SUMMARY OF 2005 PUBLIC ACTS

Connecticut General Assembly

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NOTICE TO USERS

This publication, *Summary of 2005 Public Acts*, summarizes all public acts passed by the 2005 Regular Session and the June 2005 Special Session of the Connecticut General Assembly. Special acts are not summarized.

It is important to note that special session acts may have changed provisions of the acts passed in the regular session. See the summaries of the special session acts for a description of those changes.

Use of this Book

The Office of Legislative Research encourages dissemination of this material by photocopying, reprinting in newspapers (either verbatim or edited), or other means. Please credit the Office of Legislative Research when republishing the summaries.

The office strongly discourages using the summaries as a substitute for the public acts. The summaries are meant to be handy reference tools, not substitutes for the text. The public acts are available in public libraries and can be purchased from the secretary of the state. They are also available online from The Connecticut General Assembly's website (http://www.cga.ct.gov).

Organization of the Book

The summaries are organized in chapters based on the committee that sponsored the bill. Bills sent directly to the floor without committee action (emergency certification) are placed in chapters according to subject matter. The acts from the June 2005 Special Session appear in a separate chapter for the Special Session. Within each chapter, summaries are arranged in order by public act number.

On the next page you will find a list of the vetoed acts from the 2005 session. A table on penalties, appearing on the page after the veto list, describes the fines and prison sentences for various types of offenses. In the back of the volume is a list of acts by public act number.

VETOED PUBLIC ACTS

1. PA 05-40, An Act Concerning the Authority of the Commissioner of Social Services with Respect to the Administration of the Medicaid Program *(Human Services Committee)*

2. PA 05-83, An Act Concerning the Illegal Sale or Possession with Intent to Sell of Cocaine *(Judiciary Committee)*

3. PA 05-112, An Act Concerning Legislative Review and Approval of Waiver Applications Prior to Submittal to the Federal Government *(Human Services Committee)*

4. PA 05-117, An Act Concerning School Nutrition *(Education Committee)*

5. PA 05-126, An Act Concerning Impact Statements for Reductions in State Services *(Labor and Public Employees Committee)*

6. PA 05-231, An Act Concerning Regulation of Telecommunications Services *(Energy and Technology Committee)*

7. PA 05-278, An Act Concerning Conservation Law Enforcement *(Environment Committee)*

8. PA 05-286, An Act Concerning Reform of the State Contracting Process *(Government Administration and Elections Committee)*

TABLE ON PENALTIES

Crimes

The law authorizes courts to impose fines, imprisonment, or both when sentencing a convicted criminal. They must specify the period of incarceration for anyone so sentenced. The prison terms below represent the range within which a judge must set the sentence. The judge also sets the exact amount of a fine, up to the limits listed below. Some crimes have a mandatory minimum sentence or a minimum sentence higher than the minimum term specified in the table. Repeated offenses may result in a higher maximum than specified here.

Classification of Crime	*Imprisonment*	*Fine*
Capital felony	execution or life	—
Class A felony (murder)	25 to 60 years	up to $20,000
Class A felony	10 to 25 years	up to 20,000
Class B felony	1 to 20 years	up to 15,000
Class C felony	1 to 10 years	up to 10,000
Class D felony	1 to 5 years	up to 5,000
Class A misdemeanor	up to 1 year	up to 2,000
Class B misdemeanor	up to 6 months	up to 1,000
Class C misdemeanor	up to 3 months	up to 500

Violations

CGS § 53a-43 of the Penal Code authorizes the Superior Court to fix fines for violations up to a maximum of $500 unless the amount of the fine is specified in the statute establishing the violation. CGS § 54-195 on criminal procedure requires the court to impose a fine of up to $100 on anyone convicted of violating any statute without a specified penalty.

A violation is not a crime; thus a violator does not have a criminal record. Most statutory violations are subject to Infractions Bureau procedures which allow the accused to pay the fine by mail without making a court appearance. As with an infraction, the bureau will enter a *nolo contendere* (no contest) plea on behalf of anyone who pays a fine in this way. The plea is inadmissible in any criminal or civil court proceeding against the accused.

Infractions

Infractions are punishable by fines, usually set by Superior Court judges, of between $35 and $90, plus a $20 or $35 surcharge and an additional fee based on the amount of the fine. There may be other added charges depending upon the type of infraction. For example, certain motor vehicle infractions trigger a Transportation Fund surcharge of 50% of the fine. With the various additional charges the total amount due can be over $300 but often is less than $100.

An infraction is not a crime; thus violators do not have criminal records and can pay the fine by mail without making a court appearance.

Larceny

There are six different classifications of larceny, generally depending on the value of the property illegally obtained.

Degree of Larceny	*Amount of Property Involved*	*Classification*
First Degree	Over $10,000	Class B felony
Second Degree	Over 5,000	Class C felony
Third Degree	Over 1,000	Class D felony
Fourth Degree	Over 500	Class A misdemeanor
Fifth Degree	Over 250	Class B misdemeanor
Sixth Degree	$250 or less	Class C misdemeanor

SELECT COMMITTEE ON AGING

PA 05-77—sSB 967
Select Committee on Aging
Government Administration and Elections Committee
Legislative Management Committee
Human Services Committee

AN ACT CONCERNING THE COMMISSION ON AGING

SUMMARY: This act moves the Commission on Aging to the legislative branch for administrative purposes only. It was previously located in the Department of Social Services (DSS) for such purposes. The act also adds the chairmen and ranking members of the Select Committee on Aging as *ex officio* non-voting members and adds six new voting members, one each to be appointed by the Senate president pro tempore, the House speaker, and the Senate and House majority and minority leaders. This gives each of these legislative leaders two appointments.

The act also:

1. requires the commission's chairperson to be elected from among its members instead of selected by the governor;
2. requires the commission to meet regularly with state agency representatives to review and comment on their policies and procedures concerning the elderly, instead of at least monthly with the DSS commissioner and head of DSS's Division of Elderly Services (which was recently subsumed under a larger Bureau of Aging, Community, and Social Work Services);
3. requires the commission to review and comment on the budget of DSS's Unit on Aging instead of its Division of Elderly Services; and
4. allows the commission to enter into contracts.

EFFECTIVE DATE: July 1, 2005

BACKGROUND

Commission on Aging

The commission advocates for elderly people. It conducts public hearings, issues various reports, disseminates information, and makes recommendations on elderly issues. The legislature established the commission in 1993 when it disbanded the former Department on Aging and folded its program functions into the Division of Elderly Services in the newly created DSS.

Related Act

PA 05-280 reestablishes a Department on Aging on January 1, 2007 and creates a task force to make recommendations on how to implement that act.

PA 05-2—sHB 6489
Appropriations Committee

AN ACT TO CORRECT A TECHNICAL ERROR IN ECS DISTRIBUTION, TO AUTHORIZE PROVISION OF GRANTS TO INTERDISTRICT MAGNET SCHOOLS AND TO SPECIFY DISPOSITION OF THE FAIRFIELD HILLS HOSPITAL PROCEEDS

SUMMARY: This act specifies how the Department of Mental Health and Addiction Services (DMHAS) must distribute the proceeds from the sale of Fairfield Hills Hospital allocated to mental health services grants; corrects an error in the distribution formula for FY 05 Education Cost Sharing (ECS) grants to towns; and extends through FY 05 the education commissioner's authority to provide, as she determines and within available appropriations, supplemental operating grants for enhancing educational programs at interdistrict magnet schools.
EFFECTIVE DATE: Upon passage

FAIRFIELD HILLS HOSPITAL SALE PROCEEDS

By law, some of the proceeds from the sale of the hospital are earmarked for mental health services grants and must be deposited in a separate, non-lapsing mental health services grants account in the General Fund. Prior law required the money in the account to be spent according to law. This act instead requires the DMHAS commissioner to distribute the money in the account as follows:

Amount	***For***
$425,000	Inpatient behavioral health program for preschool children aged two to five
$185,000	Behavioral health preventive activities in the community
$530,000	A study of the behavioral health after-effects on Connecticut soldiers and their families of service in Operation Iraqi Freedom or other combat theaters
$810,000	Transitional behavioral health benefits for soldiers and their families
Any remainder as determined by the DMHAS commissioner	DHMAS purposes specified by law

ECS GRANTS FOR FY 05

As part of the FY 05 ECS grant allocation formula, PA 04-254 required every town except Winchester to receive a FY 05 grant that was at least the greater of its (a) FY 03 grant or (b) FY 04 grant plus 0.07%. This act changes the percentage to 0.7%, thereby raising minimum grants to match the ECS grant appropriation in the FY 05 budget.

PA 05-98—SB 1319
Appropriations Committee

AN ACT REQUIRING PARTICIPANTS IN HEALTH BENEFIT PLANS OFFERED BY THE CONNECTICUT TEACHERS' RETIREMENT SYSTEM TO BE MEDICARE PART A PARTICIPANTS

SUMMARY: This act requires those receiving health benefits through plans offered by the Teachers' Retirement Board to be actually participating, rather than just eligible to participate, in Medicare Part A. The act also makes several technical changes.

By law, the board must offer one or more health coverage plans to members of the Teachers' Retirement System receiving retirement or disability benefits from the system; their spouses or surviving spouses; and their disabled dependents, if there is no spouse or surviving spouse. Those receiving benefits must pay one-third of the premium for a basic plan plus, if they choose any of the optional plans the board offers, the difference in premium between the cost of the basic plan and the optional plan. Medicare Part A offers coverage for hospital stays and some other services.
EFFECTIVE DATE: July 1, 2005

PA 05-99—SB 1330
Appropriations Committee

AN ACT CONCERNING SUCCESSOR ORGANIZATIONS TO THE CHILDREN'S CENTER, HAMDEN

SUMMARY: The act allows teachers and other certified professionals who work at the Children's Center's successor organizations to participate in the state Teachers' Retirement System (TRS) and to receive credit in the system for their service with the successor organization. Teaching service at the Children's Center itself is already covered by the TRS.

The Children's Center is a private agency that offers residential and day programs for children with emotional and behavioral problems, learning

disabilities, histories of physical or sexual abuse, and substance abuse and family dysfunctions. It operates Whitney Hall School, a state-accredited special education facility.
EFFECTIVE DATE: July 1, 2005

PA 05-153—SB 1318
Appropriations Committee
Education Committee

AN ACT REQUIRING THE TIMELY TRANSMITTAL BY EMPLOYERS OF NECESSARY INFORMATION TO THE TEACHERS' RETIREMENT BOARD

SUMMARY: By law, school districts must withhold Teachers' Retirement System members' retirement contributions from their salaries and transmit them electronically to the Teachers' Retirement Board (TRB) by the fifth of the following month. This act requires districts to transmit any reports and other supporting information that TRB requires with the contributions. If a district fails to do so, the act allows TRB to treat the contribution as late and to charge the district interest at the rate of 9% per year.
EFFECTIVE DATE: July 1, 2005

PA 05-245—HB 6989
Appropriations Committee

AN ACT CONCERNING EDUCATION IMPLEMENTER PROVISIONS

SUMMARY: This act make makes various changes in state education grants to implement the FY 06-07 budget. Among other things, it (1) allocates Education Cost Sharing (ECS) grants to towns for FY 06 and FY 07; (2) imposes a penalty on towns that violate the prohibition against using increases in ECS funding to supplant local funding for education; (3) increases per-pupil grants to charter schools; (4) sets a separate per-student operating grant for interdistrict magnet schools run by regional education service centers (RESCs); and (5) establishes a task force to study magnet school operations and funding.

The act establishes the FY 06 and FY 07 distribution of priority school district grants among various other education grant programs and allocates additional money for FY 06 and FY 07 to the three largest priority school districts: Hartford, New Haven, and Bridgeport. For FYs 06 and 07, it requires proportional reductions in various education grants to towns and RESCs when total appropriations for the grants are not sufficient to fully fund them. The act establishes new grants, including a pilot program for the use of technology in computer-assisted writing, instruction, and testing for 9th and 10th grade public school students. It expands and revises existing grants.

The act makes many changes in the school readiness program including (1) increasing the per-child limit on the cost of the State Department of Education's (SDE) part of the program; (2) requiring SDE to develop a statewide assessment of kindergarten preparation by October 1, 2009; (3) establishing an Early Childhood Cabinet to, among other things, develop early childhood program budget requests and promote consistent quality and comprehensiveness for early childhood programs; (4) raising minimum school readiness staff qualifications starting July 1, 2015; and (5) establishing a committee to review and assess pathways to baccalaureate degrees in early childhood education and child development.

This act also:

1. requires the state to reimburse school districts for costs associated with educating children placed by a tribal government in the same way it reimburses for those placed by state agencies;
2. requires charter schools to report on best practices they employ and requires SDE to publish and disseminate a best practices report to all public school superintendents and charter school governing councils; and
3. allows state-wide mastery tests to be administered in March or April, rather than just in April.

In the higher education area, the act increases the Capitol Scholarship grant and requires an audit of the private occupational school protection account.
EFFECTIVE DATE: July 1, 2005, except for sections dealing with the following, which are effective on passage:

1. the Eastern Connecticut State University early childhood center (§ 12),
2. authority for interdistrict magnet school supplemental grants (§ 25),
3. the interdistrict magnet school task force (§ 34),
4. youth service bureau grants (§ 37),
5. the Regional School District 11 dissolution plan (§ 40),
6. the adult education competitive grant (§ 41),
7. the private occupational school student protection account audit (§ 45),
8. the grant for certain Hartford students to participate in all-day kindergarten programs in other districts (§ 47),
9. the Early Childhood Education and Child Development Workforce Committee (§ 50),

10. the scheduling of statewide mastery tests (§ 51), and
11. eligibility for colleges participating in the program that provides grants to Connecticut students attending independent colleges in the state (§ 52).

EDUCATION COST SHARING GRANTS

ECS Grant Allocations for FY 06 and FY 07 (§§ 32 & 33)

For FY 06 and FY 07, the act requires each town to receive an ECS grant equal to its FY 05 grant plus 2%. In addition, for each of the two fiscal years, the act increases each town's grant by amounts listed in the act.

Foundation (§ 29)

The act extends the existing ECS grant foundation amount of $5,891 per student for two more years, through FY 07.

Non-Supplant Requirement and Penalty (§ 31)

The law requires towns to spend all ECS aid only for educational purposes and on the authority of their local or regional school boards. In addition, districts that receive increases in ECS grants over their prior year's grants may not use the increase to supplant local funding for education.

The act requires that the annual budgeted education appropriation of any town that receives an increase in ECS funding be at least the amount the town appropriated for education in the previous year plus the ECS grant increase. It imposes a penalty on any town or K-12 regional school district that the State Board of Education (SBE) finds has violated the non-supplant requirements in any fiscal year. The penalty requires the town or regional district to forfeit twice the amount of any shortfall. SDE must withhold the penalty from the town's ECS grant or, in the case of towns in a K-12 regional school district, from the member towns' ECS grants in proportion to their relative numbers of resident students.

The act allows SDE to waive the penalty (1) if the town or regional district agrees to increase its budgeted education appropriation for the year in which the forfeiture would occur by at least the forfeiture amount or (2) for good cause. If the district agrees to spend additional funds to avoid forfeiture, the extra funds do not count towards its future minimum expenditure requirement (MER).

Minimum Expenditure Requirement (§ 30)

The act extends the existing MER through June 30, 2006. The MER requires towns to spend a minimum amount on regular education programs. For FY 06, the act requires each town to spend at least (1) its FY 05 MER; plus (2) any ECS aid increase it receives; and (3) if its enrollment dropped between 2003 and 2004, an amount equal to the decrease multiplied by one-half the foundation amount.

NEW AND INCREASED GRANTS

Charter School Per-Pupil Grants (§ 38)

The act increases state charter school operating grants from $7,250 per pupil to $7,625 for FY 06 and $8,000 for FY 07 and subsequent years.

9th & 10th Grade Technology Pilot Program (§ 39)

The act allows the SDE, within available appropriations, to establish a pilot program to use technology in providing computer-assisted writing, instruction, and testing for 9th and 10th grade public school students.

The education commissioner may award program grants to boards of education and regional vocational-technical schools for demonstration projects. Boards and schools must apply to the SDE when and how the commissioner prescribes. The act requires the commissioner to select a diverse group of participants based on population, geographic location, and school or district economic characteristics. Grant funds may be used for computer hardware and software, professional development, technical consulting assistance, and other related activities.

Adult Education Competitive Grant (§ 41)

The act requires SDE to establish an adult education initiative competitive grant program for young adults for FY 07. The total amount awarded under the program cannot exceed $500,000. The grants must be awarded to provide new and unique methods of educating young adults entering adult education.

After-School Grant (§ 46)

The act allows SDE, in conjunction with the After-School Committee and within available appropriations, to provide grants to school districts, municipalities, and nonprofit organizations for programs that take place when school is not in session. The programs must be for educational, enrichment, and recreational activities for children in grades K-12.

The act requires grant applications to be filed annually as the education commissioner prescribes. It allows the education commissioner to accept private funds and funds from other state agencies that are members of the After-School Committee.

Hartford Interdistrict All-Day Kindergarten Program (§ 47)

For FY 05, the act allows the education commissioner to provide grants for Hartford students who participate in the Open Choice interdistrict school attendance program to attend all-day kindergarten programs in other districts. In addition to the subsidy provided to each receiving school district in the program, the act also allows grants to be used to pay for before- and after-school care and remedial services for the kindergarten students. (PA 05-6, June Special Session, extends the commissioner's authority to offer these grants through FY 07.)

Early Reading Success Competitive Grants (§ 49)

The act continues the annual $1,788,001 appropriation for early reading success competitive grants through FY 07 and continues to limit the maximum amount SDE may use for administering the grants to $203,646 per year.

Additional Funds For Three Priority Districts (§ 27)

The act requires SBE to allocate $2,039,686 for FY 06 and $2,610,798 for FY 07 to the three priority school districts with the largest populations: Bridgeport, Hartford, and New Haven. The funds are in addition to other priority school district grant money the three districts receive.

Minimum School Readiness Grants For Priority And Former Priority Districts (§ 28)

By law, school readiness funds for priority and former priority districts are distributed according to a formula. No district can receive a grant that is less than it received in the previous year or $150,000. The act requires any supplemental grants a district received for FY 05 to count as part of the previous year's grant when determining the minimum grant.

Grants to Districts "In Need of Improvement" (§ 24(b))

The act authorizes the education commissioner to provide grants to boards of education for districts identified as "in need of improvement" by the state-wide accountability plan required by the federal No Child Left Behind Act. The grants must be provided with the assistance of the state education resource center (see below) and used for the creation and acquisition of, and training in, the use of new curricula and related supporting materials. Boards may only use the grants for curricula, training, and materials authorized by the commissioner. Under the act, boards must apply for the grants when and how the commissioner prescribes. The commissioner determines grant award amounts.

Priority School District Grant Distribution (§ 35)

For FYs 06 and 07, the act directs distribution of priority school district grants as follows:

Grant	***FY 06***	***FY 07***
Priority School Districts	$34,538,308	$35,862,269
School Readiness	$48,516,500	$51,006,500
Early Reading Success	$19,747,286	$19,747,286
Extended School Building Hours	$2,994,752	$2,994,752
School Accountability	$3,499,699	$3,499,699

(PA 05-3, June Special Session, adjusts the distribution for priority school districts and school readiness for both years, increasing the former and decreasing the latter.)

PROPORTIONAL GRANT REDUCTIONS (§§ 13-20, 43 & 44)

Special Education Grants (§ 13, 18-20)

The act extends for an additional two years, through FY 07, the requirement that various reimbursement grants to school districts for special education costs be proportionately reduced if the appropriation for the grants is insufficient to pay all grants in full. But it excludes grants to reimburse districts for 100% of special education costs for students who live on state-owned or -leased property and receive special education services from local school districts. Thus, under the act, the state must pay those grants in full.

Other Education Grants (§§ 14-17, 43 & 44)

The act extends through FY 07 existing requirements for proportional reductions in the following education grants to school districts and RESCs if the total state appropriation is less than required to pay the full reimbursement to all towns:

1. school transportation for public and private school students (§§ 15 & 17);
2. adult education grants (§ 16); and
3. RESC lease cost and operating grants (§§ 43 & 44).

It also imposes the same proportional reduction requirement for FYs 06 and 07 on grants for health services for students attending private, nonprofit schools (§ 14).

SCHOOL READINESS AND EARLY CHILDHOOD EDUCATION

School Readiness Staff Qualifications and Transition to School (§ 1)

The act raises minimum qualifications for school readiness staff, beginning July 1, 2015.

Existing law requires each school readiness classroom to have someone with the following minimum qualifications:

1. a credential from an SDE-approved organization and 12 credits in early childhood education or child development from an accredited higher education institution,
2. an associate's or four-year degree from an accredited institution plus the 12 credits, or
3. a teaching certificate with an early childhood education or special education endorsement. (An endorsement indicates the grades or subjects a certified teacher is qualified to teach.)

Starting July 1, 2015, the act requires each school readiness classroom to have a staff member with at least (1) a bachelor's degree from an accredited institution in early childhood education, child development, or a related field approved by SDE or (2) a teaching certificate with an early childhood or special education endorsement.

The act also adds transition-to-school to the school readiness program standards for which SDE may issue guidelines.

Local School Readiness Councils (§ 2)

By law, to receive a state school readiness grant, a town must convene a local school readiness council or establish a regional council with other towns. The council must include the local chief elected official and school superintendent, or their designees; parents; and local child care providers, among others. The act also requires each council to include a representative of a health care provider in the community.

Early Childhood Education Cabinet (§ 3)

The act establishes an Early Childhood Education Cabinet chaired by the governor and the education commissioner or their designees. The cabinet members are the following state officials or their designees:

1. the Office of Policy and Management (OPM) secretary;
2. the commissioners of social services, higher education, children and families, public health, and mental retardation;
3. the chairmen of the Education and Human Services committees; and
4. the executive director of the Commission on Children.

The cabinet must also include a representative of a local or regional school readiness council appointed by the Senate president pro tempore and a representative of the Connecticut Head Start Association appointed by the House speaker.

The act requires the cabinet, within available appropriations, to:

1. advise the education commissioner on ways to achieve statutory goals of the state-funded school readiness program,
2. conduct a statewide longitudinal evaluation of the school readiness program in consultation with Department of Social Services (DSS) and the SDE,
3. develop early childhood program budget requests, and
4. promote consistent quality and comprehensiveness for early childhood services.

The act also requires the education and DSS commissioners to consult the cabinet, as well as other affected state agencies, about their departments' duties and responsibilities for school readiness.

DSS Quality Enhancement Grants (§ 4)

The act allows DSS' quality enhancement grants for school readiness program and daycare providers to be used for the additional purposes of providing (1) access to mental health consultants and (2) services to enhance the quality of programs for children age three and under, including informal child care arrangements. Allowable quality improvements for programs for children age three and under include improving staff-to-child ratios and interaction, staff retention initiatives, parent involvement, curriculum content, preliteracy development, and lesson plans.

The act also allows the grants to be used for staff scholarships for training for any type of early childhood education or child development credential, not just a child development associate certificate. It expands the

use of grants for supportive networks to include all child-care providers, not just family day care homes.

Connecticut Health and Educational Facilities Authority (CHEFA) Child Care Facilities Program (§ 5)

By law, CHEFA may issue bonds to fund loans to municipalities, local and regional school boards, RESCs, and other participating qualified nonprofit organizations to enable them to acquire, build, improve, expand, furnish, or equip facilities for providing educational programs for three- and four-year-olds. This act requires SDE, with DSS and CHEFA, to set financing priorities for pre-school facilities based on need and quality.

School Construction Grant Bonuses (§§ 6, 7)

In general, the state reimburses schools districts for between 20% and 80% of the eligible costs of school construction projects. Some types of projects are eligible for higher reimbursement.

The act requires school districts that receive an existing five-point school construction grant bonus for new or expanded space for a school readiness program to maintain full-day preschool enrollment for a minimum of 10 years after receiving the bonus. The five-point bonus is available for projects for new or expanded elementary school buildings that include space for school readiness programs.

The act expands an existing 10-point school construction grant bonus for projects in priority school districts or priority schools to include those needed for full-day preschool programs. Under prior law, bonus projects were limited to those needed to offer full-day kindergarten or to reduce class sizes in grades one to three. To receive the bonus for a pre-school project, eligible districts must agree to maintain the full-day programs for at least 10 years.

School Readiness Program Cost Limit (§ 8)

The law limits the cost of the SDE's school readiness program component. The act increases the limit from $6,400 to $6,650 per child for FY 06 and to $6,925 per child for FY 07 and subsequent fiscal years.

Kindergarten Assessment (§ 9)

The act requires the education commissioner, within available appropriations, to develop a state-wide developmentally appropriate assessment tool to measure each child's preparation for kindergarten by October 1, 2009.

School Readiness Competitive Grant Eligibility (§ 10)

The act expands eligibility for the school readiness competitive grant program to the towns that are among the 50 poorest, rather than the 28 poorest, that are not priority or former priority school districts. Towns or regional school readiness councils may apply to the SDE annually for competitive grants of up to $107,000 to provide spaces in school readiness programs for eligible children who live in an area served by a priority school or former priority school. For purposes of these grants, town wealth is measured in the same way as for ECS grants.

Technical Assistance (§ 11)

The act requires the education commissioner, within available appropriations, to provide technical assistance and training to school readiness programs to help them apply preschool curriculum guidelines adopted by the SBE.

SDE School Readiness Administration (§ 48)

The act allows SDE to retain up to $198,200 of the annual total school readiness grant appropriation for coordination, program evaluation, and administration.

ECSU Early Childhood Center (§ 12)

The act requires Eastern Connecticut State University's (ECSU) early childhood center to (1) work with local and regional school readiness councils to address their child-care and early education needs and (2) report to SDE on the results of the work.

Early Childhood Education And Child Development Workforce (§ 50)

The act establishes a 21-member committee to review and assess pathways to baccalaureate degrees in early childhood education and child development to promote the professionalization of the early childhood education workforce. The committee must:

1. identify existing systems and programs that lead to two- and four-year degrees in early childhood education or child development;
2. review and assess the accessibility of these programs by the workforce;
3. make recommendations for increased access to initial teacher certification in early childhood education or child development; and
4. make recommendations for strengthening the existing articulation agreement between two- and four-year colleges regarding these programs.

The committee must consist of the commissioners of higher education, education, social services, and labor, and the Office of Workforce Competitiveness director, or their designees, and the following members:

Member	***Appointing Authority***
Member of the state's Career Ladder Advisory Committee with expertise in early childhood education	Governor
Person knowledgeable in educator preparation, certification, support and assessment	Education commissioner
Representative of a local or regional school district that offers a preschool program	Education commissioner
Community representative from a local state-funded school readiness program	Education commissioner
Academic dean of a public institution of higher education that offers a teacher preparation program in early childhood education or child development at the baccalaureate level	House speaker
Member of the early childhood education or child development workforce	House speaker
Academic dean of an independent institution of higher education that offers an early childhood education or child development teacher preparation program at the baccalaureate level	Senate president pro tempore
Academic dean of a baccalaureate degree program in early childhood education or child development at a university of the Connecticut State University system	Senate president pro tempore
Community-Technical College system representative	House majority leader
State teacher's association representative	House majority leader
Faculty member of an associate degree program in early childhood education or child development	Senate majority leader
State administrator's association representative	Senate majority leader
Faculty member of an independent institution of higher education that offers a baccalaureate degree program in early childhood education or child development	House minority leader
Connecticut State University system office representative	House minority leader
Charter Oak State College representative	Senate minority leader
State early childhood education association representative	Senate minority leader

The higher education commissioner or her designee is the committee chairperson. The chairperson is responsible for scheduling the first meeting, which must be held no later than 60 days after the act becomes effective. The committee appointments must be made no later than 30 days after the act's passage. Appointing authorities must fill any vacancies.

The committee must submit a report on its findings and recommendations to the General Assembly by January 1, 2006.

EDUCATION FUNDING FOR TRIBAL-AGENCY-PLACED CHILDREN (§§ 18-20)

The act requires the state to reimburse school districts for the costs associated with educating a child placed by a tribal government in the same way it reimburses for those placed by state agencies. It does this by amending the definition of an "agency" to include tribal agencies in certain sections of the education statutes.

Special Education Placements in General

By law, whenever a public agency, other than a school board, the SBE, or the Superior Court places a child requiring special education in a foster home, group home, hospital, state institution, receiving home, custodial institution, or any other residential or day treatment facility, the school district where the child would normally attend school must provide the special education and related services. That district is financially responsible for educating the child in an amount equal to the lesser of 100% of the costs or its average per-pupil education expenditure in the preceding year, with the state paying the remainder.

If a child is not (1) placed by a state agency or (2) residing on state property, the state only reimburses a district for special education costs that exceed five times the district's average per-pupil expenditure in the preceding year, with the home district paying the remainder. Therefore, under prior law, when a student was placed by a tribal agency, the state paid only for costs exceeding five times this amount.

The act provides that a "public agency" includes the offices of a federally recognized Native American tribe. Thus, for children placed by tribal agencies, it requires the state to pay for costs that exceed the district's average per-pupil expenditure.

As under existing law for other public agencies, the act requires a tribal agency making such a placement to orally notify the board responsible for providing services within one business day of making the placement and provide written notice within two business days. The board must then, within 30 days, convene a planning and placement team meeting and invite a representative from the tribal agency.

No-Nexus Children Placed in Private Residential Facilities (Special Education)

Generally, when the district where the student would normally attend school cannot be identified, the board where the child is placed is responsible for providing special education services and is reimbursed at the regular rate (i.e., for costs exceeding five times its average per-pupil expenditure). However, a district is eligible for state reimbursement for 100% of the reasonable costs of special education, as defined in SBE regulations, when a child requiring such services (1) is placed by a state agency in a private residential facility or a DCF-operated institution, (2) receives special education at a program operated by a RESC or board of education, and (3) no board of education can be found responsible for the child's education. The act extends this state reimbursement rate to children placed by a public agency, including a tribal agency.

Regular Education Placements in General

Generally, children placed by an agency, including private Department of Children and Families (DCF)-licensed child-caring or child-placing agencies, and eligible mental health and addiction services facility residents between the ages of 18 and 21 are entitled to school privileges in the school district where they reside as a result of the placement. A board providing educational services can require documentation verifying that the residence is permanent, provided without pay, and not for the sole purpose of obtaining school accommodations provided by the school district. The district where the child would normally attend school is responsible for the full education costs or its average per-pupil expenditure for the prior year whichever is less. SDE must pay any additional costs. The act adds tribal agencies to the list of child-placement agencies, thus specifically making districts educating tribal-placed children eligible for the same state excess cost reimbursement as they receive for agency placements.

Regular Education Private Facility Placements

When a child is placed in a private residential facility by the DCF commissioner or by other agencies, the board of education governing the district where the student would have otherwise attended is responsible for the costs of educating the child in an amount equal to the lesser of 100% or its average per- pupil education costs in the preceding year, with the state paying the remainder. The placing agency is responsible for the non-educational costs. The act adds tribal agencies to the list of placing agencies.

CHARTER SCHOOL BEST PRACTICES (§§ 21 & 22)

The act adds to the information charter school governing councils must include in the annual reports they submit to the education commissioner and, in the case of a local charter school, to the local or regional board where the school is located. The law already requires governing councils to include in the report the educational progress of the students; the financial condition of the school; accomplishment of school's mission, purpose, and specialized focus; and the racial and ethnic composition of the student body and efforts to increase diversity in these areas. The act requires them also to include information about best practices employed by the school that significantly contribute to students' academic success.

The act requires SDE to annually publish a report on the reported best practices and distribute it to all public school superintendents and charter school governing councils.

STATE EDUCATION RESOURCE CENTERS (§§ 23 & 24)

Establishment

The act requires the SBE to establish a state education resource center to help it provide programs and activities promoting educational equity and excellence. Activities that the center or a RESC may provide include training and continuing education seminars, publication of technical materials, research and evaluation, and other related activities. The center may support programs and activities concerning early childhood education, the federal No Child Behind Act, closing the achievement gap between socio-economic subgroups, and other related programs and must help the education commissioner in providing grants to districts with schools "in need of improvement" (see above).

School Reform Resource Center

The act requires SDE, within available appropriations, to establish a Connecticut school reform resource center within the education resource center or by contract through a RESC. The school reform center must operate year-round and focus on serving the needs of all public schools. The center must:

1. publish and distribute reports on the most effective practices for improving student achievement by successful schools;
2. provide a professional development program for school leaders, including curriculum coordinators, principals, superintendents, and board of education members;
3. provide information on successful models for evaluating student performance and managing student data; and
4. provide other programs and materials to assist in the improvement of public schools.

Special Education Resource Center

The act allows the state education resource center to operate the existing special education resource center as part of its program of activities. The law requires SBE to maintain the special education resource center with funds it receives pursuant to the federal Education for the Handicapped Act.

INTERDISTRICT MAGNET SCHOOLS

Funding For RESC-Operated Magnet Schools and Program Administration (§ 36)

The act establishes separate per-student grants for RESC-operated interdistrict magnet schools that are not tied to the ECS foundation amount. Under prior law, state per-pupil grants for all interdistrict magnet schools were based on percentages of the ECS foundation. The percentages vary according to the proportion of the school's enrollment coming from each of its participating towns. Schools receive the largest per-pupil grants for students from towns that constitute 30% or less of their total enrollment and the smallest for students from towns making up 60% or more of the enrollment.

Under the act, these grants still apply to school district-operated interdistrict magnet schools. But the act sets flat operating grants for RESC-operated schools. If students from a single town constitute less than 55% of a RESC-operated magnet school's total enrollment, the act sets its per-pupil grant at $6,250 for FY 06 and $6,500 for FY 07 and subsequent years. If 55% or more of such a school's students come from a single town, its minimum operating grant must be $3,000 per-pupil in FY 06 and all subsequent years.

The act also eliminates a provision allowing SDE to retain up to 1% of the appropriation for magnet school operating grants for administration and evaluation. (PA 05-3, June Special Session, restores 50% of the SDE's program administration percentage.)

Magnet School Supplemental Grants (§ 25)

The act makes permanent the education commissioner's authority to provide, as she determines and within available appropriations, supplemental operating grants to interdistrict magnet schools. It also makes the commissioner's supplemental grant-making authority retroactive to FY 03. Grants must be used for enhancing educational programs in the schools. The commissioner may make the grants only after reviewing and approving a school's total operating budget, including all revenue and expenditure estimates. (PA 05-3, June Special Session, allows these grants also to be used for summer school programs at the schools.)

Task Force (§ 34)

The act establishes an 18-member task force to study interdistrict magnet schools. The members are: the education commissioner, the OPM secretary and the Education and Appropriations committee chairmen and ranking members, or their designees and eight members as shown below.

Member	***Appointing Authority***
1 State Board of Education member	State Board of Education
2 RESC directors	Education commissioner
2 representatives	Connecticut Association of Boards of Education
2 representatives	Connecticut Association of Schools
1 member	Governor

The Education Committee chairmen must serve as the task force chairmen.

The task force must:

1. examine magnet school per-pupil spending and compare it to state average per-pupil spending by local and regional school districts;
2. evaluate the adequacy of state magnet school operating and transportation grants;
3. study standard cost sharing by school districts participating in magnet schools;
4. examine magnet school governance, including comparing school district–based and RESC-based governance; and

5. consider projected enrollment commitment standards for state-aided construction and operation of new interdistrict magnet schools.

The education commissioner must report on the study to the Education and Appropriations committees by January 1, 2006.

YOUTH SERVICE BUREAUS (§ 37)

The act increases the number of youth service bureaus (YSBs) eligible for SDE grants. It does so by making all YSBs eligible for state grants starting in FY 06 if they (1) were eligible for a grant in FY 05, rather than only in FY 03, or (2) applied by June 30, 2005, rather than only by June 30, 2003, after receiving approval for their town's matching contribution. The grants are $14,000 each, with any excess funds distributed among bureaus that received grants of more than $15,000 in FY 95.

REGIONAL SCHOOL DISTRICT #11 (§ 40)

Under the law, regional school district member towns may apply to the regional board of education to institute proceedings to dissolve or withdraw from the district. Within 30 days, the regional board must call for the appointment of a committee to study issues related to the withdrawal or dissolution and the committee must prepare a written report within a year detailing its recommendations and other findings. This act allows Regional School District #11 to complete its written report within 18 months following the appointment of the full committee, despite any laws or regulations that might prohibit them from moving forward with the process.

Region 11's member towns are Chaplin, Hampton, and Scotland.

CHANGES IN SPECIAL EDUCATION DEFINITION (§ 26)

The net cost of special education is used as a factor for certain state special education grants. By law, it is calculated by determining expenditures and subtracting, among other things, the total amount of any funds from Medicaid payments received by a school board pursuant to special education law. The act specifies that boards must instead subtract Medicaid payments expended for special education purposes. It also specifies that boards must deduct special education grants and tuition payments received by the town, as well as the board.

STATE-WIDE MASTERY TEST SCHEDULE (§ 51)

Under prior law, the state-wide 4th, 6th, and 8th grade Connecticut Mastery tests and 10th grade Connecticut Academic Performance test had to be administered in April, beginning in the 2005-06 school year. The act instead allows the tests to be given in March or April. When students in grades three through eight are required to take reading, writing, and math tests beginning in 2005-06 and students in grades five, eight, and 10 are required to take a science exam beginning in 2007-08, the act also allows those tests to be offered in March or April.

HIGHER EDUCATION

Capitol Scholarship Grant Increase (§ 42)

The act increases the maximum per-student award for those attending Connecticut institutions under the Capitol Scholarship Grant Program from $2,000 to $3,000 annually. State residents who have not received a baccalaureate degree and who have been accepted at a postsecondary school, technical institute, college, or university in the state, or in any other state that allows its students to bring state student financial assistance funds into Connecticut, are eligible for the grant.

Private Occupational Student Protection Account (§ 45)

The act requires the higher education commissioner to contract with an independent auditor to conduct an actuarial study of the private occupational student protection account. The private occupational schools must pay for the study. The study is to determine the amount of funds needed to maintain the account at a level that provides adequate protection to the students. The Department of Higher Education must report on the study to the higher education committee by February 1, 2006.

The account is funded by assessments from the private occupational schools based on a percentage of their tuition revenues and is used to make tuition refunds to students who are unable to complete a course at a private occupational school because the school becomes insolvent or ceases operating.

Aid To Students Attending Independent Colleges And Universities (§ 52)

If certain program requirements are met, independent colleges and universities in the state may receive financial aid funds to distribute to state residents attending the institutions. The law provides that these requirements do not affect the eligibility of schools that participated in the program as of June 30, 1983, as it existed then. The act provides that a college or university's eligibility under this exception is not affected by a school's corporate structure change.

BACKGROUND

School Readiness Goals

By law, the state must encourage the development of a network of school readiness programs to:

1. give children open access to quality programs that promote their health and safety and prepare them for formal schooling;
2. provide opportunities for parents to choose among affordable and accredited programs;
3. encourage coordination and cooperation among programs and prevent service duplication;
4. recognize the specific service needs and unique resources available to particular municipalities and provide flexibility in the implementation of programs;
5. prevent or minimize the potential for developmental delay in children before they reach age five;
6. enhance federally funded school readiness programs;
7. strengthen the family through (a) encouragement of parental involvement in a child's development and education and (b) enhancement of a family's capacity to meet their children's special needs, including those of children with disabilities;
8. reduce educational costs by decreasing the need for special education services for school-age children and avoiding grade repetition;
9. assure that children with disabilities are integrated into programs available to children who are not disabled; and
10. improve the availability and quality of school readiness programs and their coordination with the services of child care providers.

Priority School Districts

State law designates the following as priority school districts:

1. The eight towns with the largest populations, based on the last census.
2. In the first year of each biennium, the 11 towns with the highest numbers of children on welfare plus the largest numbers of children scoring below the remedial level on the state mastery tests.
3. In the first year of each biennium, the 11 towns that rank highest in number of children on welfare divided by grant mastery percentage. The grant mastery percentage is the number of mastery tests on which students in the district score below the remedial level divided by the total number of tests taken in the district (CGS § 10-266p(a)).

Once a district is determined to be a priority district for purposes of the school readiness grant, it remains permanently eligible even if in subsequent years, it no longer meets these qualifications and becomes a former priority district.

Priority Schools

A priority school is a school located outside a priority or former priority district where 40% or more of the lunches served are served to students eligible for free and reduced-price lunches under the federal school lunch program. A district determined eligible under this category remains eligible for school readiness grants for five years (CGS § 10-16p).

Under the federal school lunch program, children with family incomes under 130% of federal poverty levels are eligible for free lunches and students with family incomes between 130% and 185% are eligible for reduced-price lunches.

PA 05-251—sHB 6940
Appropriations Committee
Finance, Revenue and Bonding Committee

AN ACT CONCERNING THE BUDGET FOR THE BIENNIUM ENDING JUNE 30, 2007, DEFICIENCY APPROPRIATIONS FOR THE FISCAL YEAR ENDING JUNE 30, 2005, AND CERTAIN TAXES AND OTHER PROVISIONS RELATING TO REVENUE

SUMMARY: This act appropriates funds for state agencies and programs and estimates state revenues for FYs 06 and 07. Among other things, it increases appropriations for municipal aid, Medicaid, teachers' retirement contributions, and Education Cost Sharing (ECS) grants. It carries forward certain unspent appropriations from prior years and directs how the money must be spent in FYs 06 and 07, appropriates money for deficiencies in FY 05 appropriations, allocates surplus funds from FY 05 for specified purposes in FYs 06 and 07, earmarks certain revenues, transfers revenue to the General Fund, and transfers General Fund revenue for FY 06 to FY 07. It delays implementation of generally accepted accounting principles for maintaining the state's finances for two years.

The act eliminates the succession tax and replaces the former gift tax. It establishes new estate and gift taxes for deaths occurring and gifts made on or after January 1, 2005, if the estate or gift value exceeds $2 million. It imposes corporation tax surcharges for the

2006 and 2007 tax years, and reconstitutes a committee to review changes in business tax policy and corporation tax credits.

The act reduces a scheduled increase in the property tax credit against the income tax, delays scheduled income tax reductions for single filers by two years, and exempts 50% of military retirement income from the state income tax starting in the 2008 tax year. It exempts private occupational school textbooks and boat broker services from the sales tax.

The act imposes a nursing home user fee on most state nursing homes. It directs the Department of Social Services (DSS) commissioner to file an amendment to the Medicaid State Plan to implement the fee, and to seek a federal Medicaid waiver to enable her to exempt continuing care retirement communities (CCRCs) from the fee and charge certain homes a lower fee.

The act increases the Medicaid rates the state pays to nursing homes and intermediate care facilities for people with mental retardation (ICF-MR) in FY 06, and increases state payments to residential care homes in FY 06. Any nursing home experiencing a net revenue gain, based in part on the act's increase, must use 85% of the gain to enhance staffing, employee wages and fringe benefits. (PA 05-280 removes this requirement.) All of the increases are contingent upon the nursing home fee's implementation and the availability of federal Medicaid matching funds. The act also appears to make budget increases for other private providers contingent on the fee's implementation.

EFFECTIVE DATE: Various, see below.

BIENNIAL BUDGET (§§ 1-47, 49-52, 55-61, 93-112)

Total Appropriations and Revenue Estimates

The act appropriates $15,282.9 million for FY 06 and $15,938.4 million for FY 07 to state agencies and accounts. These appropriations are supported by estimated revenues of $15,289.8 million in FY 06 and $15,948.9 million in FY 07, which exceed the appropriated levels by $6.9 million and $10.5 million in each of the respective fiscal years.

The act also appropriates $88.1 million to fund agency budget deficiencies for FY 05. It carries forward funds in specific agencies and accounts from FY 05 into FY 06 and FY 07. Finally, it appropriates $603.9 million from the $700.2 million anticipated FY 05 General Fund surplus for various purposes.

Funds Carried Forward From Prior Years

The act carries forward an estimated $10.9 million in the General Fund and $5.7 million in other miscellaneous funds. The amount to be carried forward into FY 07 depends on expenditures made in FY 06.

Use of FY 05 Budget Surplus

The act appropriates $603.9 million from the anticipated FY 05 surplus for the purposes shown in Table 1.

Table 1: Appropriations from FY 05 Estimated Surplus

For	***Appropriation (millions)***
Economic recovery notes	$137.7
Teachers' Retirement System contribution	100.0
Education Cost Sharing grants	57.3
Various FY 05 carryforwards	57.1
Managed care organization repayment	54.8
2003 early retirement incentive program accruals	47.6
Office of Policy and Management contingency needs	18.0
Town Aid Roads	15.7
Regular retirement accruals	14.7
Priority school districts	14.0
Payment in lieu of taxes (PILOT)–State property	10.7
PILOT–Private property	10.6
PILOT–New manufacturing machinery and equipment	10.2
All other items	55.5

If, when the state's accounts for FY 05 are closed and all legally required fund transfers have been deducted, the comptroller determines that the unappropriated General Fund surplus exceeds $76 million, the act appropriates up to $15,851,490 of the excess for private provider increases for the July 1 to September 30, 2005 period.

Major Budget Increases

The act's major programmatic budgetary increases (including both operating and anticipated FY 05 surplus dollars) over FY 05 appropriations are shown in Table 2.

Table 2: Major Programmatic Budget Increases

Program/Item	*FY 06 (in millions)*	*FY 07 (in millions)*
Medicaid	$336.4	$99.3
Debt service	40.4	194.1
Teachers' Retirement	90.8	60.4
Education Cost Sharing	56.6	32.2
TOTAL	$524.2	$386.0

Municipal Aid

The act increases grants to towns by $142.8 million to $2,448.3 million in FY 06 from estimated expenditures of $2,305.5 million in FY 05 and by $28.1 million to $2,476.4 million in FY 07 from the appropriated level in FY 06. These figures include all operating expenditures, as well as appropriations of the anticipated FY 05 surplus for use during FY 06 and FY 07.

Budget Growth Rate

Under the act, the FY 06 budget growth rate over estimated expenditures for FY 05 (including Office of Fiscal Analysis adjustments) for all appropriated funds is 8.7%. The adjusted growth rate for FY 07 over FY 06 is 3.3%.
EFFECTIVE DATE: July 1, 2005

REVENUE EARMARKS AND TRANSFERS TO THE GENERAL FUND

Emergency Spill Response Account (§ 48)

For FYs 06 and 07, the act requires the comptroller to deposit $12 million each year from the petroleum products gross earnings tax in the Department of Environmental Protection's emergency spill response account. Among other things, the account funds water pollution remediation programs.
EFFECTIVE DATE: July 1, 2005

Connecticut Lottery Corporation (§ 53)

The act requires the Connecticut Lottery Corporation to transfer an additional $500,000 of revenue from lottery ticket sales for FY 06. It requires the funds to be divided as follows: (1) $200,000 to the State Department of Education for gambling awareness education and (2) $300,000 to the Department of Mental Health and Addiction Services' chronic gamblers treatment and rehabilitation account for prevention, treatment, and rehabilitation of chronic gamblers.
EFFECTIVE DATE: July 1, 2005

Tobacco and Health Trust Fund (§ 54)

The act transfers $575,000 from the Tobacco and Health Trust Fund to the Department of Public Health for (1) the Easy Breathing Program ($500,000) and (2) Asthma Education and Awareness Programs ($75,000).
EFFECTIVE DATE: July 1, 2005

Energy Conservation And Load Management Fund Transfers (§ 89)

The act extends through July 31, 2007, the requirement that the Department of Public Utility Control authorize electric companies to send $1 million per month from their energy conservation and load management funds to the state General Fund. Prior law required such transfers to end on July 31, 2005. As under prior law, each fund's contribution must be in proportion to its receipts. Revenues come from assessments on electric bills.
EFFECTIVE DATE: Upon passage

Transfers To The General Fund For FY 07 (§§ 90 & 91)

The act (1) transfers $12 million from the Tobacco and Health Trust Fund to the General Fund for FY 07 and (2) before June 30, 2006, requires the comptroller to transfer $41 million of FY 06 General Fund revenues to FY 07 General Fund revenues.
EFFECTIVE DATE: July 1, 2005

GAAP ACCOUNTING DELAY (§ 92)

The act delays by two years the date after which the comptroller and the Office of Policy and Management (OPM) secretary may start using generally accepted accounting principles (GAAP) to maintain the state's financial statements and prepare the state budget, respectively. GAAP was to be implemented starting with FY 06. The act postpones implementation to FY 08.

The act also delays the deadline for the comptroller and OPM secretary to submit GAAP conversion plans to the Appropriations Committee from February 1, 2005 to February 1, 2007. Finally, it delays the first year of the 15-year amortization period for accrued and unpaid expenses, liabilities, and other adjustments resulting from GAAP from FY 07 to FY 09.
EFFECTIVE DATE: Upon passage

FY 06 PILOT PAYMENT FOR VETERANS' HOSPITAL (§ 52)

By law, starting in FY 07, payments in lieu of taxes (PILOTs) for nonprofit hospitals apply to a campus of

the U.S. Department of Veterans' Affairs (VA) Connecticut Healthcare Systems. The VA hospital PILOT is scheduled to be phased in, starting at 20% of the full PILOT in FY 07 and increasing by 20% per year reaching 100% in 2011 and thereafter. This act begins the phase-in one year earlier, requiring the state to pay 10% of the full PILOT for the VA hospital in FY 06. The rest of the phase-in is unchanged.
EFFECTIVE DATE: July 1, 2005

AGENCY PERSONNEL AND BUSINESS OFFICE FUNCTION CONSOLIDATION (§ 60(C) & (D))

The act requires the Department of Administrative Services (DAS) commissioner, in consultation with the OPM secretary, to develop a plan for DAS to provide personnel, payroll, affirmative action, and business office functions for executive branch state agencies. The secretary and the commissioner must determine which agencies are included in the plan and must consolidate within DAS the four functions for the included agencies.

The act authorizes the governor, with the Finance Advisory Committee's approval, to modify or reduce agency allotments, revise the number of positions agencies may fill during FYs 06 and 07, and transfer funds and positions to DAS to implement the consolidation. If, as result of efficiencies from the consolidation, the number of filled positions exceeds work requirements, the state must transfer current employees to funded vacancies in their same or comparable classifications in other agencies.
EFFECTIVE DATE: July 1, 2005

SUCCESSION, ESTATE, AND GIFT TAXES (§§ 66-70 & 113)

Taxes Eliminated

The act eliminates the succession tax and gift taxes immediately instead of over several more years as required by prior law. It eliminates the succession tax starting with deaths on or after January 1, 2005 instead of 2006 for Class B heirs (collateral relatives of the deceased, such as siblings, nieces, and nephews) and 2008 for Class C heirs (more remote relatives and unrelated people). The succession tax did not apply to Class AA and Class A heirs (spouses and direct descendants, such as children and grandchildren). The act replaces the gift tax entirely on January 1, 2005, instead of phasing it out only on gifts under $1 million by January 1, 2010.

Connecticut's former estate tax, which was equal to 100% of the maximum federal credit for state inheritance taxes paid, was also effectively eliminated on January 1, 2005 by a 2001 federal law that phased out the federal credits over four years ("The Economic Growth and Tax Relief Recovery Act of 2001," P.L. 107-134).

New Estate and Gift Taxes

The act replaces the eliminated taxes with new taxes on Connecticut taxable gifts and estates that exceed a combined lifetime total of $2 million. The new taxes apply to:

1. estates of people who die on or after January 1, 2005 if (a) the estate's taxable value exceeds $2 million and (b) the person was either a Connecticut resident when he died or owned Connecticut real or personal property;
2. gifts above the federal threshold for filing a gift tax return (currently $11,000 per year, per recipient) made on or after January 1, 2005 that, in the aggregate over the donor's life after that date, exceed $2 million; and
3. any combined value of Connecticut taxable gifts and a Connecticut taxable estate that exceeds $2 million.

Tax Rates

The new estate and gift tax rates are the same, as shown in Table 3. To find the tax on any taxable gift or estate valued above $2.1 million, subtract the amount in Column A from the total value, multiply the result by the tax rate in Column D, and add the dollar amount in Column C. Thus, for example, the tax on a taxable gift or estate of $2.3 million is $122,800 ($2,300,000 - $2,100,00 = $200,000 x 8.0% = $16,000 + $106,800 = $122,800).

Table 3: Tax Rates on Taxable Gifts and Estates

VALUE OF GIFT OR ESTATE		TAX	
***Col. A:* Over**	***Col. B:* But not over**	***Col. C:* Tax on Col. A**	***Col. D:* Tax Rate on excess over Col. A**
0	$2,000,000	No Tax	
$2,000,000	2,100,000	5.085% of the excess over 0	
2,100,000	2,600,000	$106,800	8.0%
2,600,000	3,100,000	146,800	8.8%
3,100,000	3,600,000	190,800	9.6%
3,600,000	4,100,000	238,800	10.4%
4,100,000	5,100,000	290,800	11.2%
5,100,000	6,100,000	402,800	12.0%

6,100,000	7,100,000	522,800	12.8%
7,100,000	8,100,000	650,800	13.6%
8,100,000	9,100,000	786,800	14.4%
9,100,000	10,100,000	930,800	15.2%
Over $10,100,000		$1,082,800 plus 16% of the excess over $10,100,000	

The act credits any gift taxes paid on gifts made on or after January 1, 2005 against total estate and gift tax liability.

Connecticut Taxable Estates and Gifts

Under the act, a Connecticut taxable estate is (1) a person's gross estate minus all federally allowable deductions except the one for state death taxes paid plus (2) the aggregate value of all Connecticut taxable gifts made during life, starting on January 1, 2005. For state tax purposes, a person may take advantage of the optional deduction under federal law for the value of a qualifying life income interest in property passing to a surviving spouse, even if he does not do so for the federal estate tax. But under the act, a gross estate includes any such qualifying life income interest that the decedent held.

A Connecticut taxable gift is (1) any federally taxable gift made by a Connecticut resident, excluding real estate or tangible personal property located outside the state and (2) any federally taxable gift made by a nonresident of real estate or tangible personal property located in Connecticut.

Resident and Nonresident Estates

The act retains the former definitions of resident and nonresident estate property over which Connecticut has estate tax jurisdiction. For all estates, that includes (1) real property in the state and (2) tangible personal property actually located here. For resident estates, it also includes intangible property regardless of location.

Under the act, as under prior law, the tax on a nonresident estate is prorated according to the percentage of the gross estate that falls under Connecticut's estate tax jurisdiction.

Credits for Payments By Resident Estates to Other States

As under prior law, the act gives resident estates a credit against Connecticut's estate tax for inheritance taxes paid to any other state or the District of Columbia on estate property under another state's jurisdiction. The credit is the lesser of (1) the actual taxes paid in the other state or (2) the full Connecticut tax, excluding any gift tax credits, that would otherwise be due multiplied by the percentage of the gross estate that is under the jurisdiction of the other state.

Requirement to File Estate Tax Return

The act requires all estates, regardless of gross value, to file a Connecticut estate tax return if the decedent (1) died on or after January 1, 2005 and (2) was a Connecticut resident or owned real or personal property in the state when he died. Under prior law, Connecticut returns were required only for resident and nonresident estates required to file a federal estate tax return.

The act retains the filing procedures and deadlines that applied to the former estate tax. (But PA 05-3, June Special Session, revises these filing requirements and makes other changes to conform to this act's new taxes.)

Federal Estate and Gift Tax Provisions Incorporated by Reference

As already noted, the act uses the federal taxable gift threshold to determine whether a gift must be counted toward the $2 million state tax exclusion. Smaller gifts do not count. The federal gift tax applies to gifts of $11,000 or more per recipient, per year, but this threshold can be adjusted for inflation. The act automatically incorporates any changes in the federal gift tax threshold unless the federal gift tax is repealed entirely. In that case, the threshold in effect on the day before the repeal remains in effect for Connecticut.

Likewise, if the federal estate tax is repealed, the federal law in force on the previous day remains in effect for purposes of Connecticut's tax.

Obsolete Section (§ 113)

The act eliminates an obsolete statute linking Connecticut's estate tax to the federal estate tax credits for state death taxes paid (since eliminated by federal law, as already described).

EFFECTIVE DATE: Upon passage and applicable to gifts made, and to estates of people who die, on or after January 1, 2005. The elimination of the former gift tax applies to calendar years beginning on or after January 1, 2005. The succession tax elimination applies to estates of those who die on or after January 1, 2005. The expanded estate tax return filing requirement and the repeal of the obsolete section are effective on passage.

CORPORATION TAX SURCHARGES (§§ 62, 63)

The act imposes corporation tax surcharges of 20% for the 2006 and 15% for the 2007 income years. The

surcharges apply to all companies that pay the tax, unless they owe only the $250 minimum tax. The surcharges do not apply to the minimum tax.

Corporations must calculate surcharges based on tax liability before any tax credits. The surcharge is due, payable, and collectible as part of each company's total tax for the year.

EFFECTIVE DATE: Upon passage and applicable to income years starting on or after January 1, 2006.

BUSINESS TAX CREDIT AND TAX POLICY REVIEW COMMITTEE (§§ 64, 65)

The act revamps the former Corporation Business Tax Credit Review Committee, expands its charge, renames it the Business Tax Credit and Tax Policy Review Committee, gives it access to additional tax information from the Department of Revenue Services (DRS), and requires it to report annually by January 1. Despite prior law, no members were appointed to the previous committee and it never issued a report.

Committee Membership

The act increases the committee's membership from 13 to 14 by adding the labor commissioner or his designee. It makes the Finance, Revenue and Bonding Committee chairs the review committee's chairs. As under prior law, the committee also includes one member appointed by the governor and six by legislative leaders, the Finance Committee chairs and ranking members or their designees, and the DRS and Department of Economic and Community Development (DECD) commissioners or their designees.

The act requires the committee to meet at least twice a year and at other times the chairs consider necessary. Appointments are required by August 15, 2005. Appointing authorities fill any vacancies.

Evaluating Business Tax Credits and Tax Policy

Under prior law, the committee was responsible for evaluating corporation business tax credits. This act also makes it responsible for evaluating changes in the corporation tax and for considering additional business tax policy changes.

The prior review committee had to evaluate corporation tax credits according to specified criteria. The act extends these criteria to the committee's evaluation of corporation tax modifications and business tax policy changes. Each credit or policy must, at a minimum, be evaluated on whether:

1. it benefits the state through measurable economic development, new in-state investments, job growth or retention, or measurable benefits to the state's workforce;
2. there is sufficient justification to continue the credit or policy in its existing form;
3. it could be more efficiently administered as part of a broad-based credit or policy; and
4. its application, administration, and approval process adds unnecessary complexity to the corporation tax.

In addition, the committee must analyze the history, rationale, and estimated revenue loss for each tax credit or policy change and recommend revisions to those that are (1) redundant, obsolete, or unnecessary or (2) not providing enough measurable benefit to justify the state revenue loss.

DRS Information

The act requires the DRS commissioner, at the request of the review committee chairs, to provide information to the committee about (1) corporation tax exemptions or credits, (2) how legislative tax policies are implemented and operate, and (3) other tax-related issues. The information may not include taxpayer names and addresses but may include, for each recipient of a tax credit or change in tax policy:

1. a description of its business activities,
2. the amount of income it apportions to Connecticut and taxes paid on that income,
3. the exemptions or credits it takes and their amounts, and
4. any other information DRS has available that relates to the committee's inquiry.

Authorization to Release Tax Information to Committee

The act exempts tax returns and return information that DRS provides to the review committee from statutory confidentiality requirements covering tax return information. (PA 05-3, June Special Session, specifies that the disclosure authority does not allow the commissioner to provide copies of tax returns filed with DRS.)

Committee Report

The act requires the committee to report its findings and recommendations to the Finance, Revenue and Bonding Committee by January 1 each year starting in 2006. Under prior law, the corporation tax credit review committee was to make its first report to the Finance, Revenue and Bonding Committee by January 1, 2002 and every five years thereafter.

EFFECTIVE DATE: July 1, 2005 for the changes in the committee and its responsibilities; upon passage and applicable to income years starting January 1, 2005 for the tax return confidentiality exemption. (PA 05-3, June

Special Session, changes the effective date of the tax return confidentiality exemption to July 1, 2005.)

INCOME TAX

Property Tax Credit (§ 77)

The act delays a scheduled increase in the maximum property tax credit against the income tax. Instead of increasing the credit to a maximum of $500 starting with the 2005 tax year, as prior law did, the act maintains the 2004 maximum of $350 through the 2005 tax year, and then increases it to $400 for the 2006 tax year and after.

The law reduces the maximum credit by 10% for each $10,000 of a taxpayer's Connecticut adjusted gross income (AGI) (10% for each $5,000 for married people filing separately) above specified levels. Table 4 shows the maximum property tax credits by income level and filing status under prior law and the act.

Table 4: Maximum Property Tax Credits 2005 Tax Year and After

CT AGI		***MAXIMUM CREDIT***		
Married Filing Jointly				
		Prior Law	***The Act***	
Over	***But Not Over***	***2005 & after***	***2005***	***2006 & after***
$24,000	$100,500	$500	$350	$400
100,500	110,500	450	315	360
110,500	120,500	400	280	320
120,500	130,500	350	245	280
130,500	140,500	300	210	240
140,500	150,500	250	175	200
150,500	160,500	200	140	160
160,500	170,500	150	105	120
170,500	180,500	100	70	80
180,500	190,500	50	35	40
Over $190,500		0	0	0
Single (for 2005 only)		**MAXIMUM CREDIT**		
		Prior Law	***The Act***	
Over	***But Not Over***	***2005 & after***	***2005***	***2006 & after***
$12,750	$55,500	$500	$350	$400
55,500	65,500	450	315	360
65,500	75,500	400	280	320
75,500	85,500	350	245	280
85,500	95,500	300	210	240
95,500	105,500	250	175	200
105,500	115,500	200	140	160
115,500	125,500	150	105	120
125,500	135,500	100	70	80
135,000	145,000	50	35	40
Over $145,500		0	0	0
Head of Household		***MAXIMUM CREDIT***		
		Prior Law	***The Act***	
Over	***But Not Over***	***2005 & after***	***2005***	***2006 & after***
$19,000	$78,500	$500	$350	$400
78,500	88,500	450	315	360
88,500	98,500	400	280	320
98,500	108,500	350	245	280
108,500	118,500	300	210	240
118,500	128,500	250	175	200
128,500	138,500	200	140	160
138,500	148,500	150	105	120
148,500	158,500	100	70	80
158,500	168,500	50	35	40
Over $168,500		0	0	0
Married Filing Separately		***MAXIMUM CREDIT***		
		Prior Law	***The Act***	
Over	***But Not Over***	***2005 & after***	***2005***	***2005 & after***
$12,000	$50,250	$500	$350	$400
50,250	55,250	450	315	360
55,250	60,250	400	280	320
60,250	65,250	350	245	280
65,250	70,250	300	210	240
70,250	75,250	250	175	200
75,250	80,250	200	140	160
80,250	85,250	150	105	120
85,250	90,250	100	70	80
90,250	95,250	50	35	40
Over $95,250		0	0	0

EFFECTIVE DATE: July 1, 2005 and applicable to tax years starting on or after January 1, 2005.

Delay In Income Tax Reductions For Single Filers (§§ 74-76)

The act delays, by two years, income tax reductions for single filers. It delays scheduled increases in (1) their AGI exempt from the tax and (2) income thresholds for reducing their personal exemption and personal and property tax credits.

The maximum personal exemption for single filers for 2004 was $12,625. Under prior law, that maximum was to increase to $12,750 on January 1, 2005 and was scheduled to rise in five more annual steps to $15,000 on January 1, 2010. The act delays the increase to $12,750 and each subsequent increase by two years. It also delays increases in the exemption reduction thresholds to correspond, as shown in Table 5. (The income tax personal exemption is reduced by $1,000 for each $1,000 of AGI over a specified threshold, which varies according to filing status.)

Table 5: Scheduled Increases in Personal Exemption and Personal Credit Reduction Thresholds For Single Filers

Tax Year(s)		*Maximum Exemption (AGI)*	*Personal Credit Reduction Threshold (AGI)*
Prior Law	*The Act*		
2004	2004-2006	$12,625	$25,250
2005	2007	12,750	25,500
2006	2008	13,000	26,000
2007	2009	13,500	27,000
2008	2010	14,000	28,000
2009	2011	14,500	29,000
2010 and after	2012 and after	15,000	30,000

Finally, the act also delays increases in AGI thresholds for reducing single filers' property tax credits against the income tax as shown in Table 6. (The law reduces credits by 10% for each $10,000 of AGI over a specified threshold, which varies according to filing status.)

Table 6: Scheduled Increases In Single Filer Property Tax Credit Reduction Thresholds

Tax Year		*Credit Reduction Threshold (AGI)*
Prior Law	*The Act*	
2004	2004-2006	$55,000
2005	2007	55,500
2006	2008	56,500
2007	2009	58,500
2008	2010	60,500
2009	2011	62,500
2010 and after	2012 and after	64,500

EFFECTIVE DATE: Upon passage and applicable to tax years beginning on or after January 1, 2005.

Exemption for Military Retirement Income (§§ 71-73)

Starting with the 2008 tax year, the act exempts 50% of federally taxable military retirement pay from the state income tax. The exemption applies to federal retirement pay to retired members of the U.S. Army, Navy, Air Force, Marines, Coast Guard, and Army and Air National Guard.
EFFECTIVE DATE: Upon passage and applicable to income years starting on or after January 1, 2008.

SALES TAX EXEMPTIONS (§§ 86-87)

The act exempts the following from the 6% sales tax:

1. sales of textbooks and related workbooks to private occupational school students, if the books are required or recommended for private occupational school courses and the student presents a valid student ID card, and
2. boat brokers' charges for selling boats on behalf of boat owners.

Private occupational schools provide post-secondary occupational or career-related training and are regulated by the Department of Higher Education. Sales of textbooks and workbooks to college students are already exempt from sales tax.
EFFECTIVE DATES: July 1, 2005 for the exemption for private occupational school textbooks; October 1, 2005 for the boat broker services exemption.

STATE DEBT COLLECTIONS FROM INSURANCE PAYMENTS (§ 88)

The act requires insurance companies, when they receive liability or workers' compensation claims, to notify the DAS of the claim so DAS may determine if the claimant has a potential liability to the state. The insurer must wait 25 days after providing the notice before issuing any payment on the claim. An insurer must give notice only to DAS and not to any other state agency. The claim notice requirement applies to domestic insurers and insurance companies authorized to issue liability or workers' compensation insurance policies in Connecticut.

The act bars the state from storing or maintaining any information in the insurer's notice unless it identifies the claimant as having a potential state liability.

The act exempts from liability insurers and their employees, directors, and agents, and central reporting organizations and their employees acting on an insurer's behalf that release information or withhold payments under its provisions.

(PA 05-3, June Special Session, substantially revises this section to remove its applicability to workers' compensation insurers and limit the affected liability claims to those for bodily injury or death. That act also (1) adds requirements for the DAS commissioner, including forms and process development and compliance expense reimbursement to insurers; (2) expands the hold-harmless provision for compliance with the notification requirement; and (3) eliminates from the hold-harmless provision reference to an insurer's withholding of claim payments.)
EFFECTIVE DATE: September 1, 2005

NURSING HOME RESIDENT USER FEE (§§ 60(e), 78-85)

Resident Day User Fee

The act imposes a quarterly resident user fee on each nursing home in the state. The DSS commissioner must determine the initial fee by July 1, 2005, with subsequent fees determined annually by July 1. She must promptly notify the DRS commissioner and nursing homes of the fee amount.

The act prohibits the DRS commissioner from collecting the fee until the DSS commissioner informs her that the DSS commissioner has received federal approval to impose the fee and has secured federal matching funds for the provider rate increases that the act requires. The DRS commissioner must likewise stop collecting the fee if the DSS commissioner informs her that the federal approvals are withheld or withdrawn.

The fee is calculated by taking the sum of each home's anticipated nursing home net revenue (defined as amounts a nursing home bills for all room, board, and ancillary services, minus contractual allowances, payer discounts, charity care, and bad debt), and includes estimated revenue from any increases in Medicaid payments, during the 12-month period ending on June 30th of the succeeding calendar year. This amount is multiplied by 6%. The product is then divided by the sum of each nursing home's anticipated resident days during that same 12-month period.

A resident day does not include days for which Medicare pays for the nursing home care, nor does it include the day a resident is discharged. It does include days of admission to the home, and any days for which the home is eligible for payment because the resident's bed has been reserved due to hospitalization or temporary leave. (PA 05-280 specifies that the day a nursing home resident dies is considered a resident day.)

The fee that a particular home must pay is determined by multiplying the number of the home's total resident days during the quarter by the act's user fee.

The DSS commissioner, when anticipating nursing home net revenue and resident days, must use the most recently available net revenue and resident day information.

Waiver

The act requires the DSS commissioner, within 15 days of getting federal approval to begin imposing the fee, to seek waivers of the federal law's uniformity and broad-based requirements that normally apply to such fees. The waiver is needed to (1) exempt from the fee CCRCs, regardless of whether they participate in the Medicaid program and (2) impose a lower user fee in an amount determined in accordance with the act on municipally owned homes and those homes licensed for more than 230 beds.

The act specifies that the legislative oversight law, which requires the Human Services and Appropriations committees to review waiver requests before they can be submitted to the federal government, does not apply to this waiver.

Redetermination of User Fee in Event of Federal Waiver

If the federal government approves the waiver to exempt the CCRCs from the fee and charge the lower fee to the other homes, the act requires the DSS commissioner to redetermine the fee and promptly notify the DRS commissioner and nursing homes of the new fee. The new fee must be calculated by taking the sum of each nursing home's anticipated net revenue, including any increases in Medicaid payments during the 12-month period ending on June 30 of the succeeding calendar year, but not including any anticipated net revenue of an exempted nursing home. This amount must be multiplied by 6%. The product must be divided by the sum of each nursing home's anticipated resident days, excluding exempted homes' days.

Regardless of the recalculation, the act requires the user fee on homes licensed for more than 230 beds and those that are municipally owned to equal the amount necessary to comply with the federal law's uniformity requirements, as the DSS commissioner determines. And it permits the DSS commissioner to increase the fee retroactively for nursing homes with fewer beds and those not municipally owned to offset the user fee reductions necessary to meet the federal waiver requirements.

In any succeeding year, the DSS commissioner must, by July 1, determine the user fee amount in this manner. And she must use the most recently available net revenue and resident-day information when doing so.

Once the DSS commissioner redetermines the fee, she must notify the DRS commissioner of the identity of any nursing home subsequently exempted from the fee because of the waiver and the waiver's effective date. She must also notify DRS of the identity of (1) those homes licensed for more than 230 beds or municipally owned and the effective date of any change in its user fee and (2) any home for which the fee is retroactively increased and the effective date of the increase.

The DSS commissioner must notify any nursing home affected by a retroactive increase in the fee.

Refunds or Credits for Exempt Homes

The act requires the DRS commissioner, upon being notified by the DSS commissioner, to refund or credit any fee collected from a home that is subsequently exempted from it, or that can pay a lower fee. DRS does not have to pay interest on the refund or credit. The homes must, in turn, refund any fees paid by, or on behalf of, their residents.

Notice for Homes Paying Redetermined, Higher Fee

The act requires the DRS commissioner, upon notice from the DSS commissioner, to notify any home for which the user fee is retroactively increased of the additional amount of the fee that is due and owed. The DRS commissioner may not treat the notice as a notice for deficiency assessment, nor does the home have any right of protest or appeal of the additional amount due. No interest is due on the additional payment, if it is paid on or before the last day of the month following the month during which the DSS commissioner notifies the home of the retroactive increase.

Fee Collection

The act requires each nursing home to send the DRS commissioner a quarterly return, on a form the commissioner prescribes or furnishes, stating the total resident days for the calendar quarter ending on the last day of the preceding month. The home must do this by the last day of January, April, July, and October. The return must also include any other information the commissioner deems necessary. The fee is due and payable on the return's due date.

The homes must file these returns electronically and make payments by electronic funds transfer, regardless of whether they would have otherwise been required to pay their taxes in this manner.

Penalty for Late Payments

The act imposes a penalty of 10% of the amount due, or $50, whichever is greater, for fees paid after the due date. In addition, interest accrues at 1% per month or a fraction thereof from the date the fee is due until it is paid.

The act requires the DRS commissioner to notify the DSS commissioner of delinquent amounts. Once she receives the notice, the DSS commissioner must deduct and withhold this amount from whatever it would otherwise pay the home (presumably Medicaid per diem payments).

Application of Tax Laws to Nursing Home Fee

The act applies certain state admissions and dues tax filing and enforcement laws to the nursing home fee to the extent that they do not conflict with the act's provisions. It also specifies that for purposes of the state law governing late payment of state taxes, the resident day user fee is treated as a tax.

Examination of Records

The act authorizes the DRS commissioner to enter into an agreement with the DSS commissioner to delegate to her the authority to examine the records and returns of all homes subject to the fee and determine whether homes have overpaid or underpaid the fee. These examinations and determinations have the same effect as those made by DRS.

Recording Fee as Revenue

At the close of FY 06 and of each succeeding fiscal year, the act authorizes the comptroller to record as revenue for that fiscal year the amount of fees imposed and collected, provided DRS collects it within five business days of the last day of July immediately following the end of the fiscal year.

Use of Revenue

The act increases the daily Medicaid rate DSS pays to nursing homes, as well as rates it pays to ICF-MRs (certain group homes) and residential care homes (RCHs). These increases go into effect only if the state secures the necessary federal approval to receive federal matching funds for the increases and only if the fee is collected from the homes.

The act also requires the OPM secretary, once he receives the federal approval for the nursing home tax and rate increases, to inform the DSS commissioner to implement rate increases for FY 06 for the above providers, as well as home health services, home care waiver services, state-funded home care, personal care attendants, and assisted living service agencies. And he must inform the commissioners of Mental Health and Addiction Services, Mental Retardation, Children and Families, Correction; the executive director of the Children's Trust Fund; and the chief court administrator of the Judicial Department that they must implement cost-of-living adjustments for private providers of grant-funded programs in those departments.

Nursing Homes Medicaid Rate Increases

No earlier than July 1, 2005, the act requires DSS to compute the nursing homes' Medicaid daily rate

based on their 2003 cost report filing, or a subsequent cost year filing for those homes having an interim rate (temporary rate for homes that change owners, significantly change licensed bed capacity, or experience hardship) for the rate year ending June 30, 2005, as provided in state regulations.

The act allows interim rates to take into account reasonable costs incurred by a home, including wages and benefits.

Facilities without Interim Rates. For facilities without interim rates, the rate for the rate year beginning July 1, 2005 and ending June 30, 2006 (RY 06), must be determined beginning with the higher of the computed rate based on the 2003 cost report filing or the rate in effect for the period ending June 30, 2005. The rate must then be increased by $11.80 per day. But no home's rate in RY 06 may be more than $32 higher than the rate in effect in RY 05. Also, a home with a rate less than $195 per day in RY 05 cannot see its rate rise to more than $217.43 in FY 06. Homes with higher rates cannot have a RY 06 rate that is more than 11.5% higher than their RY 05 rate.

Facilities with Interim Rates. Any home with an interim rate for FY 05 may not have an interim replacement rate that is more than $11.80 higher than the RY 05 rate plus the per-day cost of the user fee payments divided by annual resident service days. But homes with interim rates below $195 per day in RY 05 are limited to an interim replacement rate in RY 06 of no more than $217.43. Homes with higher RY 05 interim rates may not receive a replacement rate in FY 06 that is higher its RY 05 rate plus 11.5%.

Rate Year 07. The act requires all homes' rates in effect on June 30, 2006 to remain in effect in RY 07 except that a facility that would have been issued a lower rate effective July 1, 2006 than it would have on July 1, 2005 due to interim rate status or agreement with DSS must be issued the lower rate, effective July 1, 2006.

Intermediate Care Facilities for People with Mental Retardation (ICF-MR)

The act gives ICF-MRs a 4% increase in their Medicaid rate for FY 06, but delays the increase until October 1, 2005. The increase is effective only if (1) federal matching funds are available to pay the federal share of the nursing home increase and (2) the nursing home fee is imposed. ICF-MRs that would have received a lower rate on October 1, 2005 because of interim rate status or other agreement with DSS receive the lower rate. The increases remain in effect unless the federal matching funds are no longer available or the fee is no longer effective.

For FY 07, the rates in effect on June 30, 2006 remain in effect, except ICF-MRs scheduled to get lower rates due to interim rate status or some other arrangement with DSS get the lower rates, effective July 1, 2006.

Residential Care Homes (RCH)

The act increases the amount of the state supplement benefit DSS pays to RCHs by 4%, but not before October 1, 2005. The increase goes into effect only if the federal matching funds for the Medicaid per diem nursing home rates are available. The same conditions and exceptions the act creates for ICF-MRs apply to the RCH increase. (PA 05-280 eliminates the specific 4% increase and instead requires that RCHs receive rates determined in accordance with applicable law and subject to appropriations.)

The state pays RCHs a State Supplement payment only for residents who qualify for the state program. The payment is based on the cost of the care in the RCH and the amount of income the resident may have, which typically includes federal Supplemental Security Income.

Net Revenue Gains in Nursing Homes Applied to Employee Wages and Benefits

For FY 06, the act requires any nursing home that receives a net gain in revenue to apply at least 85% of the gain to increase employee wage rates and benefits and additional direct and indirect "component" staffing. (PA 05-280 eliminates this requirement.) The gain may not be applied to administrator, assistant administrator, owner, or related party employee wage or salary increases. (PA 05-280 permits the DSS commissioner to verify whether homes have met this prohibition, and allows her to recover any amounts improperly applied.)

The act defines "net gain in revenue" as the difference between the rates in effect on June 30, 2005 and July 1, 2005, multiplied by the number of resident days eligible for state payment for the period between July 1, 2005 and June 30, 2006, less state revenue user fees accrued during that period (presumably the nursing home fee a particular home pays during that period).

The act requires DSS to compare wage, benefits, and staffing expenditures for FY 06, excluding administrator, assistance administrator, owner, and related party employee expenditures, to those in FY 05 to verify whether a facility has applied the net gain as required. If she determines it has not, she must recover these amounts from the homes through rate adjustments or other means. The act permits her to require homes to file cost-reporting forms, in addition to the annual reports they already file, to verify the application of the net gains. (PA 05-280 eliminates these provisions.)

EFFECTIVE DATE: July 1, 2005

BACKGROUND

Related Act

PA 05-280 (1) eliminates a specific rate increase for RCHs and (2) eliminates a requirement that homes spend at least 85% of their rate increase on employee wages, benefits, and other staffing. It also makes several, mostly technical, changes in the user fee law.

Federal User Fee Law

Federal Medicaid law (42 CFR § 433.68) allows states to impose user fees or taxes on health care institutions, including nursing facilities. In general, these fees must be broad-based (they must be imposed on at least all health care items or services in the class or providers of these services) and uniform. Fees are considered uniform when they are the same amount for every provider and they do not hold a particular facility harmless from paying the fee. The law limits the amount states can charge to 6% of facility revenues.

States can ask the Center for Medicare and Medicaid Services (CMS) to waive one or both of these requirements and, historically, CMS has approved such requests when the states have been able to show that their fees are generally redistributive.

These fees permit states to enhance payments to health care providers without spending additional state revenues because the fees act as the state expenditure that is eligible for federal Medicaid matching funds.

Nursing Facility Rate Setting

State statutes contain a complex cost-based formula with various caps on different cost "components" for determining Medicaid payments to nursing homes, but for a number of years legislation has limited potential increases in nursing homes' reimbursements to a specified percentage of prior-year reimbursements, regardless of actual allowable costs reported.

"Direct care" costs include nursing and nurse aide personnel salaries, related fringe benefits, and nursing pool costs. "Indirect" costs include professional fees; dietary, housekeeping, and laundry personnel costs; expenses; and supplies related to patient care.

PA 05-280—HB 7000
Appropriations Committee

AN ACT CONCERNING SOCIAL SERVICES AND PUBLIC HEALTH BUDGET IMPLEMENTATION

SUMMARY: This act makes numerous changes to programs administered by the departments of Social Services (DSS), Public Health (DPH), Mental Retardation (DMR), Mental Health and Addiction Services (DMHAS), and Children and Families (DCF) and the Office of Policy and Management (OPM). Its major provisions include:

1. making more adults eligible for HUSKY A medical coverage by increasing the income eligibility limit from 100% to 150% of the federal poverty level while imposing new or higher cost-sharing requirements on them and families participating in the HUSKY B program;
2. adjusting the ConnPACE and Medicaid programs in response to the federal Medicare Part D prescription plan that begins on January 1, 2006;
3. freezing cost of living increases for several state welfare programs;
4. beginning in 2007, increasing asset limits for determining eligibility for the state-funded portion of the home-care program for the elderly;
5. reducing pharmacy reimbursements for state medical assistance programs and changing several prior authorization requirements;
6. requiring DMHAS to establish 500 new supportive housing units for people with psychiatric disabilities and creating a mechanism to fund them;
7. creating a Behavioral Health Partnership between DSS and DCF to implement an integrated behavioral health system for children and families receiving HUSKY A and B services and other children;
8. reestablishing the Department on Aging in 2007; and
9. establishing a "critical access hospital" category to address needs during public health emergencies and mass casualty events.

EFFECTIVE DATE: Upon passage or July 1, 2005, as noted below.

HUSKY A (§ 1)

Increase in Income Limits for Adult Caretaker Relatives

The act increases the income eligibility limit for adult coverage in the HUSKY A program from 100% to 150% of the federal poverty level (FPL). HUSKY A (Medicaid) coverage is available to adults who are parents or caretaker relatives of children receiving HUSKY A. The income limit for children is 185% of the FPL. The current FPL is $19,350 for a four-person household.

Transitional Medicaid

By law, families who lose eligibility for HUSKY A coverage due to employment or child support income are eligible for transitional Medicaid. The act reduces from two years to one the time that families can receive this assistance. It allows a family already receiving transitional Medicaid on July 1, 2005 to receive the balance of the benefits for up to 12 more months. Federal law requires states to provide one year of transitional Medicaid and allows them to provide an additional year. The act specifies that only working parents whose income from employment makes them ineligible (i.e., their income goes above the set limits) can get the transitional assistance.

For consistency, the act repeals PA 05-1, which extended to June 30, 2005 transitional Medicaid for certain adults with incomes between 100% and 150% of the FPL who lost their eligibility for this coverage on March 31, 2005.

Cost-Sharing

The act requires the DSS commissioner, to the extent permitted by federal law or waiver, to impose cost-sharing requirements on parents and caretaker relatives receiving HUSKY (presumably HUSKY A since HUSKY B is only for children) with incomes over 100% of the FPL. The cost-sharing includes (1) a $25 monthly premium and (2) $1 co-payment for outpatient medical services. Previously, HUSKY A had no cost-sharing requirements. If DSS seeks a federal waiver for this purpose, it must submit a copy to the Appropriations and Human Services committees for review. Such a review is required by law for most waiver requests.

The act permits the commissioner to implement cost-sharing policies and procedures while in the process of adopting regulations provided she publishes notice of intent to adopt the regulations in the *Connecticut Law Journal* within 20 days of implementing them. These policies and procedures remain valid until final regulations are adopted.

Federal Medicaid law limits the circumstances under which states may impose cost-sharing requirements on Medicaid recipients without a waiver (HUSKY A is a subset of Medicaid). For example, it allows premiums for people in the "medically needy" spend-down category, but it prohibits them for people who are "categorically needy," such as pregnant women, children, and certain families. Federal regulations establish maximum cost-sharing amounts. For example, a state cannot charge more than $1 for services costing between $10.01 and $25.00.
EFFECTIVE DATE: July 1, 2005

CONTINUED COLA FREEZE FOR TFA AND SAGA (§ 2)

The act continues the freeze on cost of living adjustments (COLA) for the Temporary Family Assistance (TFA) and the State-Administered General Assistance (SAGA) programs for FY 06 and FY 07.
EFFECTIVE DATE: July 1, 2005

FRAUD EARLY DETECTION SYSTEM (§ 3)

DSS's fraud early detection system already applied to the Medicaid, TFA, and Food Stamp programs. The act adds the child care subsidy program and allows the system to apply more broadly to department-administered programs, including those specified. The fraud early detection system identifies and investigates potential fraud in applications before the department grants assistance under these welfare programs.

The act requires the DSS commissioner to make quarterly reports to the Appropriations and Human Services committees on the savings realized through this program's implementation.
EFFECTIVE DATE: July 1, 2005

REDUCTION IN PHARMACY REIMBURSEMENTS AND APPLICATION OF DISPENSING FEE (§ 4)

The act reduces what DSS pays pharmacies for prescription drugs for its clients in the Medicaid, SAGA, ConnPACE, and the Connecticut AIDS Drug Assistance Program. It requires the payment to be the lower of (1) the rate the federal Center for Medicare and Medicaid Services sets as the federal acquisition cost, (2) the average wholesale price (AWP) minus 14% (this is a reduction from the former AWP minus 12% set by DSS as the "estimated acquisition cost" (EAC)), or (3) an equivalent percentage established under the State Medicaid Plan. Generic drugs are already subject to a different "maximum allowable cost" (MAC) reimbursement schedule based on federal limits.

Previously, the statutes required DSS to reimburse pharmacists at the rate the Center for Medicare and Medicaid Services (CMS) set as the federal acquisition cost or, if no such rate was established, the EAC.

The act eliminates payment of the usual $3.15 ConnPACE and Medicaid pharmacy-dispensing fee when a Medicare Part D plan beneficiary obtains a Medicare Part D prescription drug (see §§ 18-29).
EFFECTIVE DATE: July 1, 2005

ELIMINATION OF SELF-DECLARATION IN HUSKY A AND B (§ 5)

The act eliminates the DSS commissioner's authority to rely on income information HUSKY A and

B applicants put on the program renewal application unless she has reason to believe it is inaccurate or incomplete.
EFFECTIVE DATE: July 1, 2005

DELAY IN MEDICAID HOSPITAL INPATIENT RATE INCREASE (§ 6)

The act delays by six months the effective date for the second and third phases of higher minimum Medicaid rates for inpatient hospital care (target amount per discharge floors). The current target amount is $3,750. Under the act, the $4,000 target amount is effective on October 1, 2006 instead of April 1, 2006 and the $4,250 target amount is effective on October 1, 2007 instead of April 1, 2007.
EFFECTIVE DATE: July 1, 2005

HUSKY B—COST-SHARING INCREASES (§ 7)

HUSKY B provides subsidized, managed health insurance to children in families with incomes between 185% and 300% of FPL. Families with incomes between 235% and 300% of the FPL (Band 2) previously paid $30 per month in premiums, as well as co-payments on most medical services, with an overall annual cost-sharing cap of $1,250. Families with incomes between 185% and 235% of FPL (Band 1) paid no premiums, but paid up to $650 annually in co-payments.

Prior law permitted the DSS commissioner to increase the maximum annual cost-sharing caps provided they did not exceed 5% of the family's gross annual income, and it allowed her to impose premiums on the Band 1 families. The act requires the commissioner (1) beginning July 1, 2005, to increase the caps; (2) to impose premiums on Band 1 families; and (3) to increase the premiums for Band 2 families.
EFFECTIVE DATE: July 1, 2005

EXPEDITED MEDICAID ELIGIBILITY FOR PREGNANT WOMEN (§ 8)

The act requires DSS to expedite Medicaid eligibility for pregnant women. DSS must ensure that it processes (1) emergency applications, as the commissioner determines, within 24 hours from when it receives all required information from the applicant and (2) all other applications no later than five calendar days after receiving the information. The act requires the commissioner to submit reports every two years to the Medicaid Managed Care Council on how DSS is complying with these deadlines.

Under prior law, DSS had to perform presumptive eligibility (PE, see below) with an emphasis on pregnant women, in accordance with federal law. In practice, DSS instead implemented expedited eligibility for these women using standards different from federal PE standards. Existing regulations require DSS to grant PE in appropriate cases (with an emphasis on pregnant women) within one day of when it receives required minimum information (e.g., proof of identity, citizenship status, and income) and requires applicants to get the required information to DSS within 30 days of applying.
EFFECTIVE DATE: July 1, 2005

HUSKY A AND B—RESTORING PRESUMPTIVE ELIGIBILITY, CONTRACTS FOR SERVICES, AND CHANGING MANAGED CARE PLANS (§ 9)

Presumptive Eligibility

The act requires the DSS commissioner to institute PE for children applying for HUSKY A coverage. PE determinations must be made in accordance with applicable federal law. PE enables children to start getting HUSKY A coverage while DSS completes its eligibility determination.

It requires DSS to adopt regulations to establish standards and procedures for designating organizations as "qualified entities" (a federal designation) to grant PE. These entities must ensure that when they grant PE, a completed Medicaid application is submitted to DSS for a full eligibility determination. In adopting the standards and procedures, DSS must ensure representation of statewide and local organizations that provide services to children. PA 03-3 eliminated PE for children. Until 2003, DSS used qualified entities to make PE determinations, using the same requirements as in the act requires.

Contractor for HUSKY A and HUSKY B Services

By law, DSS must contract with an entity to be a single point of entry "servicer" for HUSKY A and B applicants and enrollees. In addition to helping people enroll, the servicer must conduct outreach and provide public information about these programs. DSS currently contracts with ACS, Inc.

The act requires DSS, when its existing contract expires, to develop one or more new contracts for single point of entry services and managed care enrollment brokering. It allows DSS to enter into more than one contract, but no contract can exceed seven years. The ACS contract, in effect since 1995, expired in December 2004. It has never been formally re-bid.

Any future contracts must contain performance measures, including (1) time limits for processing applications, (2) parameters establishing requirements for completed and "reviewable" applications, and (3) the percentage of applications forwarded to DSS in a

complete and timely fashion. They must also include a process for identifying and correcting noncompliance with performance measures, including sanctions for continued noncompliance.

Enrollees' Ability to Change MCOs

The act requires HUSKY A and B beneficiaries to remain enrolled in a managed care plan for 12 months before they can switch to another plan unless (1) they can demonstrate good cause for switching sooner or (2) the beneficiary no longer meets the program's eligibility requirements. Under DSS regulations in effect before the act's passage, HUSKY B enrollees could switch plans only once a year, while HUSKY A enrollees could switch more often.

Repeal of HUSKY B Commercial Comparability Requirement

The act repeals a requirement that HUSKY B services and cost-sharing requirements be substantially similar to those offered by the largest commercially available health plan offered by a managed care organization to state residents.
EFFECTIVE DATE: July 1, 2005

ASSET LIMIT INCREASE FOR HOME CARE PROGRAM (§ 10)

The act increases the assets that people in the solely state-funded side of the Connecticut Home Care Program for Elders (CHCPE) can keep. These asset limits are $19,020 for an individual and $28,530 for a couple, which represent 100% and 150% respectively of the minimum federal "community spouse protected amount" (CSPA) of assets that a Medicaid-eligible nursing home resident's spouse living in the community can keep. The act increases these caps to 150% and 200% of the CSPA on April 1, 2007. The federal government adjusts the CSPA annually for inflation.

The CHCPE provides home- and community-based care to seniors age 65 and over who would otherwise be at risk of going to a nursing home, meet certain financial requirements, and have incomes too high for regular Medicaid in the community. The program has Medicaid-funded and a solely state-funded portions with different asset limits.
EFFECTIVE DATE: July 1, 2005

SAGA PILOT PROGRAM FOR YOUNG ADULTS WITH MENTAL DISORDERS AND CHRONIC HEALTH CONDITIONS (§ 11)

The act requires the DSS commissioner to develop and implement a two-year pilot program for up to 100 people who (1) are age 19 to 21, (2) live with a parent or relative caregiver, (3) have been diagnosed with one or more mental disorders as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders" (DSM), (4) have a significant chronic health condition, (5) have a substantial functional impairment as a result of the mental disorder or chronic health condition, and (6) are ineligible for SAGA medical assistance because their parents' or relative caregiver's income is too high.

For the pilot, "mental disorder" does not include mental retardation; learning, motor skill, communication, or caffeine-related disorders; relational problems; and other conditions that may be a focus of clinical attention that are not otherwise defined as mental disorders in the DSM's most recent edition.

The act requires an individual eligible for benefits under this pilot program to cooperate in establishing his eligibility for Medicaid based on disability.
EFFECTIVE DATE: July 1, 2005

EXTENDED SUNSET FOR RESIDENTIAL ENERGY CONSERVATION SERVICES PROGRAM (§ 12)

The act extends the sunset date for OPM's residential energy conservation program from July 1, 2005 to July 1, 2010. This program provides energy audits to residential customers.
EFFECTIVE DATE: July 1, 2005

PUBLIC HEALTH INSURANCE COVERAGE FOR ERECTILE DYSFUNCTION (§ 13-15)

The act requires the DSS commissioner or the managed care organization or other entity performing administrative functions for the SAGA program to require prior authorization for coverage of drug treatment for erectile dysfunction (presumably in SAGA medical assistance recipients). It allows them to limit or exclude coverage for convicted sex offenders who are required by law to register with the commissioner of public safety, and it adds such drugs, when they are for the treatment of these offenders, to the list of drugs and drug products the ConnPACE program may not cover.

The act requires the commissioner, to the extent permitted by federal law, to require prior authorization for Medicaid coverage of these drugs. She may limit or deny coverage for sex offenders or exclude the drugs altogether from coverage for such sex offenders. Since 1998, federal regulations have required states to provide erectile dysfunction treatments under Medicaid when they are "medically necessary," without any distinctions as to who could or could not get the treatment. But the federal Medicaid agency recently ordered state agencies

to take measures to limit payments in these circumstances.
EFFECTIVE DATE: July 1, 2005

PRIOR AUTHORIZATION (PA) FOR PRESCRIPTION DRUGS IN DSS DRUG ASSISTANCE PROGRAMS AND DESIGNATION OF SPECIFIC DRUG SUPPLIERS (§§ 16-17)

The act changes the frequency of PA in DSS' drug assistance programs. It limits PA for a brand-name drug to one year from the date the prescription is first filled.

By law, DSS must generally require PA for brand name drugs when a chemically equivalent substitute is available and may require it for early refills of drugs covered by its drug assistance programs. Prior law specifically authorized DSS to require PA for drugs costing $500 or more for a 30-day supply. PA lasted for the lifetime of the therapy unless another chemically equivalent generic was subsequently approved by the Food and Drug Administration. For non-maintenance drugs, PA was required every six months. Prescriptions for a less than a 15-day supply are never subject to PA.

The act allows, rather than requires, the DSS commissioner to designate specific suppliers from which a dispensing pharmacy must order a prescription drug. Previously, the commissioner, to increase cost efficiency or enhance access to a particular drug, had to establish a plan (which she has already done) under which she could designate such suppliers.

Prior law required any PA plan or schedule to be submitted to and reviewed by the Public Health, Human Services, and Appropriations Committees. The act instead requires review of revisions only if they were made after July 1, 2005. Apparently, revisions made by DSS pursuant to this act are subject to legislative review because this provision takes effect on July 13, 2005.
EFFECTIVE DATE: Upon passage for the plan and schedule changes and July 1, 2005 for implementation of the duration of PA.

PREFERRED DRUG LISTS (§ 18)

The act allows, rather than requires, DSS to adopt preferred drug lists for Medicaid, ConnPACE, and SAGA in consultation with the Medicaid Pharmaceutical and Therapeutics Committee. It specifies that the committee must include physicians with experience serving recipients of medical assistance, instead of just the Medicaid program. It also removes "Medicaid" from the committee's name to be consistent with its broader responsibilities. The law continues to require DSS, after entering into a contract with an entity to provide drug coverage for managed care medical assistance recipients, to expand the preferred drug list for use in the HUSKY A and B programs. Prescriptions for drugs not on the lists need PA except for mental-health-related and antiretroviral drugs.

The act specifies that nonpreferred drugs in the classes of drugs included on the preferred drug lists must be subject to PA. It makes PA for a drug not on the preferred drug list, if granted, valid for one year from the date the prescription is first filled.

By law, mental health-related drugs and antiretroviral drugs are exempt from PA and are not to be included on the preferred drug lists. The act specifies that this exemption applies to classes of antiretroviral drugs.

It specifies that DSS may negotiate supplemental rebate agreements with drug manufacturers in addition to the rebates required under Medicaid.
EFFECTIVE DATE: July 1, 2005

STATE RESPONSE TO FEDERAL MEDICARE PART D PRESCRIPTION PLANS (§§ 19-30)

The permanent federal Medicare Part D program, which begins January 1, 2006, allows Medicare beneficiaries to enroll voluntarily in Medicare-approved private prescription plans. The plans must provide at least a specified "standard" package of benefits to all Medicare beneficiaries. The standard benefits (for people who are not on ConnPACE or dually eligible for Medicare and Medicaid) consist of (1) 75% coverage of prescription costs up to $2,250 with a $250 annual deductible; (2) no coverage beyond the $2,250 threshold until the beneficiary spends a total of $3,600 out-of-pocket ($5,100 in total consumer and Medicare expenditures), known as the "gap in standard coverage" or, informally, "the donut hole"; and (3) "catastrophic coverage" of 95% of all prescription costs above $5,100 (the beneficiary pays the greater of 5% of the cost per prescription or $2 for generic or preferred drugs and $5 for others). The plans may charge a monthly premium that can vary, but is expected to be about $37.

Under the federal law, Medicare beneficiaries with low incomes and assets and those who are Medicare-Medicaid dually eligible will receive varying additional subsidies that involve no or lower deductibles and premiums, lower copays, and coverage for the "donut hole."

The program covers only prescription drugs designated as "Medicare Part D covered drugs." In addition, the private plans can choose which Part D-covered drugs they will offer on their formularies. But under a federal exception process, people can appeal the plan's decisions and, if they win, the drugs in question can be treated and paid for as though they were on the formulary.

This act responds to the federal legislation by modifying state law concerning (1) ConnPACE and (2)

Medicaid prescription coverage for people who are fully eligible for both the Medicare and Medicaid programs (the "dually eligible"). It also makes related changes for DMR and DMHAS clients.

ConnPACE

The act coordinates Medicare Part D benefits with the state's ConnPACE program so that ConnPACE beneficiaries will not pay more than the current $30 annual registration fee and $16.25 per-prescription copayment for drugs that are (1) preferred drugs on their Part D prescription plan's formulary or (2) not designated a Part D covered drug. Beneficiaries may pay less than the $16.25 copay if the required Part D copays are lower. When a Medicare-covered drug is not a preferred drug on a particular plan's formulary, the act allows DSS to pay for it at the lower of several alternative prices and makes the client responsible for paying the difference and the usual ConnPACE copay. DSS generally does not pay for Part D covered drugs that are not on a plan's formulary, but under the federal exception procedure, if the client or DSS appeals and wins, drugs not on the formulary could be treated and paid for as though they were on it.

Under the act, DSS pays the Medicare Part D plan monthly premiums for ConnPACE recipients who are subject to them. It will cover drugs to the same extent as otherwise during the federal deductible period and the gap ("donut hole") in the standard Medicare Part D plan.

The act requires ConnPACE participants to (1) enroll in a Medicare Part D plan as a condition of receiving ConnPACE benefits; (2) disclose their income and assets to DSS as a means of determining whether they are eligible for federal low-income subsidies; and (3) appoint the DSS commissioner as their authorized representative, which allows her to place them in a plan if they do not choose one in a timely manner.

Medicare-Medicaid Dually Eligible

Under the federal law, Medicare-Medicaid dually eligible beneficiaries will no longer receive prescription coverage through Medicaid for drugs designated as Medicare Part D covered drugs. Federal law allows them to choose a Medicare Part D plan and provides them with extra subsidies compared to the "standard" Part D plan.

The act makes separate provision for these dually eligible beneficiaries. They will no longer receive Medicaid benefits for drugs that could be covered under Medicare Part D, even if these covered drugs are not on their chosen plan's formulary. For the drugs that are on the plan's formulary, they will have to pay the new federal copays for this specific group, varying from $1 to $5 depending on their income and the type of drug (generic, preferred, or other). Previously, there were no prescription copays under Medicaid in Connecticut. This group will still receive Medicaid coverage for drugs that are not covered by Part D.

Medicaid Coverage Eliminated For Part D Drugs; Continued For Non-Part D Drugs (§ 18)

The act eliminates Medicaid coverage for prescription drugs that could be covered under Medicare Part D for Medicaid recipients who are also eligible for Part D coverage, starting when that program begins. Medicaid will cover prescription drugs that are not Medicare Part D drugs.

The federal law defines "Medicare covered Part D drug" as a prescription drug, biological product, insulin and related medical supplies, or vaccines, if they are used for a medically accepted indication. It excludes drugs available under Medicare Part A (hospital) or Part B (which has very limited outpatient coverage for a few items, such as chemotherapy) and certain drugs such as over-the-counter drugs, which may be excluded from or restricted under Medicaid coverage (42 CFR 423.100, FR 1/28/05, p. 4534).

EFFECTIVE DATE: July 1, 2005

Part D-Related Drug Definitions (§ 19)

The act incorporates various federal definitions and makes several technical changes.

EFFECTIVE DATE: July 1, 2005

ConnPACE Copayments and Exemptions (§ 20)

The act generally continues the ConnPACE required maximum copayment of $16.25 per prescription, but subjects replacement prescriptions to the copay. It also makes technical changes.

EFFECTIVE DATE: July 1, 2005

Conforming ConnPACE to Medicare Part D and Other Changes (§ 21)

The act specifies that ConnPACE income limits apply to annual income at the time of application or redetermination. The federal Medicare Part D program requires eligibility to be determined according to current income information. Previously, applicants could use their prior year's income or, if that did not qualify them for the program, their current year income. The act also specifically allows people who have Medicare Part D coverage to participate in ConnPACE and deletes obsolete language.

Generally, ConnPACE does not pay for a prescription if other insurance or assistance is available when the drug is dispensed. The act makes an exception for the Part D program and requires the pharmacy to make reasonable efforts to ascertain whether the customer has Medicare Part D benefits.

The act makes a Part D beneficiary responsible for paying Part D copayments, coinsurance, and deductible requirements for Part D covered drugs, to the extent they do not exceed the ConnPACE copayment requirements. It also requires DSS to pay Medicare Part D monthly premiums for the beneficiary. If the Part D beneficiary's out-of-pocket copayment, coinsurance, or deductible requirements exceed the ConnPACE copayment requirements, the act requires DSS to pay the pharmacy to cover costs above the ConnPACE copayment. It makes DSS responsible to pay to the same extent for a Medicare Part D covered drug that is on a plan formulary when it is obtained during the gap in the standard coverage.

To the extent allowed by federal law, the act allows DSS to pay for the prescription at (1) the lowest price established by the Part D plan for a preferred drug in the same therapeutic class and category that is dispensed by a preferred pharmacy, with the beneficiary responsible for paying the cost differential beyond DSS's payment; (2) the lower of the price that would be paid under ConnPACE or the negotiated price established by the plan; or (3) in consultation with the OPM secretary, at the price that ConnPACE would pay. DSS generally pays nothing for Part D covered drugs that are not on, or treated as being on, the plan's formulary. But for prescription drugs that are not Medicare Part D covered drugs, the act requires DSS to pay under the ConnPACE program and makes the client responsible only for the usual $16.25 ConnPACE copay.

The act requires people eligible for the Medicare Part D program to enroll in it as a condition of eligibility for ConnPACE and requires ConnPACE to cover the costs of ConnPACE recipients' Part D participation. In addition, starting July 1, 2005, a ConnPACE applicant or recipient must, as a condition of eligibility, provide information about his assets and income (and his spouse's if they live in the same household), as DSS requires to determine the extent of federal benefits for which he may be eligible under Medicare Part D.

The act also requires a ConnPACE applicant or recipient, as a condition of eligibility, to appoint the DSS commissioner as his authorized representative for (1) applying to the Social Security Administration to obtain the Part D low-income subsidy, (2) appealing any denial of Medicare Part D benefits, and (3) for any other purpose the federal law allows if the commissioner deems it necessary. It allows the commissioner to sign required forms and enroll the ConnPACE applicant or recipient in a Medicare Part D plan.

The commissioner must give the individual an opportunity to choose a plan and must notify him of this opportunity. If the person does not choose a plan within a reasonable time, as determined by the commissioner, DSS must enroll him in a plan she designates.

The act makes the law concerning the temporary two-year Medicare drug discount cards effective only until the new Medicare Part D program begins.
EFFECTIVE DATE: July 1, 2005

Conforming Changes (§§ 22-27)

These sections make technical changes.
EFFECTIVE DATE: July 1, 2005

DMR and DMHAS Commissioners as Authorized Representatives for Their Clients (§§ 28-29)

The act allows DMR and DMHAS to be their clients' authorized representatives for the purpose of applying to the Social Security Administration to obtain the Medicare Part D low-income subsidy for their clients, for appealing Medicare Part D denials, and for other related purposes their commissioners consider necessary. The act gives these clients an opportunity to choose a plan and if they do not, requires the departments to enroll them in a plan the respective commissioner designates.
EFFECTIVE DATE: July 1, 2005

DSS Interim Status Report Required in 2007 (§ 30)

The act requires the DSS commissioner to submit an interim status report by January 1, 2007 on the implementation of the new Medicare Part D program to the Public Health, Human Services, and Appropriations committees.
EFFECTIVE DATE: July 1, 2005

MANDATORY ENROLLMENT IN DMR MEDICAID WAIVERS (§ 31)

The act requires people receiving or applying for residential placement through DMR or receiving certain services or supports from it to enroll in Medicaid and the department's Medicaid waiver programs, if they meet Medicaid eligibility criteria. It makes enrollment a condition for continuing an individual's placement, support, or services and eligibility for placement. It allows the DMR commissioner to provide services, within available appropriations, for individuals who are ineligible for Medicaid or a waiver program but who

must receive services under state or federal law or a court order.

The act applies to people (1) currently living or seeking placement in a DMR residential placement (e.g., Southbury Training School, a regional center, or a community living arrangement) or (2) receiving any DMR support or service included in or covered by any federal program administered and operated by DMR and DSS (i.e., Medicaid).

Under the act, anyone whose excess income or assets make him ineligible for Medicaid can remain in his placement or continue to receive DMR supports and services while "spending down" that income and assets until he qualifies.

EFFECTIVE DATE: July 1, 2005

SUPPORTIVE HOUSING (§§ 32-34)

The act requires the DMHAS commissioner to provide for up to 500 additional units of affordable, supportive housing for people with mental illness. These units are the second, "Next Steps," phase of the Supportive Housing Initiative. The first phase, the Supportive Housing Pilots Initiative, was instituted in 2001 to create 650 units.

Like the pilot initiative, the Next Steps Initiative is funded through mortgages, tax credits, and grants from the Connecticut Housing Finance Authority (CHFA) and the Department of Economic and Community Development (DECD); DSS rent subsidies; and grants from various state agencies for support services. The act permits the state to pay debt service on tax-exempt bonds CHFA issues for the program.

Eligible Individuals And Housing

Under the act, Next Steps housing is for:

1. people or families affected by psychiatric disabilities, chemical dependency, or both who are homeless or at risk of homelessness (including people living on the streets, in shelters, or in unsafe, abusive, or overcrowded environments; paying more than 50% of their income for rent; leaving homeless programs or transitional housing with no permanent housing; or needing support services to maintain permanent housing);
2. families who are eligible for TFA;
3. 18- to 23-year olds who are homeless or at risk of homelessness because they are transitioning out of foster care or other residential programs; and
4. community-supervised offenders with serious mental health needs who are under Judicial Branch or Correction Department jurisdiction.

All of the units developed under the act must be permanent and can house individuals and families with or without special needs.

