most types of electric generating facilities. The process for granting a certificate is quasi-judicial in nature and is subject to extensive public hearing and notice requirements. But if a facility (1) is on the site of a pre-July 1, 1998 generating plant, (2) does not use coal or nuclear materials, and (3) the council determines that the new facility would not cause substantial environmental harm, the council must approve it using an expedited process called a declaratory ruling. The act appears to eliminate the last condition, thereby allowing the council to approve by declaratory ruling all facilities that meet the other two conditions. The council has 60 days to act upon a request for a ruling, compared to 180 days for a certificate.

The act also eliminates the need for a certificate for fuel cell generating facilities with a capacity of up to 10 kilowatts (the amount of electricity used by 100 100-watt light bulbs). More generally, it requires the council to approve the construction or location of any fuel cell by declaratory ruling, unless the council finds that will cause substantial environmental harm.

(PA 00-93, effective October 1, 2000)

MISCELLANEOUS

Mass Transportation

Subject to available appropriations, the transportation commissioner must (1) expand mass transportation systems in places he finds appropriate and (2) conduct a comprehensive analysis to the Metro North Rail Operating Agreement and report his findings and recommendations to the Transportation Committee by February 1, 2001.

The analysis of the Metro North Agreement must include an examination of ridership, costs, service, scheduling, marketing, capital investment, and other related issues. It must recommend how the state can better exercise its legal rights under the agreement to increase ridership and maintain fare affordability as part of a strategy to reduce highway congestion in southwestern Connecticut. (PA 00-129, effective October 1, 2000)

Soil Amendments And Agricultural Liming Materials.

The legislature established a program to regulate the distribution and sale of soil amendments and agricultural liming material similar to the existing requirements for

commercial fertilizers. The legislation defines soil amendments and agricultural liming materials and prohibits their distribution unless they are registered with the Department of Agriculture (DAG). It establishes registration requirements and procedures and labeling requirements. It prohibits the distribution of misbranded or adulterated soil amendments or liming materials. DAG must sample, inspect, and analyze the products and test them as necessary.

DAG may issue stop-sale orders under certain conditions and adopt regulations for each program. DAG may also cooperate or enter into agreements with other state or federal agencies. The act establishes penalties for violations and authorizes the attorney general, upon DAG complaint, to bring a civil action to recover the penalties. (PA 00-96, effective July 1, 2000)

OPEN SPACE

New Programs

The legislature established the Charter Oak Open Space Trust Account to fund two new open space purchase programs. The two programs provide for (1) state acquisitions of open space and watershed protection lands and (2) a matching grant program for municipal and nonprofit land conservation organizations land

acquisitions. The acquired land must meet the criteria and use limits of the existing protected open space and watershed land acquisition program and must be preserved permanently by a conservation easement. The DEP commissioner may authorize expenditures from the accounts for the programs.

The programs expire when the state meets its total open space goal (currently 21% of the state's total land area). At that time, any balance remaining in the two accounts reverts to the Recreation and Natural Heritage Trust program.

The Department of Public Health commissioner must require permanent conservation easements on the sale of certain water company lands, and the act imposes additional requirements for such sales.

The Department of Agriculture must prepare a list of properties for which it has a purchase price agreement for the property's development rights and the State Bond Commission must consider the list when issuing bonds for the agricultural lands preservation program. The bond commission must issue bonds for that program to the extent they are authorized but not allocated as of July 1, 2000. **(PA 00-203, effective July 1, 2000)**

Route 11 Greenway

The legislature authorized East Lyme, Montville, Salem, and Waterford collectively to create a

Route 11 Greenway Authority Commission by ordinance and specified the commission's membership, duties, powers, and related functions. **(PA 00-148, effective October 1, 2000)**