Financing—Memorandum of Understanding (MOU)

The act requires the DMHAS commissioner and OPM secretary to enter into a MOU with DCF, DSS, DECD, and CHFA by October 1, 2005. That memorandum must provide for:

1. submission of a collaborative plan and timetables for creating up to 500 supported units;
2. an option for DSS to provide subsidies, including project-based rent subsidies during the term of any mortgage;
3. CHFA and DECD to offer viable financing through grants, mortgages, or tax credits, including capitalized operating reserves (PA 05-3, June Special Session (JSS) makes their financing optional);
4. the treasurer and OPM secretary's ability to enter into an agreement, after January 1, 2006, to pay debt service on any tax-exempt bonds CHFA issues for the units;
5. DMHAS, DSS, and DCF to provide annual grants for supportive services during the term of any mortgage; and
6. a plan for private and federal predevelopment financing and for grants and loans from nonstate sources generated by federal and state tax credits and federal project-based rent subsidies.

(PA 05-3, JSS permits the parties to the MOU to include other provisions they find necessary and appropriate.)

The act requires CHFA, by January 1, 2006, to issue a request for proposals for participation in the initiative. (PA 05-3, JSS requires CHFA to give priority to applicants DCF and DMHAS deem qualified to provide services.) It also requires CHFA to review and underwrite projects developed under both the pilot and Next Steps initiatives.

Debt Service Agreement

The act permits the treasurer and OPM secretary, on behalf of the state, to contract with CHFA to pay principal and interest and reasonable operating and replacement reserves on CHFA mortgages issued under both phases of the Supportive Housing Initiative. The contract must contain provisions they find (1) needed to assure the initiative is put into effect, (2) appropriate for repaying the state when CHFA receives mortgage payments from federal or other sources, and (3) in the state's best interests by allowing direct payment to the

bond trustee or paying agent. (PA 05-3, JSS broadens the type of assistance OPM and the treasurer can provide, requires the state to pay up to $70 million for repair and replacement and bond issuance costs, and excludes the bonds for which the state provides assistance from the state's debt limit.)

The act makes any contract provision requiring the state to pay an amount equal to the annual debt service a state contract with bondholders, appropriates all amounts needed to pay promptly, and requires the treasurer to make payments when due. It allows CHFA to pledge the state's payment as security for the bonds. And it allows CHFA to issue refunding bonds at any time.

DSS Rent Certificates

The act allows the DSS commissioner to set aside some rent assistance certificates for tenant- and project-based supportive housing units. Tenant-based certificates go to individuals who secure private housing; project-based certificates go to property owners who participate in government sponsored housing development programs. (PA 05-3, JSS allows project-based subsidies to fund reasonable repair and replacement reserves.) The act requires, to the extent practicable, that the tenant's share of rent under a certificate for supportive housing be calculated based on federal Housing Choice Voucher Program regulations. These call for a tenant to pay 30% of the family's adjusted monthly income for a unit that rents for up to the fair market price set by the Department of Housing and Urban Development.

Reporting

The act adds DCF and DSS to the list of agencies (DMHAS, DECD, CHFA) that must submit an interim status report to various legislative committees on the Supportive Housing Initiative and extends the deadline for this report to January 1, 2006. It also extends the deadline for the final report by one year to January 1, 2007.
EFFECTIVE DATE: July 1, 2005

BIRTH-TO-THREE UNIT COST STUDY (§ 35)

The act requires DMR to contract, within available resources, for a unit cost study for its Birth-to-Three program. The study must look at operating costs for those services for which the state contracts and those provided by state employees, including salaries, benefits, contracted services, administrative support, rent, vehicles and equipment, travel, materials and supplies, utilities, insurance, and training. DMR's contract for the study must permit current service providers to comment. The study must be completed by February 1, 2006, and the commissioner must report to the governor and the Appropriations and Public Health committees by March 1, 2006.
EFFECTIVE DATE: Upon passage

NUTMEG HEALTH PARTNERSHIP INSURANCE PLAN (§ 36)

The act requires the Insurance and Real Estate Committee to study the possible implementation of a "Nutmeg Health Partnership Insurance Plan," a public-private partnership to (1) increase the number of residents with health insurance, (2) provide broader health care access, and (3) make health care more affordable. By February 1, 2006, the committee must develop a plan to achieve these goals and report to the General Assembly on its details and legislation to implement it.
EFFECTIVE DATE: July 1, 2005

EMILY J. EXPENDITURES APPROVED (§ 37)

The act approves the settlement agreement reached in *Emily J. v. Rell*, a class action suit that involves the state's provision of mental health services to children in detention. The law requires the attorney general to submit agreements that call for spending $2.5 million or more for approval by the General Assembly. The attorney general did so in this case on June 7, 2005. The agreement calls for DCF and the Judicial Department to provide a variety of services to class members, including therapeutic foster care, substance abuse treatment, group home placement, multi-systemic therapy, therapeutic mentors, and staff training.
EFFECTIVE DATE: Upon passage

STATE SUPPLEMENT PROGRAM FREEZE (§ 38)

The act continues the freeze on benefit payments for the State Supplement Program (SSP) for FYs 06 and 07. But PA 05-243 allows the pass-through of the annual federal Supplemental Security Income (SSI) COLA increase by raising the SSP unearned income disregard (for example, $183 for people living in the community) by the federal COLA. Previously, SSP payments were reduced by whatever SSI COLA beneficiaries received.

The SSP program, run by DSS, generally supplements cash assistance received under the federal SSI program. The amount of state aid is based on the determination of total needs, using DSS standards. This amount is then compared to the individual's income, and the difference (after deductions are taken) is the benefit.
EFFECTIVE DATE: July 1, 2005

SECURITY DEPOSIT GUARANTEE PROGRAM (§ 39)

By law, DSS, within available appropriations, may provide security deposit guarantees of up to two months' rent, and can also offer a limited number of security deposit grants, to people residing in emergency shelters or other emergency housing, as well as to those who cannot remain in permanent housing due to circumstances beyond their control. Previously, people could receive subsequent guarantees without DSS' approval if they were requested or provided at least 18 months after the initial guarantee. The act permits the DSS commissioner to deny eligibility for the program to an applicant who has made more than two claims in a five-year period. (PA 05-3, JSS subsequently allowed her to make these denials when she has paid two or more claims, rather than when the applicant has made three or more claims, in the immediately preceding five-year period.)

By law, the commissioner can establish priorities for giving out guarantees or deposits. The act specifies that the purpose for the prioritization is to keep the program within the available appropriation.
EFFECTIVE DATE: July 1, 2005

TRANSFER OF ASSETS (§ 40)

By law, the DSS commissioner must impose a penalty period (period of Medicaid ineligibility) on a person who transfers assets for less than fair market value within 36 months of applying for long-term care Medicaid in order to qualify for such assistance. The act restores, with minor revisions, a provision that permits the commissioner to waive the penalty period when the person transferring the asset (1) suffers from dementia when she applies for Medicaid and cannot explain the transfers, (2) suffered from dementia at the time of the transfer, or (3) was exploited into making the transfer due to dementia. PA 05-209 had eliminated this waiver authority.

By law, when such transfers occur and result in a penalty period, they create a debt that either the person transferring the asset or the person receiving it must pay. The act specifies that the above transfers are still subject to the debt creation even though they do not result in a penalty period.
EFFECTIVE DATE: Upon passage

CON EXEMPTION FOR HOSPICE BEDS (§ 41)

The act adds an exception to the nursing home certificate of need (CON) moratorium for a request for up to 20 beds associated with a freestanding hospice facility for the terminally ill operated by an organization that DPH previously authorized to provide hospice services.
EFFECTIVE DATE: July 1, 2005

HEALTH INSURANCE FOR PEOPLE WITH HIV OR AIDS (§ 42)

The act requires the DSS commissioner, by January 1, 2006, to report to the Public Health, Human Services, and Appropriations committees on the feasibility and cost of establishing a program to purchase and continue health insurance policies for people with HIV or AIDS that would use the same eligibility criteria DSS uses for its AIDS drug assistance program. In this program, DSS pays the costs of drugs needed to treat HIV or AIDS in people with incomes up to 400% of the FPL ($38,280 annually for one person).
EFFECTIVE DATE: Upon passage

EXTENDED STAYS IN DCF CONGREGATE HOUSING FOR STUDENTS (§ 43)

The act allows DCF-licensed congregate residential settings to house youths up to age 21 who (1) were placed in this type of facility before their 18th birthday and (2) are attending a high school, college, technical school, or state-accredited job training program on a full-time basis. Otherwise, the cutoff age is 18.
EFFECTIVE DATE: Upon passage

TREATMENT OF PROCEEDS OF DISCRIMINATION SUITS AND SETTLEMENTS IN WELFARE PROGRAMS (§§ 44-45)

The act prohibits the state from claiming or applying a lien against a settlement or award in a housing or employment discrimination case received by a beneficiary of certain state assistance. The programs affected include Medicaid, SSP, the former AFDC program, TFA, or SAGA. In these programs, the state can recover assistance it has provided to participants or former participants if they later receive money, or it can place liens on their property and recover from their estates when they die.

The act also exempts payments people receive as a result of a human rights complaint under state or federal antidiscrimination law, either as a claim settlement or an award in a judicial or administrative proceeding, from being considered as income, resources, or assets for determining eligibility or assistance amounts for certain state assistance programs during the month it is received or in the following three months. After this period, any remaining funds must be counted. The programs affected include SSP, Medicaid or other medical assistance programs, TFA, TANF, SAGA, and the Individual Development Account program.

EFFECTIVE DATE: October 1, 2005 (PA 05-3, JSS changes the effective date of these provisions to July 1, 2005.)

PRIOR AUTHORIZATION FOR HOME HEALTH SERVICES (§ 46)

The act requires the DSS commissioner to establish PA procedures in the Medicaid program for home health services when these include more than two weekly skilled nursing visits. Medicaid providers are not required to submit PA requests more than once a month unless there are revisions to the PA received during the month.

The act permits the commissioner to contract with an entity to administer any aspect of PA, or she can expand the scope of an existing contract with an entity that performs utilization review services on DSS' behalf.

DSS can implement policies and procedures needed to administer PA while in the process of adopting them in regulations, provided it publishes notice of intent to adopt the regulations in the *Connecticut Law Journal* within 20 days of implementing the policies and procedures.

EFFECTIVE DATE: July 1, 2005

NURSING FACILITY RESIDENT USER FEE AND RATE INCREASES (§§ 47-52)

The act makes numerous, mostly technical, changes in the nursing facility user fee established by PA 05-251. It specifies that the nursing home rate increases scheduled for July 1, 2005 remain in effect unless (1) federal matching funds are no longer available or (2) the user fee is no longer in effect. It also specifies that the day a nursing home resident dies is considered a resident day for purposes of calculating the fee.

Rate Relief

The act eliminates the requirement established by PA 05-251 that residential care homes receive a 4% State Supplement increase for their residents who qualify for State Supplement. Instead, it requires that these facilities receive a rate that is determined in accordance with applicable law and subject to appropriations.

It eliminates a requirement that at least 85% of a nursing home's net revenue gain be applied to increased employee wage rates and benefits in FY 06, as well as additional direct and indirect component staffing, along with a related requirement that DSS verify that this has occurred and penalize homes that have not complied.

PA 05-251 prohibits homes from applying any net revenue gain to wage and salary increases provided to administrators, owners, or related-party employees. This act permits the DSS commissioner to verify whether homes have met this requirement by comparing their wage expenditures in 2005 with those in 2006. It allows her to recover any amounts improperly applied using the same methods formerly applied to violations of the 85% rule.

EFFECTIVE DATE July 1, 2005

DEPARTMENT ON AGING REESTABLISHMENT AND TASK FORCE (§§ 53-54)

The act establishes a Department on Aging as of January 1, 2007, headed by a commissioner appointed by the governor. It requires the commissioner to serve full-time and be knowledgeable and experienced in the conditions and needs of the elderly. He must administer all laws under the department's jurisdiction and use the most efficient and practical means to provide care for and protection of elderly people. The act requires the commissioner to:

1. administer, coordinate, and direct department operations;
2. adopt and enforce regulations;
3. establish rules for the department's internal operation and administration;
4. plan for, establish, and develop programs, administer services, and enter into contracts to achieve the department's purposes;
5. advocate for additional needed comprehensive and coordinated programs for the elderly;
6. assist and advise all appropriate state, federal, local, and area planning agencies for the elderly in performing their functions and duties under federal law;
7. coordinate outreach activities by public and private agencies serving the elderly; and
8. consult and cooperate with area and private planning agencies.

The act transfers the functions, powers, duties, and personnel of the DSS Division of Elderly Services to the Department on Aging. (This DSS division was recently merged into a larger Bureau of Aging, Community, and Social Work Services.) It continues in force relevant DSS and Commission on Aging orders and regulations in effect on January 1, 2007, until they are amended, repealed, or superseded.

The act establishes a 20-member task force to study reestablishment of the Department on Aging. The task force must study this act's provisions and make recommendations on further revising the statutes and other changes needed or advisable to implement the act. It consists of the chairmen, vice chairmen, and ranking members of the Aging Committee; the OPM secretary or his designee; the DSS, DPH, DMHAS, and Department of Transportation commissioners and the

chief state's attorney, or their designees. Appointed members include one member each appointed by the House speaker, Senate president pro tempore, and House and Senate majority and minority leaders. The legislative appointments may be legislators. The governor appoints two members.

All appointments must be made by July 31, 2005. If the legislative leaders fail to make the appointments, the act authorizes the Aging Committee's chairmen and ranking members to do so. Vacancies must be filled by the appointing authority. The House speaker and Senate president pro tempore, jointly with the governor, must select the task force co-chairmen from among its members, and the co-chairmen must schedule the first meeting by August 29, 2005. The act designates the Aging Committee's administrative staff as staff for the task force. The task force (1) must report on its findings by February 15, 2006 to the Aging Committee and (2) terminates on the earlier of the date it submits the report or January 1, 2007.

EFFECTIVE DATE: January 1, 2007 for the reestablishment of the department and July 1, 2005 for the creation of the task force.

GRANTS FOR COMMUNITY-BASED REGIONAL TRANSPORTATION SYSTEMS FOR THE ELDERLY (§ 55)

The act requires the DSS commissioner, within existing budgetary resources, to provide $100,000 for grants of $25,000 each for FY 06 to up to four towns with populations of at least 25,000 or nonprofit organizations located in them. The grants must be used to develop and plan financially self-sustaining, community-based regional transportation systems that, through a combination of private donations and user fees, provide transportation to elderly people. Before receiving the grant, a selected municipality must demonstrate to the DSS commissioner's satisfaction that it has secured at least $25,000 in matching private funds. The recipient town must work cooperatively with the regional planning agency of which it is a member to develop the system.

Under the act, a grantee must, to the extent practicable, model its system on the "ITNAmerica" model. ITNAmerica is a national nonprofit organization planning to replicate a model first developed by the Independent Transportation Network (ITN) in Portland, Maine. ITN obtains its operating funds through memberships in the organization; riders' fares; and support from individuals, community businesses, and private foundations. It uses a combination of volunteers and paid drivers to provide unrestricted, on-demand transportation to seniors in passenger automobiles.

EFFECTIVE DATE: Upon passage

ZONING FOR COMMUNITY RESIDENCES FOR PEOPLE WITH PSYCHIATRIC DISABILITIES (§ 56)

The act requires local zoning regulations to treat as single family homes community residences housing six or fewer people receiving mental health or addiction services and necessary staff. To receive this treatment, DMHAS must pay for or provide the services and staff and the residence must be licensed by DPH, if licensure is required. The act permits any resident of a town where such a home is located to petition the DMHAS commissioner to withdraw the residence's funding on the grounds that it is not complying with the statutes or regulations governing its operation. The town's legislative body must approve the resident's action. Similar provisions already apply to DMR community residences and certain DCF-licensed residential facilities.

EFFECTIVE DATE: JULY 1, 2005

CRITICAL ACCESS HOSPITAL (§§ 57-67)

Definitions (§§ 60-61)

The act includes "critical access hospital" under the category of "health care institution" for DPH regulatory purposes and defines it as a facility used intermittently, deployed at the discretion of the governor or her designee, for training purposes or in the event of a public health or other emergency for isolation or triage and treatment during a mass casualty event.

EFFECTIVE DATE: July 1, 2005

Board of Directors (§ 57)

The act establishes a board of directors to advise DPH on the operation of the critical access hospital. The board includes the DPH, DSS and, emergency management and homeland security commissioners; the OPM secretary; and the adjutant general, or their designees and two hospital representatives, one from a hospital with over 500 licensed beds and one from a hospital with 500 or fewer beds, both appointed by the DPH commissioner. The DPH commissioner is the board's chairman.

The board must adopt bylaws and meet as they specify and as the DPH commissioner deems necessary. It must advise DPH on operating policies and procedures; facility deployment and operation; appropriate facility utilization; clinical programs and delivery of patient services; staffing patterns and ratios; human resources; standards and accreditation guidelines; staff credentialing; patient admission, transfer, and discharge policies; quality assurance and performance improvement; patient rates and billing and

reimbursement mechanisms; staff education and training; and alternative facility uses.
EFFECTIVE DATE: July 1, 2005

Certificate of Need Exemption (§§ 58-59)

The act exempts a critical access hospital from the state's CON law. It also exempts any additional critical access hospital beds and related equipment obtained to enhance the state's bed surge capacity or provide isolation care under the state's health preparedness planning activities.
EFFECTIVE DATE: July 1, 2005

Critical Access Hospital Account (§§ 62- 63)

The act establishes a critical access hospital account as a separate, nonlapsing General Fund account. DSS must use the account to fund the hospital's operations in the event of activation. The account contains all funds required by law to be deposited in it. The act appropriates $1 to DSS from the General Fund in FYs 06 and 07 for deposit into the account.
EFFECTIVE DATE: July 1, 2005

Health Insurance Coverage (§§ 64-65)

The act requires all individual and group health insurance policies delivered, issued for delivery, renewed, amended, or continued in the state as of July 1, 2005 to provide benefits for isolation care and emergency services provided by the critical access hospital. The benefits are subject to any policy provisions that apply to other services covered by the policy. The rates individual and group policies pay under this provision must be equal to the rates paid under Medicaid, as determined by DSS.
EFFECTIVE DATE: July 1, 2005

HUSKY AND MEDICAID COVERAGE (§§ 66-67)

The act requires DSS to provide coverage for isolation care and emergency services provided by the critical access hospital to people participating in the HUSKY A and B programs and fee-for-service Medicaid programs. The DPH commissioner must adopt regulations to implement policies and procedures for critical access hospital isolation care and emergency services.
EFFECTIVE DATE: July 1, 2005

PRESCRIPTION DRUG PURCHASING PROGRAM (§ 68)

The act requires the DPH commissioner, in conjunction with the Public Health Committee chairmen, to convene a working group to study whether the state should contract for development of a prescription drug purchasing program or enter into an existing program that allows Connecticut residents to purchase drugs through pharmacies in Canada or other countries. The group's membership includes the commissioner, the committee chairmen, and the attorney general or their designees; an OPM representative; and anyone else the commissioner and committee chairmen deem necessary. (PA 05-3, JSS adds the consumer protection and DSS commissioners, or their designees, to the working group).

The study must evaluate any new or existing prescription drug program that would allow Connecticut residents to purchase drugs through Canadian pharmacies or those in other countries. It must assess (1) whether the program would meet all of the current levels of safety and quality assurance afforded Connecticut residents concerning prescription drug purchasing and whether it would provide state residents who enroll access to more affordable drugs and (2) whether Connecticut residents would be required to compromise any legal rights as condition of program participation. The study must also examine and make recommendations concerning the parameters of a request for proposal to solicit the implementation of a program in Connecticut. DPH can enter into contracts with consultants to assist with the study.

The health commissioner must report on the study results by January 1, 2006 to the Public Health and Appropriations committees.
EFFECTIVE DATE: Upon passage

PERFUSIONIST LICENSURE (§§ 69-77)

The act requires perfusionists to obtain a license from DPH. Perfusionists operate circulation equipment during medical situations when it is necessary to temporarily and artificially replace the patient's circulatory or respiratory functions. They are part of the surgical team for operations, such as open-heart surgery.

Definitions (§ 69)

The act defines "perfusion" as the functions necessary for the support, treatment, measurement, or supplementation of the cardiovascular, circulatory, or respiratory systems or other organs, and to ensure the safe management of physiologic functions by monitoring and analyzing the parameters of these systems under a licensed physician's order and supervision. It includes:

1. the use of "extracorporeal circulation" (diversion of a patient's blood through a heart-lung machine or similar device that assumes the functions of his heart, lungs, kidney, liver,

or other organs), long-term cardiopulmonary support techniques including extracorporeal carbon-dioxide removal and membrane oxygenation, and associated therapeutic and diagnostic technologies;

2. counterpulsation, ventricular assistance, autotransfusion, blood conservation techniques, myocardial and organ preservation, extracorporeal life support, and isolated limb perfusion; and
3. the use of techniques involving blood management, advance life support, and other related functions.

It also includes (1) administering pharmacological and therapeutic agents, blood products, or anesthetic agents through the extracorporeal circuit or an intravenous line as ordered by a physician; (2) performing and using anticoagulation, physiologic, blood gas and chemistry, hematologic monitoring and analysis, hypothermia, hyperthermia, hemoconcentration and hemodilution, or modified extracorporeal circulatory hemodialysis; or (3) observing signs and symptoms related to perfusion services, determining whether they exhibit abnormal characteristics, and implementing appropriate reporting, perfusion protocols, or changes in or the initiation of emergency procedures.

EFFECTIVE DATE: October 1, 2005

Licensure Requirements (§§ 70, 72-77)

Applicants for licensure must pay a $250 fee and provide satisfactory evidence of successful completion of (1) a perfusion education program with standards established by the Accreditation Committee for Perfusion Education and approved by the Commission on Accreditation of Allied Health Education Programs, or a program approved by DPH with substantially equivalent standards; (2) at least 50 cases after graduating from a perfusion education program; and (3) after completing (1) and (2) above, the certification examination offered by the American Board of Cardiovascular Perfusion or its successor, or a substantially equivalent examination approved by DPH.

Between October 1, 2005 and December 31, 2006, the act allows DPH to license a person without examination if he provides satisfactory evidence that he has (1) actively practiced perfusion in Connecticut before or after October 1, 2005 and (2) been operating a cardiopulmonary bypass system during cardiac surgical procedures in a licensed health care facility as part of his primary duties since October 1, 2005. The applicant must pay a $250 fee.

The act also specifies that the licensure requirements do not apply to the activities and work of a person (1) who has successfully completed a perfusion education program, is gaining the experience under direct supervision necessary to meet the minimum case requirement for licensure, and is designated as an intern, trainee, or other title indicating training status or (2) enrolled in an accredited education program and performing such work as part of the course of study. "Direct supervision" means a supervising physician is physically present in the location where the perfusionist trainee is performing routine perfusion functions.

The act prohibits DPH from issuing a license to an applicant facing pending disciplinary action or who is the subject of an unresolved complaint in any state or territory. It prohibits an individual from using the title "perfusionist" or any title, words, letters, or abbreviations that may be reasonably confused with licensure as a perfusionist unless he has a valid license from DPH. And it specifies that practicing perfusion is not considered the practice of medicine.

A license can be renewed annually for $250. The individual must apply for renewal annually during the month of his birth, providing his full name, residence, business address, and other information DPH requires.

EFFECTIVE DATE: October 1, 2005, except that §§ 73, 75 and 77 are effective on the later of October 1, 2000, or the date notice is published by the DPH commissioner in the *Connecticut Law Journal* that the licensing of athletic trainers and physical therapist assistants is being implemented.

Disciplinary Actions (§ 71)

The act subjects perfusionists to the same disciplinary actions DPH can take against other licensed health care practitioners for (1) failure to conform to accepted practice standards; (2) felony conviction; (3) fraud or deceit in obtaining or reinstating a license; (4) fraud or deceit in practice; (5) negligent, incompetent, or wrongful conduct in professional activities; (6) physical, mental, or emotional illness or disorder resulting in an inability to conform to accepted practice standards; (7) alcohol or substance abuse; (8) willful falsification of entries in any medical records; or (9) violation of any perfusionist licensure laws .

By law, DPH can order a licensee to undergo a reasonable physical or mental examination if his physical or mental capacity to practice safely is under investigation.

The possible disciplinary actions DPH can take include (1) suspending or revoking a license, (2) issuing a letter of reprimand to or censuring the licensee, (3) placing him on probation, (4) assessing a civil penalty up to $10,000, or (5) taking summary action against a licensee found guilty of a state or federal felony or subject to disciplinary action in another jurisdiction.

DPH can petition the Hartford Superior Court to enforce any such orders or actions. It must give the practitioner notice and an opportunity for a hearing.
EFFECTIVE DATE: October 1, 2005

DMHAS REORGANIZATION (§§ 78 - 81)

The act eliminates the requirement that Cedarcrest Hospital be an independent facility in DMHAS and specifies that the Connecticut Valley Hospital (CVH) facility includes an acute care division. It eliminates (1) a requirement that DMHAS consist of separate mental health and substance abuse divisions and (2) obsolete references to several substance abuse and child-serving facilities in the statutory definition of "state-operated" mental health and substance abuse facilities.

It states that if Cedarcrest and CVH consolidate operational functions, each still constitutes separate hospitals for purposes of the law governing the transfer of committed and voluntary patients. Both must continue to designate an administrator authorized to make final decisions on patient complaints and grievances. Finally, the act specifies that any reference to "acute care division" in 2005 or 2006 public or special acts, or statutes amended by such acts, means CVH's acute care division.
EFFECTIVE DATE: July 1, 2005

DEPUTY CHIEF MEDICAL EXAMINER'S SALARY (§ 82)

The act requires the Commission on Medicolegal Investigations to set the deputy chief medical examiner's salary. Under prior law, the commission recommended a salary to the administrative services commissioner. The commission continues to do so for associate and assistant medical examiners and other professional staff.
EFFECTIVE DATE: July 1, 2005

ADULT, YOUNG ADULT, AND CHILD MENTAL HEALTH SERVICES (§§ 83-91)

Mental Health Website (§ 83)

The act requires the DMHAS commissioner, by June 30, 2006, to begin to develop, implement, promote, and maintain a website that provides timely access to mental health care information and assistance for children, adolescents, and adults.

The website must contain, at a minimum:

1. directory information on available federal, state, regional, and local assistance, programs, services, and providers;
2. current mental health diagnosis and treatment options;
3. links to national and state advocacy organizations, including legal assistance;
4. summaries of state and federal mental health laws, including those concerning private insurance; and
5. an optional, secure personal folder for people to manage information about their own mental health care and assistance.

EFFECTIVE DATE: July 1, 2005

Assertive Community Treatment Teams (§ 84)

The act requires the DSS commissioner, in consultation with the DMHAS commissioner and the Community Mental Health Strategy Board, to amend the state's Medicaid plan by December 31, 2006 to include assertive community treatment teams and community support services in the definition of optional adult rehabilitation services, thereby making them eligible for federal reimbursement. Under the act, these teams provide intensive, integrated multidisciplinary services to adults with severe psychiatric disabilities, including people who are homeless; diverted or discharged from hospitals and nursing homes; or diverted or released from, or at risk of going to, prison. They must provide intensive community care management through case managers, nurses, and physicians and must include vocational, peer, and substance abuse specialists.

The act requires the DSS commissioner to adopt regulations to establish the teams and the community support services. She may implement policies and procedures that establish these services while in the process of adopting the regulations, provided she prints notice of her intent to adopt regulations in the *Connecticut Law Journal* within 20 days after implementing the policies and procedures. The interim measures remain valid until the regulations take effect.

The act requires the DSS and DMHAS commissioners to enter into an MOU delegating to DMHAS responsibility for clinically managing the adult rehabilitation services the agency provides to its clients. It defines "clinical management" as the process of evaluating and determining appropriate use of mental health services and providing assistance to clinicians or beneficiaries to ensure the appropriate use of resources. Assistance can include prior authorization, concurrent and retrospective review, discharge review, quality management, and provider certification and performance enhancement.

The act requires the commissioners jointly to adopt clinical management policies and procedures and allows the DSS commissioner to implement them. They can include changes to existing policies and procedures governing utilization management while in the process of adopting them as regulations following the process

described above. The interim measures are valid until the earlier of December 1, 2006 or the date the regulations take effect.
EFFECTIVE DATE: Upon passage

Nursing Home Diversion or Discharge Medicaid Waiver (§ 85)

The act requires the DSS and DMHAS commissioners to convene a task force by July 1, 2005 to develop a feasibility plan to obtain a federal waiver to create a Medicaid-financed home-and community-based pilot program to help adults with severe and persistent psychiatric disabilities who are diverted or discharged from nursing homes. The program can include housing assistance.

The task force consists of the commissioners and the OPM secretary, or their designees; the co-chairmen and ranking members of the Public Health and Human Services committees; and three members designated by the Community Mental Health Strategy Board. It must report to the governor and General Assembly by January 1, 2006.
EFFECTIVE DATE: Upon passage

Expanding Services To Young Adults (§ 86)

The act permits the DMHAS commissioner, within available appropriations, to expand services for young adults with psychiatric disabilities to cover additional state catchment areas (i.e., service regions). It requires him to identify service gaps for this population and report by January 1, 2007 to the Public Health and Human Services committees on the need to expand existing services and on services that should be added.
EFFECTIVE DATE: Upon passage

DCF Flexible Funds (§ 87)

The act requires the DCF commissioner, within available appropriations and in consultation with the DMHAS commissioner and the Community Mental Health Strategy Board, to maintain the availability of flexible emergency funds for children with psychiatric disabilities who are not under DCF supervision.
EFFECTIVE DATE: July 1, 2005

Supportive Housing (§ 88)

The act requires the DMHAS commissioner, within available appropriations, to provide additional supportive or supervised housing for adults with severe and persistent psychiatric disabilities.
EFFECTIVE DATE: July 1, 2005

Insurance Practices (§ 89)

The act requires the managed care ombudsman, by October 1, 2005 and in consultation with the Community Mental Health Strategy Board, to establish a process for mental health care providers, patients, business organizations, and managed care organizations to communicate about and ensure:

1. compliance with state insurance laws governing (a) compliance with federal laws on guaranteed coverage availability and renewability, mental health parity, and discrimination based on health status, (b) standards concerning psychotropic drug coverage, (c) mental health parity, and (d) coverage continuation for children with mental disabilities;
2. best practices in mental health treatment and recovery; and
3. the relative costs and benefits of providing effective mental health coverage to employees and their families.

The ombudsman must report annually to the Public Health and Insurance committees, beginning January 1, 2006, on how he is implementing this requirement.
EFFECTIVE DATE: Upon passage

Enhanced Care Clinics for Adults (§ 90)

The act requires the DSS commissioner, in consultation with the DMHAS commissioner and OPM secretary, to determine the feasibility of creating enhanced care clinics for adults and establishing a Medicaid reimbursement schedule for them by July 1, 2006. These clinics could include those based in hospitals. The commissioner must report to the governor and General Assembly by January 1, 2006.
EFFECTIVE DATE: Upon passage

Inpatient Psychiatric Bed Capacity Study (§ 91)

The act requires the Office of Health Care Access (OHCA) commissioner to establish a committee to study whether there are enough inpatient psychiatric beds for children in the state and make recommendations to expand capacity in Mental Health Region Five (Northwestern Connecticut). The committee consists of the DSS and DCF commissioners or their designees, the child advocate or her designee, and representatives of private children's hospitals and children's mental health advocacy groups. The OHCA commissioner must report the committee's findings and recommendations to the General Assembly by January 1, 2006.
EFFECTIVE DATE: Upon passage

BEHAVIORAL HEALTH PARTNERSHIP (§§ 92-102)

Partnership Established (§ 92)

The act establishes a Behavioral Health Partnership between DCF and DSS to develop and implement an integrated behavioral health system for children and families receiving services under HUSKY A and B; children enrolled in DCF's voluntary services program; and, at the DCF commissioner's discretion, other children and families the department serves. The Connecticut Community KidCare program, through which these agencies serve HUSKY A and B and voluntary services program participants, remains in place.

The partnership's charge is to increase access to quality behavioral health services by (1) expanding individualized, family-centered, community-based services and reducing unnecessary institutional and residential service use; (2) maximizing federal revenue and capturing and reinvesting any derived from reducing residential, and increasing community-based, services; (3) improving administrative oversight and efficiency; and (4) monitoring individual outcomes and overall and provider performance (in the latter case taking client acuity mix into consideration).

The act also requires the agencies to follow specific financial requirements concerning converting from grant-funded to rate-based services (see *Rate Setting*, below).

EFFECTIVE DATE: July 1, 2005

Agency Direction (§ 93)

The act requires the DSS and DCF commissioners to designate a partnership director in each agency. The director coordinates the agency's responsibilities for planning, developing, administering, and evaluating activities the agency undertakes to meet the system's goal of increasing access to services.

The departments must jointly direct the administrative services organization (*ASO*, see below) they select to develop a community system of care to (1) alleviate hospital emergency room overcrowding, (2) reduce unnecessary admissions to hospitals and residential treatment facilities and the length of time people stay there, and (3) increase the availability of outpatient services.

EFFECTIVE DATE: July 1, 2005

Agencies' Clinical Management Responsibilities (§ 94)

The law governing the KidCare program permits the DSS commissioner to delegate to DCF responsibility for the clinical management portion of the agencies' contract with the ASO pertaining to children. The act removes the limitation that DCF's responsibility is solely for children, thus giving DCF clinical management responsibility for any adults the partnership serves. It also allows DSS to contract with an ASO to develop a provider network.

The law governing KidCare requires the DSS and DCF commissioners jointly to develop clinical management policies and procedures for implementation by the ASO. It permits the agencies to implement them while in the process of adopting them as regulations. The interim measures were to remain valid until the regulations took effect or December 1, 2003, whichever happened first. The act extends this deadline to the earlier of December 31, 2006 or the regulations' effective date.

EFFECTIVE DATE: Upon passage

Behavioral Health Partnership Oversight Council (§ 95)

Responsibilities. The act creates a 39-member Behavioral Health Partnership Oversight Council to advise DSS and DCF on planning and implementing the partnership. The council must review and make recommendations on (1) the agencies' contract with the ASO to assure that its decisions are based solely on the clinical management criteria developed by the committee the act establishes; (2) behavioral health services provided under HUSKY A and HUSKY B to assure that federal revenues are being maximized; (3) periodic reports on program activities, finances, and outcomes, including reports from the partnership director on achieving the system's goals; (4) consumer grievance procedures; and (5) proposed provider-specific rates for certain services.

The council can conduct an external, independent evaluation of the partnership or can have one done. Beginning by March 1, 2006, it must report annually on its activities and progress to the Appropriations, Human Services, and Public Health committees.

Membership and Procedures. The council consists of 30 voting and nine nonvoting members. The voting members are (1) the chairmen and ranking members of the Appropriations, Human Services, and Public Health committees; (2) a member of the Community Mental Health Strategy Board, selected by the board; (3) the DMHAS commissioner or his designee; and (4) 16 people selected as follows by the chairmen of the Medicaid Managed Care Council:

1. two general or psychiatric hospital representatives,
2. two parents of children with behavioral health problems or who have received child protection or juvenile justice services from DCF,

3. one adult with a psychiatric disability,
4. one advocate for adults with psychiatric disabilities and one for children with behavioral health disorders,
5. one person with expertise in health policy and evaluation,
6. a primary care provider and a psychiatrist serving HUSKY children,
7. an adult with a substance abuse disorder or an advocate for such adults,
8. a representative of school-based health clinics,
9. two community-based behavioral health services providers, one for adults and one for children,
10. a children's residential treatment service provider, and
11. a member of the Medicaid Managed Care Council.

The council contains the following nine nonvoting, ex-officio members:

1. one each appointed by the DCF, DSS, and DMHAS commissioners and the OPM secretary to represent their respective agencies;
2. one ASO representative; and
3. a representative of each Medicaid managed care organization (there are currently four).

All appointments must be made by July 1, 2005. The Medicaid Managed Care Council chairmen select the advisory council's chairmen who must convene the first meeting by August 1, 2005. The council must meet at least monthly. The Legislative Management Committee must provide the chairmen with administrative support and help in convening the council's meetings. The initial appointing authority fills membership vacancies.
EFFECTIVE DATE: Upon passage

Clinical Management Committee (§ 96)

The act establishes a seven-member committee to develop clinical management guidelines for the partnership and the ASO. The DCF and DSS commissioners and the oversight council select two members each and the DMHAS commissioner selects one member. All members must be experts or experienced in behavioral health services.
EFFECTIVE DATE: July 1, 2005

Consumer Grievance Procedures (§ 97)

The act requires DCF and DSS to establish consumer grievance procedures and time frames, including an expedited review in emergencies, for people to appeal the ASO's decisions. The procedures must require hearing appeals within 30 days after they are filed and deciding on them within 45 days of filing. The oversight council must review and comment on the proposed procedures.
EFFECTIVE DATE: July 1, 2005

Evaluation (§§ 98- 99)

The act requires DCF and DSS to evaluate the partnership annually beginning by October 1, 2006. The evaluation must examine the partnership's provision of services, including the status of the ASO implementation and collaboration between the departments, the services provided, the number of people served, and program outcomes and spending for children and adults. The act also requires DCF to monitor the implementation of the partnership and report annually on any estimated cost savings that result from it. Both reports must be submitted to the Appropriations, Human Services, and Public Health committees.

Existing law also requires the agencies, within available appropriations, to conduct a five-year, independent longitudinal evaluation of the KidCare program's effectiveness.
EFFECTIVE DATE: July 1, 2005

Rate Setting (§§ 100 & 92)

The act permits DSS and DCF to establish provider-specific rates for inpatient, partial hospitalization, intensive outpatient, and other intensive services. If they do this before January 1, 2006, each provider's initial rates must at least equal its blend of rates under HUSKY A and B as of July 1, 2005. If they implement these rates after January 1, 2006, the initial rates must at least equal the blend of each provider's rates in effect 60 days before the date the partnership is implemented. The departments may provide grants, where necessary, to address the financial effects this new system may have on providers. The initial rate changes and the grants must be made within available appropriations.

The departments can establish uniform outpatient rates that contain a differential payment for adult and child services. These cannot exceed the rates Medicare pays for these services.

The act's rate-setting provisions supersede other laws governing DSS rate setting for hospitals, residential mental health and substance abuse facilities, and free-standing detoxification centers.

Before the partnership can convert any grant-funded services (the method DCF currently uses to pay service providers) to a rate-based, fee-for-service payment system, the act requires DCF and DSS to submit documentation to the oversight council verifying that the proposed rates seek to cover the reasonable cost of providing the services.

The act requires the departments to submit initial rates, rate reductions, and changes in the methodology they use to establish rates to the oversight council for its review. If the council does not accept the rates or methodology changes, it can send its recommendations to the Appropriations, Human Services, and Public Health committees. These committees must hold a public hearing on the subject of the proposed rates (but not the rate-setting methodology) to learn the partnership's reasons for the changes. They must make recommendations to the departments within 90 days after the proposed changes were submitted to the council. The departments must make every effort to incorporate the council's and the committees' recommendations when setting rates.
EFFECTIVE DATE: July 1, 2005

Agencies' Contract with ASO (§ 101)

The act requires DCF and DSS to contract jointly with one ASO to perform the following functions: eligibility verification; utilization, intensive care, and quality management; coordination of medical and behavioral health services; provider network development and management; recipient and provider services; and reporting. The contract must require the ASO to begin performing these functions by October 1, 2005. Under the act, DSS's Medicaid management information systems vendor pays claims, although DCF may continue to use its existing claims payment systems.

The act prohibits the ASO from having any financial incentive to approve, deny, or reduce services. It requires the ASO to base its decisions to authorize services solely on the guidelines set by the clinical management committee the act establishes, and it specifies that DSS and DCF decide how to interpret the guidelines. But, it allows the ASO to make exceptions to the guidelines when a member, a member's legal guardian, or a service provider asks and the ASO determines making an exception is in the member's best interest. The ASO must ensure that service providers and people seeking services have timely (1) access to program information and (2) responses to inquiries, including those concerning clinical guidelines.

The ASO must provide or arrange for on-site service in hospitals to (1) help place children in appropriate settings as soon as practicable when it knows they have been in an emergency room for over 48 hours or (2) arrange discharge or appropriate placement as soon as practicable for children who have been hospital inpatients for more than five days longer than the ASO and hospital agree is medically necessary.

The act requires the partnership to establish policies to coordinate benefits for people who are covered by both the partnership and Medicaid managed care organizations. The oversight council must review these policies.

DCF and DSS, in consultation with the partnership, must develop a comprehensive plan for monitoring the ASO's performance. Monitoring must include data on service authorizations, individual outcomes, appeals, outreach, and accessibility and comments from program participants obtained through written surveys and face-to-face interviews.
EFFECTIVE DATE: Upon passage

Certifying Providers (§ 102)

The act authorizes the DCF commissioner to certify providers of early periodic screening, detection, and treatment (PA 05-3, JSS amends this to refer to Medicaid's Early and Periodic Screening, Detection and Treatment program) and rehabilitation service for purposes of Medicaid coverage. She can adopt regulations to do this and can implement certification policies and procedures during that process by publishing notice of intent in the *Connecticut Law Journal*. These policies and procedures are valid until the regulations take effect.
EFFECTIVE DATE: July 1, 2005

FUND TRANSFER (§ 103)

The act transfers $150,000 in each of FYs 06 and 07 from DSS' Medicaid appropriation to DMHAS for the Governor's Partnership to Protect Connecticut's Workforce.
EFFECTIVE DATE: July 1, 2005

REPEALED SECTIONS (§ 104)

The act eliminates laws:

1. authorizing the DSS commissioner to implement a pharmaceutical purchasing initiative by contracting with an established entity for drug purchases through the lowest pricing available under certain circumstances;
2. limiting a first-time Medicaid or ConnPACE prescription for a maintenance drug, as determined by the DSS commissioner, to a 10-day supply and allowing nursing homes to request any Medicaid prescription be for a five-day supply if it is a first-time prescription or a refill needed when the patient's discharge is imminent; and
3. requiring DCF and DSS to report quarterly to various legislative committees on various service and financial data concerning residential and out-of-state placements under the KidCare program.

EFFECTIVE DATE: July 1, 2005

PA 05-23—sHB 6696
Banks Committee
Judiciary Committee

AN ACT PREVENTING BANK OR CREDIT UNION IMPERSONATION AND MISLEADING ADVERTISEMENTS

SUMMARY: This act:

1. specifically prohibits the use of the names or trademarks of Connecticut banks, their affiliates, and Connecticut and federal credit unions in any commercial advertisement or solicitation in a way that might mislead consumers;
2. requires the banking commissioner to enforce the prohibition; and
3. gives these financial institutions a private cause of action for any violations.

EFFECTIVE DATE: October 1, 2005

PROHIBITION ON MISLEADING ADVERTISEMENTS OR SOLICITATIONS

The act prohibits anyone from using a Connecticut bank, bank affiliate, or Connecticut or federal credit union's name or trademark in any commercial advertisement or solicitation for goods, products, or services in a way that might lead the consumer to believe there is an affiliation, connection, association, or endorsement relationship between these entities and the person or the products, goods, or services he offers. Under the act, "commercial advertisement or solicitation" includes the content of an Internet web site and direct mail solicitation.

ENFORCEMENT

The act requires the commissioner to enforce the prohibition. It incorporates, by reference, the actions he may take under existing law when he suspects someone is violating, is about to violate, or has violated a law under his jurisdiction. This includes the right to seek injunctive relief, impose civil penalties, and issue cease and desist orders. The act additionally specifies that the commissioner has the right to seek restitution for such violations.

However, the act limits the imposition of civil penalties for violations to $10,000 per violation as opposed to the $100,000 maximum per violation allowed under the law for other banking law violations.

RIGHT OF ACTION

In addition to any remedy already authorized by law and the act, the act gives any credit union, bank, or bank affiliate whose name or trademark is used improperly the right to bring an action to stop such use and recover damages. The action must be brought in the Superior Court in the judicial district where the financial institution has a branch or office.

If damages are awarded, the act requires the court to award the greater of either the amount of actual damages or $10,000 for each violation. Additionally, it requires the court to award attorney's fees and costs, including court costs, in any successful action.

PA 05-27—HB 6832
Banks Committee

AN ACT CONCERNING THE FIELD OF MEMBERSHIP OF A CONNECTICUT CREDIT UNION

SUMMARY: This act expands Connecticut credit unions' eligible membership. Under prior law, a credit union's field of membership was limited to (1) a single bond membership; (2) a multiple common bond membership; or (3) individuals within a well-defined community, neighborhood, or rural district. The act provides that if a credit union converts from a single or multiple common bond membership to a field of membership consisting of individuals within a certain area, it may continue to serve those groups that were within its field of membership before conversion. However, the act provides that such relationships are not exclusive and other authorized Connecticut credit unions may serve those groups as well.

The act prohibits the banking commissioner from approving an amendment to the credit union's bylaws to allow the expansion unless he makes a written determination that the probable benefits of the expansion in meeting the convenience and needs of the individuals to be served under the expansion clearly outweighs, in the public interest, any potential harm to any other credit union.

EFFECTIVE DATE: October 1, 2005

BACKGROUND

Single and Multiple Common Bond Memberships

A "single common bond membership" is a field of membership consisting of one group that has a common bond of occupation or association (e.g. employees of a company). A "multiple common bond membership" consists of more than one group that has a common bond of occupation or association within each group.

PA 05-28—HB 6833
Banks Committee

AN ACT CONCERNING CHECK CASHING AND WIRE TRANSFERS BY CREDIT UNIONS

SUMMARY: This act allows Connecticut credit unions to provide check-cashing and wire and electronic transfer services to individuals who, because they are a member of a certain group or live in certain areas served by the credit union, are eligible to become members of the credit union, but do not wish to do so.
EFFECTIVE DATE: October 1, 2005

PA 05-39—SB 1069
Banks Committee

AN ACT CONCERNING DOMESTIC AND INTERNATIONAL BANKING ACTIVITIES

SUMMARY: This act:

1. expands the banking commissioner's authority to issue cease and desist orders;
2. eliminates certain fees associated with establishing a bank branch;
3. gives the commissioner additional time to act on applications to establish Connecticut banks if good cause is shown;
4. changes the notice requirements associated with organizing a bank;
5. changes the factors that the commissioner must consider before approving a Connecticut bank's application to establish a branch;
6. decreases the maximum aggregate amount of common stock that someone other than a parent company can control in a subsidiary holding company;
7. changes the process for determining the amount of collateral a public depository must maintain;
8. defines the home state for savings and loan holding companies that function in a trust or fiduciary capacity; and
9. allows foreign banks to file a notice, instead of an application, with the banking commissioner before undertaking certain changes and eliminates the $400 investigation fee associated with changing a place of business.

EFFECTIVE DATE: Upon passage

CEASE AND DESIST ORDERS

The act allows the banking commissioner, after providing notice and holding a hearing, to issue cease and desist orders against a related person (director, officer, employee, independent contractor, manager, or general partner) of a Connecticut bank, holding company, credit union, or credit union service organization when it appears that they are (1) violating, have violated, or are about to violate state banking law; related regulations, rules, or orders; or any written conditions the commissioner imposed; (2) breaching, have breached, or are about to breach any written agreement with the commissioner; or (3) engaging, have engaged in, or are about to engage in an unsafe or unsound practice.

The act also allows the commissioner to issue a cease and desist order when it appears that a related person is using, has used, or is about to use his position in a manner contrary to the interest of any of the above-listed entities. The act appears to allow the commissioner to take such action when it looks like a Connecticut bank, holding company, credit union, or credit union service organization is "using" a related person's position in a manner contrary to its interest.

Additionally, if the commissioner finds such person's use is likely to cause insolvency or substantial dissipation of assets or earnings to the entities, or is likely to otherwise seriously prejudice the members' or depositors' interests, he may issue a temporary cease and desist order. The order is effective upon receipt and until set aside or modified by a court, or until the effective date of a permanent order or dismissal of the issue. Under current law, the commissioner may issue a cease and desist order, or temporary order, only against the above-listed entities in these situations.

APPLICATION FEES

The act eliminates the $500 fee the commissioner receives for investigating or processing applications from banks or credit unions seeking to acquire, or improve existing, real estate for a branch or limited branch office.

BANK ORGANIZATION

Hearings on Applications to Organize a Bank

The act allows the commissioner to extend the time for a hearing on an application to establish a bank if he determines there is good cause to do so. Under prior law, he had to hold the hearing within 30 days after receiving the required feasibility study and financial forecast. The act does not define good cause.

Notice Requirements

The act requires the organizers of a Connecticut bank to publish a copy of the proposed certificate of incorporation and the hearing time and place for seven

consecutive days at least 20 days before the hearing, rather than once a week for three consecutive weeks before the hearing.

The law requires the organizers to publish notice in a newspaper the commissioner designates that is published in the town where the bank's main office will be located or in a newspaper that circulates in that town if no paper is published there. The act eliminates a requirement that organizers also send a copy of the notice at least 20 days before the hearing to each bank and out-of-state bank with a main office or a branch in the town.

BRANCH ESTABLISHMENT

The act eliminates the following factors that the commissioner must currently consider before allowing a Connecticut bank to establish a branch office:

1. whether a new branch would create an oversaturation of depository institutions in the town or area surrounding the town where the branch would be located;
2. whether the bank seeking approval intends to operate the branch on a long-term basis; and
3. whether the bank maintains, and will continue to maintain, a reasonable ratio of loans made in the state to deposits received from state residents.

The act instead requires the commissioner to consider whether the branch will promote the public convenience and advantage, in addition to the existing factor of whether a new branch is consistent with safe and sound banking practices.

The act also allows the commissioner to consider whether the bank or its parent company has an office, other than one that provides deposit services, at or near the proposed branch location. Prior law prohibited him from taking this into consideration.

STOCK ISSUANCE BY SUBSIDIARY HOLDING COMPANY

The act reduces, from 51% to 50%, the maximum aggregate amount of common stock that someone other than a subsidiary holding company's parent mutual holding company may own or control at the close of a stock issuance by the reorganized subsidiary.

QUALIFIED PUBLIC DEPOSITORIES

The law requires qualified public depositors to maintain collateral equal to a specified percentage of their public deposits. The actual percentage is based primarily on their risk-based capital ratio. The act changes the basis for determining the amount of public deposits from the most recent quarterly call report or an average of the four most recent, whichever is greater, to the most recent written report filed with the commissioner or average of the last four reports, whichever is greater.

"HOME STATE" DEFINITION

By law, a savings and loan holding company's home state is the state where its largest total deposits were made on the date it was established. If the holding company holds a savings and loan association subsidiary that serves only as a trust or fiduciary, the act makes the home state the state where the total trust or fiduciary assets were the largest on the date the holding company was established.

FOREIGN BANKS

The act allows a foreign bank licensed to establish and maintain a state branch or agency in the state to change (1) its place of business from the place designated in its license to another place in the state, (2) its corporate name if it has been changed under the laws of its state of incorporation, or (3) the business it proposes to do in the state if it gives the commissioner prior notice. Prior law required the foreign bank to get the commissioner's approval to take these actions. The act eliminates the $400 investigation fee that must accompany an application to change the place of business.

PA 05-46—SB 1219
Banks Committee

AN ACT CONCERNING CONSUMER CREDIT, CHECK CASHING AND MONEY TRANSMISSION

SUMMARY: This act:

1. prohibits fraudulent conduct and authorizes the banking commissioner to issue cease and desist orders in relation to fraudulent conduct by certain individuals or entities;
2. provides that certain license renewal applications received after the deadline but accompanied by a $100 late fee are timely and sufficient under the law;
3. imposes fee and approval requirements for name changes for check cashing, payment instrument, or money transmission licensees and changes the rules governing location transfer fees;
4. requires the banking commissioner to specify the mortgage-related forms that may be used in some instances; and

5. prohibits federal credit unions from discriminating in making certain types of loans, and subjects them to existing provisions regarding pending loan applications submitted by a United States armed forces reservist or National Guard member who is called to active duty before the lender makes a decision about the application.

EFFECTIVE DATE: October 1, 2005

FRAUDULENT CONDUCT

General Prohibition (§ 1)

The act prohibits individuals registered with the banking commissioner from (1) using methods to defraud, (2) making a false statement or omitting a material fact, or (3) engaging in any fraudulent activity, in connection with activities for which they are registered. Such provisions already existed for licensees.

First and Secondary Mortgage Licensees and Registrants (§§ 3,5)

The act allows the banking commissioner to impose a civil penalty or issue a cease and desist order against first and secondary mortgage licensees and registrants who commit fraud, misappropriate funds, or in any way intentionally fail to disclose, to anyone entitled to such information, any of the material facts related to a mortgage loan transaction. The act also allows the commissioner to take such action when a registrant fails to perform an agreement with a borrower. Previously, he could only take such action against licensees for failure to perform an agreement.

Other Licensees (§§ 10, 13, 16)

The act also allows the commissioner to impose a civil penalty or issue cease and desist orders against any check cashing licensee, debt adjuster licensee, or consumer collection agency licensee or any owner, director, officer, member, partner, shareholder, trustee, employee, or agent of the licensee that has committed fraud, engaged in dishonest activities, or made misrepresentations. The law already allowed him to take such action against anyone who violated, or in the case of a cease and desist order, is violating or is about to violate any of the laws under his jurisdiction.

LICENSE RENEWALS (§§ 2, 4, 6, 7, 15)

The act requires a renewal application for a first or secondary mortgage loan lender, first or secondary mortgage correspondent lender, sales finance company, small loan lender, or consumer collection agency license, filed after the filing deadline but accompanied by a late fee, be considered timely and sufficient. In accordance with statute, when a licensee has made a timely and sufficient application to renew its license, it does not expire until the banking commissioner makes a final determination on the application.

These renewal applications must generally be filed with the banking commissioner by September 1 of the year the license expires and must include a $100 late fee if the applications are received after that date.

NAME AND LOCATION CHANGES (§§ 8, 9, 11, 12)

The act provides that a check cashing, payment instrument, or money transmission licensee cannot change the name on its license without paying a fee and obtaining the banking commissioner's approval and establishes a $100 name change fee for both licenses.

The act deletes, for check cashing licensees, the requirement for an automatic suspension of location transfer approval if the check used to pay the fee is dishonored and eliminates the prohibition on abating this fee if the license is surrendered, cancelled, revoked, or suspended before it expires. The prohibition on abatement still applies to application and license fees.

FEDERAL CREDIT UNION LOANS (§ 14)

Discrimination

The act adds federal credit unions to the list of entities that cannot discriminate in making or setting the rates and terms of mortgage loans on one-to-four family, owner-occupied, residential real property only because the property is located in a low- or moderate-income neighborhood or area. However, the law specifies a mortgage loan made under a specific public or private program created to increase the availability of mortgage loans in low- or moderate-income neighborhoods or areas where such loans have generally been denied is not a violation of this prohibition. The law already applied to Connecticut banks or credit unions that make such loans, certain other for-profit mortgage lending institutions, and federal banks.

Pending Applications from Certain Members of the Armed Forces

The act also adds federal credit unions to the list of entities that must keep on file the home mortgage loan applications of United States armed forces reservists or National Guard members who are called to active duty. They must keep the application for two years and two months if the member submits, within 30 days of being called to active duty, a written statement indicating that

he or she has been called up and would like the application maintained.

If the individual returns from active duty no later than two years after submitting the application and submits, no later than 60 days after being discharged, a written statement to the federal credit union verifying that there have been no material changes in the applicant's income, assets, debts, and employment, the federal credit union must finalize the loan with the same terms and conditions it offered at the time of application. However, the federal credit union must offer the applicant any new terms or conditions that are being offered to the public during the time when the loan is finalized.

All of these provisions already apply to Connecticut banks and credit unions that make such loans, certain other for-profit mortgage lending institutions, and federal banks.

MORTGAGE FORM (§§ 17, 18)

The act requires the banking commissioner to specify, rather than furnish, the forms that mortgagees may use to report the interest due on escrow accounts. It also requires him to adopt regulations specifying the form a lender can use to notify a homeowner of the available protections from foreclosure.

PA 05-47—SB 1221
Banks Committee

AN ACT CONCERNING HOLIDAY CLOSING SCHEDULES FOR BANKS AND CREDIT UNIONS AND ALLOWING THE ACCEPTANCE OF PROPRIETARY AUTOMATED TELLER MACHINE DEPOSITS

SUMMARY: This act allows (1) Connecticut banks and credit unions to close the day before or after a bank and credit union holiday and (2) state banks and state or federal credit unions to limit the use of satellite automated teller machines (ATMs) and point-of-sale terminals by individuals who are not their customers.
EFFECTIVE DATE: October 1, 2005

BANK AND CREDIT UNION HOLIDAY CLOSINGS

The act allows a bank or credit union to close any of its offices on a banking day that immediately precedes or follows any bank and credit union holiday. A bank or credit union that exercises this option must give the banking commissioner 45 days advance notice and post a notice in the affected office for the 30 days before the closing. The act also requires the governor to designate, at a minimum, all current state holidays as bank and credit union holidays. Previously, banking and credit union transactions were suspended during those state holidays the governor designated as bank and credit union holidays unless the commissioner, with the governor's approval, determined otherwise.

ATM AND POINT-OF-SALE TERMINALS

Satellite ATM Devices and Point-of-Sale Terminals

The act specifies the services that must be provided at satellite devices and point-of-sale terminals. A satellite device is an ATM that is not part of an office of the bank. Point-of-sale terminals are used to charge sales transactions to a customer's account.

Under prior law, Connecticut or federal credit unions that have established (1) a satellite ATM or (2) a point-of-sale terminal must make it available for use on a nondiscriminatory basis by any other bank or Connecticut or federal credit union upon payment of a reasonably proportionate share of the associated costs. The act specifically removes the non-discriminatory basis requirement and instead specifies the minimum services banks or credit unions must provide if they establish such devices. It requires them to make (1) the devices available to their own customers for all transactions they choose to permit; (2) satellite ATMs available to customers of other banks or credit unions for withdrawals, transfers, and balance inquiries; and (3) point-of-sale terminals available to customers of other banks or credit unions for withdrawals. The other institutions are still required to pay their share of costs.

The act eliminates the requirement for satellite ATMs or point-of-sale terminals to identify, with equal prominence, all of the banks and credit unions that use the device, but it still requires the identification of the network systems that use the device. However, the act requires the bank that owns the ATM to display its logo.

Under the act, these banks or credit unions may offer any other services to their own customers or those of another institution on the terms they find appropriate.

Non-Satellite ATMs

By law, banks and Connecticut or federal credit unions that have ATMs at their institutions can make them available to the customers of other such banks or credit unions. The act eliminates the requirements that availability be provided on a non-discriminatory basis and that access be provided for the same uses that are permitted with satellite ATMs.

BACKGROUND

Legal Holidays

New Year's Day	January 1st
Martin Luther King Day	first Monday on or after January 15th
Lincoln's Birthday	February 12th
Washington's Birthday	3rd Monday in February
Memorial Day or Decoration Day	last Monday in May
Independence Day	July 4th
Labor Day	first Monday in September
Columbus Day	second Monday in October
Veterans' Day	November 11th
Christmas	December 25th

Additionally, any day appointed or recommended by the Governor or the President of the United States as a day of thanksgiving, fasting, or religious observance is a legal holiday.

PA 05-62—sHB 6831
Banks Committee

AN ACT PREVENTING BANK FRAUD AND IDENTITY THEFT

SUMMARY: This act expands the exceptions to the general prohibition on a financial institution's disclosure of a customer's financial records without the customer's permission. It allows disclosure of a customer's information to an information network for fraud prevention that is accessed by financial institutions and law enforcement authorities exclusively to detect or protect against actual or potential fraud or unauthorized transactions.

The act also allows the disclosure of a customer's financial information to victims of identity theft pursuant to the federal Fair Credit Reporting Act. Under the 2003 amendments to the Act, identity theft victims are entitled to get a copy of the application or other business transaction records relating to their identity theft from businesses free of charge. Because Connecticut law defines "customer" as any person who uses the services offered by a financial institution, victims of identity theft might not otherwise be able to obtain relevant information since they did not actually use such services.
EFFECTIVE DATE: October 1, 2005

PA 05-74—SB 1070
Banks Committee

AN ACT MAKING TECHNICAL REVISIONS TO VARIOUS STATUTES RELATIVE TO THE BANKING LAW OF CONNECTICUT

SUMMARY: This act makes technical revisions to certain banking statutes.
EFFECTIVE DATE: Upon passage

PA 05-107—sHB 6830
Banks Committee
Judiciary Committee

AN ACT PROTECTING CONSUMERS IN THE MAKING OF INCOME TAX REFUND ANTICIPATION LOANS

SUMMARY: This act allows refund anticipation loans to be made only at locations where tax preparation is the principal business. It also limits the interest rate on such loans to no more than 60% annually for the first 21 days of the loan and 20% beginning on the 22nd day of the loan until the date it is repaid. A refund anticipation loan is a loan that is to be repaid directly from the proceeds of a borrower's income tax refund.

Anyone who violates the act's provisions is subject to a $500 fine and, in a civil action brought by the borrower or the attorney general on the borrower's behalf, is liable to the borrower for three times the amount of the loan fees plus reasonable attorney's fees.
EFFECTIVE DATE: October 1, 2005

PA 05-111—SB 617
Banks Committee

AN ACT REQUIRING THE DISCLOSURE OF CERTAIN INFORMATION BY INVESTMENT ADVISERS

SUMMARY: This act requires investment advisers that must register with the Banking Department and investment adviser agents, upon request, to provide their customers or clients with a schedule of any charges, fees, or penalties that might be imposed for acquiring, transferring, or holding securities. The schedule must include any variance, advantage, or economy of volume purchases that the customer or client could receive. The requirement does not apply to investment adviser representatives as defined in federal regulations.
EFFECTIVE DATE: October 1, 2005

BACKGROUND

Investment Advisers

Connecticut law requires investment advisers to register with the Banking Department. It exempts from the requirement investment advisers that (1) are registered or required to be registered under the 1940 federal Investment Advisers Act, (2) are excluded from the definition of investment adviser under the federal act, or (3) have no place of business in the state and have had no more than five clients who were residents of the state in the past 12 months.

Investment Adviser Agents

Connecticut law excludes from the definition of investment adviser agent, those who are, under federal law, supervised persons of an investment adviser who is exempt from state registration as discussed above, unless the supervised person is an investment adviser representative as defined by federal regulation.

Federal law defines supervised person as (1) a partner, officer, director, or other person occupying a similar status or performing similar functions; (2) an employee of an investment adviser; or (3) other person who provides investment advice on behalf of the investment adviser and subject to his supervision and control. It defines an investment adviser representative as a supervised person who has more than five clients who are natural persons and more than 10% of whose clients are natural persons. However, it does not include supervised persons who do not regularly solicit, meet with, or otherwise communicate with clients of the investment adviser or who only provide impersonal investment advice.

PA 05-139—SB 732
Banks Committee
Judiciary Committee

AN ACT CONCERNING DISCLOSURE OF CUSTOMER FINANCIAL RECORDS BY A FINANCIAL INSTITUTION PURSUANT TO A SUBPOENA AND APPROVAL OF THE PLAN OF CONVERSION FOR A MUTUAL SAVINGS BANK

SUMMARY: This act:

1. allows financial institution customers to attempt to quash a subpoena of their financial records any time after being served with the subpoena, instead of waiting until 10 days before the requested disclosure date and
2. allows a mutual savings bank's plan of conversion to be approved by a majority of the converting bank's corporators only if a greater percentage is not required by the bank's charter or certificate of incorporation.

EFFECTIVE DATE: October 1, 2005 for the provisions relating to financial records disclosures and July 1, 2005 for the provisions relating to mutual savings bank conversions.

DISCLOSURE OF FINANCIAL RECORDS PURSUANT TO A SUBPOENA

A financial institution must disclose a customer's financial records pursuant to a lawful subpoena if the party seeking the records serves the customer with a copy of the subpoena at least 10 days before the date the records are supposed to be disclosed. Under prior law, a customer only had standing to challenge the subpoena by filing an application or motion to quash it in court within the 10-day period before the disclosure date. This act allows the customer to challenge the subpoena at any time after the subpoena is issued.

A "financial institution" is a bank, Connecticut or federal credit union, or an out-of-state bank or credit union that has a branch or office in Connecticut.

MUTUAL SAVINGS BANK CONVERSIONS

Under prior law, the plan for the conversion of a mutual savings bank to a capital stock bank required the approval of, among others, the majority of all corporators of the converting bank as long as the converting bank had at least 25 corporators at the time of the vote. The act allows a mutual savings bank's plan of conversion to be approved by a majority of the converting bank's corporators only if a greater percentage is not required by the bank's charter or certificate of incorporation.

PA 05-177—sHB 6829
Banks Committee
Judiciary Committee
Government Administration and Elections Committee

AN ACT UPDATING AND REVISING THE CONNECTICUT UNIFORM SECURITIES ACT

SUMMARY: This act makes a number of changes to the Connecticut Uniform Securities Act (CUSA). It enhances the banking commissioner's authority, including his investigative authority, and changes and adds a number of definitions and violations in CUSA. It changes the registration requirements applicable to investment advisers and broker-dealers. It also makes a number of technical corrections and conforming changes.

EFFECTIVE DATE: October 1, 2005

DEFINITION OF SECURITY (§1)

The act expands the definition of "security" to include commonly recognized securities, such as a fractional undivided interest in oil, gas, or other mineral rights; security futures; puts; calls, straddles, options, or privilege in any security or group or index of securities; a certificated and uncertificated security; an interest in a limited liability company or limited liability partnership as an investment partnership; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

Existing law already includes in the definition of security any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; interests of limited partners in a limited partnership; collateral-trust certificate; pre-organization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; any interest or instrument commonly known as a "security;" or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

COMMISSIONER'S INVESTIGATIVE AUTHORITY (§ 9)

The act enhances the commissioner's authority to investigate suspected CUSA violations by empowering him to require a person to (1) testify or produce a record relating to an investigation or an action about to be instituted and (2) file a written statement about an action that is about to be instituted. He already had the authority to require or permit a person to file a written statement regarding a matter under investigation.

The act adds limited partnerships and limited liability partnerships to CUSA's definition of "person." Prior law only included individuals, corporations, limited liability companies, partnerships, associations, joint stock companies, trusts where the interests of the beneficiaries are evidenced by a security, unincorporated organizations, and governments or political subdivisions thereof in the definition.

VIOLATIONS OF CUSA (§ 10)

The act authorizes the commissioner to issue cease and desist orders against a person who (1) directly or indirectly controls a person who violates CUSA or a related regulation or order and (2) materially aids such violation.

It gives the commissioner authority to order restitution and disgorgement for a person that materially aids in the violations. It makes the "aider" jointly and severally liable with the main actor unless he sustains the burden of proof that he did not know, and could not have known, the relevant facts.

The act authorizes the commissioner to fine a person who controls a person who violates CUSA or a regulation or order under CUSA, and persons who aid such action.

Finally, the act expands the court-ordered remedies the commissioner may seek to include (1) an asset freeze, accounting, writ of attachment, and writ of general or specific execution; (2) an order directing the commissioner to take charge and control of a defendant's property, collect debts, and acquire and dispose of property; (3) an order directing the payment of prejudgment and postjudgment interest; or (4) an order covering such other relief as the court considers appropriate.

The law already allows for the appointing of a receiver or conservator. The act makes the commissioner a party to the receivership, proceeding, or conservatorship if a person other than the commissioner is appointed as receiver or conservator. It allows the commissioner to appoint employees or retain consultants he deems necessary for liquidating or administering the defendant's affairs.

NO ACTION LETTERS (§ 11)

The act allows the commissioner, or the employees he authorizes, to issue a "determination" that he will not institute a proceeding against a person for engaging in certain conduct (a no action letter) if the determination is consistent with the intent of CUSA. Under prior law, the commissioner only had the express authority to issue declaratory rulings and written advisory interpretations under CUSA.

The act gives no action determinations the existing protection against liability for actions taken in conformity with the banking commissioner's regulations, forms, orders, or advisory interpretations.

FREEDOM OF INFORMATION REQUESTS (§ 12)

The act allows the commissioner to certify that public records requested under the Freedom of Information Act do not exist and makes the certification prima facie evidence that the requested document does not exist in suits brought under CUSA.

REGISTRATION REQUIREMENTS (§ 3)

The act allows the commissioner, by regulation or order, to (1) impose registration conditions that are

consistent with the National Securities Markets Improvement Act of 1996 and (2) waive specific requirements in connection with registration if it is in the public interest and for the protection of investors.

SUSPENSION, REVOCATION, OR DENIAL OF REGISTRATIONS UNDER CUSA (§ 5)

Under certain circumstances the act allows the commissioner to suspend, revoke, or deny a registration based on a cease and desist order issued by a self-regulatory organization. The commissioner could already issue such orders based on a cease and desist order issued by the Securities and Exchange Commission (SEC), or the securities agency or administrator of any other state or Canadian province or territory.

The act defines "self-regulatory organization" as a national securities exchange, a national securities association of broker dealers, or a clearing agency registered under the Securities Exchange Act of 1934 or the Municipal Securities Rule Making Board established under that act.

The act also allows the commissioner to suspend, revoke, or deny a registration based on the willful aiding or abetting of a violation of CUSA or related regulation.

INVESTMENT ADVISERS AND BROKER-DEALERS (§ 2)

The act prohibits investment advisers and their agents from conducting business in Connecticut against the orders of the banking commissioner, the SEC, or a self-regulatory organization. Prior law only required them to be registered by the commissioner before transacting business in the state.

It exempts a registered investment adviser agent that refers clients to another investment adviser from registering as an investment adviser agent of that investment adviser if he is not compensated for the referral.

The act allows broker-dealers and investment advisers to succeed to the registration of another broker-dealer or investment adviser or amend their registration if they change their form of organization or state of incorporation or organization. It authorizes the commissioner to adopt regulations to prescribe how a change of control of a broker-dealer or investment advisor may occur.

Finally, the act authorizes the commissioner to adopt regulations to require agents and investment adviser agents to participate in some form of continuing education.

BROKER-DEALER RECORDS AND CUSTODY OF FUNDS (§ 4)

Broker-Dealer Records

The act allows broker-dealer records to be kept in any form of data storage acceptable under the federal Securities Exchange Act as long as they are readily accessible to the commissioner. Prior law allowed records to be stored only on microfiche, microfilm, or an electronic data processing system or similar device.

Custody of Funds

The act prohibits agents and investment adviser agents from having custody of funds or securities unless they are under the supervision of a broker-dealer or investment adviser and authorizes the banking commissioner to adopt regulations to prohibit, limit, or impose conditions on broker-dealers and investment advisers relating to the custody of securities or funds.

SECURITIES REGISTRATION EXEMPTIONS (§ 6)

The law generally requires securities to be registered before they may be sold and exempts certain securities from the requirement. The act exempts bank-issued securities that are not covered securities under the Securities Act of 1933 and certain equipment trust certificates.

The law places the burden of proof on the person claiming an exemption from the securities registration requirement. The act similarly places the burden on someone asserting preemption or exclusion.

REQUIREMENTS FOR LITERATURE FILING BY AN INVESTMENT ADVISER (§ 7)

This act clarifies the commissioner's authority to require investment advisers registered, or required to be registered, under CUSA to file sales literature or advertising communications with him. Any implementing regulation must conform with the existing statutory requirements.

FALSE AND MISLEADING STATEMENT (§ 8)

The act prohibits a person from failing to state a material fact that is necessary to ensure a statement is not false or misleading in a document filed with the commissioner or in any proceeding or examination he conducts.

OFFERS TO BUY AND SELL; SERVICE OF PROCESS (§ 13)

Offers to Buy and Sell

CUSA applies to offers to sell or buy that occur in the state, but the law excludes offers made as part of a radio or television program that originates outside the state. The act also excludes offers made in any electronic communication originating outside the state.

The act states that a radio or television program or other electronic communication is considered to have originated in the state if the broadcast studio or the originating source of the transmission is in the state unless the communication is not intended for distribution to the general public. A communication is not considered to have originated in the state if it is distributed from or originates outside of the state for redistribution to the general public and is (1) syndicated; (2) supplied by radio, television, or electronic network; or (3) captured for redistribution by community antenna or cable, radio, or other electronic system.

Service of Process

By law, a person or group licensed, registered, or conducting business under CUSA must designate the commissioner as his attorney to receive legal papers in any non-criminal action against him arising under CUSA. Further, if the person or group engages in conduct prohibited under CUSA, is not available, and has not made such a designation, the conduct is deemed the equivalent of making such a designation. The act allows the commissioner to serve legal papers in any investigation or administrative proceeding in which he is the moving party.

OTHER DEFINITIONS (§1)

Branch Office

The act excludes from the definition of "branch office" certain locations based on the limited activities conducted at those locations and on whether they are held out to the public as branch offices. The excluded locations are:

1. any location established solely for customer service or back office functions where no sales activities are conducted and that is not held out to the public as a branch office;
2. any office of convenience that is not held out to the public as an office;
3. any location that is used primarily for non-securities activities and from which an agent receives no more than 25 securities transactions a year as long as any advertisement or sales literature identifying the location also includes the phone number for the location from which the agent working at the non-branch is supervised;
4. the floor of a registered national securities exchange where a broker-dealer conducts a direct access business with public customers;
5. a temporary location established in response to the implementation of a business continuity plan;
6. any location that is the agent's or investment adviser agent's primary residence as long as:
    a. business is only conducted at the location by agents or investment adviser agents who reside there and are members of the same immediate family;
    b. the location is not held out to the public as an office and the agent or investment agent adviser does not meet there with customers;
    c. customer funds and securities are not handled at the location;
    d. the agent or investment adviser agent is assigned to a designated branch office that is reflected on all communications between the individual and the public;
    e. the agent's or investment adviser agent's communications with the public are subject to the supervision of the broker-dealer or investment adviser with which they are associated;
    f. electronic communications are made through the broker-dealer or investment adviser's electronic system;
    g. all securities orders are entered through the designated branch office or an electronic system established by a broker-dealer that is reviewable at the branch office;
    h. broker-dealers or investment advisers maintain written supervisory procedures relating to activities conducted at the residence; and
    i. the broker-dealer or investment adviser maintains a list of the residence locations; and
7. any location, other than a primary residence, used for securities or investment advisory business for less than 30 business days in a year, subject to the qualifications listed above, except those that relate to residence.

The act defines business day to exclude partial business days as long as the agent or investment adviser agent spends at least four hours on such day at his designated office during its normal business hours.

Broker-Dealer

The law excludes from the definition of "broker-dealer" a person who does not have a place of business in the state if he handles his transactions exclusively with or through certain entities, including securities issuers, other broker-dealers, and certain financial institutions. The act specifically identifies federal savings banks as one of the entities triggering the exemption.

International Banking Institution

The act defines an international banking institution as an international financial institution of which the United States is a member but whose securities are exempt from registration under the Securities Act of 1933.

Issuer

The law defines "issuer" as any person who issues or proposes to issue any security, except with regard to certain types of securities. The act specifically defines "issuer" with respect to an equipment trust certificate or similar security. For these securities, the issuer is the person to whom the property or equipment is or will be leased or conditionally sold or any person who is otherwise contractually responsible for assuring payment of the certificate.

PA 05-192—sSB 1220
Banks Committee

AN ACT CONCERNING CHECK CASHING SERVICES

SUMMARY: This act changes the laws governing check cashing services by (1) raising the maximum dollar amount of checks that may be cashed, adding an additional situation where the maximum does not apply, and requiring a report to the banking commissioner on checks cashed; (2) allowing licensees to charge at least $1 for check cashing services; and (3) specifying that the check cashing services laws are inapplicable only to banks, rather than "entities" that are subject to the banking commissioner's general supervision.
EFFECTIVE DATE: October 1, 2005

CHECK CASHING REQUIREMENTS

The act increases the maximum dollar amount of checks, drafts, or money orders that may be cashed from $2,500 to $6,000. It also provides that the maximum amount does not apply to the cashing of an item by a payee who is not an individual, as long as the licensee complies with all of the law's recordkeeping and reporting requirements. The law already provided that the maximum amount does not apply to the cashing of a check:

1. drawn by the United States; any state or political subdivision of a state; or by a department, bureau, agency, authority, instrumentality, or officer (acting in his official capacity) of the United States or any state or political subdivision of a state;
2. certified by the depository institution on which it is drawn;
3. drawn by an insurance company for the payment of a claim; or
4. drawn by an attorney from the attorney's clients' funds account.

By January 15, 2006, the act requires check cashing licensees to begin reporting quarterly to the banking commissioner on the types of checks cashed and the number that exceeded $2,500 during the previous calendar quarter.

SERVICE CHARGE

The act alters the laws governing check cashing fees to allow licensees to charge a fee of at least $1 on check cashing transactions. The commissioner is required by law to establish such fees by regulation. Under prior law, a licensee could not charge a higher fee than that set by regulation. The act allows licensees to charge at least $1 or the amount set by regulation, whichever is greater.

PA 05-157—sSB 898
Select Committee on Children
Human Services Committee
Judiciary Committee
Government Administration and Elections Committee
Legislative Management Committee

AN ACT CONCERNING THE MEMBERSHIP ON THE CHILD FATALITY REVIEW PANEL

SUMMARY: This act increases, from seven to 13, the number of permanent Child Fatality Review Panel members by adding (1) the chief medical examiner; (2) an attorney appointed by the Senate Minority leader; (3) a psychologist appointed by the House majority leader; and (4) the commissioners of the Children and Families, Public Health, and Public Safety departments, or their designees. It substitutes a social work professional (appointed by the Senate minority leader) and an injury prevention representative (appointed by the House minority leader) for the former public child welfare practitioner and medical examiner slots, respectively.

It also increases, from two to three, the number of temporary experts or interested parties the panel can select and eliminates a requirement that these appointees review a specific death only.

The panel reviews and issues reports on unexplained or unexpected circumstances leading to the death of a child who has received services from state child welfare, social services, or juvenile justice agencies.
EFFECTIVE DATE: Upon passage

PA 05-207—sHB 5057
Select Committee on Children
Human Services Committee
Judiciary Committee

AN ACT CONCERNING THE DEPARTMENT OF CHILDREN AND FAMILIES AND CHILD ABUSE OR NEGLECT PROCEEDINGS

SUMMARY: This act generally prohibits the Department of Children and Families (DCF) from disclosing information about a person suspected of abusing or neglecting a child until the suspect has had a chance to exhaust the agency's appeals process. The commissioner must adopt implementing regulations and develop notice, hearing, and appeals protocols by July 1, 2006 but must handle cases in conformity with the act's provisions while doing so.

The act also establishes a timetable for purging DCF files involving unsubstantiated reports. And it permits people whose names were placed on DCF's child abuse and neglect registry before May 1, 2000 to appeal that action if they have not already done so.
EFFECTIVE DATE: October 1, 2005, except the provisions related to delaying the release of information about suspected abusers, which are effective December 1, 2005.

REPORTS OF SUSPECTED ABUSE OR NEGLECT

By law, DCF must immediately evaluate each child abuse or neglect report it receives if the alleged perpetrator is a person (1) responsible for the child's health, welfare, or care; (2) given access to the child by a responsible person; or (3) entrusted with the child's care. Prior law required the commissioner to keep a registry of all reports she received. The act instead limits the registry to people reasonably believed, after an agency investigation, to have abused or neglected a child and continue to pose a risk to child health, safety, or welfare. It also prohibits her, in most cases, from placing an individual's name on the registry or disclosing information about the report to anyone checking the registry in conjunction with applications for employment, licensure, or entitlement to receive state child care reimbursements until the suspect has exhausted or waived all agency appeals.

Permitted Disclosures

These privacy protections do not apply if DCF has completed its investigation and found reasonable cause to believe that abuse or neglect involves:

1. a child who has died, been sexually abused, suffered a serious physical injury, or is at risk for serious physical or emotional injury;
2. a suspect who has been arrested for committing the reported abuse or neglect; or
3. a person whose parental rights are already subject to court termination proceedings.

In such cases, the person's name may be placed on the abuse registry as soon as the initial finding is issued and DCF may disclose information to any entity legally entitled to it. The accused may appeal the agency's action pursuant to the procedures described below.

Other Confidentiality Protections

By law, DCF may disclose limited information about ongoing investigations that it determines are likely to be publicized. Prior law required DCF to keep the names or other individually identifiable information about the victim or other family members confidential. The act extends the same non-disclosure requirements to people suspected of having committed the abuse or neglect unless they have been arrested for the reported conduct.

Notice of Recommended Abuse or Neglect Findings

When DCF's investigation results in a recommended finding of abuse or neglect, the act requires DCF, within five business days, to mail the accused a notice, which must include:

1. a short and plain description of the basis for its recommended finding;
2. a statement that the commissioner intends to place the individual's name on its abuse and neglect registry unless he files an appeal;
3. a description of the potential adverse consequences of being listed on the registry, including its effect on obtaining or keeping a job that involves direct contact with children;
4. information about his right to bring an administrative appeal; and
5. a form he can sign and return indicating whether he intends to file an appeal.

Prehearing Agency Review

When an appeal is filed, the commissioner or her designee must complete a prehearing review within 30 days. She must review all relevant information to determine whether the recommended finding is factually or legally deficient and should be reversed.

Before beginning the review, she must give the accused access to all documents relevant to the recommended finding. He or his representative may submit additional documentation and, at the commissioner's discretion, participate in a telephone or face-to-face conference to gather more information.

The commissioner or her designee must issue a written reversal of any recommended finding that she determines is factually or legally deficient. She must send notice of the outcome of her review (i.e., either upholding or reversing the recommendation) to the accused by certified mail within five business days. If she upholds the finding, the notice must contain a brief statement of the allegations, the agency's statutory authority, and information about the accused's right to request an administrative hearing.

DCF Hearings

Individuals wishing to challenge the commissioner's decision must request a hearing within 30 days of receiving it. DCF must schedule the hearing within 30 days of the request unless either party shows good cause for delaying it.

The accused may be represented by an attorney at the hearing. The commissioner has the burden of proving that the abuse or neglect finding is supported by a fair preponderance of the evidence submitted at the hearing.

Decisions

The hearing officer must issue a written decision within 30 days after the hearing concludes. It must contain findings of fact and conclusions of law on each issue raised at the hearing. The hearing officer can either reverse or uphold the commissioner's finding.

Court Appeals

Suspects aggrieved by the hearing officer's decision can file an administrative appeal in the Superior Court. They may seek a court order staying the agency's implementation of its decision until the court proceedings are concluded. Otherwise, the commissioner can place the accused's name on the registry while the court case is pending and, on request, disclose it and make copies available to any entity entitled to ask for it. She must ensure that the registry accurately reflects the abuse or neglect finding and cannot disclose information other than that permitted by law.

UNSUBSTANTIATED CASE FILES

The act requires DCF to seal records containing unsubstantiated abuse and neglect allegations, but may grant access to agency employees who need it to properly discharge their job duties. It requires the commissioner to destroy unsubstantiated case files five years after DCF completes its investigation if it has not received another report involving the suspect. But if a suspect has more than one unsubstantiated report within this period, DCF must keep the records for five years from the date it completed the most recent investigation.

PA 05-244—sHB 5482
Select Committee on Children
Labor and Public Employees Committee
Judiciary Committee
Government Administration and Elections Committee
Human Services Committee

AN ACT CONCERNING THE IMPLEMENTATION OF THE RECOMMENDATIONS OF THE CHILD POVERTY COUNCIL

SUMMARY: This act implements several recommendations of the Child Poverty Council, whose charge is to reduce child poverty by 50% by June 30, 2014. It directs the Office of Policy and Management (OPM) to require that state contracts with anti-poverty programs include performance-based standards and outcome measures. It also requires the Department of

Social Services (DSS) to promote greater use of the federal Earned Income Tax Credit (EITC) and enhance financial literacy and self-sufficiency programs. It authorizes three pilot programs to subsidize expenses of low-income community-technical college students with dependants. All of these activities must be within existing appropriations, but OPM and DSS can accept funds from other sources.

Finally, the act makes the Commission on Human Rights and Opportunities' executive director a member of the Child Poverty Council and adds meeting and reporting requirements to the council's charge.

EFFECTIVE DATE: Upon passage, except the DSS provisions are effective October 1, 2005.

REQUIRED CONTRACT PROVISIONS

By July 1, 2006, OPM must develop a protocol for including performance-based standards and outcome measures in contracts with anti-poverty programs. The standards and measures must relate to the council's poverty-reduction goals and must be included in state contracts by July 1, 2007. The act authorizes the OPM secretary to consult with the Commission on Children to identify academic, private, and other funding sources and to accept and spend these funds to implement the new contracting requirements.

EITC PROMOTION

The act requires DSS to consult with the Child Poverty Council and encourage municipalities, public and private employers, community–based organizations, and other entities that have frequent contact with low-income families to promote greater use of the EITC. The EITC is a federal income tax credit for low-income workers.

TECHNICAL-COMMUNITY COLLEGE PILOT PROGRAMS

The act authorizes the Board of Trustees for Community-Technical Colleges to establish up to three pilot programs to provide household and family expenses for enrolled low-income students with dependents. Participation is limited to students who qualify for federal Pell grants.

CHILD POVERTY COUNCIL ACTIVITIES

The act requires the Child Poverty Council to meet at least twice a year to review and coordinate state agency efforts to meet the goal of reducing child poverty by 50% by June 30, 2014. Its annual implementation reports to legislative committees must now include progress made toward meeting this goal.

PA 05-246—sSB 1037
Select Committee on Children
Human Services Committee
Judiciary Committee
Public Health Committee

AN ACT CONCERNING A NURTURING FAMILIES NETWORK, DEPARTMENT OF CHILDREN AND FAMILIES ACCREDITATION AND REVISION OF CERTAIN DEPARTMENT OF CHILDREN AND FAMILIES STATUTES

SUMMARY: This act makes numerous changes in statutes applicable to the Department of Children and Families (DCF). It:

1. replaces DCF's six regions with an unspecified number of area offices and makes personnel, advisory council, and conforming changes;
2. changes the manner in which DCF and the attorney general prosecute abuse and neglect cases, and adds protecting the safety of abused and neglected children, rather than their best interests only, as a goal of abuse and neglect prosecutions;
3. transfers from DCF to the Children's Trust Fund Council responsibility for operating the Nurturing Families Network program statewide;
4. simplifies the agency's obligation to prepare plans for children in its voluntary services program;
5. allows attorneys appointed by the family court to consent to their minor client's voluntary commitment for mental health treatment;
6. requires DCF to wait to notify a school about a substantiated finding of abuse or neglect involving one of its employees until the commissioner has recommended that his name be placed on the abuse and neglect registry;
7. requires DCF to seek accreditation from the Council on Accreditation;
8. makes minor changes concerning child placement facilities; and
9. eliminates the Family Violence Coordinating and Out-of-Home Placements advisory councils.

EFFECTIVE DATE: October 1, 2005, except for the DCF reorganization and Nurturing Families provisions, which are effective on passage, and the accreditation provisions, which are effective October 1, 2005.

ELIMINATION OF REGIONAL OFFICES (§§ 2, 4, 5, 6, 7, and 9)

The act eliminates DCF's six regional offices and the unclassified regional administrator positions

associated with them. It replaces them with service area offices headed by area directors in the classified service.

Regional Advisory Councils

In addition to replacing the regional advisory councils with area advisory councils, the act requires the DCF commissioner or her designee, who appoints members, to make a good faith effort to ensure that members are qualified and closely reflect the council area's gender and racial diversity.

It permits the DCF commissioner's designee to appoint council members, limits their membership to two consecutive three-year terms, and prohibits members serving simultaneously on more than one council. It also replaces the current council chairman and vice chairman positions with co-chairmen and makes the area director an ex-officio nonvoting member.

COORDINATING LEGAL EFFORTS BETWEEN DCF ATTORNEYS AND ASSISTANT ATTORNEYS GENERAL (§ 8)

The act makes DCF, rather than the attorney general, the direct supervisor of agency staff attorneys. The attorney general retains supervision over his assistant attorneys general who prosecute abuse and neglect petitions.

It requires DCF and assigned assistant attorneys general to cooperate in prosecuting abuse and neglect cases. Prior law required the agency to cooperate with the assistant attorneys general.

NURTURING FAMILIES NETWORK OPERATIONS (§ 10)

The act transfers from DCF to the Children's Trust Fund Council the responsibility for operating the Nurturing Families Network on a statewide basis and filing annual legislative reports. This program assesses and provides voluntary services to parents and their children from birth to age four who are at risk for abuse and neglect.

SIMPLIFICATION OF STATUTORILY MANDATED PLANS FOR CHILDREN RECEIVING VOLUNTARY SERVICES (§ 3)

The act also simplifies individualized plans DCF is required to develop for children admitted to its voluntary service program but who remain in their homes. Rather than developing the detailed permanency plans required by law for children in DCF's custody who are in out-of-home placements (such as foster children and delinquents), the act authorizes the agency to develop a case service plan for these children. The act retains the requirement for the probate court to review youngsters' case service plans after 120 days, but it limits continuing juvenile court review to youngsters in the voluntary services program living in out-of-home placements.

SCHOOL NOTICE OF ABUSE OR NEGLECT FINDINGS (§ 17)

Prior law required the DCF commissioner to notify a school superintendent as soon as it substantiated an abuse or neglect charge involving one of his employees. The act, instead, delays the notice until DCF makes a recommendation to place the employee on its abuse and neglect registry. As under prior law, the superintendent must then suspend that employee, with pay, while it investigates the incident.

FACILITY PLACEMENTS

The act permits:

1. DCF to place children in facilities licensed by the Department of Mental Retardation, conforming statute to practice;
2. DCF to place children in unlicensed homes if a licensed child placing agency has approved them; and
3. trained staff in residential facilities dually licensed by DCF and the Department of Public Health to administer medication to children (they can already do this in facilities under DCF jurisdiction).

BACKGROUND

Related Act

PA 05-207 establishes notice, hearing, and appeals procedures for people DCF finds reasonable cause to believe are responsible for abusing or neglecting a child and delays placing their names on its abuse registry until administrative appeals have concluded.

PA 05-254—SB 1038
Select Committee on Children
Human Services Committee
Appropriations Committee
Finance, Revenue and Bonding Committee

AN ACT CONCERNING ELIGIBILITY FOR SUBSIDIZED GUARDIANSHIP

SUMMARY: This act makes relative guardians eligible, at the agency's discretion, for the Department

of Children and Families' higher subsidized guardianship rate after they have cared for the child for six months. Prior law required them to have cared for the child for at least one year.
EFFECTIVE DATE: October 1, 2005

BACKGROUND

Subsidized and Unsubsidized Guardianship Rates

Certified relative caregivers receive monthly payments from the state of approximately $333 for the first child in their care, and between $50 and $100 for each additional child.

Relatives in the subsidized guardianship program receive monthly payments of between $680 and $780 per child.

PA 05-113—SB 1105
Commerce Committee
Finance, Revenue and Bonding Committee
Planning and Development Committee

AN ACT EXTENDING THE PROGRAM AUTHORIZING BOND FUNDS FOR INFORMATION TECHNOLOGY PROJECTS AND REMEDIATION PROJECTS AND THE TAX INCREMENTAL FINANCING PROGRAM

SUMMARY: This act extends, from July 1, 2005 to July 1, 2008, the Connecticut Development Authority's (CDA) authorization to finance projects through two funding mechanisms, both of which use the new taxes a completed project generates to repay the bonds CDA issued to finance its development.

One mechanism uses a project's revenue or the new or incremental property tax revenue the project generates to repay bonds CDA issued to finance it. CDA uses this mechanism to finance projects that clean up and redevelop contaminated property or that make extensive use of information technology. The other mechanism uses the incremental sales, admissions, and dues tax revenue a project generates to repay bonds. CDA uses this mechanism to finance large-scale projects that create new jobs or stimulate significant business activity.
EFFECTIVE DATE: Upon passage

PA 05-129—SB 1108
Commerce Committee
Finance, Revenue and Bonding Committee

AN ACT ESTABLISHING A CONNECTICUT NEW OPPORTUNITIES FUND

SUMMARY: This act requires Connecticut Innovations, Inc. (CII) to establish a fund for investing in Connecticut companies that are beginning to grow. The fund is open to pension funds, foundations, and other private entities. The act specifies how CII may structure the fund, invest its assets, and liquidate its returns. The fund's term is 10 years, but CII may extend it for three one-year terms if it needs more time to liquidate the fund's assets. If needed, the state must provide a first loss guarantee of up to $25 million at the end of the tenth year.
EFFECTIVE DATE: July 1, 2005

CONNECTICUT NEW OPPORTUNITIES FUND

Eligible Companies

The act requires CII to create this fund to invest in newly formed and emerging growth companies. The fund can make equity or similar investments in an emerging growth company that (1) finds it hard to raise early venture capital and faces entry barriers even though it is a "strong market driver" and (2) has a high growth potential, a strong management team, and current and prospective customers.

Fund Management

CII can manage the fund as a general or managing member or create a subsidiary for this purpose. It or the subsidiary can organize the fund as a limited partnership or a limited liability company. It can reimburse itself for its management costs by charging the fund up to 2% of its committed capital. The investors can participate in the fund as nonmanaging fund members or limited partners.

During the fund's first 10 years, the fund's committed capital cannot exceed $50 million. The fund can invest up to 25% of its assets in companies that are beginning to develop and grow (i.e., seed stage companies) and up to 75% in up to 20 already established, emerging growth companies. It can invest no more than $3 million in any one company.

The investors may receive a return on their investments when the fund liquidates its investments plus 80% of the fund's net realized gains. The fund manager and the state split the remaining net gains equally.

BACKGROUND

Limited Partnership and Limited Liability Company

A limited partnership involves a partnership between two groups of partners—general partners and limited partners. The general partners manage the partnership and are thus liable for its debts. The limited partners are investors only, and are not liable for the partnership's debt as long as they play no role in managing the partnership.

A limited liability company involves a relationship between a corporation and the people and institutions that own shares in it. The shareholders' liability for the corporation's debt is limited to the amount they have individually invested in the corporation.

PA 05-143—HB 5907
Commerce Committee
Finance, Revenue and Bonding Committee

AN ACT CONCERNING ASSISTANCE FOR DEFENSE MANUFACTURERS' SUPPLIERS AND THE UNITED STATES NAVAL SUBMARINE BASE-NEW LONDON LOCATED IN GROTON

SUMMARY: This act provides $10 million in bond proceeds for improving the infrastructure at the United States Naval Submarine Base—New London in Groton to support long-term, ongoing naval operations. The proceeds come from previously authorized Manufacturing Assistance Act (MAA) bonds, which are used to finance industrial parks, facility expansions, and other large-scale development projects. The Department of Economic and Community Development (DECD) must grant the funds to the Navy or to towns, businesses, or other organizations eligible for MAA funding.

The act also requires $1 million from the proceeds of previously authorized MAA bonds to help certain types of manufacturers adopt new production technologies and techniques. DECD must grant the proceeds to the Connecticut Center for Advanced Technology (CCAT) for this purpose. CCAT is a federally funded public-private partnership that helps universities, industries, and government agencies find ways to collaborate on developing new technologies.

CCAT must target small and medium-sized manufacturers who are at risk of losing contracts with larger defense manufacturers for supplying parts and services. It must do so by establishing and operating a center that helps these manufacturers keep up with their customers' changing needs and demands. The center must train suppliers, assist them at their worksites, and provide facilities and equipment for them. CCAT must run the center in collaboration with other state and national organizations.
EFFECTIVE DATE: July 1, 2005

CONNECTICUT CENTER FOR SUPPLY CHAIN INTEGRATION

CCAT must establish a center to help small and medium-sized manufacturers meet the changing needs and requirements of their larger, defense-manufacturing customers. It must establish technical and business assistance and training programs that help them:

1. adopt state-of-the-market digital manufacturing and information technologies and best business practices and techniques and
2. eliminate waste that results from a lack of timely information and counter-productive relationships with their customers and other suppliers.

The center must collaborate with other state and national organizations on helping the manufacturers transition from "a commodity-oriented business" model into a "value-added technology-based" model for component and service integration.

BACKGROUND

CCAT

Universities, businesses, and state and federal agencies established CCAT with a $1.5 million U.S. Air Force grant. CCAT focuses on developing the next generation of technological systems for military and civilian applications. Its initiatives include creating centers to (1) develop and deploy advanced technologies; (2) help entrepreneurs launch new, technology-based businesses; and (3) encourage colleges and universities to train students for advanced technology fields.

PA 05-165—sHB 5910
Commerce Committee
Legislative Management Committee
Finance, Revenue and Bonding Committee
Higher Education and Employment Advancement Committee

AN ACT CONCERNING ESTABLISHMENT OF AN INNOVATION NETWORK FOR ECONOMIC DEVELOPMENT

SUMMARY: This act requires the state's economic development agencies and the University of Connecticut to recommend a plan and budget for promoting technology transfer, which is the process through which scientists and business people find ways to apply research and new technologies. They must prepare both documents within available appropriations and submit them to the governor and three legislative committees by January 1, 2006.

The agencies and the Office of Workforce Competitiveness (OWC) must also implement the plan, which they may do by using up to $10 million of their existing resources. The implementation must stimulate at least $40 million in additional private investments. The agencies and OWC cannot implement the plan until the Bond Commission approves how they plan to use the resources and stimulate the required private investment.
EFFECTIVE DATE: Upon passage

INNOVATION NETWORK PLAN AND BUDGET

Planning Agencies

The three economic development agencies and UConn must recommend a plan and budget for creating an Innovation Network to promote technology transfer. The agencies are the Department of Economic and Community Development, Connecticut Development Authority, and Connecticut Innovations, Inc. (CII).

The agencies and UConn must consult with the following individuals and organizations when preparing the plan and budget:

1. Governor's Competitiveness Council (an advisory board consisting of business executives, public officials, and university representatives);
2. education and higher education commissioners;
3. community-technology college system chancellor;
4. OWC director; and
5. leading technology-focused organizations and any other agencies the economic and community development commissioner deems appropriate.

Plan Requirements

In recommending the plan and budget, the agencies and UConn must recommend how to:

1. create endowed chairs and hire leading academic professionals in targeted fields,
2. aggressively solicit federal research funds,
3. increase corporate-sponsored research,
4. establish at least one innovation center linked to the universities,
5. strengthen existing university-based technology transfer and entrepreneurial programs,
6. encourage collaboration between universities and industry- or federally-sponsored technology centers, and
7. create links to Connecticut-based incubators and groups of investors who generally invest in and support start-up companies in their early stages (i.e., "angel networks").

The recommendation regarding the innovation center must involve advanced technology corporations and start-up enterprises and the Hartford-based Connecticut Center for Advanced Technology (CCAT). CCAT is a federally funded public-private partnership that promotes science and technology.

The plan must show how the state can use existing resources, including CII's. CII is a quasi-public venture capital agency.

The agencies and UConn must submit their recommendations to the governor and the Commerce, Education, and Labor committees by January 1, 2006.

PA 05-185—sHB 6724
Commerce Committee
Planning and Development Committee

AN ACT CONCERNING THE DISPOSITION OF PROPERTY UNDER THE LIMITED EQUITY COOPERATIVE PROGRAM

SUMMARY: This act authorizes the economic and community development commissioner to take certain steps when a nonprofit organization can no longer manage a state-funded limited equity cooperative, which is a form of common interest ownership that restricts a unit's sales price or limits the return a member can expect when the property is sold. The steps concern the restrictions the commissioner imposes on the cooperative's property when he approves the funding and how the cooperative's members must use their equity.

The act allows the commissioner to remove the restrictions intended to insure that the property be used only for cooperative housing, but only after he fully examines the reasons why the nonprofit can no longer manage the property. He must replace the restrictions with new ones he deems appropriate to insure that the land, interest in land, and buildings be used to house low- and moderate-income families.

The act requires the commissioner to take certain steps regarding the equity of the cooperative's members. He must require the nonprofit to (1) use each member's equity to pay off any debt the member incurred as a member of the cooperative and pay the balance to the member or (2) transfer the equity with the property as long as each member does not lose his equity.

Lastly, the act deletes an obsolete statute. PA 93-309 consolidated the Limited Equity Cooperative Housing Program along with many other housing programs. It required the commissioner to adopt regulations to implement the new consolidated program and prohibited him from funding projects under those programs after he adopted those regulations. He did not adopt the regulations. The act eliminates that prohibition.

EFFECTIVE DATE: October 1, 2005

PA 05-186—HB 6726
Commerce Committee
Judiciary Committee
Planning and Development Committee

AN ACT CONCERNING THE LAND BANK AND LAND TRUST PROGRAM

SUMMARY: This act gives nonprofit organizations another option for transferring property they acquired under the Department of Economic and Community Development's Land Bank and Trust Program, which provides funds for acquiring land needed to develop low- and moderate-income housing.

A nonprofit organization's only option under prior law was to transfer units, subject to the commissioner's approval, to very low-, low-, or moderate-income people when a condominium is formed on land it acquired under the program. It could do so on the condition that the units be used only for housing people in these income groups. The act additionally allows the organization to transfer the units to another nonprofit organization eligible for funds under the program.
EFFECTIVE DATE: October 1, 2005

PA 05-191—sSB 1104
Commerce Committee
Legislative Management Committee

AN ACT CONSOLIDATING DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT REPORTS

SUMMARY: This act consolidates several Department of Economic and Community Development (DECD) reports into one annual report and expands the kind of information and analyses DECD must provide. DECD must submit the new report to the governor and the legislature by February 1 annually, beginning in 2006. Within 30 days after doing so, DECD must post the report on its website. The consolidated reports were also due annually, but at different dates. Several went to specified committees, the state auditors, the Office of Policy and Management, and the Connecticut Economic Conference Board.

The act divides the report into 15 sections, each covering topics ranging from the social and economic impact of DECD's programs to a listing of DECD-funded housing, community development, and economic development projects. DECD must still submit a separate annual report to the Commerce Committee on bond funds allocated to specific economic clusters. That report is due August 1.
EFFECTIVE DATE: October 1, 2005

AFFECTED REPORTS

Table 1 lists the reports the act consolidates, their recipients, and their due dates.

Table 1: Affected Reports

Report and Statutory Citation	***Prior Recipients***	***Prior Due Date***
Financial Assistance Programs (§ 32-1h)	Appropriations Committee Auditors Commerce Committee Finance, Revenue and Bonding Committee	November 1
Program Performance Report (§ 32-1i)	Appropriations Committee Commerce Committee Finance, Revenue and Bonding Committee	January 1 biennially
Economic Sectors (§ 32-1j)	Commerce Committee Finance, Revenue and Bonding Committee	January 15
Economic Cluster Report (§ 32-4g)	Commerce Committee Connecticut Economic Conference Board	August 1
Housing production and needs (§ 8-37s)	General Assembly Governor OPM	March 1
Households served (§ 8-37bb)	General Assembly	December 31
Energy conservation loans (§ 16-40b(g)	General Assembly	January 7
Special Contaminated Property Remediation and Insurance Program (§ 22a-133u)	Environment Committee	February 1
High performance work organizations (§ 32-479)	Commerce Committee Labor and Public Employees Committee	Unspecified
International Trade (§ 32-501)	Commerce Committee	January 1

CHANGES

Format

The new, consolidated report must:

1. assess the state's economy;
2. state DECD's goals and objectives, performance measures, and standards for providing assistance;
3. analyze the economic development portfolio (i.e., businesses DECD financed during the reporting period);
4. analyze the community development portfolio (i.e., municipalities and nonprofit organizations that received DECD funding during the period);
5. summarize DECD's marketing efforts, business recruitment strategies, and efforts to assist small and minority business enterprises;
6. summarize DECD's international trade efforts and the foreign direct investment that occurred in Connecticut during the reporting period;
7. analyze the state's industry clusters (i.e., regionally concentrated groups of similar or interrelated businesses);
8. summarize DECD's efforts to clean up contaminated sites;
9. evaluate the enterprise zones;
10. describe and analyze DECD's housing functions;
11. present DECD's housing portfolio;
12. analyze that portfolio;
13. analyze the economic impact of DECD's housing efforts;
14. provide performance data on the Energy Conservation Loan Program; and
15. summarize the social and economic impact of DECD's programs.

New Information

The act expands several reporting specifications and adds new ones. It specifies the kind of data DECD must provide about the state's overall economic condition and requires a detailed analysis of DECD's economic, community, and housing development projects. That analysis must include:

1. wages paid by the businesses DECD funds and the total dollars DECD invested in different industries;
2. investments in projects sponsored by towns and nonprofit agencies, the other investments they leveraged, and how they benefit the economy;
3. projects that clean up and redevelop contaminated property; and
4. the number and types of housing units DECD developed and how this benefits the economy.

The report must include DECD's annual list of towns where housing developers can appeal land use decisions under the Affordable Housing Land Use Appeals Procedure.

Information Deleted

The act requires DECD to analyze the total wages paid by the businesses it financed, but drops the requirement that it compare the wages each business paid for different job categories.

The act drops several requirements that DECD collect and analyze certain data regarding its business clients. These include:

1. the client's annual gross revenue,
2. economic benefit criteria DECD used to award assistance,
3. the number of jobs the clients intended to retain, and
4. the actual number of full- and part-time jobs that were created in each job category and their respective benefit levels.

The act appears to drop the requirement that DECD report the extent to which businesses it funds are achieving the public policy goals they set for themselves when they accepted DECD funds. Under prior law, DECD submitted this report to the chief elected officials of the towns where the projects were located and to the unions representing the employees of the businesses it funded.

PA 05-194—sHB 6499
Commerce Committee
Planning and Development Committee
Finance, Revenue and Bonding Committee

AN ACT CONCERNING CERTAIN PUBLIC INVESTMENT COMMUNITIES, DISTRESSED MUNICIPALITIES AND ENTERPRISE CORRIDOR ZONES

SUMMARY: This act allows towns to continue qualifying for Small Town Economic Assistance Program (STEAP) grants when they no longer meet certain eligibility criteria. A town qualifies for STEAP if it has fewer than 30,000 people and the state has not designated the entire town a distressed municipality or public investment community (PIC) or part of the town an urban center. The act allows towns to continue qualifying for STEAP grants after the state designates them a distressed municipality or a PIC.

The act changes the criteria for designating enterprise corridor zones, which are state-designated

areas where manufacturers and other specified businesses qualify for property tax abatements and business tax credits for developing facilities and creating jobs.

The act also changes the point in time when the economic and community development commissioner can remove an enterprise corridor zone designation. Prior law allowed him to do so 10 years after he approved the designation if any of the participating towns no longer met the designation criteria. The act instead lets him remove the designation 10 years after the date any of the towns no longer meet the criteria.

EFFECTIVE DATE: July 1, 2005

STEAP

The act allows a town to continue qualifying for STEAP grants after the state designates them a distressed municipality or a PIC. By law, a town becomes ineligible for these grants when its population exceeds 30,000, the state designates part of the town as an urban center, or the state designates the entire town as a distressed municipality or PIC. (But these designations also qualify towns for Urban Act grants. Currently, most towns qualify for either STEAP or Urban Act grants.) The state designates urban centers every five years when it updates the State Plan of Conservation and Development. It designates distressed municipalities and PICs annually.

The act applies to towns that become ineligible for STEAP because the state designated them as distressed municipalities or PICs. It lets these towns decide if they want to qualify for Urban Act or STEAP grants. A town may choose to continue qualifying for STEAP grants only if its legislative body or the board of selectmen (if that body is a town meeting) approves and the town notifies the Office of Policy and Management (OPM) secretary in writing about the decision. The town qualifies for STEAP grants for four years and may qualify for additional four-year periods in the same manner.

Urban Act and STEAP grants fund housing, transportation, economic development, environmental protection, and social service projects. But the Urban Act's criteria are weighted more toward projects in developed, economically distressed cities and towns. The criteria include the PIC designation, which OPM determines annually based on social and economic statistics.

ENTERPRISE CORRIDOR ZONES

The act changes the criteria for designating enterprise corridor zones. Under prior law, the legislative bodies of three or more contiguous towns could, with the economic and community development commissioner's approval, designate industrial areas within each town as corridor zones if:

1. each town was a PIC and had fewer than 60,001 people and
2. at least half of the towns were located along the same interstate highway, limited access state highway, or intersecting interstate or limited access state highways.

The act sunsets these criteria and replaces them with new ones under which the legislative bodies of two or more contiguous towns can, with the commissioner's approval, designate all the towns as corridor zones if each town:

1. is a PIC and a distressed municipality;
2. has fewer than 40,001 people;
3. has an average unemployment rate that exceeds the state's average as reported by the labor commissioner on the preceding July 1 for the most recent 12-month period; and
4. has an average per capita income less than the state's average, according to the last census or the U.S. Census Bureau's population report for the preceding January 1, whichever is most recent.

In addition, at least one of the towns must be located along an interstate highway, a limited access state highway, or intersecting interstate or limited access state highways. And, at least one must have been designated a regional center on the State Plan of Conservation and Development's locational guide map.

BACKGROUND

Public Investment Communities

PIC is a designation that identifies fiscally distressed towns. OPM scores and ranks all towns based on residents' income, tax base and tax rates, the share of unemployed residents, and the share who receive temporary family assistance. It then designates the 42 towns in the top quartile as PICs. The designation serves as an eligibility criterion for Urban Act grants, community economic development loans, residential mortgage guarantees, malpractice insurance assistance, and enterprise corridor zone designations.

Distressed Municipalities

The economic and community development commissioner annually designates distressed municipalities based on demographic and economic indicators. The designation serves as an eligibility criterion for open space, brownfield remediation, and Urban Act funding projects.

Enterprise Corridor Zones

The economic and community development commissioner designated the two current enterprise corridor zones in 1995. They are:

1. the Route 8 zone, consisting of Ansonia, Beacon Fall, Derby, Naugatuck, and Seymour; and
2. the Interstate 395 zone, consisting of Griswold, Killingly, Lisbon, Plainfield, Putnam, Sprague, Sterling, and Thompson.

PA 05-276—sHB 6727
Commerce Committee
Legislative Management Committee
Appropriations Committee
Finance, Revenue and Bonding Committee

AN ACT CONCERNING THE GOVERNOR'S COMPETITIVENESS COUNCIL RECOMMENDATIONS

SUMMARY: This act makes several changes to the Urban and Industrial Sites Reinvestment Program, which provides up to $100 million in corporate tax credits to businesses that build, expand, or rehabilitate facilities. It makes it easier for businesses to invest in smaller projects and specifically allows them to transfer credits to more than one taxpayer.

The act allows the economic and community development commissioner to establish, within available appropriations, two new programs. One must increase the entrepreneurial potential of inner cities and show their residents and students how market-based strategies can increase their wealth and income. The other must help small and medium-sized manufacturers become productive and competitive.

The act requires the commissioner to report on the amount of funds he allocated during FY 06 for the economic and industry cluster initiative and recommend adquate funding levels. He must submit the report to the Appropriations; Commerce; and Finance, Revenue and Bonding committees by December 31, 2006.
EFFECTIVE DATE: Upon passage

URBAN AND INDUSTRIAL SITES REINVESTMENT PROGRAM

Investment Thresholds

The law allows businesses to invest in projects directly or through a state-registered investment fund and sets investment thresholds for each method. The act lowers the threshold for direct investments from $20 million to $5 million and to $2 million for investments in projects that preserve and redevelop historic facilities for mixed uses that include at least four housing units. The act also qualifies businesses that jointly invest in these projects for credits if their combined investment is above the applicable threshold.

As under existing law, the act allows a business to qualify for the credits if it invests any amount in a state-registered investment fund and its total asset value is at least $60 million in the year the business claims the credit.

Assigning Credits

The law allows the business to assign or sell its credit to another taxpayer who needs it. Prior law allowed the business to assign the credit to only one taxpayer. The act allows the business to assign the credit to one or more taxpayers. As under prior law, the taxpayers receiving the credit cannot reassign it to a third taxpayer, and may claim it only during the year in which the business would have been eligible to claim it.

NEXT GENERATION MANUFACTURING COMPETITIVENESS PROGRAM

The act requires the economic and community development commissioner to establish, within available appropriations, a program to help small- and medium-sized manufacturers compete in the world economy. The program must continue current efforts to help these manufacturers adopt progressive manufacturing techniques and advanced technologies. It must also help them train their workers and identify new national and international markets and opportunities. Lastly, the program must create a center where groups of manufacturers can use computer simulators to design and develop products (i.e., virtual center).

BACKGROUND

Economic and Industry Cluster Initiative

Developed by the Governor's Council on Economic Competitiveness and Technology, the Industry Cluster Initiative joins together state officials, academic leaders, and business executives in identifying, developing, and implementing policies and programs that support the state's major business clusters—groups of industries that use similar technologies to create products or deliver services. The current clusters are aerospace, bioscience, metal manufacturing, maritime, software and information technology, plastics, and tourism.

Related Act

PA 05-143 requires $1 million from the proceeds of previously authorized Manufacturing Assistance Act bonds to help certain small- and medium-sized manufacturers adopt new production technologies and techniques. It targets manufacturers who are at risk of losing contracts with larger defense manufacturers for supplying parts and services.

PA 05-13—HB 6675
Education Committee

AN ACT CONCERNING TECHNICAL CHANGES TO EDUCATION GRANT STATUTES

SUMMARY: Public Act 04-254 extended the school readiness competitive grant program to towns that are among the 28 poorest in the state, but were not already considered priority school districts. This act extends to these towns the existing phase-out provisions that apply if districts become ineligible for the school readiness competitive grant. In such instances, the grants are reduced incrementally over a three-year period. The act also makes technical changes to the education statutes relating to special education, education equalization grants, improvement grants, and school readiness competitive grants.
EFFECTIVE DATE: Upon passage, except for the section on special education, which is effective July 1, 2005.

PA 05-104—sSB 1312
Education Committee
Public Health Committee

AN ACT CONCERNING FOOD ALLERGIES AND THE PREVENTION OF LIFE-THREATENING INCIDENTS IN SCHOOLS

SUMMARY: This act requires the State Department of Education (SDE), in conjunction with the Department of Public Health (DPH), to develop guidelines for managing students with life-threatening food allergies and make them available to boards of education by January 1, 2006. The guidelines must include:

1. education and training for school personnel on managing students with life-threatening food allergies, including training in the administration of medication by cartridge injector in accordance with existing law;
2. procedures for responding to life-threatening allergic reactions to food;
3. a process for developing individualized health care and allergy action plans for every student with a life-threatening food allergy; and
4. protocols to prevent exposure to food allergens.

By July 1, 2006, boards must implement a plan, based on the guidelines, for students with life-threatening food allergies enrolled in schools in their jurisdictions.
EFFECTIVE DATE: Upon passage

PA 05-117—sSB 1309 **(VETOED)**
Education Committee

AN ACT CONCERNING SCHOOL NUTRITION

SUMMARY: This act requires students in full-day kindergarten and grades one through five to be provided with the opportunity to engage in physical exercise for at least 20 minutes per full school day in addition to any physical education requirements. Prior law required boards of education to include a period of physical exercise in the regular school day but did not specify the duration. As under prior law, a planning and placement team may develop a different schedule for a child requiring special education services.

The act allows boards to establish wellness committees to monitor nutrition and physical activity policies required by federal law. It limits the beverages that may be offered in schools and requires boards to implement and enforce a State Department of Education (SDE)-published list of recommended foods that may be offered to students at schools.
EFFECTIVE DATE: July 1, 2005

WELLNESS COMMITTEE

Prior law allowed a board to establish a school district safety committee to, among other things, increase staff and student awareness of safety and health issues. The act eliminates a safety committee's duty to address health issues. Instead, it allows boards to establish school wellness committees to monitor and implement nutrition and physical activity policies required under the 2004 federal Child Nutrition and Women, Infants, and Children Reauthorization Act. This federal act requires every school district that participates in the federal school breakfast or lunch program to enact a wellness policy by the first day of the 2006-07 school year.

The wellness committees must make recommendations to boards of education about school wellness issues, including (1) using Connecticut-grown foods in school meals, (2) conducting school fundraisers with healthy food or non-food items, (3) establishing a nutrition education curriculum, and (4) promoting physical education and exercise.

The committee may consist of:

1. a school administrator,
2. a physical education teacher,
3. a teacher who does not teach physical education,
4. a school nurse,
5. the school district's food service director,
6. a local or regional board member,
7. a local pediatrician,

8. two parents of children enrolled in a school in the school district,
9. a middle school student, and
10. a high school student, among others.

BEVERAGE RESTRICTIONS

The act limits the beverages that boards of education may serve to students on school grounds from any source, including school stores, vending machines, cafeterias, and school- and non-school-sponsored fundraising activities. These are (1) water, (2) dairy and non-dairy milk, (3) 100% fruit or vegetable juice or a combination of the two, and (4) beverages that contain only water and fruit juice with no added natural or artificial sweeteners.

Additionally, starting one-half hour after the last lunch period, high schools may sell (1) sugar-free soft drinks and (2) electrolyte-replacement beverages that contain 42 grams or less of added sweetener per 20-ounce serving if the drinks do not constitute more than 20% each of the act's permitted beverage options.

FOOD RESTRICTIONS

The act requires SDE to publish a list of recommended pre-packaged foods and set nutritional guidelines for other foods. These may be the only foods from any source sold to students on school grounds. This requirement does not apply to beverages and foods served as part of the National School Lunch and School Breakfast programs. SDE must publish this list annually beginning January 1, 2006. Schools must implement the recommendations beginning August 15, 2006.

EXCEPTIONS TO FOOD AND BEVERAGE RESTRICTIONS

The act allows boards to permit schools to sell foods that are not on the recommended food list, once the requirement takes effect, if the sale is in connection with school-sponsored events occurring after the end of the regular school day or on the weekend; the sale occurs at the event location; and the food or beverages are not sold from a vending machine or school store. The act also authorizes boards of education to permit middle schools and high schools to sell beverages, other than those permitted by the act, under the same conditions.

Additionally, the act provides that it does not prohibit the off-campus sale of any food by students, teachers, or educational groups for fundraising activities.

PA 05-257—sHB 6948
Education Committee

AN ACT CONCERNING MINOR REVISIONS TO THE EDUCATION STATUTES

SUMMARY: This act expands requirements for the Department of Children and Families (DCF) commissioner to notify the superintendent of the employing school district when she finds, after investigation, reasonable cause to believe that a school employee holding State Board of Education-issued teaching credentials abused a child. It requires the commissioner to notify the superintendent (1) regardless of whether the child is a student in the school or school district where the employee works and (2) within five working days after making the finding. By law, the superintendent must suspend the employee upon receiving the notice and the records of the investigation, which the DCF commissioner must supply along with the notice.

The act also expressly requires local and regional boards of education that loan assistive devices to public school students to do so for free, and allows boards to prescribe rules and regulations for the care and use of the devices. The same requirements already apply to books, supplies, material, and equipment for school instructional needs. Under existing law and the act, an "assistive device" is a customized, modified, or off-the-shelf item, product system, or piece of equipment that people with disabilities can use to increase, maintain, or improve their functional capabilities.

EFFECTIVE DATE: January 1, 2006 for the changes in the DCF notice to school superintendents and July 1, 2005 for the assistive device provision.

PA 05-290—sHB 6678
Education Committee

AN ACT CONCERNING CERTIFICATION REQUIREMENTS FOR BILINGUAL EDUCATORS

SUMMARY: This act temporarily changes certification requirements for new bilingual education teachers. The changes affect both subject and language competency requirements. The changes remain in effect for three years, from July 1, 2005 to July 1, 2008. As of July 1, 2008, the previous requirements will once again apply.

The act also expressly bars school districts from continuing to provide bilingual education to students who fail to meet the state's English mastery standard after 30 months in a bilingual education program. The law already requires districts to limit participation in bilingual education programs to 30 months and to

provide language transition support services to those who have not mastered English at the end of that time. These services can include English as a Second Language, sheltered English, and English immersion programs; tutoring; and homework help. The act explicitly excludes bilingual education from these services.

EFFECTIVE DATE: July 1, 2005

SUBJECT REQUIREMENTS

Under prior law, those who applied for initial certification as bilingual education teachers had to qualify in both bilingual education and either elementary education, if they wished to be elementary-level bilingual education teachers, or the subject area they would teach, if they sought to be secondary-level bilingual education teachers. From July 1, 2005 to July 1, 2008, the act eliminates this dual certification requirement.

During the three-year period, for elementary-level bilingual education certification, the act requires applicants to be certified in either bilingual education or elementary education, and for secondary-level teachers, in either bilingual education or the subject they will teach. If certified in bilingual education, applicants must also pass the state's teacher competency test (Praxis II) in elementary education, for elementary-level teachers, or the subject they will teach, for secondary-level teachers. If they are certified in elementary education or a subject, they must also have completed six credit hours of State Board of Education-approved coursework in English as a second language. The act makes the elementary-level bilingual education certificate applicable to grades kindergarten to eight and the secondary-level certificate valid for grades seven to 12.

These new requirements expire on July 1, 2008.

LANGUAGE COMPETENCY REQUIREMENTS

Applicants for initial bilingual education teaching certificates must demonstrate their competency in both English and the other language. Under prior law, they demonstrated English competency by passing the written essential skills test required of all applicants for state teaching certificates (Praxis I). From July 1, 2005 to July 1, 2008, the act requires them to also pass an oral proficiency test in English.

Prior law required applicants to demonstrate competency in the other language by passing a test of comparable difficulty to Praxis I in the other language, if available. If no such test was available, applicants had to show competency by an alternative method certified by the State Department of Education. From July 1, 2005 to July 1, 2008, the act requires that the applicant demonstrate both oral and written competency in the other language.

The former statutory competency testing requirements in English and the other language resume on July 1, 2008.

PA 05-123—HB 6780
Energy and Technology Committee
Human Services Committee
Appropriations Committee

AN ACT CONCERNING LOW INCOME ENERGY ASSISTANCE PROGRAMS

SUMMARY: By law, the Department of Social Services must submit annually to the legislature an energy assistance program plan establishing guidelines for using federal Low Income Energy Assistance Program funds. This act requires that the plan include a design for basic grants that does not discriminate among eligible households based on the types of energy they use for heating. By law, the plan goes to the Appropriations, Energy and Technology, and Human Services committees for approval.
EFFECTIVE DATE: October 1, 2005

PA 05-204—HB 5921
Energy and Technology Committee
Human Services Committee
Legislative Management Committee
Government Administration and Elections Committee

AN ACT ESTABLISHING A LOW-INCOME ENERGY ADVISORY BOARD

SUMMARY: This act establishes the Low-Income Energy Advisory Board and specifies its members and duties. The board must:

1. advise and assist the Office of Policy and Management (OPM) and the Department of Social Services (DSS) in planning, developing, implementing, and coordinating energy assistance related programs and policies and low-income weatherization assistance programs and policies;
2. advise the Department of Public Utility Control (DPUC) on the impact of utility rates and policies; and
3. make recommendations to the General Assembly about legislation and plans subject to legislative approval to ensure affordable access to residential energy services for low-income state residents.

The OPM secretary or his designee serves as the chairperson of the board. The secretary must convene the board's first meeting by August 1, 2005. The secretary must provide notice of meetings to board members, provide space for such meetings, maintain minutes, and publish the board's reports.
EFFECTIVE DATE: Upon passage

MEMBERS

The board consists of the following individuals: the OPM secretary; the DSS commissioner; the executive director of the Commission on Aging; a person designated by each electric and gas company; the DPUC chairperson; the Office of Consumer Counsel; the executive directors of Operation Fuel, Infoline, and the Legal Assistance Resource Center of Connecticut; the director of the Connecticut Local Administrators of Social Services; the Connecticut president of American Association of Retired Persons; designees of the Norwich Public Utility and the Connecticut Petroleum Dealers Association; and a representative of the community action agencies administering energy assistance programs under contract with DSS, designated by the Connecticut Association for Community Action. The OPM secretary, DSS commissioner, and Consumer Counsel can be represented by their designees; the DPUC chairperson can be represented by another DPUC commissioner.

PA 05-224—HB 6590
Energy and Technology Committee
Judiciary Committee

AN ACT CONCERNING THE TRANSFER OF TITLE IN THE ACQUISITION OF A WATER COMPANY

SUMMARY: By law, the Department of Public Utility Control (DPUC) can order a water company to acquire another water company that is failing or has failed to comply with DPUC or Department of Public Health orders. This act requires the acquired company to properly execute and transfer to the acquiring company all documents needed to complete the title transfer within 60 days after the DPUC order. If it fails to do so, the acquiring company must notify DPUC. The requirement applies to all of the real and personal property subject to the acquisition order, including land, structures, and easements. Upon receiving the notice, DPUC must petition the Superior Court to enforce its order. These provisions do not affect any entity's rights to compensation.
EFFECTIVE DATE: Upon passage

PA 05-231—sSB 1097 **(VETOED)**
Energy and Technology Committee

AN ACT CONCERNING REGULATION OF TELECOMMUNICATIONS SERVICES

SUMMARY: By law, telecommunications services are classified as competitive, emerging competitive, and noncompetitive, with the classification affecting how a service is regulated. This act deems certain services offered by telephone companies (Verizon in parts of Greenwich, SBC elsewhere) or their affiliates to be competitive and therefore subject to less extensive regulation. But it precludes a telephone company from obtaining a waiver from a pricing standard with regard to these services before January 1, 2010. It modifies the factors the Department of Public Utility Control (DPUC) must consider in reclassifying other services.

Under prior law, DPUC had to order a telephone company to unbundle its network, under certain circumstances, to make its components available to the company's competitors. (Federal law has a similar provision.) The act exempts a company's hybrid fiber coaxial facilities or networks from unbundling unless specifically ordered by the Federal Communications Commission.

By law, DPUC can investigate any tariff and suspend a tariff during the investigation. The act specifies that the investigation can include a determination as to whether the tariff is predatory, deceptive, anti-competitive, or violates the pricing standard.

The law specifies the state's telecommunications goals. The act specifies that DPUC can enter into memoranda of understanding with third parties to foster these goals.

By law, DPUC must report to the legislature annually on the status of telecommunications competition and regulation. The act requires that the report describe the implementation of the act.
EFFECTIVE DATE: July 1, 2005

SERVICES DEEMED COMPETITIVE

The act deems the following to be competitive: (1) business and home office services offered by a telephone company and (2) services offered by these companies and their affiliates to residential customers who subscribe to two or more telephone company services, including basic local exchange services, vertical features (e.g., caller identification), and interstate toll service. Previously, these services were classified as non-competitive. The reclassification means that these services will be subject to less extensive regulation. Among other things, it will reduce the amount of notice that a telephone company will have to provide before changing the tariff for such services, which sets the rate that is charged for the service.

PRICING STANDARD

Telephone companies provide wholesale services to their retail competitors. For example, while a competitor may have its own long distance network, it may rely on the telephone company's local network to transport a call from a central office to a home or business. The law sets a floor on the rates that telephone companies can charge for their services that are determined to be competitive or emerging competitive. The floor is equal to (1) the rate the telephone company charges a competitor for the local network services that are noncompetitive or emerging competitive plus (2) the telephone company's incremental costs. For example, if a telephone company charges its competitors one cent per minute for providing local network services for business customers, the telephone company's total rate for a business customer cannot be less than this network charge plus the telephone company's added (incremental) cost in serving the customer. The act affects the first component of the floor by deeming certain services to be competitive, but it bars telephone companies from obtaining a waiver from this standard before January 1, 2010.

RECLASSIFICATION

The law establishes a process by which DPUC can reclassify a service provided by a telephone company or a certified telecommunications provider, upon petition or DPUC's own motion. Prior law required DPUC to consider eight criteria in determining whether to reclassify a service. The act modifies one of the criteria and eliminates three others.

By law, DPUC must consider the availability of functionally equivalent services in the relevant geographic area at competitive rates, terms, and conditions. The act specifies that these services include those offered by certified telecommunications providers, cell companies and other commercial mobile radio services providers, voice-over Internet protocol providers (e.g., Vonage), and other providers using alternative technologies.

The act eliminates the requirements that DPUC consider:

1. the financial viability of each of these providers;
2. the existence of market power that DPUC considers relevant, (other than barriers to firms entering and leaving the market, which

by law and under the act it must consider); and

3. the extent to which other telecommunications companies must rely on the service to provide their own services.

PA 05-241—sHB 5126
Energy and Technology Committee
Finance, Revenue and Bonding Committee
Appropriations Committee
Judiciary Committee
Legislative Management Committee

AN ACT CONCERNING CELLULAR MOBILE TELEPHONE DIRECTORIES AND CUSTOMER INQUIRIES AND COMPLAINTS REGARDING CELLULAR MOBILE TELEPHONE SERVICE

SUMMARY: This act bars cell phone and related companies from disclosing a customer's cell phone number, name, or address to another person for listing in a directory assistance database or for publication or listing in a directory unless the customer authorizes or the law requires the disclosure. It specifies how the authorization can be given and allows a customer to revoke it at any time. A cell phone or related company may not charge a fee or refuse to serve a customer who declines to give this authorization. The act bars anyone from distributing a directory containing information about a cell phone customer who has not provided the authorization. It makes violations of these provisions an unfair trade practice.

The act imposes several responsibilities on the Department of Public Utility Control (DPUC) and cell phone companies and resellers of cell phone services regarding cell phone complaints and inquiries. DPUC must carry out its responsibilities within available appropriations.

It requires cell phone companies to comply with DPUC orders and regulations. A company that fails to comply is subject to DPUC civil penalties of up to $10,000 per offense, with each violation and each day of a continuing violation considered a separate offense.

EFFECTIVE DATE: Upon passage for the disclosure provisions; October 1, 2005 for the provisions regarding cell phone complaints and inquiries

DISCLOSURE PROVISIONS

The disclosure provisions apply to cell phone companies, resellers of cell phone services, and sellers of various mobile services regulated by the Federal Communications Commission.

Under the act, a customer of one of these companies can authorize disclosure of his cell phone number, name, and address by responding to a separate question, either orally, in writing, or electronically. The company must keep a record or copy of the authorization for as long as the person is a customer.

The customer can revoke his authorization at any time and the company must comply with the revocation within 60 days.

CELL PHONE INQUIRIES AND COMPLAINTS

The act requires DPUC to receive inquiries and complaints from customers of cell phone companies and resellers of cell phone services. Complaints exclude those that have not been made to the company. DPUC must establish, by January 1, 2006, a toll-free telephone number and website where people can submit cell phone complaints and inquiries regarding activations, disputed bills, collections, deactivations, equipment problems, network trouble, and other service problems. It also must accept such complaints and inquiries by mail.

DPUC must prepare a report by March 1, 2007 and March 1, 2008 for the preceding calendar year on customer complaints in the areas described above. The report may include an analysis of the complaints and recommendations on how to address them and information DPUC considers relevant to the report's purposes, but cannot include information that may be an unfair trade practice. DPUC must post the report on its website and provide it, upon request, to the attorney general and the public.

By January 1, 2006, each company must notify its customers of the DPUC telephone number, website, and address for receiving inquiries and complaints. During the period January 1, 2006 through January 1, 2008, it must disclose this information to all new customers at the point of sale or contract.

CIVIL PENALTIES

The act subjects cell phone companies to DPUC's existing civil penalties if they fail to (1) comply with the act's service quality notification and reporting requirements, (2) report their intrastate gross revenue or pay their assessments, or (3) comply with DPUC orders or applicable utility laws. The penalty is a fine of up to $10,000 per offense, with each violation and each day of a violation considered a separate offense. The existing penalties apply to companies under DPUC's jurisdiction; a penalty of up to $40,000 per offense applies to violations of DPUC rate regulation laws. (Under federal law, cell phone companies are not subject to state rate regulation.)

BACKGROUND

Unfair Trade Practices

The law prohibits businesses from engaging in unfair and deceptive acts or practices. The Connecticut Unfair Trade Practice Act allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than $5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. The act also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to $5,000 for willful violations and $25,000 for violation of a restraining order.

PA 05-264—sHB 6729
Energy and Technology Committee
Appropriations Committee
Judiciary Committee

AN ACT CONCERNING OUTSIDE LEGAL COUNSEL TO REPRESENT THE OFFICE OF CONSUMER COUNSEL

SUMMARY: This act allows the Office of Consumer Counsel (OCC), which represents the interests of utility ratepayers, to participate in proceedings before federal agencies and federal courts on matters affecting utility services rendered or to be rendered in the state. The Department of Public Utility Control (DPUC) can already participate in these proceedings.

The act also allows the OCC to request that the attorney general retain outside legal counsel to participate but not lobby, as defined by federal law, on its behalf in proceedings before relevant federal agencies and appeals of these proceedings. The agencies are: the Federal Energy Regulatory Commission, U.S. Department of Energy, U.S. Nuclear Regulatory Commission, Securities and Exchange Commission, Federal Trade Commission, U.S. Department of Justice, and Federal Communications Commission. By law, DPUC can request the retention of outside counsel in proceedings before the first three of these agencies.

All reasonable and proper expenses of the outside legal counsel must be borne by the utility companies or other entities under DPUC's jurisdiction affected by the decisions of the proceedings. The costs must be paid when and in the manner OCC directs, and must be apportioned in proportion to the revenue of each affected entity as reported to the department for purposes of its assessments for the most recent period. The costs, including the costs of representation in appeals, cannot exceed $250,000 per year. The department must recognize the costs as proper business expenses under traditional utility ratemaking. (Some of the entities affected by this provision such as telephone companies are subject to alternative forms of rate regulation; others, such as electric generators, are not subject to rate regulation by the department.) By law similar provisions apply to the retention of outside legal counsel on the department's behalf.
EFFECTIVE DATE: October 1, 2005

BACKGROUND

Lobbying

Under federal law (2 USC § 1602), lobbying includes, among other things, communicating with a federal official on behalf of a client with regard to the (1) formulation, modification, or adoption of a law, regulation, or policy or (2) administration of a federal policy or program.

PA 05-18—HB 6414
Environment Committee

AN ACT CONCERNING DESIGNATION OF THE EIGHTMILE RIVER WATERSHED WITHIN THE NATIONAL WILD AND SCENIC RIVER SYSTEM

SUMMARY: This act declares it state policy that the portion of the Eightmile River Watershed being studied for designation as a national Wild and Scenic River be preserved according to the federal Wild and Scenic Rivers Act.

It requires the environmental protection commissioner to cooperate with federal, state, and local agencies to provide for such a designation and implement any management plan developed according to the federal act. Upon congressional designation of the Eightmile River as a Wild and Scenic River, the commissioner must notify the Environment Committee of any changes in the law required to preserve the river under the federal act. She must send a copy of this act to each member of the state's congressional delegation.
EFFECTIVE DATE: October 1, 2005

BACKGROUND

Eightmile River Watershed

The Eightmile River watershed is a 62-square-mile area with more than 160 miles of river and streams. Most of the watershed is located in East Haddam, Lyme, and Salem.

Wild and Scenic Rivers Act

Congress enacted the federal Wild and Scenic Rivers Act (P.L. 90-542) to protect free-flowing rivers with important scenic, natural, recreational, historic, cultural, or similar values. The federal act designates specific rivers for inclusion and prescribes the methods and standards by which additional rivers may be added. The Eightmile River study committee is comprised of state and local officials and representatives of conservation groups. The National Park Service provides staff support.

PA 05-76—sSB 1150
Environment Committee
Transportation Committee

AN ACT CONCERNING THE USE OF VESSELS REGISTERED WITH A MARINE DEALER'S REGISTRATION NUMBER AND THE REGULATION OF MOTORBOAT NOISE

SUMMARY: This act expands the circumstances under which marine dealers can operate, or direct their full-time employees to operate, a vessel with a marine dealer's registration number to include (1) personal use, (2) obtaining or delivering repair parts, and (3) business-related use.

The act adds the term "muffler system" to laws regarding motorboat mufflers. It specifies what is meant by muffler and muffler system and requires them to enable motorboats to operate within compliance of noise levels the law sets. It requires the Department of Environmental Protection (DEP) commissioner to allow the installation and operation of muffler system cutouts, bypasses, or similar devices that, to her satisfaction, operate in accordance with the law.

The act makes conforming changes.
EFFECTIVE DATE: Upon passage

MUFFLERS AND MUFFLERS SYSTEM

Prior law required every motorboat to have a muffling device. The act specifies that every motorboat must have a muffler or muffler system. By law, mufflers must enable a motorboat to operate in compliance with noise levels the law sets. The act applies prior law's definition of muffler, a sound suppression device or system installed to abate the sound of exhaust gases emitted from an internal combustion engine, to mufflers or muffler systems and further specifies that they cause the engine to operate in compliance with legal noise levels. Under the act, "muffler system" includes an underwater through-the-propeller-hub exhaust outlet system.

By law, it is illegal to operate or allow the operation of a motorboat on state waters if it is equipped with a muffler cutout, bypass, or similar device that prevents the proper operation, or diminishes the operating capacity, of the muffler. The act adds muffler systems and prohibits operation of a motorboat with any modified muffler or muffler system in violation of noise levels set by law. The act requires the DEP commissioner to allow the installation and operation of muffler system cutouts, bypasses, or similar devices that have been demonstrated to her satisfaction to operate in accordance with the law.

The act prohibits removing a muffler or muffler system from a motorboat or altering it, or the sale of a motorboat without a muffler or muffler system, if doing so causes the boat not to comply with legal noise levels. Prior law did not include "muffler system."

BACKGROUND

Motorboat Noise Levels

DEP has determined acceptable motorboat noise or decibel (dB(A)) levels based on the American Society of Automotive Engineers' national standards.

The noise level for a moving motorboat cannot exceed 75 dB(A). Stationary motorboat noise cannot exceed:

1. 90 dB(A), for engines manufactured before January 1, 1993;
2. 88 dB(A), for engines manufactured on or after January 1, 1993; and
3. these allowable noise levels when the boat has more than one engine, which must operate simultaneously when tested (CGS §§ 15-129c and d).

Violators are subject to a fine between $100 and $500.

PA 05-90—SB 795
Environment Committee
Judiciary Committee
Finance, Revenue and Bonding Committee

AN ACT CONCERNING THIRD-PARTY LIABILITY FOR CONTAMINATED PROPERTY

SUMMARY: This act relieves a property owner of liability, except to a state or the federal government, for costs or damages resulting from pollution that occurred or existed before he took title to the property, if (1) the Department of Environmental Protection (DEP) commissioner determines that the owner did not pollute state waters, or create any other pollution or source of pollution, (2) the owner is not affiliated with the person responsible for the pollution, and (3) the commissioner has approved pollution investigation and remediation reports.

The act requires a property owner to send to adjoining landowners (1) notice he is going to investigate or remediate his property and (2) the investigation and remediation reports.

It specifies when an owner may be found liable for pollution and imposes a civil penalty on a property owner affiliated with a person responsible for polluting his property.

An innocent landowner who complies with the act cannot be held liable to the state for costs or damages that exceed what he would be liable for under a lien imposed against his property. These provisions are in addition to the protections already provided to innocent landowners.

EFFECTIVE DATE: October 1, 2005

RELIEF FROM LIABILITY

The act relieves a property owner of liability for costs and damages, except to any state or the federal government, resulting from pollution that occurred or existed before he took title, if:

1. the commissioner has determined that the owner did not create a condition or facility at or on the property that could reasonably be expected to pollute state waters, and the owner is not responsible for creating any other pollution or source of pollution on the property;
2. the owner is not related to the person responsible for creating the pollution or source of pollution either through family ties or a contractual, corporate, or financial relationship, other than that by which the owner's interest in the property was conveyed or financed; and
3. the commissioner has given written approval to (a) an investigation report about such pollution, conducted by a licensed environmental professional (LEP) according to prevailing standards and guidelines, and (b) the LEP's final remedial action report showing the site was properly remediated.

NOTIFICATION OF ADJOINING PROPERTY OWNERS

The act requires a property owner to send adjoining property owners, by certified mail, (1) notice that he is going to investigate or remediate his property and (2) the LEP's investigation and final remedial action reports.

Under the act, an owner found to be affiliated with someone responsible for polluting his property faces a civil penalty of $100,000 or the cost of remediation, whichever is greater.

INSTANCES WHERE AN OWNER IS LIABLE

Under the act, an owner is still liable if:

1. he failed to comply with the terms of an environmental land use restriction or the conditions of a variance the DEP commissioner approved;
2. the commissioner determines that the owner provided false or misleading information, or otherwise failed to comply with the act; or
3. the pollution occurred after the owner took title to the property.

BACKGROUND

Innocent Landowner

By law, an innocent landowner is someone who owns land on which a spill or discharge occurred if the spill is caused solely by:

1. an act of God;
2. an act of war; or
3. an act or omission of a third party, other than an employee, lessee, or agent of the landowner, or someone with a contractual relationship with the landowner, unless the landlord had reason to know of the spill and failed to take reasonable steps to prevent it.

An innocent landowner also can be someone who acquires land after contamination has occurred, if he is not responsible for the pollution, and he (1) at the time he acquired the property, did not know about the contamination and inquired into previous uses of the property consistent with good commercial or customary practice, (2) acquired the property by inheritance or bequest, or (3) acquired the property interest as executor or administrator of a decedent's estate.

PA 05-124—sHB 6783
Environment Committee
Planning and Development Committee
Finance, Revenue and Bonding Committee
Judiciary Committee

AN ACT CONCERNING THE PRESERVATION AND USE OF AGRICULTURAL LANDS AND CONSERVATION AND PRESERVATION RESTRICTIONS

SUMMARY: This act prohibits anyone from filing a permit application with a state or local land use agency, local building official, or health director relating to property that is subject to a conservation or preservation restriction unless the applicant shows that he provided written notice of the application to the restriction holder at least 60 days before filing the application. It creates a process for (1) allowing permit work, (2) disapproving the permit if the restriction holder proves the work does not comply with the restriction, and (3) reversing permit approval when an applicant fails to provide notice.

It extends, from seven to 10 years, the validity of the Agriculture Department permit allowing people to farm or plant a garden on vacant state land. The act splits the permit fees for agricultural uses equally between the department and the state agency responsible for the land. Under prior law, the agency received the entire fee. (There is no fee for gardening permits.)

The act allows the commissioner to enter into joint ownership agreements with 501(c)(3) nonprofit organizations to acquire the development rights to qualified agricultural land. He may do this if the nonprofit's mission is the permanent protection of agricultural land for continued agricultural use. By law, the commissioner may issue a letter of intent requesting the assistance of a nonprofit organization to purchase development rights and the nonprofit may sell the department the development rights for the land it acquired.

The act allows the commissioner to incorporate deed requirements in accordance with the federal Farm and Ranch Lands Protection Program when he acquires the development rights of any agricultural lands (7 CFR § 1491.1, *et seq*.).

The act specifies that the attorney general may bring an action in Superior Court to enforce the public interest in conservation and preservation restrictions.

It also makes technical changes.

EFFECTIVE DATE: October 1, 2005, except the provision concerning the attorney general is effective July 1, 2005.

NOTICE OF INTENTION TO CHANGE THE USE OF RESTRICTED LAND

The act prohibits anyone from filing a permit application relating to property subject to a conservation or preservation restriction unless he shows that he provided written notice of the application to the restriction holder at least 60 days before applying. Notice must be sent by certified mail, return receipt requested. In place of the notice, the applicant may submit a letter from the restriction holder or from the holder's authorized agent, verifying that the application complies with the restriction terms. The filing requirements do not apply to permits for (1) interior work in an existing building or (2) exterior work that does not expand or alter the footprint of an existing building.

If the applicant has provided written notice, the restriction holder may provide proof to the state, local land use agency, local building official, or health director that granting the permit application will violate the restriction's terms. The agency, official, or director cannot grant the permit when the restriction holder provides such proof.

The restriction holder may, no later than 15 days after receiving the permit approval notice, file an appeal with the appropriate state or local agency or person. The agency, official, or director must reverse the permit approval upon finding that the requested land use violates the terms of the restriction.

Under the act, "state or local land use agency" includes a municipal planning commission, municipal

zoning commission, combined municipal planning and zoning commission, a municipal zoning board of appeals, municipal inland wetlands agency, a municipal historic district commission, or any state agency that issues permits for the construction or improvement of real property. Under farm and open space preservation programs, a restriction or an easement is placed in the town land record where the property is located and serves to notify any potential buyer that the land can be developed only for agricultural purposes or permanently held in its natural condition.

BACKGROUND

State Program for the Preservation of Agricultural Land

This program authorizes the agriculture department to purchase the development rights of existing farms. When the state makes this purchase, it gets a permanent easement that prohibits nonagricultural development of the land while allowing the owner to operate and manage the farm business. The program's goal is to conserve selected agricultural lands, pastures, woods, drainage areas, and open space areas for the benefit of the state and future generations.

PA 05-130—HB 5573
Environment Committee
Legislative Management Committee
Government Administration and Elections Committee

AN ACT CONCERNING THE MILK REGULATION BOARD AND A STUDY OF THE CONNECTICUT DAIRY INDUSTRY

SUMMARY: This act increases the number of appointed members on the Milk Regulation Board, from six to eight, by adding two members actively engaged in milk processing. By law, two of the other six members must be actively engaged in selling and distributing milk; two must be actively engaged in producing milk; and two must have no active or financial interest in producing milk. The governor appoints all eight members. By law, the public health commissioner, or his designee, and the agriculture commissioner are also board members.

The act requires the board to conduct a comprehensive study of the state's dairy industry and submit a report on it to the Environment Committee by January 1, 2006. The study must include the following: (1) milk production cost; (2) state dairy farmers' ability to meet milk supply demand; (3) regional milk price equity; and (4) milk supply and price issues relating to dairy farmers, consumers, processors, and retailers. The commissioner must adopt regulations, in consultation with the board, based on the report's recommendations.

The act also makes a technical change.

EFFECTIVE DATE: July 1, 2005

PA 05-133—sHB 6760
Environment Committee
Judiciary Committee

AN ACT CONCERNING BOATING SAFETY

SUMMARY: This act establishes criminal penalties for operating a vessel on state waters when (1) the required safe boating or personal watercraft operation certificate has been revoked, suspended, or refused or (2) the vessel's registration has been suspended or revoked. It imposes the same penalties on anyone who refuses to stop certain vessels when directed to do so by a law enforcement officer. The act also makes other changes in boating laws.

The act's penalties are greater for operating a vessel on state waters when the operator's certificate or right to operate has been (1) refused, suspended, or revoked for operating under the influence of drugs or alcohol, or with an elevated blood alcohol content, or (2) suspended or revoked for 2nd or 3rd degree reckless operation while under the influence. In these situations, minimum prison time cannot be waived without mitigating circumstances.

The act makes refusal to stop a vessel for an officer a (1) class A misdemeanor for a first offense and (2) class D felony for repeat offenses or for injuring or killing someone while trying to elude such an officer (see Table on Penalties).

By law, the court may suspend for up to two years the right of anyone to operate any vessel on state waters who is convicted of 1st or 2nd degree reckless boating while under the influence. The act extends this authority to cases involving people convicted of boating while under the influence or who refuse to stop for a law enforcement officer.

The act also requires anyone whose certificate was suspended or revoked for (1) boating under the influence, (2) 1st or 2nd degree reckless boating under the influence, or (3) refusing to stop for an officer to return his certificate to the Department of Environmental Protection (DEP) commissioner no later than two business days after the suspension or revocation takes effect. If the violator fails to do this, the commissioner must direct a conservation law enforcement officer to secure possession of the certificate and return it to her office. The act makes failing to return the certificate an infraction (see Table on Penalties).

It specifies that anyone in a boating accident must notify the law enforcement agency having jurisdiction and makes technical and conforming changes.
EFFECTIVE DATE: October 1, 2005

OPERATING VESSEL WITHOUT A VALID CERTIFICATE OR REGISTRATION

Suspended, Revoked, or Refused Certificate

By law, to operate certain vessels on state waters, owners must have a safe boating certificate and hold a valid (1) certificate of number from Connecticut, another state, or the U.S. government that is displayed on each side of the vessel or (2) marine document issued by the U.S. Coast Guard. Anyone operating a personal watercraft, such as a Jet-Ski, must carry a certificate of personal watercraft operation. By law, anyone violating safe boating certificate requirements is subject to a fine between $60 and $250 for each violation.

The act expressly prohibits anyone (1) refused a DEP safe boating certificate or certificate of personal watercraft operation or (2) whose certificate or right to operate a vessel in the state has been suspended or revoked from operating any vessel during the period he does not have the required valid certificate. Under the act, violators are subject to a fine between $150 and $250 or imprisoned up to 90 days, or both for the first offense. For any subsequent offense, they are subject to a fine between $200 and $600, imprisonment for up to one year, or both.

Suspended or Revoked Registration

Connecticut law requires that all boats with motors, regardless of size, and sailboats 19.5 feet or longer (powered only by sail), be registered with the Department of Motor Vehicles and numbered before launching.

The act expressly prohibits anyone from operating any vessel on state waters when his registration has been suspended or revoked. Under the act, violators are subject to the same fines as for operating a boat without a certificate.

By law, operating a vessel without number and registration carries a $120 fine for a first offense; penalties increase and the vessel is subject to seizure pending proof of payment of numbering or registration fees for subsequent violations.

OPERATING WHILE CERTIFICATE IS SUSPENDED OR REVOKED

Suspension or Revocation for Operating Under the Influence or Refusing to Stop

Under the act, anyone who operates any vessel while his certificate or right to operate a vessel in Connecticut is suspended or revoked (1) for boating while under the influence of drugs or alcohol or both, or with an elevated blood alcohol content or (2) for refusing to stop for an authorized officer, must be fined between $500 and $1,000 and imprisoned for up to a year. If the court does not find any mitigating circumstances, 30 consecutive days of the sentence may not be suspended or reduced in any manner. The court must specifically state in writing the mitigating circumstances, or lack of them.

Suspension or Revocation for Reckless Operation Under the Influence

Under the act, anyone convicted of reckless 1st or 2nd degree operation of a vessel while under the influence of alcohol or drugs, or both and who operates a vessel while his certificate or right to operate a vessel in Connecticut is suspended or revoked, must be fined between $500 and $1,000 and imprisoned for up to one year. If the court does not find any mitigating circumstances, 30 consecutive days of the sentence imposed may not be suspended or reduced. The court must specifically state in writing any mitigating circumstances, or the absence of them. By law, the vessel is subject to impoundment.

The act eliminates the prior $200 fine for anyone who operates a vessel after losing operating privileges for 1st or 2nd degree reckless boating while under the influence.

By law, a court having jurisdiction over a violation for 1st or 2nd degree reckless boating while under the influence may prohibit the violator from operating any vessel on any state waters for up to two years. The act expands the court's ability to prohibit operation for up to two years to those who operate a vessel while their certificate is revoked or suspended for boating under the influence or for refusing to stop. The court must immediately transmit notice of a suspension to the environmental protection and motor vehicle commissioners.

REFUSING TO STOP

By law, anyone operating a vessel must stop it after an officer requests or signals him to do so. Anyone who fails to do so commits an infraction. Previously, if an officer in a law enforcement vessel used an audible signal device or flashing blue lights to signal the vessel operator to stop, and the operator maneuvers his vessel in disregard of the signal so as to (1) interfere with or endanger the operation of the law enforcement vessel or any other vessel, (2) endanger or cause damage to property or people, or (3) increase speed in an attempt

to escape or elude the officer, the fine is between $100 and $500 for a first offense and between $500 and $1,000 for subsequent offenses.

Under the act, anyone who operates his vessel in disregard of an officer's signal so as to (1) interfere with or endanger the operation of the law enforcement vessel or any other vessel, (2) endanger or cause damage to property or people, or (3) increase or maintain speed in an attempt to escape or elude the officer, is guilty of a class A misdemeanor (see Table on Penalties) for a first offense. But when such a violation causes another person's death or serious physical injury, the vessel operator is guilty of a class D felony (see Table on Penalties). Also, the operator's safe boating certificate, certificate of personal watercraft operation, or right to operate a vessel must be suspended for one year. The act defines "serious physical injury" as an injury that (1) creates a substantial risk of death or (2) causes serious disfigurement, serious impairment of health, or serious loss or impairment of the function of any bodily organ.

Any subsequent offense is also a class D felony. But if the operator causes the death of another person or injury to another person that requires medical attention, and had done so previously, he must serve one year of his sentence (i.e., the year cannot be suspended or reduced by the court). Additionally, his safe boating certificate, certificate of personal watercraft operation, or right to operate a vessel that requires a certificate must be suspended for between 18 and 24 months.

By law, proof of the registration number of the vessel is legally sufficient to establish a fact or a case in any prosecution that the owner was the operator. The DEP commissioner is generally responsible for overall enforcement coordination.

ACCIDENT NOTIFICATION

By law, anyone operating a vessel on state waters that is involved in an accident must immediately notify the nearest law enforcement agency if anyone (1) dies, (2) is injured and requires medical attention, or (3) disappears. If the operator is physically incapacitated, a passenger who is not incapacitated must notify the agency. The act specifies that the law enforcement agency is the nearest one having jurisdiction over the accident.

BACKGROUND

Blood Alcohol Content (BAC)

By law, an elevated BAC is (1) .02% if the person is under age 21 and (2) .08% for anyone else. A boater is considered to have implicitly consented to tests to determine his BAC when operating in state and federal waters. The law requires an officer who arrests a person for boating while under the influence or related crimes to revoke temporarily that person's authority to engage in boating if he refuses to submit to the test or has an elevated BAC.

Safe Boating Certificate

By law, a person who lives, owns real property, or owns a vessel in the state generally must have a safe boating certificate or a U.S. Coast Guard operator license to operate a boat required to be numbered or registered. A person can obtain a certificate by (1) completing a DEP-approved safe boating course or (2) passing an equivalency examination administered by the DEP commissioner that tests his knowledge of safe boating. Anyone who fails to obtain a certificate or to carry it on board is subject to a fine of between $60 and $250.

PA 05-137—sSB 637
Environment Committee
Government Administration and Elections Committee

AN ACT CONCERNING A BI-STATE LONG ISLAND SOUND COMMITTEE

SUMMARY: This act replaces the Connecticut-New York Bi-State Long Island Sound Marine Resources Committee with the Bi-State Long Island Sound Committee. It requires the new committee to recommend legislation to avoid, minimize, and mitigate the impact of the proposed industrialization and private use of the Sound's public trust resources. Like the Sound Committee, the new committee has 18 members, nine each from Connecticut and New York, appointed by the same appointing authorities.
EFFECTIVE DATE: Upon enactment by New York state of similar legislation.

BI-STATE LONG ISLAND SOUND COMMITTEE

Charge

The committee must provide for maximum public enjoyment and protect the natural resources of the Sound, which, the act states, is threatened by proposed industrialization and negative uses, including proposed private projects. It must make specific recommendations for maintaining, protecting, and restoring natural resources. Under prior law, the Marine Resources Committee was charged with providing for the maximum enhancement of the Sound's marine resources, and making recommendations to maintain, protect, and restore those resources.

Under prior law, the Marine Resources Committee was required to coordinate and recommend standardization of all laws relating to the Sound. The act authorizes, but does not require, the Sound Committee to coordinate and recommend such standardization. The Sound Committee must consider the adverse impact any action proposed in the Sound may have upon the Sound's public trust resources, rather than its marine resources.

Under the act, the Sound's "public trust resources" include:

1. the public's historic and broad boating use of the Sound and its right to enjoy and explore the Sound's natural beauty by boat,
2. the right of the public and of commercial fishermen to harvest fish and shellfish,
3. the protection of natural resources that the state holds in trust for the public,
4. the stewardship and restoration of sites along the coastline that contain important habitat or natural resources, and
5. the protection of sites that provide opportunities for public enjoyment of the Sound.

Annual Report

The act requires the Sound Committee to submit reports to the governors and legislatures of New York and Connecticut annually by February 15. It must recommend laws regarding proposed industrialization and private use of the Sound's public trust resources. In making its recommendations, the committee must seek to avoid, minimize, and mitigate the impact of such industrialization and private uses.

Membership

The committee must consist of nine Connecticut and nine New York residents. The Connecticut representatives include:

1. three senators, representing districts that include coastal municipalities, one each appointed by the Senate president pro tempore, majority leader, and minority leader;
2. three representatives, one each appointed by the House speaker, majority leader, and minority leader;
3. the governor or a designee;
4. the environmental protection commissioner, or a designee; and
5. the director of the coastal zone management program, or a designee.

Data Requests and Signs

By law, the Marine Resources Committee can request and receive any data it needs from state and local agencies or public authorities in New York and Connecticut. The act additionally authorizes the Sound Committee to request and receive necessary data from nonprofit organizations. It authorizes the Sound Committee, rather than the Marine Resources Committee, to solicit proposals from any interested and qualified parties to design uniform signs denoting coastal access to the Sound, and to make a recommendation about such signs to the governors and legislatures of the respective states.

BACKGROUND

Marine Resources Committee

The Marine Resources Committee was created in 1973, effective on New York's adoption of similar legislation. New York adopted legislation on September 1, 1988. According to the Connecticut Department of Environmental Protection, this committee has not met for several years.

PA 05-142—sSB 1294
Environment Committee
Public Health Committee
Planning and Development Committee
Energy and Technology Committee
Judiciary Committee

AN ACT CONCERNING THE MINIMUM WATER FLOW REGULATIONS

SUMMARY: The act requires the Department of Environmental Protection (DEP) commissioner to revise water flow regulations for all rivers and streams where a dam impounds or diverts the water flow. It expands the scope of these regulations to all such rivers and streams, rather than just those DEP has stocked with fish. She must revise the regulations by December 31, 2006.

Under prior law, the regulations had to (1) provide for stream and river ecology, aquatic life, wildlife, and public recreation, and (2) be consistent with the needs and requirements of public health, flood control, industry, public utilities, water supply, public safety, agriculture, and other lawful water uses. Under the act, the regulations must provide for such needs and requirements and be based, to the greatest extent possible, on natural variations in water flow and water levels and the best available science. It specifies that aquatic life means natural aquatic life.

The act exempts from the new regulations (1) any flow management plan in a resolution, agreement, or stipulated judgment to which the state, acting through the commissioner, is a party and (2) the management plan for the Lake Whitney Water Treatment plant. It also provides for special conditions and exemptions.

The act extends the commissioner's power to regulate dams to those owned and operated by municipalities, and subjects the municipalities to the new regulations. It requires the commissioner to order any town violating the regulations to comply with them according to a specific schedule, and authorizes her to ask the attorney general to take legal action against any municipality that subsequently fails to comply.

EFFECTIVE DATE: October 1, 2005

FLOW REGULATIONS

Prior law required the commissioner, by July 1, 1973, to set minimum flow standards for rivers and streams (1) where a dam or other structure impounds or diverts the flow and (2) that she stocks with fish. The act requires her to adopt new regulations for all impounded or diverted rivers and streams regardless of whether she stocks them, and expands the factors she must consider in doing so. It requires that flow regulations already in effect remain so until the commissioner adopts the new regulations. The act requires the new regulations to set flow standards generally, rather than just minimum flow standards.

The act requires that the commissioner base the flow regulations on the best available science. The best available science must include natural aquatic habitat; biota (plant and animal life); subregional basin boundaries; stratified drift areas; stream gages and flow data; the locations of registered, permitted, and proposed diversions and withdrawal data; the locations of dams or other structures and their releases; and other information needed to develop regulations or individual management plans.

The regulations must apply to all state river and stream systems, rather than only those the commissioner stocks. As under prior law, the regulations also must (1) preserve and protect the natural aquatic life contained within such waters, including fish that travel from salt water to fresh water to spawn; (2) preserve and protect the natural and stocked wildlife dependent on the water flow; and (3) promote and protect water use for public recreation.

The act replaces the prior law's notice and hearing requirements for adopting regulations with those of the Uniform Administrative Procedure Act.

Under prior law, the commissioner, in adopting the regulations, had to consult with the Public Health Department; Department of Public Utility Control; and any other agency, board, or commission with whom she found it advisable. The act requires her to consult with these groups and an advisory group she convenes. But it does not specify who must be in the advisory group.

SPECIAL CONDITIONS OR EXEMPTIONS

The act authorizes the commissioner to provide in the regulations for special conditions or exemptions for (1) extreme economic hardships or other circumstances, (2) agricultural diversions, (3) a water quality certification related to a Federal Energy Regulatory Commission (FERC) license, or (4) one needed to allow a public water system to meet its obligations under state regulations.

Under federal law, FERC licenses non-federal hydroelectric dams, and can order these dam owners to engage in mitigation efforts that affect stream flow. A public water system is a private, municipal, or regional utility providing water to 15 or more service connections or 25 or more people.

PA 05-160—HB 6771
Environment Committee
Planning and Development Committee
Finance, Revenue and Bonding Committee
Education Committee

AN ACT CONCERNING THE DEFINITION OF AGRICULTURAL OPERATIONS

SUMMARY: This act explicitly authorizes the agriculture commissioner to provide an advisory opinion on (1) what, by law, constitutes agriculture or farming and (2) the classification of land as farmland or open space under the 490 program. He may issue these opinions when any municipality, state agency, tax assessor, or landowner requests it. The 490 program provides owners of farmland with tax relief by assessing it based on its current use, rather than its market value. It also provides this relief to people who own forest and open space land.

EFFECTIVE DATE: July 1, 2005

BACKGROUND

Definition of Agriculture

By law, agriculture and farming include cultivation of the soil, dairying, forestry, and raising or harvesting any agricultural or horticultural commodity. They also include:

1. raising, shearing, feeding, caring for, training, and managing livestock, including horses, bees, poultry, fur-bearing animals, and wildlife;

2. raising or harvesting of oysters, clams, mussels, other molluscan shellfish, or fish (aquaculture);
3. operating, managing, conserving, improving, or maintaining a farm and its buildings, tools, and equipment or salvaging timber or clearing land of brush or other debris left by a storm, as an incident to such operations;
4. producing or harvesting maple syrup, maple sugar, or any agricultural commodity, including lumber, as an incident to ordinary farming operations;
5. harvesting mushrooms;
6. hatching poultry;
7. constructing, operating, or maintaining ditches, canals, reservoirs, or waterways used exclusively for farming purposes; and
8. handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage, market, or a carrier for transportation to market, or for direct sale (a) any agricultural or horticultural commodity as an incident to ordinary farming operations, or (b) in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market or direct sale (CGS § 1-1).

PA 05-164—HB 5586
Environment Committee

AN ACT CONCERNING CUSTOM SLAUGHTERHOUSES

SUMMARY: The act requires the agriculture commissioner to adopt regulations concerning custom facilities that slaughter livestock intended for the animal owners' personal consumption. It requires the regulations to include sanitation standards. It provides that the regulations do not apply to slaughter facilities licensed and inspected by the U.S. Department of Agriculture (USDA) under federal law.
EFFECTIVE DATE: October 1, 2005

REGULATIONS

The regulations must include sanitation standards for custom slaughter facilities and accessories used at the facilities (1) in the slaughter of animals, (2) to dress and clean the carcasses, (3) for holding and handling the carcasses, and (4) holding animals for custom slaughter. They must also include health requirements for animals for slaughter.

BACKGROUND

Livestock and Slaughterhouses

By law, the state Department of Agriculture monitors livestock health and regulates slaughtering methods. No animal may be slaughtered unless it is rendered insensible to pain or restrained by an approved method. The law requires that meat and poultry products sold in establishments in which food is stored, processed, prepared, offered for sale, or sold directly to a consumer be inspected for wholesomeness under an official regulatory program, such as the USDA's.

PA 05-174—sHB 6772
Environment Committee
Planning and Development Committee
Public Safety and Security Committee

AN ACT CONCERNING FLOOD MANAGEMENT AND THE STREAM CHANNEL ENCROACHMENT PROGRAM

SUMMARY: This act:
1. limits the Department of Environmental Protection's (DEP) authority to regulate certain state activities that affect natural or man-made storm drains to proposed state actions on state-controlled property;
2. eliminates a requirement that the DEP commissioner afford the opportunity for a public hearing in certain cases involving state agency activities in a floodplain, but requires a hearing if 25 people request it;
3. authorizes the commissioner to conditionally approve state agency (a) actions in a floodplain and (b) exemptions from the floodplain approval process;
4. permits certain operations and uses in a stream encroachment channel as of right; and
5. modifies the notification and comment process for general permits for minor activities within stream channel encroachment lines.

EFFECTIVE DATE: October 1, 2005

ACTIVITIES IN A FLOODPLAIN

By law, the DEP commissioner regulates nearly all state agency actions affecting floodplains and coordinates, analyzes, and monitors floodplain management activities of state and local agencies. The act limits the commissioner's ability to regulate proposed state actions, including those that affect natural or man-made storm drainage facilities, to those

located on property the commissioner determines is under state control.

Under the act, a proposed state action is (1) an individual activity or sequence of activities proposed by a state department, institution, or agency; (2) any state or federal grant or loan proposed to fund a project that affects land use; or (3) a proposed transfer of state-owned real property.

Approval Process

By law, a state agency can begin an activity within or affecting a floodplain if it submits certain information (a "certification") to the commissioner and obtains her approval. The act authorizes the commissioner to conditionally approve such a certification. She must do so no later than 90 days after receiving it.

Exemption Request

By law, a state agency can ask the commissioner to exempt it from the approval process. Under prior law, the commissioner had to notify the public of the hearing and provide the opportunity for a public hearing. Under the act, the commissioner only has to hold a public hearing if (1) she believes it will best serve the public interest, or (2) 25 people petition for one. She must publish notice of the hearing in a newspaper with a substantial circulation in the affected area at least 30 days before it takes place.

Under prior law, the commissioner could approve or deny a request for an exemption. The act allows her to conditionally approve an exemption. It specifies the notice required before the commissioner may approve, approve with conditions, or deny the exemption. At least 30 days before issuing such a decision, she must publish, at least once in a newspaper having a substantial circulation in the affected area, (1) the applicant's name, (2) the location and nature of the requested exemption, (3) her tentative decision, and (4) additional information she deems necessary.

The act requires that a comment period follow the public notice, during which time individuals and municipalities may submit written comments. The comment period apparently runs from the time notice is published until the commissioner makes a final decision approving, conditionally approving, or denying, the application.

STREAM CHANNEL ENCROACHMENT EXCEPTIONS

By law, the DEP commissioner must establish, along certain inland waterways or flood-prone areas, boundaries beyond which no one may place any encroachment or hindrance. The law exempts from this prohibition agricultural or farming uses (but not farm buildings and structures).

The act permits 15 other types of operations and uses within stream channel encroachment lines as of right. These are:

1. lawns, gardens, or vegetative plantings;
2. split rail fences;
3. open decks attached to residential structures, properly anchored according to the State Building Code (code);
4. construction of minor structures to an existing facility to provide handicapped accessibility according to code;
5. temporary greenhouses or hoophouses built without permanent foundations and anchored according to code;
6. placing fish habitat enhancement devices by, or approved by, the commissioner;
7. demolishing existing structures;
8. backfilling foundations;
9. flood-proofing existing structures, including elevating structures according to Federal Emergency Management Agency standards;
10. repairing or installing septic systems;
11. building irrigation systems;
12. installing water monitoring structures by, or approved by, the commissioner;
13. installing dry hydrants;
14. driveway and roadway repair and maintenance that does not raise the existing road grade more than three inches; and
15. constructing patios or walkways at grade.

GENERAL PERMITS FOR MINOR ACTIVITIES

By law, the commissioner may issue a general permit for certain minor activities in a stream channel if she makes certain findings. Under prior law, the permit required an applicant to send written notice to the DEP and certain local agencies and commissions at least 60 day before starting the activity. DEP had to make this notice available to the public. Prior law allowed any person, inland wetlands agency, planning and zoning commission, or conservation commission to submit written comments to the commissioner about the proposed activity no later than 25 days before it was to begin.

Under the act, the general permit may, but does not have to, require that the applicant give written notice. For any such notice that is required, the act eliminates the (1) requirement that it be sent at least 60 days before beginning the activity; (2) need for the applicant to notify DEP, and for DEP to notify the public; and (3) opportunity for any person, inland wetlands agency, planning and zoning commission, or conservation

commission to submit written comments to the commissioner.

PA 05-175—sHB 6907
Environment Committee
Finance, Revenue and Bonding Committee
Public Health Committee
Judiciary Committee

AN ACT CONCERNING THE REVISION AND MODERNIZATION OF MILK REGULATION STATUTES AND THE LICENSING OF POULTRY DEALERS

SUMMARY: This act (1) makes various changes to the regulation of raw milk, milk and milk products, and the Milk Regulation Board; (2) replaces the licensing procedure for, and regulation of, poultry dealers; and (3) eliminates a requirement that the Agriculture Commissioner adopt regulations governing the restraint or disposal of dogs that have bitten a person.

Specifically, the act requires the agriculture commissioner to regulate retail raw milk producers in much the same way as producers of milk that will be pasteurized. It changes fees for dealer licenses and makes them non-transferable, expands who must be licensed, and eliminates certain milk-related definitions and provisions that are covered by federal law or regulations. It also streamlines and updates several processes related to the sale and regulation of milk by (1) eliminating permit requirements for out-of-state milk producers; (2) eliminating dealer permits (while retaining dealer licenses); (3) adjusting milk testing requirements and required responses to drug-tainted milk; and (4) transferring Department of Public Health (DPH) oversight of milk laboratories to the Agriculture Department, conforming with current practice.

The act expands the entities dealing with poultry that must be licensed and establishes record keeping requirements. It allows the agriculture commissioner to adopt regulations, as under existing law, but includes several requirements they must incorporate, including the license fee, which is currently set by law at $15.

EFFECTIVE DATE: October 1, 2005 for the milk regulation provisions, January 1, 2006 for the poultry licensing provisions, and upon passage for the poultry regulation and dog bite provisions.

LICENSES AND PERMITS

Retail Raw Milk Producer Permit or Raw Milk Cheese Manufacturer Permit (§§ 4 & 9)

The act establishes registration and permit requirements for raw milk producers that are similar to those for pasteurized milk producers. The law already requires producers of milk for pasteurization to be licensed. The act requires those involved in retail raw milk production or manufacture of retail raw milk cheese to register with the agriculture commissioner when these milk or cheese products will be sold or used elsewhere. It requires the commissioner to establish a registration and permit fee, which they must renew annually by June 30. The commissioner may deny, suspend, or revoke them for cause.

The act defines a "retail raw milk producer" and a "retail raw milk cheese manufacturer" as any person, firm, corporation, or cooperative association engaged in the production, handling, distribution, or sale of retail raw milk or cheese manufactured from retail raw milk, as appropriate.

Under the act:

1. retail raw milk can be offered for sale only in its unprocessed state, with no ingredients added or removed;
2. only firms or people authorized as retail raw milk producers can manufacture cheese from unpasteurized milk on their premises; and
3. the Milk Regulation Board must adopt regulations establishing standards for (a) sanitation, production, sale, labeling, handling, and storage of retail raw milk and (b) the manufacture of raw milk cheeses. It may establish standards for other milk products.

Out-of-State Producers Permit Eliminated and the In-State Dairy Farm Permit or Milk Producer Permit (§§ 4, 8, & 15)

Prior law required anyone (1) out-of-state who produced milk for sale in the state to register with, and receive a permit from, the agriculture commissioner and (2) in-state who produced milk that would be used or disposed of in any form away from the premises on which it is produced to register with, and receive a permit from, the agriculture commissioner. The act eliminates the registration and permit requirement for out-of-state producers who sell directly or indirectly in Connecticut. But it allows the commissioner to revoke or refuse a dealer license for an out-of-state producer for failing to obtain a satisfactory milk sanitation compliance rating or not being in compliance with laws and regulations for selling milk and milk products interstate. By law, anyone who stores, manufactures, processes, sells, distributes, or handles milk in- or out-of-state must be licensed as a dealer (see below).

The act makes minor and conforming changes to the permits required for anyone producing milk for pasteurization in-state whose milk will be used or disposed of in any form away from the premises on which it is produced. The act designates the permits as

"Dairy Farm" or "Milk Producer" permits. The act requires annual renewal for those in-state who wish to remain permitted. As under prior law, permits can be suspended or revoked for cause.

The act defines "producer" as any person, firm, or corporation that operates a dairy farm that provides, sells, or offers milk to any dealer, person, handler, company, or cooperative for sale. The act defines (1) "community-marketing association" as a producer and (2) "producer-dealer" as a dealer who is also a producer. "Pasteurization" or "pasteurized" has the same meaning, as defined in federal law.

Milk Dealer; Yogurt, Dry Milk, and Cheese Manufacturers; and Milk Producer Licenses and Elimination of Milk Dealer Permits

Milk Dealers (§§ 4 & 15). The act defines a milk "dealer" as any person, firm, corporation, or cooperative association engaged in receiving, handling, purchasing, distributing, or selling fluid milk or milk products, that in whole or in part, are intended for bottling, manufacturing, processing, distribution, or sale in the state. The act specifies that "dealer" includes distributors, in addition to purchasers, receivers, and handlers of fluid milk or milk products for sale, but excludes producers who deliver milk to a dealer alone, retail raw milk producers, raw milk cheese manufacturers, or cooperative marketing associations.

By law, producers of milk for pasteurization must be licensed. The act expands those who must be licensed in the same manner as dealers.

Licensing of Sub-Dealers and Certain Manufacturers (§§ 15 & 16). Under the act, anyone doing business as a sub-dealer or cheese, dry milk, or yogurt manufacturer must be licensed by the agriculture commissioner. The act applies existing law's process for a dealer applicant to these entities. An entity must file at least 15 days before the day on which it will engage in business as a dealer. Licenses must be renewed by July 1 annually. The act increases the late filing fee for these entities and other licensees from $15 to $50. But it remains $15 for store licenses.

The act specifies that these licenses and dealer licenses are not transferable and are valid from July 1 to June 30 of the following year. During March, the commissioner must notify each milk dealer; sub-dealer; and cheese, dry milk, and yogurt manufacturer regarding their license renewal date and licensing reporting requirements.

Application fees must be returned to applicants whom the commissioner refuses to license. Otherwise, the fees are credited to the General Fund.

Under the act, a:

1. "sub-dealer" is any person, firm, or corporation who sells fluid milk or milk products in their finished form for human consumption within the state to stores, other dealers or sub-dealers, restaurants, manufacturers or any place where the final sale of such fluid products takes place in the same containers in which the sub-dealer purchased it from a dealer;
2. "cheese manufacturer" is anyone in the state who purchases, receives, or handles fluid milk to manufacture cheese;
3. "yogurt manufacturer" is a milk dealer who purchases, receives, or handles fluid milk to manufacture yogurt for sale or distribution in the state; and
4. "dry milk manufacturer" is anyone in the state who purchases, receives, or handles fluid or dried milk to manufacture or remanufacture dry milk to be included or blended with fluid milk or be reconstituted into a milk product.

Milk Dealer and Yogurt, Dry Milk, and Cheese Manufacturer License Fees and Waiver (§§ 18 & 19). The act bases license fees for all milk dealers, except stores, on the volume of milk and milk products sold in the state during the reporting period (April 1 to the following March 31). It eliminates the previous statutory formula and instead requires the commissioner to adopt a formula in regulations.

It also specifies that the annual license fee for each milk dealer, yogurt manufacturer, or sub-dealer is $50 (and requires sub-dealers with yearly sales over 100,000 quarts to pay a .021 cent increase per 100 quarts of milk sold during the reporting period). It sets the license fee for (1) cheese and dry milk manufacturers at $50 and (2) stores at $30. The commissioner must adopt regulations for this.

It allows the commissioner to waive any milk related fees for nonprofit organizations.

Refusal to Grant or Renew and Revocation (§ 17). The act expands the reasons for which the commissioner may refuse or revoke a dealer license, adding (1) if located out of the state, failing to obtain a satisfactory milk sanitation compliance rating from a certified state milk sanitation rating officer or complying with all laws and regulations of the state pertaining to health and sanitation in the production, processing, handling, or sale of milk and (2) failing to provide information required. By law, the commissioner may refuse to grant or renew a license, or may suspend, revoke, or refuse to transfer a license for misconduct, financial concerns, or unscrupulous trade practices.

License Surrender (§ 16). Under the act, a milk dealer or a yogurt, dry milk, and cheese manufacturer who fails to submit required information or fees within

a 60-day grace period after the end of the licensing period is deemed to have surrendered his license. The commissioner must notify him by certified mail that his license has expired and is deemed to have been surrendered. He may notify stores by first class mail. Each September, the commissioner must furnish all licensed dealers, by electronic or other means he deems acceptable, a listing of all known milk dealers and stores that have failed to renew a license or whose license has been revoked. The commissioner may occasionally update the listing.

The act prohibits the commissioner from issuing a license to anyone who has surrendered a license or whose license he revoked, until all past due license or late fees have been paid.

Dealer Permits Eliminated (§ 25). The act eliminates the requirement for licensed milk dealers to obtain a permit.

Licenses for Weighing, Sampling, or Testing Milk or Cream (§§ 6 & 7)

By law, the commissioner licenses people who pass the required exams for weighing, sampling, or testing milk or cream. Under prior law, the licenses were valid for one year, and holders could renew them for up to five years with a written application and a fee the commissioner established. The act makes the initial license valid for two years and requires renewal every two years.

Under prior law, the milk board adopted regulations for examining and licensing people who weigh, gauge, sample, or test milk or cream (1) that is to be purchased or sold on the basis of the butterfat content or the bacterial count or (2) to determine the butterfat content or bacterial count for (a) publication or advertising purposes or (b) use as the basis of reports to anyone other than their employers. The act instead requires the board to adopt regulations and examination and licensing procedures for those who test milk components (1) that are to be purchased or sold, (2) for the presence of antibiotics or other inhibitors and milk components for publication or advertising, or (3) to determine the butterfat content or bacterial count for use as the basis of report for payment to a producer. It eliminates reference to gaging.

By law, the commissioner may revoke a license for dishonesty, incompetence, inaccuracy, or other violation after notice to the license holder and a hearing.

MILK AND RAW MILK PRODUCER PERMIT AND TESTING FEES

Milk and Retail Raw Milk Producer Permittees and Test Fees

The act specifies that milk and retail raw milk producer permittees must pay a fee to cover the actual cost of bio-assays (experiments that use living things to test chemical toxicity) and chemical tests made on milk and milk products. By law, the fees must be deposited in the General Fund. Dairy plant and milk dealer permittees already pay such fees.

The act requires milk producer, retail raw milk producer, dairy plant, or milk dealer permittees to pay only the fees for samples taken to verify product safety when required routine testing shows the product to be in violation of the law. Under prior law, dairy plant or milk dealer permittees did not pay for more than four bio-assays for any type of milk, in any biennium, except when the samples failed to contain the advertised amount of vitamins and minerals.

The law allows the commissioner to suspend the license of a dairy plant or milk dealer who fails to pay the required fees within 60 days of being billed by the commissioner. The act expands this to allow him to suspend any license or permit issued to any dairy plant; milk or retail raw milk producer; cheese, yogurt, or dry milk manufacturer; or dealer who fails to pay the required fees within 60 days of being billed by the commissioner.

Drug Testing (§ 13)

Milk and Raw Milk Producer Testing for Drugs and Other Substances. The act adds retail raw milk producer permit holders to those producers whose milk is subject to testing. By law, the agriculture commissioner may require a milk producer permit holders to test their milk for the presence of drug residues or inhibitory substances before shipment, if they sold or distributed milk or a milk product (1) that was unsanitary or detrimental to health and (2) without having produced, cared for, or handled it as the law requires.

By law, any test must be approved by the commissioner and must be able to determine whether the milk complies with Food and Drug Administration (FDA) recommendations. Any test the commissioner approves must be rapid and economically feasible. The act specifies that the test must be performed at a facility or location and in a manner acceptable to the commissioner. Under the act, the results of any required test must be recorded by the person administering it and kept on file at the test location or at the processing plant for at least two years. Prior law required the test to be on file at the receiving or

processing plant for at least one year after administration.

The act specifies that anyone who receives, handles, processes, or packages milk or milk products must test each tank truck load for the presence of drug residues or other inhibitory substances when they receive the milk or milk product at the plant, before processing it. The act eliminates the requirement that any milk receiver, handler, distributor, or seller permit holder who produces milk and processes it at the same location test the milk or milk products before processing.

Raw Milk Testing Records (§ 13). The act requires each retail raw milk producer to maintain records, which must be available for the commissioner or his designee to inspect for each individual animal treated with a drug. The records must include the name of the drug or drugs; withdrawal time required for each drug; treatment dates; and, after treatment completion, the date the animal's milk is offered for sale.

Prohibitions and Required Action When Drug Violations Occur (§ 14). The act prohibits a licensed milk processor from accepting milk for processing that contains drug residues or other inhibitory substances at or above the tolerance levels recommended by the FDA. The commissioner must prohibit the sale or distribution of such milk, packaged milk, or milk products that contain drug residues or other inhibitory substances at or above these levels. The act specifies that the milk processor responsible for accepting for processing such milk must stop its sale or distribution and destroy it in a manner acceptable to the commissioner. The commissioner may:

1. suspend the milk processor's license until the drug residues or other inhibitory substances are below the tolerance levels;
2. initiate a product recall and cause the milk to be destroyed in a manner acceptable to him; or
3. in the event of a second violation within any 12-month period, revoke the milk processor's license and initiate action to assess a civil penalty.

If milk from a permitted milk or retail raw milk producer contains drug residues or other inhibitory substances at or above FDA-recommended tolerance levels, the commissioner must prohibit the sale or distribution of that milk. The producer must stop the sale of the milk and destroy it in a manner acceptable to the commissioner. The commissioner may undertake the three options listed above for processors.

Under prior law, the commissioner could suspend or revoke a milk processor's permit for a drug testing violation. Anyone who violated the law was assessed a civil penalty of at least $1,000 for a first violation and between $2,000 and $5,000 for any subsequent violation within the next 12 months.

Also under prior law, if milk from a dairy farm was found to contain drug residues or other inhibitory substances above FDA recommended levels, no milk dealer or handler could receive milk produced by that farm for two days. For a subsequent violation within a 12-month period, no milk dealer or handler could receive milk produced by that farm for four days. For a third violation in a 12-month period, no milk dealer or handler could receive milk produced by that farm for four days and the commissioner could (1) revoke or suspend the producer's permit or (2) initiate action to assess an administrative civil penalty.

TRANSFER OF MILK LABORATORY INSPECTIONS FROM DPH TO AGRICULTURE DEPARTMENT (§§ 1 & 2)

Prior law required a $1,000 fee, payable to DPH, to register or certify an "environmental laboratory," the definition of which included a facility or other area used to test dairy and dairy products. The act eliminates "dairy and dairy products" from the definition of environmental laboratory.

The act instead creates an operating permit fee, which the agriculture commissioner must establish, for a certified milk laboratory, milk screening laboratory, or component testing laboratory. Under the act a:

1. "certified milk laboratory" is a facility at which confirmatory and final findings are performed regarding biological, chemical, physical or other examination of milk and milk products, to provide information on the sanitary quality, identification of contaminants, or amount of any substance harmful to the public health;
2. "milk screening laboratory" is a facility used to detect the presence of antibiotic residues or other inhibitory substances in milk and milk products received by a milk dealer or producer dealer; and
3. "component testing laboratory" is any facility used for the chemical, physical or other testing of milk, where the test results are used in part or in whole as the basis for payment to a producer.

The act requires anyone operating a certified milk, milk screening, or milk component testing laboratory in the state to have an operating permit from the agriculture commissioner. The commissioner must provide the permit applications and establish a fee schedules, and permit holders must renew them by June 30 annually. When the commissioner receives an application or renewal application, he or his designees must make any inspections and investigations he deems necessary. He must deny a permit when, in his opinion, the laboratory's operation would be detrimental to the public health. The Milk Regulation Board may adopt

regulations for the permitting procedure. The act specifies that the permit requirement does not apply to a milk laboratory operated by a state agency, retail raw milk producers, or intrastate milk dealers.

Each registered certified milk, milk screening, or component testing laboratory must comply with the standards for milk laboratories set forth in the Grade-A Pasteurized Milk Ordinance Recommendations of the U.S. Public Health Service/FDA and is subject to periodic inspection by the commissioner, or his designee, including inspection of all records necessary for the permitting process. The commissioner may revoke or suspend a milk laboratory permit or impose a civil penalty on violators.

MILK REGULATION BOARD (§§ 4 & 5)

The act adds topics that the Milk Regulation Board must consider in exercising its authority, such as the methods recognized authorities recommend for the production, handling, and transportation of milk products. The act changes the board's responsibilities for milk "sell by" dates. It eliminates the board's option to change regulatory definitions and create certain regulations (although another public act requires the board to study similar issues).

Topics to Consider in Exercising Authority

The act requires the board, in exercising its authority, to consider the methods recognized authorities recommend for the production, handling, and transportation of milk products. It must also do this for fluid milk. Prior law defined milk products as milk, or the products derived from it, which conform to the appropriate legal standard or definition for the specific product as defined by law and regulations. The act eliminates this definition and references federal law's definition instead.

By law, the board must consider additional methods for ensuring the healthfulness and quality of all grades and types of milk, cream, and milk products. The act adds cheese and nonstandardized milk products. "Nonstandardized milk products" are modified milk-based products that contain milk and milk products and are intended to replace or be a substitute for standardized fluid milk products.

Under the act, the board must also consider the necessity (1) of ingredient and nutrition labeling requirements for pasteurized whole, low-fat, and skimmed milk and (2) for clearly distinguishing retail raw milk, cheeses, and nonstandardized milk products.

Last Sale Date (§ 12)

Under the act, the Milk Regulation Board must adopt regulations establishing standards and criteria for listing the last date on which milk containers and milk products may be offered for retail sale, including label type size, color, and wording, that is consistent with national standards. The board may incorporate by reference The Nutritional Education and Labeling Act (21 CFR § 101). The commissioner may impose a civil penalty on violators.

Prior law specified that each container of milk or cream, yogurt, cream cheese, cottage cheese, ricotta cheese, eggnog, or sour cream had to be clearly marked with the last date on which the item could be sold or offered for sale ("sell by" date). The last sale date for pasteurized milk or cream could not exceed 12 days from the day on which it was pasteurized unless the agriculture commissioner authorized it. The act eliminates the commissioner's ability to authorize "sell by" date extensions. The act repeals the statute this section amends, but PA 05-3, June Special Session, restores the provision as amended.

Eliminated Duties

The act eliminates the board's authority to issue regulations to establish standards on:

1. maintaining the economic status of Connecticut producers and supply and demand factors for inspecting farms and plants;
2. sanitation requirements and procedures recommended by the U.S. Department of Health and Human Services in the Grade A Pasteurized Milk Ordinance; and
3. other economic considerations applicable to farm and plant inspection, such as the quality and quantity of milk.

MISCELLANEOUS MILK PROVISIONS

Serving Milk in Public Eating Places (§ 11)

By law, only pasteurized milk and milk products in any form may be served to consumers in any hotel, restaurant, lunchroom, fountain, or public eating place. The act defines "public eating places" as places where meals are served to the general public, including public or private schools and colleges, hotels, restaurants, clubs, lunchrooms, bars, or fountains. It also specifies that the limitation applies to cafeterias, schools, and hospitals.

Vending Machines (§ 3)

The act specifies that the milk that is exempt from vending machine regulations under prior law is pasteurized milk.

POULTRY DEALERS (§ 21)

License Requirements

Prior law required any person, firm, or corporation engaged in buying live poultry in the state from any in-state poultry producer to apply annually for a license. (The Agriculture Department does not currently license people engaged in buying live poultry, however.) The act expands the requirement to all poultry dealers in the state, specifying that "dealer" means (1) a person, firm, or corporation engaged in the business of buying, receiving, selling, bartering, exchanging, negotiating, or soliciting the sale, resale, or exchange of live poultry or hatching eggs; (2) a business engaged in the transportation, transfer, or shipment of live poultry or hatching eggs; or (3) a producer who is a wholesaler, distributor, or hauler of live poultry or hatching eggs.

The act defines "hauler" as any person, firm, or corporation that transports live poultry or hatching eggs from place to place, including to a distributor, live bird market, or dealer. It specifies that a producer who transports live poultry directly to a live bird market, wholesaler, distributor, or other dealer is considered a hauler and subject to the act's licensing and regulatory requirements. It defines "live bird market" as a facility where live poultry or hatching eggs are gathered (1) for sale or to be slaughtered and dressed for sale to the public or restaurants or (2) to be sold live for any purpose. It defines a "producer" as any person, firm, or corporation engaged in breeding, raising, or keeping poultry for food production, hatching egg production, or for show or exhibition.

The act exempts any business that is only a producer from the licensing and regulatory requirements. It also exempts youth groups that are considered charitable organizations and tax exempt under federal law from paying the license fee.

Prior law allowed the agriculture commissioner to issue two types of licenses: limited and unlimited. The act eliminates these sub-types and the requirement that an unlimited license holder obtain a surety bond held by the commissioner.

As under prior law, each license is nontransferable and must be shown, upon request, to any person with whom the licensee conducts or proposes to conduct business. The act changes the effective period of a license from March 1 through the last day of February of the following year to July 1 to June 30 the following year.

By law, the commissioner may, at his sole discretion, refuse to issue a license if he deems it in the public's best interest. In refusing a license, the commissioner must consider several factors, including previous license revocations, suspensions, or violations of federal or state poultry law. The act allows the commissioner to revoke or suspend a poultry dealer's license, as under existing law, but substitutes the Uniform Administrative Procedure Act for this law's notice and hearing process.

Record Keeping

Under the act, all state-licensed poultry dealers must keep accounts and records that fully and clearly disclose all transactions related to the conduct of their business. These records must be made available at any time for inspection by the commissioner or his authorized agent to determine the origin and destination of any live poultry. Information relating to the dealer's general business disclosed in the course of an inspection that is not related to the immediate purpose of an inspection is confidential and not further disclosable, except as required by law.

Regulations

The commissioner may adopt regulations, which, if adopted, must include (1) sanitation standards for vehicles, crates, facilities, and other appurtenances used to transport and hold poultry or hatching eggs, both in transit and at any place where they are held to be sold or offered for sale; (2) the health requirements for poultry and hatching eggs, including required tests, vaccinations, or other methods used to prevent poultry disease; (3) the manner and form of records to be kept, including identification of the origin of poultry or hatching eggs, poultry health records, test results, or copies of sales records and dates; (4) individual bird and premise identification; and (5) the fee for a poultry dealer.

Violation and Penalty

The act replaces the criminal penalty with a civil penalty and increases the fine to a maximum of $2,500 for each violation and $250 for each day during which the violation continues after the violator receives the commissioner's final order assessing the penalty. Under prior law, violators were subject to a fine of $100 to $200 for a first offense and $200 to $500 for subsequent offenses, 10 to 30 days imprisonment, or both.

The act also eliminates the prohibition against transporting live poultry on any public highway from 9:00 p.m. to 5:00 a.m.

BACKGROUND

Related Acts

PA 05-130 requires the Milk Regulation Board to conduct a comprehensive study of the state's dairy industry and submit a report on it to the Environment Committee by January 1, 2006.

PA 05-176—sHB 6824
Environment Committee
Commerce Committee
Finance, Revenue and Bonding Committee

AN ACT CONCERNING THE DRY CLEANING ESTABLISHMENT REMEDIATION ACCOUNT

SUMMARY: This act (1) allows owners of property on which there are eligible dry cleaning businesses to apply for grants from the dry cleaning establishment remediation account; (2) sets a maximum grant of $300,000 per applicant and increases, from $50,000 to $300,000, the maximum grant an applicant can receive in a calendar year; (3) allows the account to be used to fund environmental site assessments; and (4) makes other related changes.
EFFECTIVE DATE: Upon passage

GRANT APPLICANTS

Under prior law, only an owner or operator of a dry cleaning business could apply to the Department of Economic and Community Development (DECD) for a grant to remediate spills of hazardous chemicals from the business. The act allows owners of property on which eligible dry cleaning businesses are located to apply for grants if the business has been in operation for at least one year before DECD approves the application and is still there when DECD releases the funds.

Under prior law, an applicant had to show that he had been doing business and maintained his principal office and place of business in the state for at least one year before he applied. Under the act, the applicant must instead show he has maintained his principal office and place of business at the site for at least one year before he submitted, or DECD approved, his application. As under existing law, the applicant must also show that the dry cleaning business uses, or used, tetrachlorethylene, Stoddard solvent, or other chemicals to clean clothes and other fabrics, and that he is not in arrears on any state or municipal taxes.

The act eliminates a requirement for the applicant to show DECD that he is unable to obtain financing from conventional sources on reasonable terms or in reasonable amounts.

GRANT AMOUNTS AND USES

The act sets a $300,000 cap per applicant. The applicant must satisfy the commissioner that the remediation services for which he seeks payment have been completed. It increases, from $50,000 to $300,000, the maximum amount an applicant may receive in a calendar year.

Under prior law, responsible parties had to pay the first $10,000 of clean-up costs, except that applicants who reported a release to the Department of Environmental Protection (DEP) commissioner before December 31, 1990 had to pay the first $20,000 of such costs. Under the act, all applicants must pay only the first $10,000 of such costs.

Under prior law, money from the remediation account could be used for grants to DEP to (1) investigate dry cleaning businesses and (2) provide potable water when necessary. The act allows grants to DEP to conduct environmental site assessments as well.

ANNUAL REPORT

The act requires the DECD commissioner to report annually to the Environment Committee on the account and grant program. It eliminates an obsolete requirement about the reporting date.

BACKGROUND

Dry Cleaning Establishment Remediation Account

The legislature created the account (PA 94-4, May Special Session) to provide grants to owners and operators of dry cleaning businesses for the containment and clean-up of pollution resulting from the discharge of chemicals or hazardous waste from their sites. The account is funded through a one percent surcharge on dry cleaning gross receipts.

PA 05-179—SB 794
Environment Committee
Government Administration and Elections Committee
Legislative Management Committee

AN ACT ESTABLISHING FREDERICK LAW OLMSTED DAY

SUMMARY: This act requires the governor to proclaim April 26 of each year “Frederick Law Olmsted Day” to celebrate his legacy as the founder of American landscape architecture. It requires that suitable exercises to commemorate the day be held in the State Capitol and other places the governor designates.
EFFECTIVE DATE: October 1, 2005

PA 05-203—sHB 5615
Environment Committee
Judiciary Committee
Transportation Committee

AN ACT CONCERNING MOTORBOAT NOISE AND MOTORBOAT SOUND LEVEL TESTS

SUMMARY: The act increases the fine for failing to submit one's motorboat to an on-site noise test from between $100 and $500 to between $350 and $550 for a first offense and between $450 and $650 for each subsequent offense.
EFFECTIVE DATE: July 1, 2005

BACKGROUND

Motor Boat Noise Level Enforcement

The law specifies the maximum noise levels at which motorboats may operate. Any officer authorized to enforce boating laws who has reason to believe that anyone is operating a motorboat in excess of the permitted noise level may request the operator to submit the motorboat to an on-site test. The operator must comply with the request. If the motorboat exceeds the permitted noise level, the officer may direct the operator to take immediate and reasonable measures to correct the violation, including returning the motorboat to a mooring and keeping it there until the violation is corrected or ceases.

Officers who conduct motorboat sound level tests must be qualified in motorboat noise testing by the Department of Environmental Protection.

The Superior Court Centralized Infractions Bureau had set the fine for exceeding the permitted noise level, which an enforcement officer determines when the operator submits to an on-site test, at $220. It had set the fine for refusing to submit to the test at $170.

PA 05-227—sHB 6773
Environment Committee
Judiciary Committee
Transportation Committee
Energy and Technology Committee

AN ACT CONCERNING CLEAN AIR STRATEGIES

SUMMARY: This act:

1. bans the installation or operation of outdoor wood-burning furnaces (furnace) that do not meet certain requirements and makes operating such furnaces an infraction;
2. eliminates a requirement that the Department of Environmental Protection (DEP) commissioner set emissions standards for carbon monoxide and mercury for power plants serving the state, whether located in Connecticut or elsewhere in North America; and
3. changes the circumstances under which DEP can implement such standards for other pollutants.

EFFECTIVE DATE: October 1, 2005, except for the provision concerning wood-burning furnaces, which takes effect upon passage.

OUTDOOR WOOD-BURNING FURNACES

Under the act, an outdoor wood-burning furnace is an accessory structure or appliance designed to (1) be located outside living space ordinarily used for human habitation and (2) transfer or provide heat, through liquid or other means, through the burning of wood or solid waste for heating (a) spaces other than where the furnace is located; (b) any other structure or appliance on the premises; or (c) domestic water, or water used in a swimming pool, hot tub, or Jacuzzi. The act excludes from this definition fire pits, wood-fired barbecues, or "chimineas" (decorative fireplaces).

The act prohibits anyone from building, installing, establishing, modifying, operating, or using a furnace until U.S. Environmental Protection Agency (EPA) regulations governing furnaces take effect. But it allows furnaces (1) built, modified, or in use before July 11, 2005 or (2) that:

1. are installed at least 200 feet from the nearest home not heated by the furnace;
2. have a chimney shorter than 55 feet but at least as tall as the roof peaks of homes (a) located within 500 feet of the furnace and (b) not heated by it;
3. burn only wood that has not been chemically treated; and
4. are installed and operated according to the manufacturer's written instructions, provided the instructions comply with the act.

Anyone who operates a furnace in violation of the act commits an infraction, punishable by a fine of up to $90. Each day of operation is considered a separate violation. The DEP commissioner must enforce the act. A town affected by a furnace's operation or potential operation also may enforce it.

EMISSION STANDARDS

By law, DEP had to adopt, by regulation, pollutant emission performance standards for electric generators supplying power to state end-use customers by January

1, 1999. Prior law required the performance standards to (1) be based on the fuel used to generate electricity and (2) apply to generation facilities located in North America. The standards apply to such pollutants as nitrogen oxides, sulfur oxides, carbon dioxide (CO_2), carbon monoxide, and mercury. Under prior law, the standards for a particular pollutant would take effect when such a standard is adopted by three states (1) taking part in the northeastern states' Ozone Transport Commission as of July 1, 1997 and (2) with a total population of at least 27 million.

The act modifies the requirements for the standards and requires the Department of Public Utility Control (DPUC) to investigate whether these standards will have a negative impact on electric reliability and rates. DPUC must complete its investigation by May 1, 2006. If the study does not find a negative impact, the DEP commissioner, in conjunction with DPUC, must adopt the standards the act requires, by regulation, by July 1, 2006.

The act requires the performance standards to apply to emissions caused by electricity generated anywhere in North America used to supply Connecticut end-users. It requires that the standards limit emissions to levels consistent with those permitted from technically similar generators in Connecticut. The act removes the requirement that the DEP commissioner set emission standards for carbon monoxide and mercury, but she must continue to establish the standards for limiting air pollutants that include nitrogen oxides, sulfur oxides, and CO_2. It permits DEP to implement a standard for a particular pollutant without waiting for other states to adopt one.

PA 05-252—sSB 916
Environment Committee
Public Health Committee
Education Committee

AN ACT CONCERNING PESTICIDES AT SCHOOLS AND DAY CARE FACILITIES

SUMMARY: Existing law restricts the use of pesticides generally on the (1) grounds of any school, other than a regional vocational agriculture center, and (2) buildings or grounds of child day care centers and group and family day care homes. This act specifically restricts the use of lawn care pesticides at (1) public and private preschools and elementary schools and (2) child day care centers and group day care homes. Under the act, a lawn care pesticide is a pesticide registered by the U.S. Environmental Protection Agency (EPA) and labeled according to the Federal Insecticide, Fungicide and Rodenticide Act for lawn, garden, and ornamental use.

EFFECTIVE DATE: October 1, 2005, except for the provisions affecting schools, which take effect January 1, 2006.

LAWN CARE PESTICIDE USE AT SCHOOLS

The act bans the application of lawn care pesticides at public and private preschools starting January 1, 2006.

It restricts the application of lawn care pesticides on the grounds of public or private elementary schools starting January 1, 2006, and completely prohibits their application starting July 1, 2008, except in emergencies. Between January 1, 2006 and July 1, 2008, lawn care pesticides may be applied on playing fields and playgrounds of these schools according to an integrated pest management (IPM) plan, which a local or regional school board may develop for all schools its controls. The IPM plan must be consistent with the model IPM plan developed by the Department of Environmental Protection (DEP).

The act allows an emergency application of a lawn care pesticide at a public or private preschool or elementary school to eliminate a threat to human health, as determined by the local health director, public health, or DEP commissioner; or school superintendent in the case of a public elementary school.

DAY CARE CENTERS AND HOMES

The act prohibits the application of lawn care pesticides on the grounds of any child day care center or group day care home except to eliminate an immediate threat to human health, including mosquitoes, ticks, and stinging insects. It specifically bans, even in emergency situations, the application of a restricted use pesticide as a lawn care pesticide on their grounds. A restricted use pesticide is one classified as such by the EPA. Child day care centers provide care to more than 12 children. Group day care homes provide care to between seven and 12 children.

DEFINITIONS

By law and under the act, pesticides are fungicides used on plants, insecticides, herbicides, or rodenticides, but not sanitizers, disinfectants, antimicrobial agents, or pesticide baits. Integrated pest management is the use of all available pest control techniques, including the judicious use of pesticides when warranted, to maintain a pest population at or below an acceptable level while decreasing the unnecessary use of pesticides.

BACKGROUND

Pesticide Application at Schools

By law, only a certified pesticide applicator may apply pesticide within any building or grounds of a school, other than a regional vocational agriculture center. But someone other than a certified applicator may apply a pesticide in an emergency to eliminate an immediate human health threat where it is impractical to obtain the services of a certified person. A restricted use pesticide cannot be used, even in an emergency.

Pesticide Application at Day Center Centers

The law prohibits anyone from applying pesticides in the building or on the grounds of any child day care center, group day care home, or family day care home (six or fewer children) during regular business hours, unless it must be applied during that time to eliminate an immediate human health threat. No restricted use pesticide may be used in such an emergency. No child may enter the day care center or home until it is safe to do so, as indicated by the provisions on the pesticide label.

PA 05-278—HB 6774 **(VETOED)**
Environment Committee
Government Administration and Elections Committee

AN ACT CONCERNING CONSERVATION LAW ENFORCEMENT

SUMMARY: This act exempts from the Freedom of Information Act's (FOIA) disclosure requirements e-mail messages sent to or by legislators and legislative employees.

Under prior law, the FOIA authorized state and local government agencies to keep confidential the home addresses of certain public employees, such as police officers, correction department employees, firefighters, judicial branch employees, current and former prosecutors and public defenders, and others.

The act requires, rather than authorizes, public agencies to keep the home addresses of their own officials and employees confidential, and expands the prohibition to the officials and employees of all public agencies, regardless of whether their home addresseses are listed on the public record of another agency.

The act requires, rather than authorizes, all public agencies to keep confidential the home address of any federal or state judge or magistrate. But the prohibition against disclosure apparently no longer applies to the home addresses of former prosecutors and public defenders.

The act does not exempt from disclosure home addresses (1) of elected officials or (2) listed on a grand list, tax delinquency list, elector registration or enrollment form, voting list, or any record the law requires be made public.

It extends, from 90 days to 18 months, the deadline by which the House of Representatives or Senate must deliver to the State Library for preservation and archiving documents, data, information, or other tangible materials prepared, received, owned, used, or retained in the course of any impeachment proceeding conducted under Article Ninth of the state constitution. As under prior law, (1) the deadline runs from the conclusion of the last-occurring inquiry, investigation, impeachment, trial, or other proceeding; (2) an electronic version of these materials must be provided to the House and Senate clerks; and (3) items exempt from disclosure under state or federal law are excluded. The act requires the State Library to keep confidential any portion of the documents, data, information, or other tangible materials the House has redacted for at least 10 years after it receives them.

EFFECTIVE DATE: Upon passage

BACKGROUND

Freedom of Information Act (FOIA)

The FOIA identifies the information held by public agencies that must be made available for public inspection and copying. This public information must be made available unless the law prohibits its disclosure.

PA 05-281—sSB 132
Environment Committee
Appropriations Committee

AN ACT CONCERNING THE IMPLEMENTATION OF A LOBSTER RESTORATION PROGRAM

SUMMARY: This act requires the Department of Environmental Protection (DEP) commissioner to establish a lobster restoration program. Under the program, the tails of mature female lobsters that licensed commercial fishermen land are marked with a V-shaped notch and then released in order to increase lobster egg production. The commissioner must adopt implementing regulations and may select a contractor to implement the program.

The act requires DEP to compensate, if funds become available, each commercial fisherman who (1) lands, has marked, and releases lobsters and (2) reports it as required by law. The compensation must equal the

average market value, which the commissioner determines.

To pay for the program, the act requires the commissioner to do whatever is necessary to apply for, qualify for, and accept any federal and state funds for lobster restoration or related acts, projects, programs, or activities. She must administer these funds in accordance with applicable federal or state law. She may enter into contracts with the federal government or any state government for using, maintaining, and repaying the funds.

EFFECTIVE DATE: Upon passage for the notching program and July 1, 2005 for the funding provisions.

LOBSTER RESTORATION PROGRAM

Contractor Selection, Duties, and Compensation

The act allows the DEP commissioner to select a contractor to implement the program. If she does so, the contractor's employees must accompany participating commercial fishermen on fishing trips and mark mature female lobsters tails. The act specifies that DEP is not responsible for training, insuring, or supervising the contractor's employees and that only they may notch the lobsters. It also specifies that (1) the contractor cannot employ the fishermen to mark lobsters on fishing trips during which they are participating in the program and (2) DEP must compensate the contractor on a per trip basis, not per lobster.

Participation and Reporting

Under the act, only state residents licensed for commercial fishing by DEP can participate in the program. Each participant must be selected based on the area fished, the seasonal nature of the fishing, and the volume he landed before applying to participate in the program.

The act requires fishermen and contractor employees to sign a statement certifying the number of lobsters landed, marked, and released as part of the program for each trip. They must collect and submit to DEP all information it deems necessary to verify compliance with the program.

The act requires that all lobsters landed, marked, and released under the program be allocated to the fishermen as catch for any other state or federal lobster management program.

PA 05-285—sSB 1215
Environment Committee
Commerce Committee
Finance, Revenue and Bonding Committee
Appropriations Committee

AN ACT CONCERNING THE SPECIAL CONTAMINATED PROPERTY REMEDIATION AND INSURANCE FUND AND OPEN SPACE AND ECONOMIC DEVELOPMENT IN THE CITY OF SHELTON

SUMMARY: This act expands the purposes for which Special Contaminated Property Remediation and Insurance Fund (SCPRIF) loans can be used. Under prior law, SCPRIF provided loans to towns, businesses, and developers only to assess sites and demolish structures in preparation for remediation and development. The act also permits these entities to use the loans to remediate contaminated property. It allows the Department of Economic and Community Development (DECD) commissioner to extend the periods for repaying these loans.

The act eliminates the SCPRIF advisory board's authority to approve loans and DECD's administrative costs, thus making it advisory only. It also eliminates the requirements (1) that towns in which property was remediated pay a portion of the property tax revenue from it into SCPRIF and (2) that DECD report information about the SCPRIF program to the Environment Committee.

The act requires the DECD commissioner to revise the assistance agreement it has with the Shelton Economic Development Corporation, so that:

1. the parcel of land identified in Phase I of the agreement is designated for open space purposes,
2. the parcel of land identified in Phase II is designated for economic development, and
3. the state, Shelton, and their agents and assigns are held harmless with respect to the designations.

It also makes technical and conforming changes.

EFFECTIVE DATE: Upon passage

SCPRIF

Loan Repayments

By law, a borrower must repay DECD on a schedule the DECD commissioner deems appropriate. But the borrower must repay the principal when, as the commissioner determines, (1) the portion of the property subject to the evaluation or demolition is sold or leased, (2) the municipality sells or releases liens on the property, or (3) the Department of Environmental

Protection commissioner approves the final remedial action report. The act additionally allows the commissioner to spread repayment – principal and interest – over a period of up to five years from any of these events.

Advisory Board

The act eliminates the requirement that the SCPRIF advisory board (1) approve loans and administrative costs for the program and (2) review applications and make recommendations on them to DECD. It shifts authority to review applicants' credit history and other information from the board to the DECD commissioner. It also eliminates the requirement that DECD consult with the board to establish program criteria. The act, however, requires the board to annually advise DECD on the progress of the fund. By law, the board's seven members are appointed by the legislature and governor.

Reporting

The act also eliminates the requirement that DECD report to the Environment Committee on the number of applications received, the number and amount of loans made the preceding year, and other information. (PA 05-191 consolidates this and many other DECD reports into one annual report, which DECD must submit to the legislature February 1 annually.)

Tax Payment to SCPRIF

The act terminates, upon its passage, rather than January 1, 2006, as scheduled under prior law, the requirement that municipalities contribute part of the property taxes to the SCPRIF on certain remediated sites for five years after a final remediation action report.

PA 05-95—SB 1229
Finance, Revenue and Bonding Committee

AN ACT CONCERNING PROMPT PAYMENT PROCEDURES

SUMMARY: This act changes the interest rate on late payments to vendors from state agencies from 1% per month to the monthly effective yield for the state's Short Term Investment Fund (STIF). The change applies to late state payments on written contracts for public works, personal services, goods, services, equipment, and travel.

Under existing law, a state payment for goods or services is late if mailed or delivered (1) after the date specified in the contract or (2) if no date is specified, more than 45 days after the state receives either the goods or services or a properly completed claim for payment, whichever is later. A state payment of funds withheld under state or federal law is late if the agency does not mail or deliver a check or warrant for the correct amount on the date the applicable law allows the funds to be released.
EFFECTIVE DATE: October 1, 2005

BACKGROUND

Short Term Investment Fund

The state treasurer manages STIF, which is a money market fund in which the state's agencies, authorities, and political subdivisions can invest their operating cash.

PA 05-100—SB 1351
Finance, Revenue and Bonding Committee
Insurance and Real Estate Committee

AN ACT CONCERNING RETALIATORY LAWS AGAINST CONNECTICUT DOMICILED INSURERS

SUMMARY: When another state or foreign country imposes taxes; fees; fines; deposit requirements; or other obligations, restrictions, or prohibitions against Connecticut insurance companies doing business there that exceed those Connecticut imposes on their insurance companies operating here, Connecticut law imposes an equivalent retaliatory charge or restriction on the other jurisdiction's companies doing business in Connecticut.

This act invokes Connecticut's retaliatory law when another jurisdiction retaliates against Connecticut insurers because Connecticut imposes certain types of taxes, fees, or charges on that jurisdiction's insurers. These taxes, fees, or charges include real and personal property taxes based on property value; personal income taxes; premium taxes on special health care plans for previously uninsured small employers; agents' license fees; and special purpose assessments, including assessments for workers' compensation and the Insurance Guaranty Association Fund.
EFFECTIVE DATE: October 1, 2005

PA 05-116—sSB 1265
Finance, Revenue and Bonding Committee
Judiciary Committee

AN ACT CONCERNING PENALTIES FOR FAILURE TO REPORT LISTED TRANSACTIONS

SUMMARY: This act establishes new and enhanced state penalties to address tax avoidance through so-called "listed transactions." Listed transactions are tax shelters the Internal Revenue Service (IRS) specifically identifies as abusive, and any transactions similar to them. The act:

1. imposes a penalty on tax shelter promoters whose activities affect Connecticut tax returns and
2. establishes a separate, higher penalty for corporation and personal income tax underpayments ("deficiencies") attributable to a taxpayer's failure to disclose a listed transaction on his federal tax return as required by federal law.

The act also gives the Department of Revenue Services (DRS) more time to audit corporation and personal income tax returns and send tax deficiency assessment notices in certain situations.
EFFECTIVE DATE: Upon passage. The penalty on tax shelter promoters applies to any open tax period (i.e., any tax period for which a return is still subject to audit). The remaining provisions apply to income years starting on or after January 1, 2005. (PA 05-260 makes the increased penalty for taxpayers who fail to report listed transactions on their federal returns apply to any returns on which DRS starts an audit on or after January 1, 2006.)

PENALTY FOR ABUSIVE TAX SHELTER PROMOTERS

The act imposes a new penalty on tax shelter promoters who deliberately make material false statements in connection with organizing or selling abusive tax shelters listed by the IRS ("listed transactions"), if the activities affect Connecticut tax returns. The penalty is 50% of the gross income the

person derives or expects to derive from the activity. The false statement must relate to the allowability of any deduction, credit, income exclusion, or other tax benefit arising from participation in the listed transaction.

Federal law applies the same penalty for such activity (26 USC § 6700, as amended by P.L. 108-357, § 818). Under the act, the state penalty applies to anyone subject to the federal penalty, even if no federal penalty is imposed.

CORPORATION AND PERSONAL INCOME TAX DEFICIENCY PENALTIES

Federal law requires taxpayers to report their participation in listed transactions to the IRS on their federal corporation or income tax return. The act establishes a new penalty of 75% of DRS' tax deficiency assessment when any part of a tax underpayment is attributable to the taxpayer's failure to disclose a listed transaction on his federal return. Under prior law, the only penalties were (1) 10% of an assessment (or $50, if greater, for the corporation tax) for tax underpayments stemming from negligence or intentional disregard of state tax laws or regulations and (2) 25% of an assessment for underpayments due to fraud or intent to evade state tax laws or regulations.

CORPORATION TAX DEFICIENCY ASSESSMENTS

Audit and Tax Deficiency Assessment Deadline Extensions

The act extends the time DRS has to audit corporation tax filings and send notices of deficiency assessments in certain cases and eliminates time limits entirely in others. In doing so, it makes the corporation tax audit and deficiency assessment requirements more closely match similar provisions of the personal income tax.

Prior law imposed the same tax deficiency assessment deadline for all situations. For returns showing no operating loss, the deadline for mailing an assessment was three years after the return's due date or the date DRS receives it, whichever is later. For returns showing an operating loss, it was three years after the due date or receipt date, whichever is later, of the last return on which the loss carryover is fully utilized or deemed utilized.

The act maintains the three-year time limit for most situations but extends it to six years when a company (1) omits more than 25% of properly includable gross income, unless the return itself or an attached statement adequately discloses the nature and amount of the omission or (2) fails to disclose a listed transaction on its federal tax return. It eliminates any deadline when (1) a company fails to file a required return or amended return reflecting federal tax adjustments or (2) a tax deficiency results from fraud or intent to evade the corporation tax law or its regulations.

Deficiency Assessment Notice Timetable

The act eliminates a 30-day window between the time DRS discovered an error in a return and the time it had to notify the taxpayer. Instead, it requires DRS to mail a deficiency assessment notice when it discovers a deficiency. If no later than 60 days before the deadline for sending a deficiency assessment notice, the commissioner receives a written document signed by the taxpayer showing that the taxpayer owes additional taxes, the act extends the deficiency assessment notice deadline to 60 days from the date DRS receives the document.

The act specifies that, for purposes of determining deficiency assessment notice deadlines, a tax return filed before the final due date, excluding extensions, is considered filed on the due date.

PERSONAL INCOME TAX DEFICIENCY ASSESSMENTS

The act increases the time limit, from three to six years, for DRS to send an income tax deficiency assessment notice to a taxpayer who fails to disclose a listed transaction on his federal tax return. A six-year time limit already applied when a taxpayer omits more than 25% of his includable Connecticut adjusted gross income from his income tax return and fails to adequately explain the omission in the return or an attached statement.