Technical Revisions To Agriculture And Environment Laws

The legislature made a minor change to the state's open space acquisition goal, specifying that the overall open space goal is 21% held by the state, municipalities, nonprofit conservation groups, and water companies, rather than only the state. It also made technical changes to laws regarding livestock commission sales, open space, and commercial fishing vessel permits. **(PA 00-26, effective October 1, 2000)**

Conveyances

Every year, the legislature conveys parcels of state-owned land to municipalities and other entities. This year's act conveys parcels to the towns of Manchester, Newington, Newtown, and Wethersfield for open space and recreational purposes. It requires the Department of Agriculture to convey the Noank Aquaculture-Marine Laboratory to Groton. The town must make part of the laboratory and surrounding grounds available to its shellfish commission for aquaculture purposes and use the rest for

municipal purposes. The act also requires the Department of Public Works to transfer 53 acres of state land in Preston to DEP. DEP must create a 500-foot wide no hunting zone along the western edge of the property. **(PA 00-168, effective upon passage)**

PENALTIES FOR VIOLATING ENVIRONMENTAL LAWS

Criminal Violations

The legislature made several changes to the enforcement laws regarding hazardous waste record keeping, handling, transportation, storage, and disposal, and it increased the penalties for violating them. The legislation expanded the state hazardous waste program to cover used oil and established corresponding penalties for used oil violations. It increased, from one to two years, the maximum prison term for violating the laws related to asbestos disposal and solid waste handling and, from two to five years, the maximum term for subsequent violations. It increased the maximum penalties for willful violations of the state's water pollution control laws, cease and desist orders, and activities authorized under DEP's general authority. It also increased the penalty for knowingly making false statements, representations, or certifications in documents required in connection with such

laws, orders, and activities. **(PA 00-19, effective October 1, 2000)**

Unauthorized Tree Cutting

The legislature increased the penalties for harming a tree or shrub in a public area or way. Prior law subjected anyone who willfully removed, pruned, injured, or defaced a shrub or tree in a public area without proper authorization to fine of up to \$100. The act eliminates the requirement that the violation be willful and sets the fine at the appraised value of the tree or shrub as determined by the local tree warden or forester or other appropriate authority. The appraisal must comply with regulations that DEP must adopt. The regulations may incorporate by reference the latest edition of *The Guide for Plant Appraisal*, published by the International Society of Arboriculture. Until the regulations are adopted, appraisals may be made in accordance with this guide.

By law, a tree warden may adopt regulations regarding the care and preservation of trees and shrubs along town roads. The act removes the \$90 cap on fines for violating such regulations and instead requires that the fines be reasonable. The law establishes a notice and public hearing process for the tree warden to prune or remove such trees for public safety. The act increases, from five to 10 days, the minimum time between the posting of the notice and the

removal or pruning of the tree. (PA 00-106, effective October 1, 2000)

Pet Animals and Kennels

The legislature increased, from \$25 to \$250, the maximum fine for violating animal quarantine orders for dogs, cats, or other animals that bite or attack people. By law, the animal's owner may also be imprisoned for up to 30 days.

The act increases, from \$25 to \$250, the minimum fine for violating laws related to kennels or restraining or destroying dogs or cats, while eliminating the maximum penalty of \$50. By law, the violator may also be imprisoned for up to 30 days. (PA 00-88, effective October 1, 2000)

SOLID WASTE

Construction And Demolition Wood Generated By Residences

The legislature expanded the types of residential waste that may be disposed of in resource recovery facilities (RRFs) to include construction and demolition wood that is not pressure-treated and does not contain arsenic. It specifies that this wood and other items already allowed at RRFs are deemed municipal solid waste. Previously RRFs had to apply for a special waste permit before accepting residential construction and demolition

wood. (PA 00-29, effective upon passage)

Solid Waste Odor Control

Certain facilities owned or operated by the Connecticut Resources Recovery Authority are now exempt from the solid waste and air permit process when installing certain equipment for odor control. The changes covered include the addition of thermal oxidizers and air pollution control equipment for odor control. Any such change is not considered a modification or a new source requiring a new or modified construction or operation air permit, unless it represents a major modification or a major source. The legislation requires the facilities to report such changes to DEP for review and comment after the fact rather than apply for a permit modification or new permit. (PA 00-23, effective upon passage)