The act also allows DRS to send a deficiency assessment notice at any time to a taxpayer who willfully attempts to evade or defeat the state income tax law or regulations. DRS already had unlimited time to send deficiency assessment notices to taxpayers who (1) fail to file returns, (2) fail to file required amended returns reflecting federal tax changes, or (3) file false or fraudulent returns.

In all other situations, income tax deficiency assessment notices must still be sent within three years.

BACKGROUND

IRS Listed Transactions

The IRS has identified 30 transactions it has determined have no economic substance and are undertaken only to avoid taxes. These transactions include misuse of Roth IRAs by businesses, S corporations that do not benefit rank and file employees,

improper life insurance arrangements for highly compensated employees, transactions involving distributions on encumbered property in which a taxpayer claims tax losses for capital outlays he has in fact recovered, and transactions generating losses from artificially inflating the cost basis of partnership interests.

PA 05-145—sHB 6838
Finance, Revenue and Bonding Committee

AN ACT CONCERNING THE RECEIPT BY THE DEPARTMENT OF REVENUE SERVICES OF VARIOUS TAX REVENUES

SUMMARY: By law, the comptroller can record certain tax receipts as revenue for a fiscal year if the Department of Revenue Services (DRS) receives them by specified deadlines after the fiscal year ends. This act both extends the deadlines and requires DRS to determine if tax receipts meet them solely according to when DRS receives a payment, instead of according to either the receipt date or the postmark.

Prior law allowed the comptroller to count as revenue for the fiscal year ending June 30, payments postmarked or received by DRS by (1) July 31 (August 15 for the corporation tax) or (2) the following business day if July 31 or August 15 falls on a weekend or holiday. The act instead allows the comptroller to count any payments DRS receives within five business days after July 31, or August 15 for the corporation tax.

The act applies to payments of the cigarette, alcoholic beverage, motor vehicle fuel, motor carrier road, utility companies, corporation, personal income, and real estate conveyance taxes, and to the petroleum products and cable and satellite t.v. company gross earnings taxes.
EFFECTIVE DATE: Upon passage

PA 05-163—SB 1230
Finance, Revenue and Bonding Committee
Appropriations Committee

AN ACT CONCERNING THE TAXATION OF DAILY RENTAL MACHINERY

SUMMARY: This act imposes a 1.5% surcharge on the total cost of renting heavy construction, mining, and forestry equipment without an operator for 30 days or less. The new surcharge mirrors the existing 3% surcharge on daily car and truck rentals.

The surcharge applies to machinery rented from a company that is in the business of renting such machinery and has a rental fleet of at least five pieces of machinery in Connecticut. Covered machinery includes bulldozers, earthmoving equipment, well-drilling machinery, and cranes.

The surcharge reimburses the rental company for Connecticut property taxes and Department of Motor Vehicles (DMV) licensing and titling fees paid on the equipment. The company must annually remit any surcharge amounts it collects that exceed these costs to the Department of Revenue Services (DRS) for deposit in the General Fund.

The act extends to the new surcharge all the administrative, reporting, and collection requirements and penalty provisions that apply to the existing 3% surcharge on car and truck rentals.
EFFECTIVE DATE: Upon passage

SURCHARGE COLLECTION

As is the case with the existing car and truck rental surcharge, the act requires (1) the machinery rental company to collect the surcharge from the renter, (2) the surcharge to be included in the company's sales and use tax receipts, and (3) the machinery rental contract to state the surcharge separately. The surcharge is recoverable in the same way as other debts.

REPORTING AND PAYMENT

The act extends the existing surcharge reporting and payment requirements to the new surcharge. Thus, machinery rental companies must report to DRS by February 15th annually on the aggregate amounts of personal property taxes paid to towns and registration and titling fees paid to DMV, and the aggregate amount of rental surcharges collected in the previous year on the rental machinery, along with any other information DRS requires. At the same time it files the report, a company must also pay to DRS for deposit in the General Fund any surcharges collected that exceed its annual total property taxes and licensing and titling fees paid.

PENALTY AND ENFORCEMENT

Under the act, as under existing law for the car and truck rental surcharge, the penalty for failure to pay the required excess is 15% of the unpaid amount or $50, whichever is greater, and 1% interest per month until the payment is made. The act applies the same refund, audit, deficiency assessment, hearing, and appeal procedures to the new surcharge as already apply to both the existing surcharge and to DRS administration of admissions and dues taxes.

PA 05-202—sSB 1358
Finance, Revenue and Bonding Committee
Planning and Development Committee

AN ACT CONCERNING THE CREATION, MANAGEMENT AND FUNDING OF MUNICIPAL POST-EMPLOYMENT HEALTH AND LIFE BENEFIT SYSTEMS

SUMMARY: This act expressly allows municipalities to establish, by ordinance, and to finance and maintain post-employment health and life benefit plans and other post-employment benefits (OPEBs) for former municipal officials and employees and their beneficiaries. OPEBs are benefits, other than pensions, that a municipality provides to retirees and former employees. They can include medical, vision, dental, and life insurance and long-term care benefits.

The act extends requirements for periodic actuarial evaluations of municipal pension systems established by special act to OPEB systems and municipal pension and retirement systems established by public act, charter, or special act charter. It also extends to OPEB systems existing (1) prohibitions against enacting ordinances or acts altering pension systems until the municipal legislative body asks for and receives a qualified cost estimate from its actuary and (2) requirements for revised actuarial evaluations within six months after adoption of any increase in system benefits, unless the periodic evaluation is due within one year after the adoption. The act thus makes the statutes conform to the Governmental Accounting Standards Board's (GASB) Statement No. 45 regarding employer reporting for OPEB systems.

The act states that its authority to establish OPEBs does not invalidate any municipal post-employment health and life benefit system established before its effective date under any public or special act, charter, home-rule or local ordinance, or local law. It also specifies that it does not affect a municipal legislative body's authority to create a loss and retiree benefit reserve fund.
EFFECTIVE DATE: October 1, 2005

BACKGROUND

GASB Statement No. 45

GASB Statement No. 45, *Accounting & Financial Reporting By Employers For Post Employment Benefits Other Than Pensions*, establishes standards for the measurement, recognition, and display of OPEB expenses and liabilities that are similar to the methodology used to account for pension benefits. Statement No. 45 implementation is required in three phases based on a government's total annual revenues in the first fiscal year after June 15, 1999. It is effective beginning in FY 07 for governments with total annual revenues of $100 million or more.

PA 05-260—sSB 1232
Finance, Revenue and Bonding Committee

AN ACT CONCERNING CERTAIN TAXES ADMINISTERED BY THE DEPARTMENT OF REVENUE SERVICES

SUMMARY: This act:

1. requires cigarette manufacturers to get and maintain a Connecticut cigarette manufacturer's license as a condition of being listed or having their cigarette brand families listed in the Department of Revenue Services (DRS) directory of manufacturers that comply with the tobacco settlement agreement and whose cigarettes may thus be sold in Connecticut;
2. revises reporting requirements for cigarette vending machine owners and operators;
3. reduces reporting requirements for licensed tobacco products distributors who do not acquire untaxed tobacco products by making them file annual, instead of monthly, reports with DRS;
4. allows the DRS commissioner to adopt regulations exempting unclassified importers from licensing and monthly reporting requirements, if she decides it would not undermine tobacco products tax enforcement;
5. exempts companies whose only business activity in Connecticut is participating in trade shows at the Hartford convention center from state corporation and sales taxes, if they meet certain conditions;
6. revises timetables, definitions, and procedures for providing security for Connecticut taxes due in connection with nonresident (out-of-state) contractor activities in this state;
7. retroactively applies increased penalties under PA 05-116 for certain taxpayers who fail to disclose their participation in IRS-designated abusive tax shelters; and
8. establishes a July 1, 2005 extended due date for motor vehicle parts manufacturing company corporation tax returns for an income year ending September 30, 2004.

EFFECTIVE DATES: Various, see below.

TOBACCO PRODUCT MANUFACTURERS DIRECTORY (§ 1)

The law requires DRS to compile and publish, by July 1, 2005, a directory of tobacco product manufacturers that comply with the tobacco settlement agreement with the state, and their cigarette brands and brand families. It is illegal to sell, offer to sell, distribute, or possess for sale in Connecticut cigarettes whose manufacturer or brand family is not listed in the directory.

This act requires that, to be included in the directory, a manufacturer also get and maintain a state cigarette manufacturer's license. The annually renewable license is required for any manufacturer who, directly or indirectly, sells cigarettes in the state. The law already bars DRS from issuing a license to any manufacturer that is not complying with the tobacco settlement.

EFFECTIVE DATE: July 1, 2005

CIGARETTE VENDING MACHINE REPORTS (§ 3)

The act eliminates requirements that cigarette dealers and distributors who own or operate six or more cigarette vending machines file reports by the 15th of every month and that those with up to five machines report twice a year at times DRS prescribes. It also eliminates requirements that reports filed by dealers and distributors with six or more machines show how many machines they owned, operated, acquired, and disposed of during the reporting period and any other information DRS requires.

Instead, the act gives DRS authority to prescribe the timing and content of cigarette vending machine reports.

EFFECTIVE DATE: Upon passage

TOBACCO PRODUCTS TAX ENFORCEMENT (§ 4)

Reporting Requirements

The act:

1. reduces reporting requirements for licensed tobacco products distributors who do not acquire untaxed tobacco products by making them file annual, instead of monthly, reports with DRS, and
2. allows the DRS commissioner to adopt regulations exempting unclassified importers from licensing and monthly reporting requirements, if she decides it would not undermine tobacco products tax enforcement.

Under prior law, DRS licensed both distributors and unclassified importers and required them to file reports and pay tobacco products taxes monthly by the 25th of each month.

The act also eliminates the DRS commissioner's authority to adopt regulations requiring distributors and unclassified importers to annually report the names and addresses of their customers and to update the reports for any changes by the 10th of every month.

Tobacco Products Distributors

By law, "tobacco products" are all types of smoking and chewing tobacco products other than cigarettes and a "licensed distributor" is anyone (1) in the business of manufacturing tobacco products; (2) who buys such products at wholesale from a manufacturer or distributor for sale; and (3) who imports tobacco products into the state, if at least 75% of them are to be sold. Under the act, "untaxed tobacco products" are products other than those acquired from a licensed distributor who acquires untaxed products and must pay the tobacco products tax on them.

Instead of monthly reporting, the act requires distributors who do not acquire untaxed products to file reports by July 25th annually. The reports must include any information and be in a form the DRS commissioner requires. The forms must include a notice that making a false statement on a report is punishable. The act also requires each distributor who files an annual report to keep records of (1) the people from whom he acquired the products, the quantities acquired, and acquisition dates; (2) the people to whom he sold them, the quantities sold, and the sale dates; and (3) any other information the commissioner considers necessary.

Unclassified Importers

Any regulations the commissioner adopts exempting unclassified importers from licensing and monthly reporting must require such importers, within 24 hours after acquiring untaxed products, to (1) file a report in a form the commissioner requires and (2) pay the tax due on the untaxed products. The form must include a notice that making a false statement on a report is punishable.

By law, an "unclassified importer" is someone other than a distributor who brings out-of-state tobacco products into the state for use or consumption here.

EFFECTIVE DATE: October 1, 2005

EXCLUSION FROM CORPORATION AND SALES TAX NEXUS (§§ 2 & 5)

The act exempts companies and retailers from corporation and sales and use taxes if their only activity in Connecticut is participating in trade shows at the Hartford convention center. Under the act, such companies are not subject to the state taxes, even if they

have employees or other staff present at the trade shows, as long as:

1. their only activity at the shows is displaying goods or promoting services,
2. they make no sales,
3. they send any orders they take out of state to be accepted or rejected,
4. the orders are filled outside the state, and
5. the companies participate in the shows on no more than 14 days during any income year they use for federal income tax purposes.

EFFECTIVE DATE: Upon passage and applicable to tax years starting on or after January 1, 2005.

TAX SECURITY PROCEDURES FOR TRANSACTIONS WITH NONRESIDENT CONTRACTORS (§ 6)

Security Requirements and Exemption

To provide security for Connecticut taxes due in connection with a nonresident contractor's in-state activities, the law requires a person doing business with such a contractor to either (1) withhold and deposit with DRS 5% of the contract price or (2) obtain a certificate from the contractor showing that the contractor has posted a bond for an equivalent amount with DRS.

This act exempts a homeowner or tenant from the security requirements for a contract involving his own residence with three or fewer units, as long as the contractor posts the required security bond.

Contract Price

Under the act, the 5% security requirement is based on all contract charges, including deposits, retainage, change orders, or charges for add-ons.

Withholding Procedure

The act changes the schedule for a customer to remit to DRS amounts withheld from payments to a nonresident contractor. Instead of requiring the customer to withhold 5% of the total contract price and remit it to DRS within 30 days after the contract is completed, the act requires that the customer withhold 5% of each payment to the contractor, transfer the amounts withheld to DRS by the last day of the month following the calendar quarter that comes after the calendar quarter in which the first payment occurs, and transfer amounts withheld from subsequent payments every calendar quarter thereafter. It requires each transfer to be accompanied by a DRS form and requires DRS to hold the transferred amounts in a special trust fund. The act bars a nonresident contractor from suing anyone for withholding money from payments and transferring it to DRS to comply with the act.

The act also eliminates a requirement that DRS issue a receipt to the customer for each withholding amount transferred.

Bond Procedure

As an alternative to the customer withholding part of the contractor's payments, the law allows the contractor to post security with DRS in the form of a bond to guarantee tax payments. The bond must equal 5% of the contract price.

The act changes the deadline for a contractor to post the bond. Prior law gave the contractor 120 days after the contract begins to petition DRS to be allowed to furnish a guarantee bond in lieu of customer withholding. The act eliminates the petition and requires the contractor to actually post the bond by either 120 days after the contract begins or 30 days after the contract ends, whichever is earlier. It also allows the contractor to post a cash bond as an alternative to the guarantee bond.

The act requires DRS to issue the bond compliance certificate to the contractor when it accepts the bond, rather than when it grants a contractor's petition to post a bond. It also specifies that a customer who receives a bond compliance certificate from the contractor is not liable for any DRS claim for taxes arising out of the contractor's activities. This exemption from liability already applies to customers who withhold tax security from payments to the contractor.

Customer Tax Liability

The act specifies that compliance with the security requirements does not relieve a customer of liability for use taxes due on services he buys from the contractor. It also makes a customer who does not comply with the security requirements personally liable for the nonresident contractor's taxes stemming from the project.

Deadline for Audit Requests and Refunds

The law requires a contractor who posted a bond or whose payments were withheld to file a written request that the DRS commissioner audit his records for the project to determine if he owes taxes. The act requires a contractor to request the audit within three years after the final payment to DRS. If a contractor fails to file his request in time, he waives his right both to an audit and any refund of excess amounts withheld or excess bond amounts.

The act requires DRS to refund excess amounts within 90 days after completing its audit and issuing a certificate of no tax due.

Nonresident Contractor Definition

Prior law defined a nonresident contractor as one that does not continuously maintain or occupy any Connecticut office, factory, warehouse, or other space where it regularly and systematically does business in its own name through employees in regular attendance there. The act specifies that, to be a Connecticut contractor, the employees must not just be in regular attendance but also be carrying on the contractor's business in the contractor's own name.

In determining whether a contractor has a regular place of business in the state, prior law excluded a temporary office at a construction site in Connecticut. The act expands this exclusion to cover (1) temporary offices used only for the duration of the contract, whether or not they are located at a construction site and (2) offices maintained, occupied, and used by a contractor's affiliate.

EFFECTIVE DATE: October 1, 2005 and applicable to contracts entered into on or after that date.

ABUSIVE TAX SHELTER PENALTY (§§ 7 & 8)

PA 05-116 established a separate penalty for corporation and personal income tax underpayments attributable to a taxpayer's failure to disclose a listed transaction on his federal tax return. The penalty is 75% of the underpayment (deficiency). Listed transactions are tax transactions that the Internal Revenue Service determines are abusive tax shelters. PA 05-116 applied the new penalty to tax years beginning on or after January 1, 2005.

This act instead applies the new penalty to audits of returns that begin on or after January 1, 2006. Since DRS has three years to audit a corporation or personal income tax return filed prior to January 1, 2005, this act makes PA 05-116's increased penalties retroactive to returns filed in 2003 and 2004.

EFFECTIVE DATE: Upon passage

EXTENDED CORPORATION TAX FILING DATE (§ 9)

The act establishes a special July 1, 2005 extended due date for corporation tax returns filed by any motor vehicle parts manufacturing company for an income year ending September 30, 2004.

By law, corporation tax returns are due by the first of the month following the due date for the company's federal return or, if the company is not required to file a federal return, by the first of the fourth month after the end of the company's income year (generally, the calendar year on which the company computes taxable net income). DRS can grant a reasonable extension for filing the return if the company applies for an extension, files a tentative return, and pays the tax reported to be due on that return by the original due date.

EFFECTIVE DATE: Upon passage

PA 05-262—sHB 6685
Finance, Revenue and Bonding Committee
Legislative Management Committee

AN ACT CONCERNING FISCAL ACCOUNTABILITY OF STATE GOVERNMENT

SUMMARY: This act:

1. requires the legislature's two fiscal committees to meet annually before the regular legislative session to consult and receive information about the state's fiscal condition,
2. expands the scope of fiscal notes on bills and requires periodic updates of fiscal notes on enacted bills,
3. requires state agencies that submit bills to the General Assembly for consideration also to submit a fiscal note and bill summary with each request,
4. sets a deadline by which Bond Commission meeting agendas must be available to commission members, and
5. exempts school construction projects and school construction interest subsidy grants from certain Bond Commission filing requirements.

EFFECTIVE DATE: October 1, 2005, except for the provisions concerning the annual submission of financial information to the legislative committees, the required annual meeting of the committees with the Office of Fiscal Analysis (OFA) director and the Office of Policy and Management (OPM) secretary, and the expanded scope for OFA fiscal notes, which take effect July 1, 2005.

ANNUAL INFORMATION SUBMITTED TO, AND MEETING OF, FISCAL COMMITTEES

The act requires the OPM secretary and the OFA director to each submit the following information to the Finance, Revenue and Bonding and Appropriations committees by November 15 each year:

1. for the current biennium and the three following fiscal years, estimates of the revenue, spending, and ending balance for each fund, with the assumptions used to make the estimates;

2. the tax credits they project will be used in the current biennium and the three following fiscal years, with the assumptions used to make the projections;
3. summaries of any estimated deficiencies for the current fiscal year, the reasons for them, and the assumptions used to make the estimates;
4. projected budget reserve fund balances at the end of each uncompleted fiscal year of the current biennium and the three following fiscal years;
5. projected bond authorizations, allocations, and issuances in each of the five following fiscal years and their effect on debt service in the state's major funds;
6. an analysis of revenue and spending trends and of major cost drivers affecting state spending, including any areas of concern and efforts to address them, including efforts to obtain federal funds; and
7. an analysis of possible uses for surplus funds, including the budget reserve fund, debt retirement, and funding pension liabilities.

The act requires the committees to meet annually by November 30 with the OPM secretary, the OFA director, and any others they consider appropriate to review the submissions.

FISCAL NOTES

Unless two-thirds of the members of the House or Senate vote to suspend the requirement, the law bars the General Assembly from acting on any bill requiring state or municipal spending or affecting state or municipal revenue without a fiscal note. The act expands the fiscal note requirement to cover any bill that would require spending or affect revenue in the current fiscal year or any of the five following fiscal years. It also requires each fiscal note to identify clearly the bill's state and municipal impact in the current and each of the five following fiscal years.

The act also requires OFA to review fiscal notes for enacted bills in the second and fourth years after enactment and to compare them to the fiscal notes it prepared when the bill was enacted.

AGENCY BILL PROPOSALS

By law, state agency heads may file requests for legislation in bill form with the House or Senate clerk by January 15, in odd-numbered years, and by February 8, in even-numbered ones. This act requires them to include a bill summary and fiscal note with these requests. The agency fiscal note must clearly identify the cost and revenue impact of the proposal on the state and municipalities in the current and each of the following five fiscal years.

BOND COMMISSION AGENDA

By law, the State Bond Commission agenda must include a list of proposed bond allocations, along with certain information and supporting documents for agenda items. The act requires the agenda to be available to the commission's members at least four business days before the meeting. It counts the meeting day as one of the four.

The Bond Commission normally meets monthly. The OPM secretary is the commission's secretary and is responsible for compiling and issuing the agenda.

SCHOOL CONSTRUCTION PROJECTS AND INTEREST SUBSIDY GRANTS

The act exempts Bond Commission resolutions authorizing funds for school building projects and school project interest subsidy grants from the requirement that, before authorizing the funds, the commission find that any requests or documents it or the bond act requires have been filed. These types of resolutions are already exempt from requirements for filing human services facility collocation statements, statements from the agriculture commissioner for projects that would convert 25 or more acres of farmland to nonagricultural use, and capital development impact statements.

PA 05-268—sHB 6841
Finance, Revenue and Bonding Committee
Planning and Development Committee

AN ACT CONCERNING THE REAL ESTATE CONVEYANCE TAX

SUMMARY: This act extends the 0.25% municipal real estate conveyance tax rate for two years, until July 1, 2007. Under prior law, the rate was scheduled to drop to 0.11% on July 1, 2005.

The act also allows the 18 towns that, under prior law, had an option to add a flat 0.25% to their basic municipal conveyance tax rate, to add any lower percentage up to 0.25%. The towns eligible to exercise this option are the 17 targeted investment communities and the single town that has a manufacturing plant that qualifies for enterprise zone benefits.

The real estate conveyance tax applies to real property transfers for $2,000 or more, with several exceptions. The seller pays the tax.
EFFECTIVE DATE: Upon passage

PA 05-7—HB 6071
General Law Committee

AN ACT AUTHORIZING THE RETAIL SALE OF BEER BY PERSONS WHO HOLD A MANUFACTURER PERMIT FOR BEER OR A BREW PUB

SUMMARY: This act allows brewpubs and beer manufacturers to sell the beer they brew at retail for off-premises consumption during the same hours and days that package stores may sell. It limits to eight liters (about two gallons) the daily amount that may be sold to a person for off-premises consumption. The law already allows brewpubs to brew and bottle beer and sell it for on-premises consumption and beer manufacturers to brew and bottle beer and sell it at wholesale. Beer manufacturers may also offer free samples of their beer between 10:00 a.m. (11:00 a.m. on Sunday) and 8:00 p.m. The act (1) restricts when brewpubs may sell alcoholic beverages for either on- or off-premises consumption to the hours that a package store may sell liquor and (2) prohibits beer manufacturers from keeping their establishments open to the public during the hours that they are prohibited from selling or when their liquor permit has been suspended.
EFFECTIVE DATE: Upon passage

PERMISSIBLE DAYS AND HOURS OF SALE

The act limits the hours when brewpubs and beer manufacturers may sell for off-premises consumption to the same hours during which the law allows brewpubs, package stores, grocery stores, and drug stores with liquor permits to sell: 8:00 a.m. to 9:00 p.m. Monday through Saturday, except for six specified holidays. It also requires them to be closed to the public when they may not sell for off-premises consumption. PA 05-226 amends this act to make it clear that brewpubs may sell for on-premises consumption whenever restaurants may sell alcoholic beverages and for off-premises consumption whenever package stores may sell alcoholic beverages.

BACKGROUND

Permissible Hours of Sale for On-Premises Consumption

The law limits when brewpubs may sell for on-premises consumption to the same hours allowed for most sellers for on-premises consumption. They may sell on Monday through Thursday from 9:00 a.m. to 1:00 a.m. the following morning, on Friday and Saturday from 9:00 a.m. to 2:00 a.m. the following morning, and on Sunday from 11:00 a.m. to 1:00 a.m. the following morning (CGS § 30-91).

PA 05-38—SB 653
General Law Committee
Planning and Development Committee

AN ACT INCREASING THE CONTRACT AMOUNT FOR WHICH A MUNICIPALITY MUST RECEIVE A BOND ON A CONSTRUCTION OR PUBLIC WORKS PROJECT

SUMMARY: This act raises, from $50,000 to $100,000, the threshold above which a state or municipal construction contract must require the contractor to furnish a bond to guarantee payment to subcontractors providing labor or material. The requirement applies to contracts for constructing, altering, or repairing state or municipal buildings or public works projects.
EFFECTIVE DATE: October 1, 2005

PA 05-41—sSB 1115
General Law Committee
Public Health Committee

AN ACT CONCERNING THE TRAINING OF PHARMACISTS

SUMMARY: This act allows pharmacists to earn the required annual hour of continuing education on pharmacy or drug law in any format, rather than just at a live presentation. The law requires, with certain exceptions, pharmacists to obtain at least 15 hours of accredited continuing education each year, at least five of which must be earned by attending a live presentation.
EFFECTIVE DATE: Upon passage

PA 05-73—sSB 945
General Law Committee
Public Health Committee
Judiciary Committee

AN ACT CONCERNING THE PRACTICE OF PHARMACY

SUMMARY: This act (1) prohibits practitioners from prescribing anabolic steroids solely for enhancing a patient's athletic ability or performance, (2) makes prescriptions for controlled substances invalid if based

solely on the results of an electronic questionnaire and not a physical examination, and (3) establishes penalties for violating two pharmacy laws.
EFFECTIVE DATE: Upon passage

PRESCRIPTIONS BASED ON ELECTRONIC QUESTIONNAIRES

In the absence of a documented patient evaluation that includes a physical examination, the act deems a request for a controlled substance issued solely on the results of answers to an electronic questionnaire to be issued outside of the context of a valid practitioner-patient relationship and not a valid prescription. It defines "electronic questionnaire" as a form in an electronic format that may ask the consumer or patient for personal, financial, or medical information. The act authorizes the consumer protection commissioner to adopt regulations about these requests for controlled substances.

PENALTIES

The act authorizes the consumer protection commissioner to hold a hearing concerning possible violations of the ban on prescribing anabolic steroids solely for athletic enhancement. He may forward his findings and the record to the authority that licensed the prescribing practitioner. This may be, for example, the commissioner of health services if the practitioner is a physician. Further, the law establishes a criminal penalty for anyone who prescribes except as authorized by law. The penalty for a first offense is imprisonment for up to seven years, a fine of up to $25,000, or both and for subsequent offenses, imprisonment for up to 15 years, a fine of up to $100,000, or both.

The act also establishes penalties for violating the laws concerning collaborative drug therapy management agreements and prescription error reporting. The penalties are the same as those for all other provisions of the Pharmacy Practice Act; a violator is subject to a fine of up to $5,000, imprisonment for up to five years, or both.

BACKGROUND

Anabolic Steroids

Anabolic steroids are Schedule III controlled substances. Controlled substances are grouped in Schedules I through V, according to their decreasing tendency to promote abuse or dependency (Conn. Agencies Reg. § 21a-243-9(f)).

Collaborative Drug Therapy Management Agreements

The law permits physicians and hospital pharmacists to enter collaborative agreements to manage the drug therapy of individuals receiving inpatient hospital services. The agreements must be based on written protocols and approved by the hospital. All treatments must be based on a written protocol specific to each patient (CGS § 20-631).

Prescription Error Reporting

The law requires the consumer protection commissioner to adopt regulations requiring pharmacies to establish quality assurance programs designed to detect, identify, and prevent prescription errors. It defines a "prescription error" as a clinically significant act or omission relating to the dispensing of a drug that results, or may reasonably be expected to result, in a patient's injury or death (CGS § 20-635).

PA 05-86—sSB 1181
General Law Committee

AN ACT CONCERNING THE POSTING OF PRICES ON RETAIL END CAPS

SUMMARY: The law requires retailers to mark each item with its price if they choose to use Universal Product Coding (UPC) to ring up a customer's purchases. It allows retailers to obtain an exemption from the item-pricing requirement if they operate an approved electronic shelf labeling system. The act eliminates the requirement that these retailers use electronic shelf labels for commodities located on "end cap displays" if the information otherwise provided on an electronic shelf label is clearly and conspicuously posted on, or adjacent to, the end cap display. The act defines "end cap display" as the location that is at the immediate end of the aisle. The law authorizes the consumer protection commissioner to grant the exemption. Electronic shelf labels display an item's retail and unit price.
EFFECTIVE DATE: Upon passage

PA 05-88—HB 6730
General Law Committee
Finance, Revenue and Bonding Committee

AN ACT CONCERNING THE DEFINITION OF PLUMBING AND PIPING WORK FOR PURPOSES OF LICENSURE

SUMMARY: This act requires people who install, repair, replace, alter, or maintain piping or tubing that conveys liquid or gas used to make chemicals to be licensed as (1) plumbing contractors or journeymen or (2) heating, piping, and cooling contractors or journeymen.

The law generally exempts from licensing industrial firm employees whose main duties concern making glass products or certain systems or equipment used to produce goods sold by industrial firms. The act similarly exempts such workers who work on pipes or tubes used directly in chemical production.
EFFECTIVE DATE: October 1, 2005

BACKGROUND

Occupational Licensing System

State law establishes a licensing system for several trades overseen by different licensing boards, including the Examining Board for Electrical Work, the Examining Board for Plumbing and Piping Work, and the Examining Board for Heating, Piping, Cooling and Sheet Metal Work. They have the power to determine who qualifies for a license and to enforce standards by disciplining licensees. Boards may create limited licenses authorizing their holders to work in a specific area of a trade. Each trade has different levels of expertise—apprentice, journeyman, and contractor. Workers must meet education, training, and experience requirements to qualify for each level. The boards establish less extensive requirements for workers attempting to qualify for limited licenses. The boards are within the Department of Consumer Protection. The department receives complaints, carries out investigations, and performs administrative tasks, such as physically issuing licenses and renewals, for the boards.

PA 05-89—SB 412
General Law Committee
Judiciary Committee

AN ACT CONCERNING THE POSTING OF GAS PRICES

SUMMARY: This act requires gasoline retailers to display and maintain, in the same manner, size, and print, the price for (1) the public and (2) members of a club, retail membership organization, or people who qualify for a special discount on each public gasoline price sign and on each gasoline pump sign required by Department of Consumer Protection (DCP) regulations. A violation is a criminal offense subject to a fine of $50 to $250.
EFFECTIVE DATE: Upon passage

BACKGROUND

Requirements for Price Signs for the General Public

DCP regulations require that, among other things, gasoline price signs on the pumps state the price for full-serve, mini-serve, and self-serve; be clearly visible from both sides of the pump; and be 7¼" high and 9½" wide (Conn. Agencies Reg. §§ 16a-15-9 and 16a-15a-1).

PA 05-91—sSB 953
General Law Committee
Public Safety and Security Committee
Planning and Development Committee

AN ACT CONCERNING SCHEDULED EVENTS AT JUICE BARS

SUMMARY: This act makes the police notification procedure that a café must follow before operating a juice bar more specific. It requires (1) a café to inform the chief municipal law enforcement officer in writing (including by facsimile) and (2) that the notice be received at least 48 hours before the scheduled event. Prior law simply required a café to inform local police before an event. The law, unchanged by the act, requires the notice to include the specific dates and hours of a scheduled event in which the café, or a part of it, will be used as a juice bar. The act also allows a chief municipal law enforcement officer to station an officer at the event and charge the cost to the café permittee.

By law, a "juice bar" is an area in which nonalcoholic beverages are served to minors. The law allows a café permit holder to operate a juice bar in a room or area where alcohol is not sold, consumed, or dispensed.
EFFECTIVE DATE: Upon passage

PA 05-96—sSB 1256
General Law Committee
Finance, Revenue and Bonding Committee
Public Health Committee

AN ACT CONCERNING THE DEFINITION OF "CHAIN STORE" FOR PURPOSES OF CERTAIN CIGARETTE TAX STATUTES

SUMMARY: This act excludes franchisors from the definition of "chain store" for purposes of the laws requiring cigarette sellers to obtain a state license and to mark-up cigarettes by a certain percentage. Under the act, a chain store consists of at least five retail stores under common ownership and control.
EFFECTIVE DATE: July 1, 2005

BACKGROUND

Chain Stores Selling Cigarettes

The law requires a "chain store" to obtain a license as a distributor from the Department of Revenue Services. It prohibits selling cigarettes below cost and defines "cost," absent proof otherwise, in a way that depends on the type of seller and transaction. Sellers must sell at their basic cost plus a percentage representing their cost of doing business.

Table 1

Distributor	***Cost of Doing Business***
Stamping agent selling to subjobbers and chain stores	.875%
Stamping agent selling to dealers	5.75%
Subjobber selling to dealers	4.875%

PA 05-101—SB 946
General Law Committee
Finance, Revenue and Bonding Committee
Judiciary Committee

AN ACT CONCERNING THE SOLICITATION OF CHARITABLE FUNDS ACT

SUMMARY: This act requires the consumer protection commissioner to publicize the terms of a paid solicitor's contract, including the percentage of the donations the solicitor is to keep, before a campaign begins and increases the paid solicitor's registration fee from $120 to $500.

The act prohibits anyone engaged in conducting a charity's affairs from engaging in a financial transaction that is unrelated to accomplishing the charity's purpose or that jeopardizes or interferes with a charity's ability to accomplish its purpose. The law already prohibits a charity from engaging in such transactions. Further, the act prohibits anyone from appropriating a charity's property for private use. The penalties for violating the Solicitation of Charitable Funds Act include a fine of up to $5,000, up to one year in prison, or both and registration suspension or revocation.

The act requires charities to register annually rather than once and raises their registration fee. By law, charities must register with the Department of Consumer Protection (DCP) before raising funds. The act deems any charity registered on September 30, 2005 to be registered until the last day of the fifth month after the close of its fiscal year in effect on September 30, 2005.
EFFECTIVE DATE: Upon passage

PAID SOLICITORS

The act requires the DCP commissioner to publicize (1) the terms of a paid solicitor's contract with a charity before the solicitation campaign begins, (2) the dates of the campaign, and (3) the percentage of the raised funds to be kept by the solicitor. The act requires the commissioner to publicize the contract by issuing a press release and posting the information on DCP's web site. It allows the commissioner to use additional means he deems appropriate. The act provides that the information in the financial report filed with a solicitor's registration application must be available to the public.

ANNUAL REGISTRATION

The act sets an annual registration fee of $50 and eliminates (1) the $25 annual report filing fee and (2) the one-time $20 registration fee.

It requires the registration application to include (1) a registration statement and (2) an annual financial report for the charity's preceding fiscal year prepared in accordance with charitable solicitation law requirements. If the charity's gross revenue exceeded $200,000 in its previous fiscal year, it must also file an audited financial statement for that year. The act provides that the information in the financial report filed with the registration application must be available to the public.

The act requires charities to renew their registrations within five months after the end of their fiscal year and to submit an annual financial report and an audited financial statement with their applications. Prior law required the charities to submit them five months after the end of their fiscal year.

It expands the exemption for chapters, branches, or affiliates. Under the act, they are exempt from registration if the parent organization files a

consolidated registration application. Under prior law, chapters, branches, or affiliates were exempt from filing an annual report if the parent organization filed a consolidated annual report and its principal office was located in Connecticut.

APPLICATION DETERMINATION

If DCP determines that the application does not contain required documents or does not comply with the implementing regulations, the act requires it to notify the applicant in writing of the fact by the 10th day after DCP receives the application. Under the act, an applicant is deemed approved if it is not notified of the noncompliance by the 10th day after DCP receives the application.

The act authorizes a charity that received such a notice to request a hearing on its status. The request must be made by the seventh day after it receives the notice. The act requires DCP to hold a hearing within seven days after receiving a request and to make a determination on the status within three days after the hearing.

LATE RENEWALS

The act sets a $25 late fee for each month, or part of a month, that a charity is late in renewing its registration instead of the $25 late fee prior law imposes for each report that is not filed on time. It increases, from three months to 180 days, the time that the DCP commissioner may extend the deadline for filing an annual report for good cause after receiving a written request. Under the act, a prior registration remains in effect during the extension and the imposition of the late fee is suspended.

FAILURE TO RENEW

The act requires a charity that fails to register to include in its application an annual financial report for each of the previous years in which it was required to either register or file an annual financial report.

BACKGROUND

Related Act

PA 05-288 modifies the prohibition against engaging in financial transactions that are unrelated to the accomplishment of a charity's purpose by making it clear that the prohibition applies only while someone is engaged in conducting a charity's affairs.

PA 05-134—sHB 6804
General Law Committee

AN ACT CONCERNING RESTAURANT SAFETY

SUMMARY: This act requires food service establishments, other than catering establishments and itinerant vendors, to post signs describing ways to recognize and procedures to follow if a patron is choking. It also revises requirements relating to a patron's ability to take a partially consumed open bottle of wine from a restaurant.
EFFECTIVE DATE: Upon passage

REQUIRED SIGN

This act requires each food service establishment to acquire by October 1, 2005, a sign that describes how to recognize choking signs and addresses appropriate procedures to take if a patron is choking. It must be posted conspicuously in an area where food operators and other employees can readily see it. The act requires food operators and other employees to become familiar with the sign's contents. It provides that it must not be construed to apply to catering or itinerant vendor food establishments.

BOTTLE OF WINE

Prior law allowed a restaurant patron to take from the premises one open bottle of wine if he purchased a full course meal and consumed a part of it with the meal on the premises. The act instead states that a patron must be allowed to take from the premises one open bottle of wine if he (1) purchased the bottle at the restaurant, (2) purchased a full course meal at the restaurant, and (3) consumed a part of the bottle with the meal on the premises. The law defines "full course meal" as a diversified selection of food that ordinarily cannot be consumed without using tableware or conveniently consumed while standing or walking.

BACKGROUND

Food Service Establishments and Food Operators

The Public Health Code defines "food service establishment" as a place where food is prepared and intended for individual service, regardless of whether consumption is on or off the premises or whether there is a charge for the food. It defines "food operator" as a full-time employee who has demonstrated knowledge of safe food handling techniques (Conn. Agencies Reg. § 19-13-B42).

PA 05-138—SB 652
General Law Committee
Judiciary Committee

AN ACT REGARDING THE RETURN POLICY OF RETAIL STORES

SUMMARY: This act requires a retailer that uses an electronic system to record, monitor, and limit the number or dollar amount of returns made by a consumer to state clearly in its posted refund or exchange policy that the system is being used. The law makes it an unfair trade practice for a retailer to refuse to accept the return of goods and issue a refund or credit toward another purchase if the goods are returned by the deadline established by the retailer's conspicuously posted refund or exchange policy. The act also makes a violation of this requirement an unfair trade practice.

The act requires retailers that use an electronic system to give notice to the consumer before terminating a consumer's ability to return goods. The notice must state that the consumer's ability to return goods to the store is being terminated. The act states that a notice sent to the consumer's last-known address, or to an address obtained through reasonably available public records, complies with this requirement.
EFFECTIVE DATE: January 1, 2006

BACKGROUND

Connecticut Unfair Trade Practices Act (CUTPA)

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the Department of Consumer and Protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than $5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. The act also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to $5,000 for willful violations and $25,000 for violation of a restraining order.

PA 05-148—sSB 650
General Law Committee
Judiciary Committee

AN ACT REQUIRING CONSUMER CREDIT BUREAUS TO OFFER SECURITY FREEZES

SUMMARY: This act (1) allows a consumer to freeze his credit report and (2) requires businesses to inform the affected consumers if there has been a security breach involving their computerized personal information.

With certain exceptions, the act prohibits a credit rating agency from releasing a frozen credit report, or any information in it, without the consumer's express authorization. It requires an agency to freeze a report in five business days. The act creates a means by which a consumer can release his report permanently, temporarily, or to a specific third party. It allows agencies to charge a consumer up to $10 for each freeze or removal and up to $12 for a temporary removal for a specific third party.

It allows an agency to deny a request to implement a freeze, or to remove one, if in good faith it believes the request involves fraud or misrepresentation.

The act authorizes most types of businesses to deem a credit application incomplete, and insurers to deny an application, if they find that a consumer's credit report is frozen.

The act requires a business that has suffered a security breach involving personal information to disclose it to affected consumers, generally without unreasonable delay. It generally requires that the notice be given in writing, by telephone, or electronically. It allows a substitute form of notice when the cost of providing it is high or the number of affected people is large. It prescribes the form of the substitute notice.

It creates exceptions for businesses with their own security breach notification procedures if they meet the act's timing requirements.

The act makes a violation of its security breach provisions an unfair trade practice.
EFFECTIVE DATE: January 1, 2006

SECURITY FREEZES

The act allows a consumer to ask a credit rating agency to place a security freeze on his credit report. A consumer request to freeze a report must be made in writing by certified mail or by another secure method authorized by the agency. The act requires an agency to freeze the report within five business days and send the consumer written confirmation with a unique personal identifier or password within 10 business days thereafter, unless it has a good faith reason not to do so. It requires an agency to keep the freeze in effect unless temporarily or permanently removed at the consumer's request. A "credit report" is a credit rating agency's written or oral report, recommendation, or representation about a consumer's credit worthiness, credit standing, or credit capacity, including information sought to determine credit eligibility. A "consumer" is

a person using or seeking credit for personal, family, or household purposes.

The act defines "security freeze" as a notice placed in a consumer's credit report, at his request, that prohibits an agency from releasing the report, or any information in it, without the consumer's express authorization.

Removing or Suspending a Freeze

The act allows a consumer to use the unique identifier or password sent by a credit rating agency to authorize the agency to permanently or temporarily remove a freeze or release a credit report to a specific third party. If a consumer wants to remove the freeze, he must provide proper identification and his unique identification number or password. If he wants to disclose his information for a period of time or to a third party, he must also provide proper information about the time period for which the credit report will be available or the third party to receive the credit report.

The act requires an agency that has received a request to remove a freeze, either temporarily or permanently, to do so by the third business day after receiving the request. It authorizes agencies to develop procedures to receive and process the requests. These must allow a consumer to send requests by e-mail, letter, or facsimile.

Denying a Request to Implement or Remove a Credit Freeze

The act authorizes a credit agency to refuse to implement or remove a credit freeze if it believes in good faith that (1) the request was part of a fraud that the consumer participated in or knew about or can be demonstrated by circumstantial evidence or (2) the report was frozen due to a material misrepresentation of fact by the consumer. PA 05-288 instead authorizes agencies to remove a security freeze rather than to refuse to remove a freeze on the same grounds.

The act requires an agency to notify the consumer in writing by the fifth day after refusing to implement a freeze or by the fifth day before removing a freeze.

Requests for Information From Frozen Credit Reports

The act authorizes an insurer to deny an application if an applicant has placed a freeze on his report and has not authorized its disclosure to the insurer. It authorizes other third parties to deem a credit application incomplete if it requests access to a consumer's frozen credit report in conjunction with a credit application, or for another purpose, and the consumer has not authorized disclosure to the third party.

Exempted Disclosures

The act allows agencies to disclose frozen credit reports to:

1. a person, or the person's subsidiary, affiliate, agent, or assignee with which the consumer has or, prior to assignment, had an account, contract, or debtor-creditor relationship to review the account or collect a debt;
2. a subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted to facilitate the extension of credit or another permissible use;
3. anyone acting according to a court order, warrant, or subpoena;
4. anyone for "prescreening" as provided by the federal Fair Credit Reporting Act;
5. anyone solely to provide credit file monitoring subscription services to which a consumer subscribes;
6. a credit rating agency solely to provide a consumer with a copy of his or her own credit report on request; or
7. a federal, state, or local government, including a law enforcement agency or court or their agents or assignees pursuant to their statutory or regulatory duties.

The act defines "reviewing the account" as including activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

Business Exempt from Placing a Freeze

The act states that the following businesses are not required to place a freeze on a consumer's report, but they are subject to a freeze placed on a credit report by a credit rating agency:

1. a check services or fraud prevention services company that reports on incidents of fraud or issues authorizations to approve or process negotiable instruments, electronic fund transfers, or similar methods of payment;
2. a deposit account information service company that issues reports on account closures due to fraud, substantial overdrafts, automated teller machine abuse, or similar information to inquiring banks or other financial institutions to use only to review a consumer's request to open a deposit account; or
3. a credit rating agency that (a) only resells credit information by assembling and merging it in a database of one or more credit reporting agencies and (b) does not keep a permanent database of credit information from which new credit reports are produced.

DISCLOSING SECURITY BREACHES OF COMPUTERIZED DATA

The act requires anyone who does business in Connecticut and who, in the ordinary course of business, owns, maintains, or licenses computerized data that includes personal information to disclose a "breach of security" generally without unreasonable delay to state residents whose personal information has been, or is reasonably believed to have been, accessed by an unauthorized person. If the business does not own the personal data, it must notify the person who owns or licenses it. The act defines "breach of security" as the unauthorized access to, or acquisition of, electronic files, media, databases, or computerized data that contain personal information when access to the information has not been secured by encryption or by any other method or technology that makes it unreadable or unusable.

"Personal information" means an individual's first name or initial and last name in addition to one or more of the following: (1) Social Security number; (2) driver's license number or state identification card number; or (3) an account number, credit or debit card number, in combination with its security code, access code, or password that permits access to the individual's financial account. The act excludes publicly available information that is lawfully made available to the public from federal, state, or local government records or widely distributed media.

Making a Disclosure

Businesses must disclose security breaches after the completion of an investigation to (1) determine the scope of the incident, (2) identify the affected individuals, or (3) restore the reasonable integrity of the data system. PA 05-288 requires notification without unreasonable delay subject to the act's provision requiring businesses to delay notification if requested by a law enforcement agency conducting a criminal investigation. The act does not require disclosure if, after appropriate investigation and consultation with federal, state, and local law enforcement agencies, the business reasonably determines that the breach will not likely result in harm to the affected individuals.

Criminal Investigation

The act requires businesses to delay public notification for a reasonable time if a law enforcement agency asks, after determining that notification will impede a criminal investigation. In this case, notification must be made after the law enforcement agency determines and notifies the business that notification will not compromise the investigation.

Notifying the Public

The act requires the notice to be given: (1) in writing; (2) by telephone; (3) electronically, if it is consistent with the federal "e-sign" law; or (4) using a substitute method, if the business can demonstrate that the cost of using the first three methods is more than $250,000, that the class of affected people is larger than 500,000, or the business does not have sufficient contact information. The act requires the substitute notice to be: (1) by e-mail when the business has the e-mail address of the affected person; (2) through conspicuous posting on its website, if it has one; and (3) sent to major statewide media, including newspapers, radio, and television.

Businesses with Security Breach Procedures

The act deems that a business is complying with its notification requirements, regardless of the act's provisions on public notification, if it: (1) maintains its own security breach procedures as part of an information security policy to treat personal information, (2) otherwise complies with the act's timeliness requirements, and (3) notifies affected people of a security breach in accordance with its own procedures. Further, the act deems a business to comply with its notification requirements if it maintains a security breach procedure in compliance with the rules, regulations, procedures, or guidelines established by the primary or secondary federal "functional regulator" as defined by federal law if it notifies affected people of a security breach in accordance with them. PA 05-288 corrects the reference in the act to federal law about functional regulators to 15 USC § 6809(2).

BACKGROUND

Fair Credit Reporting Act

Federal law on credit rating agencies (15 USC § 1681, *et seq.*) does not define "prescreening," but it does prohibit states from adopting any requirements or prohibitions concerning prescreening reports for credit or insurance transactions not initiated by a consumer (15 USC §§ 1681t, 1681b(c), and 1681(e)).

Federal Electronic Signatures in Global and National Commerce Act ("e-sign")

The Electronic Signatures in Global and National Commerce Act applies to transactions in interstate or foreign commerce. The act validates the use of electronic records and electronic signatures in transactions but does not require anyone to agree to use

or accept electronic records or signatures (15 USC § 7001, *et seq.*).

Federal Functional Regulator

The federal Gramm-Leach-Bliley Act (P. L. 106-102, 15 USC § 6809(2)) defines "federal functional regulator" as (1) the Board of Governors of the Federal Reserve System, (2) the Office of the Comptroller of the Currency, (3) the Board of Directors of the Federal Deposit Insurance Corporation, (4) the Director of the Office of Thrift Supervision, (5) the National Credit Union Administration Board, and (6) the Securities and Exchange Commission.

Connecticut Unfair Trade Practices Act (CUTPA)

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the DCP commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than $5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. The act also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to $5,000 for willful violations and $25,000 for violation of a restraining order.

The act requires businesses to notify the public of security breaches without unreasonable delay subject to the provision requiring an information maintainer to instead notify the owner or licensee of the breach.

PA 05-158—sHB 6519
General Law Committee
Judiciary Committee

AN ACT CONCERNING HEALTH CLUBS

SUMMARY: This act allows health club contracts to renew automatically under certain conditions, authorizes the consumer protection commissioner to impose a $300 civil penalty on a club that sells contracts after failing to renew its license, simplifies requirements for the equipment list that clubs must maintain and submit as part of their license application, and makes other minor changes.
EFFECTIVE DATE: Upon passage

AUTOMATIC RENEWAL CLAUSES AND RENEWAL OPTIONS

The act allows health club contracts to contain automatic renewal clauses if (1) the renewal period is not longer than one month at a time, (2) the renewal takes effect only after the renewal price is paid, (3) the contract allows the buyer to cancel further renewals with a maximum of one month's notice, and (4) the renewal price does not change unless the contract or another written document given to the buyer at least one month before renewal discloses the amount of the increase or decrease or method of calculating it.

The law permits health club contracts to include renewal options that must be accepted by the buyer in writing. The act also allows the acceptance to be sent by e-mail or fax. Under the act, the renewal option must, rather than may, take effect only after the renewal price is paid.

CIVIL PENALTY FOR FAILURE TO RENEW

The act authorizes the consumer protection commissioner to impose a civil penalty of up to $300 on a health club that sells, or offers to sell, contracts after failing to submit a license renewal application and renewal fee within 30 days after its license expired. The fine must be deposited in the Consumer Protection Enforcement Account. The law authorizes the attorney general, at the commissioner's request, to seek restraining orders against a club for any violation of the health club law.

EQUIPMENT LIST

The law requires a health club, before it begins to sell health club contracts, to list each piece of equipment and service it will have available. The act eliminates the need to list each piece of equipment separately and instead requires a list of equipment. By law, the list must be included in each health club contract and accompany a club's application for a license. The act allows an updated list to be included.

EXERCISING THE RIGHT TO CANCEL A HEALTH CLUB CONTRACT AND ADDRESSES

The law gives a buyer of a health club contract three days in which to exercise the right to cancel the contract—the "cooling-off period." The act allows health club contracts to identify an agent to receive the buyer's cancellation notice. It requires the contracts to state an address to which the cancellation notice must be sent rather than requiring that the notice be sent to the health club. The act also requires contracts to state the

address of the location at which the buyer enters the contract.

EXEMPTION FROM LICENSURE AND OTHER HEALTH CLUB REGULATION

The act exempts health clubs that do not offer services or collect advance payments for periods longer than one month, rather than 30 days as under prior law, from the requirement that they obtain a license from the Department of Consumer Protection and otherwise comply with the law regulating health clubs. The law, among other things, requires health clubs to use contracts that meet certain requirements, gives buyers the right to sue for triple damages if a club materially violates the health club law, and requires clubs to participate in the Health Club Guaranty Fund.

CONTRACT LENGTH AND ADVANCE PAYMENTS

Prior law limited the "duration" of a health club contract to two years. The act instead limits the "term" to two years. Prior law prohibited health clubs from collecting more than 50% of the entire consideration for the contract before providing services. The act instead prohibits clubs from collecting a payment, in cash or its equivalent, of more than 50% of the entire consideration before providing services.

BACKGROUND

Consumer Protection Enforcement Account

The statutes establish the Consumer Protection Enforcement Account funded with the revenue generated from imposing fines for licensing law violations and up to $400,000 per year from the Home Improvement Guaranty Fund. DCP must use the account "to fund positions and other related expenses" to enforce the licensing and registration laws it administers (CGS § 21a-8a).

Health Club Guaranty Fund

The fund is designed to prevent health club members from losing their investment when a club closes. It is funded with annual fees paid by health clubs and administered by DCP. If a club closes and does not reimburse its members for the unfulfilled portion of their contracts, members may seek reimbursement from the fund (CGS § 21a-226).

PA 05-166—sHB 6072
General Law Committee
Judiciary Committee

AN ACT PROTECTING THE COMMISSIONS OF SALES REPRESENTATIVES

SUMMARY: This act requires a principal, when a contract with a sales representative terminates, to pay the sales representative (1) all commissions due under the contract on or before the termination's effective date by the later of the date set by the contract or 30 days after the termination date and (2) all commissions due after the termination date by the date specified in the contract but not later than 30 days after they become due under the contract. The act defines "commission" as the compensation that accrues to a sales representative as a percentage of the amount of sales, orders, or profits or any other agreed-upon compensation method, including service fees and retainers. A business relationship between a sales representative and a principal may terminate by the action of either party or by operation of the contract's terms.

The act gives sales representatives the right to sue for certain violations and specifies that its provisions are in addition to other legal remedies available to a sales representative.

The act includes provisions on suits between principals and sales representatives, voided contract provisions, and the legal implication of accepting a partial commission. It exempts certain insurance and real estate professionals and insurance businesses from its provisions.

EFFECTIVE DATE: Upon passage

PRINCIPALS AND SALES REPRESENTATIVES

Under the act, a "principal" (1) manufactures, produces, imports, sells, or distributes a product or service; (2) establishes a business relationship with a sales representative to solicit orders for the product or service; and (3) compensates the sales representative in whole or part by commission. A "sales representative" establishes a business relationship with a principal to solicit orders for products or services and receives compensation in whole or part by commission. A sales representative is not an employee or someone who (1) places orders or buys on his own account or for resale or (2) is a seller subject to regulation by the Home Solicitations Sales Act. An individual, corporation, limited liability company, partnership, unincorporated association, trust, or estate can be a principal or sales representative.

CIVIL ACTION

The act makes a principal who willfully, wantonly, recklessly, or in bad faith fails to pay a commission when due liable for twice the amount of commission owed. The act creates a rebuttable presumption that the principal acted willfully and in bad faith if he does not pay a commission or respond within 30 days of receiving a written demand by certified mail from the sales representative. It also entitles the prevailing party in a lawsuit to court costs and reasonable attorney's fees. Under the act, a principal who establishes a business relationship with a sales representative to solicit orders for products or services in Connecticut is considered to be transacting business in the state for purposes of court jurisdiction.

The act provides that it must not be construed to invalidate or restrict any right or remedy available to a sales representative or preclude him from seeking to recover all claims in a single suit.

ACCEPTING A PARTIAL COMMISSION

The act states that a sales representative's acceptance of a partial commission from a principal does not constitute a release by the representative of any other commissions due unless the payment is made according to a binding and final written settlement agreement and release. It makes a full release of all commissions claimed to be owned by a sales representative as a condition of a partial commission payment void.

VOIDED CONTRACT PROVISION

The act voids provisions in contracts between a sales representative and principal that waive any of its provisions.

EXCLUSIONS

The act states that it does not apply to: (1) an insurance producer (a person required to be registered in Connecticut to sell, solicit, or negotiate insurance); (2) an insurer (any corporation, association, partnership, or combination of persons doing any kind of insurance business other than a fraternal benefit society); or (3) a licensed real estate salesperson who has a claim for payment of a real estate commission or compensation against a real estate broker with whom the salesperson is affiliated.

BACKGROUND

Home Solicitation Sales Act

The Home Solicitation Sales Act gives a consumer three days to cancel a home solicitation sale. A "home solicitation sale" is a transaction involving consumer goods or services that occurs anywhere other than the seller's own place of business. The act establishes minimum contract requirements for the sales contracts. For example, they must be signed and dated by the buyer. Further, sellers may not include provisions in contracts that waive a consumer's rights or misrepresent the right to cancel.

PA 05-189—sSB 123
General Law Committee
Finance, Revenue and Bonding Committee

AN ACT CONCERNING THE EXPIRATION OF GIFT CARDS

SUMMARY: The law deems most types of property held or owed in this state to be abandoned if the owner fails to claim it after three years. This act (1) exempts the value of gift cards from the law; (2) repeals the law that explicitly states that the value of an unredeemed gift card is presumed abandoned three years after the purchase date or its last use, whichever is later; and (3) eliminates the requirement that gift card sellers obtain and keep the purchaser's address. The escheats law requires holders of abandoned property to send it to the state treasurer, who assumes custody of it. By exempting gift cards from this law, the act also allows gift card sellers to impose dormancy fees or charges. PA 05-273 re-imposes the prohibition against imposing dormancy charges on gift cards.

The act relieves holders of abandoned property from liability for interest or penalty if they failed to report or deliver abandoned gift certificates to the state treasurer before August 16, 2003. Otherwise, the law imposes 15% annual interest on unreported or undelivered abandoned property and authorizes the treasurer to waive the interest on a showing of a good faith effort to comply with the law. Legislation explicitly subjecting gift certificates to the escheats law became effective on August 16, 2003.
EFFECTIVE DATE: October 1, 2005

PA 05-211—sHB 6732
General Law Committee
Legislative Management Committee

AN ACT CONCERNING OCCUPATIONAL LICENSES FOR PERSONS ENGAGED IN SOLAR-RELATED WORK

SUMMARY: This act requires the Electrical Work Board in the Department of Consumer Protection (DCP) to recommend regulations establishing licenses for solar electricity work. It also expands the scope and renames the license applying to solar-related work performed by heating, piping, and cooling tradesmen.

The law requires contractors performing home improvements to register with DCP and defines "home improvement" for that purpose. The act eliminates "solar energy systems" from the illustrative list of types of "home improvements" and adds "sunrooms," thereby making it clear that registered home improvement contractors are not authorized to install solar energy systems but may install sunrooms.
EFFECTIVE DATE: October 1, 2005

SOLAR ELECTRICITY WORK

The act defines "solar electricity work" as the installation, erection, repair, replacement, alteration, or maintenance of photovoltaic or wind generation equipment used to distribute or store ambient energy for heat, light, power, or other purposes to a point immediately inside a structure or next to an end use. The act requires the Electrical Work Board to recommend regulations establishing contractor and journeyman licenses for solar electricity work and requires the DCP commissioner to adopt them.

SOLAR THERMAL WORK

The law requires anyone performing "solar work" to hold a license as a contractor or journeyman or an apprentice permit issued by DCP and authorized by the Heating, Piping, Cooling, and Sheet Metal Work Board. The act eliminates the prior definition of "solar work" and instead defines "solar thermal work" as the installation, erection, repair, replacement, alteration, or maintenance of active, passive, and hybrid solar systems that directly convert ambient energy into heat or convey, store, or distribute the ambient energy. It defines "active solar system" as one that uses an external source of energy to power a motor-driven fan or pump to force the circulation of fluid through solar heat collectors and that takes the heat from the collectors and carries it to where it may be used or stored. It defines a "passive solar system" as one that can collect or store the sun's energy as heat without using a motor-driven fan or pump. A hybrid system is one that has parts of each system. Under prior law, "solar work" was the installation, repair, replacement, alteration, or maintenance of an active, passive, or hybrid solar hot water heating system. The act renames the solar work licenses and permits as solar thermal work licenses and permits.

BACKGROUND

Occupational Licensing System

State law establishes a licensing system for several trades overseen by different licensing boards, including the Electrical Work Board and the Heating, Piping, Cooling, and Sheet Metal Work Board. They have the power to determine who qualifies for a license and to enforce standards by disciplining licensees. Boards may create limited licenses authorizing their holders to work in a specific area of a trade. Each trade has different levels of expertise—apprentice, journeyman, and contractor. Workers must meet education, training, and experience requirements to qualify for each level. The boards establish less extensive requirements for workers attempting to qualify for a limited license. DCP's duties to the boards include receiving complaints, carrying out investigations, and performing administrative tasks, such as physically issuing licenses and renewals.

PA 05-214—sHB 6858
General Law Committee

AN ACT CONCERNING THE LICENSING OF ELECTRICIANS WHO ARE CURRENTLY LICENSED IN OTHER STATES OR A COMMONWEALTH OR TERRITORY OF THE UNITED STATES

SUMMARY: This act allows the Department of Consumer Protection (DCP) commissioner to issue a Connecticut license without examination to contractors and journeymen licensed by licensure jurisdictions within another state (e.g., counties), the District of Columbia, or any U.S. territory or commonwealth in the same way and under the same conditions that he may issue such licenses to people licensed by another state. This is known as reciprocal licensure. The provision applies to: electricians; plumbers; heating, piping and cooling contractors and journeymen; elevator contractors and craftsmen; solar contractors and journeymen; fire protection sprinkler contractors and journeymen; irrigation contractors and journeymen; sheet metal contractors and journeymen; and automotive and flat glass contractors and journeymen.
EFFECTIVE DATE: October 1, 2005

BACKGROUND

Reciprocal Licensure

The law allows reciprocal licensure if the other jurisdiction's requirements are at least equal to those of Connecticut and if this privilege is provided to Connecticut residents on a reciprocal basis. The applicant must pay the appropriate fee. The law allows the DCP commissioner to adopt regulations with the advice and consent of the appropriate licensing board.

Occupational Licensing System

State law establishes a licensing system for several trades overseen by different licensing boards, including the Examining Board for Electrical Work. The boards are within DCP. They have the power to determine who qualifies for a license and to enforce standards by disciplining licensees. Boards may create limited licenses authorizing their holders to work in a specific area of a trade. Each trade has different levels of expertise—apprentice, journeyman, and contractor. Workers must meet education, training, and experience requirements to qualify for each level. The boards establish less extensive requirements for workers attempting to qualify for a limited license. The law establishes DCP's duties to the boards, which include receiving complaints, carrying out investigations, and performing administrative tasks, such as physically issuing licenses and renewals.

PA 05-222—HB 5661
General Law Committee
Environment Committee

AN ACT REQUIRING MOBILE HOME PARKS TO PROVIDE RESIDENTS WITH NOTICE OF CERTAIN HEALTH AND SAFETY HAZARDS

SUMMARY: This act requires mobile manufactured home park owners to notify their park residents of a violation, or possible violation, of an environmental law enforced by the Department of Environmental Protection if its commissioner has given the owner written notice of the determination that there is a violation, or possible violation, on the park's grounds. The act's requirements do not apply to record-keeping or reporting violations. It requires the DEP commissioner to give a copy of the notice to the consumer protection commissioner.

The act sets requirements for the park owner's notice to residents and provides that it must not be construed to affect any other notice requirement, including compliance with one, that the owner may need to fulfill concerning park residents.
EFFECTIVE DATE: Upon passage

NOTICE REQUIREMENTS

The act requires the park owner's notice to be (1) given to residents within 10 days after the owner receives a notice from the DEP commissioner, (2) sent to residents using a method reasonably calculated to inform all of them, and (3) sufficient to reasonably inform residents of the nature of the violation or possible violation. It also requires the owner to give the commissioner, within five days after providing notice to residents, a written certification stating that the notice has been given to the residents and describing how it was done.

PA 05-229—sSB 948
General Law Committee
Judiciary Committee
Planning and Development Committee

AN ACT CONCERNING THE FAILURE OF A MUNICIPALITY TO OBTAIN A BOND FROM CERTAIN CONTRACTORS, PREPAID HOME HEATING OIL CONTRACTS AND HEAT AND UTILITY SURCHARGE CLAUSES IN RESIDENTIAL LEASES

SUMMARY: The law requires public works contracts, including those issued by political subdivisions, valued at $50,000 or more to require the general contractor to furnish a payment bond from a surety company to pay anyone the contractor fails to pay for work or materials supplied under the contract. The act allows, if a political subdivision fails to obtain the required bond, an unpaid subcontractor or supplier to sue it in the same way that he may sue a surety company for payment. The act states that it must not be construed to extend liability to the state for anyone's right to be paid or to constitute a waiver of the state's sovereign immunity.

The act limits the circumstances under which a general contractor or subcontractor must deposit disputed funds into an escrow account to those in which it has failed to obtain a surety bond.

The act prohibits home heating oil dealers from entering into prepaid contracts with consumers unless the dealers secure the contracts with either a minimum level of heating oil futures contracts or a surety bond of a certain amount. It sets standards for prepaid home heating oil contracts and establishes civil and criminal penalties for violating its provisions.
EFFECTIVE DATE: Upon passage

ESCROW ACCOUNTS

The law requires public works contracts for which such a payment bond is required to include certain provisions establishing a payment schedule. It also establishes a procedure for subcontractors to follow to enforce their payment claim against a general contractor or another subcontractor who has not complied with the payment schedule. The law makes a general contractor or subcontractor who has been properly notified of such an outstanding debt liable for the amount due and, 10 days after receiving notice, for 1% per month interest. In these cases, prior law also required a general contractor or subcontractor, on a written demand from his subcontractor, to place the amount of the claim, plus the 1% interest, in an escrow account unless the general contractor or subcontractor contends that his subcontractor has not substantially completed the work according to the terms of the contract. The act instead requires a general contractor or subcontractor to place the money in an escrow account only if the surety bond described above is not in place.

HOME HEATING OIL CONTRACTS

Futures Contracts and Security Bonds

The act allows a dealer to secure prepaid contracts with heating oil futures contracts or similar commitments that allow him to purchase at a fixed price at least 75% of the oil that he commits to providing under all of his prepaid contracts. Alternatively, it allows a dealer to secure contracts with a surety bond for at least 50% of the total amount he received from consumers under his prepaid contracts. The futures contracts or bonds must be maintained for as long as the prepaid contracts are in force, but the amount may be reduced to reflect deliveries.

Contract Standards

The act requires the contracts to state (1) the amount the consumer must pay, (2) the maximum number of gallons the dealer is committed to deliver, and (3) that the dealer's ability to fulfill the contract is secured by either futures contracts or a surety bond. It prohibits prepaid home heating oil contracts from committing consumers to purchase oil for longer than 18 months. It requires contracts to provide that the contract price of undelivered heating oil owed on its end date must be reimbursed to the consumer within 30 days of that date, unless the dealer and consumer agree otherwise.

Civil and Criminal Penalties

The law makes it an unfair trade practice for a dealer to fail to use written contracts when offering a guaranteed price plan or to fail to offer advertised prices for a minimum period. The act also makes it an unfair trade practice to violate the prohibition against consumer contracts longer than 18 months or fail to include the required provisions in consumer contracts.

The law requires home heating oil dealers to register with the Department of Consumer Protection (DCP) and authorizes DCP to suspend or revoke a registration after notice and hearing for such things as gross incompetency. The act also authorizes DCP to suspend or revoke a registration for home heating oil contract or advertising violations.

A home heating oil dealer who knowingly violates the act's requirement to obtain and maintain futures contracts or a security bond commits a class A misdemeanor (see Table on Penalties).

BACKGROUND

Enforcing Payment on a Payment Bond Provided Under a Public Works Contract

A subcontractor or supplier who has not been fully paid by the contractor after 60 days for work performed or material supplied on a public works project may file a payment claim with the surety company. If the surety has not paid the contractor within 180 days after the requisition for work or material was submitted or, if the work or material was not included in a requisition or estimate, within 180 days after the work was performed or material supplied, the subcontractor or supplier may file a claim against the surety.

Connecticut Unfair Trade Practices Act (CUTPA)

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the DCP commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than $5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. The act also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to $5,000 for willful violations and $25,000 for violation of a restraining order.

PA 05-240—sHB 6608
General Law Committee

AN ACT CONCERNING THE LIQUOR CONTROL ACT

SUMMARY: The law requires beer manufacturers and wholesalers to post their bottle, can, case, keg, barrel, or fractional unit prices (*e.g.*, quarter kegs) for the following month with the Department of Consumer Protection. The price, once posted, is the controlling price for the entire next month. This act allows them to post additional prices for specified parts of the month and makes them the controlling prices for the specified parts of the month. It requires wholesalers to provide their price postings for the following month to retailers by the 12th of the month "prior to such posting." These provisions are effective for one year, from July 1, 2005 to June 30, 2006.

The law prohibits retailers from selling any kind of alcoholic beverage below cost. The act redefines "cost" for beer to mean the lowest posted price during the month in which the retailer is selling plus any shipping or delivery charge paid by the retailer in addition to the price originally paid by the retailer.
EFFECTIVE DATE: July 1, 2005

PA 05-269—sHB 6854
General Law Committee
Appropriations Committee
Public Health Committee
Higher Education and Employment Advancement Committee
Human Services Committee

AN ACT CONCERNING INFORMATION RELATING TO PATIENT ASSISTANCE PROGRAMS AND DISCOUNT DRUG CARDS OF PHARMACEUTICAL COMPANIES

SUMMARY: This act establishes the Pharmacy Outreach Program administered by participating manufacturers through a toll-free number. The program is to (1) help state residents obtain reduced or no-cost medicine from participating manufacturers and (2) educate residents about programs available in Connecticut relating to such medicine. The act requires the Department of Social Services (DSS), within available appropriations, to oversee the program.
EFFECTIVE DATE: Upon passage

OBTAINING FREE OR REDUCED COST MEDICINE

The program must help residents obtain free or low-cost prescription or nonprescription medicine by (1) evaluating the likelihood that a resident will qualify to receive reduced-cost or no-cost prescription or nonprescription medicine from a participating manufacturer based on the eligibility requirements for each manufacturer's voluntary drug assistance program, (2) helping qualified residents to receive them, and (3) helping state-licensed physicians communicate with participating manufacturers about applications for assistance.

PROGRAM DUTIES

The act requires the program to (1) establish a statewide toll-free telephone number staffed by individuals qualified to advise residents on questions concerning access to reduced or no-cost medicine; (2) sponsor and organize materials and information, in conjunction with other organizations, about access to affordable prescription medicine; and (3) offer and give medication information, including information about drug interaction and abuse.

REPORT

The act requires DSS, if requested by the General Law and Human Services committees, to report by January 15, 2006 and annually thereafter on (1) the number of telephone calls received, (2) the number of prescriptions requested and issued through the program, and (3) anything else DSS deems relevant.

PA 05-273—SB 83
General Law Committee
Insurance and Real Estate Committee

AN ACT CONCERNING DORMANCY CHARGES AND GIFT CERTIFICATES

SUMMARY: This act prohibits retailers and other property holders from imposing dormancy charges or fees, abandoned property charges, unclaimed property charges, inactivity charges, or any similar charge, fee, or penalty for inactivity on gift certificates. Further, neither the certificate nor an agreement concerning it may contain language suggesting that there may be such a charge.

The law defines a "gift certificate" as a record showing a promise by the seller or issuer, made for consideration, that goods or services will be provided to the owner to the value shown in the record. This

includes, but is not limited to, a (1) record that contains a microprocessor chip, magnetic stripe, or other means to store information that is prefunded and for which value is decreased with use; (2) gift card; (3) electronic gift card; (4) stored value card or certificate; (5) store card; or (6) similar record or card. By law, a "record" is information inscribed on a tangible medium or stored in an electronic or other medium and retrievable in perceivable form.
EFFECTIVE DATE: Upon passage

BACKGROUND

Related Act

PA 05-189 exempts the value of gift cards from the law deeming most types of property held or owed in this state to be abandoned if the owner fails to claim it after three years and, in so doing, exempted gift cards from the law prohibiting the charges addressed in this act.

PA 05-274—SB 122
General Law Committee

AN ACT CONCERNING THE SHIPMENT OF WINE TO STATE RESIDENTS

SUMMARY: This act allows Connecticut farm wineries to ship directly to Connecticut consumers, establishes a procedure they must follow to do so, and requires out-of-state wineries shipping directly to Connecticut consumers to follow the same procedure.

The act requires in-state and out-of-state wineries to send their wine using delivery companies that hold in-state transporter's permits. As an alternative, the act allows wineries to obtain in-state transporter's permits. It requires (1) packages containing wine to bear labels stating that they contain alcohol and that an adult's signature is required as a condition of delivery and (2) delivery companies to obtain an adult's signature before delivery after checking the recipient's age using specific forms of identification.

The act also requires all shippers, both in-state and out-of-state, to pay any sales and alcoholic beverages tax due from the sales to the Department of Revenue Services (DRS) and prohibits them from (1) shipping more than five gallons in a 60-day period to any one consumer and (2) shipping into a "dry" town. The act also includes record-keeping and advertising requirements.
EFFECTIVE DATE: Upon passage

PROCEDURE FOR SHIPPING WINE DIRECTLY TO CONNECTICUT CONSUMERS

To ship directly to Connecticut consumers, the act requires wineries to:

1. make certain that all packages of wine shipped to Connecticut consumers bear labels stating, "CONTAINS ALCOHOL—SIGNATURE OF A PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY;"
2. obtain the signature of a person 21 or older before delivering, after requiring the signer to prove his age by showing a valid driver's license or Connecticut identity card;
3. pay all sales and alcoholic beverage taxes due on the sales to DRS and file related tax returns;
4. report to the Department of Consumer Protection (DCP) a separate and complete record of all sales and shipments to consumers in the state, on a ledger or similar form, which readily presents a chronological account of the permittee's dealings with each consumer;
5. hold an in-state transporter's permit or ship to Connecticut consumers using a delivery company that holds such a permit; and
6. clearly and conspicuously state their liquor permit number when advertising or offering wine for direct shipment to Connecticut consumers on the Internet or any other on-line computer network.

It allows them to be holders or backers of in-state transporter's permits.

The act prohibits all such shippers from shipping (1) more than five gallons of wine in a 60-day period to anyone in Connecticut or (2) to any address in the state where the sale of alcoholic beverages is prohibited under the local option provision of the Liquor Control Act (currently Bridgewater, Eastford, Roxbury, and Wilton, according to DCP).

FARM WINERIES

The act eliminates the ability of Connecticut farm wineries to sell and ship their brandy to customers outside of the state but authorizes them to sell it by the glass or bottle to customers for on-premises consumption. The law allows farm wineries to sell another Connecticut farm winery's products. The act limits this to sales made from the farm winery's premises. It also eliminates their ability to ship liquor in the state without holding an in-state transporter's permit. The law already allows farm wineries to sell and ship their product to Connecticut retailers in original sealed containers of up to 15 gallons.

OUT-OF-STATE SHIPPERS AND WINERIES

The act requires out-of-state wineries that want to ship wine that they have manufactured directly to Connecticut consumers to hold either (1) out-of-state shipper's permits for alcoholic beverages other than beer or (2) out-of-state small winery permits. It renames the latter permit the "out-of-state winery permit."

The act allows out-of-state wineries, if they do not produce more than 100,000 gallons of wine per year, to sell and ship their product to Connecticut retailers in original sealed containers of up to 15 gallons, as the law allows farm wineries. The act gives out-of-state shippers for alcoholic beverages for other than beer the same privilege, if they operate a farm winery and do not produce more than 100,000 gallons of wine per year. It defines "farm winery" for this purpose as a place or premises located on a farm in which wine is manufactured and sold and which grows at least 25% of the fruit used to make such wine. This is similar to the requirements for in-state farm wineries.

Prior law required applicants for initial or renewed out-of-state small winery permits to submit affidavits to DCP affirming that they did not produce more than 100,000 gallons of wine in the most recent calendar year. The act instead requires these applicants to submit affidavits stating whether they produced more than 100,000 gallons of wine.

The act prohibits out-of-state shippers from shipping directly to Connecticut consumers until they have registered with DRS to pay Connecticut's sales and alcoholic beverage taxes. For sales tax purposes, the act deems these shippers to be retailers engaged in business in Connecticut and requires DRS to issue them seller's permits. For alcoholic beverage tax purposes, the act deems these shippers to be distributors and requires them to (1) obtain distributor's licenses from DRS, (2) pay Connecticut's alcoholic beverages and sales taxes to DRS, (3) calculate taxes as if the sale were made in this state where the delivery is made, (4) file all related tax returns with DRS, and (5) allow DCP and DRS, separately or together, to audit their records on request. The act requires these shippers to agree in writing that state agencies and courts have jurisdiction concerning the enforcement of Connecticut's out-of-state shipper law and related laws, rules, and regulations, including tax laws, rules, or regulations. For the law concerning out-of-state shippers for alcoholic beverages other than beer, the act defines "out-of-state" as any other state, any U.S. territory or possession, the District of Columbia, or Puerto Rico, but not a foreign country. This is the same definition in the law concerning out-of-state winery permits.

IN-STATE TRANSPORTERS

The act requires in-state transporters to (1) make certain that all packages of wine shipped to Connecticut consumers bear labels stating, "CONTAINS ALCOHOL—SIGNATURE OF A PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY" and (2) obtain the signature of a person 21 or older before delivering, after requiring the signer to prove his age by showing a valid driver's license or Connecticut identity card.

It prohibits them from delivering to any address in the state where the sale of alcoholic beverages is prohibited under the local option provision of the Liquor Control Act. It also prohibits them from delivering alcoholic beverages unless any applicable sales taxes have been paid. The law already prohibits such deliveries unless the alcoholic beverages tax has been paid.

The act makes a violation of its requirements and prohibition by an in-state transporter a criminal penalty punishable by a fine of up to $2,000 for each offense. The law already imposes the same penalty for violations of other provisions of the in-state transporter permit law.

REGULATIONS

The act authorizes the DCP, in consultation with DRS, to adopt regulations implementing its provisions concerning out-of-state shippers.

PA 05-183—sSB 1
Government Administration and Elections Committee
Judiciary Committee
Appropriations Committee

AN ACT CREATING THE OFFICE OF STATE ETHICS AND THE CITIZEN'S ETHICS ADVISORY BOARD

SUMMARY: This act abolishes the nine-member State Ethics Commission (SEC) and establishes the Office of State Ethics (OSE) and a nine-member Citizen's Ethics Advisory Board as its successor. The board is located within the office, which is an independent state agency. The act requires the governor, Senate president, and House speaker to jointly appoint an interim executive director to oversee the transfer of duties and responsibilities. It also requires the administrative services commissioner to transfer current SEC staff to other state agencies.

Once established, the OSE, like the SEC, will administer and enforce the Code of Ethics for Public Officials and the Code of Ethics for Lobbyists. Unlike prior law, the act clearly delineates the responsibilities of the board and OSE staff. OSE staff must primarily perform the day-to-day administrative functions that, in practice, were performed by SEC staff, and the board must perform the functions of the former nine-member commission. The OSE must follow similar procedures as the SEC. However under the act, a judge trial referee, rather than the new office, holds probable cause hearings and determines if probable cause exists to believe that an ethics violation was committed. Another significant difference from prior law is that the act requires the board to delay the effect of any decision for up to seven days upon the request of any aggrieved party.

The act requires the chief court administrator to designate and make available to the OSE 10 judge trial referees to hold probable cause hearings, make probable cause determinations, and preside over violation hearings.

EFFECTIVE DATE: July 1, 2005, except for the provisions on the interim executive director and staff transfers, which are effective upon passage.

OFFICE OF STATE ETHICS

Composition

The OSE is composed of an executive director, general counsel, ethics enforcement officer, and such other staff as the executive director hires. It also consists of a nine-member Citizen's Ethics Advisory Board.

Staff. The act requires the office to hire different people to serve as executive director, general counsel, and ethics enforcement officer. It exempts them from classified state service and requires the administrative services commissioner to determine their salaries in accordance with accepted personnel practices. The office may employ other necessary staff within available appropriations who must be in classified state service.

Under the act, the advisory board appoints the executive director for an open-ended term. The executive director appoints the general counsel, ethics enforcement officer, and other staff. The board must annually complete a written evaluation of the executive director's performance and the director must annually, and in writing, evaluate the general counsel's and enforcement officer's performance. The board may remove the executive director, who can remove the general counsel and ethics enforcement officer in accordance with the State Personnel Act. Additionally, the general counsel and ethics enforcement officer may be removed in accordance with any applicable collective bargaining agreement.

The general counsel, in consultation with the executive director, oversees yearly training of all state personnel in the code of ethics, provides training on the code to other individuals or entities subject to the code, and makes recommendations on public education regarding ethics.

Citizen's Ethics Advisory Board. The governor appoints three of the nine board members and the top six legislative leaders appoint one each. The appointments must be made in the same manner as SEC appointments. Initial board members serve staggered terms of the same duration as the initial members of the SEC. Beginning October 1, 2005, subsequent members all serve four-year terms. The limitations on SEC members' terms and political activities apply to board members. Unlike SEC members, board members cannot continue in office after their terms expire. No more than five members of the board can represent the same political party.

The act alters the number of members needed to take certain actions. Under the act, as under prior law, six members constitute a quorum. However, a majority of the members, rather than a majority vote of a quorum, is necessary under the act, for most actions, including approving advisory opinions. Two-thirds of the board members present and voting are required to find an ethics violation and impose penalties. A minimum of three, rather than five, members may call a meeting.

Like SEC members, board members receive (1) a $50 per diem for attending meetings and hearings and (2) reimbursement for necessary expenses.

Limitations on Staff and Board Members' Activities and Employment

The act requires staff and board members to adhere to the same code of ethics as staff and members of the SEC. Additionally, the act:

1. prohibits board members from being state employees and from holding any other position in state government for one year after service,
2. prohibits board members and employees from making political contributions to anyone subject to the code,
3. prohibits them from representing anyone (other than themselves) before the board within one year after service,
4. prohibits anyone who appears before the board from hiring them within that one year, and
5. requires board members to recuse themselves from proceedings involving the person who appointed them.

The act prohibits the board and OSE staff from disclosing confidential information OSE receives during an evaluation or investigation to determine possible lobbyist code violations. The same prohibition applies to OSE staff, but not the board, under the public officials code.

Organization

The act organizes the office into two divisions: legal and enforcement. The legal division, headed by the general counsel, provides information and opinions (written and verbal) to people subject to the code and to the public, gives the board legal advice on matters before it, and represents the board in matters where the board is a party. If the board needs help, it must ask the attorney general for assistance. The information the legal division receives may not be used as the sole basis for investigating or instigating a complaint.

The act requires the enforcement division, headed by the ethics enforcement officer, to (1) investigate complaints filed with the board or that the board initiates, (2) review appeals from municipal ethics agencies' decisions, and (3) advise the board on the merits of hearing each appeal. The division must employ necessary attorneys and investigators. It can refer criminal matters to the chief state's attorney.

OSE's General Duties

With a few exceptions, the act requires the OSE to perform most of the duties and responsibilities the SEC previously performed. In addition to these duties and responsibilities, the act requires the OSE, including the board, to (1) issue, compile, maintain, and preserve informal staff letters; (2) respond to inquiries and provide advice regarding the code either verbally or through informal letters; (3) provide annual ethics training to all state employees; (4) make legislative recommendations to the General Assembly; and (5) meet at least once a month with the executive director and ethics enforcement officer.

Advisory Board's General Duties

The board performs the functions, which in practice were performed by the nine-member SEC. For example, the board approves advisory opinions drafted by OSE staff; determines code violations and imposes appropriate penalties; adopts regulations, including regulations defining "major life event" and prescribing the color, size, and material for lobbyists' badges; refers matters, as appropriate, to the chief state's attorney; receives statements of financial interests; establishes lobbyists registration fees; and prescribes lobbyists registration and financial report forms.

Ethics Complaints, Investigations, and Hearings

Under prior law, the SEC prescribed ethics complaint forms and investigated complaints of alleged ethics violations, regardless of whether they were filed by a third person or initiated by the commission. After the investigation, which could include a hearing, the commission determined if probable cause existed to believe a violation occurred. The investigation and initial determination of probable cause were confidential, unless the respondent requested otherwise. If probable cause was found, the commission held a public hearing to determine whether there had been a violation. A judge trial referee presided over the public hearing to rule on evidentiary matters only. He did not vote on whether a violation was committed. The commission decided if a violation was committed. The commission could issue orders to correct any violation it found or punish violators.

Under the act, the board prescribes the form for complaints against public officials and state employees and the OSE prescribes the form for complaints against lobbyists. The act changes the process by (1) requiring the Citizen's Ethics Advisory Board to adopt, as regulations, procedural rules governing probable cause hearings; (2) designating the OSE's ethics enforcement officer as the only person authorized to conduct investigations; (3) requiring the board to give notice of complaints under the public officials code and the OSE to give notice under the lobbyist code; (4) separating the probable cause hearing from the investigation; and (5) authorizing a judge trial referee to conduct any probable cause hearing.

Probable Cause. The act requires the judge trial referee making the probable cause determination to do

so within 30 days after he receives the alleged violation from the ethics enforcement officer. However, the referee may extend the 30-day deadline for good cause. He must publish his finding within five days after the deadline. However, as the SEC could under prior law, the OSE can prevent anyone from examining or releasing the record for up to 14 days in order to reach a stipulated agreement or settlement. The act requires a majority of board members present and voting to approve the agreement or settlement.

If a judge trial referee finds no probable cause to believe the public officials' code was violated, the act requires the (1) complaint and record and the OSE's investigation to remain confidential unless the respondent requests otherwise and (2) board to pay the respondent's legal expenses as determined by the attorney general or a court. Currently, the SEC pays these expenses if it finds no probable cause.

Violations. The act requires the board to initiate a hearing to determine if a violation has been committed within 30 days after the probable cause determination and conclude it 90 days later. A judge trial referee may extend these deadlines for good cause shown. The judge trial referee who presides over the hearing must be different from the one who conducted the probable cause hearing.

The act permits the board to impose the same penalties for code violations as the SEC does currently.

STATE TRIAL REFEREES

The act requires the chief court administrator to designate and make available 10 judge trial referees to preside over and issue rulings at ethics hearings and make probable cause determinations after ethics investigations.

INTERIM EXECUTIVE DIRECTOR

The act requires the governor, Senate president, and House speaker to jointly appoint an interim executive director to serve until the Citizen's Ethics Advisory Board appoints the OSE executive director. The interim director must oversee the transfer of responsibilities and duties of the SEC to the OSE. Additionally, the act gives him the general powers and duties of the SEC.

STAFF TRANSFERS

The act requires the administrative services commissioner to transfer the current SEC staff and the funds allocated for their positions to other state agencies by July 1, 2005. The commissioner must make sure that the new positions (1) are within 20 miles of Hartford and (2) retain their employees' current titles, grades, benefits, and union membership. The act prohibits the commissioner from requiring the OSE to hire any of them. It further prohibits any state employee from being laid off as a result of the transfers.

BACKGROUND

Related Act

PA 05-3, June Special Session, permits a member of the SEC on June 30, 2005 to serve on the Citizen's Ethics Advisory Board from July 1, 2005 to September 30, 2005. After July 1, 2005, all board members, including vacancies, must be appointed consistent with the provisions in PA 05-183. Any SEC member who elects to serve on the board during the three-month period is considered to fill a vacancy and after the term expires he is eligible for appointment to one full four-year term.

If the advisory board does not have enough members from July 1, 2005 to September 1, 2005 to constitute a quorum, the governor can appoint members that the Senate president and House speaker approve. Like the SEC members who elect to serve on the board, the gubernatorial appointees are considered to fill vacancies and after their terms expire they are eligible for appointment to one full four-year term.

The act requires all board members to be in place and serving their initial terms, which begin on October 1, 2005, before they hire the executive director.

The act specifies that the regulations the advisory board adopts do not govern the conduct of judge trial referees who determine if probable cause exists to believe that an ethics violation was committed and preside over ethics violation hearings.

PA 05-188—sSB 55
Government Administration and Elections Committee
Appropriations Committee
Legislative Management Committee
Judiciary Committee

AN ACT CONCERNING VOTER REGISTRATION, CERTAIN NOMINATING PROCEDURES, CAMPAIGN ACCOUNTABILITY, A VOTER GUIDE, PUSH POLLING AND ELECTRONIC VOTING MACHINES

SUMMARY: This act modifies existing voting and campaign procedures and creates new ones. Generally, it:

1. sets standards for direct recording electronic voting machines (DREs) and establishes procedures for elections and primaries that use them;

2. expands the law that requires campaign ads to include attributions;
3. requires the secretary of the state to prepare and publish an online voter guide;
4. requires the secretary of the state to provide voter registration services at certain naturalization ceremonies;
5. exempts from disclosure certain voter registration information;
6. eliminates the provision for holding a primary before an election to fill congressional or multitown judge of probate vacancies, replacing it with a new calendar and process for filling such vacancies; and
7. requires a study on push polling.

EFFECTIVE DATE: Upon passage, except for (1) voter registration at naturalization ceremonies, which is effective on July 1, 2005 and (2) changes in campaign attribution requirements and preparation of the voter guide, which are effective on January 1, 2006.

VOTING MACHINES

The act allows the secretary of the state to approve voting machines for use in Connecticut that, among other things, meet standards that the federal Election Assistance Commission adopts pursuant to the federal Help America Vote Act ((HAVA) (P.L. 107-252)) or those that the Federal Election Commission (FEC) adopts, whichever are most current. Under prior law, she was only allowed to consider the FEC's standards.

DRE Operations

The act establishes requirements that DREs used in elections or primaries occurring on or after July 1, 2005 meet minimum standards. They must:

1. produce a contemporaneous individual, permanent, paper record ("voter record") of each elector's selections and a voting machine-generated, individual, permanent, paper record ("machine record") after the polls close, each with an identical voting machine-generated unique identifier that can be matched against the other and that preserves the secrecy of each elector's ballot;
2. permit electors to verify their voter record as reflected on a DREs' screen ("electronic summary screen"), or to hear an audio description of the screen, and make changes or corrections before casting their ballot;
3. void the first voter record and produce another if an elector changes his ballot, and provide that person with another opportunity to verify his selections;
4. provide that ballots are considered cast when (a) an elector's voter record is deposited into a receptacle designed to store the paper records and (b) his votes are simultaneously electronically recorded inside the voting machine; and
5. secure the secrecy of each elector's ballot while he is (a) voting, (b) verifying his vote, (c) changing or correcting his choices, and (d) casting his ballot, as well as during any canvass, recanvass, or tally of all electors' ballots whether manually or electronically.

The DREs also must ensure accessibility to blind or visually impaired individuals by providing each elector with an audio description, if desired, of their voter record in addition to an audio description of the electronic summary screen. But the secretary may approve a DRE for purchase or lease that does not comply with this provision if (1) she determines that no DREs are available at that particular time that comply; (2) the DRE meets all of the act's other standards; and (3) the applicant agrees, by reference in the contract, to (a) modify any previously sold or leased DRE if the secretary notifies him that modifications exist to bring the machine into compliance and (b) provide only DREs that comply with the accessibility provision after the secretary's notification.

Election Procedures When DREs Are Used

The act establishes procedures and extends existing procedures that apply to elections and primaries in which DREs are used. The procedures:

1. require all votes, including those cast on DREs, to be tallied at the polling place immediately following the close of the polls, with the printout of a DRE attached to the tally sheets;
2. require a manual recount of the voter records if a recanvass is needed for a particular candidate or question;
3. establish the voter records as the official record of each elector's vote if a manual recount does not reconcile with the electronic vote tabulation;
4. match any of these records that are damaged with the machine records bearing the identical unique identifier and use the machine records as the official records;
5. allow the secretary of the state to order a discrepancy recanvass for a federal, state, or district office if she has reason to believe that it could affect the outcome of the election or primary;
6. require the voter records to be preserved in their designated receptacle for (a) 180 days following an election or primary not involving

federal offices or (b) 22 months following an election or primary involving federal offices;
7. stipulate that candidates and electors retain their rights to existing remedies in a contested election or primary; and
8. allow the court or the State Elections Enforcement Commission (SEEC) to order machines (a) locked for a period longer than that required by law or (b) audited.

DRE Audit Procedures

The act requires a manual audit of at least two DREs per assembly district, selected through random drawing, within five days after each election or primary. It designates the registrars of voters or their designees, representing at least two political parties, as the auditors after an election. After a primary, the registrars of voters of the affiliated party designate as the auditors two or more people representing at least two candidates. One of the auditors may be the registrar. No audit is required if the machines are subject to a recanvass.

The random drawing must be announced in advance, open to the public, and use a selection method that the secretary determines and publicly announces.

The audit consists of a manual tally of a DRE's voter records compared with its electronic vote tabulation. If a voter record is damaged, the audit officials must instead use the matching machine record. The act requires the officials to prepare a reconciliation sheet, comparing the tabulations and listing any discrepancies, and file it with the town clerk and the secretary of the state. The sheet is open to the public and may be used as prima facie evidence of a discrepancy in a contested election or primary. If the audit officials are unable to reconcile the manual count with the electronic vote tabulation and discrepancies, the secretary of the state must conduct an investigation to review the machine's certification qualifications, and may order a recanvass.

CAMPAIGN ACCOUNTABILITY

By law, written, typed, and other printed political communications paid for by people or committees cooperating with, in consultation with, or acting at the request of, a candidate or his agent or committee to promote or defeat a candidate must include an attribution.

The act expands the attribution law. It extends to written Internet-based campaign communications the requirement that they include the identity of the person who paid for it. This means, if an individual paid for the ad, it must include the person's name and address. If a party committee paid for the ad, it must include the committee's name. If any other committee paid for it, it must include the committee name and the name of its campaign treasurer.

In addition to the required designation of the person or committee that paid for it, the act expands the attribution for all communications by requiring them to identify the person who approved it. The face of any printed literature must include the words "approved by." If an individual makes the expenditure (1) with the cooperation of, (2) at the request or suggestion of, or (3) in consultation with any candidate or his committee or agent, the attribution must include the individual's name. If a candidate committee makes the expenditure, the attribution must include the candidate's name. Like existing attribution requirements, the act's provisions do not apply to (1) unsolicited, freely published newspaper, magazine, or journal editorials, news stories, or commentary; (2) banners; (3) political paraphernalia; or (4) signs under 32 square feet.

The act also requires television and Internet video communications to show, for at least four seconds, images and readable printed statements and personal audio messages of approval from the candidate. Radio and Internet audio communications must include a personal, audio message from the candidate.

Table 1 shows the new attribution requirements.

Table 1: Attribution Requirements

Agent	***Television/Internet Video***	***Radio/Internet Audio***
Candidate or his committee	▪ Clearly identifiable image of the candidate ▪ Clearly readable statement identifying him and indicating that he approves the message ▪ Personal audio message stating "I am (candidate's name) and I approved this message"	▪ Personal audio message by the candidate indicating his name, the office he is seeking, and his approval of the message by stating "I am (candidate's name) and I approved this message"

VOTER GUIDE

The act requires the secretary of the state, in consultation with the SEEC and within available appropriations, to prepare and publish on the Internet a voter guide for each state election. She must complete it by October 1 in each state election year.

The voter guide must include:

1. the date of the election and hours the polls will be open;
2. the name, party affiliation, and contact information for each candidate for the offices of U.S. president and vice-president, U.S. senator and representative, the six state constitutional offices, and the state legislature;
3. maps showing the current boundaries of congressional and state legislative districts;
4. a description of each office to be filled;
5. an absentee ballot application form in printable format with instructions on how to vote by absentee ballot;
6. a voter registration form in printable format with information on voter registration procedures;
7. the text of each proposed constitutional amendment, if any, and the explanatory text for it; and
8. the text of the Voter's Bill of Rights.

The act authorizes the secretary of the state, in consultation with the SEEC, to adopt regulations that implement the preparation and publication of the voter guide. But, she cannot authorize the inclusion of information beyond what is specified in the act.

VOTER REGISTRATION

The act requires the secretary of the state, within available appropriations and in consultation with registrars of voters and nonprofit organizations, to provide voter registration services at naturalization ceremonies for 25 or more people.

The act exempts from disclosure under the Freedom of Information Act information submitted as part of a mail-in voter registration application with the exception of the applicant's name, address, date of birth, and telephone number. The law allows a person who applies by mail to register for the first time in Connecticut to submit as part of his application (1) a copy of a current and valid photo identification; (2) a copy of a current utility bill, bank statement, government check, paycheck, or government document showing his name and address; (3) a valid Connecticut driver's license number; or (4) the last four digits of his Social Security number. A person who does not submit a form of identification with his registration application must do so when voting for the first time at a federal election, or cast a provisional ballot.

NOMINATING PROCEDURES

The act eliminates the provision for holding a primary before an election held to fill a vacancy in the office of a U.S. representative or judge of probate in a multitown district. It replaces the schedule for (1) issuing writs of election, depending on when the vacancy occurs; (2) selecting convention delegates; and (3) holding a primary for contesting candidates, with a process and calendar for filling such a vacancy.

Under the act, an election to fill congressional or multitown judge of probate vacancies must occur at least 63 days after the governor issues the writs of election. If a vacancy occurs between 125 and 66 days before a regular state election, the governor must issue the writs 63 days before the day of the state election, ordering the election to fill the vacancy to also be held on that day.

If the vacancy occurs between (1) 65 days before the regular state election and (2) the Wednesday following the first Monday of January of the next year, the governor does not issue the writs and no election is held (unless the vacant position is that of a member-elect, in which case a special election is held).

In the event of a vacancy in these offices, the act repeals the provision in prior law for holding a primary to nominate a party's candidate. The convention delegates who met to endorse candidates for the previous state election must meet to nominate the party's candidate to fill the vacancy. If there is a vacancy among the delegates, the appropriate town committee (in the town or political subdivision or district where the delegate lived) fills it. Political parties must certify their nomination at least 35 days before the election.

PUSH POLLING

The act requires the SEEC to conduct a study of the use of push polling in Connecticut campaigns. By February 1, 2006, it must submit a report to the Government Administration and Elections Committee on its findings, conclusions, and any recommended legislation.

The act defines "push poll" as a paid telephone survey or series of surveys that are similar in nature and that reference a candidate or group of candidates other than in a basic preference question. Additionally, in a push poll:

1. the polling organization uses a list or directory to select respondents based on demographic or political information such as race, age, sex, ethnicity, party affiliation, or like characteristics;
2. the survey fails to ask demographic questions such as age, household income, or status as a likely voter sufficient to tabulate results based on a relevant subset of the population consistent with standard polling industry practices;

3. the pollster or polling organization does not collect or tabulate survey results;
4. the survey prefaces a question regarding support for a candidate on the basis of an untrue statement; and
5. the survey's primary purpose is to suppress or change the call recipient's voting position.

BACKGROUND

Help America Vote Act

Congress passed HAVA in October of 2002 as a package of federally ordered election improvements. Under Section 301 of HAVA, the technology and administration of every voting system used in federal elections must meet uniform and nondiscriminatory requirements. Beginning January 1, 2006, all voting systems must:

1. permit voters to verify their selections on their ballot, notify them of overvotes, and permit them to make changes or correct an error before casting the ballot;
2. produce a permanent paper record for the voting system that can be manually audited and is available as an official record for recounts;
3. provide individuals with disabilities, including the blind and visually impaired, the same accessibility to voting while maintaining voter privacy and ballot confidentiality through the use of at least one DRE or properly equipped voting system at each polling place;
4. provide alternative language accessibility, as required by the Voting Rights Act of 1965; and
5. comply with the error rate standards in the federal voting system standards in effect on October 29, 2002.

Related Act

PA 05-235 amends this act by (1) adding an accessibility provision for DREs; (2) changing, in some cases, DRE audit procedures; and (3) eliminating the changes to the process for filling congressional or multitown judge of probate vacancies, leaving existing law in place. It also establishes a Voting Technology Standards Board for electronic voting machines.

PA 05-235—sHB 6669
Government Administration and Elections Committee
Planning and Development Committee
Judiciary Committee
Legislative Management Committee
Appropriations Committee

AN ACT CONCERNING ABSENTEE VOTING, ELECTIONS ENFORCEMENT, A VOTING TECHNOLOGY STANDARDS BOARD, NOMINATION PROCEDURES, TRAINING FOR ELECTION OFFICIALS, CAMPAIGN FINANCE REPORTING, RESTORATION OF VOTING RIGHTS AND VOTER REGISTRATION

SUMMARY: This act (1) imposes more restrictions, and establishes greater accountability, in the absentee voting process; (2) expands the State Elections Enforcement Commission's (SEEC) jurisdiction and powers and increases the penalties for registration and voting fraud; and (3) limits the right to appeal, and changes the process for appealing, decisions on right to vote made by admitting officials.

It establishes a Voting Technology Standards Board to develop standards for electronic voting systems used in this state. It adds to the accessibility standards for direct recording electronic voting machines (DREs) established by PA 05-188, sets deadlines for approving machines that do not meet these standards, and gives registrars an option for the number of DREs they must audit.

The act gives residents additional time to register to vote before an election and delays, by two days, the date registrars must file supplemental voter lists with their town clerks.

It establishes a process for filling certain vacancies in municipal offices and restores the process for filling congressional and probate court vacancies that PA 05-188 eliminated.

The act changes filing deadlines for certain campaign finance reports and increases penalties for missed deadlines. It makes other changes to the voter registration form and the process for filing certificates of party endorsements.

It (1) requires registrars to certify party enrollment lists, (2) prohibits them from requiring disenfranchised felons to provide proof of their discharge from custody when seeking to have their voting rights restored, and (3) requires the Registrars of Voters Certification Committee to establish a training program for poll workers and registrars.

EFFECTIVE DATE: July 1, 2005, except for the provisions on (1) voting technology standards, DREs, and congressional vacancies, which are effective upon passage; (2) absentee voting, which are effective July 1, 2005 and applicable to elections, primaries, and

referenda beginning September 1, 2005; (3) voting machines and endorsed candidates, which are effective October 1, 2005; and (4) voter registration and registration forms, which are effective January 1, 2006.

ABSENTEE VOTING (§§ 1-5)

Application Log

The act requires town clerks to keep a log of all absentee ballot applications they provide. The log must include the names and addresses of each recipient and the number of applications each received. The act requires applications the clerks issue to be consecutively numbered and stamped or marked with the issuing municipality's name.

Supervised Absentee Balloting

The act expands registrars of voters' duty and authority to supervise absentee voting. Under the act, supervision is mandatory at assisted living facilities where at least 20 requests are made for absentee ballots. It is permissible at other assisted living facilities and at apartment buildings or complexes where at least 20 requests are made for absentee ballots. Registrars may already supervise absentee voting at health care facilities for veterans or the handicapped; residential care, nursing, or rest homes; alcohol or drug treatment facilities; or infirmaries operated by educational institutions.

Absentee Voting Requirements

The act prohibits anyone from misrepresenting the requirements for voting by absentee ballot to an elector or prospective absentee ballot applicant. Under existing law, a person may vote by absentee ballot if:

1. he is absent from his city or town of residence during all hours of voting, ill or physically disabled, or in active service with the armed forces of the United States;
2. the tenets of his religion forbid secular activity on the day of the primary, election, or referendum; or
3. he is an election or referendum official outside of his voting district and his duties will keep him away during all hours of voting.

Application Distributors

The act requires ballot application distributors to register with the town clerk before distributing five or more applications. The registration requirement does not apply to an applicant's designee or to people distributing applications solely to dependent relatives living in their household or to their spouse, child, or parent (immediate family).

Ballot Distribution Requirements

The act requires ballot application distributors to file with the town clerk a list of the names and addresses of all the people who receive an absentee ballot application before the primary, election, or referendum for which the ballot was distributed. Application distributors who receive completed and signed applications must file them with their town clerks right away.

Requirements for Mailing Unsolicited Applications

The act prohibits candidates, party and political committees, or their agents from mailing unsolicited absentee ballot applications unless the mailing includes (1) an explanation of the eligibility requirements for voting absentee and (2) a warning that voting or attempting to vote by absentee ballot illegally carries civil and criminal penalties.

Absentee Ballot Application Notice Requirement

The act requires the secretary of the state to conspicuously post a notice next to the absentee ballot available for downloading on her web site. The notice must state that a person may download the application for his own use or use by his immediate family or designee. The notice must also contain an advisory statement that distributors of five or more applications to others must register with their town clerk.

The act requires the SEEC, in consultation with the secretary of the state, to prepare a summary of the absentee voting laws' requirements and prohibitions and place it on their websites. It requires candidates and political party chairs to provide the summary to campaign and party employees and volunteers.

Absentee Voting Law Violators Ineligible for Accelerated Rehabilitation

The act makes ineligible for accelerated rehabilitation (1) designees charged with executing an application contrary to an elector's wishes and (2) people charged with the following crimes:

1. making false statements in absentee balloting,
2. illegally executing a ballot,
3. improperly trying to ascertain how an absentee balloter cast his vote,
4. unlawfully opening or filling out a blank and signed application, or
5. willfully violating absentee balloting laws.

Under existing law, accelerated rehabilitation participants waive their right to a speedy trial and agree to a tolling of the statute of limitations. The court places them under the supervision of the Court Support Services Division for up to two years under whatever conditions it orders. If the defendant successfully completes the program, the court dismisses the charges against him and his records are erased. If he violates a condition of the program, he is brought to trial on the original charges.

STATE ELECTION ENFORCEMENT COMMISSION (§§ 6 & 12)

The act expands the SEEC's jurisdiction. After a hearing, it authorizes the SEEC to impose a civil penalty of up to $2,000 per violation (1) for local petition circulation failures, (2) on election or primary officials who fail to perform their duties with respect to elections or voting methods, or (3) on illegal voters. This penalty is in addition to criminal penalties that already exist for violations.

The act gives the commission the power to issue an order determining a person's qualifications as an elector after its own investigation.

It permits the revenue services commissioner to disclose necessary tax returns or return information to the SEEC when the commission makes a written request for it to investigate suspected violations of state election laws.

CRIMINAL PENALTIES FOR REGISTRATION AND VOTING FRAUD (§§ 8-10)

The act makes it a class D felony and thereby increases the criminal penalty (see Table on Penalties) for anyone who makes false statements about his qualifications as an elector or uses the name of a qualified elector to fraudulently vote in a town meeting, primary, or election. It extends the penalties for (1) false statements to cover those made prior to primaries and referenda and before the SEEC and (2) fraudulent voting to cover referenda. The act leaves unchanged the requirement in law that all violators be disenfranchised.

APPEAL FROM DECISION ON QUALIFICATIONS AS AN ELECTOR (§ 7)

Right to Appeal

Under existing law, anyone may appeal an admitting official's decision regarding a person's qualifications as an elector to the registrar of voters, or to Board for Admission of Electors if the registrar made the decision, in the town where the dispute arises. The appellant must give the registrar or board notice of the appeal and, within seven days thereafter, the registrar or board must notify the appellant of the time and place for the appeal.

The act limits the right to appeal to people denied admission as an elector or the right to remain an elector. It prohibits an appellant-registrar from serving as a voting member on the board that hears the appeal. (Since only a person denied admission or the right to remain an elector can appeal, the prohibition against registrars has no legal effect.) Existing law already prohibits the registrar whose decision is the subject of the appeal from voting on the matter.

Appeals to SEEC

The act permits the aggrieved party to further appeal the decision to the SEEC. If an appeal is not filed with the commission, the registrar's or board's decision is final. An appeal to the SEEC must be in writing and filed at the SEEC's principal office within 14 days after the registrar's or board's decision. Within the same period, the appellant must also provide a copy of the appeal notice to the registrar or board that rendered the decision.

Within 10 days after receiving notice of the appeal, the initial decision maker must deliver the record of its hearing on the matter to the commission. Within 21 days after it is filed, the commission must hear the appeal as a contested case and record it. Before making a decision, the commission may review the record of the initial hearing and examine witnesses, documents, and other relevant evidence.

The commission's decision is due within 60 days after its hearing unless it needs, or grants a requesting party, an extension. The commission must get the written consent of all parties before initiating an extension.

The commission must issue an order determining the aggrieved person's qualifications as an elector. Since the commission is not an admitting official, presumably if it determines that an appellant (or aggrieved party if other than the appellant) is a qualified elector, it must order the registrars to add his name to the town's active registry list.

If the commission determines that the person is not qualified to be an elector, the act authorizes it to order the registrars to remove his name from the town's active and inactive registry lists and any enrollment list. The person may reapply to be an elector at any time. If the reapplication is made within four years after the decision, the registrars can approve it only if they find him eligible and a substantial change in the circumstances that provided the basis for the commission's decision. The commission can impose a civil penalty of up to $2,000 if it receives a complaint and finds that a registrar willfully, and without good

cause, violated the requirement to find a substantial change in circumstances.

VOTING STANDARDS BOARD AND VOTING MACHINES (§§ 13-14 & 29-30)

Standards Board

The act establishes a 12-member Voting Technology Standards Board to adopt electronic voting technology standards that ensure the integrity of the state's voting systems. The board must terminate by January 16, 2006, which is the deadline for it to submit its standards in a report to the Government Administration and Elections (GAE) Committee, governor, and secretary of the state.

The board's appointing authorities must appoint board members within 30 days after the act's passage and fill vacancies in their appointments as they arise. The board must elect a chairperson and vice-chairperson from among its members.

Board members are:

1. the GAE Committee chairs and ranking members;
2. the secretary of the state or her designee;
3. the SEEC's executive director or his designee;
4. one person each from two different political parties appointed by the president of the Registrars of Voters Association of Connecticut;
5. one person each from two different political parties appointed by the president of the Connecticut Town Clerks Association, Inc.;
6. a University of Connecticut faculty member or employee with expertise in computer architecture appointed by the governor; and
7. one representative of a nonpartisan organization for government accountability appointed by the governor.

Electronic Voting Technology Standards

The standards must:

1. address accuracy;
2. protect voter anonymity;
3. maintain secret ballots, except where a voter requests assistance;
4. prevent duplicate voting on any ballot question and people from voting for more candidates for any office than there are persons to be elected to it;
5. address the equivalent of write-in votes;
6. provide for reliable backup power sources so that a system is not subject to power failures;
7. address handicapped accessibility;
8. provide a simple ballot layout that will not confuse voters;
9. allow for easy navigation of multiple-screen ballots;
10. enable voters to check and correct votes;
11. provide for voter-verified paper trails;
12. address adequate security precautions if individual voting systems are networked or if voting results will be communicated via the Internet;
13. address encryption;
14. provide adequate protection from computer viruses; and
15. provide any other standards necessary to protect the integrity of the voting systems.

The act requires that electronic voting machines the secretary of the state examines for possible use in this state comply with the standards once they are submitted.

DRE Standards

The act adds to the accessibility standards that PA 05-188 establishes for DREs used in state elections and primaries. It requires the DREs to comply with any accessibility standards that the secretary of the state may adopt by law.

PA 05-188 requires that DREs used in elections or primaries occurring on or after July 1, 2005 ensure accessibility to blind or visually impaired individuals by providing each elector with an audio description, if desired, of the contemporaneously produced individual, permanent, paper record in addition to an audio description of the electronic summary screen.

Approving DREs

The act sets a deadline for the secretary of the state to exercise the authority PA 05-188 gives her to approve a DRE for purchase or lease that does not comply with the above accessibility.

On or before June 30, 2007, she may exercise the authority under PA 05-188 if (1) she determines that at that particular time, no DREs are available that comply; (2) the DRE meets all of the act's other standards; and (3) the applicant agrees, by reference in the contract, to (a) modify any previously sold or leased DRE if the secretary notifies him that modifications exist to bring the machine into compliance and (b) provide only DREs that comply with the accessibility provision after the secretary's notification. Beginning July 1, 2007, the act prohibits any voting machine that is not in compliance with the accessibility standards from being used.

Auditings DREs

The act gives registrars an option for the number of DREs they must audit. PA 05-188 requires them to conduct a manual audit, within five days after each election or primary, of at least two randomly selected DREs in each assembly district. This act gives them the option of auditing a number of machines equal to one-half of the voting districts in each municipality if that number is less than two per district.

VOTER REGISTRATION AND VOTER LISTS (§§ 26-28)

The act extends the last day for registrars of voters to conduct a voter registration session from 14 to seven days before an election.

Under prior law, registrars had to file a final list of registered voters with their town clerks on the second Friday before an election and a supplemental or updated list of voters transferred, restored, or added to the list before the sixth day before an election. The act delays by two days, from the sixth to the fourth day, the deadline for filing the updated or supplemental lists.

FILING VACANCIES (§§ 31- 32)

The act establishes a process for determining the holder of a municipal office when a candidate is elected to two or more offices in the same election but is prohibited by law, charter, or ordinance from holding more than one. Under that process, the candidate must notify the registrar and town clerk of the office he declines. When he does, the act deems the next highest vote getter to be the person elected to the office.

The act restores the existing law for holding a primary before an election held to fill a vacancy in the office of U.S. representative in Congress or judge of probate in a multitown district, which PA 05-188 eliminated.

It eliminates the new calendar and process for filling such vacancies that PA 05-188 established.

CAMPAIGN FINANCE REPORTS (§§ 11 & 24)

By law, campaign treasurers of candidate committees must file campaign finance statements with either the secretary of the state or a town clerk. The secretary of the state receives the filing for candidates for statewide, legislative, and probate court offices; otherwise the clerk of the town where the candidate is running for office receives the filing. Lobbyists file statements of contributions to, or purchases from, committees in excess of $1,000 in 12 months with the secretary of the state.

Filing Dates

The act requires campaign treasurers, other than those for state central committees, to file quarterly reports on the 10th, rather than 7th, of January, April, July, and October. The pre-election filing deadline remains unchanged on the 7th day preceding the regular election. The act changes the filing deadline for state central committee reports from January 30th to January 10th. The April 10th and July 10th deadlines remain the same.

Penalty for Failure to File on Time

The act increases the penalty, from $55 to $100, for campaign treasurers and lobbyists who fail to file timely campaign finance reports. It extends the penalty to candidates who fail to file a timely statement that they have formed, or a certification that they are exempt from forming, a candidate committee.

It delays the earliest date that the penalty can attach to certifications or statements that must be filed with the secretary of the state from 21 days after the deadline to 21 days after the secretary's notice warning of a potential violation. By law, the secretary must send the notice by certified mail, return receipt requested, within 10 days after the filing deadline. The act instead requires her to send it within 10 days after she knows or should know the deadline has passed. The act requires the secretary to notify the SEEC of a missed deadline. Under the act, she must notify the SEEC within 28 days after the notice if the statement or certification is not filed within the 21 days after the notice. Under prior law she had to notify the SEEC within 28 days after a missed deadline.

The act applies the same knowledge standard to notices town clerks must send.

Penalty After Notice to the SEEC

Under prior law, people who failed to file the statements after a warning notice were subject to a fine of up to $1,000, up to one year in prison, or both. The act imposes a minimum, and increases the maximum, fine. The new fine is $200 to $2,000.

MAJOR PARTY DESIGNATIONS ON VOTER REGISTRATION FORMS (§§ 15-16)

Existing law requires voter registration forms, including mail-in forms, to provide a space for applicants to enroll in a political party if they wish. The act requires any forms printed on or after January 1, 2006 to include a list of the major parties.

CERTIFIED ENDORSEMENTS OF LEGISLATIVE CANDIDATES (§§ 17-18)

The act requires party-endorsed legislative candidates in a single-town district to file a certificate of their endorsement with the secretary of the state, rather than the town clerk. The act leaves unchanged a requirement that (1) the chairman or presiding officer and the secretary of town committee, caucus, or convention that made the endorsement attest the certificate and (2) the candidate file the certificate by 4 p.m. on the 14th day after his endorsement.

CERTIFIED PARTY ENROLLMENT LISTS (§ 19)

The act requires registrars of voters to certify that any party enrollment list they provide to candidates circulating petitions for nomination by the political party is the most recent and, to the registrars' best knowledge, accurate. Registrars must place the certification on the first page of the list.

RESTORATION OF VOTING RIGHTS (§ 25)

By law, felons who have not been convicted of elections-related crimes may have their voting rights restored upon satisfactory proof that they have been released from prison and completed any parole. The Department of Correction (DOC) commissioner must give these inmates a release certificate.

The law also requires the DOC commissioner, on the 15th of each month, to send the secretary of the state a list of all felons released from his custody during the preceding calendar month. The list must include each inmate's name, birth date, address, date of conviction, and crime. The secretary must send the list to the registrar of (1) each inmate's town of residence at conviction and (2) the town where she believes he was registered to vote.

The act prohibits registrars from requiring these former inmates to submit the certificate as proof of their discharge from confinement or parole. Since registrars need proof of discharge to restore former inmates voting rights, the act presumably prohibits registrars who have sufficient proof from requiring the certificate as a condition of restoration.

TRAINING ELECTION OFFICIALS (§§ 20-23)

Developing Training Programs

The act requires the statutory six-member Registrars of Voters Certification Committee to develop an election procedures training program for poll workers and an election law and procedures training program and guide for registrars, deputy registrars, and assistant registrars. The committee already establishes programs and procedures for training, examining, and certifying registrars.

Under the act, trained or former registrars the secretary hires must provide the training. The committee must submit the programs and guide to the secretary of the state for approval. She may approve or modify them. She must establish an elections training unit to coordinate the training. At least one person with field experience in elections must staff the unit.

Officials Required to Attend Training

The act expands the training that election officials must receive to include poll worker training as necessary for the proper conduct of elections. They must already receive training in the use of voting machines. Although neither the act nor existing law defines "election officials", it appears that they include poll workers and others hired to work during an election.

The act also requires each registrar to annually designate one registrar, deputy, or assistant (but not poll worker) to receive at least 10 hours of the training developed by the registrars' certification committee.

Voting Machine Training

Existing law requires town clerks, registrars, moderators, and mechanics to instruct election officials on the use of voting machines before each election. The act requires these instructors to file a report of the time, place, and people attending the instruction with the secretary of the state, in addition to the town clerk. It adds to the report the signed statements from election officials that they received the instructions.

PA 05-277—sHB 6738
Government Administration and Elections Committee
Labor and Public Employees Committee
Appropriations Committee

AN ACT CONCERNING PROCEDURES FOR STATE EMPLOYEE COLLECTIVE BARGAINING

SUMMARY: This act makes several changes to state employee collective bargaining time frames and procedures. It (1) increases the time during which parties may begin negotiating a new contract from 180 to 330 days before the expiration of the existing contract; (2) allows a party to initiate arbitration 60, rather than 90, days after negotiations begin; and (3) eliminates an arbitrator's authority to waive a deadline to which he is subject.

The act requires motions to vacate or modify an arbitrator's award, which are filed in Superior Court, to identify the specific issue or issues. It specifies that the court can vacate or modify the entire award or an issue. It also makes final and binding an arbitrator's decision on issues not subject to the motion.
EFFECTIVE DATE: October 1, 2005

ARBITRATOR TIME LIMITS

Under prior law, any or all of the time frames in negotiation and impasse resolution procedures could be waived either by agreement of the parties or at an arbitrator's request. The act bars an arbitrator from waiving deadlines imposed on him and permits such waivers only by agreement of the parties. It allows waivers of deadlines imposed on the parties only by (1) their agreement or (2) an arbitrator's ruling if it is preceded by a party's "timely request."

MOTIONS TO VACATE OR MODIFY

By law, the court may vacate or modify an award after a hearing if the substantial rights of the party have been prejudiced because the award:

1. violates the state constitution;
2. exceeds the arbitrator's statutory authority;
3. is made using unlawful procedure;
4. is affected by other error of law;
5. is clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or
6. is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

The act specifies that the court may do so only if it finds the substantial rights of the party have been prejudiced as described above.

PA 05-279—HB 6909
Government Administration and Elections Committee

AN ACT CONCERNING THE CONVEYANCE OF CERTAIN PARCELS OF STATE LAND

SUMMARY: This act authorizes new conveyances of state land to (1) the towns of Cheshire, Haddam, New Britain, and Sprague and (2) Charter Oak Health Center, Inc.; Barry T. Pontolillo; Goodwin College; Shiloh Baptist Church; Heritage Land Preservation Trust, Inc.; Matthew Ramos; and Nutmeg Housing Development Corporation.

It authorizes property exchanges with Thomas S. Charis and Dom Delvecchio, and the towns of Branford and Westbrook.

The act revises existing provisions and conditions on state property conveyances to Edward H. Dzwilewski and in the towns of Norwich, Franklin, Manchester, Middletown, Newtown, Meriden, Plainville, and Bethel. It repeals previous conveyances to Trumbull, New Britain, Westbrook, Middletown, and Enfield.

The act (1) validates the sale, transfer, and conveyance of property by the Wallingford Housing Authority to Ridgeland Road, LLC; (2) allows the town of Plainville to exchange two parcels of land that it received in a conveyance from the Department of Environmental Protection (DEP) pursuant to SA 95-25; and (3) returns to Chandler B. Saint at no cost property that he conveyed to the state on December 30, 1999.

It requires the DEP commissioner to pay for surveying two parcels of land PA 04-186 required him to accept in an exchange with the town of Voluntown.
EFFECTIVE DATE: Upon passage

NEW CONVEYANCES

The act requires the following conveyances from these agencies to the named recipients for the specified purposes:

1. Department of Motor Vehicles to New Britain for economic development (.26 acres);
2. Department of Transportation (DOT) to New Britain for economic development or housing (.32 acres) and economic development (.11 acres);
3. DOT to Sprague for recreational purposes (1.65 acres);
4. DOT to Cheshire for parking (66,305 square feet);
5. Connecticut State University to New Britain for a cul-de-sac development (.1 acre);
6. Department of Social Services to Barry T. Pontolillo (.33 acres);
7. DOT to Goodwin College for educational purposes (1.99 acres in East Hartford and 2.15 acres in Glastonbury);
8. DEP to Wallingford for recreational purposes, with the state retaining fishing access (9 acres);
9. Department of Public Works (DPW) on behalf of the Department of Children and Families (DCF) to Shiloh Baptist Church for a period of years (10 acres);
10. DOT to Heritage Land Preservation Trust, Inc. for open space in Torrington (11,543 square feet);
11. DPW to Haddam for municipal, recreational, and economic development purposes (51 acres); and
12. Department of Economic and Community Development to Nutmeg Housing

Development Corporation for affordable housing in East Hartford (94,564 square feet).

The act also requires the DPW to convey property (.725 acres) to the Charter Oak Health Center, Inc. for a federally qualified community health center. It requires the health center to lease to the state, on terms acceptable to the DPW commissioner, space sufficient for use by state agencies. By November 13, 2006, the commissioner must arrange to relocate the Commission on Human Rights and Opportunities, within available appropriations, to another suitable facility.

NEW EXCHANGES

The act requires the following property exchanges from the agencies to the named recipients:

1. DOT with Branford (33.48 acres for 25.7 acres),
2. DEP with Dom Delvecchio land in Durham (9 acres for 6.8 acres),
3. DEP with Thomas S. Charis land in Preston (1.1 acres for 1.3 acres), and
4. DOT with Westbrook (5.05 acres for 2.087 acres).

PROCEDURES FOR CONVEYANCES AND EXCHANGES

The conveyances and property exchanges are subject to approval by the State Property Review Board. With two exceptions, all are completed at a cost equal to the administrative cost of the conveyance, which the recipient pays. The Meriden property must be sold to Barry T. Pontolillo for $6,000. The Milford property must be sold to Matthew Ramos for fair market value.

The conveyed property reverts back to the state if the recipient does not use it for the stated purpose. With three exceptions, the conveyed property also reverts to the state if the town fails to retain ownership or leases it. New Britain can lease or sell the property and Haddam can lease, but not sell, the property. Within five years, Shiloh Baptist Church must convey the property to a nonprofit corporation for public moderate-income housing and educational, recreational, or community facilities. The property reverts to the state if the (1) church does not complete a timely conveyance, (2) property is not used for the specified purposes, or (3) uses do not comply with the act's requirements.

PRIOR CONVEYANCES

Revisions

The act:

1. changes lot size descriptions on land previously conveyed by the DEP to the Yantic Volunteer Fire Department, by DOT to the Wickham Park Trust, and by the Department of Agriculture (DOAg) to Groton (or the Noank Fire District if Groton refuses to accept);
2. expands allowable uses for land (a) previously conveyed by the Department of Mental Health and Addiction Services to Middletown and by DOAg to Newtown, and (b) included in a 1995 restrictive covenant from the state to the Meriden YMCA;
3. allows Plainville to exchange previously conveyed land for a privately owned parcel;
4. reduces, by the city's demolition costs, the amount Middletown must pay for land previously conveyed by DCF;
5. allows Bethel to lease, under specified circumstances, land previously conveyed by DOT;
6. removes restrictions on the number of dwelling units allowed on land previously conveyed by the state to Newtown Housing for the Elderly, Inc.; and
7. allows the DEP to sell at fair market value or give in an exchange the property in East Lyme previously authorized for exchange to Edward H. Dzwilewski. The act requires the DEP commissioner to determine the terms of the transaction.

Repeals

The act repeals the following previously authorized conveyances from DOT to:

1. Trumbull, a parcel of land to be used for affordable housing (1997);
2. New Britain, a parcel of land to be used for municipal purposes (2000);
3. Westbrook, a parcel of land to be used for recreational purposes (2003);
4. Middletown, a parcel of land to be used for open space (2003); and
5. Enfield, two parcels of land for open space and municipal purposes (2004).

All of the above parcels are located in the towns named.

PA 05-286—sSB 94 **(VETOED)**
Government Administration and Elections Committee
Judiciary Committee
Labor and Public Employees Committee
Environment Committee
Energy and Technology Committee
Legislative Management Committee
Appropriations Committee
Transportation Committee
Finance, Revenue and Bonding Committee
Commerce Committee

AN ACT CONCERNING REFORM OF THE STATE CONTRACTING PROCESS

SUMMARY: This act establishes a State Contracting Standards Board (SCSB) as an independent state agency and the successor agency to the State Properties Review Board (SPRB). It dissolves the SPRB on October 1, 2007 and transfers its duties and responsibilities to the SCSB on that date. The new board is also charged with various other responsibilities that reform state contracting processes. It must establish uniform procurement standards, audit state contracting agencies, and discipline them for failure to comply with the act or the uniform procurement code. "State contracting agencies" are (1) state agencies other than the SCSB and the Judicial and Legislative branches; (2) municipal and quasi-public agencies; and (3) any other agency that receives state funds. The act requires the Judicial Branch to prepare its own procurement code.

The act establishes:

1. grounds for suspending and disqualifying contractors and subcontractors from bidding on or participating in state contracts,
2. a limited moratorium on state privatization contracts and conditions on entering these contracts after the moratorium ends,
3. a procedure for the legislature to exempt construction contracts from the competitive bidding process, and
4. procedures for state agencies to use when entering purchase of service agreements.

It eliminates certain requirements from the contractor prequalification process and generally bans state and municipal agencies from receiving state funds for construction if they accept bids from a contractor without proof of his prequalification.

The act conforms the Department of Public Works' contractor selection law to practice and increases the time it and constituent units of higher education have to award contracts.

The act prohibits the state from contracting with corporations that receive a tax benefit as a result of reincorporating outside of the United States.

It bans, with some exceptions, the use of state bond revenues or appropriated or allocated state funds for outdoor lighting that is not energy efficient or that exceeds the brilliance required to achieve its purpose. It establishes a schedule for floodlight violators to comply with the law.

The act permits documents public agencies receive in response, and related, to a procurement request for proposal (RFP) to be exempt from disclosure under the Freedom of Information Act (FOIA) for a limited time.

The act changes the definition of small contractor under the set-aside program.

Lastly, the act requires state agencies to obtain from certain contractors an affidavit identifying consultants who work with them on that contract.

EFFECTIVE DATE: Upon passage, except for the provisions (1) establishing the SCSB and the date for SPRB duties to transfer, on the Judicial Branch's procurement code, on contractors under the set-aside program, and on nonresponsible bidders, which are effective on July 1, 2005; (2) on light requirements and reincorporated companies, which are effective on October 1, 2005; (3) on prequalification and small contractors under the set-aside program, which are effective on January 1, 2006; (4) on SCSB duties, other than the uniform procurement code, which are effective on July 1, 2007; and (5) on SCSB audits, appeals, and contract reviews, contractors disqualification and suspension, advisory council, and SPRB dissolution, which are effective on October 1, 2007.

STATE CONTRACTING STANDARDS BOARD (SCSB) (§§ 1-7 & 26)

The act establishes the nine-member SCSB as a separate, independent, Executive-Branch agency. The governor appoints five board members. The appointing authorities for the remaining four members vary depending on the party affiliation of the governor and the majority party in the House and Senate. When the governor is:

1. of a different political party than that which controls both houses of the General Assembly, the House speaker and the Senate president each appoints two members;
2. of the same political party as one chamber of the General Assembly, the highest ranking leader of the opposing party of the applicable chamber appoints four members;
3. of the same political party as both chambers of the General Assembly, the minority leader of the House and Senate each appoint two members; or
4. an independent, the House speaker and the Senate president each appoints two members.

The legislature must confirm each appointment. The members' terms are coterminous with that of their appointing authority. Each appointing authority fills any vacancy in his appointment. Six members of the board constitute a quorum, which is required to transact business.

The act requires the board to appoint its chairperson and the governor to appoint an executive director who serves as an ex-officio, nonvoting board member. The legislature must confirm both appointments. All board employees are members of classified state service. The board must annually evaluate the executive director's performance. The executive director may be removed for cause.

The act authorizes the board to employ any other staff it considers necessary, including property and procurement specialists, real estate examiners, and contract specialists.

Board Member Qualifications

The act requires each member to have (1) a demonstrated interest in government ethics and integrity or (2) education, training, or experience received in five consecutive years of the 10 years immediately preceding his appointment, in several of the following areas:

1. procurement;
2. contract negotiation, selection, and drafting;
3. contract risk assessment;
4. requests for proposals and real estate transactions;
5. business insurance and bonding;
6. the State Code of Ethics;
7. federal and state statutes, policies, and regulations;
8. outsourcing and privatization proposal analysis;
9. small and minority business enterprise development; or
10. personnel and union management.

"Contract risk assessment" means (1) the identification and evaluation of loss exposures and risks, including business and legal risks associated with contracting and (2) the identification, evaluation, and implementation of measures available to minimize potential loss exposures and risks.

Board Ethics and Operations

The act prohibits anyone from serving on or working for the board if (1) he holds another position in state or municipal government or (2) his spouse, child, stepchild, parent, or sibling is directly or indirectly involved in any enterprise that does business with the state. The act requires the State Ethics Commission to adopt regulations clarifying the meaning of "directly or indirectly involved in any enterprise."

It requires board members and employees to file with the board and the State Ethics Commission annual financial statements, by April 15, that disclose the sources of any income over $1,000 for the preceding calendar year and the name of any business with which they are associated. The requirement appears to apply to members and employees beginning with their second year of service or employment, respectively. By law, an associated business is one owned by an official, employee, or member of his immediate family, or where any one of them (1) serves as an officer, director, or compensated agent or (2) owns at least 5% of the stock in any class. The financial statement is a public record and subject to disclosure under FOIA.

Any board employee or member who violates the employment prohibition and any member or employee who fails to file the statement violates the State Ethics Code and may be subject to the code's penalties, including a fine of up to $10,000.

The act requires the board to adopt any rules it deems necessary to conduct its internal affairs, including appellate rules of procedure and procedural rules to carry out its duties and responsibilities.

Budget and Compensation

The act requires the board's budget, upon approval of its members, to pay its reasonable expenses. It requires the board chairperson to be paid a $200 per diem up to a maximum of $30,000 annually. Other members must receive the same per diem up to $25,000 annually.

Uniform Procurement Code

By January 1, 2007, the act requires the SCSB to prepare a uniform code for use by state contracting agencies when contracting for, buying, renting, leasing, or otherwise acquiring or disposing of supplies or services, including construction services, materials, or supplies. The uniform code does not apply to the expenditure of federal assistance or contract funds if federal law provides procurement procedures.

The act requires the board to conduct a comprehensive review of existing state contracting and procurement laws, regulations, and practices and use any appropriate, existing procedures and guidelines when preparing the code. It requires each state contracting agency to provide its procurement information if the board asks. The act gives the board access to all such agencies' information, files, and records necessary to complete the code. However, the board cannot disclose documents exempt from disclosure under FOIA.

The act requires the board to submit the code to the legislature for approval by filing it with the Senate and House clerks by January 15, 2007. Within the next five days, the Senate president and House speaker must submit the code to the Government Administration and Elections (GAE) Committee. The committee must hold a hearing on the code and report its recommendations, including any changes, for approval or rejection to the House and Senate. The General Assembly must vote on the code by the end of the 2007 regular session.

Code Requirements. The act requires the code to:

1. establish uniform state contracting agencies' standards and practices;
2. ensure the fair and equitable treatment of all businesses and people involved in the state's procurement system;
3. include a process for maximizing the use of small contractors and minority business enterprises;
4. provide increased economy in state procurement activities and maximize purchasing value to the fullest extent possible;
5. ensure that state contracting agencies procure supplies, materials, equipment, services, real property, and construction in a cost-effective and responsive manner;
6. preserve and maintain state agencies' contracting or procurement procedures that represent best practices, including their discretion and authority to disqualify contractors and terminate contracts;
7. include a process to improve contractor and state contracting agency accountability;
8. establish standards for leases and lease-purchase agreements and for the purchase and sale of real estate;
9. simplify and clarify the state's contracting standards and procurement policies and practices, including procedures for competitive sealed bids or proposals, small purchases, and sole source, special, and emergency procurements (procurements necessary because of a sudden, unexpected occurrence that poses a clear and imminent danger to public safety or that requires immediate action to prevent or reduce loss or impairment of life, health, property, or essential public services); and
10. provide a process for competitive sealed bids and proposals, small purchases, sole source, emergency, and special procurements, best-value selection, and qualification-based selection, and the conditions for their use.

"Best-value selection" means a process to award contracts based on quality and costs. "Qualification-based selection" means a process to award contracts based primarily on contractor qualifications and a fair and reasonable price.

Code Privatization Standards. The code must also include standards for state contracting agencies to evaluate proposals to privatize state or quasi-public agency services and privatization contract bid proposals. At a minimum these standards must require state and quasi-public agencies to:

1. complete an analysis before deciding to privatize services that examines all direct and indirect state costs and the privatization contract's effect on the public health and safety of state residents who may use the services;
2. give their affected employees and, where applicable, employee unions, adequate notice;
3. prepare an employee impact statement, including measures a bidder must take to retain the agency's qualified employees;
4. set fair wages based on objective standards, such as those required under the act for privatization contracts; and
5. provide their employees with adequate information and resources that would encourage and help them to organize and submit a bid to provide the services that are the subject of the privatization contract.

The standards must also require bidders to disclose all relevant information pertaining to their past performance and pending or concluded legal or regulatory proceedings or complaints, including compliance with fair employment practices standards and federal fair employment and discrimination standards.

Other Board Duties

The act requires the board to:

1. recommend the repeal of repetitive, conflicting, or obsolete state procurement statutes;
2. develop, publish, and maintain the code for all state contracting agencies;
3. help their staffs with code compliance by providing guidance, models, advice, and practical assistance on buying the best service at the best price, properly selecting contractors, and drafting contracts that achieve state goals and protect taxpayers' interest;
4. review and certify that a state contracting agency's procurement processes comply with the code;
5. triennially recertify state contracting agencies' procurement processes, give them notice of any certification deficiency, and tell them how they can rectify it;

6. define the training requirements for state contracting agency procurement professionals;
7. monitor implementation of the state contracting website and make recommendations for improving the Department of Administrative Services (DAS);
8. define the requirements for state agencies to retain information on (a) the number and type of existing state contracts, (b) their dollar value, (c) a list of client agencies and contractor names, (d) a description of contracted services, and (e) an evaluation of contractor performance, and make sure that it is available on the state contracting portal;
9. recommend the procurement code changes to the governor and the GAE Committee;
10. approve an ethics training course for state employees involved in procurement and for prequalified state contractors and subcontractors; and
11. conduct compliance audits.

The ethics training course may be developed and provided by the State Ethics Commission or any other person or firm as long as the SCSB approves it.

Compliance Audits. The act requires the board to audit state contracting agencies every three years and report on their compliance with the uniform procurement code. During the audit, the act gives the board access to all of the agencies' contracting and procurement records and authority to interview people responsible for awarding and negotiating contracts or procurement. The board can make an agreement with the state auditors to conduct the audit.

The board must identify in the compliance report any process or procedure that is inconsistent with the uniform procurement code and corrective measures to achieve code compliance. It must deliver the report, which is a public record, to the contracting agency within 30 days after the audit is completed.

Disciplinary Actions for Noncompliance and Other Violations. Under the act, the board can restrict an agency's contracting or procurement authority upon a two-thirds vote, after notice and a hearing, because it finds the agency failed to comply with statutory and procurement requirements and showed a reckless disregard for applicable policies and procedures. The restriction stays in effect until the agency implements corrective measures and complies with the code. Any restriction must be in the state's best interest.

The board may review or terminate a contract or procurement agreement for cause after consulting with the attorney general and giving the agency and contractor 15 days notice. "For cause" means (1) engaging in activities prohibited under the State Ethics Code; (2) wanton or reckless disregard of any state contracting and procurement process by anyone substantially involved in the contract or with the state contracting agency; or (3) notification from the attorney general to the state contracting agency that a whistleblower investigation indicates that the contract process was compromised by fraud, collusion, or other serious ethical improprieties.

The decision to terminate a contract must be preceded by notice to the state contracting agency and any other affected party that the board is meeting for that purpose. The board's decision to terminate must be approved by a two-thirds vote of its members present and voting.

CONTRACTOR DISQUALIFICATION OR SUSPENSION (§§ 7 & 8)

Process

The act allows the board to disqualify, and a state contracting agency to suspend, contractors from bidding on, applying for, or participating as a subcontractor in, state or agency contracts, respectively. Disqualification can last for up to five years and suspension for up to six months. The board and an agency must provide reasonable notice and a hearing before taking this action. Additionally, the board must consult with the relevant state contracting agency and get a two-thirds vote of board members before acting.

When making its decision, the board or agency, as the case may be, must consider the seriousness of the contractor's acts or omissions, any mitigating factors, and whether at least one of the act's grounds for disqualification or suspension, respectively, is met.

The board or agency must make its decision within 90 days after the hearing; include its reasoning and the disqualification period; and mail it to the contractor by certified mail, return receipt requested. An aggrieved party may appeal the decision to Superior Court.

The board can reduce the disqualification period or limit its application upon the contractor's written request and supporting documentation showing (1) newly discovered material evidence, (2) a reversal of the conviction that formed the basis for the disqualification, (3) a bona fide change in ownership or management, or (4) the elimination of other causes that formed the basis for the disqualification. A contracting agency can allow a suspended contractor to work on a particular contract upon its commissioner's written determination that good cause exists for the exception and that it is in the state's best interest.

Grounds for Disqualification by the Board

The board may disqualify a contractor for:

1. conviction of, or guilty or no contest plea to, a crime (a) related to getting or attempting to get a public or private contract or subcontract or (b) related to performing the contract or subcontract;
2. conviction of, or guilty or no contest plea to, embezzlement, theft, forgery, bribery, document falsification or destruction, receiving stolen property, or any other offense that indicates a lack of business integrity or honesty related to a contractor's responsibility;
3. conviction of, or guilty or no contest plea to, violating state or federal antitrust, collusion, or conspiracy laws while submitting a public or private contract or subcontract bid or proposal;
4. at least two suspensions in 24 months by a contracting agency;
5. a willful failure to perform the terms of at least one contract;
6. a willful violation of a statute or regulation applicable to a contract;
7. a willful or egregious violation of ethical standards specific to contractors or contractor prequalification and evaluation laws; or
8. any reason that casts serious and compelling doubt on the contractor's responsibility, including (a) for-cause disqualification by another state; (b) fraudulent, criminal, or seriously improper conduct committed by a shareholder or member, including an employee of the contractor's firm in the performance of his duties on behalf of the contractor, if the contractor knew or had reason to know of the conduct; or (c) an informal or formal business relationship with a contractor disqualified from bidding on state contracts.

Grounds for Suspension by a Contracting Agency

The agency may suspend a contractor for:

1. failure, without good cause, to adhere to contract specifications or timeframes;
2. a record of failure to perform or of at least one unsatisfactory performance, other than one caused by acts beyond the contractor's control;
3. any reason, including suspension for cause by another agency, that the contracting agency deems to cast serious and compelling doubt on the contractor's responsibility; or
4. a violation of ethical standards specific to contractors or contractor prequalification and evaluation laws.

CONTESTING STATE CONTRACT SOLICITATIONS OR AWARDS (§ 9)

The act establishes a process for bidders on state contracts to contest the way the contracts were solicited or awarded or to contest an unauthorized or unwarranted, noncompetitive selection process. A bidder can file a complaint with the commissioner of the contracting agency within 14 days after he knew or should have known about the facts forming the basis for the complaint.

The act authorizes the commissioner or his designee to resolve or settle the complaint. If the complaint is not resolved, the act requires the commissioner (or his designee) to issue a written decision within 30 days after receiving the complaint and to provide a copy to the complaining bidder. The decision must:

1. describe the procedure the agency used to solicit and award the contract,
2. indicate the agency's findings on the merits of the bidder's complaint, and
3. inform the bidder of his right to appeal to the SCSB.

APPEALS FROM AGENCY DECISIONS (§ 10)

The act permits bidders to appeal an agency decision on state contract solicitation and awarding processes to the SCSB within 14 days after receiving it. Each bidder must state the facts supporting his claim in enough detail for the SCSB to determine whether the process for soliciting or awarding the contract failed to comply with the uniform procurement code or involved an unauthorized or unwarranted noncompetitive selection process. The appeal does not prohibit the award or execution of the contested contract.

The act requires the SCSB to create a subcommittee of three of its members to review these appeals and decide, by a unanimous vote, whether an allegation of noncompliance or an unauthorized or unwarranted, noncompetitive selection process has been demonstrated. If there is a split vote, the full membership must review the appeal and dispose of it by a vote of two-thirds of its members present and voting. And any three board members may request that the full board review an agency's deliberating or awarding process.

The subcommittee, or the full board in the event of a split vote, must issue a written decision, or take other appropriate action, on each appeal and provide a copy of any decision to the bidder. The subcommittee must act

within 90 days after receiving the appeal. The full committee must act within 90 days after receiving the appeal from the subcommittee. If the subcommittee or full board decides in the contractor's favor, the board must direct the state contracting agency to take corrective action within 30 days after the decision date. If the subcommittee finds the appeal to be frivolous, its filing may be grounds for disqualifying the contractor. Anyone aggrieved by a decision can appeal to Superior Court.

CONTRACTING STANDARDS ADVISORY COUNCIL (§ 11)

The act establishes a nine-member Contracting Standards Advisory Council to discuss problems with procurement processes and to recommend improvements to the SCSB. The council can conduct studies, research, and analyses and make reports and recommendations on matters within the SCSB's jurisdiction.

The governor designates the council's members. They must represent state contracting agencies, including at least one representative each from the Administrative Services, Transportation, and Public Works departments. The council must meet at least once a year.

STATE PROPERTIES REVIEW BOARD (§§ 12 & 34)

The act names the SCSB as a successor department to the SPRB and transfers the powers, duties, obligations, and other government functions of latter to the former beginning October 1, 2007. By the same date, the act requires the SCSB to establish a three-member subcommittee, called the State Properties Review Subcommittee, to perform SPRB's duties in accordance with SCSB's rules and procedures.

JUDICIAL BRANCH PROCUREMENT CODE (§ 27)

By January 1, 2007, the act requires the Judicial Branch to prepare a procurement code for its use when contracting for, buying, renting, leasing, or otherwise acquiring or disposing of supplies, equipment, or services, including consultant and construction services. This code must be identical to the SCSB's procurement code, except the Judicial Branch's code does not have to:

1. preserve and maintain contracting or procurement procedures that represent best practices,
2. include a process to improve contractor and state contracting agency accountability,
3. establish standards for leases and lease-purchase agreements and for the purchase and sale of real estate, or
4. include standards for evaluating proposals to privatize services and privatization contract bid proposals.

By February 1, 2007, the act requires the Judicial Branch to submit the code to the Judiciary Committee for approval.

PRIVATIZATION CONTRACTS (§ 14)

The act prohibits state agencies from entering privatization contracts between its passage and June 30, 2007. From the latter date to June 1, 2009, a privatization contract, including one initiated by the Judicial Branch, must provide that it becomes effective only after the contractor and the state agency have complied with the act and the uniform procurement code. "Privatization contracts" means those between a state agency and a private person, at a cost to the state of $500,000 or more, to provide services substantially similar to those provided by state employees and that result in state employee layoffs, transfers, or reassignments. The term does not include, among other things, a privatization contract in effect on July 1, 2005 that a state agency rebids.

If the General Assembly approves the uniform procurement code but it is not signed into law by June 30, 2007, no state agency may enter into a privatization contract between June 30, 2007 and July 1, 2009 unless a code is approved and signed into law during that period or the contract constitutes an emergency procurement.

Additionally, the act requires privatization contracts to contain provisions requiring the contractor to:

1. offer any available contract positions to qualified regular state employees who satisfy the hiring criteria and are being terminated because of the contract;
2. refrain from discriminatory employment practices and take affirmative steps to provide equal opportunity to all people;
3. allow the state auditors to conduct periodic performance audits of the contract;
4. pay a minimum wage rate for employee positions equal to the lesser of the standard wage rate or the rate paid for a comparable position by a state agency; and
5. submit quarterly payroll records to the Labor Department listing the name, address, Social Security number, hours worked, and the hourly wage paid for each employee in the previous quarter.

The act requires state agencies to file all privatization contracts with the SCSB, which must maintain them as public records. Each agency must also file with the board:

1. a certification that it complied with the act and that the privatization contract is necessary and appropriate under the procurement code;
2. its analysis of the quality of the services the bidder will provide and that the quality at least meets that provided by regular agency employees;
3. the designated bidder's certification that neither the company nor any of its supervisory employees, while so employed, have an adjudicated record of repeated willful noncompliance with any relevant federal or state regulatory law, including labor relations, occupational safety and health, nondiscrimination and affirmative action, environmental protection, and conflicts of interest; and
4. a description of why the proposed privatization contract is in the public interest.

The act permits employees (or their union) adversely affected by any proposed privatization contract to file a motion for an order to show cause in Hartford Superior Court claiming that the contract fails to comply, substantively or procedurally, with the act. The court may (1) deny the motion if it finds full compliance with all procedural and substantive requirements, (2) grant the motion if it finds that the proposed contract would substantively violate the act, or (3) stay the effective date of the contract until any procedural or substantive defect it finds is corrected.

The act specifies that the limited moratorium and standards for privatization contracts do not prohibit families and individuals from using their family support grants to develop new residential and day services beyond the existing level of services on January 1, 2006, when these services are exclusively designed for people on the Department of Mental Retardation's waiting list. The moratorium and standards also do not apply to any privatization contract:

1. executed in accordance the uniform procurement code if the governor signs the act adopting the code by June 30, 2007, or
2. approved by a two-thirds vote of the SCSB if the uniform code is not enacted by the legislature by that date.

FAST-TRACK CONSTRUCTION PROJECTS (§ 13)

The act limits the legislature's ability to exempt construction projects from the competitive bidding process. It requires the legislature to approve fast-track legislation by a two-thirds vote of the members of each chamber. If this legislation is rejected, the fast-track proposal is not valid and cannot be implemented for the project. The legislation is deemed rejected if the legislature fails to vote to approve it (1) by the end of the regular session during which it is filed, (2) before the end of the next regular session if the legislature is not in regular session when the legislation is filed, or (3) before the end of any special session called to consider the legislation. If the legislation is filed less than 30 days before the end of a regular session, the legislature may vote to approve or reject it within 30 days after the first day of (1) a special session convened for that purpose or (2) the next regular session.

By law, if the legislature approves the legislation, the SPRB must review the contract and approve or disapprove it no later than 30 days after the public works commissioner submits it. Beginning October 1, 2007, the act requires the State Properties Review Subcommittee of the SCSB to conduct the review. Consistent with existing law, the contract is deemed approved if the review does not occur within the 30 days.

PURCHASE OF SERVICE AGREEMENTS (§ 15)

By law, state agencies may enter into purchase of service agreements with nonprofit agencies. Typically, the parties to these agreements agree on a likely cost of services provided over a specified period. The actual cost of services may be less than that provided under these "prospective pricing" contracts.

The act requires the Office of Policy and Management (OPM) to establish procedures for state agencies to use when entering purchase of service agreements based on an agreed-upon price for such services, a set cost for such services, or a flat grant for an agreed upon level of services. The procedures must require agencies to pay one-half of any unexpended contract funds to the nonprofit agency, partnership, or corporation at the end of the contract if the services rendered meet the contracted requirements for number, type, and quality of services. The procedures commonly apply to human services contracts for clients of the departments of Social Services, Children and Families, Mental Retardation, Mental Health and Addiction Services, Public Health, and Correction.

CONTRACTS FOR LEGAL SERVICES (§ 16)

Beginning January 1, 2006, the act requires state agency contracts for legal services that will, or could reasonably be expected to, result in attorney's fees, including contingency fees, of at least $250,000 to be awarded pursuant to request for proposal or for qualification and negotiation procedures. By October 1, 2005, the attorney general must establish these

procedures. He must also approve all legal services contracts for form and substance.

PREQUALIFIED CONTRACTORS (§§ 17-19 & 29)

The act requires subcontractors to prequalify with DAS before they perform work valued above $500,000 on a state or municipal construction contract. The prequalification procedures, range of application fees, and possible penalties for violations are generally the same as those under existing law for prequalified contractors. The act eliminates a requirement for applicants to include in their application their experience on private and public construction projects over the immediately preceding five years or their 10 most recently completed projects and the names of any subcontractors they used on them. This effectively gives the DAS commissioner a broader review of the applicants' experiences. The act requires the commissioner to adopt regulations establishing a schedule of applicable fees for subcontractors required to prequalify. The existing application fees for contractors are based on aggregate work capacity ratings and range from $600 for a rating of $5 million or less to $2,500 for a rating over $40 million. The act eliminates the $600 floor on the prequalification renewal fee and prohibits the fee from being less than, rather than equal to, one-half of the initial application fee.

The act eliminates a requirement for contractors to include a list of their non-bonded projects in the update statements that they must submit with (1) each bid on a state construction contract and (2) applications to renew or upgrade their prequalification certificate. It leaves unchanged a requirement that they include in these statements (1) a list of bonded projects, (2) the names and qualifications of personnel who will supervise any new contract they are bidding on, (3) any significant change in their financial position or corporate structure since the certificate was issued or renewed, and (4) any other relevant information the DAS commissioner prescribes. By law, the commissioner must establish the form.

The act prohibits a public agency from receiving any state funds for construction if it accepts a bid without the bidder's prequalification certificate or update statement.

The act adds an additional ground for the DAS commissioner to revoke a contractor's or subcontractor's prequalification. She can do so if the SCSB disqualifies the contractor or subcontractor. The revocation period is the same as the disqualification period. The commissioner can already revoke prequalification, generally for two years (five years for fraud), for fraud in obtaining or maintaining prequalification, making materially false statements in application or update statements, or criminal convictions related to contract procurement or performance.

Within 120 days after becoming prequalified, the act requires contractors and subcontractors to participate in an SCSB-approved ethics training course.

By law, public agencies must evaluate the performance of contractors and subcontractors working on public projects. The act allows municipalities to meet this requirement by relying on a contractor's evaluation of his subcontractors.

DPW CONTRACTOR SELECTION PROCESS (§§ 20-21)

The act changes the number, tenure, and mission of the panels that assist the public works commissioner to award state construction projects outside of the competitive bidding process. Instead of a single panel with members who serve for one year to assist in all contracts negotiated that year, the act establishes multiple panels (one per contract) where members serve for deliberations on a single contract only. The number of members and their appointing authorities do not change under the act.

The panels affected are the DPW construction services selection and award and Connecticut Health and Education Facilities Authority (CHEFA) construction services panels. The selection panel screen firms that respond to invitations to bid on design-build, noncompetitively bid projects and submit lists of the three most qualified to the commissioner. The CHEFA panel's work is limited to CHEFA-funded projects. The award panel interviews the screened firms and ranks them for the commissioner, who awards the contract.

The act limits the projects that the award panels work on to those that are not competitively bid. This means the panels work on fast-track and design-build projects only.

CONTRACT AWARDS (§ 22)

The act increases, from 60 to 120, the number of days the DPW commissioner and constituent units of higher education have to award contracts after opening bids.

STATE CONTRACTS WITH REINCORPORATED COMPANIES (§ 23)

The act requires DAS to require each publicly traded corporation seeking to do business with the state to certify in an affidavit that it is not a company that (1) was previously incorporated, and conducted business, in the U.S.; (2) reincorporated outside of the U.S. on or after July 1, 2005; and (3) realized a federal or state tax

benefit as a result of the reincorporation. The act prohibits the state from contracting with corporations that fail to make the certification, except the attorney general may waive the prohibition if (1) the services the state is seeking are not available from a company incorporated in the U.S. or (2) the waiver is in the state's best interest.

LIGHT POLLUTION (§§ 24-25)

The act bans, with some exceptions, the use of state bond revenues or appropriated or allocated state funds to install or replace an outdoor light or lighting unit on state building or facility grounds that:

1. fails to maximize energy conservation and minimize light pollution, glare, and light trespass (light that shines beyond the boundaries of the property where it is located);
2. provides light at a level that exceeds what is adequate for its intended purpose; or
3. has an output of more than 1,800 lumens (the unit for measuring the brilliance of a light source), unless it is a full cut-off luminaire (a lighting unit that allows no direct light emissions above a horizontal plane through its lowest light-emitting part).

The act allows four exceptions to the full cut-off requirement. It exempts lighting units (1) on the grounds of a Department of Correction institution or facility, (2) required by federal regulations, (3) required for Department of Transportation (DOT) storm operations, and (4) in a plan for DOT facilities where less than 25% of the luminaires will be replaced. It also sets conditions under which the DPW commissioner, or his designee, may waive the full cut-off requirement for other state buildings or facilities when necessary. The act directs the commissioner to prescribe the form for the waiver request, which must include a description of the lighting plan, the efforts that have been made to comply with the cut-off requirement, and the reasons the waiver is necessary. The commissioner, or his designee, must consider design safety, cost, and other appropriate factors in his review.

The act also exempts a new or replacement lighting system from its requirements if the OPM secretary finds that a noncomplying system is more cost-effective than one that meets the act's requirements. The secretary must determine this by comparing the systems' life-cycle cost analyses and certifying that a system that meets the act's requirements is not cost-effective or the most appropriate alternative.

The act establishes a schedule for violators of laws regulating the use of floodlights on private property to comply with the law. Prior law required all violators to comply by October 1, 2005. Under the act, approximately 20% must comply each year until full compliance is reached by October 1, 2009. The law prohibits (1) floodlights intended to illuminate private property from being located in a state highway right-of-way unless they meet certain light pollution reduction and other requirements and (2) a floodlight from being located in a state highway right-of-way if the private property it is intended to illuminate is across the highway from the utility pole on which it would be mounted.

DISCLOSURE OF PROCUREMENT DOCUMENTS (§ 28)

The act allows procurement documents submitted in response to an agency's RFP to be exempted temporarily from disclosure under FOIA if the agency's chief officer certifies that the public's interest in confidentiality outweighs its interest in disclosure. Under the act, RFP responses and records and files provided to the agency during the contracting process can be treated confidentially until the agency awards the contract or contract negotiations end, whichever occurs first. The act does not specify who receives the certification.

SET-ASIDE PROGRAM (§§ 30-32)

By law, state and quasi-public agencies and political subdivisions, other than municipalities, must set aside 25% of the contracts they let for construction, goods, and services each year for small contractors. Set-aside contracts must be awarded based on competitive bids.

The act changes the definition of small contractor as it pertains to the set-aside program. To qualify as a small contractor under prior law, a business must, among other things, have grossed no more than $10 million in its most recently completed fiscal year. The act replaces this condition with a size standard that DAS establishes for the business sector in which a contractor, subcontractor, manufacturer, or service company operates.

It requires a state agency that awards a set-aside contract to obtain from that contractor a written explanation detailing any subcontract it has with a business that is not eligible under the set-aside program. By law, a contractor that is awarded a set-aside contract, together with set-aside-eligible subcontractors, must perform at least 25% of the work done under such a contract. It also requires, rather than allows, awarding agencies to notify contractors via certified mail of hearings on their suspected set-aside program violations.

AFFIDAVITS IN STATE CONTRACTS (§ 33)

The act amends a provision in PA 05-287 by requiring state and quasi-public agencies to obtain from goods and service contractors an affidavit identifying consultants who will work with them on the contract if the contract costs, rather than has a total value to the state of, $50,000 or more in a calendar or fiscal year. It leaves unchanged PA 05-287's provision that the requirement applies only if the consultant's duties include any communication concerning the business of the agency, whether direct or indirect, with the agency or a state official or employee.

PROHIBITED ACTIVITIES BY CONTRACTORS AND CONSULTANTS
(§ 34)

PA 05-287 prohibits state contractors, prequalified contractors, parties to state consultant services contracts, and people seeking these contracts or prequalification from (1) seeking an inappropriate competitive advantage on a bid for a state contract, (2) overcharging the state, or (3) purposefully trying to circumvent state competitive bidding or ethics laws.

It also prohibits state consultants and their businesses from consulting with anyone other than the state on a state contract, receiving a state contract, or serving as a subcontractor or consultant on a state contract. PA 05-287 allows state agencies to deem violators nonresponsible bidders.

This act limits the people who may be deemed nonresponsible to those who the State Ethics Commission finds in violation.

PA 05-287—sSB 96
Government Administration and Elections Committee
Judiciary Committee
Appropriations Committee
Transportation Committee
Finance, Revenue and Bonding Committee
Planning and Development Committee

AN ACT CONCERNING GOVERNMENT ADMINISTRATION

SUMMARY: This act makes changes to laws affecting state contracts. It:

1. subjects certain large contractors to state ethics laws and civil or criminal penalties for violating them,
2. requires state agencies to obtain from certain contractors an affidavit identifying consultants who work with them on that contract,
3. authorizes certain contract extensions,
4. modifies the process for awarding state contracts,
5. requires a study on certified professional estimators, and
6. requires that additional contracts go through the competitive bidding process.

The act also makes several changes to state ethics laws. It:

1. tightens gift restrictions and reporting requirements;
2. expands ethics reporting requirements;
3. prohibits former public officials and state employees who are convicted of crimes related to employment from working as lobbyists;
4. requires the appointment of agency ethics compliance officers and liaisons;
5. expands the State Ethics Commission's (SEC's) jurisdiction to include out-of-state residents and contractors;
6. eliminates the SEC's ability to employ an executive director, a general counsel, and additional staff to administer and enforce the codes of ethics;
7. expands the attorney general's authority to bring civil actions against ethics violators; and
8. protects whistleblowers from civil liability for good faith disclosures made to the SEC about alleged ethics violations.

The act makes several changes to state whistleblower laws. Among other things, it (1) specifies the scope of the attorney general's investigation of state agency whistleblower complaints, (2) expands the whistleblower statutes' applicability, (3) subjects large state contracts for public buildings or public works to the whistleblower provisions, and (4) bars civil liability for good faith disclosures made to the attorney general or auditors of public accounts.

The act changes public access to records and meetings. It (1) exempts from disclosure certain e-mail addresses and (2) expands recording requirements for planning and zoning commissions.

It establishes a Disabled and Disadvantaged Employment Security Policy Group to study and recommend policies to benefit disabled and disadvantaged workers and the state contractors who employ them.

The act expands the people who may participate in the Department of Public Works' (DPW) process to fulfill their need for additional space. It also changes notification requirements for the transfer of state-owned property.

It decreases, from 10 to five, the hours of training that the Commission on Human Rights and Opportunities (CHRO) and the Permanent Commission on the Status of Women must provide to (1) affirmative action officers and (2) people who represent state

agencies, departments, boards, or commissions in front of CHRO or the Equal Employment Opportunity Commission. The reduction does not apply to the officer's or representative's first year in that position.

The act validates the town of Enfield's November 2, 2004 referendum. The electors (1) approved an appropriation for the reconstruction and repair of certain town roads and roadside elements; (2) authorized the issuance of bonds, notes, and temporary notes; and (3) agreed to accept grants and other funds to defray the cost of the appropriation.

The act names the Department of Public Utility Control building in New Britain the "Joseph H. Harper, Jr. Building."

It dissolves the Ararat Widow and Orphan Fund as a body politic and corporate, thus freeing the corporation to use the fund for any purpose, rather than just to benefit widows and orphans of deceased members.

The act:

1. changes reciprocity requirements for public accountants,
2. requires annual reports on CORE-CT,
3. reorganizes certain state agencies, and
4. changes internal deadlines for certain grant payments to towns.

Lastly, the act makes various minor and technical changes.

EFFECTIVE DATE: Upon passage, except for (1) the ban on unethical bidding and contracting procedures, most changes to the codes of ethics, CORE-CT reporting, and changes in the location of the victim and child advocates and the Board of Accountancy for administrative purposes, which are effective on July 1, 2005; (2) the reduction in required training hours for affirmative action officers, which is effective on October 1, 2005; and (3) the expanded recording requirement for planning and zoning commission meetings, which is effective on January 1, 2006.

CONTRACTING (§§ 10-12, 23-24, 29, 32-33, 39, 42-43, 51)

By law, state contractors for construction projects estimated to cost more than $500,000 must be prequalified. To be prequalified, contractors must apply to the Department of Administrative Services (DAS) and refrain from engaging in illegal and deceptive behaviors. Contractors who violate these provisions may be deemed nonresponsible and, as such, ineligible to bid on state contracts for specified periods.

The act adds to the list of prohibited activities and additionally gives the SEC jurisdiction over prequalified contractors, large state construction or procurement contractors, consultants on state contracts, and people seeking those positions. Generally, it (1) prohibits those contractors and consultants from engaging in unethical bidding and contracting practices and (2) requires the SEC to investigate allegations of misconduct and penalize violators.

Under the act, a "large state construction or procurement contract" is any state contract with a value greater than $500,000 for the (1) remodeling, alteration, repair, or enlargement of any real asset; (2) construction, alteration, reconstruction, improvement, relocation, widening, or changing of the grade of a section of a state highway or a bridge; (3) purchase or lease of supplies, materials, or equipment; or (4) construction, reconstruction, alteration, remodeling, repair, or demolition of any public building.

The act also prohibits a consultant who helps plan a state contract, and the businesses with which he is associated, from serving as the contractor, subcontractor, or consultant on that project, or as a consultant to any person seeking the contract.

Affidavit Requirement

The act requires state and quasi-public agencies to obtain from goods and service contractors an affidavit identifying consultants who will work with them on the contract if the contract is valued at $50,000 or more in a calendar or fiscal year. The affidavit must indicate whether the consultant's duties include any communication concerning the business of the agency, whether direct or indirect, with the agency or a state official or employee.

Under the act, "consulting agreement" means any written or oral fee-for-service agreement for the purpose of (1) providing counsel to a contractor, vendor, consultant, or other entity seeking to conduct, or conducting, business with the state; (2) contacting, orally or in writing, any executive, judicial, or administrative office or employee of the state for solicitation, dispute resolution, introduction, or requests for information; or (3) any other similar activity related to the contract. Lobbyists who are registered when the affidavit is made with the state are not considered consultants.

The affidavit must be sworn under penalty of false statement (a class A misdemeanor, see Table on Penalties). It must be amended whenever the bidder or vendor enters into a new consulting agreement during the term of the contract. It must include (1) the name of the consultant and the firm, (2) the basic terms of the consulting agreement, (3) a brief description of the services provided, and (4) an indication as to whether the consultant is a former state employee or public official. If the consultant is a former state employee or public official, the affidavit must also include the name of his former agency and the date his employment ended.

Every state agency and quasi-public agency must include notice of the affidavit requirement in any bid specification or request for proposal. Under the act, a bidder or vendor who refuses to submit the affidavit is disqualified from contracting and the agency can award the contract to the next highest ranked vendor or the next lowest responsible qualified bidder, or it can seek new bids or proposals.

Service Industry Contracts

The act authorizes the commissioners of DAS or DPW to extend for one year janitorial, building maintenance, security, and food and beverage services contracts valued at $50,000 or more in effect on May 1, 2005. It requires those extensions to include an increase, if applicable, in the workers' standard wage as established by the Labor Department.

The act prohibits a chief executive officer of a constituent unit of higher education (i.e., UConn, Connecticut State University, Charter Oak College, and the community-technical colleges) from extending a service industry contract with a value of $50,000 or more unless (1) it is in effect on May 1, 2005, (2) the extension is for a period of one year from the date the contract would otherwise expire, and (3) it includes any applicable increase in the standard wage.

Architectural and Engineering Consultants

The act requires selection panels to consider a consultant's (1) knowledge of Connecticut's building and fire codes and (2) geographic location (i.e., proximity to the project site) when selecting the most qualified firms for state projects that require architectural or professional engineering services.

Certified Professional Estimators

The act requires the Government Administration and Elections Committee to study the need to use certified professional estimators for state construction projects and report its findings to the General Assembly by February 1, 2006.

Fast-Track Projects

The act removes the Connecticut Juvenile Training School and the UConn library projects from the list of public building fast-track construction projects, thereby subjecting them to competitive bidding and contracting procedures.

STATE ETHICS (§§ 31, 34-45, 50, 52-53)

Gifts

The act tightens gift provisions under the State Codes of Ethics. For public officials and state employees, it prohibits the knowing exchange of a gift valued at $100 or more between supervisors and those who work under their supervision. The act prohibits their family members from receiving such a gift but does not ban them from giving one to their family member's supervisor or subordinate. Additionally, it:

1. prohibits public officials and state employees from accepting goods or services provided to the state from people prohibited from giving gifts;
2. requires contractors doing or seeking to do business with the state, people engaged in activities regulated by an official's or employee's agency, and prequalified contractors, to report to the SEC any gift solicitations by public officials or state employees;
3. requires these contractors and regulated individuals, or their agents, to provide a description of any gift they give, its value, and the name of the recipient to the recipient's department head, not just to the recipient as was required under prior law; and
4. limits the volunteer services that constitute a gift exception under the ethics codes for public officials and lobbyists to volunteer work done to promote the success or defeat of a political party, candidate, or referendum.

Changes Affecting Public Officials and State Employees

Ethics Reporting. The act requires state and quasi-public agency heads, and their deputies, and people in charge of state procurement and contracting to report suspected ethics violations by public officials or contractors to the SEC. The SEC may report these violations to the auditors of public accounts, chief state's attorney, or attorney general.

Corrupt Officials. The act prohibits a former executive, judicial, or legislative branch, or quasi-public agency official or state employee who is convicted of any felony involving corrupt practices, abuse of office, or breach of public trust from seeking or accepting employment as a lobbyist. It further prohibits a public official or state employee who is convicted or pleads guilty or no contest to a crime related to state or quasi-public agency office from seeking or accepting employment as a lobbyist, or from performing the functions of a lobbyist.

Under the act, "crime related to state or quasi-public agency office" means (1) larceny by embezzlement from the state or theft or (2) bribery or bribe receiving (both class C felonies, see Table on Penalties) committed while serving as a public official or state employee. (There is no separate offence in the Connecticut General Statutes for larceny by embezzlement from the state or theft. Thus, it is unclear what legal effect this language would have on people who serve as lobbyists.)

Ethics Compliance Officers and Liaisons. The act requires each state agency and quasi-public agency involved in or planning a large state construction or procurement contract to appoint an ethics compliance officer. Each officer must (1) develop his agency's ethics policies; (2) coordinate ethics training programs and monitor them for compliance; and (3) at least annually, provide ethics training to personnel involved with state contracts. Every other state agency and quasi-public agency must appoint an ethics liaison to work with the SEC to develop ethics policies and training for their agencies.

Ethics Advice. The act prohibits a public official or state employee from advising or approving actions that violate the ethics code.

Changes Affecting the State Ethics Commission

Long-Arm Jurisdiction. The act expands the SEC's jurisdiction to include out-of-state residents. It gives the SEC long-arm jurisdiction over out-of-state residents and their agents who (1) give anything of value to public officials or state employees or (2) are, or are seeking to become, prequalified contractors.

The act appoints the secretary of the state (SOTS) as the defendant's attorney in a long-arm jurisdiction case and as agent for service of process if the defendant does not have a registered agent for service of process in Connecticut. It requires that (1) the SOTS be served at least 12 days before a required appearance and (2) copies of the documents be sent, via registered or certified mail, to the defendant or his agent.

Contractors. The act expands the SEC's jurisdiction to include prequalified contractors, large state construction or procurement contractors, consultants on state contracts, and people seeking those positions. It requires the SEC to investigate allegations of unethical bidding and contracting practices by those contractors and consultants, and to follow the same procedures it uses for alleged ethics codes violations. The SEC must, among other things, make probable cause determinations and impose penalties for code violations.

Contracting and Staff. The act authorizes the SEC, within available appropriations, to enter into contracts necessary for the discharge of its duties. It eliminates the SEC's authority to employ an executive director, general counsel, and necessary staff to administer and enforce the codes of ethics.

Imposing Penalties. The act decreases from seven to six the number of concurring votes by SEC members needed to fine a public official, state employee, or contractor in violation of the code or to impose a civil penalty against him. This is the same number of concurring votes required to find a lobbyist guilty of an ethics violation.

Changes Affecting Contractors

The act prohibits prequalified contractors, large state construction or procurement contractors, consultants on state contracts, and people seeking those positions from (1) soliciting from public officials or state employees information that is not available to other bidders in order to gain a competitive advantage; (2) defrauding the state by charging an agency, board, commission, institution, or quasi-public agency for work not performed or goods not provided; and (3) violating or circumventing competitive bidding and ethics laws. The act requires the SEC to handle alleged violations in the same way it handles ethics code violations and it subjects violators to the same penalties, including a civil fine of up to $10,000 or a class D felony (see Table on Penalties). A state agency, board, commission, institution, or quasi-public agency may deem a violator of these provisions to be a nonresponsible bidder and thus ineligible to win a contract.

Summary of Ethics Laws. The act requires state agencies to provide large state construction or procurement contractors with the SEC's most recent summary of the state ethics laws and, prior to accepting their bids, obtain written affirmation that their key employees have read, understand, and agree to comply with them. The summary must be included by reference in the contract itself. Large state construction or procurement contractors must provide their subcontractors and consultants with the same summary and submit those written affirmations to the state agency with which they have the contract, or face its termination.

Changes Affecting Lobbyists

The act requires every lobbyist to include with his registration fee the names of executive and quasi-public agencies he plans to lobby or solicit for state contracts during the registration period. It requires a client lobbyist, one who makes expenditures for lobbying on his own behalf, to include with his registration (a) the name of his company; (b) the nature of the company or association; (c) the primary business address; (d) the

name of the person responsible for overseeing the lobbying activities; (e) that person's job title and any applicable contact information including phone and facsimile numbers, and e-mail and business mailing addresses. A communicator lobbyist, one who lobbies on behalf of one or more client lobbyists, must include (1) the name of the person with whom he has primary contact for each client and (2) any applicable contact information for that person including phone and facsimile numbers, and e-mail and business mailing addresses.

Changes Affecting the Attorney General

By law, the attorney general may bring a civil action against a public official who realizes a financial gain from an ethics violation. The act expands his jurisdiction to include violations by prequalified contractors, large state construction or procurement contractors, consultants on state contracts, and people seeking those positions. It authorizes him, in addition to restitution plus up to twice the amount of damages, to also recover any other financial benefit the person derived from the violation. But it prohibits the court from allowing the attorney general to recover up to two times the amount of damages in enforcement of legal defense fund violations.

WHISTLEBLOWERS (§ 47)

Attorney General's Authority

By law, the attorney general may investigate state agency whistleblower allegations or recommendations he receives from the auditors of public accounts. Although the act does not change the law, it appears to limit the attorney general's authority to conduct investigations by requiring him to get the concurrence and assistance of the auditors of public accounts before proceeding. The act specifies that the scope of those investigations can include any information that may be reasonably derived from the auditors' report. Prior to conducting an investigation, the attorney general must consult with the auditors about the relevance of their report to the information the attorney general is seeking. The act allows the auditors or attorney general, in addition to the exempt records provision of the Freedom of Information Act, to withhold the investigation records while the investigation is pending.

Whistleblower Protections

The law prohibits appointing authorities and officers and employees of the state, quasi-public agencies, or large state contractors from taking or threatening to take personnel action against an agency or contractor employee in retaliation for his disclosure of information to the auditors of public accounts or the attorney general. The act extends this safeguard to disclosures by a contractor and also protects disclosures to (1) the agency where the state officer or employee works; (2) a state agency pursuant to a mandated reporter statute; or (3) in the case of a large state contractor, an employee of the contracting state agency concerning information about the large state contract.

The act extends the application of these provisions to contracts for at least $5 million with a state or quasi-public agency to construct, alter, or repair a public building or public work.

Complaints

Prior law allowed the attorney general, the employee, or the employee's attorney to file a complaint about the personnel action with the chief human rights referee after the investigation concluded. The act eliminates the attorney general's ability to file a complaint. It requires the employee or his attorney to file the complaint with the referee within 30 days after learning of the specific incident giving rise to a claim that a personnel action has occurred or been threatened, rather than at the conclusion of the attorney general's investigation.

Civil Actions and Damages

If an appointing authority or an officer or employee of a state agency, quasi-public agency, or large state contractor takes or threatens to take action impeding, canceling, or failing to renew a contract between a state agency and a large state contractor, or a large state contractor and its subcontractor, in violation of the whistleblower statutes, the act allows the affected agency, contractor, or subcontractor to bring a civil action to recover damages, attorney's fees, and costs. The agency, contractor, or subcontractor must bring the action in Hartford Superior Court within 90 days of learning of the action, threat, or failure to renew.

The law requires contracts between a state or quasi-public agency and a large state contractor to provide for the contractor's civil liability for up to $5,000 per offense, up to a total of 20% of the contract value, for personnel actions the contractor's officer, employee, or appointing authority takes or threatens to take against an employee in retaliation for the employee's disclosure of information to the auditors of public accounts or the attorney general. The act extends this monetary penalty to retaliations against the contractor's employees for disclosing information to the contracting state or quasi-public agency's employees.

The act prohibits anyone from being held liable for civil damages as a result of his good faith disclosure of information to the auditors or the attorney general.

PUBLIC ACCESS TO RECORDS AND MEETINGS (§§ 26-27, 46)

The act makes changes to the public's access to records and meetings. Specifically, it:

1. prohibits the Department of Transportation (DOT) from retaining permanently any personal information it collects, including e-mail addresses, to notify people of significant highway or railway incidents;
2. exempts from disclosure individual e-mail addresses DOT obtains to administer such a notification plan; and
3. requires planning and zoning commissions to record, electronically or by transcription, all meetings during which they deliberate on formal petitions, applications, requests, or appeals, rather than just those directly appealable to the courts.

DISABLED AND DISADVANTAGED WORKERS (§ 25)

The act establishes a 15-member Disabled and Disadvantaged Employment Security Policy Group. The Senate president pro tempore, House speaker, and Senate and House majority and minority leaders appoint one member each. The executive director of the Connecticut Community Providers Association appoints three members, one of whom must be a disabled worker. The executive director of S.E.I.U., Local 32BJ, appoints three members, one of whom must be a disadvantaged worker. The chancellor of the Connecticut State University System appoints one member from higher education. The labor and administrative services commissioners appoint one representative each from their respective departments.

By February 1, 2006, the group must recommend to the Government Administration and Elections Committee policies that can best achieve mutually beneficial procedures for disabled and disadvantaged workers and the state contractors who employ them. Its goals are to:

1. expand long-term employment opportunities,
2. preserve existing employment,
3. create supportive work environments,
4. establish meaningful career ladders, and
5. maximize cooperation between agencies and companies employing disabled and disadvantaged workers.

STATE PROPERTY (§§ 28, 48-49)

Transfer of State Property

The act requires a state agency, department, or institution that sells state-owned property to first notify in writing the state senator and state representative of the district in which the land is located of the state's intention to sell the land. By law, agencies must already notify the chief executive officer of the municipality.

The act authorizes the towns of Preston and Norwich to purchase Norwich State Hospital provided the towns (1) continue to make good faith efforts to do so as determined by the DPW commissioner and (2) comply with notification requirements required by law.

Public Works

The act allows the public works commissioner to acquire property or provide design and construction services in the event that a public or special act authorizes the state to acquire real property or build, improve, repair, or renovate any facility. It expands the definition of "user agency" to include the agency for which a project is being undertaken, not just the agency requesting the project. By law, the public works commissioner is responsible for fulfilling state agencies' requests for office space, including constructing new space. The user agency participates in the process the department follows to acquire the space.

BOARD OF ACCOUNTANCY (§§ 21-22)

By law, an out-of-state certified public accountant (CPA) has several options for reciprocity. One is to show that he passed the certification examination in another state and has five years of experience or meets equivalent standards set by the Board of Accountancy after passing the examination and within the 10 years immediately preceding his application. The act eliminates the requirement that a CPA must have passed the examination within the 10 years immediately preceding his application. It gives a CPA reciprocity if he has been practicing for at least five of the 10 years immediately preceding his application or meets equivalent standards set by the Board of Accountancy. (Thus, if a CPA took the examination 20 years ago, for example, he is still eligible for reciprocity if he meets the other requirements.)

The act also specifically allows the Board of Accountancy to adopt regulations establishing due dates for certain license, permit, and registration fees. It further allows the board to establish late fees for failure to remit those payments on time.

CORE-CT (§ 7)

The act requires the state comptroller to submit annual reports to the governor and the General Assembly on CORE-CT, the state's new integrated financial, human resources, and payroll system.

The reports must include:

1. the system's implementation status,
2. the anticipated completion date,
3. total cost to date and projected costs for the next three fiscal years,
4. additional software or hardware needed for successful implementation and any associated costs,
5. date and cost of future upgrades,
6. level of cooperation from vendors and state agencies, and
7. any administrative or legislative obstacles to implementation.

AGENCY REORGANIZATION (§§ 3-6)

The act transfers the budgeting and related administrative functions of the Office of the Child Advocate and the Office of the Victim Advocate from the Freedom of Information Commission to DAS. It also transfers the budgeting and related administrative functions of the Board of Accountancy from the Office of the Secretary of the State to the Office of Policy and Management (OPM).

The act makes the Department of Emergency Management and Homeland Security autonomous by transferring its budgeting and related administrative functions out of OPM, where they were formerly located.

GRANT PAYMENTS TO TOWNS (§§ 13-20)

The act modifies the deadlines that the OPM secretary, the comptroller, and the treasurer must meet when processing certain grant payments to towns. It leaves unchanged when towns receive the payments. Generally, it (1) gives the OPM secretary 15 additional calendar days to certify to the comptroller the amount due and (2) decreases from 15 calendar to five business days the time that the comptroller has to draw an order on the treasurer. The grant payments are for loss of property tax revenue due to property tax exemptions for:

1. up to $1,000 of the assessed value of property owned by totally disabled persons;
2. low-income elderly and totally disabled homeowners and renters under the "circuit breaker" and tax freeze programs;
3. manufacturing facilities in distressed municipalities, targeted investment communities or enterprise zones, and exempt property of service facilities;
4. the property of private colleges and general hospitals; and
5. state-owned real property, reservation land held in trust by the state for an Indian tribe, municipally owned airports, and land taken into trust by the federal government for the Mashantucket Pequot Tribal Nation.

The changes also apply to deposits to the Mashantucket Pequot and Mohegan Fund.

BACKGROUND

Standard Wage

By law, the labor commissioner must determine the standard rate of wages for service worker employees based on the federal Register of Wage Determinations under the Service Contract Act of 1965 (41 USC § 351 et seq.) (CGS § 31-57f)).

State Projects

By law, "project" means any state program requiring consultant services if (1) the cost of those services is estimated to exceed $50,000 or, in the case a state higher education system program, $300,000, and (2) the construction costs are estimated to exceed $500,000 or, in the case of a state higher education system program, $2 million.

E-mail Address Disclosure

The Office of the Public Records Administrator and State Archives said in General Letter 98-1 that only permanent or permanent archival e-mail messages are public records subject to disclosure under the Freedom of Information Act. DOT's web site has a feature that allows visitors to sign-up for transportation updates via e-mail.

Related Acts

PA 05-183 abolishes the SEC and replaces it with a new Office of State Ethics (OSE). It transfers the SEC's powers and authority to the OSE.

PA 05-286, vetoed by the Governor, also establishes grounds for contractor disqualification, including violation of the state ethics code.

HIGHER EDUCATION AND EMPLOYMENT ADVANCEMENT COMMITTEE

PA 05-4—SB 605
Higher Education and Employment Advancement Committee

AN ACT CONCERNING THE AWARDING OF EDUCATION DOCTORAL DEGREES BY THE CONNECTICUT STATE UNIVERSITY SYSTEM

SUMMARY: This act permanently authorizes the Connecticut State University system to award doctoral degrees in education. PA 01-141 authorized the system to award such degrees between May 1, 2002 and January 30, 2007.
EFFECTIVE DATE: July 1, 2005

PA 05-60—HB 6795
Higher Education and Employment Advancement Committee

AN ACT CONCERNING THE PRIVATE OCCUPATIONAL STUDENT PROTECTION ACCOUNT

SUMMARY: This act doubles, from $10,000 to $20,000, the amount of the irrevocable letter of credit new private occupational schools must obtain. It also extends the period for which schools must maintain their letter of credit from five to eight years from the date they were approved to operate or until they pay $20,000, rather than $10,000, into the private occupational school student protection account, whichever occurs first.

By law, schools must obtain the letter of credit as a condition of doing business. The letter guarantees their required payments to the private occupational school student protection account, which is available to reimburse students if a school closes or becomes insolvent.
EFFECTIVE DATE: July 1, 2005

PA 05-110—SB 398
Higher Education and Employment Advancement Committee
Public Safety and Security Committee
Appropriations Committee

AN ACT CONCERNING IN-STATE TUITION FOR ACTIVE DUTY MILITARY STATIONED IN CONNECTICUT

SUMMARY: This act makes any member of the armed forces who is stationed in Connecticut under military orders, and his or her spouse, eligible for in-state tuition at UConn, Connecticut State University, and the community colleges.
EFFECTIVE DATE: July 1, 2005

PA 05-184—sHB 6709
Higher Education and Employment Advancement Committee
Finance, Revenue and Bonding Committee
Government Administration and Elections Committee

AN ACT CONCERNING THE CONNECTICUT STUDENT LOAN FOUNDATION

SUMMARY: This act makes numerous changes to the Connecticut Student Loan Foundation's (CSLF) operations and authority. It increases the maximum term of its bonds, from 30 to 40 years, and reduces, from "AA" to "A," the rating of the institutions with which it can contract on certain interest rate transactions. It enables CSLF to assign its assets (transfer their title) as well as pledge them (use them as collateral) to back its debt instruments and adds income and revenue payable to CSLF (receivables) to those assets.

It allows CSLF to contract with financial institutions that are not governed by federal higher education law and specifies the interest rates that apply to CSLF loans and loan guarantees not governed by such law. It allows CSLF's board to adopt rules governing loans CSLF finances and services, in addition to those it makes and guarantees. It removes the ability of a bond rating agency or underwriter to set terms and conditions on CSLF loans, loan guarantees, and loan sales or purchases.

The act adds a member to the board who is knowledgeable in accounting. It allows CSLF to substitute a report it makes to the federal government for part of the report it must make to state officials.

It changes how CSLF's assets must be distributed if its existence is terminated. And it repeals several obsolete provisions and eliminates internal references to others.
EFFECTIVE DATE: July 1, 2005

CSLF DEBT INSTRUMENTS

The act increases, from 30 to 40 years, the maximum term of CSLF bonds. It reduces, from "AA" to "A," the rating of financial institutions with which CSLF may contract, or the security that can secure contracts, for interest rate cash flow arrangements (e.g., interest rate swaps or cap transactions).

The law allows CSLF to pledge its current funds, income, and revenue to secure its debt obligations. The act allows it also to (1) pledge money, income, and revenue payable to it (receivables) as security and (2) assign its current and receivable funds, income, and revenue. It permits CSLF to include in its bond resolutions provisions concerning assignment and use of

assets and receivables and pledging receivables. CSLF can already include provisions on pledging assets.

The act specifies that all money received on behalf of CSLF or subject to a pledge contained in a bond resolution or trust agreement must be held in trust and used only as provided in the resolution or agreement. This constraint already applied to money CSLF receives pursuant to a bond resolution or trust agreement.

ELIGIBLE LENDERS

The act allows CSLF to contract with financial institutions that are not governed by the Federal Higher Education Act and consequently not eligible to participate in the student loan program. The law already allows CSLF to make, guarantee, and acquire and sell "alternative" loans, that is, those not governed by the federal law.

The law allows CSLF to contract with "eligible lenders," as defined by the federal law, for originating, administering, servicing, collecting, and guaranteeing (1) loans; (2) investment agreements; (3) agreements in connection with credit facilities; (4) agreements to moderate interest rate fluctuations; and (5) other activities that its directors deem necessary or desirable to execute its powers.

Under the federal law, "eligible lenders" include (1) national and state banks, savings and loan associations, and credit unions whose primary consumer credit function, except under specified conditions, is not making or holding student loans; (2) pension funds; (3) insurance companies; (4) a state-designated state or nonprofit agency; (5) higher education institutions (which include public and private colleges and universities and private occupational schools) that make loans; (6) certain federally created secondary loan institutions; and (7) certain consumer finance subsidiaries of national banks. Under the act, this definition applies only where applicable, that is, when the transaction is governed by federal law.

LOAN INTEREST

The act limits the interest rate CSLF can charge on loans it makes or guarantees that are not governed by federal higher education law. The simple interest rate on such loans must comply with state or federal consumer lending laws, where appropriate (e.g., on out-of-state loans CSLF guarantees, the rate of the state in which the loan is made). Their annual rate cannot exceed 12% or 5% over the Federal Reserve Board's discount rate on 90-day commercial paper (the rate that higher education institutions can charge for student loans). The act also requires the term of loans CSLF makes (but not those it guarantees) to comply with federal and state consumer lending law, where appropriate.

The act requires CSLF to maintain its funds attributable to activities governed by the Federal Higher Education Act in accordance with that act. It removes a requirement that CSLF maintain an adequate restricted fund.

BOARD POWERS

The act makes several changes to the CSLF board of directors' powers. It allows the board to adopt rules governing loans CSLF finances and services, in addition to those it makes and guarantees. These rules can cover an individual's qualifications for a loan, including financial need; loan applications and terms; and CSLF's granting and administering of the loan. It removes a bond rating agency's or underwriter's authorization to set terms and conditions, within the limits of applicable federal higher education laws, on CSLF loans, loan guarantees, and loan sales or purchases.

It allows CSLF to contract with higher education institutions, eligible lenders, nonprofit organizations, and other legal entities to take custody of loans and for interest rate exchange agreements, in the latter case instead of agreements to moderate interest rate fluctuations. Existing law allows CSLF to contract with these entities to originate, administer, service, collect, and guarantee loans and for investment and credit facility agreements.

Finally, it repeals a reference to the state's repayment of debt obligations for an obsolete loan forgiveness program.

REPORTING REQUIREMENTS

The act requires CSLF to submit a copy of its report to the U.S. Department of Education as part of the annual report it must submit to the governor and General Assembly. Prior law required it to provide a description of the organization, including the number of employees and data on the number and amount of loans in default. CSLF must continue to submit a financial statement with its report.

The law requires CSLF to review its operations against budget projections at least quarterly. The act requires this review to include its revenue in addition to its expenditures.

It deletes an obsolete reference to administering loans made before July 1965.

BOARD OF DIRECTORS MEMBERSHIP

The act adds a public member to CSLF's board of directors, raising its membership to 14. The new member's education or experience must give him an

understanding of accounting principles and practices, financial statements, and audit committee functions and knowledge of internal controls. The individual must be an elector in Connecticut. He is appointed by the board of directors and serves a four-year term. By law, the term of appointed board members is coterminous with their appointing authority or until a successor is appointed.

USE OF ASSETS UPON DISSOLUTION

The act directs that if the foundation is terminated (which cannot occur as long as it has outstanding debt) all its assets, property, and money must go to the undergraduate scholarship funds of nonprofit colleges and universities in the state in proportions the board determines. Under prior law, only gifts, grants, bequests, or contributions made to CSLF could go to these institutions; all other money and property went to the General Fund.

REPEALED LAWS

The act repeals laws that (1) authorize the state to issue up to $5 million in state bonds to capitalize a fund to support CSLF's loan guarantees and (2) require CSLF to maintain a separate restricted fund to back any state-supported loan guarantees and authorize it to borrow from the General Fund, if necessary, to meet those obligations. Federal law requires CSLF to maintain a fund to back its guarantees on loans made under that law.

The act repeals CSLF authority to use its surplus funds to establish a loan or grant program for people who do not qualify for federally guaranteed loans.

PA 05-198—sSB 1258
Higher Education and Employment Advancement Committee
Appropriations Committee
Commerce Committee

AN ACT CONCERNING THE PROMOTION OF COLLABORATIVE RESEARCH APPLICATIONS WITH INDUSTRY

SUMMARY: This act requires the Office of Workforce Competitiveness (OWC) to establish four new grant programs to prepare college students for careers in research and development and spur research collaborations between academia and industry. It requires (1) the state's economic development agencies and the University of Connecticut to recommend a plan for promoting technology transfer and (2) OWC to make recommendations on advancing nanotechnology development in the state.

The new OWC grants, which must be made within available appropriations, go to colleges and universities, businesses, and technology-focused organizations according to priorities the act establishes and with advice from the Council of Advisors on Strategies for the Knowledge Economy. This council already advises OWC on the grants it makes for developing educational programs geared toward emerging technologies requiring interdisciplinary skills. The act adds the executive directors of Connecticut Innovations, Inc. (CII) and the Connecticut Development Authority (CDA) to the council, increasing its membership to 11.

EFFECTIVE DATE: July 1, 2005, except for the technology transfer plan and nanotechnology study provisions, which are effective on passage.

OWC GRANT PROGRAMS

Grants for Students

OWC must create a program to develop the academic and physical infrastructure needed to help colleges and universities prepare students. In developing that program, OWC must work with vocational-technical and other secondary schools on student outreach and development. Colleges and universities can use the grants for:

1. upgrading instructional laboratories to meet industry specifications;
2. developing new curriculum and certificate and degree programs to address industry needs;
3. developing, in collaboration with vocational-technical and other secondary schools and other colleges and universities, articulated career development programs in industries facing projected manpower shortages; and
4. supporting undergraduate and graduate research projects and experimental learning activities.

Grants for Faculty

OWC must create a grant program to help colleges and universities and technology-focused organizations:

1. recruit eminent faculty in basic and applied research,
2. leverage federal funds for research centers, and
3. help faculty develop the initial data they need to secure larger research grants from federal and other non-state sources.

Joint University-Business Research Grants

OWC must create a program to encourage colleges and universities to collaborate with businesses on finding ways to apply research. These grants can be

awarded to colleges and universities, technology-focused organizations, and businesses, which may use them to (1) develop, operate, and maintain shared laboratory facilities and staff and (2) match funds for joint research projects involving businesses, technology-focused organizations, and universities.

The act specifies how OWC must administer the matching grants. The grants match private funds on a one-to-one basis, are capped at $100,000, and small and medium-sized businesses can match the amount with in-kind services. OWC must award the grants on a competitive basis in two annual funding rounds, using outside parties to evaluate each grant request. Reviewers must determine if the proposed research is commercially relevant and if any innovations it spawns have a "clear path to market" (i.e., there are no obstacles to their being developed and sold). OWC must publicize the grants to businesses and conduct an aggressive marketing campaign through business organizations to make them aware of universities' and technology-focused organizations' resources.

Grants to Commercialize University Research

Lastly, OWC must help colleges and universities to promote the commercial value of their research. It must provide grants to the institutions and businesses to:

1. verify the technical and commercial feasibility of patented or disclosed early-stage research to improve its chances for successful commercialization and
2. allow smaller institutions to contract for services with independent technology transfer organizations.

Funding Priority

The act requires OWC to use the following priority order in awarding grants. Grants that:

1. focus on key technology areas to give Connecticut a competitive advantage in the knowledge economy;
2. create certificate and degree programs to encourage talent generation;
3. promote collaboration between public and private colleges and universities;
4. involve multiple activities, enhance research capabilities, promote applied research collaboration, and find commercial uses for academic research; and
5. match funds from businesses, technology-focused organizations, or colleges and universities.

TECHNOLOGY TRANSFER PLAN AND BUDGET

The act requires the economic and community development department (DECD) commissioner, the CDA and CII executive directors, and the UConn president, or their designees, to make recommendations on a plan and budget to create an innovation network to promote technology transfer, the process through which research and new technologies are applied to the production of goods and services. They must do this within available appropriations and in consultation with the following individuals and organizations:

1. the Governor's Competitiveness Council (an advisory board consisting of business executives, public officials, and university representatives);
2. the education and higher education commissioners;
3. the state university and community college system chancellors;
4. the OWC director; and
5. leading technology-focused organizations and any other agencies the DECD commissioner deems appropriate.

Plan Requirements

The recommendations for the plan and budget must include how to:

1. create endowed chairs and hire leading academic professionals in targeted fields,
2. aggressively solicit federal research funds,
3. increase corporate-sponsored research,
4. establish at least one innovation center,
5. strengthen university-based technology transfer and entrepreneurial programs,
6. create financial and other incentives to encourage collaboration between universities and industry or federally sponsored technology centers, and
7. create links to "angel networks" (i.e., groups of investors who generally invest in and support start-up companies in their early stages) and Connecticut-based incubators.

The recommendation concerning the innovation center must be linked to universities; involve advanced technology corporations and start-up enterprises; and leverage the Hartford-based Connecticut Center for Advanced Technology, a federally funded public-private partnership that promotes science and technology. The plan must also recommend how the state can implement these strategies by using existing resources, including those of CII, CDA, OWC, and UConn.

The DECD commissioner, in consultation with CII, CDA, and the UConn president, must submit the plan and budget to the governor and the Commerce, Education, and Labor committees by January 1, 2006.

NANOTECHNOLOGY STUDY

The act requires OWC, within available appropriations, to make recommendations to the legislature to advance the state's nanotechnology development. The recommendations must (1) cover state investment to increase university research and develop centers of excellence and shared-use facilities, (2) promote partnerships and collaboration between colleges and universities and technology-based businesses and industries, (3) leverage existing federal funds, and (4) advance education and training in nanotechnology. OWC must report its recommendations to the Higher Education Committee by January 1, 2006.

In making its recommendations, OWC must establish and consult with a Nanotechnology Advisory Council. The council must include representatives from (1) DECD and other state agencies, (2) CDA and CII, (3) public and private colleges and universities, and (4) the technology industry and technology-focused organizations. The OWC executive director chairs the council. It is not clear whether she selects all council members or just the industry and technology-focused organization representatives, or who may add other state agency representatives to the council.

BACKGROUND

Nanotechnology

Nanotechnology is a hybrid science that combines chemistry and engineering to manipulate molecules and atoms and place them in a pattern to produce a desired structure. It can be applied to organic and inorganic matter. Nanotechnology is potentially applicable to materials manufacture, alternative energy production, electronics, and health care products and processes.

Council of Advisors on Strategies for the Knowledge Economy

This nine-member group, composed of state agency and technology industry representatives, advises OWC on (1) the process for awarding grants to public postsecondary schools and their business partners, (2) promoting university-business relations, and (3) identifying benchmarks for technology-based workforce innovation and competitiveness.

Related Act

PA 05-165 also requires the development of an innovation network, and it allows DECD, CII, CDA, UConn, and OWC to use up to $10 million of their existing resources to implement the plan.

PA 05-165 requires the commissioner of higher education, in consultation with OWC, to review inclusion of nanotechnology, molecular manufacturing, and advanced and developing technologies at colleges and universities.

PA 05-255—sSB 1050
Higher Education and Employment Advancement Committee
Appropriations Committee
Judiciary Committee

AN ACT CONCERNING ENDOWMENT MATCHING FUNDS, THE BOARD OF TRUSTEES FOR THE UNIVERSITY OF CONNECTICUT, FACULTY INCREASES, AND THE UCONN HEALTH CENTER

SUMMARY: This act authorizes the University of Connecticut to borrow money from the Connecticut Health and Education Facilities Authority (CHEFA) for projects at the UConn Health Center and pledge revenue from Health Center clinical services projects to repay this borrowing. It authorizes CHEFA to back any bonds it issues for this purpose with a special capital reserve fund (SCRF). SCRF-backed bonds are contingent liabilities of the state; if a SCRF is exhausted, the General Fund automatically replenishes it, regardless of the state spending cap.

It requires the UConn, Connecticut State University (CSU), and Community College boards of trustees to develop plans every two years to increase the number of full-time faculty at their institutions and biennially report these plans to the Higher Education Committee beginning December 31, 2005. And it makes the economic and community development commissioner and the chairman of the UConn Health Center board of trustees ex-officio members of UConn's board of trustees.

EFFECTIVE DATE: July 1, 2005, except for the faculty planning provisions, which are effective on passage.

UCONN BORROWING FOR HEALTH CENTER PROJECTS

Purposes

The act permits UConn, with its board of trustees' authorization, to borrow money from CHEFA (and refinance this debt) for any purpose for which CHEFA

is authorized to lend money to health care institutions. These include (1) buildings for hospitals; clinics; laboratories; laundries; employee and student housing; administration; research; and maintenance, storage, and utility facilities, including parking and (2) equipment and machinery needed for any of these purposes. The law otherwise limits CHEFA's lending to nonprofit colleges and universities and health facilities, but it allows CHEFA to lend to the CSUs for higher education purposes (e.g., academic buildings, dorms, and laboratories). The act specifies that the powers it grants UConn are in addition to those it has under UConn 2000 laws.

Pledging Revenue to Back Bonds

The act permits UConn's board to make any agreements, covenants, and representations necessary for CHEFA to issue bonds and for the university to borrow the proceeds from CHEFA. These can include (1) pledging revenue from "clinical services projects," any other clinical services income, or other general Health Center revenue to repay the bonds and (2) agreements with providers of letters of credit, insurance, or other credit facilities. All such agreements, covenants, and representations are full faith and credit obligations of the university, as long as they do not violate any state covenant arising from UConn 2000 borrowings.

Under the act, a "clinical services project" is one used principally to provide or support inpatient or outpatient clinical and patient services and programs offered at the Health Center. These can include services at John Dempsey Hospital, the faculty physician practice, or other clinics the Health Center operates anywhere in the state. They do not include education or research functions.

The university's pledge of revenue to repay CHEFA-issued bonds takes priority over any existing law or special act dedicating Health Center revenue to pay debt service on state bonds issued for Health Center projects. Any revenue remaining after paying CHEFA can be used for other debt service.

Required Approvals

The state treasurer and Office of Policy and Management secretary, or their deputies, must give approval before CHEFA can issue bonds or borrow money for the Health Center. The act requires them to consider whether the Health Center will have sufficient revenue to pay debt service on (1) the money it borrows from CHEFA, (2) all state bonds issued for the Health Center, and (3) any other debt for which Health Center revenue is pledged.

Special Capital Reserve Fund

The act authorizes CHEFA to back any bonds it issues to finance a clinical services project with a special capital reserve fund, if it determines the project's revenue is sufficient to pay the debt service, establish reserves, maintain the project, and pay any other needed costs. A SCRF is a debt service reserve fund that typically equals one year's principal and interest on the bond. If the borrower is unable to make all or part of the scheduled debt service payments, the SCRF is used to meet them.

Statutory Lien

Any pledge UConn makes concerning its borrowing and these bonds is a statutory lien. It is binding on all parties with any claim against the university and has priority over all other liens, including those of people who do business with the university. Regardless of Uniform Commercial Code requirements, the lien need not be recorded or filed. Any revenue UConn receives that is subject to its pledge is immediately subject to the lien without physical delivery of the money.

State Covenants

The act creates a covenant that the state will not, without protecting CHEFA and its bondholders, (1) create any lien against the Health Center assets or revenue pledged to back the bonds higher than the lien the act creates on them; (2) in any way impair the rights of the bondholders; or (3) limit, repeal, or alter UConn's right to take action to fulfill its obligations. But the act does not prevent the state from changing this restriction as long as it protects CHEFA and bondholders.

Court Jurisdiction

Any legal action concerning these bonds must be brought to the Hartford Superior Court. The court's jurisdiction includes any set-off, claim, or demand UConn makes against a plaintiff. Actions must be tried without a jury. UConn can use any legal defense except sovereign immunity.

PA 05-53—HB 5108
Select Committee on Housing
Planning and Development Committee
Judiciary Committee

AN ACT EXTENDING THE HOLD HARMLESS PROTECTIONS FOR HOUSING AUTHORITY EMPLOYEES TO PART-TIME EMPLOYEES

SUMMARY: This act requires housing authorities to protect and hold harmless part-time housing authority employees from financial loss and expense, including legal fees and costs, arising from any claim, demand, suit, or judgment for alleged negligence or infringement of anyone's civil rights while fulfilling their duties. Previously, this protection was available only to the commissioner and full-time employees.
EFFECTIVE DATE: October 1, 2005

PA 05-56—HB 6598
Select Committee on Housing
Planning and Development Committee
Judiciary Committee

AN ACT CONCERNING SURCHARGE CLAUSES IN RESIDENTIAL LEASES FOR HEAT AND UTILITIES

SUMMARY: This act specifies that if a rental agreement includes heat and utilities, it cannot additionally require a tenant to agree to pay a heat or utility surcharge. This prohibition applies to rental agreements or agreement renewals signed on or after October 1, 2005.

By law, provisions prohibited from rental agreements are unenforceable.
EFFECTIVE DATE: October 1, 2005 for rental agreements or renewals signed on or after that date.

PA 05-132—HB 6429
Select Committee on Housing
Planning and Development Committee
Appropriations Committee
Finance, Revenue and Bonding Committee

AN ACT EXTENDING THE DEMONSTRATION PROGRAM FOR ENERGY-EFFICIENT AND ENVIRONMENTALLY SAFE HOUSING

SUMMARY: This act extends to June 30, 2008, the end date for a Department of Economic and Community Development (DECD) window replacement matching grant demonstration program, which terminated on June 30, 2005 under prior law. The act requires DECD to report to the Housing Committee by February 1, 2008, on (1) the number of eligible buildings that received assistance, (2) costs, (3) program effectiveness, and (4) recommendations whether to expand the program and make it permanent.
EFFECTIVE DATE: Upon passage

BACKGROUND

Window Replacement Program

PA 02-5 (May 9 Special Session) authorizes the DECD commissioner to establish a three-year matching grant demonstration program to promote environmentally safe housing and energy conservation by repairing and replacing wooden windows in two-to-six-family buildings built before 1950. Of the first three towns the commissioner selects for the demonstration, at least two must have populations of 100,000 or over and one must have a population under 100,000. The maximum grant is $100 per window. The commissioner may fund the program from an affordable housing assistance program established in 2001 or from any other money he has available.

Under prior law, the program ended on June 30, 2005 with the commissioner having to report to the Housing Committee by February 1, 2005 on whether to expand the program and make it permanent, among other things. He did not report at that time because DECD had not implemented the program.

PA 05-187—sSB 1088
Select Committee on Housing
Planning and Development Committee
Public Health Committee
Public Safety and Security Committee
Appropriations Committee
Finance, Revenue and Bonding Committee

AN ACT CONCERNING FIRE SPRINKLERS IN NURSING HOMES

SUMMARY: This act extends the deadline for nursing homes to install automatic fire extinguishing systems, expands the scope of reporting requirements, and adds employee fire training requirements. Under prior law, each nursing home had to have an automatic fire extinguishing system approved by the state fire marshal on each floor by July 1, 2005. The act extends the deadline to July 31, 2006, specifies that the system should be complete, and requires it to be installed throughout the nursing home instead of on each floor. It requires the Connecticut Health and Educational Facilities Authority (CHEFA) to create and administer a loan program to help pay for the cost of installation.

EFFECTIVE DATE: Upon passage, except for the CHEFA requirements, which take effect July 1, 2005.

FIRE EXTINGUISHING SYSTEM INSTALLATION REPORTS

Reporting

The act requires each nursing home, by July 1, 2005 and quarterly thereafter, to submit a report to the local fire marshal describing its progress in installing the automatic fire extinguishing systems required by law. Under the act, nursing homes must conduct a facility risk analysis of the:

1. type of construction;
2. number of stories and residents;
3. safeguards in the facility;
4. types of patients; and
5. travel distance to, and arrangement of, exits.

After reviewing the report, the fire marshal may require the nursing home to implement alternative fire safety measures to reduce the risk level to occupants before installation of the system is completed.

The act requires nursing home owners or their agents to notify the public health commissioner that they submitted a fire extinguishing plan by July 1, 2004 as required by law.

Training

By July 1, 2005, the act requires each nursing home to submit a plan for employee fire safety training and education to the public health and public safety commissioners. The commissioners must review the plans and may make recommendations they deem necessary. Once approved or revised, the commissioners cannot require a plan to be resubmitted until it is further revised or the nursing home changes ownership.

CHEFA

Financial Assistance

The act requires CHEFA to develop a loan program to provide financial assistance to nursing home owners for costs they incur in installing automatic fire extinguishing systems, including smoke detectors and warning equipment, approved by the state fire marshal and required by law.

It establishes a revolving loan account in CHEFA for the program. The account contains any money required to be deposited in it. CHEFA may accept contributions from any source, public or private, for deposit in the account. The act gives CHEFA the powers necessary or appropriate for the loan program, including the same powers it has by law for other loans.

The act requires CHEFA to determine, as it deems reasonable, (1) loan terms and program conditions and (2) eligibility, loan approval, credit, and other underwriting requirements and criteria.

CHEFA's authority to grant loans ends on June 30, 2008. It may use the money remaining in the account, or received after this date for its other purposes, subject to specific restrictions on donated funds.

Report and Written Procedures

CHEFA must submit a report by October 1, 2006, and annually thereafter, as long as the loan program remains active, to the Public Health, Public Safety and Security, and Housing committees. The report must set forth:

1. a list of the loans made under the program and a general description of their terms, conditions, and repayment history;
2. an assessment of the impact of the loans on compliance with the act;
3. the need for additional program funding; and
4. other information the authority deems relevant to evaluate the program's success in meeting its objectives.

CHEFA must adopt written procedures (with approval of its board and required notice) for the program.

BACKGROUND

Installation Plans

Under existing law, by July 1, 2004, the owner or authorized agent of each nursing home must have submitted plans for the installation of the system, signed and sealed by a licensed professional engineer. He must have sent the plans to the local fire marshal and building official within the jurisdiction where the home is located, or to the state fire marshal, and must have applied for a building permit to install the system.

By law, anyone who fails to install an automatic fire extinguishing system in a nursing home as required above is subject to a civil penalty of up to $1,000 for each day the violation continues. The attorney general, upon request of the state fire marshal, must institute a civil action to recover the penalty.

CHEFA

By law, CHEFA assists institutions of higher education, health care institutions, nursing homes, childcare or child development facilities, and qualified nonprofits in the construction, financing, and

refinancing of projects or other authorized purposes. It issues bonds to finance projects for qualified hospitals, health care centers, nursing homes, and other health care institutions.

PA 05-206—HB 6594
Select Committee on Housing
Planning and Development Committee
Appropriations Committee
Commerce Committee

AN ACT CONCERNING THE TRAINING AND RESPONSIBILITIES OF RESIDENT SERVICE COORDINATORS

SUMMARY: This act expands and redefines the responsibilities of resident service coordinators (RSCs) and allows the Department of Economic and Community Development (DECD) to convene monthly in-service training and information sharing meetings for them.

By law, RSCs assist residents in state-assisted elderly housing projects to live independently. The act broadens RSCs' responsibilities by requiring them to (1) organize meetings and plan activities to promote socialization among residents; (2) provide orientation services to new residents; and (3) establish and maintain relationships with community service providers, including linking residents to appropriate services. The act redefines RSCs' responsibilities for conflict mediation and resolution by specifying that they must (1) facilitate conflict resolution between residents, including between elderly and younger residents, and (2) act as liaisons to assist in problem solving. Under existing law and unchanged by the act, they also assess tenants' needs in order to establish and maintain support services, monitor the delivery of services, and advocate for service changes sought or required by the residents.

Under the act, if DECD convenes the RSC in-service training and information sharing meetings, the topics must include information on the health care needs of seniors and people with disabilities, mediation and conflict resolution, and local and regional service resources.

EFFECTIVE DATE: July 1, 2005

BACKGROUND

State-Assisted Elderly Housing Developments

By law, those who qualify to live in state-assisted elderly housing are low-income people (1) age 62 and older and (2) age 61 or younger and certified by the Social Security Board or any other federal board or agency as totally disabled (CGS § 8-113a).

PA 05-223—sHB 6539
Select Committee on Housing
Planning and Development Committee
Judiciary Committee

AN ACT CONCERNING IDENTIFICATION OF A LANDLORD

SUMMARY: The act allows towns to require nonresident owners of rental property, or their agents, to maintain their current residential addresses on file in the town where the property is located. The property owner or agent must maintain the residential address on file whether the rental property is occupied or vacant. The owner or agent must inform the town when his residential address changes. (It is not clear if "nonresident" refers to the rental property owner or agent not being a resident of the town or the rental property or both.)

If the nonresident owner or agent fails to file his address, the address to which the municipal tax assessor mails the property tax bills for the property is deemed to be his current residential address under the act. The act specifies that a post office box is not considered an address.

Under the act, when the state or a town serves orders for certain reasons to an owner or agent who is required to file his residential address under the act, that action is sufficient proof of service in any subsequent criminal or civil action against him for failure to comply with the orders.

Violators, presumably a nonresident owner or agent whose address is on file as a post office box, commit an infraction (See Table on Penalties). Additionally, any town may, by ordinance, establish a civil penalty for noncompliance with the address reporting requirement. The amount of the penalty may not exceed $250 for the first violation and $1,000 for subsequent violations. Anyone who is assessed a civil penalty may appeal to the Superior Court.

EFFECTIVE DATE: October 1, 2005 for allowing towns to require nonresident rental property owners to maintain their current address on file and upon passage for establishing a penalty for noncompliance with the address provisions.

RESIDENTIAL ADDRESS REQUIRED TO BE ON FILE

The act allows towns to require nonresident owners of rental property to maintain on file in the tax assessor's office where their property is located, or other office the town designates, his current residential address, if he is an individual, or the address of the agent in charge if the owner is a corporation, partnership, trust, or other legally recognized entity. The act defines "agent in

charge" as one who manages real estate, including collecting rent and supervising property.

Address and Dwelling Unit

The act defines "address" as a location (1) described by the street name and full street number, if any; (2) the city or town; and (3) the state. The act specifies that "address" does not include a post office box. "Dwelling unit" means any house or building, or portion of one, that is rented, leased, or hired out to be occupied, is arranged or designed to be occupied, or is occupied, as the home or residence of one or more people, living independently of each other, cooking on the premises, and having a common right in the halls, stairways, or yards.

Service of Orders

Under the act, when the state or a town serves orders to the owner or agent concerning (1) the maintenance of his rental property or (2) compliance with state law and local codes at the address on file, which is considered his residential address under the act, that action is sufficient proof of service in any subsequent criminal or civil action against the owner or agent for failure to comply with the orders. The act does not limit the validity of any other means of giving notice of such orders that the state or a municipality may use.

Address Change

If the nonresident owner's residential address changes, the owner or his agent must provide the new address to the tax assessor or other designated municipal office within 21 days after the date that the address change occurred.

Violations

The act makes a violation of its provisions an infraction. It appears that an owner or agent who fails to file a residential address, which would be evident when the address on file is a post office box, is a violator.

Under the act, any town's legislative body may, by ordinance, establish a civil penalty for noncompliance with the address reporting requirements. The penalty may not exceed $250 for the first violation and $1,000 for subsequent violations.

Anyone assessed a civil penalty may appeal to the Superior Court, which they must do within 30 days after the town mailed the penalty notice. The appeal must be brought in the Superior Court facility designated by the chief court administrator. The appellant must pay an entry fee equal to the entry fee for small claims cases (currently $35). The petition and the fee entitle the appellant to a hearing.

PA 05-1—sHB 6438
Human Services Committee
Appropriations Committee

AN ACT EXTENDING HUSKY PLAN, PART A BENEFITS FOR PARENTS AND NEEDY CARETAKER RELATIVES

SUMMARY: This act extends Medicaid benefits for certain adults with incomes above 100% of the federal poverty level (FPL). Specifically, it continues until June 30, 2005 benefit eligibility for adults receiving HUSKY A on a "transitional" basis who become ineligible for the benefit between March 31, 2005 and May 31, 2005. The act makes these individuals ineligible for this extended benefit beyond June 30, 2005 and prohibits the Department of Social Services (DSS) from paying for it after that date.

The act appropriates $7.5 million to DSS from the FY 05 budget for Medicaid. It is not clear whether federal matching funds will be available to pay for this extension.
EFFECTIVE DATE: Upon passage

BACKGROUND

Related Act

Effective July 1, 2005, Section 1 of PA 05-280 (1) increases the income limit for HUSKY A adults from 100% to 150% of the FPL and (2) reduces from two years to one the duration of transitional Medicaid.

HUSKY—History of Adult Caretaker Coverage

Legislative History. In 1999, the legislature added a new Medicaid coverage group (Section 1931) to allow low-income adults who were not receiving cash assistance to receive medical assistance. Parents and caretaker relatives of children receiving HUSKY A with income up to 185% of the FPL (the limit up to which children also qualify for HUSKY A coverage) were eligible. In 2000, the legislature reduced the income limit for these adults to 150% of the FPL and delayed the start of coverage to 2001.

PA 03-2 lowered the adult limit to 100% of the FPL, effective April 1, 2003. However, adults with higher incomes who were receiving benefits on that date did not lose them because Connecticut Legal Services filed suit in U.S. District Court challenging DSS's implementation of the 2003 act.

Legal History. Connecticut Legal Services argued in U.S. District Court that federal law required DSS to offer "Extended Medical Assistance" (another name for Transitional Medicaid) to certain individuals who lost their "Section 1931" eligibility (*Rabin v. Wilson-Coker*, Docket Case #03-CV-555). The plaintiff adults were those in the state's 1931 coverage group who had incomes between 100% and 150% of the FPL. It asserted that they were entitled to Transitional Medicaid because Section 1931 allowed for continued coverage for people who lost their 1931 eligibility due to excess income.

The District Court granted the plaintiffs a temporary restraining order, preventing DSS from reducing the income limit. It later denied plaintiffs' request for a temporary injunction and granted DSS summary judgment, rejecting the plaintiffs' claim that reducing the income limits was cause for Transitional Medicaid eligibility. The judge held that the federal law's legislative history showed that Transitional Medicaid need be provided only when someone lost 1931 eligibility due to increased earnings, not because of a reduction in the program's income limits. DSS planned to suspend benefits for these individuals on July 1, 2003, but the plaintiffs appealed.

On June 26, 2003, a U.S. Appeals Court (2nd Circuit) issued a temporary injunction pending its review. But the order applied only to adults with earnings who were receiving benefits before April 1. Thus on July 1, unemployed adults who were in the higher income range lost their Transitional Medicaid benefits.

On March 26, 2004, the Appeals Court ruled in favor of the plaintiff families, holding that they were entitled to two years of Transitional Medicaid if they lost their Medicaid eligibility under a different Medicaid category due to earnings (362 F3d 190 (2004)). Since the 2003 law went into effect on April 1, 2003, these families remained eligible for Medicaid until April 1, 2005, or later, depending on their redetermination date.

Section 1931 and Transitional Medicaid

Section 1931 of the Social Security Act (42 USC § 1396u-1) was created under the Personal Responsibility and Work Opportunities Reconciliation Act (PRWORA) of 1996, which also established the Temporary Assistance for Needy Families (TANF) program. It essentially de-linked Medicaid from state cash assistance programs, which meant that receiving cash assistance no longer automatically made someone eligible for Medicaid. But Section 1931 requires states to offer Medicaid to families using standards that were in effect when PRWORA passed (thus ensuring families would not lose coverage they had), although it allows them to use less restrictive eligibility criteria. Hence, families receiving Temporary Family Assistance (TFA) (cash assistance) (who, by definition, can have incomes no higher than 100% of the FPL) qualify for Section 1931 coverage.