VEHICLE EMISSIONS INSPECTION

The legislature codified the present inspection fees (\$10 for vehicles that require an annual inspection and \$20 for vehicles requiring biennial inspections) through the life of the current inspection contract, which expires on June 30, 2002. It eliminated a requirement that one-half of the \$20 late fee (required from people who present their vehicles for

inspection more than 30 days after their stickers expire) go to the Emissions Enterprise Fund. This conforms the law to another law that requires all the revenue from late fees be deposited in the Special Transportation Fund.

The act eliminates a requirement that any contracts the motor vehicles commissioner negotiates with one or more independent contractors for providing emissions inspections be for at least five years. It also eliminates references to the emissions test having to be a “transient” test. Federal regulations use this term to describe a test procedure generally known as IM/240. This is the test that Connecticut initially was required to have as part of its enhanced emissions inspection program, but which is no longer required.

The act also allows the commissioner to deny initial issuance or renewal of a vehicle registration if it is not in compliance with emissions requirements. (Previously he could only suspend a registration.) This makes state law conform with federal regulations that require states to deny registration to vehicle owners who do not bring vehicles for testing. **(PA 00-169, effective upon passage)**

WATER RESOURCES

Certification of Water Treatment Plant and Distribution System Operators

The legislature broadened the Department of Public Health’s (DPH) authority to adopt regulations governing the operation of public water supply facilities and the qualifications, certification, and training of plant operators. The regulations must be adopted by February 1, 2001, and must be consistent with federal law and regulations regarding plant operators.

The act bars operators from operating a water supply plant or distribution system without DPH certification. It authorizes DPH to discipline plant operators for certain acts of fraud, deception, incompetence, and illegal activity in the same way the professional health licensure boards can discipline members of their professions, other than imposing a civil penalty.

DPH can impose a maximum civil penalty of a \$5,000 per violation rather than \$5,000 in total on a water company for certain health code and water supply planning violations. The act expands the types of violations subject to such penalties to include violations of water standards, testing requirements, plant operation standards, water company land sales requirements, and other operator training and

certification requirements. It also requires DPH to include consideration of the number of people served by or the size of a water company when developing regulations with a penalty matrix. By law, DPH cannot impose any civil penalties until it adopts the regulations.

The act also requires DPH to adopt regulations requiring water companies to report elevated copper levels in public drinking water. **(PA 00-90, effective upon passage)**

Urban Harbors, the Mill River, and Boating

The legislature amended the Coastal Zone Management Act to require state and municipal agencies, under certain circumstances, to promote the revitalization of inner city urban harbors and waterfronts by encouraging the appropriate reuse of historically developed shorefronts. That law generally restricts development in coastal areas and requires agencies to promote various other policies.

The act requires the DEP commissioner to grant a permit to the Army Corps of Engineers for emergency dredging of Clinton Harbor. He must do this within 15 days of receiving certification that the dredging will not harm the harbor or any area used to dispose of the dredged material.

The act requires the South Central Regional Water Authority, in consultation with

DEP, to develop a management plan establishing performance based monitoring and mitigation procedures to be met during the operation of the proposed water treatment plant on Lake Whitney. The program must protect the environmental quality of the lake and the Mill River corridor and avoid unacceptable harm to the ecology and the aesthetics of the area.

The act eliminates the right of a person who has passed a safe boating program in another state to operate a boat in Connecticut. But, it retains the right of someone who has a safe boating certificate from another state that has a reciprocal agreement with Connecticut to operate a boat here.

Finally, the act repeals provisions of PA 98-209 validating the corporate existence of the Brookfield Water Company. **(PA 00-152, effective October 1, 2000)**