In addition to de-linking cash and medical assistance, Section 1931 requires states to provide Transitional Medicaid benefits to families as follows. Families who would lose their Medicaid eligibility because their income exceeds the Section 1931 limits due to child support must receive up to four months of Transitional Medicaid. Families losing eligibility for Medicaid due to hours of, or income from, employment can receive up to 12 months of transitional benefits. (The former group was not affected by the lawsuit.)

In practice, DSS has offered two full years of transitional benefits by combining a different Section 1931 provision that allows states to combine the less restrictive eligibility methodology with the above time-limited coverage provisions. For families with child support income, DSS "disregards" this excess income for 20 months, after which the four months of mandatory coverage start. Families with excess earnings have these disregarded for one year. Then, the mandatory year of coverage begins. Federal matching funds are available for the full two years.

PA 05-5—SB 23
Human Services Committee

AN ACT CONCERNING THE BOARD OF EDUCATION AND SERVICES FOR THE BLIND MONITORING COUNCIL

SUMMARY: This act extends the sunset date for the council monitoring the Board of Education and Services for the Blind (BESB) from July 1, 2005 until January 1, 2006. It also requires the council to continue to meet at least monthly until, and submit a progress report to the Appropriations, Education, and Human Services committees by, September 1, 2005 instead of February 1, 2005. The council has been meeting regularly since January 2004. It issued a preliminary progress report in January 2005.
EFFECTIVE DATE: Upon passage

BACKGROUND

BESB Monitoring Council

PA 03-217 established the BESB monitoring council. The 16-member council consists of legislators, state agency personnel, and public members, including adults with blindness. The law requires the council to establish benchmarks concerning BESB's management, operations, and services and report on the agency's progress meeting those benchmarks. The council must also recommend changes in BESB's organizational structure. PA 04-90 added two members to the council and extended its sunset date to July 1, 2005.

PA 05-6—HB 6600
Human Services Committee

AN ACT CONCERNING THE CONTINUATION OF HEALTH INSURANCE FOR PERSONS FORMERLY EMPLOYED IN BOARD OF EDUCATION AND SERVICES FOR THE BLIND WORKSHOPS

SUMMARY: This act makes blind people who were employed in the Board of Education and Services for the Blind's (BESB) Industries workshops on December 31, 2002 eligible to receive the group health insurance coverage that BESB provided when they were employed there. This change conforms the statute to BESB's practice, which is to offer full or supplemental health coverage for the former Industries clients to the extent they are not covered by other insurance.
EFFECTIVE DATE: Upon passage

BACKGROUND

BESB Industries Closure in 2003

BESB formerly operated an Industries Division, which provided jobs and job training to 92 blind people. The division was shut down in January 2003. PA 03-3, June 30 Special Session, provided funding for job and vocational training, job support, and other services for the people who were in the Industries program when it closed.

PA 05-14—HB 6786
Human Services Committee

AN ACT CONCERNING THE STATE'S LONG-TERM CARE POLICY

SUMMARY: This act requires the state's long-term care plan and policy, developed by the Long-Term Care Planning Committee, to provide that people who need long-term care can choose to receive it in the least restrictive, appropriate setting.
EFFECTIVE DATE: October 1, 2005

BACKGROUND

Olmstead Supreme Court Decision

A 1999 U.S. Supreme Court decision ruled that states cannot discriminate against people with disabilities by offering them long-term care services only in institutions when they could be served in the community, given state resources and other citizens'

long-term care needs *(Olmstead v. L.C.* , 119 S. Ct. 2176).

Long-Term Care Planning Committee

In 1998, the General Assembly created the interagency Long-Term Care Planning Committee to study issues related to long-term care for the elderly and create a long-term care plan for them. Later, the committee, prompted by the *Olmstead* decision, added long-term care planning for all people with disabilities to its original charge.

The long-term care plan must address nursing facilities, home and community-based services, and supportive housing and must contain other specified items. The committee must reissue the plan every three years; it completed the most recent plan in 2004. The law requires (1) the committee to evaluate long-term care issues in light of the *Olmstead* decision and (2) the plan to serve as a guide for state agencies' programs serving people who need long-term care.

PA 05-24—HB 6787
Human Services Committee

AN ACT CONCERNING MEDICAL ASSISTANCE FOR CHILDREN UNDER THE SUPERVISION OF THE COMMISSIONER OF CHILDREN AND FAMILIES

SUMMARY: By law, the Department of Children and Families (DCF) commissioner must insure that all children under her supervision have adequate medical, dental, psychiatric, psychological, and social services. This act requires medical assistance to be provided, in accordance with this mandate, to children who (1) are not receiving Medicaid, (2) have not yet qualified for Medicaid, or (3) are ineligible for Medicaid because they live in an institutional setting.

Under previous practice, DCF ran a state-funded medical assistance program for children under its supervision through a cooperative arrangement with DSS. This included those children (1) adopted from DCF whose families received subsidies for their care but were not considered Title "IV-E" eligible, (2) generally between the ages of 18 and 20 and transitioning out of DCF custody, (3) residing in the Connecticut Juvenile Training School or other correctional facility, or (4) for whom DSS had not determined Medicaid eligibility. DSS recently received federal approval to cover the first two groups under Medicaid. Federal law prohibits states from granting Medicaid to individuals in correctional institutions.

(Although the act amends the state's Medicaid statutes and DSS runs the state's Medicaid program, it does not actually specify which agency is to provide this assistance.)

The act requires the DCF commissioner, to the extent practicable, to apply for, or assist children in qualifying for, Medicaid.
EFFECTIVE DATE: July 1, 2005

BACKGROUND

IV-E Children

Title IV-E of the federal Social Security Act generally governs state foster care and adoption assistance programs, including their funding. Children with a IV-E status are automatically eligible for Medicaid.

PA 05-35—HB 6788
Human Services Committee
Judiciary Committee

AN ACT CONCERNING INVESTIGATIONS OF ABUSE AND NEGLECT BY THE DEPARTMENT OF CHILDREN AND FAMILIES

SUMMARY: This act increases, from 30 to 45 calendar days, the time the Department of Children and Families (DCF) has to complete child abuse and neglect investigations. By law, when the DCF commissioner receives a report of alleged abuse or neglect that contains sufficient information to begin an investigation, she must start the investigation within 72 hours (two hours when the child is at imminent risk of physical harm or some other emergency). The clock starts when the commissioner receives the report.

The *Juan F. Exit Plan*, a court-ordered plan for DCF to move out from under a 1991 consent decree, requires at least 85% of all investigations of reports the DCF Hotline receives of alleged maltreatment to be completed within 45 days.
EFFECTIVE DATE: October 1, 2005

PA 05-40—SB 1100 **(VETOED)**
Human Services Committee

AN ACT CONCERNING THE AUTHORITY OF THE COMMISSIONER OF SOCIAL SERVICES WITH RESPECT TO THE ADMINISTRATION OF THE MEDICAID PROGRAM

SUMMARY: This act continues until June 30, 2007 the prohibition against the social services commissioner agreeing to any Medicaid waiver in which the federal government, as a condition of granting the waiver,

limits the program's normal 50% federal cost-sharing. The prohibition was scheduled to end on June 30, 2005.
EFFECTIVE DATE: Upon passage

PA 05-43—SB 1155
Human Services Committee

AN ACT CONCERNING TRANSITIONAL MEDICAL ASSISTANCE COMPLIANCE WITH FEDERAL LAW

SUMMARY: This act brings state law into compliance with federal Medicaid law by limiting who can receive the extension of Medicaid benefits (i.e., Transitional Medicaid (HUSKY A in Connecticut)). Previously, to qualify for this extension (formerly two years but reduced to one year by PA 05-280), family income had to go above the program's limit (100% of federal poverty level (FPL) ($12,832 annually for a family of two)) and one of the following criteria had to be met: (1) an adult caretaker relative in the family was working or became employed within six months of losing Medicaid eligibility or (2) the family received child support income that brought it over the limit.

The act eliminates DSS' authority to extend assistance in cases where the adult becomes employed within six months. Federal law does not allow transitional Medicaid to be provided under these circumstances.
EFFECTIVE DATE: July 1, 2005

BACKGROUND

Related Acts

PA 05-1 extended medical assistance for certain HUSKY A-eligible adults with incomes above 100% of the FPL until June 30, 2005. These families had been receiving this transitional Medicaid, as ordered by a U.S. appeals court judge. That assistance ended on March 31, 2005.

PA 05-280 increases the income limit for HUSKY A adults from 100% to 150% of the FPL.

PA 05-44—sSB 1157
Human Services Committee

AN ACT CONCERNING THE DEFINITION OF HUSKY PLAN, PART A AND THE AVAILABILITY OF SERVICES UNDER HOME AND COMMUNITY-BASED WAIVER PROGRAMS

SUMMARY: This act permits the commissioner of the Department of Social Services (DSS) to amend the Acquired Brain Injury (ABI) and Department of Mental Retardation (DMR) home- and community-based services (HCBS) waivers to enable people enrolled in the Medicaid for Employed Disabled (MED) coverage group to participate in those waiver programs. The financial eligibility criteria for the MED group are more liberal than under the waiver programs. Currently, adults in the MED group are eligible for the Personal Care Assistance (PCA) waiver, another DSS-administered HCBS waiver. DSS amended that waiver in 2001 to enable MED enrollees to participate.

The act also changes the definition of HUSKY A to more accurately reflect that adult caretaker relatives and pregnant women, not just children, receive HUSKY A benefits.
EFFECTIVE DATE: July 1, 2005

BACKGROUND

Eligibility for MED and Waiver Programs

By law, certain adults with severe disabilities who are between ages 18 and 65 and can work a minimum number of hours can receive Medicaid, and the financial eligibility criteria are considerably more liberal than they are for other Medicaid coverage groups. For example, their annual adjusted gross income can be up to $75,000, and they can have liquid assets of $10,000 if single, or $15,000 if married. (Since most of the individuals in the MED coverage group receive Medicare, the Medicaid coverage pays mainly for goods and services Medicare does not cover, such as PCAs.)

Although many of these adults may be functionally eligible for the ABI and DMR waivers, financial eligibility for the waiver programs is more restrictive. To qualify for either of these programs, income is limited to 300% of the federal Supplemental Security Income (SSI) maximum benefit (currently $1,737 per month for a single person). And liquid assets cannot be more than $1,600 for one person.

PA 00-213, which also created the MED coverage group, directed DSS to amend the PCA waiver to ensure that both existing and new enrollees would not lose eligibility by virtue of qualifying for the new MED coverage group.

HUSKY A

HUSKY A provides Medicaid-funded health insurance to pregnant women and children in families with incomes up to 185% of the federal poverty level (FPL). It also covers adult caretaker relatives of these children, but the income limit for these adults is lower. There is no asset test.

PA 05-112—SB 801 **(VETOED)**
Human Services Committee
Appropriations Committee
Legislative Management Committee
Government Administration and Elections Committee

AN ACT CONCERNING LEGISLATIVE REVIEW AND APPROVAL OF WAIVER APPLICATIONS PRIOR TO SUBMITTAL TO THE FEDERAL GOVERNMENT

SUMMARY: This act strengthens legislative oversight of the Department of Social Services' (DSS) federal waiver applications. By law, whenever DSS submits an application to the federal government to waive certain requirements of a federal program, it must first submit the application to the Human Services and Appropriations committees. Previously, the committees could, but were not required to, advise the DSS commissioner of their opinion of the application, which, in practice, was not binding on her.

The act (1) requires, rather than allows, the committees to advise the DSS commissioner of their approval, rejection, or modification of the waiver application within 30 days of receiving it; (2) requires the committees to hold a public hearing on the application after they receive it and before they advise the commissioner; and (3) makes their failure to advise an approval.

If the committees reject the waiver application, the commissioner may not submit it to the federal government. She must modify the application when the committees advise her to do so.

If the committees disagree, the act requires their chairmen to appoint a six-member conference committee comprised of three members from each committee. At least one member from each committee must be from the minority party. The conference committee must report to each standing committee, which must in turn vote to accept or reject, but not amend, the report. The Appropriations Committee must advise the commissioner of its approval, denial, or modifications of the application if both committees accept the report and she must act in accordance with it. If either committee rejects the conference report, the waiver application is considered approved and the committee rejecting it must notify the commissioner.

When submitting the application to the federal government, the act requires the commissioner to include (1) a complete transcript of the joint committees' proceedings along with the written comments submitted to them, which the act directs the committees to send her, and (2) any written comments she receives during the public comment period that is required by law before submitting the application to the General Assembly.

EFFECTIVE DATE: July 1, 2005

BACKGROUND

Public Comment Period for Federal Waiver Applications

By law, DSS must publish a notice in the *Connecticut Law Journal* whenever it intends to seek a federal waiver. The commissioner must allow 15 days for written comments on the application before submitting it to the legislative committees for their review and must include the comments with the waiver application she submits to the committees.

PA 05-118—sHB 6275
Human Services Committee
Public Health Committee
Judiciary Committee
Government Administration and Elections Committee

AN ACT CONCERNING THE ACCEPTANCE OF ELECTRONIC SIGNATURES BY THE COMMISSIONER OF SOCIAL SERVICES

SUMMARY: This act requires the Department of Social Services (DSS), when it processes or audits home health care and homemaker-home health aide agencies' reimbursement claims, to accept electronic records and records containing the electronic signature of an individual the home care agency has authorized to submit such records. (PA 05-272 amends this provision, requiring instead the signatures of a licensed physician or licensed health care practitioner submitted to the home care agency.)

Under the act, DSS must generally accept such records and signatures in accordance with the existing Connecticut Uniform Electronic Transactions Act (CUETA). CUETA does not require a government agency to use or permit the use of electronic records or signatures except as otherwise required by law. This act adds DSS' acceptance of electronic records and signatures to the CUETA exceptions.

It also requires DSS, when auditing such agencies' claims, to consider a physician's or other licensed health care practitioner's signature on the patient's care plan to be timely if the agency received the signed document before it sought reimbursement from DSS.
EFFECTIVE DATE: October 1, 2005

BACKGROUND

Related Act

PA 05-272 § 44 requires that the signature on the electronic records for DSS reimbursement claims be that of a licensed physician or other licensed healthcare practitioner that has been submitted to the home care agency. It also (1) adds procedures DSS must follow when an electronic record or signature is illegible and (2) modifies the provision concerning timeliness of the physician's or practitioner's signature to apply to situations where the document was signed before the agency sought reimbursement and to allow for verbal or telephone orders that are subsequently documented.

Related Law

CUETA established a state version of the National Conference of Commissioners on Uniform State Laws' Uniform Electronic Transactions Act (UETA), which provides uniform rules governing electronic commerce transactions. It validates the use of electronic records and signatures and places electronic commerce and paper-based commerce on the same legal footing.

The law defines "electronic record" as a record created, generated, sent, communicated, received, or stored by electronic means, such as facsimiles, electronic mail, telexes, and Internet messaging. It defines "electronic signature" as an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

It generally does not require a state or local government agency to use or permit the use of electronic records or signatures, but (1) sets certain procedural requirements if an executive agency decides to use these methods and (2) requires the Department of Information Technology to adopt regulations concerning certain administrative and security-related aspects.

PA 05-120—HB 6542
Human Services Committee
Appropriations Committee

AN ACT PROVIDING THE COMMISSIONER OF SOCIAL SERVICES WITH AUTHORITY TO SEEK A MEDICAID WAIVER FOR FAMILY PLANNING SERVICES

SUMMARY: This act requires the Department of Social Services (DSS) commissioner to apply for a federal "Section 1115" waiver to provide Medicaid coverage for family planning services to adults in households with income up to 185% of the federal poverty level (FPL, currently $29,766 annually for a family of three) who are not otherwise eligible for Medicaid. In general, adults who are not aged or disabled qualify for Medicaid in Connecticut only if they (1) have children who receive Medicaid and (2) have incomes no higher than 100% of the FPL ($16,090 for three people). (The income limit for parents and caretaker relatives increases to 150% on July 1, 2005, per PA 05-280.) Family planning services are eligible for a 90% federal Medicaid match; the state's normal federal match is 50%.
EFFECTIVE DATE: July 1, 2005

BACKGROUND

Medicaid Family Planning—Mandatory Coverage and Section 1115 Waivers

Federal law requires states with Medicaid programs to offer family planning services to individuals of childbearing age, within the confines of the state's program eligibility requirements. As of July 1, 2005, women with incomes up to 150% of the FPL who have children receiving Medicaid are entitled to such benefits in Connecticut.

States wishing to offer services or eligibility outside these rules must seek a Section 1115 waiver. To get a waiver, a state must show that its program is budget neutral.

PA 05-141—sSB 1335
Human Services Committee
Education Committee

AN ACT CONCERNING PROGRAMS AND SERVICES OF THE DEPARTMENT OF SOCIAL SERVICES

SUMMARY: This act explicitly permits the Department of Social Services (DSS), when appropriate, to make payments directly to providers of services for DSS clients, which is DSS's current practice. DSS must do this with the comptroller's approval and in a manner consistent with her procedures.

The act prohibits DSS from prorating the standard utility allowance under the Food Stamp Program when an assisted household shares the utility with someone who is not a member of the household. This change conforms state law to federal law. The act also makes a technical correction in a reference to the federal food stamp law.

Finally, the act deems services recommended by planning and placement teams (PPT) and certain licensed practitioners to be authorized for federal

Medicaid reimbursement under the state's School Based Child Health (SBCH) Program. The program provides federal funds to municipalities to offset some of the costs they incur for providing health services to special education students.
EFFECTIVE DATE: Upon passage

SBCH PROGRAM

The act changes the condition under which towns obtain Medicaid reimbursement for providing health services to special education students under the SBCH program. Under prior practice, towns had to ensure that doctors signed a "substantiation form" as a condition of DSS billing the federal government for matching Medicaid funds and paying some of those funds back to the towns. Federal Medicaid law requires a healing arts practitioner, as defined in state law, to authorize these services as a condition of payment and doctors are included in the state's definition.

The act allows towns to get payment when practitioners other than doctors recommend SBCH services by deeming them to be authorized by a healing arts practitioner when they are (1) recommended by a PPT; (2) specified on the individualized education program; and (3) eligible for Medicaid reimbursement, if an appropriately licensed or certified person recommends them and the services are within the individual's scope of practice. This applies to diagnosis, evaluation, and other recommended services.

BACKGROUND

Food Stamp Program

This program is administered by the state, which shares some of the administrative costs. It provides supplemental food assistance to people on welfare and low-income families. The amount they receive depends on a complex formula that looks at their finances, makes certain deductions, and determines their needs. Utility costs are among the factors considered.

If the total of other shelter costs plus the utility allowance is more than 50% of applicants' income, the amount above 50% ("excess shelter costs") is subtracted from income after certain other deductions. Federal law allows states to use a standard utility allowance rather than actual expenditures. In 2003, the legislature exercised this option. Federal law prohibits states that mandate the standard allowance from prorating it (7 USC § 2014(e)(6)(C)(iii)(III)).

The standard utility allowance is $390 for people who pay for heating or cooling, $210 for those who pay only for other utilities, and $23 for those who pay only for telephone services.

SBCH Program Enrollment

The federal Individuals with Disabilities Education Act requires local education agencies (LEA) to identify all children with disabilities who are in need of special education and related services. Although the LEAs must provide the services, federal Medicaid law provides federal reimbursement for related medical services. Towns bill DSS, which in turn bills the federal government for 100% of what the towns spend, keeps one half of the federal reimbursement, and passes the other half to the participating LEAs.

PA 05-156—sSB 1271
Human Services Committee
Transportation Committee
Government Administration and Elections Committee

AN ACT CONCERNING THE ADMINISTRATION AND DUTIES OF THE BOARD OF EDUCATION AND SERVICES FOR THE BLIND

SUMMARY: This act allows the Board of Education and Services for the Blind (BESB) to use funds from its Educational Aid for Blind and Visually Handicapped Children account to employ enough rehabilitation teachers, rehabilitation technologists, and orientation and mobility teachers to provide compensatory skills evaluations and training to blind and visually impaired children.

The act requires BESB to provide the Department of Motor Vehicles (DMV) with the name of everyone age 16 or older who, on or after October 1, 2005, has been diagnosed as blind by a physician or optometrist. It requires the board to (1) give simultaneous written notice to the people whose names it is transmitting to DMV, (2) transmit new names quarterly, and (3) enter into a memorandum of understanding with DMV to implement the act.

The law requires physicians and optometrists to report specified personal information to the board about blind people coming under their care. These reports are not open for public inspection and the board's clients' case records are confidential, with some exceptions for administrative purposes and computerized management information sharing among the state's health and social services agencies. The act adds another exception specifically for the list the board must provide to DMV.

The act also makes a number of changes to update the statutes, make them consistent with current practice and federal requirements, and clarify several aspects of BESB's administration.
EFFECTIVE DATE: October 1, 2005

EXPANDED CHILDREN'S SERVICES

The act expands the uses of BESB's Educational Aid for Blind and Visually Handicapped Children account to include its directly employing enough rehabilitation teachers, rehabilitation technologists, and orientation and mobility teachers to provide compensatory skills evaluations and training to blind and visually impaired children. It also allows BESB to use this account to cover the actual cost for paraprofessionals from school districts to participate in agency-sponsored Braille training.

The act also requires teachers of visually impaired children who are hired directly or contracted by a school district to document that they have participated in at least five hours of professional development training on vision impairment or blindness during the school year.

REMOVAL OF COST CAP ON ADAPTIVE EQUIPMENT FOR ADULTS

The act removes a statutory $6,400 annual per person cap on the cost of purchasing adaptive equipment for adults. The change is consistent with current practice and federal law, which prohibits such a cap for adults receiving services under the federal Rehabilitation Act. By law, adaptive equipment for children is not subject to the cap.

BESB ADMINISTRATIVE CLARIFICATIONS AND UPDATING OF STATUTES

Appointment of BESB Chairman

The act requires the governor to appoint the chairman of the BESB board (by law, the governor appoints six of the board's members). And it directs the board chairman, not BESB's executive director, to call meetings. This change is consistent with current practice.

Director's Obsolete Authority to Compel Child's Attendance at Institution

The act deletes outdated statutory provisions that allow the BESB director to compel attendance of a blind child until the age of 16 at an institution providing specialized instruction and to apply to the probate court for an order requiring it if the parents do not consent.

Criteria for Low Vision Care

The act requires BESB to establish criteria for low vision care and maintain a list of ophthalmologists and optometrists who are exclusively authorized to receive BESB funds through existing state fee schedules to provide specifically defined low vision services that increase eligible recipients' capacity to maximize use of their remaining vision. The change is consistent with BESB's current practice.

Changes Reflecting 2003 Closure of BESB Industries

The act allows BESB, within available appropriations, to fund employment and vocational training at community rehabilitation facilities. This conforms the statute to current practice; the board contracts with several such facilities to provide these services to former BESB Industries clients.

It also specifies that certain other authorized BESB activities may be conducted within available appropriations. These are (1) maintaining and developing workshops that train and employ blind people to produce products and services state and local agencies and institutions use and (2) helping blind people find employment in developing home industries and marketing their products and services. (BESB formerly conducted these activities through its Industries Division, which provided jobs and job training in a workshop environment to 92 blind people. The division was shut down in January 2003.)

The act also limits BESB's responsibility to file a balance sheet and operating statement with the comptroller at fiscal year-end and send a copy to the auditors of public accounts only to fiscal years during which it operates such a workshop.

References Conforming to Federal Law

The act eliminates outdated statutory language concerning BESB's authority to maintain vocational rehabilitation services and replaces it with general authority to conduct such a program as authorized under the Federal Rehabilitation Act of 1973 (29 USC 791 *et seq.*). It specifies that the purpose of this program is to provide and coordinate the full scope of necessary services to assist legally blind recipients of BESB services to prepare for, enter, and maintain employment consistent with the federal law's purposes. This change is consistent with current practice and federal law.

Braille Literacy Advisory Council

The act eliminates the Braille Literacy Advisory Council (which has not met for over two years).

PA 05-195—SB 21
Human Services Committee
Appropriations Committee

AN ACT CONCERNING AUDITS CONDUCTED BY THE DEPARTMENT OF SOCIAL SERVICES

SUMMARY: This act establishes a statutory procedure for Department of Social Services (DSS) audits of service providers. It limits use of extrapolations in calculating overpayments or underpayments to certain situations, and makes clerical errors *per se* not violations.
EFFECTIVE DATE: July 1, 2005

AUDIT PROCEDURES, LIMITS, AND NOTICES

Audit Scope

The act requires the DSS commissioner, or any agencies she uses to audit service providers, to conduct the audits in accordance with its provisions. The act applies to the department's welfare programs such as Temporary Family Assistance; the State Supplement Program; Food Stamps; State-Administered General Assistance; Medicaid; HUSKY B; the Connecticut Pharmaceutical Contract to the Elderly and Disabled; and payment for nursing homes, residential care homes, and home and community-based care. For this purpose, a "provider" is a person or a public, private, or proprietary agency licensed, certified, or otherwise approved by the commissioner to provide authorized services.

The act requires the commissioner or the audit agency, at least 30 days before beginning the audit, to give written notice to the provider. This notice is not required if the commissioner or the audit agency makes a good faith determination that (1) a service recipient's health or safety is at risk or (2) the provider is engaging in vendor fraud.

Clerical Errors

Under the act, a clerical error discovered in a record or document produced for the audit, of itself, does not constitute a willful violation of program rules, unless proof of an intent to commit fraud or otherwise violate program rules is established. Under the act, a "clerical error" includes recordkeeping, typographical, writer's, or computer error.

Extrapolation

The act prohibits DSS from finding that an overpayment or underpayment was made to a provider based on extrapolated projections, unless (1) the provider has a sustained or high level of payment error, (2) documented educational intervention has failed to correct the error levels, or (3) the aggregate claims' value exceeds $150,000 on an annual basis.

Extrapolation is the practice of (1) dividing the total number of payment errors found in a sample of documents by the sample size to arrive at average errors per sample and (2) multiplying this by the total number of claims to arrive at a presumed, extrapolated number of payment errors for all payments to the provider during the audited time period. The provider must make repayments to DSS based on these extrapolated errors.

Provider's Right to Provide Documents Addressing Discrepancies

The act gives a provider, in complying with audit requirements, at least 30 days to provide documentation related to a discrepancy discovered and brought to his attention during an audit.

PRELIMINARY REPORT AND EXIT CONFERENCE

The act requires the commissioner or the audit agency to produce a preliminary written audit report and give it to the provider within 60 days after the audit's conclusion. The commissioner or the audit agency must hold an exit conference with the provider to discuss the preliminary report once it is issued.

FINAL REPORT

The commissioner or audit agency must produce a final written report and give it to the provider within 60 days after the exit conference unless the commissioner or audit agency agree to a later date or there are other pending referrals or investigations concerning the provider.

PROVIDER REQUESTS FOR REVIEW OF DECISIONS

Under the act, a provider who is aggrieved by a decision in a final report can, within 30 days after receiving the report, request in writing a review of all items in question. The request must describe each item in detail. The commissioner's designee presiding over the review must be impartial and cannot be an employee of the DSS Office of Quality Assurance or an employee of the contracted audit agency.

EXEMPTION FROM ACT'S PROVISIONS

The act's audit provisions do not apply to audits conducted by the Office of the Chief State's Attorney's Medicaid Fraud Control Unit.

PA 05-209—sHB 6688
Human Services Committee
Appropriations Committee

AN ACT IMPLEMENTING CERTAIN GOVERNOR'S BUDGET RECOMMENDATIONS WITH RESPECT TO SOCIAL SERVICES PROGRAMS

SUMMARY: This act requires the Department of Social Services (DSS) commissioner to establish prior authorization procedures for admissions and lengths of stay for Medicaid–eligible individuals who might require care in chronic disease hospitals. The act permits her to administer prior authorization or any part of it by (1) contracting with someone else or (2) expanding the scope of an existing contract her department has with a utilization review contractor. The act allows the program to go forward before regulations are formally adopted.

The act also increases, from 100 to 150, the number of people who may participate in the state-funded Personal Care Assistance (PCA) pilot program created in 2004 (but not yet implemented). And it repeals a 50-person pilot PCA program established in 2000 for people either (1) transitioning off the state's Medicaid-funded PCA program for younger adults with disabilities or (2) eligible for the Connecticut Home Care Program for Elders (CHCPE) but unable to access adequate home care services. Under the act, people in the repealed pilot program (which the commissioner increased in 2004 to 100 people, as authorized by law) become part of the 150-person pilot program. Consistent with this change, the act repeals a requirement that the DSS commissioner apply for a waiver to include the 2000 pilot in the Medicaid-funded portion of the CHCPE. The act also extends the reporting deadline for the ongoing PCA pilot.

The act repeals a 2000 law that directed the DSS commissioner to seek a federal waiver to allow her to make the start date later for long-term care asset transfer penalties. And it repeals provisions related to the waiver. DSS submitted the waiver request in 2002 but it was never approved.

Finally, the act permits, instead of requires, the commissioner to design a care enhancement and disease management initiative and implement it if she determines that it will be cost-effective. The commissioner has never implemented a program. The act continues to require the commissioner to annually submit a status report on the program to the Appropriations and Human Services committees but only if she implements it.

EFFECTIVE DATE: July 1, 2005, except for the PCA pilot program and transfer of assets provisions, which are effective upon passage.

AUTHORITY TO IMPLEMENT PRIOR AUTHORIZATION FOR CHRONIC DISEASE HOSPITAL STAYS BEFORE REGULATIONS ADOPTED

The act permits the commissioner to implement policies and procedures needed to carry out the prior authorization while in the process of adopting regulations, provided she publishes notice of intent to adopt the regulations in the *Connecticut Law Journal* within 20 days after implementing the program. These policies and procedures are valid until final regulations are adopted.

STATE-FUNDED PCA PILOT

Under prior law, people qualified for the 100-person pilot program's PCA services if (1) the services were an "alternative covered service to avoid institutionalization," (2) they were age 65 or older, (3) they met the eligibility requirements for the CHCPE, and (4) the per-person cost of the PCA did not exceed the average annual per-person cost of home health services under the CHCPE. Under the act, participants must still meet the age and CHCPE eligibility criteria but the PCA services do not have to be an "alternative covered service to avoid institutionalization." (By law, the CHCPE is a program specifically designed to prevent institutionalization.) Instead, the act requires that the services be cost-effective, as the DSS commissioner determines.

The act also extends the reporting deadline for the pilot from January 1, 2006 to January 1, 2007.

TRANSFER OF ASSETS WAIVER REPEAL

The act repeals the requirement that the DSS commissioner submit a federal waiver request to delay the start date for the penalties she imposes when applicants for long-term care Medicaid transfer assets for less than fair market value solely to qualify for Medicaid within 36 months before applying. Under federal law, the penalty period (i.e., period of Medicaid ineligibility) starts from the date the asset is transferred. Under prior state law, the penalty period would have started on the date the applicant was determined otherwise eligible for Medicaid if the waiver had been approved.

The act also repeals language that would have provided financial relief to nursing homes that suffered losses as a result of the waiver going forward. These losses would have resulted because a home with a resident for whom a penalty of Medicaid ineligibility was imposed would not necessarily be able to discharge the resident immediately, yet would have no other source available to pay for the resident's care.

It also repeals language related to the waiver that would have allowed the commissioner to (1) increase the look-back period for home property transfers from three years to five years, (2) establish asset thresholds below which DSS would not scrutinize transfers, and (3) waive the imposition of the penalty if the resident making the transfer suffered from dementia or was exploited into making it.

Under prior law, repealed by the act, none of these provisions would go forward until the waiver became effective.

The act retains the law's presumption that transfers of assets resulting in penalty periods are made to obtain or maintain Medicaid eligibility and that the presumption can be rebutted only by clear and convincing evidence that the transfer was made for some other purpose. Although this language was part of the 2000 law, it is a codification of long-existing DSS regulations. The federal government has previously stated that this burden of proof is acceptable.

The act also retains language that makes transfers or assignments of assets that result in penalty periods debts that the transferor or transferee owes DSS in an amount equaling the amount of Medicaid provided to or on behalf of the transferor on or after the date the assets are transferred. Under this provision, the DSS and administrative services commissioners and the attorney general have the authority to seek administrative, legal, or equitable relief as provided by other statutes or common law.

Finally, the act retains language authorizing the commissioner to implement policies and procedures necessary to carry out the remaining policy changes while adopting them in regulation.

BACKGROUND

Related Act

PA 05-280 restores the provision in the act that allows the commissioner to waive the penalty period when the person transferring it has dementia or is exploited.

Prior Review For Other Health Care Institutions

DSS staff already performs level-of-care reviews for all nursing home admissions. Staff assess whether the patient needs a nursing facility level of care.

In addition, DSS contracts with Qualidigm, Inc., which assesses whether Medicaid-eligible individuals should be admitted into acute care hospitals. The contractor assesses whether the procedures or diagnoses associated with the admission require a hospital level of care.

PA 05-243—sHB 5290
Human Services Committee
Appropriations Committee

AN ACT CONCERNING AN INCREASE TO THE UNEARNED INCOME DISREGARD FOR STATE SUPPLEMENT RECIPIENTS

SUMMARY: This act requires the Department of Social Services (DSS) commissioner, beginning January 1, 2006 and on each January 1 thereafter, to increase the amount of unearned income she disregards when determining eligibility and benefits for the State Supplement Program (SSP). She must increase the disregard by the amount of the annual cost-of-living adjustment (COLA), if any, provided to federal Supplemental Security Income (SSI) recipients.

The act also repeals obsolete language.

EFFECTIVE DATE: Upon passage

BACKGROUND

Related Act

Section 37 of PA 05-280 continues to freeze the adult payment standard in the SSP program. This standard is used when calculating the client's benefit.

State Supplement Program

Low-income people who are aged, blind, or disabled can receive federal SSI benefits if they meet that program's financial eligibility requirements. The state offers a supplement to these benefits, the SSP, to people whose gross income is no more than 300% of the SSI benefit (currently $1,737 per month) and assets are no more than $1,600 if single, or $2,400 if part of a married couple. To calculate the benefit, DSS takes the income, subtracts any applicable disregards, and compares the difference to the program's payment standard (which, in part, is based on the person's living arrangement). If the net income figure is less than the benefit, the person qualifies and the benefit equals the difference.

Since 1991, DSS has disregarded $183 in unearned income from applicants or recipients who are living alone in the community. These disregards, as well as program benefit levels, have not increased in many years. But SSI benefits (considered unearned income) have risen each year on January 1. This has had the effect of reducing the amount of SSP benefits people receive or, in some cases, eliminating their eligibility for the program altogether.

PA 05-15—HB 6868
Insurance and Real Estate Committee

AN ACT CONCERNING FILING DEADLINES FOR MANAGED CARE OMBUDSMAN REPORTS

SUMMARY: This act requires the managed care ombudsman to file his annual report by March 1 instead of January 1. It also requires the Office of Managed Care Ombudsman's advisory committee to file its annual evaluation of the office by April 1 instead of February 1. Reports are filed with the governor and the General Assembly's Public Health and Insurance and Real Estate committees.
EFFECTIVE DATE: October 1, 2005

BACKGROUND

Managed Care Ombudsman's Annual Report

The managed care ombudsman must file an annual report with the governor and the General Assembly's Public Health and Insurance and Real Estate committees that includes (1) the subject, disposition, and number of consumer complaints processed by the ombudsman; (2) common problems and concerns detected by the ombudsman; (3) the need for any administrative, legislative, or executive action; and (4) the office's fiscal accounts.

Advisory Committee

The advisory committee to the Office of Managed Care Ombudsman must file an annual evaluation of the effectiveness of the office with the governor and the General Assembly's Public Health and Insurance committees. The six-member committee must meet four times each year with the ombudsman and his office staff to review and assess the office's performance. Committee members are appointed one each by the Senate president pro tempore, House speaker, Senate majority leader, House majority leader, Senate minority leader, and House minority leader.

Related Act

PA 05-102 changes the name of the Office of Managed Care Ombudsman to the Office of Healthcare Advocate.

PA 05-20—HB 6618
Insurance and Real Estate Committee

AN ACT CONCERNING FEDERAL REQUIREMENTS FOR MEDICARE SUPPLEMENT PLANS

SUMMARY: This act revises Medicare supplement policy requirements to reflect federal law changes that take effect January 1, 2006. It prohibits an insurer from considering a person's age, gender, claim history, or medical condition when deciding to accept or reject an application for coverage under a Medicare supplement policy. But, the act permits an insurer to consider a person's claims history and medical condition when deciding to issue plans H, I, and J to an applicant before January 1, 2006.

By eliminating authority for insurers to consider claims history and medical condition when establishing rates for plans H, I, and J, the act requires insurers to community rate all Medicare supplement plans, since plans A through G must already be community rated by law. (Community rating is the process of developing a uniform rate for all enrollees.)

The act permits, instead of requires, the insurance commissioner to adopt regulations governing Medicare supplement plans. It replaces a reference to 10 plans with 12 plans, "A" through "L" to accommodate new plans K and L. The act also makes a minor change regarding loss ratio premium refunds and several technical changes.

The act applies to insurers, HMOs, hospital and medical service corporations, fraternal benefit societies, and other entities that issue Medicare supplement plans.
EFFECTIVE DATE: July 1, 2005

LOSS RATIO PREMIUM REFUND DONATIONS

This act requires that insurers donate all loss ratio premium refunds held in an interest-bearing account by law to the University of Connecticut Health Center, instead of splitting them between the Health Center and Uncas-on-Thames Hospital, which is defunct.

BACKGROUND

Medicare Supplement Policies

A Medicare supplement policy (also referred to as "Medigap") is a health insurance policy that covers some of the health care costs that Medicare does not cover. Currently, there are 10 standard Medicare supplement policies called plans "A" through "J." Plan A covers only basic benefits. Plans B through J offer additional benefits, with Plan J offering the most. States retain regulatory authority over policies that meet

minimum standards set forth in federal law and by the National Association of Insurance Commissioners.

Medicare Modernization Act of 2003

The federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (P. L. 108-173) (MMA) establishes Medicare Part D, which provides prescription drug coverage for seniors. As of January 1, 2006, no new Medicare supplement plans will be sold with prescription drug coverage. If a person enrolls in a Medicare supplement policy that currently covers prescription drugs (i.e., plans H, I, or J) by December 31, 2005, he can keep that policy with the drug coverage if he does not enroll in Medicare's Prescription Drug Benefit (Medicare Part D). If he chooses to enroll in a Medicare prescription drug benefit plan, he can keep the supplement policy but the drug coverage will be removed from it.

MMA also creates two new Medicare supplement plans, K and L, which include reduced first dollar coverage. One will cover 50% of the cost-sharing required under Medicare Parts A and B and limit out-of-pocket expenses to $4,000, subject to an annual inflationary adjustment. The other will cover 75% of the cost-sharing and limit out-of-pocket expenses to $2,000.

Loss Ratio

Loss ratio is the ratio between insurance losses sustained and premiums earned in a given period. By law, a Medicare supplement premium rate filing must include a guarantee that actual loss ratios will meet or exceed a specified anticipated loss ratio. If the target is not met, an insurer is required to refund premium to Connecticut policyholders as necessary to bring the actual loss ratio up to the guaranteed level. Refunds under two dollars must be aggregated by the insurer and deposited in an interest-bearing account. At each calendar year end, the insurer must donate the account balance as specified by law.

PA 05-25—HB 6807
Insurance and Real Estate Committee

AN ACT CONCERNING FEES FOR REQUESTS FOR AGENT APPOINTMENTS

SUMMARY: This act exempts a non-Connecticut domiciled (non-domestic) insurance company from the $25 per "request for agent appointment" filing fee if the state or country where the company is domiciled does not require a fee when a Connecticut insurance company requests an agent appointment in that state or country.
EFFECTIVE DATE: October 1, 2005

BACKGROUND

Agent Appointments and Fees

Before a licensed insurance producer may act as an agent on behalf of a Connecticut insurance company, (1) the company must request an agent appointment from the Insurance Department and (2) the department must issue the appointment. In addition to the request for agent appointment fee, state law requires (1) a $40 fee per appointment issued or continued for an agent of a domestic insurance company and (2) a $20 fee per appointment issued or continued for an agent of a non-domestic insurance company. The latter fee is waived if the other state or country does not require a fee for an appointment issued to an agent of a Connecticut insurance company.

PA 05-29—HB 6863
Insurance and Real Estate Committee

AN ACT MAKING MINOR AND TECHNICAL CHANGES TO THE INSURANCE STATUTES

SUMMARY: This act expands the type of information a managed care organization (MCO) must provide when responding to the insurance commissioner's, an enrollee's, or a provider's request for information about an enrollee's appeal under a self-insured government health care contract. By law, an MCO must provide instructions on how to access an electronically available fully insured policy under which an appeal is brought. The act requires an MCO to send similar instructions on how to access an electronically available self-insured government contract under which an appeal is brought. Information must be provided within five days of the request. (PA 05-94 amends this act by eliminating the requirement that an MCO provide any information related to a self-insured government health care contract, except verification of its self-insured status.)

The act also makes technical and conforming changes in the insurance statutes.
EFFECTIVE DATE: October 1, 2005

PA 05-48—SB 1253
Insurance and Real Estate Committee
Public Safety and Security Committee

AN ACT CONCERNING LOCATIONS WHERE REAL ESTATE COURSES ARE OFFERED

SUMMARY: The law authorizes the consumer protection commissioner, with the Real Estate Commission's advice and assistance, to adopt regulations relating to the approval of schools offering courses in real estate principles and practice and related subjects, or real estate student intern programs, and the content of such courses or programs. The act specifies that the regulations may not require that a course be given in a classroom location approved for such use by a local fire marshal if it is conducted in a hotel, restaurant, or other public building, or a place of public assembly.

A "place of public assembly" means a structure where 50 or more people assemble to discuss and act upon matters in which they have a common interest; transact business; conduct religious services; or attend a recreational, entertainment, or education event. The term includes churches, chapels, meeting houses, auditoriums, assembly halls, theaters, and sports complexes.
EFFECTIVE DATE: October 1, 2005

BACKGROUND

Related Regulations

Under prior Department of Consumer Protection regulations, real estate courses could be conducted only in locations approved by the local fire marshal for such use (Conn. Agencies Regs. § 20-319-2).

PA 05-57—sHB 6622
Insurance and Real Estate Committee

AN ACT PROTECTING SENIORS IN ANNUITY TRANSACTIONS

SUMMARY: This act requires the insurance commissioner to adopt regulations to establish (1) standards for selling to, or exchanging annuities with, a senior consumer and (2) procedures for making annuity sales or exchange recommendations to a senior consumer. A "senior consumer" is an individual age 65 or older. In the case of a purchase by more than one person, the purchaser is considered a senior consumer if one of the people is age 65 or older.

By law, "annuities" are agreements to make periodic payments where all or some of the payments depend on a person's continued life or a specified number of years. It does not include payments under a life insurance policy.
EFFECTIVE DATE: Upon passage

PA 05-61—sHB 6806
Insurance and Real Estate Committee
Judiciary Committee

AN ACT CONCERNING INSURANCE PRODUCER COMPENSATION

SUMMARY: This act expands what constitutes a misrepresentation of an insurance policy. Existing law makes a misrepresentation to induce the lapse, forfeiture, exchange, conversion, or surrender of an insurance policy an unfair and deceptive insurance practice. This act makes a misrepresentation to induce the purchase of insurance an unfair and deceptive insurance practice as well. It also includes an intentional premium rate misquote as a misrepresentation.

This act prohibits an insurance producer or his affiliate who receives compensation directly from a customer for an insurance sale from also receiving compensation from an insurer or other third party for the sale unless, before he delivers the insurance policy to the customer, the producer (1) obtains the customer's acknowledgement that he or his affiliate will receive compensation from the insurer or other third party and (2) discloses the compensation amount. If the amount is unknown, he must give a reasonable estimate, if possible, and describe how the compensation is calculated.

The customer's acknowledgement must be in writing, but if the transaction occurs over the telephone or electronically and written consent cannot reasonably be obtained, the producer can document the acknowledgement himself.

The act does not apply to a producer (1) whose only compensation is from an insurer (e.g., he is the insurer's employee) or (2) who does not receive compensation from the customer and informs the customer before policy delivery that (a) he will receive compensation from the insurer or (b) he represents the insurer and can service the customer on the insurer's behalf. It also does not apply to (1) the placement of insurance in surplus lines or residual markets, (2) a person who is a licensed producer but only acts as an intermediary between the insurer and the customer's producer, or (3) a reinsurance intermediary.

Compensation from a customer excludes commissions that are deductible from the customer's premium payment and fees agreed to in writing for certain administrative services authorized by current

regulation. Compensation from the insurer means payments, commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options, gifts, prizes, or other valuable consideration, whether agreed to in writing or not.
EFFECTIVE DATE: October 1, 2005

BACKGROUND

Unfair and Deceptive Insurance Practice

When the insurance commissioner determines, after a hearing, that a person has committed an unfair and deceptive insurance practice, she may order fines, restitution, license suspension or revocation, or any combination of these. Fines are up to $1,000 per violation, not to exceed $10,000 in total. If the person knowingly commits the violation, fines are up to $5,000 per violation, not to exceed $50,000 in total in any six-month period.

PA 05-63—sHB 6866
Insurance and Real Estate Committee
Labor and Public Employees Committee
Appropriations Committee

AN ACT CONCERNING LIFE INSURANCE OFFERED TO STATE EMPLOYEES

SUMMARY: This act makes a state employee or legislator ineligible for a state-issued group life insurance policy as both a retiree and an active employee or legislator. The act permits him to keep any policy obtained through the state in accordance with the policy terms if the policy was in effect on June 30, 2005. Thus, for example, if a person retires from state service, maintains a life insurance policy that took effect before July 1, 2005, and is later rehired as an active employee, he is not eligible for another policy but can keep his existing one.

By law the comptroller, with the attorney general's and insurance commissioner's approval, can revise the group life insurance plan for state employees. Employees are eligible for coverage after six months of continuous service. Legislators are eligible six months after taking office.
EFFECTIVE DATE: July 1, 2005

PA 05-65—sHB 6917
Insurance and Real Estate Committee
Planning and Development Committee

AN ACT CONCERNING INTERLOCAL RISK MANAGEMENT AGENCIES

SUMMARY: Connecticut law permits two or more municipalities to form an interlocal risk management agency to pool risks and jointly purchase insurance for (1) public liability, automobile, and property; (2) workers' compensation; and (3) excess risk. Prior law required each pool to maintain a contingency fund of a specified amount. This act allows an interlocal risk management pool organized between July 1, 1995 and July 1, 2005 that established a contingency fund as required before July 1, 2005 to forgo the contingency requirements until July 1, 2010.

Beginning July 1, 2010, the act requires a workers' compensation or excess risk pool that chose not to maintain a contingency fund to maintain at least $100,000 for contingencies for each fiscal year it operates, but the pool does not have to have more than $500,000 total.

Beginning July 1, 2010, the act requires a public liability, automobile, and property risk pool that opted not to maintain a contingency fund to maintain one at a minimum of: (1) as of June 30, 2011, $100,000 plus 1% of total member contributions for the preceding year; (2) as of June 30, 2012, $200,000 plus 2% of total member contributions for the preceding year; (3) as of June 30, 2013, $300,000 plus 3% of total member contributions for the preceding year; (4) as of June 30, 2014, $400,000 plus 4% of total member contributions for the preceding year; and (5) as of June 30, 2015, $500,000 plus 5% of total member contributions for the preceding year.

As of July 1, 2015, the act reinstates prior law for all pools. Thus, a workers' compensation or excess risk pool must maintain at least $100,000 for contingencies for each fiscal year it operates, but the pool does not need to have more than $500,000 total. A public liability, automobile, and property risk pool must maintain at least $500,000 for contingencies for its first fiscal year of operation and increase it by 5% of total member contributions for each subsequent year until the contributions-to-fund ratio is no more than three to one.

The act also requires each pool operating under the requirements of this act to submit reports to the insurance commissioner, as she requires.
EFFECTIVE DATE: July 1, 2005

BACKGROUND

Contingency Fund

A contingency fund is unassigned money held above and beyond other pool liability reserves. Members advance the funds to the pool. An advance is repaid only when a repayment does not reduce the fund below its required minimum.

PA 05-69—sSB 30
Insurance and Real Estate Committee
Planning and Development Committee

AN ACT CONCERNING HEALTH INSURANCE COVERAGE FOR BREAST CANCER SCREENING

SUMMARY: This act requires a health insurance policy to cover a physician-recommended comprehensive ultrasound screening of an entire breast or breasts for a woman classified as category 2, 3, 4, or 5 on the American College of Radiology's Breast Imaging Reporting and Database System (BI-RADS), subject to any policy provisions applicable to other covered services.

The act applies to individual and group health insurance policies that cover (1) basic hospital expenses; (2) basic medical-surgical expenses; (3) major medical expenses; and (4) hospital or medical services, including those provided by HMOs. The act also applies to individual policies that cover (1) accidents only and (2) limited benefits.
EFFECTIVE DATE: October 1, 2005

BACKGROUND

Ultrasound

A breast ultrasound sends high-frequency sound waves through the breast. A computer detects the sound wave echoes to create an image that is displayed on a viewing screen.

BI-RADS Categories

The American College of Radiology collaborated with the National Cancer Institute, the Center for Disease Control and Prevention, the American Medical Association, and others to develop BI-RADS. BI-RADS is a breast mammogram assessment tool. Each BI-RADS category corresponds to a specific finding and recommendation, as shown below. The radiologist includes a BI-RADS category in the mammogram report he prepares for the referring doctor.

Table 1

BI-RADS Category	***Finding and Recommendation***
0	Need additional imaging evaluation
1	Negative – continue annual mammogram screening
2	Benign (non-cancerous) – continue with annual mammogram screening
3	Probably benign – six-month follow-up mammogram
4	Suspicious abnormality – biopsy should be considered
5	Highly suggestive of malignancy – appropriate action should be taken (e.g., biopsy)

Related Act

PA 05-272 requires the Department of Public Health to review when breast cancer screening should be done using comprehensive ultrasound screening or mammogram examination and make best practices recommendations by January 1, 2006.

PA 05-94—SB 1002
Insurance and Real Estate Committee

AN ACT CONCERNING APPEALS OF HEALTH INSURANCE DETERMINATIONS MADE TO THE INSURANCE COMMISSIONER

SUMMARY: This act extends the existing internal grievance requirements for managed care organizations (MCOs) to health insurers. An insurer must (1) have a grievance process for enrollees to appeal the insurer's actions or inactions and (2) notify enrollees of the process at initial enrollment, annually thereafter, and when it denies a service, admission, or hospital stay extension. It also expands the external appeal law to permit a plan enrollee to appeal a health insurer's denial to the insurance commissioner after exhausting the insurer's process. By law, an enrollee can already appeal an MCO or utilization review company decision to the commissioner.

The act requires a utilization review company that, after appeal, upholds a decision to not authorize an admission, service, procedure, or hospital stay extension to provide in writing to the individual (1) the main reason for the decision, (2) notice that he has exhausted all internal appeal opportunities, and (3) procedures and an application for filing an external appeal to the commissioner.

The act requires each MCO and health insurer that upholds an appealed claim denial based on medical necessity to provide the enrollee in writing (1) notice that he has exhausted all internal appeal opportunities and (2) an external appeal application and procedures.

By law, an MCO must provide the commissioner, enrollee, or provider certain information regarding a plan under which an appeal is made within five business days of receiving a written request. The act (1) extends this requirement to health insurers and (2) removes from the requirement sending information if the appeal relates to a self-insured governmental health plan, except for verification that it is self-insured.

The act also makes technical and conforming changes.

EFFECTIVE DATE: July 1, 2005

HEALTH INSURER

Under this act, a "health insurer" is any entity (other than an MCO) that delivers, issues for delivery, renews, or amends individual or group health policies that cover (1) basic hospital expenses; (2) basic medical-surgical expenses; (3) major medical expenses; (4) limited health benefits; (5) hospital and medical services, including those provided by HMOs; and (6) specified diseases. An MCO is an insurer, HMO, or other entity that delivers, issues for delivery, renews, or amends individual and group managed care plans.

INTERNAL GRIEVANCE PROCESS NOTICE AND DEADLINE

A health insurer's notices to enrollees describing the internal grievance process must explain (1) how to submit a grievance, which can be done orally, electronically, or in writing; (2) that the enrollee or a person acting on his behalf, including his health care provider, may submit a grievance; and (3) the insurer's timeframe to resolve a grievance. A health insurer must resolve a grievance within 60 days from when the enrollee submitted it unless the enrollee requests an extension.

EXTERNAL APPEALS PROCESS AND FEES

An enrollee, or provider on his behalf, who has exhausted a health insurer's, MCO's, or utilization review company's internal appeal process may appeal to the insurance commissioner any claim denial based on medical necessity or decision not to certify an admission, service, procedure, or extension of stay.

The enrollee or provider must submit the "external appeal" within 30 days of receiving a final determination from the MCO, insurer, or utilization review company to the commissioner on forms she prescribes. The appeal must include a general release from the enrollee for medical records and a $25 processing fee, which the commissioner can waive for an indigent person. The company against who the appeal is filed must also pay a $25 fee. The commissioner assigns the appeal to an independent entity for review and a binding decision. The commissioner refunds (1) the company's fee if, after an initial review, the appeal is not accepted for a full review or (2) the prevailing party's fee after a full review is completed.

REQUEST FOR INFORMATION

The act extends to health insurers requirements already applying to MCOs for responding to information requests about a plan under which an appeal is made. The insurer or MCO must provide the commissioner, enrollee, or provider certain appeal-related information within five business days of receiving a written request. Failure to do so subjects the insurer or MCO to a fine of $100 for each day of violation. The information includes written verification that the plan is fully insured, self-insured, or otherwise funded.

If the plan is fully insured, the insurer or MCO must also send: (1) written certification to the commissioner or designated review entity that the benefit or service appealed is covered; (2) written certification that the policy or contract is accessible electronically, along with clear and simple instructions on how to access it; or (3) a copy of the entire policy or contract between the enrollee and the MCO.

The insurer's or MCO's failure to provide information or notify the plan sponsor within the five-business-day period or before the 30-day appeal period ends, whichever is later as determined by the commissioner, (1) creates a presumption that the benefit or service is a covered benefit for purposes of accepting the appeal for full review and (2) entitles the commissioner to require the MCO to reimburse the Insurance Department for appeal-related expenses. The act specifies that the presumption established does not create or authorize benefits or services exceeding those in the enrollee's policy or contract.

BACKGROUND

Related Act

PA 05-97 requires notification to the enrollee's provider, in addition to the enrollee, of the internal grievance procedure when an MCO denies a service, admission, or hospital stay extension. It also (1) adds a $25 fine for each time a grievance resolution notice is not sent within the required deadline and (2) makes

violating the internal grievance procedure requirements an unfair and deceptive insurance practice.

PA 05-97—SB 1297
Insurance and Real Estate Committee
Finance, Revenue and Bonding Committee
Judiciary Committee

AN ACT CONCERNING MANAGED CARE GRIEVANCE PROCEDURES

SUMMARY: By law, a managed care organization (MCO) must maintain a specified grievance process for enrollees to appeal the MCO's actions or inactions. This act makes violating the grievance requirements an unfair and deceptive insurance practice, subject to a fine up to $1,000 for each violation, to a maximum of $10,000. If a person knew or should have known his action was a violation, the penalty is (1) a fine up to $5,000 for each violation, to a maximum of $50,000 in any six-month period; (2) license suspension or revocation; and (3) restitution of any amounts obtained through the violation.

By law, a grievance must be resolved within 60 days after it is initiated, unless the enrollee requests an extension. The act permits a person acting on the enrollee's behalf also to request an extension. It requires an MCO to pay a $25 fine for each time it does not provide notice of the grievance resolution within the required timeframe. The fines are payable to the insurance commissioner for deposit into the Insurance Fund and must be allocated to the managed care ombudsman's office (which PA 05-102 renames the Office of the Healthcare Advocate).

The act requires the MCO to notify the enrollee and his provider of the grievance process when it denies a service, admission, or stay extension the provider ordered. Prior law required it to notify just the enrollee of the grievance process when it denied any service, admission, or stay extension, regardless of who requested it. The notice must explain (1) the process for submitting a grievance; (2) that the enrollee or a person acting on his behalf, including his provider, can submit a grievance; and (3) the insurer's timeframe to resolve a grievance. A grievance can be submitted orally, electronically, or in writing.
EFFECTIVE DATE: October 1, 2005

BACKGROUND

Related Act

PA 05-94 extends the grievance procedure requirements to health insurers, requires a final denial notice to include instructions on how to appeal to the insurance commissioner, and limits the information an MCO must provide about a self-insured government plan that is the subject of an appeal.

PA 05-103—SB 1299
Insurance and Real Estate Committee

AN ACT CONCERNING EXTENDED REPORTING PERIOD COVERAGE UNDER MEDICAL MALPRACTICE INSURANCE POLICIES

SUMMARY: This act requires that under certain circumstances, professional liability insurance policies issued on a claims-made basis provide coverage for prior acts and unlimited extended reporting period coverage without additional charge to insureds. The requirement applies if, while an insured is covered under the policy, (1) the insurer stops offering the policy in Connecticut for any reason and the insured is over the age of 55 and has been insured by the insurer for the seven consecutive years immediately preceding the discontinuance or (2) the insured dies, becomes permanently disabled and unable to carry out his or her practice, or retires permanently from practice. (The act overrides current regulations relating to physicians, advanced practice registered nurses, or physician assistants who retire.)

The act applies to policies delivered, issued for delivery, or renewed in Connecticut on or after October 1, 2005 to a physician or surgeon, advanced practice registered nurse, physician assistant, or hospital.

The act makes coverage for prior acts and unlimited extended reporting period coverage enforceable against an insurer that stops offering such policies in Connecticut for any reason before the insured's death, disability, or retirement, if the insured is covered under the policy on the date the insurer stops offering the policy. The act requires the insurer to provide such coverage upon death, disability, or retirement in the same manner as if the insurer continued offering it in Connecticut.
EFFECTIVE DATE: October 1, 2005

BACKGROUND

Claims Made Policy

By law, "claims-made policy" means an insurance policy or an endorsement to an insurance policy that covers liability for injury or damage that the insured is legally obligated to pay (including injury or damage occurring before the effective date of the policy, but after the retroactive date, if any), arising out of incidents, acts, or omissions, as long as the claim is first

made during the policy period or any extended reporting period (Conn. Agencies Reg. § 38a-327-1). (It is not clear if this definition will apply to the act.)

Related Laws

The law requires that every professional liability insurance policy issued on a claims-made basis contain (1) a provision for the purchase of coverage for prior acts and (2) a contractual right of the insured to purchase at any time during the policy period (or within 30 days after it) equivalent coverage for all claims occurring during an insured policy period regardless of when made (CGS § 38a-394).

Anyone required by law to have a medical malpractice insurance policy who has a claims-made policy may not lose the right to unlimited additional extended reporting period coverage after he permanently retires from practice because he provides free professional services at a tax-exempt clinic (CGS § 20-11b).

Related Regulation

Under an Insurance Department regulation, which applies to all claims-made policies for professional liability, unlimited additional extended reporting period coverage must be provided without additional cost to the insured if, while covered by a claims-made professional liability policy, the insured dies or becomes permanently disabled and unable to carry out his practice. It also applies if the insured retires permanently from practice:

1. at or over age 65 having been insured with the same insurer on a claims-made basis for at least the five consecutive years immediately preceding retirement or
2. at or over age 62 having and has been insured with the same insurer on a claims-made basis for at least the 10 consecutive years immediately preceding retirement (Conn. Agencies Reg. § 38a-327-3(e)).

Regarding professional liability insurance, "additional extended reporting period coverage" means coverage for the period specified in the policy during which claims first made after termination of coverage for injury or damage that occurs on or after the retroactive date, if any, but before the policy term expires (Conn. Agencies Reg. § 38a-327-1(f)(2)).

If a policy has no aggregate liability limit, the insurer must offer additional extended reporting period coverage without an aggregate liability limit. If a policy contains an aggregate liability limit, the insurer must offer additional extended reporting period coverage with a limit at least equal to that specified in the policy (Conn. Agencies Reg. § 38a-327-3(f)).

PA 05-115—sSB 1254
Insurance and Real Estate Committee
General Law Committee

AN ACT CONCERNING THE OWNERSHIP OF REAL ESTATE BROKERAGE COMPANIES

SUMMARY: This act eliminates the requirement that every member or officer of a corporation, association, or partnership that holds a broker's license who actively participates in its brokerage business be licensed as a real estate broker. It thus permits licensed real estate salespersons to be owners, members, partners, and officers of real estate brokerages. The act specifies that a limited liability company (LLC) may be granted a real estate broker's license and requires that brokers own or control at least 51% of the corporation, partnership, or LLC that is licensed as a broker.

The act requires each corporation, LLC, or partnership that wants a real estate broker license to apply to the Real Estate Commission in whatever manner the Consumer Protection Department prescribes. It also requires corporations, LLCs, and partnerships that have real estate broker licenses to (1) designate at least one licensed real estate broker to be in charge of the brokerage business and (2) notify the commission of any change in the designation within 30 days after it becomes effective.

The act reduces, from $2,000 to $1,000, the maximum fine the commission may impose on a corporation or partnership that engages in real estate business without a license, and it establishes a maximum fine of $1,000 on an LLC that does so.
EFFECTIVE DATE: October 1, 2005

REAL ESTATE BROKER'S LICENSE FOR A CORPORATION, LLC, OR PARTNERSHIP

Under prior law, partnerships, associations, or corporations could not be granted a real estate broker's license unless every (1) member or officer who actively participated in its brokerage business was licensed as a real estate broker and (2) employee who acted as a salesperson, and every salesperson who was affiliated as an independent contractor, was a licensed real estate salesperson. The business had to designate in its application an individual to serve as broker under the license.

The act allows both licensed brokers and salespersons to engage in the business of real estate brokerage as corporations, LLCs, and partnerships if:

1. the personnel who engage in the real estate brokerage business as brokers or salespersons, and the brokers who counted as owners or members of such corporations, LLCs, and

partnerships, are licensed or exempt from licensure;
2. the corporation, LLC, or partnership has been issued a real estate broker license and has paid the license or renewal fee; and
3. one or more brokers constitute at least 51% of a non-stock corporation's members or own or control at least 51% of a stock corporation's issued shares or an LLC's or a partnership's ownership interest.

The act specifies that (1) no corporation, LLC, or partnership is relieved of responsibility for the conduct or acts of its agents, employees, or officers because it complied with the act and (2) no individual practicing real estate brokerage is relieved of responsibility for real estate services performed because of his employment or relationship with such a corporation, LLC, or partnership.

The act authorizes the commission to refuse to issue or renew a license for any reasons for which it may suspend or revoke a license.

BACKGROUND

Real Estate Commission — Authority to Impose Fines

The commission may temporarily suspend or permanently revoke any real estate broker's license and, in addition to or in lieu of such suspension or revocation, may, in its discretion, impose a fine of up to $2,000 when, after a hearing, it finds that the licensee has violated any real estate broker law or regulation (CGS § 20-320).

Related Declartory Ruling

The commission, in a July 19, 2002 declaratory ruling ruled that each owner who actively engages in the management or control of a brokerage business must be individually licensed as a broker.

PA 05-125—sHB 6864
Insurance and Real Estate Committee
Judiciary Committee

AN ACT CONCERNING DOCUMENT PREPARATION FEES ASSOCIATED WITH THE RESALE OF A CONDOMINIUM UNIT

SUMMARY: This act increases, from $75 to $125, the maximum fee an association may charge its unit owners for preparing the resale certificate and other documents the law requires unit owners to provide purchasers. The act requires the association to establish a fee that reflects the actual printing, photocopying, and related costs to prepare the certificate and related material.

The act requires the association to itemize the actual printing, photocopying, and related costs and provide an itemized list to the unit owner with the certificate and documents. It allows the association to charge an additional fee of up to $10 for furnishing the certificate and all required documents to the unit owner within three business days after it receives a written request.

The act specifies that the association may not include in the regular or expedited fee costs for services provided by an attorney or paralegal.
EFFECTIVE DATE: October 1, 2005

PA 05-140—sSB 999
Insurance and Real Estate Committee
Judiciary Committee

AN ACT CONCERNING CHANGES TO THE INSURANCE STATUTES

SUMMARY: This act makes several changes in Connecticut's insurance statutes.

The act removes from the list of unfair and deceptive insurance practices nonpayment of mandatory fees to the insurance commissioner. This means that a person's or insurance company's failure to pay any of the required fees will no longer be subject to the unfair practice penalties, which include fines and license suspension or revocation. The act does not affect any other penalty allowed by law for not paying fees or paying them late.

The act eliminates the requirement that an insurer provide people covered under an automobile insurance policy written notice of the availability of full glass repair or replacement coverage. By law, each automobile insurance policy must include such coverage at the insured's request.

The act also makes changes in the Connecticut Insurance Guaranty Association statutes. The act specifies that the association is not responsible for a claim that arises out of a policy issued by an insurer that was not licensed to transact insurance in Connecticut either when the policy was issued or when the insured event occurred.

It also redefines "insolvent insurer" for purposes of the guaranty association. Under prior law, an insolvent insurer included the legal successor of the insolvent insurer in the event of a merger. Under the act, an insolvent insurer instead includes the legal successor of an insurer (because of a merger) that was licensed to transact insurance in Connecticut either when the policy was issued or when the insured event occurred, as long as an insurance regulator with jurisdiction approved the

merger. By law, a court of competent jurisdiction must make the determination that the insurer is insolvent.

The act also broadens the definition of an "insolvent insurer" to include an insurer (1) that inherits the policy obligations of an insurer (because of a corporate division) licensed to transact insurance in Connecticut when the policy was issued or when the insured event occurred, if the corporate division is approved and (2) determined to be insolvent by a court of competent jurisdiction. The corporate division must be approved in a jurisdiction that allows it by an insurance regulator having jurisdiction over it.

EFFECTIVE DATE: October 1, 2005, except for the changes to the guaranty association statutes, which are effective upon passage and applicable to insolvencies occurring on or after that date.

BACKGROUND

Connecticut Insurance Guaranty Association

Connecticut has a property and casualty insurance guaranty association fund. All insurance companies licensed to issue property and casualty coverage—with the exceptions prescribed by law— must belong to the association.

If an insurance company defaults, the guaranty association pays valid claims of policyholders and other claimants, up to the dollar limits of the policy subject to ceilings fixed by state law. Policyholders also may receive partial refunds of premiums.

Payment of claims by the guaranty association is coordinated with the Connecticut Insurance Department. Guaranty association payments are triggered by an order of the insurance commissioner or a court of competent jurisdiction declaring a life or health insurance company to be "impaired" or by an order of a court of competent jurisdiction declaring a property and casualty company to be insolvent.

PA 05-162—sSB 31
Insurance and Real Estate Committee

AN ACT CONCERNING NOTICE OF LATE FEES UNDER PERSONAL RISK INSURANCE POLICIES AND THE COMMISSIONERS' 2001 STANDARD ORDINARY MORTALITY TABLE

SUMMARY: This act requires personal risk insurers that charge a fee when an insured pays his premiums late to conspicuously display the fee amount and applicability on the bill sent to the policyholder.

By law, "personal risk insurance" includes homeowners, tenants, private passenger automobile, mobile home, and other property and casualty insurance for personal, family, or household needs, but excludes workers' compensation.

The act also revises the law that regulates the calculation of life insurance minimum reserves, nonforfeiture benefits, and premiums by allowing an insurer to use the 2001 Commissioners' Standard Ordinary (CSO) Mortality Table, instead of older versions, for policies issued after December 31, 2003. For policies issued before April 1, 2005, the act prohibits insurers from using the 2001 table to increase an insured's already agreed-upon premiums. (Apparently, an insurer can use the 2001 table to effect a premium reduction for policies issued before April 1, 2005.) An insurer must give the insurance commissioner written notice of its decision to use the 2001 table before January 1, 2009. Beginning January 1, 2009, the act requires insurers to use the 2001 table.

EFFECTIVE DATE: January 1, 2006, except for the provisions regarding life insurance mortality tables, which are effective upon passage.

BACKGROUND

Reserve Valuation

By law, insurers must apply a standard accounting methodology to calculate the value of its future policy obligations. This valuation is the basis for setting minimum reserves (i.e., the amount of money an insurer must have on hand to pay claims and other obligations). The calculation includes certain interest rates and the use of mortality tables.

In general, as life expectancy increases, a smaller reserve amount is needed because the expected future earned interest increases. Thus, if the 2001 table reflects longer life spans than the older tables currently in use and an insurer calculates reserves based upon it, the insurer may need to keep less in reserve.

Nonforfeiture Benefits

By law, a life insurance policy guarantees a certain minimum benefit (either a lump sum cash payment or the paid-up insurance amount) to a policyholder who stops paying his premiums. Nonforfeiture benefit calculations also use interest rates and mortality tables. Increased life expectancy may result in lower premiums since an insurer will have longer to invest premiums collected before having to pay out on the policy.

2001 CSO Mortality Table

The 2001 CSO Mortality Table is a table of mortality rates for women and men. The American Academy of Actuaries CSO Task Force developed the 2001 table based on the Society of Actuaries Individual

Life Insurance Valuation Mortality Task Force's Valuation Basic Mortality Table. The National Association of Insurance Commissioners adopted the 2001 table in December 2002.

Retroactive Application of a Law

The act permits an insurer, after December 31, 2004 and at its choosing, to use the 2001 mortality table for any one or more life insurance policies issued after December 31, 2003 and before April 1, 2005 for reserve and nonforfeiture valuations, except to increase premiums. It permits an insurer to use the 2001 table after December 31, 2004 for policies issued on and after April 1, 2005 for valuation, including to increase premiums. This constitutes a retroactive application of the new provisions.

General statutory construction applies new laws prospectively and considers retroactive application as unfair (Sutherland Statutory Construction). Despite this default rule, courts have upheld retroactive legislation that is determined to be reasonable. Courts weigh retroactivity carefully, looking at (1) the nature and identity of the parties; (2) their rights and reliance on the existing law; (3) the impact on completed transactions; and (4) constitutional concerns, such as due process.

PA 05-193—sSB 1251
Insurance and Real Estate Committee
Planning and Development Committee
Appropriations Committee
Government Administration and Elections Committee

AN ACT CONCERNING OWNER-CONTROLLED INSURANCE PROGRAMS ON STATE AND MUNICIPAL CONSTRUCTION PROJECTS

SUMMARY: This act prohibits contracts to build, alter, or repair public buildings or works from allowing or requiring the state or a municipality to maintain an owner-controlled insurance program ("OCIP"), with two exceptions: (1) any "UConn 2000" infrastructure improvement project or (2) municipal projects totaling at least $100 million that are under the supervision of one construction manager or located within a municipality's boundaries if under the supervision of two or more construction managers.

The act requires each principal or contractor to disclose in its project plans or specifications when soliciting bids that the project will be covered by an OCIP. It also establishes certain requirements for an OCIP contract or insurance policy, which must provide that:

1. coverage for work performed and materials furnished continue from the date work is completed to the date all causes of action are barred under any applicable statute of limitations;
2. the principal and all covered contractors receive notice of a change in coverage, coverage cancellation, or a refusal to renew coverage;
3. the effective date of a change in coverage is at least 30 days after the principal and contractors receive notice of it; and
4. the effective date of a cancellation or non-renewal of coverage is at least 60 days after the principal and contractors receive notice of it.

Under the act, an OCIP is an insurance procurement program where a principal provides and consolidates insurance coverage for one or more contractors or one or more construction projects.

The act also limits the bonding requirement for contracts exceeding $50,000 to the state and municipalities, instead of the state and any of its political subdivisions.

EFFECTIVE DATE: Upon passage

BACKGROUND

Owner-Controlled Insurance Program (OCIP)

In an OCIP, the construction project owner purchases insurance for other participants in the project and administers the project's loss-prevention program. The coverage can include general liability, builder's risk, workers' compensation, design errors and omissions, excess, umbrella, and other special coverage. The owner requires the other project participants to reduce their bid prices by eliminating their usual insurance costs in exchange for the owner-provided coverage. An OCIP administrator runs the program, acts as the owner's agent, and is usually selected by the insurance broker. When an owner implements an OCIP, the contractor and subcontractors must participate.

PA 05-196—sSB 508
Insurance and Real Estate Committee
Appropriations Committee
Public Health Committee

AN ACT CONCERNING HEALTH INSURANCE COVERAGE FOR INFERTILITY TREATMENT AND PROCEDURES

SUMMARY: This act requires individual and group health insurance policies to cover the medically necessary costs of diagnosing and treating infertility. It

specifies permissible coverage limitations and requirements. It also permits religious employers and individuals to exclude infertility coverage if it is contrary to their religious tenets. Prior law required insurers and HMOs to offer infertility coverage to group plan sponsors, who could have rejected or accepted it.

The act requires a clinical practice that performs insurance-covered in-vitro fertilization (IVF), gamete intra-fallopian transfer (GIFT), or zygote intra-fallopian transfer (ZIFT) procedures to report certain information to the Department of Public Health (DPH) by February 1 following any year it performs the procedures.

The act applies to policies delivered, issued, amended, renewed, or continued on and after October 1, 2005 that cover (1) basic hospital expenses; (2) basic medical-surgical expenses; (3) major medical expenses; and (4) hospital or medical services, including HMOs.

EFFECTIVE DATE: October 1, 2005

INFERTILITY COVERAGE

The act requires health insurance policies to cover medically necessary expenses incurred for the diagnosis and treatment of infertility, including ovulation induction, intrauterine insemination, IVF, uterine embryo lavage, embryo transfer, GIFT, ZIFT, and low tubal ovum transfer. It defines "infertility" as the inability of a presumably healthy person to conceive or produce conception or sustain a successful pregnancy during a one-year period.

COVERAGE LIMITATIONS AND REQUIREMENTS

A policy can:

1. limit coverage to people under age 40;
2. place a lifetime ovulation induction coverage limit of four cycles;
3. place a lifetime intrauterine insemination coverage limit of three cycles;
4. place a lifetime IVF, GIFT, ZIFT, or low tubal ovum transfer limit of two cycles and two embryo implantations per cycle, where each fertilization and transfer procedure counts toward the maximum as one cycle;
5. require covered services to be performed at facilities conforming to standards and guidelines developed by the American Society for Reproductive Medicine or the Society of Reproductive Endocrinology and Infertility;
6. limit coverage to people who have been covered by the policy for at least 12 months;
7. require a person seeking infertility coverage to disclose to the insurer on a form developed by the insurance commissioner any previous infertility treatment or procedures for which a different health insurance policy provided coverage; and
8. limit IVF, GIFT, ZIFT, and low tubal ovum transfers to people who have used less expensive and medically viable treatments or procedures covered under the policy but remain infertile.

But, coverage for IVF, GIFT, ZIFT, and low tubal ovum transfers cannot be denied if a person forgoes a less expensive treatment option because her doctor determines it is unlikely to be successful.

RELIGIOUS EXEMPTION

An insurer, medical or service corporation, or HMO can issue a religious employer a health insurance policy that excludes infertility diagnosis and treatment coverage contrary to the employer's bona fide religious tenets.

If a person states in writing that infertility diagnosis and treatment is contrary to his religious or moral beliefs, an insurer, medical or service corporation, or HMO can issue him a policy or rider that excludes the coverage.

An entity that issues a policy excluding the infertility coverage because of the religious exemption must give written notice of the exclusion to each insured or prospective insured. The notice must appear in the policy, application, and sales brochure and be in at least 10-point type.

Under the act, a "religious employer" is a "qualified church-controlled organization," as defined in federal law, or a church-affiliated organization. Federal law defines "qualified church-controlled organization" as a church-controlled tax-exempt organization, other than one that (1) offers goods, services, or facilities for sale to the general public, other than those sold at a nominal charge that is substantially less than the actual cost, and (2) normally receives more than 25% of its support from either (a) government sources or (b) receipts from admissions, merchandise sales, services performed, or facilities furnished (26 USC § 3121).

REPORTABLE INFORMATION

A clinical practice that performs insurance-covered IVF, GIFT, and ZIFT procedures must report to DPH by February 1 the (1) number of procedures performed the previous year; (2) number of multiple births or conceptions per pregnancy with a breakdown of births or conceptions per pregnancy; and (3) rates of complications. It must also report, per patient on average and by the number of attempts required, the (1) number of procedures attempted before a successful implantation, (2) number of embryos implanted, and (3)

pregnancy rate. The practice must report the information on a form DPH develops.

BACKGROUND

Infertility Procedures

Ovulation induction uses medication to stimulate development of one or more mature follicles (where eggs develop) in a woman's ovaries. IVF uses a drug to stimulate a woman's egg production. Once mature, the eggs are removed to a culture dish and fertilized with sperm. After fertilization, embryos are placed in the woman's uterus.

In GIFT, egg and sperm are placed in a woman's fallopian tubes where fertilization can occur naturally. ZIFT involves placing embryos in a woman's fallopian tubes. Low tubal ovum transfer involves transferring eggs past a blocked or damaged section of the fallopian tube to an area closer to the uterus. Uterine embryo lavage is a procedure by which the uterus is flushed to recover a preimplantation embryo from a donor and then transferring it to the woman who is to bear the child.

PA 05-233—HB 5292
Insurance and Real Estate Committee
Public Health Committee

AN ACT CONCERNING THE REQUIREMENT THAT PRESCRIPTIONS BE FILLED BY MAIL ORDER

SUMMARY: This act prohibits insurance policies that (1) cover prescription drugs and (2) are issued to individuals from requiring an insured person to receive prescriptions from a mail order pharmacy. The bill applies to individual insurance policies delivered, issued, renewed, amended, or continued on or after July 1, 2005.
EFFECTIVE DATE: July 1, 2005

PA 05-237—sHB 6619
Insurance and Real Estate Committee
Judiciary Committee
Finance, Revenue and Bonding Committee

AN ACT CONCERNING MEDICAL DISCOUNT PLANS

SUMMARY: This act establishes a regulatory framework for medical discount plans and organizations that offer such plans. It establishes requirements for (1) incorporation and licensure, (2) net worth, (3) provider agreements, (4) advertising and plan material content, and (5) consumer disclosures. It also establishes fines and penalties for violations and authorizes the commissioner to adopt implementing regulations.
EFFECTIVE DATE: January 1, 2006, except for the prohibition on marketing, advertising, or selling plans that do not meet the mandatory plan provisions and related fines, which are effective July 1, 2005.

MEDICAL DISCOUNT PLAN

A "medical discount plan" is an arrangement or contract that allows people who pay a membership fee access to discounted health care services. It does not include a product (1) already subject to regulation or approval by the insurance commissioner or (2) that costs less than $25 annually. (Although not specified, this cost apparently refers to a consumer's cost to join a medical discount plan.)

A "medical discount plan organization" is a person who establishes a medical discount plan, contracts with providers or other medical discount plan organizations to provide discounted health care services to members, and sets the membership fee. A Connecticut-licensed health insurer, HMO, hospital or service corporation, or fraternal benefit society, or an affiliate of any such entity, is not a medical discount organization, but can offer medical discount plans.

LICENSE REQUIREMENTS

A medical discount plan organization must be a corporation, limited liability company, limited liability partnership, or other entity organized in Connecticut or a foreign corporation or entity authorized to transact business in Connecticut. It must obtain a license as a medical discount plan organization by filing a completed license application with the insurance commissioner on a form she prescribes and an officer (or authorized representative) must swear to it under penalty of false statement. The application must include the applicant's articles of incorporation and bylaws and the names, addresses, official positions, and biographical information of the medical discount plan organization and the individuals responsible for conducting its affairs, including any person or entity owning or having the right to acquire 10% or more of the applicant's voting securities. It must fully disclose any contracts, arrangements, or possible conflicts of interest between the applicant and these individuals. It must provide a complete biographical statement for each individual responsible for conducting the organization's affairs.

The application must also include:

1. a statement describing the applicant, its personnel, and services to be offered;
2. a copy of all contracts made or to be made between the applicant and any
   a. person responsible for conducting the organization's affairs, including any person or entity owning or having the right to acquire 10% or more of the applicant's voting securities;
   b. provider or provider network for health services; and
   c. person performing functions on the applicant's behalf, including marketing, administration, enrollment, and subcontracting health service delivery;
3. the applicant's most recent independent certified public accountant-audited financial statements or its parent company's financial statements as long as the parent company guarantees the applicant's minimum capital requirement;
4. a proposed marketing plan;
5. a description of the subscriber complaint procedures; and
6. a $500 license fee.

Each medical discount plan organization must maintain a net worth of at least $250,000 or post a $100,000 surety bond.

Before applying for a license, the applicant must establish an Internet web site to list providers contracted with the medical discount plan.

If the applicant meets all requirements, the commissioner issues it a medical discount plan organization license, which expires one year from issue. She must renew it annually if the organization remains in compliance and pays a $500 renewal fee. License fees are deposited into the Insurance Fund.

A health care provider who gives discounts to his own patients is exempt from the licensing requirement.

PROVIDER AGREEMENTS

A provider who offers health services under a medical discount plan must have a written agreement with the medical discount plan organization or belong to a provider network that does.

A provider agreement must include (1) the discounted services and products; (2) the discount amounts or a fee schedule with the provider's discounted rates; and (3) a provision prohibiting the provider from charging plan members more than the discounted rates.

A provider network agreement must require that the provider network have written agreements with its providers that (1) contain the terms described above, (2) authorize it to contract with the medical discount plan organization on behalf of the provider, and (3) require it to maintain an up-to-date participating providers list that is given quarterly to the discount health plan organization.

A medical discount plan organization must maintain a copy of each active provider agreement. It is prohibited from contracting with a provider network that is not licensed as a preferred provider network.

PLAN REQUIREMENTS

The act prohibits marketing, advertising, or selling a medical discount plan or using plan material that does not meet certain requirements. A plan or plan material must:

1. provide a clear and conspicuous disclosure that the plan is not insurance but only provides for discounted health care services from participating providers;
2. include the plan administrator's name, address, and telephone number;
3. have a toll-free telephone number through which a member can obtain a complete and accurate list of the local participating providers and applicable discounted services;
4. promise that a printed copy of the provider list is available upon request;
5. update the provider list at least once every six months;
6. use plain language that does not lead to a misleading, deceptive, or fraudulent representation of the discounts;
7. provide notice of the consumer's right to cancel the plan within 30 days of the discount health plan's receipt of membership fees for a full refund minus a reasonable processing fee; and
8. guarantee the refund within 30 days of receiving a member's timely cancellation.

The plan or plan material cannot use the term "insurance," "health plan," "coverage," "copay," "copayments," "preexisting conditions," "guaranteed issue," "premium," "PPO," "preferred provider organization" or any other term that could lead a person to believe the plan is insurance, except in a disclaimer that the plan is not insurance. It can offer only discounted health care services or products that are authorized by a provider agreement.

The medical discount plan organization must issue at least one member discount card to each member. The cards must prominently include (1) a statement that the plan is not insurance and (2) the names, logos, or trademarks of any contracted provider network. The medical discount plan organization must provide the names of the networks to members upon request.

Each medical discount plan organization must (1) give the commissioner at least 30 days advance written notice if it changes its name or address, (2) maintain an up-to-date list of its participating providers' names and addresses on an Internet website, and (3) include its website address prominently on all plan material, including member discount cards.

FINES AND PENALTIES

The insurance commissioner may levy, collect, and deposit into the Insurance Fund the following fines:

1. up to $2,000 for a medical discount plan organization that violates the act's requirements on licensure or the contents, maintenance, and disclosure of provider agreements;
2. up to $10,000 for a person who knowingly operates a medical discount plan organization that violates the plan requirements; and
3. up to $10,000 for a person who knowingly aids and abets another that he knew or should have known was operating a medical discount plan organization that violates the plan requirements.

Anyone who collects medical discount plan membership fees but fails to provide the promised benefits is guilty of larceny. Under the penal code, larceny can be either a class A misdemeanor or a class B, C, or D felony depending on the property value at issue (see Table on Penalties).

The commissioner may suspend a medical discount plan organization's authority to enroll new members and revoke or refuse to renew its license if the organization is (1) not in compliance with the act, (2) not fulfilling its obligations, or (3) hazardous to its members. If she has reasonable cause to believe that grounds exist for license suspension, non-renewal, or revocation, she must give the organization written notice of those grounds.

Her order suspending an organization's authority to enroll new members must specify when the suspension is effective and the conditions that must be met before the license may be reinstated to enroll new members. She may rescind or modify the order before the suspension period ends. She may not reinstate a license if (1) the organization does not request it and (2) the circumstances that led to the suspension still exist or are likely to recur.

When a medical discount plan organization's license is surrendered, not renewed, or revoked, the organization must immediately wind up and settle its affairs and cannot market, advertise, sell, collect fees on, or renew contracts as a medical discount plan organization.

BACKGROUND

Penalty for False Statement

A person who intentionally makes a false statement under oath to mislead a public official, is guilty of false statement in the 2nd degree, which is a class A misdemeanor (see Table on Penalties).

PA 05-238—sHB 6655
Insurance and Real Estate Committee
Labor and Public Employees Committee
Finance, Revenue and Bonding Committee

AN ACT CONCERNING GROUPS COVERED UNDER THE STATE EMPLOYEE HEALTH PLAN AND ASSOCIATION GROUP PLANS

SUMMARY: This act requires the insurance commissioner to approve an insurance policy or contract, including one issued by an HMO, that offers a flexible plan design with respect to provider networks and enrollee cost-sharing, in certain circumstances.

The act expands eligibility for the Municipal Employee Health Insurance Program (MEHIP) to (1) individuals eligible for a retirement benefit from the Connecticut municipal employees' retirement system ("retired members") and (2) federally qualified nonprofit corporations that receive any public funding, or have federal 501(c)(5) tax-exempt status (e.g., labor unions). It also broadens the types of nonprofit corporations with state contracts that are eligible to participate in MEHIP.

The act excludes small employer groups purchasing health insurance through MEHIP or an association group plan from the existing small employer rating law, which requires adjusted community rating, at the comptroller's or association group plan administrator's option, under certain circumstances. To use this option, (1) the MEHIP or association plans offered or issued must cover small employer groups as a single group and insure at least 10,000 individuals, (2) each small employer must be offered the same premium rates for each individual and dependent (i.e., rated using a pure community rating methodology), and (3) the plans must be written on a guaranteed issue basis.

The act prohibits insurers from purchasing reinsurance coverage from the Connecticut Small Employer Health Reinsurance Pool for a small employer group that is offered pure community rates. Insurers can reinsure these groups, but must purchase the coverage through other avenues.

The act no longer requires small employer groups participating in MEHIP to be fully insured, at the discretion of the comptroller (e.g., she can permit the

groups to be self-insured). It also requires insurers to consider savings resulting from a reduction in an insurer's profits because of issuing plans for small employer groups through MEHIP or an association health plan when developing rates for small employers, as long as any loss in the insurer's overall revenue is not shifted to other small employers.

The act also (1) expands the list of plans that are exempt from the 1.75% HMO premium tax, (2) excludes community action groups from the definition of small employer (thus exempting them from the small employer laws), and (3) makes technical and conforming changes.

EFFECTIVE DATE: Upon passage, except for the (1) premium tax exemptions, which are effective July 1, 2005 and apply to income years beginning on or after January 1, 2005 and (2) approval of policies with variable networks and enrollee cost-sharing provisions, which is effective October 1, 2005.

FLEXIBLE BENEFIT DESIGNS

The act requires the insurance commissioner to approve health insurance plans that offer a flexible plan design if the (1) policy or contract complies with all state insurance laws, (2) insurer or HMO files the policy or contract and associated rates with the insurance commissioner, and (3) rate filing demonstrates a reasonable premium rate reduction compared to a policy or contract that does not use the flexible design.

The act limits how an insurer or HMO can design a flexible benefits policy or contract. It can offer (1) a choice of different sized provider networks; (2) different deductibles depending on the type of health facility used; or (3) prescription drug benefits that use a combination of deductibles, coinsurance not to exceed 30%, or copayments, including combinations at different benefit levels.

PREMIUM TAX EXEMPTION

By law, HMOs must pay an annual premium tax of 1.75% per contract or policy, except for contracts or policies issued to employees of municipalities and nonprofit organizations. The act also exempts from the tax any new or renewal contract or policy obtained through MEHIP and entered into after June 30, 2005 that provides coverage to (1) a community action agency's employees and their dependents, and (2) retired members and their dependents.

SMALL EMPLOYER

A "small employer" is an employer with one to 50 employees, including a self-employed person, other than a (1) private school obtaining health insurance through an association of private schools; (2) municipality participating in MEHIP; (3) nonprofit organization participating in MEHIP, unless the comptroller and the Office of Policy and Management secretary make a written request to the insurance commissioner to treat it as a small employer; and (4) personal care assistants association participating in MEHIP.

The act also excludes a community action agency from the definition. By law, a "community action agency" is a public or private nonprofit agency that has previously been designated by and authorized to accept funds from the federal Community Services Administration for community action agencies under the Economic Opportunity Act of 1964 or a successor agency.

BACKGROUND

MEHIP

MEHIP is a group health insurance program for municipal employees sponsored by the Office of the Comptroller and established by law. Subsequent laws expanded MEHIP eligibility to (1) nonprofit community action agencies, (2) state-contracted nonprofit corporations, (3) regional emergency telecommunications centers and tourism districts, and (4) small employers.

By law, participation in MEHIP must be voluntary. In addition, MEHIP must not affect the rates the state pays for state employee health plans, and participants must pay all administration costs.

Community Rating—Pure and Adjusted

Pure community rating is the process of developing a uniform rate for all enrollees. An adjusted community rate modifies a community rate by specific case characteristics. "Case characteristics" are demographic or other objective characteristics of a small employer group's employees, including age, gender, family composition, location, size of group, administrative cost savings resulting from the administration of an association group plan or a plan written through MEHIP, and industry classification.

Connecticut Small Employer Health Reinsurance Pool

Reinsurance spreads a company's insurance risk by having one or more other companies assume some portion of the risk. The legislature created the Connecticut Small Employer Health Reinsurance Pool in 1990. All insurers issuing health insurance and insurance arrangements providing health plan benefits must be pool members. Pool members may purchase reinsurance coverage for a small employer group or

individuals within a small employer group who are considered high risk. A high-risk individual is one who is likely to generate substantial claims due to his health status.

PA 05-253—sSB 1034
Insurance and Real Estate Committee

AN ACT ESTABLISHING A COMPREHENSIVE HEALTH INSURANCE CONSUMER EDUCATION PROGRAM

SUMMARY: This act requires the insurance commissioner, after consulting with the social services commissioner and the healthcare advocate (formerly called the managed care ombudsman), to develop a public education outreach program by January 1, 2006 to educate health care consumers about the various health care options in Connecticut.

The information must be posted on the Insurance Department's Internet web site and must refer to the availability of and general eligibility requirements for (1) programs administered by the Department of Social Services, such as Medicaid, HUSKY, and the state-administered general assistance (SAGA) program; (2) the Municipal Employee Health Insurance Program (MEHIP); (3) comprehensive health care plans; and (4) other coverage options offered through local, state, or federal agencies, or other Connecticut-licensed entities. The insurance commissioner must update the information at least quarterly.

The act also requires the comptroller to submit a report to the Insurance and Real Estate Committee by February 1, 2006 on the feasibility of making uninsured individuals eligible for MEHIP. "Uninsured individuals" include, at a minimum, residents without access to employer- or government-sponsored health insurance.

EFFECTIVE DATE: October 1, 2005, except the MEHIP study requirement, which is effective upon passage.

BACKGROUND

Related Act

PA 05-238 expands eligibility for MEHIP to (1) individuals eligible for a retirement benefit from the Connecticut municipal employees' retirement system and (2) federally qualified nonprofit corporations that have contracts with the state or receive any public funding, or have federal 501(c)(5) tax-exempt status (e.g., labor unions).

PA 05-266—sHB 6805
Insurance and Real Estate Committee
Finance, Revenue and Bonding Committee

AN ACT CONCERNING THE RENEWAL OF INSURANCE PRODUCER LICENSES

SUMMARY: This act:

1. makes an initial insurance producer license renewable every two years on the licensee's birthday instead of on February 1 in even-numbered years;
2. permits the insurance commissioner to establish a process to transition producers to the new license renewal schedule and establishes a $40 transitional license fee;
3. increases license renewal fees to $40 per year or any portion thereof instead of $40 every two years;
4. requires the commissioner to notify a producer at least 30 days before his license expires;
5. adds renewal fee payment to the license renewal requirements; and
6. authorizes the commissioner to implement a more efficient license renewal process that supersedes the mandated requirements upon implementation.

EFFECTIVE DATE: October 1, 2005, except for the fee provisions, which are effective January 1, 2006.

LICENSE RENEWAL SCHEDULE

Initial License Issuance and Renewal

The act requires that a producer license issued for the first time on or after January 1, 2006 expire two years after the producer's most recent birthday. It may be renewed every two years thereafter on the producer's birthday.

Existing License Renewal

The act requires that a producer license in effect on January 1, 2007 and not issued as an initial or transitional license in 2006 expire on the producer's first birthday after January 1, 2007. It may be renewed every two years thereafter on the producer's birthday.

Transitional License

The act permits the commissioner to implement a transitional birthday-based renewal process for licenses in effect on December 30, 2005. The transition process runs from February 1, 2006 to January 1, 2007 and can be used to renew some or all of the licenses that would have been eligible for renewal on February 1, 2006

under prior law, as long as producers are selected in a nondiscriminatory way. The commissioner can select producers using license numbers or alphabetically by last name. A license renewed under the transitional process expires on the producer's first birthday after the renewal and may be renewed every two years thereafter on the producer's birthday.

Regulations

The act permits the commissioner to adopt regulations to establish a license renewal schedule.

BACKGROUND

Insurance Producer

An insurance producer is a person who, under state law, must be licensed to sell, solicit, or negotiate insurance (CGS § 38a-702a(6)).

PA 05-270—HB 6865
Insurance and Real Estate Committee

AN ACT REDEFINING HEALTH INSURANCE UNDER HEALTH REINSURANCE ASSOCIATION PLANS

SUMMARY: By law, insurers and HMOs issuing health insurance in the state and the Health Reinsurance Association, the state's high-risk pool, must offer comprehensive health care plans with specified minimum standard benefits. This act expands the types of insurance plans that are not considered "health insurance" for comprehensive health care plan purposes, thus potentially limiting the insurers and HMOs that must offer comprehensive health care plans. In addition to other plans excluded from the definition, the act excludes specified disease or limited benefit policies from the definition of "health insurance" for comprehensive health care plan purposes if a carrier offering such policies files information with the insurance commissioner each year before March 2 certifying that such policies are not substitutes for hospital and medical expense policies.
EFFECTIVE DATE: July 1, 2005

HEALTH INSURANCE DEFINITION

By law and for comprehensive health plan purposes, "health insurance" means hospital and medical expense policies, nonprofit service plan contracts, HMO contracts, and self-insured employee benefit plans. Prior law excluded accident only, disability, motor vehicle, and personal and commercial risk liability insurance from the definition.

This act specifies that, for comprehensive health plan purposes, "health insurance" excludes (1) hospital indemnity plans, accident only, credit, dental, vision, Medicare Supplement, long-term care, or disability insurance; (2) supplemental coverage to liability insurance; (3) workers' compensation or similar insurance; (4) automobile medical-payments insurance; or (5) insurance coverage required by law in a liability insurance policy or similar self-insurance plan that pays beneficiaries regardless of fault.

It also excludes specified disease or limited benefit policies from the definition if a carrier offering such policies files certain information with the commissioner each year before March 2. The carrier must file (1) a statement certifying these policies are supplemental in nature and not substitutes for hospital or medical expense policies and (2) a summary of each policy, including the average annual premium rate or range of rates if premium varies by age, gender, or other factors. Carriers providing specified disease or limited benefit policies in the state for the first time must file the information at least 30 days before issuing or delivering such a policy in the state.

BACKGROUND

Health Reinsurance Association

HRA is a nonprofit entity whose members consist of insurers, HMOs, and self-insurers doing business in the state. The association makes individual and group comprehensive health care plans available to people unable to obtain insurance coverage through other means. The association administers a reinsurance program and pools risk among participating members. Members share association losses.

Comprehensive Health Care Plans

By law, all individual and group comprehensive health care plans must include specified minimum benefits, including coverage for catastrophic illness and a lifetime maximum coverage of $1 million. The plans may include cost-containment features, such as preferred provider provisions and utilization review of health care services.

PA 05-271—sHB 6915
Insurance and Real Estate Committee

AN ACT CONCERNING PORTABILITY UNDER HEALTH CARE PLANS ISSUED THROUGH THE HEALTH REINSURANCE ASSOCIATION

SUMMARY: This act requires comprehensive health care plans issued through the Health Reinsurance Association (HRA) to cover a preexisting condition for a group member or dependant who is newly insured on or after October 1, 2005, if the insured's qualifying former plan provided coverage for the condition. If the qualifying former plan did not cover the condition, the new HRA plan must credit the time the insured was covered under the former plan toward the HRA plan's exclusion period for a preexisting condition.

To be eligible for these provisions, the insured must apply for the HRA plan within 30 days of initial eligibility. In addition, his former plan must have terminated no more than 120 days before the effective date of the HRA plan (150 days if the termination was due to involuntary loss of employment), excluding any waiting period.

A qualifying former plan is (1) a group health insurance plan or arrangement, (2) a group self-insured plan, (3) Medicare or Medicaid, or (4) an individual insurance plan that provides benefits that are actuarially equivalent to or better than those provided by a small employer health care plan, as determined by the Insurance Department.

EFFECTIVE DATE: October 1, 2005

BACKGROUND

Health Reinsurance Association

The Health Reinsurance Association is a health insurance risk pool whose members consist of insurers, HMOs, and self-insurers doing business in Connecticut. It makes individual and group comprehensive health care plans available to people unable to obtain insurance coverage through other means. It administers a reinsurance program and pools risk among participating members. Members share association losses.

Comprehensive Health Care Plans

By law, all individual and group comprehensive health care plans must include specified minimum benefits, including coverage for catastrophic illness and a lifetime maximum coverage of $1 million. The plans may include cost containment features, such as preferred provider provisions and utilization review of health care services.

Related Act

PA 05-270 redefines "health insurance" for comprehensive health plan purposes.

PA 05-10—sSB 963
Judiciary Committee
Appropriations Committee
Finance, Revenue and Bonding Committee
Planning and Development Committee

AN ACT CONCERNING CIVIL UNIONS

SUMMARY: This act authorizes same sex couples to enter into civil unions, granting them the same legal benefits, protections, and responsibilities as married couples. It incorporates civil unions by reference in most statutes that use or define terms indicating a spousal relationship. It establishes eligibility, application, and licensing criteria; specifies who can perform civil union ceremonies; and prescribes record-keeping requirements. The act (1) restricts civil unions to emancipated minors and couples over age 18 and (2) exempts people authorized to perform civil union ceremonies from liability for failing or refusing to do so. Otherwise, the act's substantive provisions and penalties are identical to current marriage statutes.

The act also defines "marriage" as the union of one man and one woman. It establishes circumstances under which the state will recognize civil unions performed in other countries.
EFFECTIVE DATE: October 1, 2005

BENEFITS, PROTECTIONS, AND RESPONSIBILITIES

The act specifies that the rights it extends to civil union partners may derive under statute, administrative regulations or court rules, policy, common law, or any other source of civil law. Generally, these fall into the following categories:

1. family law, including marriage, divorce, and support;
2. title, tenure, descent and distribution, intestate succession, wills, survivorships, or other incidents of the acquisition, ownership, or transfer (during life or at death) of real or personal property;
3. state and municipal taxation;
4. probate courts and procedure;
5. some pension and group insurance plans;
6. family leave benefits;
7. financial disclosure and conflict-of-interest rules;
8. protection against discrimination based on marital status;
9. emergency and non-emergency medical care and treatment, hospital visitation and notification, and authority to act in matters affecting family members;
10. state public assistance benefits;
11. workers' compensation;
12. crime victims' rights;
13. marital privileges in court proceedings; and
14. vital records and absentee voting procedures.

Excluded Laws

The act does not incorporate civil unions by reference in the chapter of the General Statutes relating to marriage procedures and formalities. But it includes new provisions setting out the same procedures and formalities for applicants and parties to civil unions.

Civil unions are also specifically excluded under the act from the statute that states that "the current public policy of the state is now limited to a marriage between a man and a woman" (CGS § 45a-727a(4)).

ELIGIBILITY CRITERIA

To be eligible to form a civil union, the act requires that each party be of the same sex, not a party to another civil union or a marriage, and no more closely related to one another than first cousin. Unions between people more closely related are void.

People under age 18 can enter into civil unions only if a court has declared them emancipated (legal adults). By law, partners 16 or 17 years of age may marry if their parents consent, and those under age 15 may do so with a probate judge's consent. Under the act, as well as existing marriage law, people under conservatorships must obtain their conservator's written permission. A conservator's refusal to permit the ceremony to proceed must be based on clear and convincing proof of recent behavior that would cause or create a risk of harm.

BACKGROUND

Related Act

Section 58 of PA 05-3, June Special Session, makes the gift, estate, and income tax provisions effective for tax years beginning January 1, 2006.

PA 05-12—HB 6581
Judiciary Committee

AN ACT CONFIRMING AND ADOPTING VOLUMES 1 TO 13, INCLUSIVE, OF THE GENERAL STATUTES, REVISED TO 2005

SUMMARY: This act formally adopts, ratifies, confirms, and enacts the General Statutes revised to 2005.
EFFECTIVE DATE: Upon passage

PA 05-16—SB 972
Judiciary Committee
Government Administration and Elections Committee

AN ACT CONCERNING THE MEMBERSHIP OF THE PSYCHIATRIC SECURITY REVIEW BOARD

SUMMARY: This act allows permanent UConn Health Center psychiatrists and psychologists to fill the two mental health slots on the six-member Psychiatric Security Review Board. The board supervises people confined to a mental hospital or conditionally released into the community after having been acquitted of crimes due to a mental disease or defect. Prior law prohibited permanent state employees from serving on the board.

UConn psychiatrists and psychologists can be considered for membership if they have experience with the criminal justice system and no involvement in the administration of, or treatment decisions for, people under the board's supervision.
EFFECTIVE DATE: October 1, 2005

PA 05-19—sHB 6577
Judiciary Committee
Public Health Committee

AN ACT CONCERNING PATIENTS AT THE WHITING FORENSIC DIVISION AND HEARINGS FOR CERTAIN CRIMINAL DEFENDANTS PLACED FOR TREATMENT PENDING CIVIL COMMITMENT PROCEEDINGS

SUMMARY: This act specifies that Whiting Forensic Institute is the only Department of Mental Health and Addiction Services (DMHAS) facility that can accept desperate and dangerous prisoners who are incompetent to stand trial. This is the current standard for desperate and dangerous prisoners sent to Whiting for other reasons (e.g., emergency commitments); in such cases, the Department of Correction must maintain custody and give them appropriate treatment. It allows the DMHAS commissioner to refuse to admit violent prisoners when the agency lacks the staff, facilities, or security to accommodate them.

Previously, state police officers had to guard dangerous prisoners placed in DMHAS's custody for competency restoration treatment when DMHAS lacked the resources to do so. The act eliminates this option.

The act also requires courts to schedule hearings within 10 days of receiving a report that an incompetent criminal defendant placed at Whiting pending civil commitment has been denied commitment or that commitment is not being pursued. Courts must already schedule hearings for defendants placed at Whiting for competency restoration treatment within 10 days of receiving reports indicating either that the defendant (1) is competent to stand trial or (2) will not regain competency within the period specified in his placement order.
EFFECTIVE DATE: October 1, 2005

PA 05-26—HB 6810
Judiciary Committee

AN ACT CONCERNING TRANSFER OF PROBATE COURT RECORDS

SUMMARY: This act allows a person under conservatorship who has moved from the probate district where his conservator was appointed to make a motion to transfer his file to his new probate district. By law, the person's conservator, spouse, or relative, or the first selectman or chief executive officer of the town where the person resides can also make this motion.
EFFECTIVE DATE: October 1, 2005

BACKGROUND

Conservators

The probate court can appoint a conservator to supervise (1) the financial affairs of a person found incapable of managing his own affairs, (2) the personal affairs of a person found incapable of caring for himself, or (3) both. The probate court can appoint a conservator involuntarily. A person can also voluntarily ask the court for the appointment of a conservator for either or both of these purposes.

PA 05-42—SB 1121
Judiciary Committee

AN ACT CONCERNING DAMAGES IN SMALL CLAIMS ACTIONS

SUMMARY: This act increases, from $3,500 to $5,000, the maximum amount of damages that may be claimed in small claims court actions. Small claims court has jurisdiction over all matters, except libel or slander, involving money damages up to the statutory maximum.
EFFECTIVE DATE: October 1, 2005

PA 05-45—SB 1196
Judiciary Committee

AN ACT CONCERNING WITNESS FEES

SUMMARY: This act allows psychologists who give expert testimony, including by deposition, to receive a reasonable fee, as determined by the court, in place of other witness fees. By law, practitioners of the healing arts, dentists, registered nurses, advanced practice nurses, licensed practical nurses, and real estate appraisers already receive these fees for expert testimony.
EFFECTIVE DATE: July 1, 2005

BACKGROUND

Witness Fees

The law sets fees and expenses for witnesses in a number of circumstances. Generally, witnesses receive 50 cents a day for attending court and the same per-mile rate for travel to the place of trial as is paid to state employees for travel.

PA 05-68—SB 1280
Judiciary Committee

AN ACT CONCERNING NOTIFICATION OF THE OFFICE OF VICTIM SERVICES BY THE DEPARTMENT OF CORRECTION UPON THE RELEASE OF AN INMATE

SUMMARY: This act requires the Department of Correction to notify the Office of Victim Services (OVS) when an inmate is granted a specific type of furlough. It must give the notice when an inmate is allowed to serve an unspecified period of time reintegrating into the community immediately preceding his discharge or release on parole.

Under existing law, the department has to notify OVS when it schedules an inmate for release. OVS must notify, by certified mail, victims who have requested notice of an inmate's scheduled release. The notice must be in writing and inform each victim of the inmate's date of release. Victims are responsible for making sure that OVS has their current mailing address.
EFFECTIVE DATE: October 1, 2005

PA 05-72—sSB 516
Judiciary Committee

AN ACT CONCERNING THE PENALTY FOR CRUELTY TO PERSONS

SUMMARY: This act sets graduated penalties for the crime of cruelty to persons and custodial cruelty to youngsters, which are currently punishable by a fine of up to $500, imprisonment for up to one year, or both. It imposes stiffer penalties for more serious, intentional misconduct. Prior law did not distinguish between the nature of the criminal conduct or the actor's state of mind, and it limited the scope of custodial cruelty to youngsters to cases where the victim was age 15 or younger.
EFFECTIVE DATE: October 1, 2005

CRUELTY TO PERSONS

Under the act, a person is subject to a fine of up to $5,000, imprisonment of up to five years, or both when he intentionally:

1. tortures, torments, or cruelly or unlawfully punishes another person or deprives him of necessary food, clothing, shelter, or proper physical care; or
2. mistreats, tortures, overworks, or cruelly or unlawfully punishes a minor under his custody or control in any capacity whatsoever.

A person is subject to the existing law's penalties (a fine of up to $500, imprisonment for up to one year, or both) when he is criminally negligent and:

1. deprives another person of necessary food, clothing, shelter, or proper physical care; or
2. deprives any minor under his custody or control in any capacity whatsoever of necessary food, clothing, or shelter.

PA 05-78—sSB 256
Judiciary Committee
Public Safety and Security Committee

AN ACT CONCERNING THE LIABILITY OF SKI AREA OPERATORS FOR INJURIES

SUMMARY: By law, each skier assumes the liability for any injury he suffers arising out of the risks inherent in the sport. The law specifies what some of the inherent risks are. The act makes several changes to this law. Specifically, it:

1. eliminates the exception for injuries caused by the negligent operation of the ski area by the operator, his agents, or employees;

2. specifies that collisions with on-duty employees who are skiing and are within the scope of their employment are not an inherent risk of skiing and thus skiers do not assume liability for such collisions;
3. treats as an inherent risk loading, unloading, or otherwise using, instead of just boarding, a passenger tramway without prior knowledge of proper loading and unloading procedures, without reading instructions concerning loading and unloading posted at the base of the passenger tramway, or without asking for such instructions;
4. makes conspicuously placed lift towers an inherent risk of skiing;
5. makes spectators on skiable terrain who are not in a designated area during any event assume responsibility for such inherent hazards;
6. makes those who use other equipment, such as snowboards, on ski areas also assume legal responsibility for inherent risks;
7. specifies that those engaging in snow tubing operations the ski area operator provides do not assume legal responsibility for inherent dangers; and
8. eliminates the right of ski operators to raise certain special defenses in lawsuits by skiers.

The law imposes certain duties on ski operators. Prior law required the ski area and passenger tramway operators to conspicuously mark all lift towers within the confines of any trail or slope. The act instead requires the operator to do so only if the tower is not readily visible.

Finally, the act specifies that the assumption of liability provision does not apply to any case where it is determined that an injury was caused by something other than a hazard inherent in the sport of skiing.

EFFECTIVE DATE: October 1, 2005

SNOWBOARDS AND OTHER EQUIPMENT USED ON SKI AREAS

The act specifies that people assume the risks inherent in skiing when they slide downhill or jump on snow or ice using (1) a snowboard, snow blades, a snow bike, or a sit-ski or (2) any other device that is controllable by its edges on snow or ice or is for the purpose of using any skiable terrain. It specifies that those engaging in snow tubing operations provided by a ski area operator do not assume legal responsibility for inherent dangers.

STATUTORY DEFENSES

The act eliminates the statutory right of a ski operator to prevail in a lawsuit by alleging and proving that the skier who is suing him did not:

1. know the range of his own ability to negotiate any trail or slope that is conspicously marked for its degree of difficulty or as closed,
2. ski within the limits of his own ability,
3. maintain reasonable control of speed and course at all times while skiing,
4. heed all posted warnings,
5. ski on a skiing area designated by the operator, or
6. embark on or disembark from a passenger tramway at a designated area.

BACKGROUND

Related Case

The Connecticut Supreme Court recently interpreted the statute the act amends. It held that under this statute, a skier does not assume the risk of, and legal responsibility for, an injury arising out of a collision with a ski instructor, acting in the course of his employment with the ski area operator, when the collision is caused by the instructor's negligence (*Jagger v. Mohawk Mountain Ski Area*, 269 Conn. 672 (2004)).

PA 05-83—HB 6635 **(VETOED)**
Judiciary Committee

AN ACT CONCERNING THE ILLEGAL SALE OR POSSESSION WITH INTENT TO SELL OF COCAINE

SUMMARY: This act increases, from one-half gram to one ounce, the minimum amount of crack cocaine a non-drug dependent person must possess to be guilty of selling or manufacturing, distributing, prescribing, compounding, transporting, or possessing cocaine with intent to sell. The increase eliminates the legal disparity between crack and powder cocaine for commission of this crime.

EFFECTIVE DATE: October 1, 2005

BACKGROUND

Related Act

PA 05-248 eliminates the disparity in the minimum amount of crack and powder cocaine that a non-drug dependent person must possess to be guilty of selling or manufacturing, distributing, prescribing, compounding,

transporting, or possessing cocaine with intent to sell. It accomplishes this by increasing the minimum amount of crack cocaine from one-half gram to one-half ounce and decreasing the minimum amount for powder cocaine from one ounce to one-half ounce.

PA 05-84—HB 6885
Judiciary Committee

AN ACT CONCERNING THE ADMINISTRATIVE PARDONS PROCESS AND THE DUTIES OF THE BOARD OF PARDONS AND PAROLES

SUMMARY: This act changes the period of time that must pass before a person is eligible for an administrative pardon in two instances.

1. The act decreases, from 10 to five years, the amount of time that must pass without a conviction before someone convicted of a misdemeanor when he was under age 21 can receive an administrative pardon.
2. It increases, from five to 10 years, the time that must pass since a person's conviction or prison release date, whichever is later, for someone to be eligible for an administrative pardon if he was convicted of certain drug crimes and has had no convictions in the last five years. These crimes include (1) illegal manufacture, distribution, sale, prescription, or dispensing of drugs; (2) illegal manufacture, distribution, sale, prescription, or dispensing of drugs by a non-drug-dependent person; and (3) illegal possession of drugs.

The act also repeals a requirement that the Board of Pardons and Paroles chairman adopt regulations for administering the Interstate Parole Compact.

It also makes a technical change.

EFFECTIVE DATE: October 1, 2005

BACKGROUND

Administrative Pardons

PA 04-234 required the Board of Pardons and Paroles chairman, in consultation with the board's executive director, to adopt regulations to establish an administrative pardons process that allows certain people convicted of a crime to receive a pardon without a hearing, unless a victim requests one.

PA 05-87—sSB 1283
Judiciary Committee

AN ACT CONCERNING THE UNAUTHORIZED CONVEYANCE OR USE OF ELECTRONIC WIRELESS COMMUNICATION DEVICES IN CORRECTIONAL INSTITUTIONS

SUMMARY: This act makes it a crime for someone, unless authorized by the Department of Correction commissioner or her designee, to (1) convey or possess with intent to convey an electronic wireless communication device to an inmate in a correctional institution or (2) use an electronic wireless communication device to take a photo or digital image in a correctional institution.

The act makes a violation a class A misdemeanor (see Table on Penalties).

EFFECTIVE DATE: October 1, 2005

PA 05-105—sHB 6883
Judiciary Committee

AN ACT CONCERNING SERVICE OF PROCESS ON THE STATE

SUMMARY: This act specifies that service of process on the state must be made by a proper officer. It applies to civil actions, foreign attachments, and garnishments against (1) the state; (2) a state institution, board, commission, department, or administrative tribunal; or (3) an officer, servant, agent, or employee of one of them.

Prior law required service by leaving a true and attested copy of the process, including the declaration or complaint, with the attorney general or at his office in Hartford. The act specifies that the copies must be left at the attorney general's office. It also gives the officer the option of sending a true and attested copy of the process, including the summons and complaint, to the attorney general's office by certified mail, return receipt requested.

A "proper officer" includes a state marshal and constable and other officers authorized by statute.

EFFECTIVE DATE: October 1, 2005

PA 05-108—HB 6888
Judiciary Committee
Government Administration and Elections Committee

AN ACT CONCERNING EMPLOYEES OF THE BOARD OF PARDONS AND PAROLES

SUMMARY: PA 04-234 and PA 04-257 made several changes to make the Department of Correction responsible for supervising parolees instead of the Board of Pardons and Paroles, including removing references to parole officers or employees in a number of statutes. This act reinstates those references in some of those statutes. It:

1. justifies the use of physical force or deadly physical force by authorized officials of the board or those they direct under certain circumstances when making an arrest under a warrant or preventing escape;
2. specifies that the restrictions on the use of physical restraint in certain institutions other than correctional facilities do not limit the justified use of physical force by a board employee responsible for supervising people released on parole while performing his duties;
3. makes assault of a board employee under certain circumstances punishable by the crime of assault of public safety or emergency medical personnel (a class C felony, see Table on Penalties);
4. allows the chief court administrator to grant access to information in the protective order registry to board personnel for use in performing their duties;
5. prohibits public agencies from disclosing board employee residential addresses;
6. generally prohibits public disclosure of a board employee's personal information in motor vehicle records when he submits a written request and makes his business address available for disclosure; and
7. empowers board employees to administer oaths in the performance of their assigned duties.

EFFECTIVE DATE: Upon passage

PA 05-109—sHB 6985
Judiciary Committee

AN ACT ADOPTING REVISED ARTICLE 1 OF THE UNIFORM COMMERCIAL CODE CONCERNING GENERAL PROVISIONS

SUMMARY: This act changes the definitions and rules that apply throughout the Uniform Commercial Code (UCC). The UCC covers a number of topics including the sale of goods, leases, bank deposits and collections, and secured transactions. The act's definitions and rules, as those in prior law, do not apply to other parts of the UCC if contrary or more specific ones are found there.

The act:

1. modifies the rule established by federal law on electronic signatures (E-SIGN);
2. adds provisions on the use of the "course of performance" in interpreting agreements between parties;
3. allows a waiver or renunciation in an authenticated record;
4. adds a provision on subordinated obligations;
5. deletes a general statute of frauds provision, although others apply to specific types of UCC transactions;
6. adds some definitions and alters others; and
7. makes a number of technical changes.

The act specifies that it applies to transactions to the extent they are governed by UCC provisions. It specifies that if any UCC provision or clause or an application of it to a person or circumstances is ruled invalid, it does not affect other UCC provisions or applications that can be given effect without the invalid provisions or applications.

EFFECTIVE DATE: October 1, 2005

E-SIGN

The federal Electronic Signatures in Global and National Commerce Act (E-SIGN) validates the use of electronic records and signatures (15 U.S.C. § 7001 et seq.). It applies to interstate and foreign commerce. Where E-SIGN conflicts with a state law, the federal law preempts state law. But under the federal law, a state provision can modify, limit, or supersede E-SIGN's electronic contracting provisions if it provides alternative procedures or requirements for the use or acceptance of electronic records or signatures, is consistent with the federal law, does not require or accord greater legal status or effect to a specific technology, and specifically references the federal act.

The act's provisions modify, limit, and supersede E-SIGN except for certain provisions on consumer disclosures. It specifies that it does not authorize electronic delivery of court notices and certain notices regarding utility services, housing, health and life insurance, and product recalls.

COURSE OF PERFORMANCE, COURSE OF DEALING, AND USAGE OF TRADE

The act defines "course of performance" as a sequence of conduct between the parties to a particular transaction that exists if (1) their agreement for the transaction involves repeated occasions for performance by a party and (2) the other party, knowing the nature of performance and having the opportunity to object to it, accepts or acquiesces to the performance without objection.

The act adds that a course of performance (as well as the course of dealing and usage of trade as under prior law) can give meaning and supplement or qualify terms of an agreement between parties.

Prior law defined course of dealing as a sequence of previous conduct between the parties to a particular transaction that is fairly regarded as establishing a common basis of understanding for interpreting their expressions and other conduct. The act specifies that the conduct relates to previous transactions between the parties.

The act also allows, rather than requires, a usage of trade applicable in the place where part of the performance is to occur to be used for that part of the performance. As under prior law, usage of trade is a practice or method of dealing regularly observed in a place, vocation, or trade that justifies an expectation that it will be observed in the transaction. It can be found in a trade code or similar writing. The act eliminates the writing requirement in that provision and instead requires a record (which the act defines below).

As under prior law, when it is not possible to construe the course of dealing or usage of trade as consistent with the agreement, the agreement's express provisions prevail. Under the act, express provisions also prevail over a course of performance but the course of performance prevails over the course of dealing and usage of trade.

Under the act, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance (but this is subject to the rules for modification, rescission, and waiver under the sale of goods law (UCC Article 2)).

WAIVER OR RENUNCIATION OF CLAIM OR RIGHT AFTER BREACH

The act allows a waiver or renunciation to discharge a claim or right arising out of an alleged breach to be in an electronic form as well as in writing. The act does so by requiring an authenticated record (defined as information inscribed on a tangible medium or stored in an electronic or other medium that can be retrieved in perceivable form) instead of requiring a written and signed agreement.

SUBORDINATED OBLIGATIONS

Under the act, an obligation can be issued as subordinated to another obligation or a creditor can subordinate its right to performance of an obligation by agreeing with the obligated person or another creditor. The act specifies that subordination does not create a security interest against either the debtor or the creditor.

STATUTE OF FRAUDS

The act eliminates the statute of frauds for personal property other than for contracts for the sale of goods, securities, or security agreements. The deleted provision states that a contract for the sale of personal property is not enforceable beyond $5,000 in amount or remedy unless there is a writing indicating a contract between the parties at a defined or stated price, reasonably identifying the subject matter, and signed by the party (or his authorized agent) against whom enforcement is sought.

Other UCC articles have statute of fraud rules (such as Article 2 for the sale of goods, Article 2A for leases, and Article 8 for sale of investment securities). The law also provides a general statute of frauds that prohibits an action to enforce an agreement unless the agreement, or a memorandum of it, is in writing and signed by the party against whom it is to be enforced (or the party's agent) for (1) an agreement that is not to be performed within a year of its making, (2) a loan exceeding $50,000, and (3) certain other types of agreements.

DEFINITIONS

As under prior law, the act's definitions apply throughout the UCC unless an article includes a specific definition or the context requires otherwise. The act provides that the words and phrases it defines, or that are defined in other articles of the UCC to apply to particular articles or parts of them, have the meanings stated unless the context requires otherwise.

New Definitions

The act defines a "consumer" as an individual who enters a transaction primarily for personal, family, or household purposes.

The act defines a "record" as information inscribed on a tangible medium or stored in an electronic or other medium that can be retrieved in perceivable form.

Under the act, "state" is a U.S. state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or a territory or insular possession subject to U.S. jurisdiction.

Changed Definitions

As under prior law, a "bank" is a person engaged in the business of banking. The act specifies that this includes a savings bank, savings and loan association, credit union, and trust company.

Under the act, a "defendant" includes a defendant in a third-party claim (a claim where the defendant brings in another party) as well as defendants in counterclaims and cross-claims as in prior law.

Under prior law, "fault" was a wrongful act, omission, or breach. The act adds default to the list of items that is considered fault.

The act expands the definition of "good faith" to include the observance of reasonable commercial standards of fair dealing, as well as honesty in fact.

The act alters one part of the definition of "insolvent" from someone who has ceased to pay his debts in the ordinary course of business to someone who has generally ceased to pay debts in the ordinary course of business other than because of a bona fide dispute.

It provides more specific examples of "person," including a limited liability company, joint venture, government instrumentality, and public corporation. It eliminates a provision that an organization includes two or more people having a joint or common interest.

The act makes the current definition of "present value" that applies for purposes of the definition of a security interest applicable generally throughout the UCC. "Present value" means the amount as of a certain date of one or more sums payable in the future, discounted by using (1) an interest rate specified by the parties if it is not manifestly unreasonable at the time of entering the transaction or (2) a commercially reasonable rate that accounts for facts and circumstances at the time of entering the transaction.

The act specifies that "purchase" includes leases.

The act alters the intent requirement in the definition of "sign." Instead of using a symbol with intent to authenticate a writing, the act requires the intent to adopt or accept the writing. The act also applies the definition to anyone and not just parties as under prior law.

The act adds secondary obligor to the definition of a "surety." Prior law was limited to guarantors.

PA 05-114—sSB 1189
Judiciary Committee
Legislative Management Committee

AN ACT CONCERNING THE JUDICIAL REVIEW COUNCIL AND THE INDEMNIFICATION AND REPRESENTATION OF STATE OFFICERS AND EMPLOYEES

SUMMARY: This act requires the Judicial Review Council (JRC) to notify the Judiciary Committee when it admonishes a judge, workers' compensation commissioner, or family support magistrate and provide the substance of the admonishment and copies of the complaint file. As under prior law, the JRC must inform the complainant that the admonishment was issued and cannot otherwise disclose the substance of an admonishment.

By law, the JRC must make a recommendation to the Judiciary Committee when a judge is renominated or nominated to a different court, including a report of any complaints filed, their disposition, and any investigations by the council. It must make all complaint files available to the committee. Under the act, when a complaint against a judge results in admonishment, public censure, or suspension, the JRC (1) cannot remove, redact, or withhold any information about the complaint, investigation, or disposition before making the file available to the Judiciary Committee and (2) must give the committee any information it has about the judge that the committee chairmen request in writing, including confidential information. The act requires the JRC to provide the information within three business days of receiving a request. It also prohibits the committee from further disclosing the confidential information.

The act places these same requirements and prohibitions on the JRC with respect to information about any complaint, investigation, and disposition, including confidential information it submits with its recommendation about the reappointment of a workers' compensation commissioner.

The act also allows a state officer, employee, or member of the Public Defender Services Commission to sue the state in Superior Court to enforce the provisions on indemnification for their financial losses from certain claims based on their actions while discharging their duties or acting within the scope of their employment.

The act also makes technical changes.

EFFECTIVE DATE: October 1, 2005

INDEMNIFICATION

The law requires the state to indemnify a state officer, employee, or member of the Public Defender Services Commission for financial loss or expense from a claim or judgment based on negligence, deprivation of civil rights, or other acts or omissions causing damage or injury, if the person was acting in the discharge of his duties or scope of employment. Indemnification does not apply if the person acted wantonly, recklessly, or maliciously. The attorney general must defend the person unless it is inappropriate.

If the attorney general does not defend the person and it is later determined that his conduct is covered by

the indemnification statute, the state must pay his legal fees and costs. The act specifies that commission members, like state officers and employees under existing law, are paid these costs after the claim's final disposition.

The act also allows a state officer, employee, or commission member to sue the state in Superior Court to enforce the indemnification provisions.

BACKGROUND

Judicial Review Council

The JRC investigates complaints against judges, workers' compensation commissioners, and family support magistrates. It can publicly censure or suspend for up to one year a judge, commissioner, or magistrate; recommend that the Supreme Court suspend a judge or magistrate for more than one year; recommend that the Supreme Court remove a judge or magistrate; recommend that the governor remove a commissioner; or exonerate the judge, commissioner, or magistrate.

If the JRC finds that a judge's, commissioner's, or magistrate's conduct does not subject him to censure, suspension, or removal but it gave the appearance of impropriety or was unfavorable judicial or magisterial practice, the JRC can admonish the person.

PA 05-135—sHB 6809
Judiciary Committee

AN ACT CONCERNING THE SERVICE OF CAPIAS AND WARRANTS BY STATE MARSHALS AND FEES AND EXPENSES RELATING TO THE EXECUTION OF TAX WARRANTS

SUMMARY: This act allows a state marshal to serve the following legal documents anywhere in the state: (1) capias (a court order to take a person into custody) to arrest a witness who does not appear as required by a subpoena, (2) capias for a witness or defendant who violates a court order regarding a court appearance, or (3) warrant or capias issued by a court or family support magistrate in a family support matter.

The act increases, from 10% to 15%, the share of the taxes collected that a state marshal or constable receives when executing an alias tax warrant and collecting delinquent municipal taxes, in addition to allowable expenses. It also increases the minimum fee for serving tax warrants from $20 to $30. These fees are the same fees state marshals and constables receive for levying an execution.

EFFECTIVE DATE: Upon passage. The provision on tax warrants applies to those issued beginning July 2, 2003.

PA 05-136—sSB 262
Judiciary Committee

AN ACT CONCERNING ACCESS TO DECEDENTS' ELECTRONIC MAIL ACCOUNTS

SUMMARY: This act requires email service providers to give estate executors and administrators access to, or copies of, the decedent's email account. The decedent must have been domiciled in Connecticut when he died, and estate executors and administrators must present proof of their status.

Email service providers need not disclose information if doing so would violate federal law.
EFFECTIVE DATE: October 1, 2005

DEFINITIONS

Email Service Provider

Under the act, an email service provider is an intermediary that gives end-users the ability to send or receive email.

Electronic Mail Account

An electronic mail account contains all email the end-user sent or received that the provider has stored or recorded in its regular course of business. It also contains other stored or recorded electronic information directly related to the email services it provided, such as billing and payment information.

PROOF OF STATUS

Executors and administrators can satisfy the act's requirements by giving the service provider a written request, a copy of the death certificate, and a certified copy of their certificate of appointment. Alternatively, a probate judge who has jurisdiction over the estate can order disclosure.

PA 05-144—sHB 6286
Judiciary Committee
Public Health Committee
Appropriations Committee
Planning and Development Committee

AN ACT CONCERNING THE EMERGENCY USE OF CARTRIDGE INJECTORS

SUMMARY: The act immunizes from civil liability certain people who provide emergency assistance by using a cartridge injector on someone who needs it. A "cartridge injector" is a prefilled, automatic device for delivering a standard dose of epinephrine for an emergency first aid response to allergic reactions. Under the act, the person administering the injector is not liable to the person he assisted for any injuries that result from any acts or omissions in using the injector that constitute ordinary negligence. The immunity does not apply to acts or omissions that constitute gross, willful, or wanton negligence.

Under certain circumstances, the act requires the owner or operator of a before- or after-school program, day camp, or daycare facility to select and supervise an identified staff member trained to administer medication with a cartridge injector to a child in attendance who has a medically diagnosed allergic condition that may require prompt treatment in order to protect him against serious harm or death.
EFFECTIVE DATE: October 1, 2005

IMMUNITY FOR EMERGENCY ASSISTANCE

The act's immunity applies to anyone who voluntarily and gratuitously renders emergency assistance by using a cartridge injector other than in the ordinary course of his employment or practice, and has either:

1. completed a first aid course offered by the American Red Cross, the American Heart Association, the National Ski Patrol, the Department of Public Health (DPH), or any director of health and is certified by the agency or health director offering the course, or
2. been trained to use a cartridge injector by a licensed physician, physician's assistant, or registered nurse, or advance practice registered nurse (APRN).

The immunity also applies to an identified staff member selected by the owner or operator of a before- or after-school program, day camp, or daycare facility to administer medication with a cartridge injector who has received certain training. The act requires that such staff member receive the training specified in both, instead of either, 1 or 2 above. But it does not require that the agency or health director certify that the staff member has completed the first aid course. (PA 05-272 allows a staff member to receive training in either, instead of both.)

REQUIREMENT FOR TRAINED STAFF MEMBER

The requirement for a trained staff member in a before- or after-school program, day camp, or daycare facility applies only if (1) the parent or guardian of a child attending the program, camp, or facility requests it and provides written authorization to use a cartridge injector and (2) there is a written order for its use from a licensed physician, physician assistant, or an APRN.

BEFORE- OR AFTER-SCHOOL PROGRAM

The act defines a "before- or after-school program" as any educational or recreational program for children offered in any building or on school grounds by a local or regional board of education, a municipal agency, or a private provider. The act specifies it does not include a program that DPH licenses. (PA 05-272 exempts private providers from this definition and thus exempts them from the requirements of this act.)

DAY CAMP

The act defines a "day camp" as any recreational camp program a municipal agency operates.

DAY CARE FACILITY

The act defines a "day care facility" as an unlicensed child day care center or group day care home. A "child day care center" is a facility that offers or provides a program of supplementary care to more than 12 related or unrelated children outside their own homes on a regular basis. A "group day care home" is a facility that offers or provides a program of supplementary care to between seven and 12 related or unrelated children on a regular basis. Such supplemental care includes:

1. services administered by a public school system, or a municipal agency or department and located in a public school building;
2. services administered by a private school that complies with state laws that require certain reporting to the commisioner of education, and are approved by the State Board of Education or accredited by a board recognized accrediting agency;
3. recreation operations such as:
   a. creative art studios for children that offer parent-child recreational programs and classes in music, dance, drama, and art

that are no longer than two hours in length;
   b. library programs;
   c. boys' and girls' clubs;
   d. church-related activities;
   e. scouting or camping; or
   f. community-youth programs;
4. informal arrangements among neighbors or certian relatives in their own homes;
5. drop-in supplementary child care operations for educational or recreational purposes where the parents are on the premises and the child receives such care infrequently;
6. drop-in supplementary child care operations in retail establishments where the parents are on the premises for retail shopping, if the operation does not charge a fee or refer to itself as a child daycare center; or
7. religious educational activities a religious institution administers exclusively for children whose parents or legal guardians are members.

BACKGROUND

Ordinary Negligence

Ordinary negligence is the failure to exercise such care as the great mass of mankind ordinarily exercises under the same or similar circumstances (57 Am. Jur. 2d Negligence, § 98).

Gross, Willful, and Wanton Negligence

Gross negligence generally signifies more than ordinary inadvertence or inattention, but less than conscious indifference to consequences (*State v. Carty* 120 Conn 231; *Glorioso v. Police Dept. of Town of Burlington*, 48 Conn. Supp. 1; *Prosser on Torts, Gross Negligence*). The usual meaning assigned to willful and wanton negligence is that the actor has intentionally done an act of unreasonable character, in disregard of a risk known to him or so obvious that he must be assumed to have been aware of it, and so great as to make it highly probable that harm would follow (*Second Restatement of Torts, Section 500*; *57A Am. Jur 2d, Negligence §§ 271 & 272*). Willful or wanton negligence is usually accompanied by such a conscious indifference to the consequences that it almost seemed the actor wanted them to follow. It is an action or omission that amounts to an extreme departure from ordinary care, in a situation where a high degree of danger is apparent and must be more than mere thoughtlessness, inadvertence, or simple inattention.

Related Laws

The law immunizes from civil liability, in the same manner as this act, volunteers associated with, and employees of, certain nonprofit organizations who, under specified conditions, administer a cartridge injector to a child who apparently needs an injection. The nonprofit organizations must offer programs to children under age 17. Volunteers must have (1) been trained in using cartridge injectors by a licensed physician, physician assistant, registered nurse, or APRN and (2) obtained parental or guardian consent to use an injector on the child. The organization is also immune (CGS § 52-557b(e)).

The law requires the public health commissioner to adopt regulations that specify that a licensed child daycare center or group daycare home:

1. may not deny services to a child based on a known or suspected allergy or because he has a prescription for a cartridge injector to treat an allergic reaction or for injectable equipment used to administer glucagon;
2. must, with three weeks after the child's enrollment, have staff trained in the use of such equipment on-site during all hours when the child is on-site;
3. must require the child's parent or guardian to provide the injector- or injectable equipment and a copy of the prescription when the child is enrolled; and
4. must require a parent or guardian enrolling such a child to replace the medication and equipment before its expiration date (CGS § 19a-79; § 19a-79-9a Regulations of Conn. State Agencies).

PA 05-146—sHB 6881
Judiciary Committee

AN ACT CONCERNING NOTIFICATION OF INMATE APPLICATIONS FOR RELEASE OR OTHER RELIEF

SUMMARY: This act statutorily establishes a Victim Services Unit in the Department of Correction (DOC). It requires the unit, in instances when DOC is already required to do so, to:

1. receive notices from inmates applying for release or sentence reduction or review;
2. receive notices from people applying for sex offender registration exemptions, restriction of dissemination of the information, or removal of such a restriction;

3. receive requests for notification from victims or members of an inmate's immediate family, including notices of change of address;
4. notify those who have requested notice; and
5. notify the appropriate board, agency, or court when the unit has complied with the notification requirements.

By law, prosecutors can request notification from the Office of Victim Services (OVS) when an inmate applies for release or sentence reduction or review. The act gives prosecutors the option of requesting this notice from DOC's Victim Services Unit.

The act also specifies that the Victim Services Unit, on behalf of DOC, has access to records that the Board of Pardons and Paroles, sentencing court, and sentence review division may make available in order to perform victim notification duties.

EFFECTIVE DATE: October 1, 2005

BACKGROUND

Related Act

PA 05-68 requires DOC to notify OVS when an inmate is granted a furlough that allows him to serve an unspecified period of time reintegrating into the community immediately preceding his discharge or release on parole.

PA 05-147—sSB 34
Judiciary Committee

AN ACT CONCERNING THE ISSUANCE AND VIOLATION OF RESTRAINING AND PROTECTIVE ORDERS

SUMMARY: This act increases the penalty for criminal violation of a restraining order from a class A misdemeanor to a class D felony (see Table on Penalties), thus making the penalty the same as that for criminal violation of a protective order or a standing criminal restraining order.

It permits a court to issue a standing criminal restraining order when a person is convicted of criminal violation of a protective order or attempt or conspiracy to commit this crime. Like such restraining orders issued in other cases, the court must find that the (1) victim is a member of the offender's family or household member and (2) order will best serve the victim and public's interest given the history, character, nature, and circumstances of the crime. Under existing law standing criminal restraining orders are effective until they are modified or revoked by the court.

The act permits a court to issue a protective order when someone is arrested for 1st or 2nd degree harassment if it finds that the crime victim reasonably feared for his safety. It makes a technical correction by changing the penalty for violating a protective order, which must appear on all such orders, to reflect the current penalty provided in the state penal code.

Lastly, the act removes a requirement that the targets of foreign orders of protection have had notice and an opportunity for a hearing before the orders were issued in order to be guilty in this state of crimes that specifically apply to the targets of protective or restraining orders issued here. These crimes are 1st degree criminal trespass, criminal possession of a firearm or electronic defense weapon, criminal possession of a pistol or revolver, and criminal violation of a restraining order.

EFFECTIVE DATE: October 1, 2005

BACKGROUND

Standing Criminal Restraining Order

Courts issue these orders in certain criminal cases to protect crime victims from future harm. The orders may, among other things, prohibit the offender from restraining, threatening, harassing, assaulting, molesting, sexually assaulting, or attacking the victim, or entering the victim's home. The criminal cases covered are:

1. 1st and 2nd degree assault;
2. 1st and 2nd degree assault of an aged, blind, disabled, pregnant, or mentally retarded person;
3. 2nd and 3rd degree assault with a firearm;
4. 2nd degree assault with a firearm of an aged, blind, disabled, pregnant, or mentally retarded person;
5. 1st, 2nd, and 3rd degree sexual assault;
6. aggravated 1st degree sexual assault;
7. sexual assault in a spousal or cohabitating relationship; and
8. stalking.

Family or Household Member

"Family or household members" are spouses, former spouses, parents and their children, people age 18 or older related by blood or marriage, people age 16 or older either living together or who have lived together, people who have a child together, and people in or formerly in a dating relationship.

Restraining and Protective Orders

Restraining and protective orders are court-issued, civil and criminal orders, respectively, typically issued to protect victims of family violence crimes from

threatened or further harm. These orders may, among other things, prohibit the respondents from restraining, threatening, harassing, assaulting, molesting, sexually assaulting, or attacking the victim, or entering the victim's home. Restraining orders are generally effective for six months. Protective orders are a condition of bail or other release from incarceration.

Harassment

A person commits 1st degree harassment when he has been convicted of at least one of the statutorily specified felonies and, with intent to harass, annoy, alarm, or terrorize another person, he (1) threatens to kill or physically injure that person or another person and (2) communicates the threat in a manner likely to cause annoyance or alarm.

A person commits 2nd degree harassment when he (1) uses indecent or obscene language over the telephone; (2) with intent to harass, annoy, or alarm, communicates with a person in a manner likely to annoy or alarm; or (3) with intent to harass, annoy, or alarm, calls a person, regardless of whether a conversation ensues, in a manner likely to annoy or alarm.

First-Degree Criminal Trespass

It is 1st degree criminal trespass for the subject of a foreign protective order to enter or remain in a building or any other premises in violation of the order.

Criminal Violation of a Restraining Order

A person commits criminal violation of a restraining order when he, as the target of the foreign order, knows of its terms and (1) fails to stay away from a person or place or (2) contacts, imposes restraints on the person or liberty of, threatens, harasses, assaults, molests, sexually assaults, or attacks another person.

PA 05-152—sSB 1263
Judiciary Committee

AN ACT CONCERNING COURT OPERATIONS

SUMMARY: This act makes numerous changes in laws relating to court operations. Specifically, it:

1. requires a $5 assessment to be imposed against people convicted of speeding, reckless driving, or driving under the influence instead of limiting the assessment to people who were convicted of these offenses and who forfeited a cash bond or guaranteed bail bond certificate posted under state law or under reciprocal agreements made with other states;
2. makes changes in the notice requirements for protective orders;
3. allows court records concerning title to land to be microfilmed and retained in electronic format;
4. allows a person filing a lawsuit to post a bond either before or after the writ, summons, and complaint is signed instead of requiring it before;
5. requires that defendants arrested for a violation of probation or conditional discharge or failure to appear be arraigned at the court that has jurisdiction over the underlying case instead of the court where the crime occurred or the court in the geographical area where the arrest was made;
6. makes several changes in the rules regarding transporting a defendant to a correctional facility to post bail; and
7. establishes new disclosure and confidentiality requirements regarding (a) information obtained during any mental health screening or assessment of a child and (b) certain court orders directed at a youth in crisis.

The act authorizes a crime victim or an inmate's immediate family member to file a request with the Office of Victim Services (OVS) or the Department of Correction (DOC) to be notified when the inmate is granted a furlough that allows him to serve an unspecified period of time reintegrating into the community immediately before his discharge or release on parole.

By law, OVS must notify, by certified mail, victims who have requested notice of an inmate's scheduled release. The notice must inform each victim of the inmate's release date. Victims are responsible for making sure that OVS has their current mailing address. The act specifies that OVS and DOC can share with each other up-to-date address information on crime victims in order to facilitate victim notification.

Finally, the act makes several technical changes.

EFFECTIVE DATE: October 1, 2005

PROTECTIVE ORDERS (§ 3)

By law, after the court grants a protective order, the clerk must provide two certified copies of it to the applicant and a copy to the respondent (person the order is against). Under prior law, immediately after a proper officer served the respondent, the officer had to provide a true and attested copy of any ex parte order, including the applicant's affidavit and a cover sheet stating the date and time the respondent was served, to the law enforcement agency for the town in which the applicant resided and worked and the respondent resided. (An ex parte order is one granted in connection with a judicial

proceeding in which the opposing party did not receive notice and was not present.)

The act eliminates the officer's duty to provide a copy of any ex parte order, including the applicant's affidavit, and specifies that the officer may send or cause to be sent, by facsimile or other means, a copy of the application stating the date and time the respondent was served. The act also applies these requirements to protective orders issued after a hearing.

Existing law, unchanged by the act, requires the court clerk to send by fax or other means a copy of any order, or the information contained in the order, to the law enforcement agency or agencies where the applicant resides and works and where the respondent resides within 48 hours after the order was issued.

RETENTION AND DESTRUCTION OF COURT RECORDS

The act authorizes the chief court administrator to microfilm any court records concerning title to land that are required to be retained by (1) court rules, (2) directives promulgated by the Office of the Chief Court Administrator, or (3) statute. The law defines microfilm to include microcard, microfiche, microphotograph, electronic medium, or any other process that actually reproduces or forms a durable medium for reproducing the original. The act authorizes him to retain court records concerning title to land in electronic format. He may already do so for records, papers, and documents relating to other things.

STRIKING AN OFFICER WITH A MOTOR VEHICLE

The act requires that a first offense of striking an officer with a motor vehicle be processed as an infraction, which allows the defendant to pay the fine by mail without a court appearance. A person commits this offense if he strikes certain officers, including a fire police officer, with a motor vehicle while the officer is engaged in traffic control or regulation, if he is in uniform or prominently displays his badge, and the officer was complying with the law. The first offense carries a fine of $150 to $250. (By law, a subsequent offense carries a fine of up to $250, imprisonment for up to 30 days, or both.)

TRANSPORTATION OF DEFENDANT TO CORRECTIONAL FACILITY TO POST BOND

By law, when any person is taken into custody on a capias (court order directing that a person be brought before the court) issued by the Superior Court, the proper officer taking the person into custody must, without undue delay, bring him before the court that issued the capias. The act specifies that this requirement also applies to a state police officer who takes a person into custody.

By law, if a courthouse lockup operated by the Judicial Branch is available at the court that issued the capias and is operational when the officer brings the person to the court, the officer must transfer the custody of the person to a judicial marshal at the court, unless the person requires medical attention or there is insufficient space for him at the lockup.

Under prior law, if the court was not in session, the officer had to, without undue delay, bring him before the clerk or assistant clerk of the court that issued the capias during the clerk's office hours. If the clerk's office was not open, the officer had to, without undue delay, take him to a community correctional center in the judicial district where the capias was issued or, if there was no community correctional center within such judicial district, to the nearest one.

Under the act, if the court is in session, the judicial marshal must present the arrested person before the court. If the court is not in session but the clerk's office is open, the judicial marshal must present him before the clerk, assistant clerk, or a person the chief court administrator designated.

If the court is not in session and the clerk's office is closed, and the arrested person indicates to the judicial marshal that he cannot meet the conditions of release fixed by the court, the judicial marshal must immediately:

1. transport him to a community correctional center within the judicial district or, if none exists, to the nearest one, to set conditions of release or
2. if it is more expedient, hold him in custody until the clerk's office is open or the next court session, to set conditions of release.

If the person does not indicate to the judicial marshal that he cannot meet the conditions of release the court established, the judicial marshal must hold him in custody until the clerk's office is open or the next court session, for the purpose of setting conditions of release.

If a courthouse lockup the Judicial Branch operates is not available at the court that issued the arrest warrant, is available but not operational, or has insufficient space, the proper officer or state police officer taking the person into custody must, without undue delay, transport him to a community correctional center within the judicial district or, if none exists, to the nearest one to satisfy the release conditions the court set.

YOUTH IN CRISIS

The act allows records concerning a youth in crisis (YIC) who has been emancipated from his parents by court order to be available to the Department of Motor Vehicles (DMV) if they are relevant to the emancipation order.

The act gives DMV access to relevant parts of court records concerning a YIC. By law, courts can order that such youths' driving privileges be suspended for up to one year.

The act allows this information to be disclosed for:

1. the purposes of any court-ordered evaluation, treatment, or provision of services for the child;
2. mandated reporter requirements concerning an abused, neglected, or injured child; or
3. mandated reporter requirements concerning abused, neglected, exploited, or abandoned people 60 years of age or older.

It also grants Judicial Department employees access to any records the department maintains and permits disclosure in accordance with policies and procedures the chief court administrator adopts.

BACKGROUND

Protective Orders

Any family or household member who has been subjected to a continuous threat of present physical pain or injury by another family or household member or person he was dating may apply to the Superior Court for a protective order (CGS § 46b-15).

The court, after a hearing, may make whatever orders it deems appropriate to protect the applicant, any dependent children, or others. The order may enjoin the respondent from (1) restraining the applicant; (2) threatening, harassing, assaulting, molesting, sexually assaulting, or attacking the applicant; or (3) entering the applicant's dwelling. If an applicant alleges an immediate and present physical danger, the court may issue an ex parte order.

Furlough

A "furlough" is the temporary custodial transfer for an authorized purpose of an inmate from an institution to the community under a verified community sponsor's supervision.

Youth in Crisis

By law, a "YIC" is defined as 16- and 17-year-olds who (1) run away from home or some other residence without cause; (2) are beyond their parent's, guardian's, or other custodian's control; or (3) are habitual truants.

Related Act

PA 05-68 requires DOC to notify OVS when an inmate is granted a furlough that allows him to serve an unspecified period of time reintegrating into the community immediately before his discharge or release on parole.

PA 05-154—sHB 6849
Judiciary Committee
Human Services Committee

AN ACT CONCERNING THE APPOINTMENT AND DUTIES OF TEMPORARY CONSERVATORS

SUMMARY: This act restricts the powers of temporary conservators and requires additional court oversight of their activities. It restricts the probate court's authority to appoint them and requires the court to hold a hearing within 72 hours of making an ex parte (without advance notice and a hearing) appointment. By law, interested parties may file applications with the probate court, accompanied by medical documentation, to place people unable to take care of their own financial or health care needs under conservatorship. Temporary conservators are appointed in cases involving potential irreparable harm. They serve for up to 60 days or until a permanent conservator is appointed, whichever occurs first.

EFFECTIVE DATE: Upon passage

BASIS FOR APPOINTMENT

The act adds a requirement that the risk of irreparable harm to a person needing a temporary conservator be immediate. It requires the probate court to limit the temporary conservator's powers to the circumstances that gave rise to the application and to make specific findings to justify these limitations. In doing so, it must consider (1) the present and previously expressed wishes of the person being placed under temporary conservatorship (the ward) and his abilities; (2) previous appointments of attorneys-in-fact, health care agents, or other fiduciaries; (3) other support services available to the ward; and (4) other relevant evidence. Prior law did not specify matters that the court had to consider.

Ex Parte Appointments

By law, probate courts may appoint a temporary conservator without prior notice to the ward and without appointing him legal counsel (ex parte). The act restricts this procedure to situations in which the court determines that the delay resulting from giving notice and appointing the attorney would cause immediate and irreparable injury to the ward's physical health or financial or legal affairs. The court must make a specific finding on the appointment decree stating the injury that formed the basis for its determination and why a hearing with appointed counsel was not required. Otherwise, it must provide the ward with prior notice, an attorney, and a hearing.

When the court makes an ex parte appointment, the act requires it to hold a hearing within 72 hours of its decree, excluding weekends and holidays. The court must mail or give other appropriate notice of the hearing to the ward and his next of kin and attorney, and include copies of the application for appointment and physician's report as required under existing law. Prior law required court hearings only upon written request.

After the hearing, the act requires, rather than allows, the court to confirm or revoke the temporary conservator's appointment. It also permits the court to modify the temporary conservator's assigned duties, responsibilities, or powers.

RESTRICTING TEMPORARY CONSERVATOR'S POWER TO RELOCATE WARD

Except for nursing home placements, the act allows temporary conservators to relocate their wards only after attending a court hearing and obtaining a court ruling that the relocation is necessary.

Nursing Home Placements

Under the act, temporary conservators may place wards in nursing homes when necessary. They must first file a report with the probate court that appointed them unless (1) the nursing home admission results from the ward's discharge from a hospital or (2) the ward's health or financial and legal affairs would be irreparably harmed by doing so. In such cases, they must place the ward in a nursing home before filing a report.

The report must contain the temporary conservator's reasons for choosing a nursing home placement; the community resources he considered to avoid it; and why the ward's physical, mental, and psychosocial needs cannot be met in a less restrictive and more integrated setting. Under the act, community resources include services provided by the departments of Social Services, Mental Health and Addiction Services, and Mental Retardation; the Office of Protection and Advocacy for Persons with Disabilities; area agencies on aging; independent living centers; residential care homes; and congregate or subsidized housing.

The temporary conservator must file reports containing the same information within five days after making an emergency placement. They must also include a statement as to the hospital discharge or a description of the irreparable injury that the placement avoided.

The act requires the temporary conservator to notify the ward and any other interested parties the court designates of the placement, and to provide copies of his report. If any of the notified parties requests a hearing, the court must hold it no later than 30 days after the request. It can also hold a hearing on its own motion. After the hearing, the court must order the ward placed and maintained in a less restrictive and more integrated setting if it determines that the ward has adequate resources, either from his own estate or through private or public assistance.

PA 05-155—sHB 6851
Judiciary Committee
Human Services Committee

AN ACT CONCERNING THE DUTIES OF A CONSERVATOR WHO PLACES A WARD IN AN INSTITUTION FOR LONG-TERM CARE

SUMMARY: This act requires a conservator to file a report with the probate court that appointed him when he determines it is necessary to place his ward in a long-term care institution (a skilled nursing facility or intermediate care facility).

The act requires the conservator to place the ward before filing the report if the placement results from the ward's discharge from a hospital or if irreparable injury to his mental or physical health or financial or legal affairs would result from filing the report before placement. In these circumstances, the conservator must (1) file the report within five days after making the placement and (2) include a statement about the hospital discharge or a description of the irreparable injury that placement averted. In other circumstances, the conservator must file the report before making the placement.

In either case, the act requires the conservator to give notice of the placement and a copy of the report to the ward and other interested parties determined by the probate court. The ward or an interested party can request a hearing on the report and placement, and the court must hold the hearing within 30 days of the request. The act allows the court to hold such a hearing

even though no request is made. If the court then decides that the ward's physical, mental, and psychosocial needs can be met in a less restrictive and more integrated setting within the limits of the ward's resources, either through his estate or private or public assistance, the act requires the court to order the ward placed and maintained in such a setting.
EFFECTIVE DATE: October 1, 2005

REPORT CONTENTS

The act requires the report to state:
1. the basis for the conservator's determination;
2. what community resources have been considered, including those offered through area aging agencies; the departments of Social Services, Mental Health and Addiction Services, and Mental Retardation; the Office of Protection and Advocacy for Persons with Disabilities; independent living centers; residential care homes; and congregate or subsidized housing; and
3. the reasons why the ward's physical, mental, and psychosocial needs cannot be met in a less restrictive and more integrated environment.

BACKGROUND

Related Act

PA 05-154 makes the same changes with respect to temporary conservators.

PA 05-169—sHB 6579
Judiciary Committee

AN ACT CONCERNING CRIME VICTIMS

SUMMARY: Although youthful offender (YO) and juvenile delinquency proceedings are generally private, this act prohibits a judge from excluding victims from attending unless he finds good cause for doing so after hearing from the parties and the victim. Judges must clearly and specifically state their reasons on the record. It requires courts, in YO proceedings, to allow crime victims to make a statement before the court accepts a plea agreement or imposes a sentence based on a plea. It defines "victim" as the crime victim or his parent or guardian, legal representative, or court-appointed victim advocate.

Lastly, the act absolves peace officers of liability for failing to comply with requirements under existing law to provide crime victims with certain information. Specifically, peace officers are not liable for failing to (1) present a card to crime victims that informs them of their rights and available services or (2) refer them to the Office of Victim Services for additional information about their rights and available services. Under existing law, "crime victims" are people who suffer direct or threatened physical, emotional, or financial harm as a result of a crime, including the immediate family of a minor, incompetent, or deceased victim or anyone designated by a deceased victim.
EFFECTIVE DATE: October 1, 2005

BACKGROUND

Youthful Offenders

A YO is a 16- or 17-year-old who (1) has not previously been (a) convicted of a felony, (b) adjudged to be a serious or serious repeat juvenile offender, or (c) permitted to take accelerated rehabilitation and (2) has been charged with any crime other than:
1. a class A felony,
2. risk of injury to a minor involving contact with the intimate parts of a minor under age 16, or
3. various degrees of sexual assault.

If the court grants YO status, the information and proceedings are confidential and do not become a part of the person's criminal record.

Court-Appointed Victim Advocates

If a victim agrees, the law allows a court to appoint any appropriate person to act as his advocate. These advocates provide initial screening of personal injury cases, prepare victim statements for placement in court files, provide information needed for more effective case processing, provide information and advice to individual victims, direct victims to services, coordinate victims' applications to the Victim Advocate's Office, and help victims process claims for restitution.

PA 05-170—sHB 6602
Judiciary Committee
Government Administration and Elections Committee
Insurance and Real Estate Committee
Legislative Management Committee

AN ACT CONCERNING CLAIMS AGAINST THE STATE

SUMMARY: By law, a claimant who filed a claim for more than $7,500 who wishes to protest the claims commissioner's decision to deny it or to order the payment of $7,500 or less may waive immediate payment and have his claim submitted to the General Assembly for review. This act requires that the request for review be in writing and filed with the claims

commissioner within 20, instead of 10, days after the date the claimant receives a copy of the decision. The notice must indicate the deadline for filing the request. Under the act, the filing of a request for review automatically stays the claims commissioner's decision.

The act requires that the notice the commissioner gives claimants of their right to a legislative review of his decision be in writing. It requires the legislature to review claims submitted by the claims commissioner in accordance with procedures it establishes.

The act authorizes the legislature to return any claims commissioner decision that comes before it to the claims commissioner for whatever further proceedings the legislature directs.

The act specifies what must be included in the annual report the attorney general must, by law, submit on the status and disposition of lawsuits that either the claims commissioner or legislature authorized. It expands the requirement to include other lawsuits filed against the state in which the attorney general represents the state. It requires that the attorney general submit the report to the Judiciary Committee instead of the legislature.

The act requires the Department of Correction (DOC) commissioner to establish a lost property board to hear and determine any claim against the state by a correctional facility inmate who seeks up to $3,500 for lost or damaged personal property.

It authorizes the State Insurance Risk Management Board to recommend to the governor and legislature policies designed to reduce risks and hazards that may result in state liability for tortious conduct. It requires that the board's annual report to the governor also be made to the Judiciary Committee, and requires that certain additional information be included.

EFFECTIVE DATE: October 1, 2005

LEGISLATIVE ACTIONS

Under prior law, the legislature could (1) accept or alter any claims commissioner recommendation or (2) reject a recommendation and grant or deny the claimant permission to sue the state. The act makes the legislature's authority more explicit and detailed for each of the three possible types of recommendations the commissioner can make: (1) a denial; (2) an order of a payment for $7,500 or less; or (3) a recommendation for a payment of more than $7,500.

Denial of Claim by Commissioner

When the commissioner denies a claim seeking more than $7,500, the act authorizes the legislature to (1) confirm the decision or (2) vacate it and order the payment of a specified amount or authorize the claimant to sue the state.

Commissioner Order to Pay Claim of $7,500 or Less

When the commissioner orders payment of $7,500 or less, for a claim for more than $7,500, the act authorizes the legislature to (1) confirm the decision, (2) modify it by ordering that a different amount be paid, or (3) vacate the decision and either deny payment or authorize the claimant to sue the state.

Commissioner Recommendation to Pay a Claim of More Than $7,500

When the commissioner recommends paying a claim for over $7,500, the act authorizes the legislature to:

1. accept the recommendation and order payment of the specified amount,
2. modify the recommendation by ordering that a different amount be paid, or
3. reject the recommendation and order that no payment be made or authorize the claimant to sue the state.

Remand to Claims Commissioner

The act also authorizes the legislature to return any claims commissioner decision to the claims commissioner for whatever further proceeding it directs.

LEGISLATIVE ORDERS TO PAY A CLAIM

The act requires that, when the legislature orders payment of a claim, the clerk of the Claims Commissioner's Office deliver to the comptroller a notice of the order. The comptroller must make payment from legislative appropriations for the payment of claims or, in the case of contractual claims for goods or services furnished or for property leased, from the appropriation of the agency that received the goods or services or occupied the property.

ATTORNEY GENERAL ANNUAL REPORT

The act requires the attorney general's annual report to the Judiciary Committee to include:

1. the number of lawsuits against the state pending in state and federal court, categorized by the alleged grounds;
2. the number of new lawsuits filed in the preceding year in state and federal court, categorized by the alleged grounds;
3. the number of lawsuits disposed of in the preceding year, categorized by their grounds and whether they were disposed of by settlement or litigation to final judgment, and

the amount paid for lawsuits within each category; and

4. other information the committee requests.

The report must identify each lawsuit disposed of by paying more than $100,000.

LOST PROPERTY BOARD

The act requires the DOC commissioner to create a lost property board to hear and decide inmate claims for up to $3,500. It may award damages if it determines a claim is one that, in the interest of equity and justice, the state should pay. If the board denies a claim, in whole or in part, the inmate may, within 60 days after the decision, present the claim to the claims commissioner. The act requires the correction commissioner to adopt implementing regulations. (It does not explicitly establish a statute of limitations for filing a claim with the board.)

Filing a claim with the board tolls the time limit for presenting one to the claims commissioner. By law, claims must be filed with the claims commissioner within one year from the date when the damage is sustained or discovered, or by exercising reasonable care, should have been discovered, and within three years from the date of the act or event complained of.

STATE INSURANCE AND RISK MANAGEMENT BOARD

The act requires the State Insurance and Risk Management Board's annual report to include (1) any recommendations it adopts for enacting policies designed to reduce risks and hazards that may result in state liability for tortious conduct and (2) the status and disposition of claims administered through the state insurance program.

It also requires that the portion of the report on the status and disposition of claims include:

1. the number of claims pending under the state insurance program, categorized by the alleged grounds;
2. the number of new claims brought under the program in the preceding year, categorized by their alleged grounds;
3. the number of claims disposed of in the preceding year, categorized by their grounds and whether they were disposed of by settlement or litigation to final judgment, and the amount paid for claims within each category; and
4. other information within the board's cognizance that the Judiciary Committee may request.

The report must identify each claim disposed of by paying more than $100,000.

BACKGROUND

Claims Commissioner Law

The law requires those who wish to sue the state to go to the claims commissioner unless their case falls within an exception established by law. They must file their claim within one year after it accrues. A claim accrues on the date the damage or injury is sustained or discovered or, in the exercise of reasonable care, should have been discovered. But no claim may be presented more than three years after the date of the act or event complained of (CGS § 4-148).

The law excludes:

1. claims for the periodic payment of disability, pensions, retirement, or other employment benefits;
2. claims for tax refunds;
3. claims for which an administrative hearing procedure is established by law; and
4. requests by political subdivisions for the payments of grants in lieu of taxes.

State Insurance and Risk Management Board

The State Insurance and Risk Management Board determines how the state insures itself against losses by purchasing insurance to obtain the broadest coverage at the most reasonable cost. It must direct the negotiations to purchase such insurance and determine whether deductible or other risk retention provisions should be included in the insurance contract. Where appropriate, it must determine that the state self-insure and may request funds to establish reserves and carry out practices necessary to safeguard the self-insurance activity. It may develop and implement risk management and loss prevention programs related to insurance plans.

PA 05-173—sHB 6744
Judiciary Committee
Transportation Committee

AN ACT CONCERNING RESTRICTIONS ON THE OPERATION OF MINI-MOTORCYCLES

SUMMARY: This act prohibits someone from operating or riding as a passenger on a mini-motorcycle or, as the owner of such a vehicle, allowing someone to operate or ride as a passenger on one on any highway, public sidewalk, or public property in the state. It also prohibits operation on private property without the property owner's written permission.

The act requires anyone offering a mini-motorcycle for sale, lease, or rent to provide warning labels and

advisories on the safe and legal use of such vehicles, the limitations on their use, and the possible consequences for violating the limitations.

The act designates violations of any of its provisions as infractions and requires that the police impound the mini-motorcycle for 48 hours for illegal operation.

The act specifies that it does not prohibit municipalities from adopting more restrictive limitations on the use, sale, lease, or rent of mini-motorcycles.

The Department of Motor Vehicles (DMV) must adopt implementing regulations by January 1, 2006.

EFFECTIVE DATE: October 1, 2005

MINI-MOTORCYCLES DEFINED

The act defines a mini-motorcycle as a vehicle that (1) has no more than three wheels in contact with the ground, (2) is equipped with or designed to have a seat on which a rider may sit, (3) is propelled by an engine having a piston displacement of 50 cubic centimeters or less, (4) is capable of a speed in excess of 20 miles per hour, and (5) is not eligible to be registered as a motor vehicle.

USE PROHIBITIONS

This act prohibits someone from operating or riding as a passenger on a mini-motorcycle on any highway, public sidewalk, or public property in the state. It also prohibits a mini-motorcycle owner from allowing someone to operate it or to ride as a passenger on it on any highway, public sidewalk, or public property in Connecticut.

The act prohibits someone from operating a mini-motorcycle on someone else's property unless he is carrying the property owner's written permission to do so and, if he is carrying a passenger, carrying written permission to do that. It prohibits someone from riding as a passenger on private property unless the operator owns it, or is carrying the property owner's written permission to operate on his property with a passenger. It prohibits a mini-motorcycle owner from allowing someone to operate it, or to ride on it as a passenger, on someone else's property unless the operator is carrying the property owner's written permission to operate, and if applicable, to carry a passenger.

REQUIREMENTS FOR MINI-MOTORCYCLE SALE, LEASE, OR RENT

The act prohibits anyone from offering a mini-motorcycle for sale, lease, or rent without a warning label giving information about the safe and legal use of the mini-motorcycle and about the use limitations and possible consequences of violating these limitations. The act also requires the offeror, when the sale, lease, or rental of the mini-motorcycle occurs, to provide a clear and conspicuous written statement to the receiver that is separate from the warning label providing the same warning information with respect to safe and legal use, limitations on use, and possible consequences of violation.

Advertisements for mini-motorcycles and oral communications of someone offering one for sale, lease, or rent may not contain information that is inconsistent with the information required by the act. These requirements do not apply to someone who sells fewer than five used mini-motorcycles in one calendar year, but the burden of proving the inapplicability of the requirements rests with the person claiming to be exempt.

Until DMV adopts the implementing regulations, the act requires anyone offering a mini-motorcycle for sale, lease, or rent to display warning information, advertise, and make oral communications in a manner that is consistent with the act's requirements.

POLICE DUTY TO IMPOUND MINI-MOTORCYCLES

The act requires the officer who issues a summons for illegal operation to cause the mini-motorcycle to be impounded for a period of 48 hours after he issued the summons. The act allows the mini-motorcycle owner to reclaim it after the 48-hour period upon payment of all transportation and storage costs.

DMV REGULATIONS

The act requires the DMV to adopt regulations by January 1, 2006 to implement the provisions of the act and, specifically, to set forth the warning information the act requires, the manner of its display, and to set reasonable transportation and storage fees.

BACKGROUND

Infraction

Infractions are punishable by fines, usually set by Superior Court judges, of between $35 and $90, plus an additional fee based on the amount of the fine and a $20 surcharge. An infraction is not a crime; thus, violators do not have criminal records and can pay the fine by mail without making a court appearance.

PA 05-182—sSB 1356
Judiciary Committee
Public Safety and Security Committee
Energy and Technology Committee

AN ACT AUTHORIZING LAW ENFORCEMENT OFFICIALS TO REQUEST EX PARTE AUTHORITY TO COMPEL DISCLOSURE OF TELEPHONE AND INTERNET RECORDS

SUMMARY: This act requires telecommunications carriers and electronic communication and remote computing service providers to disclose their customers' call-identifying information or basic subscriber information, respectively, to designated law enforcement officials based on court orders, rather than search warrants. It requires Superior Court judges to issue these orders without notifying the customer or holding a hearing (ex parte) when the official states (1) a reasonable suspicion that a crime has been, or is being, committed or that emergency (exigent) circumstances exist and (2) that the customer information is relevant and material to an ongoing criminal investigation. It establishes post-disclosure deadlines for notifying the customer that his call-identifying or subscriber information has been given to law enforcement officials. And it protects providers who disclose the information in good faith.

The act also requires law enforcement officials to report to the chief state's attorney annually on the orders, including grounds for requesting them. It requires the chief state's attorney to file yearly reports with the Judiciary Committee.
EFFECTIVE DATE: October 1, 2005

DEFINITIONS

The act adopts federal definitions for the service providers and customer records it covers.

Telecommunications Carrier

A "telecommunications carrier" is a person or entity that transmits or switches wire or electronic communications as a common carrier for hire. It includes commercial mobile service providers and wire or electronic switching or transmission services that substantially replace portions of a local telephone exchange service, as determined by the Federal Communications Commission.

Electronic Communication and Remote Computing Services

An "electronic communication service" is any service that enables its users to send or receive wire or electronic communications. A "remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communications system.

Basic Subscriber Information

"Basic subscriber information" is (1) name, address, telephone or instrument number, or other subscriber number or identity, including any assigned Internet protocol address; (2) local and long distance telephone connection records or records of session times and durations; (3) length of service, including start date, and types of services utilized; and (4) source of payment for such service, including any credit card or bank account number.

Call-Identifying Information

"Call-identifying information" is dialing or signaling information that identifies the origin, direction, destination, or termination of each communication generated or received by a subscriber or customer by means of any equipment, facility, or service of a telecommunications carrier.

Law Enforcement Official

The law enforcement personnel authorized to obtain disclosure orders are:

1. the chief state's attorney and each state's attorney,
2. Division of Criminal Justice inspectors,
3. sworn members of the State Police, and
4. sworn members of an organized local police department.

CONTENTS OF COURT ORDERS

Court disclosure orders must include the case number assigned to the criminal investigation giving rise to the order, the date and time of issuance, and the name of the issuing judge. The judge must sign the order within 48 hours of its issuance, or the next business day, whichever is earlier. (It is unclear whether providers must disclose their records when presented with an unsigned order.)

SERVICE PROVIDER COMPLIANCE

The act requires telecommunications carriers to disclose call-identifying information and electronic communication or remote computing service providers to disclose basic subscriber information to a designated law enforcement official when a judge issues a disclosure order. They must be paid the reasonable

expenses they incur to comply with the order, and they are subject to the same legal protections and good faith immunity for their actions as are available under federal law.

SUBSCRIBER OR CUSTOMER NOTIFICATION

The act requires the law enforcement official to mail a notice to the person whose records were the subject of the order. This must be done within 48 hours after the order is issued. Notification can be delayed for up to 90 days if the enforcement officer presents the issuing judge a written certification that there is reason to believe that notification of the order's existence may result in:

1. an individual's life or physical safety being endangered,
2. flight from prosecution,
3. evidence tampering or destruction,
4. intimidation of potential witnesses, or
5. seriously jeopardizing the investigation.

The officer must keep a true copy of the certification and may ask the court for an additional extension during the initial 90-day period.

REPORTS TO JUDICIARY COMMITTEE

The act requires each law enforcement officer to report to the chief state's attorney by January 15 of each year on orders issued the previous year. The chief state's attorney must compile the data in the individual reports and provide it in a report to the Judiciary Committee by January 31 of each year.

The individual and chief state's attorney's reports must include:

1. the number of orders issued,
2. the types of entities they were directed to,
3. whether the order sought call-identifying or basic subscriber information,
4. the statutory offenses that were being investigated,
5. the number of delayed notifications courts approved and the reasons for each,
6. the number of motions to vacate that were filed and their dispositions,
7. the number of investigations concluded and their final outcomes, and
8. the status of any criminal prosecution resulting from the investigations.

PA 05-197—sSB 1124
Judiciary Committee
Public Health Committee

AN ACT CONCERNING THE CUSTODY OF REMAINS OF DECEASED PERSONS AND ANNUAL MEETINGS AND FINANCIAL STATEMENTS OF CEMETERY ASSOCIATIONS

SUMMARY: This act (1) expands the law governing advance directives people can create regarding the disposition of their bodies and (2) imposes financial reporting and conflict-of-interest rules on cemetery associations. It permits advance directives to include disposal options other than cremation (including burial, interment, or cryogenic preservation) or to designate someone to make decisions on the deceased's behalf. It also simplifies the process for creating advance directives, includes a model form, and eliminates a requirement that a Public Health Department-authorized form be used.

The act limits the steps funeral directors must take before honoring the advance directive. Existing law governs the custody and disposal of remains when the decedent has died without an advanced directive or when the designated representative or next of kin cannot be located or refuses to take custody of the remains.
EFFECTIVE DATE: October 1, 2005

MODEL FORM

The model form includes most of the information required under the prior advance cremation directive law. But it does not require someone making an advance directive to provide the name, address, and telephone number of his next of kin if the directive names someone else as the custodian or decision–maker with respect to the disposition of his remains, as prior law required.

The act declares that execution of an advance directive under the act's terms revokes any similar document the maker previously executed, except the designation of another adult to make anatomical gift decisions pursuant to existing state law or otherwise enforceable anatomical gifts made during his lifetime.

FUNERAL DIRECTORS

The act eliminates funeral directors' obligations to attempt to contact the decedent's next of kin when another person has been designated in the directive, and precludes challenges to actions they take to comply with the directive's terms, so long as their actions were reasonable and warranted under the circumstances.

It retains the requirement that funeral directors seek a probate court ruling when the decedent's designated

custodian or next of kin has not been located within 48 hours or refuses to act.

CEMETERY ASSOCIATIONS

The act requires cemetery association boards to hold annual meetings and keep minutes of them for at least 20 years. Each year's minutes must include a board-approved financial statement containing an accounting of (1) the association's income and expenses for the last fiscal year and (2) its assets.

It allows interested parties to petition the probate court to require disclosure of annual meeting minutes. The court may grant this petition after giving notice to all interested parties and holding a hearing. The court determines which years' minutes are reasonable and necessary if (1) the petition was not filed for harassment purposes and (2) the petitioner's interest is sufficient to warrant disclosure.

The act also prohibits cemetery association officers, directors, and trustees from also serving as an officer, director, or trustee of any company that manages or operates any aspect of the cemetery.

BACKGROUND

Related Act

PA 05-81 establishes a process and requirements for funeral directors to dispose of the cremated remains of a deceased person, including unclaimed or unaccepted remains.

PA 05-200—sHB 6746
Judiciary Committee
Public Safety and Security Committee

AN ACT CONCERNING THE CANCELLATION OR REVOCATION OF THE CERTIFICATION OF POLICE OFFICERS AND THE CONDITIONS FOR THE REINSTATEMENT OF POLICE OFFICERS UPON RETURN FROM INTERNATIONAL PEACEKEEPING OPERATIONS

SUMMARY: This act authorizes the Police Officer Standards and Training Council (POST) to cancel or revoke a police officer's certificate if he is found by a law enforcement unit, pursuant to its procedures, to have committed an act that constitutes the crime of (1) tampering with or fabricating evidence, (2) perjury, or (3) 2nd degree false statement.

By law, when POST finds a reasonable basis for canceling or revoking the certification of a police officer, police training school, or law enforcement instructor, it must provide an adequate opportunity for a hearing. The act (1) specifies that POST provide notice of the hearing, (2) requires POST to have a de novo review (take a fresh look at the evidence), and (3) requires cancellation or revocation to be based on clear and convincing evidence.

The act also makes changes in the law that provides job protection to a state or local police officer who takes a leave of absence or resigns to participate in certain international peacekeeping operations.

EFFECTIVE DATE: October 1, 2005, except the provisions on international peacekeeping are effective upon passage.

PEACEKEEPING OPERATIONS AND JOB PROTECTION

PA 04-241 entitles a state or local police officer who takes a leave of absence or resigns to participate in international peacekeeping operations under the supervision of the United Nations, the Organization for Security and Cooperation in Europe, or other sponsoring organization to (1) the position he held when he took the leave or (2) if his job is unavailable, an equivalent position with equivalent benefits, pay, and other employment terms and conditions. Employment must be with a company the U.S. State Department has contracted with to recruit, select, equip, and deploy police officers for such operations.

The act:

1. specifies that the job protection applies to officers who take leave or resign as of September 11, 2001;
2. entitles an officer to his previous or an equivalent job on his return to the United States rather than on return from leave;
3. requires an officer, within six months of his return to the United States, to notify his employer of his return and his desire to return to his job or an equivalent position; and
4. prohibits POST from canceling or revoking an officer's certificate while he is participating in one of these international peacekeeping operations outside the U.S. and for six months after his return to the U.S., except as otherwise provided by law.

BACKGROUND

Police Officers Subject to POST Authority

By law, the following are subject to POST Council authority: municipal police officers, appointed constables who perform criminal law enforcement duties, special policemen, and members of a law enforcement unit who perform police duties. Police

officers must be certified within one year of employment. In order to continue serving, they must be recertified. They may not serve during any period when their certificate is cancelled or revoked.

Grounds on Which POST Can Revoke a Certificate

By law, POST can cancel or revoke a certificate for the following reasons:

1. it was issued in error;
2. it was obtained by misrepresentation or fraud;
3. the holder falsified a document to get or renew it;
4. the holder was convicted, or found not guilty by reason of mental disease or defect, of a felony;
5. the holder was convicted of misdemeanor drug possession or accepting gifts or rewards to influence his conduct;
6. the holder was refused a certificate or similar authorization or had one cancelled or revoked in another jurisdiction on grounds similar to those that warrant cancellation or revocation in Connecticut; or
7. the holder was found by a law enforcement unit, pursuant to its procedures, to have used a firearm improperly and caused death or serious physical injury to another person.

Tampering With or Fabricating Evidence

A person commits this crime if he believes that an official proceeding is pending or will be instituted and he (1) alters, destroys, conceals, or removes a record, document, or thing to impair its validity or availability in the proceeding or (2) makes or uses a record, document, or thing knowing it is false in order to mislead a public servant regarding the proceeding. This is a class D felony (see Table on Penalties).

Perjury

A person commits this crime if he intentionally makes a false statement, swears, affirms, or testifies falsely to a material statement that he does not believe is true while under oath in an official proceeding. This is a class D felony (see Table on Penalties).

2nd Degree False Statement

A person commits this crime if he (1) intentionally makes a false written statement under oath or on a form that states that false statements are punishable, (2) does not believe the statement is true, and (3) intends to mislead a public servant in performing his official functions. This is a class A misdemeanor (see Table on Penalties).

PA 05-201—sSB 1073
Judiciary Committee
Insurance and Real Estate Committee

AN ACT CONCERNING THE SUPERVISION OF THE LEGAL STAFF OF AND THE PROCESSING OF HOUSING DISCRIMINATION COMPLAINTS BY THE COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

SUMMARY: This act makes several changes in laws involving housing discrimination complaints filed with the Commission on Human Rights and Opportunities (CHRO).

Specifically, the act:

1. gives CHRO 90, instead of 45, days to bring a housing discrimination complaint to court after an investigator finds reasonable cause that discrimination occurred and one of the parties requests a court resolution rather than an administrative hearing;
2. authorizes injunctive relief, punitive damages, or a civil penalty in such cases under certain circumstances;
3. authorizes returning such cases to CHRO for further investigation under certain circumstances;
4. limits what claims, counterclaims, or defenses can be raised in such cases;
5. alters the procedures CHRO must follow when it goes to court to seek punitive damages, a civil penalty, or equitable relief and extends CHRO's authority to file a petition in court to pursue these remedies in public accommodation discrimination cases; and
6. automatically restrains a property owner from making his property unavailable to a complainant while the court considers a petition to grant a permanent or temporary restraining order against him.

Also the act requires that one of the legal counsel appointed by CHRO serve as supervisory attorney and specifies that each CHRO legal counsel be licensed to practice in Connecticut. And it requires that, when CHRO's executive director assigns legal counsel to represent it, he do so though the supervisory attorney.
EFFECTIVE DATE: Upon passage

HOUSING DISCRIMINATION COMPLAINTS—TRANSFERS TO COURT AT COMPLAINT'S OR RESPONDENT'S REQUEST

By law, if a CHRO investigator finds there is reasonable cause to believe that housing discrimination has occurred, either the complainant or respondent may choose to go directly to court instead of having the case resolved at an administrative hearing. The act gives CHRO 90, instead of 45, days to bring such a case to court.

The act authorizes CHRO to seek injunctive relief, punitive damages, or a civil penalty in such a case if the attorney general (AG) or a CHRO legal counsel, and a commissioner, believe that it would be appropriate.

The act authorizes the AG or a CHRO legal counsel to refuse to bring such a civil action and instead to remand the file to the investigator for further action if either one determines that a material mistake of law or fact has been made in the reasonable cause finding. The act requires the CHRO investigator to complete the investigation of a remanded case within 90 days after receiving it.

Finally, the act limits housing discrimination cases CHRO brings to court at the election of the complainant or respondent to whatever claims, counterclaims, or defenses would be required for CHRO to have jurisdiction over the complaint had the complaint remained with it for disposition.

PETITIONS TO SEEK PUNITIVE DAMAGES, CIVIL PENALTY, OR EQUITABLE RELIEF

By law, CHRO may go to court on its own initiative to seek punitive damages, a civil penalty, or equitable relief (injunctions and other court orders) in cases involving the sale or renting of a dwelling or commercial property. The act alters the procedures CHRO must follow by:

1. authorizing CHRO, instead of an individual CHRO commissioner, to initiate the court proceeding; and
2. eliminating the requirement that a CHRO investigator review the matter and recommend the court action before it may be brought to court.

The act also extends CHRO's authority to go to court to seek punitive damages and a civil remedy to cases involving discrimination in places of public accommodation, resort, or amusement. It specifies that injunctions regarding the sale or rental of a dwelling or commercial property may be temporary or permanent.

AUTOMATIC RESTRICTION ON MAKING PROPERTY UNAVAILABLE TO COMPLAINANTS

By law, a respondent who is served notice that CHRO has gone to court to seek equitable relief, punitive damages, or a civil penalty is automatically restrained from selling or renting the dwelling or commercial property to anyone other than the complainant until the court acts on the request for a restraining order. The act expands this to also automatically restrain the respondent from otherwise making the property unavailable to the complainant.

BACKGROUND

Place of Public Accommodation, Amusement, or Resort

"Place of public accommodation, resort, or amusement" means any establishment that caters or offers its services or facilities or goods to the general public, including any commercial property or building lot on which it is intended that a commercial building will be constructed or offered for sale or rent (CGS § 46a-63).

PA 05-215—sHB 6882
Judiciary Committee
Transportation Committee

AN ACT CONCERNING THE PENALTY FOR OPERATING A MOTOR VEHICLE WITHOUT AN OPERATOR'S LICENSE AND DURING AND AFTER A PERIOD OF LICENSE SUSPENSION, THE LENGTH OF LICENSE SUSPENSION AND THE ELIGIBILITY FOR A SPECIAL OPERATOR'S LICENSE

SUMMARY: This act establishes penalties for operating a motor vehicle without obtaining a reinstatement of a license after the suspension period has expired. Under prior law, such violators were apparently subject to the penalties for operating with a suspended license.

The act reduces the mandatory license suspension periods for a second offense from at least five to at least two years for certain motor vehicle offenses. It specifies that this reduction applies to any suspension that occurred on or after October 1, 2000.

The act imposes additional penalties for certain people convicted of operating a motor vehicle without first obtaining a license, violating a condition of a conditional license, or operating a motor vehicle with a suspended or revoked license or registration, or with a refused license.

The act allows someone whose license was permanently revoked for a third conviction for driving under the influence of alcohol or drugs (DUI) to, at any time after 10 years from the revocation date, apply to the motor vehicles commissioner for a reversal or reduction of the revocation.

The law requires an administrative license suspension process for drivers who refuse to submit to a blood alcohol content (BAC) test or whose test results indicate an elevated BAC (.08% or more or .02% or more if the driver is under age 21). The act doubles the license suspension periods if the offender is under age 21.

The act makes people ineligible for a special driving permit that allows certain work-related driving if they have been previously convicted of DUI. But it specifies that a person is not ineligible solely for being convicted of two DUI violations unless the second conviction is for a violation committed after a prior conviction.

EFFECTIVE DATE: October 1, 2005, except for the provision that doubles the license suspension for drivers under age 21, which is effective January 1, 2006, and the provision concerning special licenses, which is effective upon passage.

OPERATING A MOTOR VEHICLE WITHOUT OBTAINING A REINSTATEMENT OF A LICENSE (§ 1)

Under the act, anyone whose motor vehicle license has been suspended and who operates a motor vehicle after the suspension period has expired without obtaining a license reinstatement:

1. during the first 60 days after the expiration commits an infraction, which carries a $75 fine, and
2. after the 60-day period, for a first offense, commits an infraction (the fine plus fees is $158), and for a second offense, must be fined from $250 to $350, be imprisoned up to 30 days, or both.

The act specifies that someone charged with this offense may not also be prosecuted for operating a motor vehicle while his license is suspended. That offense generally carries a penalty for a first offense of a $150 to $200 fine, a prison term of up to 90 days, or both, and for any subsequent offense, a fine of $200 to $600, a prison term of up to one year, or both.

REDUCTION OF LICENSE SUSPENSION PERIODS FOR CERTAIN SECOND OFFENDERS (§ 2)

The act reduces the mandatory license suspension period from at least five years to at least two years for people convicted for the second time of:

1. evading responsibility (CGS § 14-224),
2. swearing or affirming falsely to the motor vehicles commissioner regarding enforcement of the motor vehicle laws (CGS § 14-110),
3. operating a motor vehicle with a suspended registration or license (CGS § 14-215), and
4. using a motor vehicle without the owner's permission or tampering with a motor vehicle (CGS § 53a-119b).

The act specifies that the reduction applies to any suspension that occurred on or after October 1, 2000.

OPERATING A MOTOR VEHICLE WITHOUT OBTAINING A LICENSE OR IN VIOLATION OF A LIMITED LICENSE (§ 3)

By law, no one:

1. may operate a motor vehicle on any public highway of this state or on a private road on which a speed limit has been established until he has obtained a motor vehicle operator's license, or
2. having been issued a limited license, may operate (a) a motor vehicle in violation of the limitations imposed by the license or (b) any motor vehicle other than the motor vehicle for which his right to operate is limited.

Anyone who violates this law, for a first offense, commits an infraction (the fine is $75), and for any subsequent offense, is subject to a fine of $250 to $350, imprisonment for up to 30 days, or both.

The act imposes additional penalties for certain violators. Under the act:

1. anyone who has either violated this law before, or committed the offense of operating a motor vehicle while his registration or license is refused, suspended, or revoked is subject to an additional fine of up to $500 or up to 100 hours of community service, and
2. anyone who has committed either of these offenses at least twice before, or each one at least once before, must be given the additional mandatory sentence of 90 days in prison.

OPERATING A MOTOR VEHICLE WITH A SUSPENDED OR REVOKED LICENSE OR REGISTRATION (§ 4)

By law, anyone who operates a motor vehicle with a suspended or revoked license or registration or with a license that has been refused is subject:

1. for a first offense, to a fine of $150 to $200, up to 90 days in prison, or both and
2. for any subsequent offense, to a fine of $200 to $600, up to one year in prison, or both.

The act imposes additional penalties for certain violators. Under the act:

1. anyone who has either violated this law before, or committed the offense of operating a motor vehicle without first obtaining a license, is subject to an additional fine of up to $500, or up to 100 hours of community service and
2. anyone who has committed either of these offenses at least twice before, or each one at least once before, must be given the additional mandatory sentence of 90 days in prison.

These additional penalties do not apply to people who were driving with a suspended or revoked license on account of violating the driving under the influence or the implied consent law or being convicted of manslaughter in the second degree with a motor vehicle or assault in the second degree with a motor vehicle. By law, unchanged by the act, these people are subject to a fine of between $500 and $1,000 and imprisonment of up to one year. In the absence of any mitigating circumstances as determined by the court, 30 consecutive days of the sentence imposed may not be suspended or reduced. The court must specifically state the mitigating circumstances in writing for the record.

APPLICATION TO MOTOR VEHICLES COMMISSIONER TO REVERSE OR REDUCE LICENSE REVOCATION FOR DUI (§ 5)

The act allows someone whose license was permanently revoked for a third conviction for DUI to, at any time after 10 years from the revocation date, apply to the motor vehicles commissioner for a reversal or reduction of the revocation. The application must be in writing and specify the reasons why the applicant believes he is entitled to a reversal or reduction. The commissioner must consider the application and the applicant's driver control record, and may grant a hearing.

ADMINISTRATIVE LICENSE SUSPENSIONS (§ 6)

The law requires an administrative license suspension process for drivers who refuse to submit to a blood alcohol test or whose test results indicate an elevated BAC (.08% or more or .02% or more if he is under age 21). Table 1 specifies the penalties.

Table 1: Administrative Per Se License Suspension Periods

Per Se Offense	*First Offense*	*Second Offense*	*Third or Subsequent Offense*
Test Refused	6 months	One year	3 years
BAC of: .08% or more .02% or more if under age 21	90 days	9 months	2 years
BAC of .16% or more	120 days	10 months	2 years, six months

The act doubles these administrative license suspension periods if the offender is under age 21.

WORK-ONLY DRIVERS' PERMITS (§ 7)

By law, anyone who has had a driver's license suspended may apply for a special driving permit that allows certain work-related driving. Such a permit may not be granted to a person (1) with a previous suspension; (2) who operated a vehicle while under suspension; (3) who failed to appear for trial; or (4) under suspension for refusing to submit to a DUI blood, breath, or urine test until at least 90 days of his mandatory six-month suspension has run.

The act makes people ineligible if they have been previously convicted of DUI. But the act specifies that a person is not ineligible solely on the basis of being convicted of two DUI violations unless the second conviction is for a violation committed after a prior conviction.

BACKGROUND

Related Law — License Reinstatement

Any person whose operator's license or right to operate a motor vehicle in this state has been suspended or revoked by the commissioner of motor vehicles must pay a restoration fee of $125 (CGS §14-50b).

Driving Under the Influence or with an "Elevated" BAC

The law prohibits driving (1) while under the influence of alcohol or drugs or (2) with an "elevated blood alcohol content." A person is "under the influence" if his ability to drive is affected to an appreciable degree (*Infield v. Sullivan*, 151 Conn. 506 (1964)). This may be prosecuted with or without any direct evidence of his BAC. A person has an "elevated blood alcohol content" if his BAC is .08% alcohol by weight or above. The law also makes it illegal for someone under age 21 to drive with a BAC of .02% or

more. While this is defined under a different statute (CGS § 14-227g), most of the criminal drunk driving provisions apply by reference to anyone under age 21 violating the prohibition.

Driving Under the Influence (DUI)-Criminal Penalties

A person convicted of DUI is subject to the criminal penalties listed in Table 2.

Table 2: DUI Criminal Penalties

Conviction	*Jail Sentence*	*Fine*	*License Suspension*
First	Either (a) up to six months with a mandatory minimum of two days or (b) up to six months suspended with probation requiring 100 hours of community service	$500-$1,000	One year
Second	Up to two years, with a mandatory minimum of 120 consecutive days and probation with 100 hours community service	$1,000-$4,000	Three years (or until age 21 if longer)
Third and Subsequent	Up to three years, with mandatory minimum of one year and probation with 100 hours community service	$2,000-$8,000	Permanent Revocation

In assessing these penalties, the law considers as a subsequent conviction one that occurs within 10 years of a prior conviction for the same offense. Also, any conviction that occurs in another state for an offense that the court determines has "substantially the same" essential elements as Connecticut's criminal drunk driving offenses, manslaughter in the 2nd degree with a motor vehicle, or assault in the 2nd degree with a motor vehicle will constitute a prior conviction of the same offense for purposes of determining someone's prior criminal history. (Second degree manslaughter or assault with a motor vehicle involves driving while under the influence of liquor or drugs.)

PA 05-216—HB 6963
Judiciary Committee
Public Health Committee

AN ACT CONCERNING SERVICES THAT MAY BE PROVIDED BY PROFESSIONAL CORPORATIONS AND LIMITED LIABILITY COMPANIES

SUMMARY: The act authorizes physicians and chiropractors to form a professional service corporation to offer the services of a physician and chiropractor. It also authorizes them to form limited liability companies to render this professional service.
EFFCTIVE DATE: October 1, 2005

PA 05-220—sHB 6959
Judiciary Committee
Transportation Committee

AN ACT CONCERNING ACCIDENTS INVOLVING STATE VEHICLES AND THE USE OF HAND-HELD MOBILE TELEPHONES AND MOBILE ELECTRONIC DEVICES BY OPERATORS OF MOTOR VEHICLES

SUMMARY: This act specifies that a person who provides transportation services pursuant to a state contract with the Department of Transportation (DOT) commissioner is not an arm or agent of the state. The act allows any person harmed by the contractor's operation of such service to sue him for damages in Superior Court. It prohibits the contractor from asserting sovereign immunity, the doctrine that protects states from being sued, as a defense in the suit.

The act (1) expands the prohibitions in PA 05-159 against drivers using hand held mobile telephones while driving to mobile electronic devices; (2) eliminates exemptions from the prohibitions for the driver of a taxicab, tow truck, or bus without passengers; and (3) makes it clear that PA 05-159 prohibits the use of any type of mobile telephone, including one that is hands-free, by drivers under age 18, except in the emergency situations the act defines.

The act defines a "mobile electronic device" as any hand-held or other portable electronic equipment capable of providing data communication between two or more people, including devices for text messaging or paging, a personal digital assistant, a laptop computer, equipment capable of playing a video game or digital video disk, or equipment on which digital photographs are taken or transmitted. A mobile electronic device does not include audio equipment or any equipment installed in the vehicle to provide navigation,

emergency, or other assistance to the driver or video entertainment to passengers in the vehicle's rear seats.
EFFECTIVE DATE: October 1, 2005, except for the contractor liability provisions, which are effective July 1, 2005 and applicable to civil actions pending or filed on or after that date.

BACKGROUND

Transportation Services

The DOT commissioner can enter into contracts, in the name of the state, with any person or entity to initiate, continue, develop, provide, or improve transportation services, typically bus or rail services, within and outside of the state.

Related Case

In *Gordon v. H. N. S. Management, Inc*., 272 Conn. 81 (2004), the state Supreme Court held that the defendant, a private company that contracted with the state to operate public transportation services, was an arm of the state and entitled to claim sovereign immunity in an action by a driver and passenger for underinsured and uninsured motorist benefits.

PA 05-221—sSB 440
Judiciary Committee
Public Health Committee

AN ACT CONCERNING THE PENALTIES FOR DISTRIBUTORS WHO VIOLATE PROVISIONS REGULATING THE SALE OF CIGARETTES

SUMMARY: This act imposes stiffer penalties on licensed cigarette distributors who sell cigarettes below cost in order to lessen competition, particularly when they commit multiple violations. It reduces the fines that can be imposed on licensed dealers for committing the same offenses.
EFFECTIVE DATE: October 1, 2005

INCREASED PENALTIES FOR DISTRIBUTORS

Table 1 compares prior law and the act.

Table 1: Penalties for Cigarette Distributors

	Prior Law	***The Act***
Civil Penalty		
1st offense	Minimum: (a) 7-day license suspension and (b) $1,000 fine	Maximum: Up to (a) 7-day license suspension and (b) $10,000 civil fine
2nd offense within 5 years	Minimum: (a) 30-day license suspension and (b) $5,000 fine	Maximum: Up to (a) 30-day license suspension and (b) $25,000 civil fine
Each additional offense within 5 years	Same as for second offense	License revocation and civil fine of up to $50,000
Criminal Penalty		
1st offense	Minimum: $500 fine	Maximum: Up to $1,000 fine
Second offense	Minimum: $1,000 fine	Maximum: Up to $5,000 fine
Subsequent offenses	Same as for second offense	Maximum: Up to $10,000 fine per offense

REDUCED CRIMINAL PENALTIES FOR DEALERS

Prior law subjected licensed dealers to minimum criminal penalties of $250 and $500 for first and subsequent offenses. The act, instead, makes the specified criminal penalties the maximum that can be imposed.

BACKGROUND

Related Act

PA 05-96 eliminates franchises from the definition of "cigarette distributor."

PA 05-225—HB 6747
Judiciary Committee
Appropriations Committee
Legislative Management Committee

AN ACT CONCERNING REGIONAL CHILDREN'S PROBATE COURTS

SUMMARY: This act makes the New Haven regional children's probate court pilot program permanent. It also authorizes the probate court administrator to establish six more regional children's probate courts under the same conditions as applied to the New Haven court's creation. He may select the regions and must consult with the probate judges of the districts located in the designated region. As under the pilot program, these judges can voluntarily participate in the regional program and advise the probate court administrator in selecting the administrative judge for their regions.

The act permits the probate court administrator to use Probate Court Administration Fund money as necessary to establish, improve, maintain, and operate court facilities in the six designated regions. It indicates that it does not relieve any town of its legal obligation to provide and maintain probate courts.

The probate court administrator must include information on the operation and effectiveness of the regional courts in the report on the New Haven court he must submit to the Judiciary Committee by January 3, 2007.
EFFECTIVE DATE: October 1, 2005

PA 05-232—sHB 5215
Judiciary Committee
Appropriations Committee
Human Services Committee

AN ACT CONCERNING YOUTHFUL OFFENDER PROCEEDINGS

SUMMARY: This act makes more children and 16- and 17-year-old youths eligible for youthful offender (YO) status. It presumes that all 16- and 17-year-olds and younger teenagers whose cases have been transferred to the adult criminal docket are eligible for YO status unless they (1) are charged with a serious felony or (2) have already been convicted of a felony on the adult docket or adjudicated a serious juvenile offender. Prior law also excluded people with past YO convictions and accelerated rehabilitation participants. It required the defendant or prosecutor to file a motion and the applicant to undergo an eligibility investigation before the court could assign him YO status.

The act creates a mechanism for prosecutors and judges to (1) challenge a defendant's eligibility for YO status or (2) seek a court order transferring a YO to the adult criminal docket.

It also establishes four years as the maximum incarceration period but permits courts to extend a YO's probation indefinitely. Prior law permitted confinement of YOs for the maximum period authorized for the offense but capped probation supervision at five years.
EFFECTIVE DATE: January 1, 2006 and applicable to offenses committed on and after that date.

PRESUMPTIVE ELIGIBILITY

The act creates a presumption that all 16- and 17-year-old defendants, and children on the adult criminal docket other than those charged with the excluded felonies, are eligible for YO status. Prosecutors who contend a defendant is not eligible can file a motion and the court may order an adult probation officer to investigate the youth's background and the circumstances of the crime he is accused of committing. The defendant must consent to the investigation, including all necessary physical and mental examinations, questioning, and disclosure of unerased juvenile records. The court may also order an investigation on its own authority so long as the defendant gives the required consent.

The act requires that hearings on YO challenges be held in a closed courtroom away from adult criminal courtrooms.

TRANSFER TO ADULT COURT

The act requires that a child or youth be transferred to the adult criminal docket at any time the court determines he is ineligible for YO so long as the court finds probable cause to believe he has committed the act he is charged with. He must be arraigned on the regular criminal docket by the next business day and that any proceedings held before the transfer is finalized be held in private and away from adult courtrooms. The file must remain sealed until the end of the 10th working day following the arraignment.

The act also permits the defendant to transfer his case to the adult docket for a jury trial at any time before the YO trial begins or he has pled guilty. His lawyer and parent or guardian's consent is required, and the court must be satisfied that he has knowingly and voluntarily waived his right to YO status.

Whenever a YO case is transferred to the adult docket, the court must order the information or complaint unsealed and the defendant is tried as if no YO proceedings had occurred. Prior statements or admissions made cannot be used as evidence, but may be considered for sentencing purposes.

TRANSFER FROM ADULT TO YO DOCKET

Prosecutors may file a motion to transfer the case of any youth, except those charged with the excluded crimes, from the adult to the YO docket within 10 business days of arraignment. The court must hold a hearing and decide the motion within 10 working days.

BACKGROUND

Youthful Offender Status

YO status affords a youth the opportunity to have his case proceedings kept private and hearings conducted in a part of the court separate from adult criminal proceedings. If convicted, his court record is sealed. All court and police records are erased at age 21 if he successfully completes the program and does not offend again. Those subject to erasure are considered to have never been arrested for the underlying offense.

Excluded Offenses

Children and youths are ineligible if they are charged with a class A felony or:

1. risk of injury to a minor involving sex;
2. rape;
3. aggravated rape;
4. spousal rape;
5. 2nd sexual assault, except for statutory rape involving a victim age 13 through 15;
6. 3rd degree sexual assault; or
7. 3rd degree sexual assault with a firearm.

Related Act

PA 05-169 allows most crime victims to attend the YO proceedings and requires courts to allow the victim to make a statement before the court accepts a plea agreement or imposes a sentence based on the plea.

PA 05-234—sHB 5750
Judiciary Committee
Environment Committee
Planning and Development Committee
Finance, Revenue and Bonding Committee

AN ACT CONCERNING TRESPASS, LITTERING AND VANDALISM ON PUBLIC LANDS

SUMMARY: This act broadens the list of activities that constitute trespass and criminal mischief to include certain acts committed on public land. It defines "public land" as a state or municipal park, state forest, or any other publicly owned land open to the public for active or passive recreation.

The act specifically prohibits anyone from throwing, scattering, spilling, placing; causing such actions to occur; or otherwise improperly disposing of any litter in a state or municipal park, state forest, or other publicly owned land open to the public for active or passive recreation. Violators are subject to a fine of up to $199. Existing law prohibits these activities on public property and waters or on someone else's property. Under prior law, one-half of the fine for engaging in these illegal activities was paid to the enforcing municipality. The act instead requires it to be paid to the municipality in which the arrest was made unless the arresting authority is a conservation or special conservation officer or patrolman appointed by the Department of Environmental Protection (DEP) commissioner, in which case one-half of the fine must be paid to the department.

The act requires courts to impose a surcharge on people convicted of the above-described illegal acts on public land. The surcharge must be in addition to any authorized fine the court imposes and must equal one-half of the fine. The surcharge and one-half of the fine must be paid to the municipality in which the arrest was made unless the arresting authority is a conservation or special conservation officer or patrolman appointed by the DEP commissioner, in which case the surcharge must be paid to the department. The other half of the fine must be paid to the state.

Lastly, the act authorizes conservation officers, special conservation officers, and patrolmen appointed by the DEP commissioner to enforce 4th degree criminal mischief.

EFFECTIVE DATE: January 1, 2006

CRIMINAL TRESPASS

The act makes a person guilty of criminal trespassing if he, knowing that he is not licensed or privileged to do so, enters or remains:

1. on public land after an authorized state or municipal official personally orders him to leave or not to enter (1st degree, a class A misdemeanor);
2. on public land (2nd degree, a class B misdemeanor); or
3. on public land that is posted as prescribed by law, posted in a manner likely to come to the attention of intruders, or fenced or otherwise enclosed in a manner designed to exclude intruders (3rd degree, a class C misdemeanor) (see Table on Penalties).

CRIMINAL MISCHIEF

The act makes a person guilty of criminal mischief if he, without reasonable grounds to believe he has a right to do so:

1. intentionally causes damages over $1,500 to tangible state or municipal property located on public land (1st degree, a class D felony);
2. intentionally causes damages between $250 and $1,500 to tangible state or municipal property located on public land (2nd degree, a class A misdemeanor);
3. intentionally or recklessly damages or through tampering places in danger of damage tangible state or municipal property located on public land (3rd degree, a class B misdemeanor);
4. damages tangible state or municipal property located on public land by negligently using potentially harmful or destructive force or a potentially harmful or destructive substance, including fire, explosives, flood, avalanche, collapse of a building, poison gas, or radioactive material (3rd degree, a class B misdemeanor);

5. intentionally or recklessly damages or tampers with a state or municipally owned fire hydrant or hydrant system located on public land (4th degree, a class C misdemeanor); and
6. intentionally and recklessly damages, tampers with, or removes state or municipally owned fire alarms, smoke detectors and alarms, fire suppressants, or police alarms located on public land (4th degree, a class C misdemeanor).

BACKGROUND

Fourth-Degree Criminal Mischief

A person is guilty of this crime when, having no reasonable ground to believe he has a right to do so, he intentionally or recklessly (1) damages or tampers with any fire hydrant or hydrant system owned by the state or a municipality, fire district, or private water company or (2) damages, tampers with, or removes any fire alarm, smoke detection and alarm, fire suppressant, or police alarm.

PA 05-247—SB 1303
Judiciary Committee
Insurance and Real Estate Committee

AN ACT CONCERNING THE LIS PENDENS STATUTE, THE VALIDATION OF CERTAIN CONVEYANCES, NOMINATIONS AND GRANTS PURSUANT TO THE SMALL TOWN ECONOMIC ASSISTANCE PROGRAM, EXTENSIONS OF FILING DEADLINES FOR CERTAIN TAX EXEMPTIONS AND FOR LICENSURE IN SWIMMING POOL MAINTENANCE AND REPAIR, EXEMPTION FROM DECK WIDTH REQUIREMENTS FOR CERTAIN SWIMMING POOLS, AND AMENDMENTS TO THE CHARTER OF THE GROVE BEACH POINT ASSOCIATION

SUMMARY: The act validates a recorded mortgage, lease, release, assignment, or other document conveying or otherwise affecting a real estate interest from a fiduciary to himself recorded before January 2, 1997 unless someone has initiated a legal proceeding to set aside the transfer and recorded a *lis pendens* notice on the land records within 10 years after the document was recorded. (A *lis pendens* is a notice filed on the land records, which advises that a lawsuit affecting real estate is pending against the owner of that property. Once recorded, it serves as notice to anyone who subsequently acquires any interest in the property and binds him to the lawsuit's outcome.)

The law does the same thing for such documents recorded after January 1, 1997.

Under prior law, a recorded notice of *lis pendens* was invalid and did not constitute constructive notice of the lawsuit unless the person recording the notice served a true and attested copy of it on the property owner within 30 days after recording it. The act eliminates the requirement to serve a copy of the *lis pendens* in foreclosure actions. Thus, a recorded notice of *lis pendens* involving a foreclosure of a mortgage or other lien would be valid and bind those who subsequently acquire an interest in the property even if the foreclosing party did not serve the property owner with a copy of the *lis pendens*.

The act requires that the party that recorded the *lis pendens* notice file a copy of the papers showing that the notice was served on the property owner with the clerk of the court in which the lawsuit that affects the property is pending. The act requires the clerk to include a copy in the court record.

The act makes certain towns eligible for a Small Town Economic Assistance Program Grant for a sewer project even if the project is inconsistent with the locational guide maps accompanying the state conservation and development plan. It applies to municipalities that (1) have a population of fewer than 15,000 people as determined by the most recent decennial census and (2) have within their borders between 5,500 and 6,000 acres of land owned by a regional water authority.

The act validates certain actions and activities regarding:

1. property tax exemptions in the cities of Bloomfield, Branford, East Hartford, Hartford, Milford, and Norwalk;
2. subdivision plans or maps in New Fairfield; and
3. the confirmation of executive or legislative nominations during the 2005 regular session.

The act gives people who were engaged in swimming pool maintenance and repair work before July 1, 1999, until January 1, 2006 to apply to the Department of Consumer Protection (DCP) for the appropriate limited license and requires that DCP issue it without an examination if the applicant has the experience and training required to take the exam.

The act allows the Sacred Heart University Whirlpools at the William H. Pitt Center to deviate from the deck width required by state regulation if local rescue personnel provide documentation to the Public Health Commissioner showing that a reduced deck will not impair or hinder rescue of people using the whirlpools.

Finally, the act makes various changes to the special act that incorporated the Grove Beach Point Association in Westbrook.
EFFECTIVE DATE: October 1, 2005

PA 05-248—sHB 6975
Judiciary Committee
Public Safety and Security Committee
General Law Committee
Insurance and Real Estate Committee

AN ACT CONCERNING THE COLLECTION OF CERTAIN UNPAID FEES, FUNERAL SERVICE CONTRACTS AND THE ILLEGAL SALE OR POSSESSION WITH INTENT TO SELL OF COCAINE

SUMMARY: This act eliminates the disparity in the minimum amounts of crack and powder cocaine that a non-drug dependent person must possess to be guilty of selling or manufacturing, distributing, prescribing, compounding, transporting, or possessing cocaine with intent to sell. It accomplishes this by increasing the minimum amount of crack cocaine from one-half gram to one-half ounce and decreasing the minimum amount for powder cocaine from one ounce to one-half ounce.

The act creates three crimes related to funeral services contracts, making it a class A misdemeanor to violate the law regarding entering or arranging these contracts and making it a class D felony to (1) arrange or sell a contract with intent to defraud or (2) enter a contract and intentionally deprive the contract's beneficiary, the estate, or the beneficiary's heirs of the contract's services, personal property, or merchandise.

The act eliminates a requirement that state's attorneys collect, compromise, and settle certain fees and charges and instead makes failure to pay them subject to a driver's license suspension procedure.
EFFECTIVE DATE: October 1, 2005 except the provision on the driver's license suspension procedure is effective July 1, 2005.

FUNERAL SERVICES CONTRACTS

The act makes it a class A misdemeanor (see Table on Penalties) for a person, firm, or corporation to enter a funeral services contract or arrange, promote, or sell one on behalf of a funeral service establishment unless licensed as an embalmer or funeral director. As under prior law, violations of these and other provisions on funeral service contracts are unfair or deceptive trade practices.

The act also punishes (1) arranging, promoting, or selling a funeral services contract with intent to defraud and (2) entering a funeral services contract and intentionally depriving the contract's beneficiary, the estate, or the beneficiary's heirs of the services, personal property, or merchandise under the contract. The act makes these crimes class D felonies (see Table on Penalties). The act makes the statute of limitations for these two crimes the earlier of five years from the date the (1) contract's beneficiary dies or (2) victim notifies a police officer or state's attorney, in their official capacity, of the crime.

By law, a funeral service contract is a contract that requires the payment of money or delivery of securities in exchange for the future final disposition of a dead human body. Disposition includes funeral, burial, and other services and furnishing personal property or funeral merchandise.

COLLECTING FEES

The act eliminates a requirement that the state's attorneys collect, compromise, and settle (1) fees imposed in addition to the fine or forfeiture for infractions and certain motor vehicle violations (such as speeding, driving under the influence, and weight restrictions); (2) costs imposed on prosecutions; (3) costs imposed for infractions and certain motor vehicle and other violations; and (4) Special Transportation Fund surcharges on fines, penalties, and other charges for certain motor vehicle offenses.

The act instead requires the court to report to the motor vehicles commissioner when a person fails to pay one of these fees, costs, or surcharges and requires the commissioner to revoke the person's motor vehicle registration and operator's license.

BACKGROUND

Selling or Possessing With Intent to Sell

The penalty for a non-drug dependent person selling or possessing with intent to sell narcotic substances is five years to life in prison. Besides crack and cocaine, this penalty applies to selling or possessing one ounce of heroin or methadone and substances with at least five milligrams of lysergic acid diethylamide. The five-year sentence is a mandatory minimum except a court may suspend it if (1) the defendant was under age 18 or mentally impaired at the time he committed the crime or (2) in committing the offense he (a) did not use, attempt, or threaten to use physical force; (b) did not cause physical injury to another person; and (c) was unarmed and did not use, display, or represent that he had a firearm, deadly weapon, or other instrument that could cause death or serious injury. The court can depart from the mandatory minimum under the second provision for good cause and only once for a defendant.

PA 05-249—sHB 6976
Judiciary Committee
Legislative Management Committee
Appropriations Committee
Government Administration and Elections Committee

AN ACT CONCERNING CRIMINAL JUSTICE PLANNING AND ELIGIBILITY FOR CRIME VICTIM COMPENSATION

SUMMARY: This act creates the Criminal Justice Policy and Planning Division within the Office of Policy and Management (OPM), directed by an OPM undersecretary, to develop a plan to promote a more effective and cohesive state criminal justice system. Among other things, it must conduct an in-depth analysis of the criminal justice system, determine the system's long-range needs and make recommendations, identify critical problems, advise the General Assembly, and determine information needs. The act authorizes the division to perform any of these functions to promote an effective and cohesive juvenile justice system.

The act requires the division to collaborate with certain agencies and consult certain officials. Those agencies and officials must provide information and data the division needs. The act includes provisions on the confidentiality of that information.

The act requires the division to develop correctional population projections for planning purposes and report them annually by November 1. It must develop a reporting system to track trends and outcomes related to policies designed to reduce prison overcrowding, improve rehabilitation efforts, and enhance reentry strategies for offenders released from prison. The division must issue monthly reports beginning by November 1, 2006.

The act requires the reporting system to define outcomes for major programs, annually report them, and identify strategies to measure outcomes when information is not available to measure the effectiveness of particular programs. The first yearly report is due by January 1, 2007 and can be included in a report and presentation the division must make annually by January 1 to the Appropriations and Judiciary committees about its activities, recommendations, and specific actions necessary to promote an effective and cohesive criminal justice system.

The act also makes the OPM undersecretary a member of the Prison and Jail Overcrowding Commission (PJOC) and makes him the commission's chairman. Under prior law, the governor appointed a commission member as chairman. The act deletes the requirement that the PJOC annually issue a comprehensive state criminal justice plan to prevent prison overcrowding, specifically (1) including a study of the pretrial and post-sentencing options provided through community-based agencies and (2) accounting for other state plans in related areas of mental health and drug and alcohol abuse and the report of the Alternatives to Incarceration Advisory Committee.

By law, the Office of Victim Services (OVS) may compensate certain crime victims, or their immediate families when the victim is deceased, incapacitated, or a minor child, for actual and reasonable expenses, lost wages, and pecuniary and other losses resulting from injury or death. The act removes the deadline for certain crime victims or their immediate families to request a waiver of the time limit for compensation applications.

EFFECTIVE DATE: July 1, 2006 except the provision on victim compensation applications is effective October 1, 2005.

PLANNING

In order to develop its plan for the criminal justice system, the act requires the division to:

1. conduct an in-depth analysis of the criminal justice system;
2. determine the system's long-range needs and recommend policy priorities;
3. identify critical problems and recommend strategies to solve them;
4. assess the cost effectiveness of the use of state and local funds;
5. recommend ways to improve the deterrent and rehabilitative capabilities of the system;
6. advise and assist the General Assembly in developing plans, programs, and legislation to improve the system's effectiveness;
7. compute daily costs and compare interagency costs of services provided;
8. compute populations to plan the system's long-range needs;
9. determine the system's long-range information needs and acquire that information;
10. cooperate with the Office of the Victim Advocate by providing information and assistance to improve victims' services;
11. act as liaison for the state to the U.S. Department of Justice on criminal justice issues relating to data, information systems, and research;
12. measure the success of community-based services and programs in reducing recidivism; and
13. engage in other activities consistent with its responsibilities.

COLLABORATIONS, CONSULTATIONS, AND DATA

The act requires the division to (1) collaborate with the departments of Correction, Mental Health and Addiction Services, and Public Safety, and the Board of Pardons and Paroles and (2) consult the chief court administrator, chief state's attorney, chief public defender, and Court Support Services Division executive director.

At the division's request, these departments and officials must provide information and data the division needs to perform its duties. The act gives the division access to individualized records for research purposes. They can be used for statistical analyses only and not in any manner that reveals the identity of individuals. The division must develop protocols with the agencies to protect the privacy of the records according to state and federal law. Any information and data received that is confidential under state or federal law cannot be disclosed.

SYSTEM TO TRACK TRENDS AND OUTCOMES

The act requires the division to develop a reporting system to track trends and outcomes related to policies designed to reduce prison overcrowding, improve rehabilitation efforts, and enhance reentry strategies of offenders released from prison. The system must monthly track the:

1. number of admissions to prison (a) directly from the courts, (b) for parole revocation, and (c) for probation revocation;
2. number of releases on parole and to other forms of community supervision and facilities;
3. parole granting rates;
4. number of probation placements and placement to probation facilities;
5. prison population; and
6. projected prison population.

The first monthly report is due by November 1, 2006.

Annual Report and Presentation

The act requires the system to define outcomes for major programs, annually report them, and delineate strategies to measure outcomes when information is not available to measure the effectiveness of particular programs. The system must yearly track recidivism of offenders (1) released from prison, (2) on probation, and (3) participating in programs designed to reduce prison overcrowding, improve rehabilitation efforts, and enhance reentry strategies. The division must measure recidivism with a nationally accepted method.

The act requires the first yearly report by January 1, 2007 and it can be included in a report and presentation the division must make annually by January 1 to the Appropriations and Judiciary committees about its activities, recommendations, and specific actions necessary to promote an effective and cohesive criminal justice system. That report must (1) estimate the savings achieved by the actual prison population being less than projected before policies were adopted to reduce prison overcrowding and (2) recommend how to reinvest a portion of the savings in community-based services and programs and community supervision by probation and parole officers to maintain the reduction in projected prison population.

STATUTE OF LIMITATIONS FOR VICTIM COMPENSATION APPLICATIONS

By law, eligible crime victims generally have two years after the date of personal injury or death to apply for victim compensation. However, victims who miss the deadline can ask for, and OVS can grant, a waiver if they (1) sustained physical, emotional, or psychological injuries as a result of the personal injury or death or (2) were minors during the two-year period and through no fault of their own missed the deadline.

Under prior law, the deadline to apply for a waiver was: (1) for minors, two years after they reach 18 or seven years after the date of personal injury or death, whichever is sooner and (2) for all others, six years after personal injury or death. The act removes these waiver application deadlines and allows a person to apply for a waiver whether he failed to apply for compensation before, on, and after October 1, 2005.

PA 05-250—sHB 6978
Judiciary Committee
Appropriations Committee
Human Services Committee

AN ACT CONCERNING CHILDREN OF FAMILIES WITH SERVICE NEEDS

SUMMARY: This act prohibits (1) holding a child whose family has been adjudicated as a "family with service needs" (FWSN) in juvenile detention or (2) adjudicating them delinquent solely for violating a court's FWSN order. Judges could previously place children charged with violating a FWSN order in juvenile detention facilities and juvenile probation officers determined whether a delinquency petition should be filed.

By law, judges cannot order out-of-home placements or commitment to the Department of Children and Families for FWSN children unless they

find there is no less restrictive alternative appropriate to the child's and community's needs.
EFFECTIVE DATE: October 1, 2007

BACKGROUND

Family With Service Needs

A "family with service needs" is a family that includes a child who (1) has, without just cause, run away from the parental home or other properly authorized and lawful place of abode; (2) is beyond the control of the child's parent, parents, guardian, or other custodian; (3) has engaged in indecent or immoral conduct; (4) is a truant or habitual truant or who, while in school, has been continuously and overtly defiant of school rules and regulations; or (5) is age 13 or older and has engaged in sexual intercourse with another person age 13 or older and not more than two years older or younger.

FWSN court orders generally deal with issues related to school attendance, curfews, and substance abuse treatment and counseling.

PA 05-258—sSB 1194
Judiciary Committee

AN ACT CONCERNING ARBITRATION IN CERTAIN FAMILY RELATIONS MATTERS AND ADOPTING CERTAIN RECOMMENDATIONS OF THE GOVERNOR'S COMMISSION ON CUSTODY, DIVORCE AND CHILDREN

SUMMARY: This act makes several changes in child custody, support, and visitation statutes based on the recommendations of the Governor's Commission on Custody, Divorce, and Children. Existing law requires courts to be guided by the child's best interests and presumes joint custody is appropriate when the parents agree to it. The act extends this presumption to other matters they agree on.

It also permits divorcing couples to submit disputes, except those involving child support, visitation, or custody, to binding arbitration. It requires advance approval by the court, which must determine that (1) each party voluntarily agreed to arbitrate and (2) the terms of their written arbitration agreement are fair and equitable under the circumstances. Prior law did not provide this option in divorce proceedings.

It subjects marital arbitrations to the same rules, standards, and limited court review as already apply to other arbitrations.
EFFECTIVE DATE: October 1, 2005

PARENTAL RESPONSIBILITY PLANS

The act requires each parent to submit a proposed parental responsibility plan to the court in any proceeding involving a dispute over their child's custody, care, education, or upbringing. The objectives of the plan are to set forth each parent's authority and responsibility over the child and to provide for the child's physical care, emotional stability, and changing needs as he grows older. Parenting plans must include provisions:

1. designating where the child will live during the year;
2. allocating decision-making authority to either or both parents for the child's health, education, and religious upbringing;
3. for resolving future disputes that include seeking assistance from mental health professionals or others in reaching a developmentally appropriate resolution, where appropriate;
4. for dealing with (a) a parent's failure to honor his or her responsibilities under the plan and (b) the child's changing needs over time; and
5. for minimizing the child's exposure to harmful parental conflict and encouraging the parents in appropriate circumstances to meet their responsibilities through agreements and protecting the child's best interests.

Court Approval of Plans

The court must adopt consensual parenting plans and make their terms its custodial and access orders unless it determines that the plan is not in the child's best interests. The act authorizes courts to modify their terms in the same manner it follows in other divorce matters involving children.

COURT ORDERS AND MODIFICATIONS

The act requires court custody and support orders to (1) take into consideration each parent's rights and responsibilities, (2) serve the child's best interests, and (3) provide for the active and consistent involvement of both parents according to their abilities and interests.

The orders may include:

1. approval of a parental responsibility plan the parents have agreed to;
2. joint parental responsibility orders, which must include provisions for (a) the child's living arrangements in accordance with the child's and parents' needs, (b) parental consultations, and (c) making major decisions concerning the child's health, education, and parental upbringing;

3. an award of sole custody to one parent with appropriate parenting time for the other parent when sole custody is in the child's best interests; and
4. any other custody arrangements the court determines are in the child's best interests.

Factors the Court May Consider

The act permits judges to consider, when making or modifying orders:

1. the child's temperament and developmental needs;
2. the parents' capacity and disposition to understand and meet the child's needs;
3. any relevant and material information obtained from the child;
4. the parents' wishes concerning child custody;
5. the child's past and current interaction and relationship with each parent, his siblings, and any other person who may significantly affect his best interests;
6. each parent's willingness and ability to facilitate and encourage a continuing parent-child relationship with the other parent, as appropriate, including complying with any court orders;
7. either parent's manipulative or coercive behavior designed to involve the child in their dispute;
8. each parent's ability to be actively involved in the child's life;
9. the child's adjustment to his home, school, and community environments;
10. how long the child has lived in a stable and satisfactory environment and the desirability of continuing this;
11. a parent's voluntary leaving of the family home, where leaving served the child's best interests;
12. the stability of the child's existing or proposed residences;
13. the mental and physical health of all involved;
14. the child's cultural background;
15. how a child has been affected by an abuser's domestic violence occurring between the parents or between one parent and another person or the child;
16. whether the child or his siblings have been abused or neglected under existing statutory definitions; and
17. whether the parents completed court-mandated parenting education classes.

The court need not assign any particular weight to any of the factors it considers, but it cannot deny custody based solely on a parent's disability unless it determines that it is in the child's best interests.

Prior child custody statutes do not list factors the courts may consider other than the child's wishes and the parents' completion of the court's parenting education program, although, like the act, they required consideration of the child's best interests.

PA 05-261—sSB 1350
Judiciary Committee
Banks Committee
Insurance and Real Estate Committee

AN ACT CONCERNING THE INTEREST EARNED ON LAWYERS' CLIENTS' FUNDS ACCOUNTS PROGRAM

SUMMARY: This act requires that, beginning July 1, 2005, each entity, other than a borrower, having an account established to receive loan proceeds from a mortgage lender participate in the Interest on Lawyers' Trust Accounts (IOLTA) program. It requires participating parties to deposit funds, regardless of the amount or period for which they are held, in special interest-bearing IOLTA accounts. The interest earned on such accounts is paid to a federally tax-exempt organization, which the Superior Court judges designate to administer the program.

The act defines a "mortgage lender" as any person engaged in the business of making first or secondary mortgage loans, including a bank or out-of-state bank; a Connecticut, federal, or out-of-state credit union; and a first or second mortgage lender required to be licensed under state law.

The act specifies that the IOLTA law does not prevent an entity from depositing a person's loan proceeds, regardless of the amount or the period for which the proceeds are expected to be held, in a separate interest-bearing account established on behalf of and for the person's benefit.

The act also specifies that nothing in the IOLTA law grants to the judges of the Superior Court, or any other judicial authority, any legislative, regulatory, or rule-making authority over insurance companies.
EFFECTIVE DATE: July 1, 2005

BACKGROUND

IOLTA Program

IOLTA is a program in which lawyers pool their clients' fund accounts and use the interest to assist in providing legal services to the poor and scholarships for poor law students. The law authorizes the Superior Court judges to choose an administrator for the

program. They have selected the Connecticut Bar Foundation.

Under the program, clients' funds which are less than $10,000 or are expected to be held for a period of not more than 60 business days, must be deposited by participating lawyers and law firms in interest-bearing accounts specifically established pursuant to the IOLTA program. But the law specifies that a lawyer or law firm may deposit a client's funds, regardless of the amount or the period for which the funds are expected to be held, in a separate interest-bearing account established on behalf of and for the benefit of the client.

PA 05-267—HB 6815
Judiciary Committee
Public Safety and Security Committee
Finance, Revenue and Bonding Committee

AN ACT CONCERNING EXPEDITED CRIMINAL HISTORY RECORDS CHECKS

SUMMARY: This act authorizes the public safety commissioner to provide expedited service for people requesting criminal history record checks. It authorizes the commissioner to contract with any person, firm, or corporation to establish and administer this service, which must include making the results of the check available to the requesting party through the Internet. It requires the commissioner to charge an additional $25 fee for each expedited record check provided. It specifies that the fees the commissioner charges for providing any criminal history record check must be paid by the requesting party in whatever manner the commissioner requires.
EFFECTIVE DATE: October 1, 2005

PA 05-275—sSB 1052
Judiciary Committee
Insurance and Real Estate Committee
Public Health Committee
Legislative Management Committee
Appropriations Committee

AN ACT CONCERNING MEDICAL MALPRACTICE

SUMMARY: This act makes numerous changes in the laws dealing with civil litigation, primarily relating to medical malpractice; medical malpractice insurance regulation and oversight; and the regulation, oversight, and disciplining of doctors.

Regarding litigation reform, the act:

1. permits a plaintiff to pay more than the statutory contingency fee sliding scale allows under certain circumstances, but prohibits a fee exceeding one-third of the settlement or the damages awarded (§ 1);
2. requires, as a condition of filing a medical malpractice lawsuit, a signed opinion from a similar health care provider indicating that malpractice has occurred (§ 2);
3. requires the court, within six months after a medical malpractice case is filed, to schedule a conference to determine whether to recommend the case be designated as a complex litigation case and transferred to the complex litigation docket (§ 3);
4. changes the "offer of judgment" law in several ways including changing the terminology to "offer of compromise" and ending the process in a withdrawal of the lawsuit after payment instead of a judgment against the defendant (§§ 4-7);
5. reduces the interest rate the court may award with respect to an offer of compromise for cases that accrue after September 30, 2005, from 12% to 8%, and establishes some additional requirements for such cases (In general, a cause of action accrues when the right to bring suit on a claim is complete.) (§ 4);
6. allows defendants in medical malpractice cases that accrue after September 30, 2005, to introduce evidence of the amount of damages awarded to the plaintiff for the same injury or death in a separate lawsuit by the plaintiff against a different health care provider (§ 8);
7. makes expressions of sympathy by health care providers inadmissible in lawsuits by victims of unanticipated outcomes of medical care (§ 9);
8. requires the court to review the evidence in medical malpractice cases where $1 million or more in noneconomic damages is awarded to determine if the award is excessive as a matter of law (§ 10); and
9. eliminates the medical malpractice screening panel (§ 28).

Regarding insurance regulation and oversight, the act:

1. requires prior rate approval when an insurer wants to increase medical malpractice insurance rates by 7.5% or more for physicians, hospitals, and certain other health care providers and requires an insurer to give insureds at least 60 days notice of (a) the proposed rate increase and (b) their right to request a hearing before the insurance commissioner (§ 11);

2. requires the insurance commissioner, no earlier than October 1, 2008, to review medical malpractice insurance rates to determine if (1) the amount or frequency of insured awards and settlements against these providers has decreased since October 1, 2005; (2) the rates reflect the decrease; and (3) the rates bear a reasonable relationship to the costs of writing such insurance in this state and requires her to convene a working group to recommend appropriate changes to decrease or establish reasonable rates if after review she determines that rates have not decreased and are not reasonably related to the costs of writing such insurance (§12);
3. requires the commissioner to develop a plan to maintain a viable medical malpractice insurance industry in Connecticut and submit it to the governor (§ 13);
4. requires insurers to report to the insurance commissioner on each malpractice claim they close and requires her to compile and analyze this data and report on it to the Insurance and Real Estate Committee and the public (§ 14); and
5. requires captive insurers to provide certain information to the commissioner (§§ 15 & 16).

Regarding medical provider regulation and oversight, the act:

1. requires the Department of Public Health (DPH) to adopt guidelines for investigating complaints against, and disciplining, physicians (§§ 17 & 20);
2. expands the pool of people who may serve as members of DPH hearing panels from 18 to 24, specifies that at least eight, instead of eight, must be physicians, and at least one, instead of one, must be a physician assistant, and requires that one member must be a physician or a physician assistant, as appropriate (§§ 18 & 19);
3. amends the physician profile law to require more information about adverse licensure actions in other states, professional liability insurance, and active involvement in patient care and requires physicians to report any changes or updates in mandatory reporting information (§§ 22 & 23);
4. establishes continuing education requirements for physicians as a condition of license renewal, along with exemptions from these requirements under certain conditions (§§ 21, 24, and 25);
5. requires a physician whose license becomes void for failure to renew while on active duty in the armed forces to complete continuing education requirements in order to have his license renewed (§ 25);
6. requires each health care facility to develop pre-surgery identification protocols by October 1, 2005 and the DPH commissioner to report on them to the Public Health Committee by that date (§ 26); and
7. requires each hospital to contract with a patient safety organization to gather medical- or health care-related data and make recommendations to the hospital on ways to improve patient care and safety (§ 27).

EFFECTIVE DATE: Upon passage, except for the provision requiring captive insurers to provide information, which takes effect July 1, 2005 (§ 16); the provisions dealing with good faith certificates (§ 2), offer of compromise (§§ 4-7), collateral source (§ 8), review of insurance rates (§ 12), DPH disciplinary guidelines (§ 17), the physician profile (§§ 22, 23), and continuing education (§§ 21, 24, 25), which take effect October 1, 2005; and the provision dealing with closed claims reports (§ 14), which takes effect January 1, 2006.

CONTINGENCY FEES (§ 1)

Waiving Contingency Fee Limits

The law establishes a sliding scale of contingency fees attorneys may charge clients based on the amount of the settlement or judgment. It allows attorneys to collect (1) one-third of the first $300,000, (2) 25% of the next $300,000, (3) 20% of the next $300,000, (4) 15% of the next $300,000, and (5) 10% of amounts exceeding $1,200,000. The scale applies to any lawsuit to recover damages resulting from personal injury, wrongful death, or property damage involving contingency fees, not just to medical malpractice cases. A Superior Court judge interpreted this law to allow clients to waive its protections limits and agree to pay a higher contingency fee.

The act allows a claimant in a claim or civil action that accrues on or after the act's effective date to waive the sliding scale limits only if the claim is substantially complex, unique, or different from other claims as to warrant a deviation. The act specifies that factors that may indicate that a claim is substantially complex, unique, or different include whether it:

1. involves complex factual, medical, or legal issues;
2. involves serious permanent personal injury or death;
3. is likely to require extensive investigation and discovery proceedings, including multiple depositions; or

4. requires testimony, whether at trial or in a deposition, from an expert who has not participated in the claimant's care or in any official investigation of the incident involved.

The act requires that before a claimant may enter into an agreement that provides for a contingency fee that exceeds the sliding scale, the attorney must (1) explain the sliding scale and the reasons the attorney is unable to abide by it; (2) advise the claimant of his right to seek representation by another attorney willing to abide by it; and (3) allow the claimant enough time to review the proposed agreement, and, if the claimant wishes, seek representation by another attorney before entering into it.

The act makes any waiver of the sliding scale invalid unless the agreement (1) is in writing; (2) states completely the sliding scale fee schedule; (3) contains a conspicuous statement containing certain information, printed in boldface type at least 12 points in size, in substantially the form the act specifies; and (4) is signed and acknowledged by the claimant before a notary public or other person authorized to take acknowledgements.

The act requires that the conspicuous statement contain the following information:

1. the client understands that the sliding scale statute limits the amount of attorney's fees payable by a claimant and is intended to increase the portion of the judgment or settlement that a claimant actually receives; and
2. despite the legislative intent in enacting that fee schedule, the client knowingly and voluntarily waives the schedule in his claim or civil action.

If a claimant waives the schedule, the act limits the total contingency fee to one-third of the damages awarded or the settlement amount the claimant received. It prohibits the attorney from requiring the claimant to repay any costs the attorney incurred in investigating and prosecuting the claim or civil action if there is no recovery.

The act specifies that no fee shall be payable to any attorney who seeks a fee that exceeds the sliding scale unless the claimant has waived it pursuant to the act's requirements and the contingency fee agreement complies with the act.

GOOD FAITH CERTIFICATE (§ 2)

The law prohibits filing a medical malpractice lawsuit unless the attorney or claimant has made as reasonable an inquiry as permitted by the circumstances to determine that grounds exist for a good faith belief that the claimant received negligent care or treatment. The complaint or initial pleading must contain a certificate of the attorney or claimant that his inquiry resulted in a good faith belief that grounds exist for a lawsuit against each named defendant.

Under prior law, a good faith belief could be shown if the claimant or his attorney received a written opinion from a similar health care provider that there appeared to be evidence of medical negligence. But, it could also be shown in some other way. The act instead requires, for lawsuits filed after September 30, 2005, a written signed opinion from a similar health care provider in order to show good faith. The opinion must include the reasons for concluding that medical negligence occurred. It is not subject to discovery by the defendants except for questioning the certificate's validity. The act requires the claimant or his attorney to retain the original written opinion and attach a copy of it to the certificate, with the health care provider's name and signature removed.

It makes the failure to obtain and file the written opinion grounds for dismissal.

The act imposes the same good faith certificate requirement on defendants who file an apportionment complaint against another health care provider. An apportionment complaint is a defendant's claim in a medical malpractice lawsuit that another health care provider who the plaintiff did not make a defendant committed malpractice and partially or totally caused the plaintiff's damages. By filing the apportionment complaint, the defendant in essence makes the other health care provider a party to the plaintiff's lawsuit.

The act makes the health care provider who provides the opinion immune from liability unless it is shown he acted with malice.

By law, the court may impose sanctions if a certificate is not made in good faith.

COMPLEX LITIGATION CASE (§ 3)

The act requires the court, within six months after a medical malpractice case is filed, to schedule a conference to determine whether to recommend to the chief court administrator, or his designee, that the case be designated as a complex litigation case and transferred to the complex litigation docket. The act specifies that it does not prevent any party or judge from, at any time, asking the chief court administrator to designate the case as a complex litigation case.

OFFER OF COMPROMISE BY PLAINTIFFS AND DEFENDANTS (§§ 4-7)

Contract Cases or Cases Seeking Money Judgments

By law, in any contract case or a case seeking money damages, plaintiffs and defendants can use a statutory procedure to offer to settle the case for a specified amount. This was called an "offer of

judgment;" the act changes the term to "offer of compromise."

Plaintiffs can file an offer with the court clerk up to 30 days before trial. After trial, the court must examine the record to determine whether the plaintiff made an offer that the defendant failed to accept. Under prior law, if it determined that the plaintiff recovered an amount equal to or greater than the sum stated in his offer of judgment, the court had to add 12% annual interest.

A defendant had 60 days to file an acceptance of the offer with the court clerk. If he notified the clerk that he accepted the offer, the clerk had to enter judgment.

The act reduces the interest the court must add from 12% to 8% for claims that accrue after September 30, 2005. It prohibits the plaintiff from making the offer for at least 180 days after service of process on the defendant. It gives the defendant 30, instead of 60, days to accept.

If the defendant accepts the offer, he must file his acceptance with the court clerk. After the plaintiff receives the amount specified in the offer from the defendant, he must file a withdrawal of the lawsuit with the clerk, which the clerk must record. Thus, no judgment is entered against the defendant.

By law, defendants may also file an offer with the court clerk up to 30 days before trial. The plaintiff has 10 days after being notified of the defendant's offer to accept it. If the plaintiff recovers less than the offer of judgment, he must pay the defendant's costs accruing after he received the offer, including reasonable attorney's fees up to $350.

The act gives the plaintiff 60 days to accept the defendant's offer, instead of 10. After the plaintiff files an acceptance of an offer to compromise with the clerk and receives the amount specified in the offer, he must file a withdrawal of the lawsuit with the clerk, who must record.

Medical Malpractice Cases

The act requires that, in medical malpractice cases, a plaintiff's offer of compromise must specify all damages known to him or his attorney when the offer is made. At least 60 days before filing the offer, the plaintiff or his attorney must provide the defendant or his attorney with an authorization to disclose medical records that meets federal privacy provisions under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and disclose all expert witnesses who will testify about the prevailing professional standard of care. The plaintiff must file with the court a certification that he has provided each defendant or his attorney with all documentation supporting the damages.

EVIDENCE OF DAMAGES AWARDED (§ 8)

The act allows defendants in medical malpractice cases that accrue after September 30, 2005 to introduce evidence of the amount of damages awarded to the plaintiff for the same injury or death in a separate lawsuit the plaintiff filed against a different health care provider.

EXPRESSIONS OF SYMPATHY (§ 9)

The act makes certain statements or other conduct inadmissible evidence as an admission of liability or an admission against interest in any medical malpractice lawsuit or any arbitration proceeding related to it. This rule applies to statements, affirmations, gestures, or conduct expressing apology, fault, sympathy, condolence, compassion, or a general sense of benevolence that a health care provider or his employee makes to the alleged victim, his relative, or representative regarding the victim's discomfort, pain, suffering, injury, or death from a medical treatment or procedure that differs from an expected result.

The victim's relatives include his spouse, parent, grandparent, stepfather, stepmother, child, grandchild, sibling or half-sibling, or his spouse's parents; relationships that are created by adoption; and any person who has a family-type relationship with a victim. A victim's representative is his legal guardian, attorney, health care agent, or any one else recognized in law or custom as his agent.

MANDATORY REVIEW OF NONECOMOMIC DAMAGES OVER $1 MILLION (§ 10)

The act requires the court, in any medical malpractice case in which the jury awards more than $1 million in noneconomic damages, to review the evidence to determine if the amount is excessive as a matter of law. The court must consider whether it so shocks the sense of justice as to compel the conclusion that the jury was influenced by partiality, prejudice, mistake, or corruption. If the court concludes the award was excessive, it must order the plaintiff to remit the excessive amount. If the plaintiff refuses to do so, the court must set aside the verdict and order a new trial.

PRIOR MALPRACTICE INSURANCE RATE APPROVAL (§ 11)

The act subjects malpractice insurance rates for physicians, hospitals, advanced practice registered nurses, and physician assistants to prior rate approval by the insurance commissioner. On and after the act's effective date, each insurer or rating organization seeking to increase its rates by 7.5% or more must file a

request with the Insurance Department and send, by certified mail with return receipt requested, written notice to all affected insureds at least 60 days before the change's effective date on a form the commissioner prescribes.

The request for a rate increase must be filed after this notice is sent and must indicate the date the notice was sent. The notice must indicate that the insured can request a public hearing by submitting a written request to the insurance commissioner within 15 days after the date notice was sent. Within 15 days after notice is sent, the insurer must give the Insurance Department a list of insureds to whom notice was sent and indicate whether a return receipt was received for each.

The act prohibits the commissioner from approving, modifying, or denying a requested rate increase until the time for an insured to request a hearing expires. It requires her to hold a public hearing, if requested, before taking action.

The commissioner must approve, modify, or deny the filing within 45 days after receiving it. Her final decision may be appealed to Superior Court.

INSURANCE COMMISSIONER REVIEW OF MALPRACTICE INSURANCE RATES (§ 12)

No earlier than October 1, 2008, the act requires the insurance commissioner to review medical malpractice insurance rates in Connecticut for physicians, hospitals, advanced practice registered nurses, and physicians' assistants to determine if (1) the amount or frequency of insured awards and settlements against these providers have decreased since October 1, 2005; (2) the rates reflect the decrease; and (3) the rates bear a reasonable relationship to the costs of writing such insurance in this state. She must examine the rates for policies issued by (1) captive insurers and risk retention groups, to the extent this information is available, and (2) insurers licensed in Connecticut.

If the commissioner determines that rates have not decreased and are not reasonably related to the costs of writing such insurance in the state, she must convene a working group to (1) consider the amount of awards and settlements in the past 10 years and (2) recommend appropriate changes, if any, in the law to decrease rates or establish reasonable ones. These changes may include reasonable limits on noneconomic damage awards, revisions to procedures insurers use to establish rates, and regulation of reimbursement rates health insurers and HMOs pay to health care providers.

The working group must consist of:

1. the chairmen and ranking members of the Judiciary, Public Health, Insurance and Real Estate, and the Legislative Program Review and Investigations committees or their designees;
2. one member each appointed by the Connecticut Medical Society, the Connecticut Hospital Association, and the Connecticut Trial Lawyers Association;
3. one representative of a patient advocacy group appointed by the House speaker;
4. one representative of a medical malpractice insurer licensed and actively doing business in Connecticut appointed by the Senate president pro tempore;
5. the commissioner of the Office of Health Care Access, or a designee; and
6. the insurance commissioner.

PLAN TO MAINTAIN A VIABLE MEDICAL MALPRACTICE INSURANCE INDUSTRY (§ 13)

By January 1, 2006, the insurance commissioner must develop and submit to the governor a plan to maintain a viable medical malpractice insurance industry in Connecticut for physicians, hospitals, advanced practice registered nurses, and physician assistants.

MEDICAL MALPRACTICE DATABASE OF CLOSED CLAIMS (§ 14)

Closed Claim Reports

Prior law authorized the insurance commissioner to require all medical malpractice insurers in Connecticut to submit whatever information she deemed necessary to establish a medical malpractice database. The database could include information on all incidents of medical malpractice, all settlements, and awards, other information relative to procedures and specialties involved, and any other information relating to risk management.

The act instead requires the commissioner to establish a closed claim reports electronic database. Beginning January 1, 2006, each insurer (including captive insurers and self-insured entities) must provide to the commissioner a closed claim report on whatever form she requires. A "closed claim" is one that has been settled or otherwise disposed of, where the insurer has paid all claims regarding physicians, hospitals, advanced practice registered nurses, and physician assistants.

The act requires the insurer to report within 10 days after the end of the calendar quarter in which a claim is closed. The report must include information only about claims settled under Connecticut's laws. It must include details about the insured and insurer, the injury or loss, the claims process, and the amount paid.

Details About the Insured and Insurer

The report must include the (1) insurer's name; (2) policy limits and whether it was an occurrence policy or was issued on a claims-made basis; (3) insured's name, address, license number, and specialty coverage; and (4) insured's policy number and unique claim number. An "occurrence policy" provides protection for malpractice that occurred during the time the policy was in effect. A "claims-made" policy provides protection for claims made during the period the policy is in effect.

Details About the Injury or Loss

The report must specify the:

1. date of the injury or loss that was the basis of the claim;
2. date the injury or loss was reported to the insurer;
3. name of the institution or location where the injury or loss occurred;
4. type of injury or loss, including an injury severity rating that corresponds with the injury scale that the commissioner must establish based on the severity scale developed by the National Association of Insurance Commissioners; and
5. name, age, and gender of any injured person covered by the claim.

Any individually identifiable health information (as defined by federal HIPPA regulation) is confidential. The act specifies that reporting this information is required by law. It requires that if necessary to comply with federal privacy laws, the insured must arrange with the insurer to release the required information.

Details About the Claims Process

The report must contain details about the claims process including:

1. whether a lawsuit was filed, and if so, in which court;
2. its outcome;
3. the number of other defendants, if any;
4. the stage in the process when the claim was closed;
5. the trial dates;
6. the date of any judgment or settlement;
7. whether an appeal was filed, and if so, the date filed;
8. the resolution of the appeal and the date it was decided;
9. the date the claim was closed; and
10. the initial and final indemnity and expense reserve for the claim.

Details About the Amount Paid on the Claim

The report must include:

1. the total amount of the initial judgment rendered by a jury or awarded by the court;
2. the total amount of the settlement if no judgment was rendered or awarded or the claim was settled after judgment was rendered or awarded;
3. the amount of economic and noneconomic damages, or the insurer's estimate of these amounts in a settlement;
4. the amount of any interest awarded due to failure to accept an offer of compromise;
5. the amount of any reduction or addition and the amount of final judgment after such reductions or additions;
6. the amount the insurer paid;
7. the amount the defendant paid due to a deductible or a judgment or settlement in excess of policy limits;
8. the amount other insurers or defendants paid;
9. whether a structured settlement was used;
10. the expense assigned to and recorded with the claim, including defense and investigation costs but not including the actual claim payment; and
11. any other information the commissioner determines necessary to regulate the medical malpractice insurance industry, ensure its solvency, and ensure that such liability insurance is available and affordable.

Annual Data Summary

The act requires the insurance commissioner to aggregate the individual closed claim reports data into a summary and annual report. The report must analyze the closed claim information, including:

1. a minimum of five years of comparative data, when available;
2. trends in frequency and severity of claims;
3. itemization of damages;
4. timeliness of the claims process; and
5. any other descriptive or analytical information that would help interpret the trends in closed claims.

The annual report must summarize rate filings for medical malpractice insurance for medical professionals and entities that the department approved for the prior calendar year. The summary must include an analysis of the trend of direct losses, incurred losses, earned premiums, and investment income as compared to prior years. The report must also include base premiums medical malpractice insurers charge for each specialty

and the number of providers insured by specialty for each insurer.

Beginning March 15, 2007, the commissioner must annually submit the report to the Insurance and Real Estate Committee. She must also (1) make the report available to the public, (2) post it on the department's Internet site, and (3) provide public access to the contents of the electronic database after establishing that the names and other individually identifiable information about claimants and practitioners have been removed.

The act requires the commissioner to provide the DPH commissioner with electronic access to all the closed case information she receives. It also requires the DPH commissioner to keep such information as confidential as the law requires the insurance commissioner to do.

CAPTIVE INSURERS (§§ 15 & 16)

A "captive insurer" is an insurance company owned by another organization and whose primary purpose is to insure risks of the parent organization and affiliated companies. In the case of groups and associations, it is an insurance organization owned by the insured whose primary purpose is to insure risks of member organizations, group members, and their affiliates.

The act requires each captive insurer that offers, renews, or continues insurance in Connecticut to provide the following information to the insurance commissioner in the same manner required for risk retention groups:

1. a copy of the group's financial statement submitted to its state of domicile, which must be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist;
2. a copy of each examination of the captive as certified by the commissioner or public official conducting the examination; and
3. at the commissioner's request, a copy of any audit performed with respect to the captive.

If a captive insurer does not maintain this information in this form, the act permits it to submit the information on whatever form the commissioner prescribes.

The act requires the commissioner to act as agent for service of process for risk retention groups domiciled outside the United States and for captive insurers. By law, the commissioner acts as agent for risk retention groups domiciled in another state that offer insurance in Connecticut.

DPH DISCIPLINARY GUIDELINES AGAINST DOCTORS (§ 17)

The act requires that, by January 1, 2006, the DPH, with the assistance of the Connecticut Medical Examining Board and relevant medical professional associations, establish guidelines for the physician disciplinary process. The guidelines, must include, at a minimum:

1. identification of each type of violation;
2. a range of penalties for each type of violation;
3. additional conditions the board may impose;
4. identification of factors the board must consider to determine what penalty to apply;
5. conditions, such as mitigating factors or other facts, that the board may consider in deviating from the guidelines; and
6. a requirement for the board to specify its reason for any deviation.

The act specifies that the guidelines may not be considered regulations.

DPH HEARING PROCEEDINGS AGAINST DOCTORS (§§ 18 & 19)

By law, DPH must investigate charges that a physician may be unable to practice medicine with reasonable skill or safety. If it finds probable cause, it refers the mater to the Medical Examining Board, which must refer it to a three-member hearing panel within 60 days of receiving it. The panel makes a recommendation to the board after conducting a hearing on the charges. The board may restrict, suspend, or revoke a physician's license or limit his right to practice for certain misconduct.

The act expands the pool of people who may serve as members of such panels from 18 to 24. It specifies that at least eight, instead of eight, must be physicians, and at least one, instead of one, must be a physician assistant.

By law, the three-member medical hearing panel must include a board member and a public member. The act requires that one member must be a physician or a physician assistant as appropriate.

DPH INVESTIGATION GUIDELINES CONCERNING COMPLAINTS AGAINST PHYSICIANS (§ 20)

Under prior law, the DPH commissioner could, with the Connecticut Medical Examining Board's advice and assistance, establish regulations to carry out his physician licensing duties. The act instead requires the commissioner to establish guidelines, which will not be considered regulations, to carry out these duties. By

January 1, 2006, the commissioner must establish guidelines:

1. for screening complaints about physicians' competence to determine which complaints DPH will investigate and in what order;
2. for conducting investigations to ensure prompt action when it appears necessary;
3. to determine when an investigation should be broadened beyond the initial complaint to include sampling patient records to identify patterns of care, reviewing office practices and procedures, and reviewing performance and discharge data from hospitals; and
4. to protect and ensure the confidentiality of patient and provider identities when an investigation is broadened.

PHYSICIAN PROFILES (§§ 22 & 23)

The act amends DPH's physician profile program to require physicians to report adverse licensure actions taken in other states. Prior law only required them to report disciplinary actions taken by DPH or the Medical Examining Board. The act requires the physician also to report (1) whether he is actively involved in patient care and (2) the name of his professional liability insurance carrier.

The law requires the physician periodically to update certain information in his profile about practice specialty and location, board certifications, languages spoken, hospital and nursing home privileges, and any felony convictions. The act requires periodic updating of additional profile elements, including appointments to Connecticut medical school faculties; professional services, activities, and awards; hospital disciplinary actions; and malpractice judgments, arbitration awards, and settlements.

CONTINUING EDUCATION (§§ 21 & 24)

Requirements and Acceptable Education and Activities

Beginning October 1, 2007, the act requires a physician applying for license renewal to have completed at least 50 contact hours of continuing education during the previous 24 months. A "contact hour" means a minimum of 50 minutes of continuing education activity. It must (1) be in the physician's practice area; (2) reflect the physician's professional needs in order to meet the public's health care needs; and (3) include at least one contact hour of training or education in infectious diseases (e.g., AIDS, HIV), risk management, sexual assault, and domestic violence.

Under the act, acceptable continuing medical education includes courses offered or approved by the American Medical Association, American Osteopathic Medical Association, Connecticut Hospital Association, Connecticut State Medical Society, county medical societies or equivalent bodies in other jurisdictions; education sponsored by hospitals and other health institutions; and courses offered by regionally accredited academic institutions, or a state or local health department.

Attesting to Continuing Education When Renewing a License

The act requires a physician applying for license renewal to sign a statement that he satisfied the continuing education requirements. The physician must keep attendance records or certificates of completion showing compliance with the requirements for at least three years following the year in which they were completed. He must provide the records to DPH for inspection within 45 days from when it requests them.

Exemptions

A first-time applicant for license renewal is exempt from the continuing education requirements. Also exempt is a physician not actively practicing during a one-year registration (license renewal) period if he provides DPH, before the period ends, a notarized application for exemption on a DPH form. DPH may require other documentation. The application must include a statement that the physician cannot practice until he meets the continuing education requirements.

A physician exempt from the requirements for less than two years must complete 25 contact hours of continuing education within the 12 months immediately preceding his return to active practice. A physician exempt for two or more years must complete the Special Purpose Examination of the Federation of State Medical Boards before returning to active practice.

Medical Disability or Illness Waiver

The act allows the DPH commissioner to waive the continuing education requirements or grant an extension to a physician in the case of medical disability or illness. The physician must apply to DPH for a waiver or extension on a DPH form and provide a licensed physician's certification of the disability or illness, as well as other documentation the commissioner may require. DPH can grant a waiver or extension for up to one registration period. It can grant additional waivers or extensions if the disability or illness continues beyond that period and the physician applies for the additional waiver or extension.

Failure to Renew License

A physician whose license lapses and who applies for reinstatement must document to DPH successful completion of the 25-hour continuing education requirement within the year preceding the application.

PHYSICIANS IN THE ARMED FORCES (§ 25)

If a physician's license becomes void for nonrenewal because he is on active duty in the armed forces, the act requires DPH to renew it within one year from the discharge date upon the physician's completion of the 25 contact hours of continuing education. The physician must apply to DPH and provide any documentation required. Under prior law, DPH had to renew a license in such a situation within six months from the discharge date, upon completion of any continuing education or refresher training required to renew the license.

PRE-SURGICAL PROTOCOLS (§ 26)

The act requires each hospital and outpatient surgical facility to develop protocols for accurate identification procedures they must use before surgery. The protocols must include (1) procedures to identify the patient, the surgical procedure to be performed, and the body part on which it is to be performed and (2) alternative identification procedures in urgent or emergency circumstances or where the patient cannot speak or is comatose, incompetent, or a child. After January 1, 2006, no hospital or outpatient surgical facility may anesthetize a patient or perform surgery unless the protocols have been followed. Each health care facility must make a copy of its protocols available to the commissioner upon request. DPH must report to the Public Health Committee by October 1, 2006 and describe the protocols developed.

DPH PATIENT SAFETY PROGRAMS (§ 27)

By January 1, 2006, the act requires each hospital to (1) contract with a patient safety organization to gather medical or health care related data from the hospital and make recommendations to it on ways to improve patient care and safety and (2) provide documentation to DPH, in whatever form and manner DPH requires, that the hospital has complied. The organization must do this by collecting, aggregating, analyzing, or processing medical or health care–related information it receives from health care providers. By law, a "patient safety organization" is any public or private organization, or part of one, whose primary activity is improving patient safety and quality of health care delivery for patients.

ELIMINATION OF MALPRACTICE SCREENING PANEL (§ 28)

The act eliminates the voluntary Medical Malpractice Screening Panel. Under prior law, the parties had to consent to use the panel. With their mutual agreement, the insurance commissioner or her designee selected panel members from lists of names submitted by the Connecticut State Medical Society and the Connecticut Bar Association. The panel was composed of two doctors and one attorney with trial experience in personal injury cases who acted as chairman. One of the doctors had to practice in the same specialty as the defendant. Panel members could not be from communities in which the defendant doctor or the parties' attorneys practice. Panel members were not compensated. The panel held confidential hearings and made transcripts available at cost to either party.

The panel's conclusion as to liability was outlined in a finding signed by the members and recorded by the insurance commissioner. The panel did not address the issue of damages. Each party received a copy of the panel's findings. If a trial was subsequently held, only unanimous panel findings were admissible. The court or jury determined the weight assigned to such findings. No member could be compelled to testify.

BACKGROUND

"Similar Health Care Provider"

By law, if the defendant health care provider is not certified by the appropriate American board as a specialist, is not trained and experienced in a medical specialty, or does not hold himself out as a specialist, a "similar health care provider" is one who is (1) licensed by the appropriate regulatory agency in Connecticut or another state requiring the same or greater qualifications and (2) trained and experienced in the same discipline or school of practice. Such training and experience must be a result of active involvement in practicing or teaching medicine within the five-year period before the incident giving rise to the claim.

If the defendant health care provider is certified by the appropriate American board as a specialist, is trained and experienced in a medical specialty, or holds himself out as a specialist, a "similar health care provider" is one who is (1) trained and experienced in the same specialty and (2) certified by the appropriate American board in the same specialty. But, if the defendant health care provider is providing treatment or diagnosis for a condition that is not within his specialty, a similar health care provider is a specialist trained in the treatment or diagnosis of that condition.

Sanctions if Certificate Not Filed in Good Faith

By law, the court must impose an appropriate sanction on the person who signed the certificate stating that malpractice occurred if it determines, after discovery is completed, that the certificate was not made in good faith and that no valid issue was presented against a health care provider who fully cooperated in providing informal discovery. It may also sanction the claimant. The sanction may include an order to pay to the other party or parties the reasonable expenses incurred because of the filing of the pleading or motion, including a reasonable attorney's fee. The court also may submit the matter to the appropriate authority for disciplinary review of the attorney who submitted the certificate.

Licensed Health Care Providers and Institutions

The provisions of the act relating to evidence of damages awarded (§ 8) and expressions of sympathy (§ 9), apply to medical malpractice lawsuits filed against the following licensed health care providers:

1. doctors,
2. chiropractors,
3. natureopaths,
4. podiatrists,
5. athletic trainers,
6. physical and occupational therapists,
7. substance abuse counselors,
8. radiographers and radiologic technologists,
9. midwives,
10. nurses and nurses aides,
11. dentists and dental hygienists,
12. optometrists and opticians,
13. respiratory care practitioners,
14. pharmacists,
15. psychologists,
16. marital therapists and professional counselors, and
17. clinical social workers.

The provision dealing with expressions of sympathy also apply to lawsuits against:

1. veterinarians;
2. massage therapists;
3. electrologists;
4. hearing instrument specialists, speech pathologists, and audiologists;
5. ambulance drivers; and
6. emergency medical technicians and communications personnel.

The provisions also apply to the following health care institutions: hospitals; outpatient surgical facilities; residential care homes; health care facilities for people with disabilities; nursing homes; rest homes; home health and homemaker-home health aide agencies; mental health and substance abuse treatment facilities; college infirmaries; diagnostic and treatment facilities, including those operated and maintained by a state agency, except facilities for the care or treatment of mentally ill or substance abusing people; and intermediate care facilities for the mentally retarded.

PA 05-288—sHB 6977
Judiciary Committee

AN ACT CONCERNING THE REVISOR'S TECHNICAL CORRECTIONS AND CERTAIN OTHER CHANGES TO THE GENERAL STATUTES AND CERTAIN PUBLIC ACTS

SUMMARY: This act makes a number of unrelated changes.

It expands the definition of an "emergency vehicle" for purposes of the laws establishing the rights of emergency vehicles and motorists' responsibilities with respect to them to include any vehicle operated by a member of an emergency medical service organization responding to an emergency call, rather than only the organization's own vehicles. This appears to expand the definition to cover any motor vehicle a member of the organization is driving to respond to an emergency call, including, for example, the personal vehicle of a member of a volunteer organization, instead of only vehicles that are actually owned by the organization. It makes a similar change to a provision that prohibits someone from willfully or negligently obstructing or retarding such a vehicle while answering an emergency call or taking a patient to a hospital (§§ 238, 239).

PA 05-218 expanded the authorization for using flashing or revolving red lights or flashing headlamps and a flashing amber light to include first or second deputy chiefs or first or second assistant chiefs of municipal or volunteer emergency medical service organizations, rather than only the organization's chief, while on the way to an emergency scene. This act further expands this authority to include these officials of licensed (commercial) emergency medical service organizations (§ 234).

By law, a Siting Council certificate is needed to build a gas pipeline, other than one that has a design capability of less than 200 pounds per square inch. The act additionally exempts pipelines that have a design capacity of less than 20% of their specified minimum yield strength, thereby subjecting them to local planning and zoning regulation (§ 236) (June Sp. Sess. PA 05-1 also makes this change).

The act makes it clear that the prohibition established by PA 05-101 against engaging in financial transactions that are unrelated to accomplishing a

charity's purpose applies only while someone is engaged in conducting a charity's affairs (§ 221).

By law, a person who stores, cares for, maintains, repairs, or furnishes services, gasoline, accessories, materials, or other supplies for an aircraft has a lien on the aircraft for the amount due and can retain the aircraft. The act specifies that the lien can be for any of the services provided; the person has a lien until the amount is paid; and he can retain possession of the aircraft until the amount is paid or the lien is dissolved (§ 170).

By law, protective orders in stalking cases or that prohibit witness harassment must contain a statutorily specified statement including the penalty for violating the order. PA 02-127 increased the penalty from a class A misdemeanor to a class D felony for a criminal violation of the order (see Table on Penalties). The act changes the required statement in the protective order to reflect this increased penalty (§§ 183, 186).

The act makes two changes to commemorative road designations in PA 05-210.

1. It corrects the commemorative designation for route 53 in Bethel from the "John L. Tiele Memorial Highway" to the "John L. Thiele Memorial Highway" (§ 229).
2. It modifies the designation for the "Hamden Veterans' Memorial Highway" by beginning the designation from the intersection of Route 10 and Route 15, instead of the Route 10 and Farmington Canal Greenway overpass, and including the segment of Route 717 from Whitney Avenue eastward to its intersection with Route 15 in the designation (§ 235).

The act makes many technical changes, corrects improper references, and makes conforming changes. It also makes changes to two bills that did not pass (§§ 233, 237).

EFFECTIVE DATE: Upon passage, except technical changes regarding (1) private detective and security service licenses, civil unions, youthful offenders, and a bill that did not pass are effective October 1, 2005 and (2) credit security freezes are effective January 1, 2006.

PA 05-17—SB 1028
Labor and Public Employees Committee

AN ACT CONCERNING WORK EXPERIENCE FOR CERTAIN NONPERMANENT STATE SERVICE

SUMMARY: This act requires the state to credit people it employed as general workers for program support or technical services with work experience for time they spent working "out of class" doing work relevant to any full-time state position for which they later apply.

If such workers contest the amount of out-of-class experience the state agency awards, they are entitled to a hearing before an agency hearing officer and may appeal the hearing officer's decision to the commissioner or other agency head. The hearing and appeals must be held in accordance with the Uniform Administrative Procedure Act.

The affected workers are temporary, hourly–paid state employees who are not part of the state civil service system and do not receive benefits. A state employee is considered working "out of class" when he is performing duties outside of his job class that are part of another, usually higher, job class.

General workers not covered by the act include part-time student employees doing miscellaneous work or Department of Mental Retardation patient workers working at a state facility.
EFFECTIVE DATE: Upon passage

PA 05-30—HB 6945
Labor and Public Employees Committee

AN ACT CONCERNING NOTICE PERIOD PAY

SUMMARY: This act limits the notice-period or other separation pay of a dismissed classified state employee to the employee's pay rate at the time of dismissal. Such pay is limited to two weeks or the notice period provided in the employee's union contract. Notice-period pay is the pay received from the date of the separation notice to the employee's last day on the job.
EFFECTIVE DATE: October 1, 2005

BACKGROUND

Classified and Exempt State Jobs

Almost all state employees in the executive branch are in the classified service (i.e., civil service positions). Roughly 10% of state employees are exempt from classified service, including all employees of the Judicial and Legislative departments.

PA 05-32—sHB 6228
Labor and Public Employees Committee
Planning and Development Committee
Appropriations Committee

AN ACT INCREASING THE MINIMUM WAGE

SUMMARY: This act increases the state's minimum hourly wage from $7.10 to $7.40 on January 1, 2006 and to $7.65 on January 1, 2007.
EFFECTIVE DATE: October 1, 2005

BACKGROUND

Hotel and Restaurant Industry Tip Credit

By law, hotels and restaurants can pay service employees and bartenders, who customarily and regularly receive tips, less than the minimum wage as long as tips make up the difference. The tip credit is 29.3% for hotel and restaurant service employees and 8.2% for bartenders. When the minimum wage increases to $7.40 an hour, the new minimum with the tip credit will be $5.23 for hotel and restaurant service employees and $6.79 for bartenders.

PA 05-34—HB 6751
Labor and Public Employees Committee
Appropriations Committee

AN ACT CONCERNING THE UNEMPLOYMENT COMPENSATION ALTERNATIVE BASE PERIOD

SUMMARY: This act extends, from December 31, 2005 to December 31, 2007, the sunset date for unemployment compensation benefits to be calculated on an alternative base period. The alternative base period is used to determine the unemployment compensation eligibility of claimants who do not qualify for benefits under the regular base period.

The act repeals the requirement that the Department of Labor (DOL) adopt regulations by July 1, 2003 to implement the base period and alternative base period policies, including gathering wage information from employers to calculate the alternative base period.
EFFECTIVE DATE: October 1, 2005

BACKGROUND

Regular and Alternative Base Periods

The regular base period is the first four of the five most recently completed quarters prior to the quarter in which the claimant files an unemployment claim. By

law, when determining a claimant's eligibility under the alternative period, DOL can use the four most recently completed quarters before the quarter in which he filed his claim. But if the claimant was (1) receiving or eligible for workers' compensation or (2) properly absent from work under his employer's sick or disability leave policy before becoming unemployed, the alternative base period is the four most recent quarters in which he worked, as long as they were not previously used to claim unemployment compensation.

PA 05-50—sSB 847
Labor and Public Employees Committee
Government Administration and Elections Committee
Planning and Development Committee

AN ACT CONCERNING REPORTING REQUIREMENTS ON PREVAILING WAGE PROJECTS

SUMMARY: This act specifies that the state prevailing wage law applies to people doing the work of mechanics, laborers, or workers on prevailing wage projects. This means these employees will be paid for the type of work they do regardless of their job classification or whether they are independent contractors. Prior law covered any mechanic, laborer, or workman employed on the project. By law, contactors must pay the prevailing hourly wage, as determined by the state Labor Department, to all employees working on state and municipal construction projects that cost more than a set dollar threshold.

The act specifies employers must abide by the prevailing wage record-keeping requirements even if the person doing the work is a subcontractor or independent contractor.

Furthermore, the act changes the word "employee" to "person" in the same statute to cover any person doing work covered by the prevailing wage law. The act only covers those doing the type of work covered by the prior law: mechanic, laborer, or worker. People employed on the project in other capacities, such as architect or manager, are not covered.
EFFECTIVE DATE: October 1, 2005

BACKGROUND

Prevailing Wage Law

The state prevailing wage law applies to state and municipal (1) new construction projects that cost $400,000 or more, and (2) repair or remodeling jobs that cost $100,000 or more. Punishments for violating the law include fines; suspension from bidding on future public projects; cancellation of the existing contract; and, in the case of failing to file, or filing a false certified payroll, up to five years in prison.

PA 05-85—sHB 6918
Labor and Public Employees Committee
Finance, Revenue and Bonding Committee
Judiciary Committee

AN ACT CONCERNING THE INTEGRITY OF THE UNEMPLOYMENT COMPENSATION EXPERIENCE RATED TAX SYSTEM

SUMMARY: This act prohibits a person or business that buys or acquires an employer solely or primarily to obtain a lower unemployment compensation tax rate from getting that employer's lower unemployment tax experience rating. It also prohibits transferring employees or business from one employer to another employer under the same ownership or control to obtain a lower unemployment tax rate.

It establishes penalties for violations that include fines, imprisonment, and an increase in the employer's unemployment tax rate. Its penalties also apply to existing provisions of unemployment compensation law regarding the determination of an employer's unemployment tax rate.

The act states it must be interpreted to meet the minimum requirements of the federal law requiring state unemployment compensation laws to prohibit acquisition, restructuring, or workforce shifting intended to avoid unemployment taxes.

It requires the Department of Labor (DOL) to adopt implementing regulations and applies to tax years beginning on or after January 1, 2006.
EFFECTIVE DATE: October 1, 2005

VIOLATIONS

DOL administers the unemployment compensation law and annually calculates each employer's unemployment tax rate. Under the experience rating system, an employer's tax rate is based largely on the amount of unemployment compensation paid to its former employees. The more unemployment compensation paid to former employees, the higher its unemployment tax rate, up to a limit established by law. Employers with no history of former employees obtaining benefits will have the lowest statutory tax.

The act prohibits a person or business that buys or acquires the assets, organization, employees, trade, or business of an employer solely or primarily to obtain a lower unemployment compensation tax rate from getting that employer's lower unemployment tax experience rating. The act makes such an acquisition a violation of its provisions.

Under the act, when employees, assets, organization, or businesses are transferred from one employer to another with which it shares substantially common ownership, management, or control, the unemployment tax experience of the transferring employer moves with the transfer to the receiving employer. DOL must recalculate the unemployment tax rates for both, which are effective on the transfer date.

The act applies to individuals, corporations, limited liability companies, companies, trusts, estates, partnerships, and associations.

DOL'S AUTHORITY

The act requires DOL to, at a minimum, consider the following when determining whether an employer acquired another employer's assets, organization, employees, trade, or business solely or primarily to lower its unemployment taxes:

1. the cost of acquiring the business,
2. whether the new owner continued the business activity of the acquired business and for how long, and
3. whether the new owner hired a substantial number of new employees to perform duties unrelated to the business activity conducted by the business before its acquisition.

To enforce any provision of the act, DOL may require any employer, whether or not it is otherwise subject to the provisions of unemployment compensation law, to provide any necessary sworn or unsworn reports.

CIVIL AND CRIMINAL PENALTIES

Under the act, any person or business that (1) knowingly violates, attempts to violate, or knowingly advises another to violate the act's ban; (2) transfers employees between two companies under the same ownership or control and fails to provide the requested reports necessary to enable DOL to recalculate each company's experience rating; or (3) violates any other provision of the unemployment compensation law to obtain a lower tax rate is subject to penalties, fines, and imprisonment.

The penalties are:

1. a criminal penalty of a fine of up to $2,000, imprisonment for up to one year, or both and
2. for (a) an employer, a penalty tax rate of an additional 2% of taxable wages for the year of the violation and the next three years, and (b) a non-employer, a civil penalty of $500 to $5,000.

The act requires that non-employer penalties be deposited in the Employment Security Special Administration Fund.

It requires that, in cases where one person or business acquired another to obtain a lower tax rate, DOL charge the employer the greater of the new employer tax rate (for employers without enough experience to have their rate based on experience) or the employers' rate based on its actual unemployment experience.

The act applies its penalties to violations of existing law regarding the determination of an employer's unemployment tax rate.

CONFORMITY WITH FEDERAL LAW

The act states it must be interpreted to meet the minimum requirements of the federal law (P.L. 108-295, known as the SUTA Dumping Prevention Act of 2004) requiring state unemployment compensation laws to prohibit acquisition, restructuring, or workforce shifting that is intended to avoid unemployment taxes. This law requires states to prohibit state unemployment tax "dumping" as a condition for receiving federal unemployment credits.

PA 05-126—SB 846 **(VETOED)**
Labor and Public Employees Committee
Government Administration and Elections Committee
Legislative Management Committee

AN ACT CONCERNING IMPACT STATEMENTS FOR REDUCTIONS IN STATE SERVICES

SUMMARY: This act requires, before any governor-recommended major layoff or dismissal of state employees takes place, the Office of Policy and Management secretary, or his designee, to submit to the General Assembly a written statement on the effect the layoff or dismissal will have on (1) the affected agency, department, board, or commission and (2) any clients or consumers it serves. The act defines a major layoff or dismissal as at least 5% of the total agency positions.

The act does not define "position," but it defines "state employee" as any full- or part-time employee in the Executive, Legislative, or Judicial branches and any employee of a quasi-public agency. The definition excludes judges.

EFFECTIVE DATE: Upon passage

PA 05-199—sSB 1336
Labor and Public Employees Committee
Insurance and Real Estate Committee

AN ACT CONCERNING REVISIONS TO STATUTES GOVERNING THE SECOND INJURY FUND

SUMMARY: This act makes changes in the laws governing the Second Injury Fund, a state-run workers' compensation fund administered by the state treasurer. It exempts the fund from liability in certain cases and reduces the fund's potential liability by prohibiting retroactive claims filed more than two years after the date on which the employer or its insurer paid benefits.

It (1) changes the method of assessing employers for fund costs, (2) defines employer-paid losses, and (3) prohibits credits against paid losses with some exceptions.

It also authorizes:

1. the treasurer to audit employers and insurers regarding requested information and any fund payment due,
2. a 15% penalty on insurers and employers who fail to pay their fund assessment or surcharge and a 6% annual interest charge on unpaid assessments and surcharges, and
3. workers' compensation commissioners and the treasurer to enter into settlements with claimants either before or after an award against an employer.

The act imposes collection and payment responsibilities on the insurance carriers of insured employers.

The act also makes conforming changes and deletes some obsolete language.

EFFECTIVE DATE: July 1, 2006

LIABILITY REDUCTION

The act reduces the fund's liability by (1) exempting the fund from being considered an employer or insurer when liability is assigned to an employee's previous employers, (2) prohibiting claims on the fund filed more than two years after the date on which the employer or its insurer paid benefits, (3) exempting it from claims brought due to an insolvent insurer, and (4) exempting it from claims by the Insurance Guarantee Association.

Reimbursement in Previous Employer Claims (§ 1)

By law, a person's last employer is initially responsible for his workers' compensation claim. But a workers' compensation commissioner can order an earlier employer or his insurer to reimburse the last employer or his insurer, if the commissioner determines that the earlier employer is partially liable for the claim. Under the act, the fund is not an employer or insurer, and thus is exempt from liability. Under the act, any amount the Second Injury Fund is exempt from will be proportionally reallocated between the other insurers and former employers.

Retroactive Benefit Claims (§§ 2-7)

The act exempts the fund from any liability for retroactive benefit claims older than two years from the date on which the employer or its insurer paid benefits. It applies this liability limitation on workers' compensation death benefits, cost of living increases, benefits provided after an injury reoccurs, and cases of insolvent insurers.

Insolvent Insurer Claims (§ 7)

In situations where more than one employer is liable for compensation, the act exempts the fund from claims brought due to an insolvent insurer.

Insurance Guarantee Association (§ 12)

The act exempts the fund from claims by the Insurance Guarantee Association, another statutorily created entity that makes payments when an insurer goes bankrupt.

EMPLOYER ASSESSMENT (§ 8)

The act creates a new method for assessing employers and elaborates on the definitions of "insured employer" and "self-insured employer."

Under the act, an insured employer means an employer who insures its workers' compensation risks with an insurance company the state authorized to issue workers' compensation policies in Connecticut, and it includes any member of a workers' compensation pool administered by an interlocal risk management agency. It requires that a self-insured employer be one that the workers' compensation chairman has approved to self-insure under the Workers' Compensation Act.

The act handles employer mutual associations organized before June 6, 1996 with members composed exclusively of health care providers and whose premium base is entirely from health care organizations differently for two separate time frames. For the period starting October 1, 2004 and ending December 31, 2004, such associations are deemed self-insured employers and for the period beginning January 1, 2005 they are insured employers.

The act specifies that the treasurer must allocate the fund's assessments between self-insured employers and

insured employers based on a percentage of paid losses (defined below) for each group for the preceding calendar year.

The act prohibits employers from taking credits against paid losses except:

1. voided checks for expenses paid under the workers' compensation act previously reported as a paid loss,
2. recoveries from third-party tortfeasors, and
3. reimbursement granted under the initial liability of last employer law and Second Injury Fund reimbursements.

Starting with policies effective July 1, 2006 or later, the assessment for insured employers will be based on the Second Injury Fund Surcharge Base (SIFSB), which the act defines as a direct written premium prior to application of deductible policy premium credits. It specifies that a direct written premium includes all endorsements, retrospective adjustments, audits, and minimum premium and must be determined without regard to when or whether the policy premium is paid. Under prior law, the assessment for insured employers was based on a standard premium (not defined in statute), which could include deductible premium credits and was subject to accounting adjustments that could delay payment to the Second Injury Fund. The act makes conforming changes replacing standard premium with the SIFSB.

By law and unchanged by the act, the fund assesses self-insured employers based on the employer's paid losses.

The act defines the Second Injury Fund Surcharge for insurance companies, interlocal risk management agencies, and self-insurance groups as the rate set by the treasurer multiplied by the SIFSB. For purposes of collecting the fund surcharge from insured employers and paying the surcharge to the fund, the act deems insurance companies to be collection agents of the Second Injury Fund. The insured employer is liable for paying the surcharge, and the insurance company must collect the payment and submit it to the fund.

The act allows, instead of requires, the treasurer to adopt regulations regarding assessing employers.

PAID LOSSES (§ 8)

By law, the fund assesses self-insured employers based on the employer's paid losses. The act defines paid losses as the total indemnity, medical, and any other expenses, prior to any credits or deductions, paid on or after January 1, 2006, by or on behalf of the employer to or on behalf of the injured employee. Paid losses include all legal expenses paid for benefits in accordance with workers' compensation law and any loss payments within deductible limits on workers' compensation insurance policies.

AUDITS, HEARINGS, AND PENALTIES (§§ 8 & 10)

The act gives the treasurer the authority to conduct periodic audits of any self-insured employer, group self-insured employer, insured employer, or insurance company regarding information or payment the treasurer requires. The employer and insurer must provide all necessary documents and information the treasurer requires.

Audit periods cannot cover more than three years. If the last audit was less than three years earlier, the review period must be from the prior audit date. If the audit determines repeated errors or underreporting by an employer or insurer, the fund may conduct an audit covering an additional two-year period.

If an audit indicates that an employer or insurer has not properly reported to the fund and, as a result, has underpaid its assessment, the treasurer can require the employer to pay the full amount of the assessment along with interest and penalty due not later than 30 days after the treasurer's notice.

FINES AND INTEREST PAYMENTS (§ 10)

The act establishes a fine of 15% of the unpaid assessment (or a minimum of $50) and an interest charge of 6% per year on any amounts owed as the result of an audit. Under prior law, the treasurer could only charge interest at 15%, although in practice this was considered a fine. For self-insured employers, interest accrues 30 days after notice from the fund of the unpaid audit assessment. For insurance companies, the interest accrues from the date of the notice of audit errors or deficiencies as determined by the postmark date.

Any partial payments made to the fund must first be applied to any unpaid penalty, then to any unpaid interest, and the remainder, if any, to the unpaid assessment. Interest or penalties will be applied if the fund receives assessment reports or payments postmarked after the designated due date.

INSURANCE CARRIER RESPONSIBILITIES (§ 8)

For insured employers, in addition to deeming their insurers to be collection agents for the fund, the act makes insurers responsible for correct billing, timely collection, and timely payments to the fund. It also makes insurers subject to the act's audit provisions and penalties and interest charges for failure to remit required amounts to the fund.

REPORTING REQUIREMENTS FOR INSURED EMPLOYERS AND SELF-INSURANCE GROUPS (§ 8)

For insured employers and self-insurance groups, the SIFSB must be reported to the fund in the quarter the policy is effective, regardless of when the billing is sent or when the payment is made. Insurers and self-insurance groups must also report all endorsements, retrospective adjustments, and audits in the quarter the policy is issued.

The act defines a self-insurance group as a non-profit association consisting of 15 or more employers engaged in the same or similar business, who are members of the same trade or professional association that is at least five years old and who pool their workers' compensation and employers' liabilities.

STIPULATED AGREEMENTS AND SETTLEMENTS (§ 11)

Under the act, a workers' compensation commissioner may approve stipulated agreements (claim settlements) for benefits between an injured worker and the treasurer before or after an award or finding is issued against an employer, if the commissioner determines it is in the best interest of the injured worker. Notice of the proposed settlement must be sent to the employer by certified mail, return receipt requested, to the last address on file with the secretary of the state or local postal authority. The commissioner must hold a hearing on the proposed settlement at the request of the employer in accordance with workers' compensation law. If the employer does not file a written objection to the proposed settlement with the Workers' Compensation Commission within 28 days after the date of the settlement notice to the employer, the employer is deemed to have consented to the settlement and may not later contest the settlement terms. The settlement and its payments will be made by the fund if the employer is unable or fails to make such payments.

The act also provides that none of its provisions, or those already existing in law, precludes the treasurer from entering into an agreement with the employer for the reimbursement of expenses, costs, or benefits paid by the fund. The treasurer, the uninsured employer, the injured worker, or his beneficiaries, or a liable third party may enter into a settlement agreement to finally or partially settle the rights and liabilities of any or all parties, subject to the approval of the commissioner.

AWARDS AND UNINSURED EMPLOYERS (§ 11)

Under the act, when a finding and award of compensation has been made against an employer who neglected or refused to pay, and the employer's insurer neglected or refused to pay, the Second Injury Fund must pay the compensation and any type of benefit coming due as a consequence of the award. By law and unchanged by the act, the fund must pay for any benefit that an employer or the employer's insurer failed or is unable to pay.

If there are further claims for any related, reasonable, and necessary treatment, the fund must provide payment to the claimant without an additional finding and award.

PA 05-208—sHB 6639
Labor and Public Employees Committee
Appropriations Committee

AN ACT CONCERNING OFFSETS AGAINST DISABILITY RETIREMENT BENEFITS FOR STATE EMPLOYEES AND STRESS-RELATED WORKERS' COMPENSATION BENEFITS FOR POLICE OFFICERS

SUMMARY: This act prohibits the state from reducing a state retiree's disability retirement benefit by the amount of attorney's fees the retiree incurs to obtain workers' compensation or Social Security disability benefits. Thus, attorney's fees will be removed from a retiree's workers' compensation or Social Security disability benefit before the state deducts (offsets) them from a retiree's disability retirement. The act applies to the Tier I and Tier II state employee retirement plans (Tier IIA is governed by union contract).

The act also extends workers' compensation coverage for mental or emotional impairment to a police officer who uses deadly force or is the target of the attempted use of deadly force while in the line of duty. Such an officer must reasonably believe he was at risk of physical injury or death. Under prior law, police officers' mental and emotional injuries were compensable only if they arose from a physical injury. By law, all other employees are compensated for mental and emotional injuries only if they stem from a physical injury.

It also limits who can treat police officers' mental and emotional injuries.

EFFECTIVE DATE: July 1, 2005, except for the police officer workers' compensation provision, which takes effect October 1, 2005.

POLICE OFFICER STRESS BENEFITS

Under the act, a police officer acts within the line of duty when he does what he is obligated or authorized by law, rule, regulation, or written condition of employment or paid by the public employing entity to

do. The act defines "police officer" as a (1) state or local police officer or (2) a municipal constable.

Employees eligible for workers' compensation under the act may receive treatment only from a practicing psychologist or psychiatrist on an approved list established by the Workers' Compensation Commission chairman pursuant to law.

BACKGROUND

Retirement Benefits and Collective Bargaining

State employee pensions are a mandatory subject for collective bargaining and, by law, state employee contract provisions supersede contrary provisions of state law. Since the current pension contract does not expire until July 1, 2017, any changes in the law enacted by the General Assembly technically should not take effect before that date without the consent of the state employees union coalition. However, the legislature and the governor occasionally enact law, such as with the 2003 Early Retirement Incentive Program, without negotiating first with the state employees union coalition.

State Employee Retirement System

The State Employee Retirement System has three tiers. With some exceptions, employees hired:

1. before July 1, 1984 are in Tier I,
2. on or after July 1, 1984 through June 30, 1997 are in Tier II, and
3. on or after July 1, 1997 are in Tier II A.

State statutes contain provisions for Tier I and Tier II, but Tier IIA is entirely contained in the state employees union coalition contract mentioned above. Tier IIA benefits are largely the same as those of Tier II, except Tier IIA members must contribute to their retirement.

PA 05-230—sSB 956
Labor and Public Employees Committee
Judiciary Committee
Appropriations Committee

AN ACT CONCERNING PORTAL-TO-PORTAL WORKERS' COMPENSATION COVERAGE FOR CORRECTION OFFICERS AND CLAIMS FOR COMPENSATION BY DEPENDENTS OF DECEASED EMPLOYEES

SUMMARY: Under law unchanged by this act, police officers and firefighters receive workers' compensation coverage when they travel between home and work (known as portal-to-portal coverage). The act gives Department of Correction employees similar coverage in two specific situations: (1) going directly to work in response to a direct order to report to work when nonessential employees are excused from working, and subsequently returning directly home, or (2) going directly home after two or more mandatory overtime work shifts on consecutive days. It makes the employees eligible for compensation if injured during such travel.

The act requires the Workers' Compensation Commission to adopt implementing regulations by January 1, 2006 that define "departure from place of abode directly to duty" and "return directly to place of abode after duty."

It permits the dependent or dependents of a deceased employee seeking workers' compensation death benefits, whom a court barred from filing a claim because the dependents missed the statutory filing deadline, to file a claim if the death arose from an injury occurring between June 1 and June 30, 1991 and the death occurred between November 1 and November 30, 1992. It allows such filings to be made up to one year from the act's effective date and gives a workers' compensation commissioner jurisdiction to rule on such claims.

EFFECTIVE DATE: October 1, 2005, except for the provision regarding workers' compensation death benefit claims, which is effective upon passage and applicable to claims pending on, filed on, and after the effective date.

PA 05-236—HB 6565
Labor and Public Employees Committee
Appropriations Committee
Government Administration and Elections Committee
Public Safety and Security Committee

AN ACT PROVIDING WORKERS' COMPENSATION BENEFITS FOR MEMBERS OF THE STATE ARMED FORCES CALLED TO ACTIVE DUTY

SUMMARY: Under prior law, state armed forces personnel, including Connecticut National Guard members, injured while on duty under state orders could file a claim in either (1) the workers' compensation system available to all workers or (2) a similar system in the state Military Department under the adjutant general. (If injured while they are on federal orders, Connecticut Guard members receive federal compensation.) This act repeals the Military Department's authority to consider claims, make or deny compensation awards, and set compensation amounts. It places state armed forces personnel, when on state orders, under the state workers' compensation

system. By law, "state armed forces personnel" are defined as the Connecticut National Guard, the state naval militia, and the organized militia (including the Governor's Foot Guards and the Governor's Horse Guards).

The act also makes conforming changes.

EFFECTIVE DATE: July 1, 2005

WORKERS' COMPENSATION FOR STATE ARMED FORCES

The act requires that any member of the state armed forces who is under state orders and is injured or contracts a disease when on duty or assembled for duty must receive benefits in accordance with the state Workers' Compensation Act. It applies to any injury or disease that causes temporary or permanent disability that prevents the person from performing his usual duties or occupation. Under this law, each benefit claim is adjudicated by one of 16 impartial compensation commissioners. Commissioner decisions can be appealed to a three-member appeals board established under the workers' compensation law.

Prior law allowed an armed forces member to file a claim under either regular workers' compensation or the system the adjutant general oversaw. In practice, claims were filed under the military system. Under this system, the adjutant general had broad authority to (1) appoint a medical examiner or board of examiners to review the claim's merits; (2) order the claimant to be treated at a specific hospital; (3) order the examiner's findings to be revised or require further testimony; and (4) hear appeals and approve, disapprove, or modify the original decision. In this system a claimant forfeited the right to his claim or benefits if he did not comply with (1) the order for a medical exam, (2) the order to move to a hospital designated by the general, (3) any other order by the general, or (4) the treatment prescribed to him.

CONFORMING CHANGES

Definition of Employee

The act adds members of the National Guard and of other state armed forces called to active duty by the governor and performing active duty service to the definition of employee under the state Workers' Compensation Act. This means the Military Department must adhere to all employer requirements of the workers' compensation law for National Guard and armed forces members.

Authority to Pay Compensation Under the Military System

The act also repeals the comptroller's authority, with the attorney general's approval, to make payments to injured members of the state armed forces who were deemed eligible under the military system the act repeals.

PA 05-284—SB 1138
Labor and Public Employees Committee
Judiciary Committee
Appropriations Committee

AN ACT CONCERNING DISABILITY RETIREMENT BENEFITS FOR CORRECTION OFFICERS

SUMMARY: This act creates a higher level of disability retirement benefit for a unionized state correction officer whose case is designated an "extraordinary circumstances" disability. It establishes guidelines and a mechanism, including the option of binding arbitration, for designating the benefit.

Under the act, if an employee receives the designation, his disability retirement benefit is calculated using the highest pay grade in his bargaining unit, regardless of his pay grade at the time of the disability. This increases the benefit for any employee who is not at the highest pay grade because pay grade is a factor in calculating a disability retirement. To qualify, the disability must be a result of the special hazards inherent in the duties of a correction officer, and the employee must be permanently disabled and unable to engage in other comparable employment.

The act states it does not change the benefits due a correction officer under the Workers' Compensation Act or state employee hazardous duty workers' compensation law. The standard disability retirement benefit for state employees provided under statutes and the collective bargaining agreement, known as State Employees Bargaining Agent Coalition V (SEBAC V), also remains unchanged.

EFFECTIVE DATE: October 1, 2005

PAY FACTOR IN DISABILITY RETIREMENT BENEFITS

Under the act, disability retirement benefits for an employee with an extraordinary circumstances disability designation are calculated using the highest pay grade in his bargaining unit. This increases salary at the time of disability for any employee not already at the highest pay grade, and thus increases the retirement benefit. Under statutes and SEBAC V, depending upon the

employee's retirement system tier, the employee's average salary over three years or annual salary at the time of disability is used.

GUIDELINES AND MECHANISM

Extraordinary Circumstances Disability Defined

To qualify, the disability must be a result of a "special hazard inherent in the duties of a correction officer," and the employee must be permanently (1) disabled or unable to render service as a correction officer and (2) unable to engage in other suitable, comparable employment.

Seeking Designation

The act allows the correction officers' union, at its descretion, to petition the Office of Policy and Management (OPM) on behalf of the employee to designate the case as an extraordinary circumstances disability.

If OPM does not approve the request, the union may file for binding arbitration with the State Board of Mediation and Arbitration on the sole issue of whether the employee should receive the extraordinary circumstances designation for purposes of determining his disability retirement. A copy of the filing must be served on the OPM secretary.

Arbitrator Selection and Decision

The act requires the union and OPM jointly to select an arbitrator within seven days after the arbitration filing is served on OPM. The arbitrator (1) must have substantial, current experience as an impartial arbitrator of labor-management disputes and (2) must not have served as an advocate or consultant for labor or management in labor-management relations or be associated with, or member of, a firm that performs such work.

If the parties cannot agree on an arbitrator in seven days, the act requires the selection to be made using the American Arbitration Association's voluntary labor arbitration procedures.

The arbitrator's decision is final and binding and cannot be appealed under any state law or collective bargaining agreement.

BACKGROUND

Retirement Benefits and Collective Bargaining

State employee pensions are a mandatory subject for collective bargaining and, by law, state employee contract provisions supersede contrary provisions of state law (CGS § 5-278(e)). Since the current pension contract goes to July 1, 2017, any changes in the law enacted by the legislature technically should not take effect before that date without the consent of SEBAC. Despite this, the legislature and the governor occasionally enact legislation, such as with the 2003 Early Retirement Incentive Program, without first negotiating with the state employees union coalition.

PA 05-33—HB 6712
Planning and Development Committee

AN ACT AUTHORIZING MUNICIPALITIES TO ESTABLISH MUNICIPAL DEVELOPMENT AGENCIES

SUMMARY: This act allows municipalities that meet certain narrow criteria to establish, by ordinance, an authority to plan and implement development or redevelopment of a specified area or parcel of land in the municipality. To qualify, the municipality must (1) have a 2000 population between 25,000 and 30,000, (2) have an area of at least 59 square miles, and (3) be the site of a Department of Correction institution. (It appears that only Newtown meets these criteria.)

The municipality's legislative body must approve the ordinance on or before December 31, 2005. The ordinance must prescribe (1) the boundaries of the area or parcel; (2) the appointment and terms of office of members of the authority; and (3) the authority's powers and duties, which must include adopting and implementing a development plan, hiring employees, building and operating improvements to the land, and leasing any part of the land and its improvements. An authority cannot adopt a plan unless there has been a public hearing in the municipality. The ordinance must also specify (1) a schedule for reporting progress on development and implementation of the development plan to the legislative body and other appropriate municipal officials, (2) that any lease is subject to the approval of the municipality's executive authority, and (3) other provisions the legislative body deems necessary.
EFFECTIVE DATE: July 1, 2005

PA 05-106—HB 6475
Planning and Development Committee
Finance, Revenue and Bonding Committee

AN ACT CONCERNING THE POWERS OF SPECIAL DISTRICTS

SUMMARY: This act allows special taxing districts to implement tick control measures. The law already allows the districts to provide a wide range of municipal services, including fire protection, street lighting, road repair, and flood control. It allows them to fund these services by levying property taxes and issuing bonds backed by the taxes and other district revenue. The authority to implement tick control applies to districts operating under the statutes, not to those operating under special acts.
EFFECTIVE DATE: Upon passage

BACKGROUND

Special Taxing Districts

Special taxing districts differ based on who created them. Until the 1890s, the legislature created most of the districts by special acts, which it enacted on behalf of the residents of an area who wanted a specific service. This method allowed the legislature to customize the district's powers and structure to suit the residents' needs. In 1893, the legislature enacted statutes allowing residents to establish, organize, and operate districts on their own without requesting special acts.

Related Acts

PA 05-289 adds the installation of sound barriers to the purposes for creating special taxing districts. That act and SA 05-14 authorize the creation of districts in Bridgeport, East Lyme, and Redding to develop infrastructure and provide municipal services to support new development.

PA 05-190—SB 1085
Planning and Development Committee
Finance, Revenue and Bonding Committee
Environment Committee

AN ACT CONCERNING BUFFERS TO INLAND WETLANDS AREAS AND CONCERNING APPLICATION OF THE CONVEYANCE TAX TO LAND CLASSIFIED AS FARM LAND, FOREST LAND OR OPEN SPACE LAND

SUMMARY: This act makes many changes to the "490" program, in which eligible farm, forest, or open space land is assessed based on its current use, rather than its full market value. Among other things, the act modifies when transactions involving the land or changes in its use make it subject to a conveyance tax.

Under the act, if a municipal inland wetland agency permit requires that land serve as a buffer (thereby subjecting it to development restrictions), the municipality must assess the land as though it were wetlands.
EFFECTIVE DATE: Upon passage, except the changes to the 490 program are effective July 1, 2005 and applicable to sales, transfers, or changes in use occurring on or after that date.

CHANGES TO 490 PROGRAM

General Provisions

The act specifies that the classification of land as open space, farm, or forest land under the 490 program is personal to its owner and does not run with the land.

By law, the classification runs until (1) the land's use is changed to something other than was described in the owner's application or (2) the land is sold. The act explicitly states that the classification terminates under these circumstances and additionally terminates the classification when the land is transferred. In the case of a change in use, the classification terminates on the earlier of the date the use changes or the assessor becomes aware of this change.

Under the act, the town clerk must notify the assessor of the sale of any land that is in the program when the sale is filed in the land records. Upon receiving the notice, the assessor must notify the new owner of the tax benefits of participating in the program. The act requires the filing of a revised program application with the assessor whenever ownership of land in the program changes.

The act requires that applications to classify property as forest land be submitted to the assessor by October 1.

Conveyance Tax

By law, a conveyance tax is imposed on land in the program that is sold within 10 years of its classification. The tax is 10% if the land is sold in the first year following its classification, and decreases by 1% per year. The act extends this tax to land transferred during this period. It also imposes the tax based on sales or transfers within 10 years if a person other than the owner caused the land to be classified as open space or farm or forest land.

Under prior law, the tax applied to the property's fair market value rather than its value at its current use. The act instead bases the tax on the property's fair market value as determined in conjunction with the most recent revaluation. In the case of property that was in the program at the time of the last revaluation, it appears this would be a lower value since the property would have been valued as open space, farm or forest land.

By law, the conveyance tax does not apply in several circumstances. The act additionally exempts transactions involving deeds to or from a limited liability corporation when the grantors or grantees are the same individuals as the principals or members of the corporation. Under prior law, the tax did not apply when property was transferred as a result of death, e.g., by will. The bill limits this exception to cases where no consideration was received for the land. The act exempts deeds of foreclosure rather than deeds releasing property that is security for a debt or obligation.

By law, the tax does not apply if the land is subject to a covenant that runs for at least eight years and is enforceable by the municipality that precludes the land from being sold or used for purposes inconsistent with the program. The act extends this provision to also require the covenant to bar transfers of the land for purposes inconsistent with the program. By law, the town or any of its residents can initiate an action to enforce the covenant. The act specifies that if a taxpayer initiates the action, the action must commence before the ninth year following the date of the deed containing the covenant.

Appeals

By law, anyone aggrieved by the imposition of the tax can appeal to the board of assessment appeals. The act specifies that if the board's deadline for hearing appeals has passed, the taxpayer can appeal at its next regularly scheduled meeting.

PA 05-205—sHB 6570
Planning and Development Committee
Environment Committee
Legislative Management Committee
Appropriations Committee
Transportation Committee

AN ACT CONCERNING PLANS OF CONSERVATION AND DEVELOPMENT

SUMMARY: This act makes many changes in the requirements and processes for preparing state, regional, and local land-use plans. It requires the State Plan of Conservation and Development (Plan of C&D) to identify areas suitable for mixed-use developments and target development funding. It requires regional planning agencies (RPAs) to revise their existing plans of development by July 1, 2008 and at least once every 10 years. It modifies the process for adopting these plans and requires them to (1) identify any inconsistencies with six growth management principles, which are included in the current state Plan of C&D and (2) note on the record any inconsistencies with that plan and the reasons for them. It expands the contents of local plans of C&D, requires them to address the same six principles, modifies the process for adopting the plans, and establishes a process under which anyone may request plan changes.

The act establishes a process for the Office of Policy and Management (OPM) to designate priority funding areas, subject to legislative approval. It

generally restricts state funding for growth-related projects to such areas and establishes new criteria for targeting state funding for such projects.

The act requires the OPM secretary, within available funds, to coordinate the review of federal projects in relation to their location in priority funding areas to encourage the siting of these projects in urban areas in accordance with a federal executive order.

The act validates the adoption of the 2004-2009 Plan of C&D, notwithstanding the failure of the Continuing Legislative Committee on State Planning and Development to hold a hearing and submit the plan to the legislature by the statutory deadline.

Under prior law, the continuing committee had to, within 35 days of the start of the regular session when the plan is presented to the legislature for its approval, hold a hearing and submit its recommendations to the legislature. The act gives the committee 45 days from the start of the session to hold its hearing, and 45 days from completing the hearing to recommend approval or disapproval.

The act makes several changes to reflect the fact that the submission date for the current plan was extended by one year.

The act bars the environmental protection commissioner from denying a water quality permit based on the proposal's inconsistency with the plan.

The act removes provison in the legislative findings of the Water Diversion Policy Act that states that diversions shall only be permitted when consistent with the plan.

EFFECTIVE DATE: July 1, 2005, except for the validating provision and the provisions reflecting the one-year extension and change in deadlines for the continuing committee, which are effective upon passage.

STATE PLAN OF C&D

Existing law requires OPM to prepare the state Plan of C&D for legislative approval every five years. The act requires that future plans describe the progress made in achieving the goals and objectives of the last plan. Future plans must also identify:

1. areas where it is prudent and feasible to have mixed-use development patterns and land reuse that is compact, accessible to transit, and pedestrian-oriented and promote such patterns and reuse;
2. priority funding areas (described below); and
3. corridor management areas on either side of a limited-access highway or a rail line.

In designating corridor management areas, the OPM secretary must make recommendations that:

1. promote land-use and transportation options to reduce the growth of traffic congestion,
2. connect infrastructure and other development decisions,
3. promote development that minimizes the cost of new infrastructure facilities and maximizes the use of existing facilities, and
4. increase intermunicipal and regional cooperation.

The act requires that the secretary post the plan on the state website.

REGIONAL PLANS OF DEVELOPMENT

Prior law required each RPA to adopt a plan of development but set no timeframe for doing so. The act requires that they do so at least once every 10 years. It also requires RPAs to revise their existing plans by July 1, 2008. The act requires the plans to identify areas where it is prudent and feasible to have mixed-use development patterns and land reuse that is compact, accessible to transit, and pedestrian-oriented, and to promote such patterns and reuse. It also requires the plan to identify any inconsistencies with the following growth management principles:

1. redevelop and revitalize regional centers and areas of mixed-land uses with existing or planned physical infrastructure;
2. expand housing opportunities and design choices to accommodate a variety of household types and needs;
3. concentrate development around transportation nodes and along major transportation corridors to support the viability of transportation options and land reuse;
4. conserve and restore the natural environment, cultural and historical resources, and traditional rural lands;
5. protect environmental assets critical to public health and safety; and
6. integrate planning across all levels of government to address issues on a local, regional, and statewide basis.

The act also requires that the plan include the RPAs' recommendations for the use of land for agriculture.

By law, an RPA must hold a public hearing on its draft plan. The act requires that the RPA post the plan on its website (if there is one) at least 65 days before the hearing. It requires the RPA to submit the draft plan to OPM for findings in the form of comments and recommendations, rather than giving OPM notice of the public hearing. The findings have to include a review of whether the draft is consistent with the state Plan of C&D. The RPA must note on the record any inconsistencies and the reasons for them. The RPA must notify the OPM secretary of the inconsistencies in the adopted plan and the reasons for them.

The RPA must post the adopted plan on its website, if it has one.

LOCAL PLANS OF C&D

Contents

Under existing law, a local planning commission must prepare or amend a Plan of C&D for its municipality every 10 years. The act requires the plans to (1) identify where it is feasible and prudent to have mixed-use development patterns and land reuse that is compact, transit-accessible, and pedestrian-oriented and (2) promote such patterns and reuse. The act requires the commission to consider focusing development and revitalization in areas with existing or planned infrastructure when preparing the plan.

The act requires the plans, in addition to their existing components, to provide for a system of thoroughfares, parkways, bridges, streets, sidewalks, and other public ways as appropriate, rather than just including the commission's recommendations for these facilities. It requires the commission, in developing the plan, to consider the protection and preservation of agriculture in addition to other factors it must consider. It allows the plans to include commission recommendations for corridor management areas and proposed priority funding areas (described below).

By law, a plan must include the commission's recommendations for how the land in the municipality should be used. The act requires that the plan include a map with such proposed uses. It also specifically allows the plan to include the commission's recommendations regarding the location, relocation, and improvement of schools, a provision that already applies to public buildings.

Under prior law, the local commission had to note any inconsistencies with the state Plan of C&D. The act instead requires the commissiion to note any inconsistencies with six growth management principles similar to those listed above.

Adoption Process

By law, the local commission must hold a hearing on the plan. The act requires that the commission submit the plan to the RPA 35, rather than 65, days before the hearing on adopting the plan. It also requires the commission to post the draft plan on the municipality's website (if there is one) by that deadline. The act requires the RPA's advisory report back to the commission to include findings regarding the local plan's consistency with the state Plan of C&D, the regional plan of development, and the local plans of C&D of other municipalities in the RPA's area. The commission may revise the draft plan in accordance with the RPA's report, but may make a decision on the plan without the report.

The act changes when the legislative body receives and endorses the plan. Under prior law:

1. the commission had to submit the plan to the municipality's legislative body for its review at least 65 days before the public hearing,
2. the legislative body could hold a hearing on the plan at this stage and submit its comments to the commission before the commission hearing on the plan's adoption,
3. the legislative body tacitly approved the plan if it failed to report before by the hearing date, and
4. the legislative body could hold a hearing on the adopted plan and then adopt a resolution endorsing it.

Instead, the act allows the commission to revise its draft plan after its public hearing and requires that the proposed final plan be submitted to the legislative body for its endorsement. The legislative body must endorse or reject the plan or parts of it. It may submit comments and recommended changes to the commission.

In towns where the town meeting is the legislative body, the proposed final plan goes to the board of selectmen, which may hold a hearing on it. The town meeting may endorse or reject the plan or parts of it within 45 days of receiving it and submit comments and recommendations on it.

By law, even if the legislative body does not endorse all or part of the plan, the commission can still adopt it by a vote of at least two-thirds of its members.

Under the act, once the plan is adopted, it must be posted on the municipality's website (if there is one). The commission must notify the OPM secretary of any inconsistencies between the final plan and the state Plan of C&D and the reasons for them.

Requested Amendments

The act allows any property owner or tenant in the muncipality, or his agent, to submit a proposal to change the plan to the commission. The proposal must be in writing and on a form prescribed by the commission. The commission must decide whether to hold a hearing on the proposal within 35 days of receiving it. It must hold a hearing if it determines that it is in the public interest.

The commission must approve, deny, or modify the proposal by the deadline that already applies to other petitions (usually 65 days after the hearing ends). If the commission determines at any time that the proposal would be a significant change to the policies and goals of the local plan, it must consider the proposal in the same way it considers plan revisions, as discussed above.

PRIORITY FUNDING AREAS

Designation

Under the act, the OPM secretary must develop recommendations for setting and revising boundaries for priority funding areas. He must consult with RPAs, the chairman of the Transportation Strategy Board; the economic and community development, environmental protection, public works, agriculture, and transportation commissioners; and other persons or entities the secretary considers necessary in doing this.

In making his recommendations, the secretary must consider:

1. regional centers, growth areas, neighborhood conservation areas, and rural community centers as designated in the state Plan of C&D;
2. redevelopment areas, distressed municipalities, targeted investment communities, public investment communities, and enterprise zones;
3. corridor management areas identified in the state Plan of C&D; and
4. the principles of the Transportation Strategy Board.

The secretary must submit his recommendations to the Continuing Legislative Committee on State Planning and Development for its review in conjunction with its review of the state Plan of C&D. (The last version of the plan was approved in March 2005; the next approval will take place in 2010.) The committee must submit its recommendations to the legislature at the time the plan is submitted. The boundaries of the priority funding areas become effective upon the approval of the legislature.

Once the areas are designated, each state agency and department must review its regulations and modify them to carry out coordinated management of growth-related projects in priority funding areas. Each agency, department, and institution must cooperate with municipalities to ensure that programs and activities in rural areas sustain village character.

State Funding for Growth-Related Projects

Once the boundaries are established, state agencies, departments, and institutions generally cannot provide funding for growth-related projects outside of the priority funding areas. Funding includes any form of assurance, guarantee, grant, credit, tax credit, loan, loan guarantee, or reduction in the principal or interest rate on all or part of a loan.

Growth-related projects are those that include:

1. acquisition of real property, other than open space for conservation or preservation purposes, with an acquisition cost over $100,000;
2. development or improvement of real property where the development costs exceed $100,000; and
3. acquisition of public transportation facilities or equipment costing more than $100,000.

Growth-related projects also include the authorization of state grants of more than $100,000, if the grant application is not pending on July 1, 2006, to (1) acquire, develop, or improve real property or (2) acquire public transportation equipment or facilities.

Any project, funding, or other state assistance, other than described above, is not subject to the financing restrictions. In addition, grant programs are not subject to the restrictions if the grant is for:

1. school construction projects funded by the Department of Education;
2. libraries;
3. municipal-owned property or public buildings used for governmental purposes;
4. maintaining, repairing, adding to, or renovating existing facilities;
5. acquiring land for telecommunications towers whose primary purpose is public safety;
6. parks, conservation, and open space;
7. acquiring agricultural, conservation, and historic easements;
8. housing that the economic and community development commissioner determines will promote fair housing choice and racial and economic integration; and
9. projects at an existing facility needed to comply with state environmental or health standards.

In addition, grant funding by the Department of Economic and Community Development (DECD) is not considered a growth-related project under certain circumstances. To be exempt, the grant must be used for a project (1) financed with federal funds to purchase or rehabilitate existing single or multifamily housing or (2) financed by revenue bonds. In addition, the DECD commissioner must determine that applying these provisions would (1) conflict with state or federal law regarding the issuance or tax-exempt status of bonds or a provision of a trust agreement between DECD and trustees or (2) prohibit financing of an existing project or financing provided to cure or prevent a default under existing financing.

Funding Projects Outside of Priority Funding Areas

State funding of growth-related projects is allowed outside of priority funding areas if the head of the funding agency, with OPM approval, determines that it is consistent with the local Plan of C&D and that the project:

1. enhances other activities targeted by state agencies, departments, or institutions to a municipality within a priority funding area;
2. is located in a distressed municipality, targeted investment community, or public investment community;
3. supports existing neighborhoods or communities;
4. promotes the use of mass transit;
5. provides for mixed-use development patterns and land reuse that is compact, transit accessible, and pedestrian-oriented, and promotes such patterns and land reuse;
6. has no reasonable alternate site in a priority funding area;
7. must be located away from other developments due to its operational or physical characteristics; or
8. is for the reuse or redevelopment of an existing site.

The act also allows for funding if the extreme inequity, hardship, or disadvantage of not funding the projects clearly outweigh the benefits of locating the project within such areas.

Within one year after the areas are designated and annually thereafter, every department, agency, and institution must prepare a report that describes grants for growth-related projects made under these provisions.

PA 05-228—sSB 410
Planning and Development Committee
Environment Committee
Education Committee
Finance, Revenue and Bonding Committee
Appropriations Committee

AN ACT CONCERNING FARM LAND PRESERVATION, LAND PROTECTION, AFFORDABLE HOUSING AND HISTORIC PRESERVATION

SUMMARY: This act creates new farmland preservation programs and institutes a new $30 document-recording fee to fund these and several existing programs, including affordable housing, open space acquisition, and historic preservation. The towns collect the fee for each document they record in their land records and keep $3 to fund local capital improvement projects.

The act reinstates the program under which the agriculture commissioner purchases title to real and personal agricultural property without any conditions or restrictions on the sale (i.e., purchase of fee simple title). It also extends the existing property tax exemption for agricultural buildings to those housing seasonal agricultural employees. That exemption is for up to $100,000 of assessed value.

Lastly, the act allows towns to create quasi-public authorities to help preserve land for farming, recreation, or open space.

EFFECTIVE DATE: July 1, 2005, except for the property tax exemption, which is effective upon passage and applicable to assessment years beginning on or after October 1, 2005. (PA 05-3, June Special Session, makes the entire act effective on October 1, 2005.)

NEW FARMLAND PRESERVATION PROGRAMS

Agricultural Viability Matching Grant Program

The act authorizes grants to towns for helping farmers to improve the viability of their operations. The Department of Agriculture (DOA) must annually allocate $500,000 for these grants from its share of the revenue from the new document recording fee the act establishes and which is described below. Towns may use the grants to:

1. fund processing facilities, farmers' markets, and other capital projects intended to make farms viable; and
2. develop and implement land use regulations that are sensitive to farming and strategies to sustain and promote it.

Farm Transition Matching Grant Program

The act authorizes matching grants to help farmers diversify their crops, transition to value-added production and sales, and develop farmers' markets and other places where most of the products sold are grown in Connecticut. DOA must annually allocate $500,000 for these grants from its share of the document recording fee revenue. Farmers, agricultural cooperatives, and nonprofit agricultural organizations can qualify for the grants. The DOA commissioner must adopt implementing regulations, which must require grant applicants to prepare business plans.

Connecticut Farm Link Program

The act requires DOA to create and maintain a database on its website linking people who want to sell farms or farmland with people who want to farm or start an agricultural business. DOA must annually allocate $75,000 from its share of the document recording fee for this purpose.

People interested in starting or expanding an agricultural business may authorize DOA to enter their names, contact information, and business intentions into the database. DOA must make reasonable efforts to link people with similar interests. It must also post

educational materials about the program on its website. The material must include information about farm transfer and succession planning, family farm estate planning, farm transfer strategies, farm leasing, forming farm partnerships, and starting a farm business.

LAND PROTECTION, AFFORDABLE HOUSING, AND HISTORIC PRESERVATION FUNDING MECHANISM

The act creates a mechanism to fund affordable housing development and farmland, open space, and historic preservation. It requires town clerks to collect an additional $30 fee for each document they record in the town's land records, except those recorded for a municipal or state employee as part of his official duties. The state receives $26 of each recorded document fee and the towns keep $4.

The act specifies how towns must use their share. The clerks keep $1 and the remaining $3 becomes part of the town's general revenue. Towns must use their share to fund the same types of projects that qualify for state Local Capital Improvement Program grants.

The clerks must remit the state share they collect each month to the state treasurer by the 15th day of the next month. She must deposit this money in the General Fund and credit it to the nonlasping Land Protection, Affordable Housing, and Historic Preservation Account, which the act establishes. The act requires the funds to be distributed quarterly and divides them equally among four agencies:

1. Connecticut Commission on Culture and Tourism, which must allocate $200,000 annually to supplement the Connecticut Trust for Historic Preservation's technical assistance and preservation programs and the remainder to supplement the state's historic preservation programs;
2. Connecticut Housing Finance Authority, for supplementing new or existing affordable housing programs;
3. Department of Environmental Protection, for municipal open space preservation grants; and
4. DOA, for new and existing farmland preservation programs.

In addition to the three new DOA programs described above, the act allocates from the fund:

1. $100,000 annually for encouraging Connecticut schools, restaurants, retailers, and other institutions and businesses to buy Connecticut-grown food;
2. as noted above, $75,000 annually for the Farm Link Program; and
3. the remainder to purchase the development rights to farms and fee simple titles to agricultural real and personal property.

The act allows the four agencies to use up to 10% of the funds they receive to administer the funded programs. (PA 05-3, June Special Session, requires that the cost of administering these programs be paid from the account the act creates.)

PURCHASE OF FEE SIMPLE TITLE PROGRAM

The act reinstitutes the program under which the DOA commissioner acquires fee simple titles to agricultural real and personal property. He must sell the property he acquires for agricultural purposes as soon as practicable or lease, transfer, assign, or manage it for specified purposes until he can sell it. The commissioner must also retain the development rights to any land he sells. The program's authorization expired under prior law on July 1, 1995.

LOCAL LAND ACQUISITION AND DEVELOPMENT AUTHORITY

The act allows towns, by vote of their legislative bodies, to create authorities to help them preserve land for agricultural, open space, and recreational uses. An authority can help the town acquire or develop land for these purposes or acquire easements, interests, or rights to the land. It can also help the town enter into covenants and agreements to acquire, maintain, improve, or protect land for agricultural, open space, and recreational uses; limit its future use; or conserve it.

PA 05-263—sHB 6704
Planning and Development Committee
Legislative Management Committee

AN ACT CONCERNING THE DEFINITION OF LAKES

SUMMARY: This act repeals, as of October 1, 2006, a law that bars certain developments within 2,000 feet of a lake that is larger than 500 acres. Under that law, municipal zoning regulations cannot permit the construction of structures, accessory structures, or improvements having a total area of 12,000 square feet in such areas.

Until October 1, 2006, the act excludes from the 12,000 square-foot-threshold parking areas on contiguous parcels under common ownership and control. It also broadens an exemption for developments near reservoirs. Under prior law, the development restriction did not apply to buildings located within 2,000 feet of a reservoir. The act instead exempts developments within 2,000 feet of storage and distribution reservoirs or any part of a lake, pond, or stream that serves as such a reservoir. A distribution

reservoir is a reservoir from which water is released directly through pipes or pipelines to a treatment or purification facility or directly to distribution mains of a public water system. A storage reservoir is an artificial impoundment of substantial amounts of water used or designed for storing public water supplies and the release of the water to a distribution reservoir. Under the act, the restriction applies to lakes or other bodies of water that have characteristics of both a lake and a reservoir. The act also exempts from the restriction any municipality with a plan of conservation and development that has been revised, updated, and approved as required by law.

Finally, the act requires the Planning and Development Committee to annually study the definitions of bodies of water, including lakes, that local zoning authorities may then use in zoning ordinances adopted under the statutes. The committee must report its findings and recommendations to the legislature annually, beginning January 1, 2006.

EFFECTIVE DATE: Upon passage, except for the repeal, which is effective October 1, 2006.

PA 05-289—HB 6205
Planning and Development Committee
Finance, Revenue and Bonding Committee

AN ACT CONCERNING TAXING DISTRICTS TO PAY FOR SOUND BARRIERS AND ESTABLISHING SPECIAL TAXING DISTRICTS WITHIN THE CITY OF BRIDGEPORT AND THE TOWN OF EAST LYME

SUMMARY: This act allows voters in Bridgeport and East Lyme to form special taxing districts to finance roads, sewers, and other infrastructure for new development and pay for the services needed to support them. It delineates the districts' geographic boundaries, but the districts come into existence only if the voters approve their formation. The statutes allow people who reside or own property in a section of a town to form similar special taxing districts on their own without legislative approval, but only for collecting garbage, fighting fires, or providing other similar public services.

The procedures for creating, operating, and terminating the Bridgeport and East Lyme districts are largely the same as those for creating, operating, and terminating special taxing districts under existing law. Both procedures allow people who reside or own property in the district to vote on these matters. But the act extends voting rights to corporations, partnerships, and other entities that own or have an ownership interest in property in the Bridgeport and East Lyme districts.

The Bridgeport and East Lyme districts can assess and collect property taxes, fees, rents, and benefit assessments and issue and secure bonds with these revenues and the districts' full faith and credit. They must begin issuing bonds by specified dates, after which the municipalities may vote to merge with them. The districts can assess the benefits when they first issue the bonds, which could happen before the property owners paying the assessment benefit from the improvement. Statutory districts can only assess and collect property taxes and issue bonds.

Like the statutory districts, the Bridgeport and East Lyme districts are solely liable for their bonds and other debt. Consequently, neither the state nor the districts' respective towns are liable for the bonds. The towns may help the districts finance their projects, but are under no obligation to do so. If they choose to provide financial or other assistance, they must do so under an interlocal agreement negotiated with their respective districts.

The districts' powers are in addition to those the law gives to statutory districts. But the act's provisions control where they conflict with the statutes or any municipal law, ordinance, or resolution. These provisions must be liberally interpreted to achieve the districts' goals. But state and municipal laws, ordinances, and resolutions still govern property, residents, and businesses in the districts.

Lastly, the act expands the purposes of the statutory districts to include installing highway sound barriers. The law already allows them to construct and maintain roads, sidewalks, sewers, recreational facilities, and flood control systems and provide various public services, including fire protection and trash pick-up.

EFFECTIVE DATE: July 1, 2005 for the authorization to create the districts in Bridgeport and East Lyme and October 1, 2005 for the authorization for districts to install sound barriers.

FORMATION

Petition

As with statutory districts, the process for forming the Bridgeport and East Lyme districts starts when 15 or more voters petition the municipalities' chief elected officials (CEOs) to convene a meeting to vote on the issue. The petitioners may include those who reside outside the proposed districts.

Decision

The forums for deciding whether to form the Bridgeport and East Lyme districts are the same as those for forming districts under the statutes. Under those statutes, voters must decide whether to create the district at a meeting or referendum. The vote must be taken within 30 days after the CEOs received the

petition. The act imposes this deadline on Bridgeport's CEO but not East Lyme's.

The CEOs, at their discretion, can require the voters to decide the issue at the meeting or referendum. But they must hold a referendum if at least 200 voters or 10% of all voters residing in the proposed districts, whichever is less, petition for one. The CEOs and the voters still can call for a referendum after the CEOs scheduled the meeting, and they may do so up to 24 hours before the meeting. The act's timeframes and methods for notifying voters about the meeting or referendum are the same as those under the special districts statute.

Eligible Voters

The act's voting requirements for creating the districts are different than those for creating districts under the statutes. Under the statutes, only voters who reside in the proposed district and people who own property there can vote. The latter must be U.S. citizens age 18 or older who are liable to the district for at least $1,000 in real property taxes or who would be liable for that minimum amount if they received no residential property tax exemptions.

The act gives voting rights to these groups and corporations, partnerships, and other holders of record interests in real property in the district. Holders of record include tenants in common and joint tenants. A tenant in common's vote equals the fraction of his ownership interest. A joint tenant's vote equals his fractional share of the real property.

Holders of record include:

1. corporations, partnerships, unincorporated associations, trustees, fiduciaries, guardians, conservators, other forms of entity, or any combination of forms; and
2. individuals who hold interests jointly or in common with other individuals or entities.

A corporation must cast its vote through its chief executive officer or his designee. A noncorporate entity must designate someone to cast its vote. Each owner gets only one vote (or fraction thereof), and the act explicitly bans the district from excluding holders of record from participating in its affairs.

Approving the District

As with districts formed under the statutes, the East Lyme district is formed if two-thirds of the voters vote to form it at the meeting or referendum. But the standard is different for the Bridgeport district: it comes into existence if voters representing two-thirds of the tax assessments of the holders of record vote to form it. In either case, the vote may be at the district's initial meeting or at a referendum on the question.

If the voters agree to form the districts, they can start operating it after the district clerks complete certain administrative steps. They must notify the municipalities about the vote, the officers the voters elected, how the districts will organize themselves, and how they will finance their operations. The clerks must also record the districts' names and boundaries in the municipalities' land records. Both requirements also apply to districts formed under the statutes. The act additionally requires the Bridgeport and East Lyme district clerks to include a caveat in those records, but does not specify its purpose.

Each district becomes a body corporate and politic with the same the powers granted to the statutory districts once their clerks complete these steps. Those powers include assessing and collecting property taxes and issuing bonds.

ORGANIZING THE DISTRICT

Organizational Meeting

The voters must address several specific policy and administrative issues if they agree to form the district. They must do this at their first meeting, which could be the meeting called on whether to form the district or a meeting held after a referendum on its formation.

The voters can address the issues only if they have a quorum, which they have if:

1. 15 or more voters are present, or
2. a majority of the holders of record are present and the assessed value of their properties exceeds half of the assessed value of all real property in the district.

The towns' CEOs chair this meeting and can adjourn it until a quorum is met.

District Purpose

At the organizational meeting, the voters must specify the district's purposes, which are mostly the same as those of the statutory districts. These include financing many types of public improvements, such as constructing and maintaining roads, sidewalks, drains, sewers, and parking facilities. Voters may also authorize the Bridgeport district to repair bulkheads, construct facilities, dredge water bodies, and clean up contaminated land.

Governance

The voters must name the district, elect its officers, and set the date of its annual meeting. The officers are the same as those for the statutory districts: president, vice president, clerk, treasurer, and five directors. These officers must serve until the first annual meeting, at which the voters must elect new officers. But the act allows the municipalities' CEO to appoint one additional director, who serves at the CEO's pleasure. It also requires that at least three directors be Connecticut residents.

OPERATIONS

Meetings

The act's provisions for calling special meetings and requiring votes on agenda items at regular and special meetings are the same as those that apply to statutory districts. The quorum requirement is the same as the one for the district's organizational meeting, except that the district's president, not the CEO, may adjourn the meeting until the quorum is met. The act requires the districts' clerk to prescribe the form for submitting petitions and imposes the same requirements that apply to special municipal meetings.

Annual Reports

The district clerks must comply with the same reporting requirements that apply to statutory district clerks. By law, a district clerk must report to the town's clerk. The initial report must list the officers and describe the district's organization and finances and be accompanied by a copy of the district's charter or the special act establishing it. The law does not specify the contents of the subsequent reports, but it requires the district clerk to include copies of subsequent charter or special act changes.

Activity Reports

The district clerks must submit quarterly activity reports to the Office of Policy and Management secretary and the Finance, Revenue and Bonding Committee. The reports must provide information and updates on the districts' projects, including their design, financing, construction, sales, and any other aspect the secretary or the Finance Committee chairmen ask about. This requirement does not apply to statutory districts.

Disclosure

The districts must take affirmative steps to disclose the public funds used to finance and maintain the improvements. They must disclose this information to all existing and prospective residents and give each developer who constructs housing in their districts enough documents containing this information to pass along to prospective buyers. Condominium, cooperative, or planned unit development developers must also include the information in the public offering statement the law requires them to provide.

FINANCIAL POWERS AND MANAGEMENT

The districts' boards must adopt budgets and set taxes, fees, rents, benefit assessments, and other charges. They must do this according to procedures that they must establish at a board meeting held for that purpose. The boards must notify people and the municipalities' CEOs about the meeting and hold at least two public hearings on the revenue measures. The Bridgeport district's board must also notify the city's common council. The act requires the boards to adopt their budgets and revenue packages at least annually, within 30 days of the start of their fiscal year.

The act gives the districts broad revenue-raising powers to finance improvements, cover their debts and operating costs, and pay for other services and commodities provided to district properties. They can issue bonds and assess, levy, collect, abate, and forgive reasonable taxes, fees, rents, benefit assessments, and other charges. They may do these things to finance the improvements at the same time they issue the bonds. They can use the bond proceeds to pay 100% of the improvements, financing costs, capitalized interest, and debt. They can impose the taxes and other charges before or after they acquire or construct the improvements. The districts must base the taxes and charges they impose before acquiring or starting an improvement on the estimated costs.

The districts have the same powers as municipalities to collect revenues. These include charging interest and imposing liens, which take precedence over all other liens except Bridgeport and East Lyme's tax liens.

The act requires the districts to maintain financial records, which they must make available to municipal and state officials. It also requires the state to audit the records.

BENEFIT ASSESSMENTS

The districts can assess land and buildings that benefit, in their judgment, from district-financed improvements. They can decide how to apportion the costs among the properties benefiting from the improvements and pay the balance from the general revenues. The districts can assess newly constructed or improved buildings and structures as though they

already existed when the districts initially imposed the assessment. In other words, the districts can assess these properties without prorating the benefit from when they were constructed or improved. They can also adjust assessments that were imposed before the improvements were completed to reflect their actual costs.

The districts may allow taxpayers to pay the benefit assessments in up to 30 installments. They can also forgive assessments that are due in any year without forgiving the remaining installments.

The act specifies that providing open space in the districts or their respective municipalities benefits all property within the districts.

BONDING

Bond Limits

The act authorizes the districts to issue bonds within specified limits. It allows the Bridgeport district to issue up to $190 million and the East Lyme district to issue up to $30 million in bonds, but only after they execute an interlocal agreement with their respective municipalities. The districts may then issue the bonds without obtaining the state's or their respective municipalities' approval.

Security

The districts can use the bond proceeds to finance the improvements, create and maintain necessary reserves, and cover the issuance costs. They can secure the bonds through a trust agreement, which need only be filed in the districts' records. The act specifically exempts the agreements from any Uniform Commercial Code filing requirements.

The districts may use their revenues and full faith and credit to secure the bonds, whose terms cannot exceed 30 years. The board may decide how to issue and repay the bonds and whether to secure them through an indenture of trust. While the districts' debt is outstanding, the legislature cannot diminish their powers, duties, or existence or impair them in any way that would harm the bondholders' rights and interests. The districts' bonds are securities in which public agencies and financial institutions may invest.

Merger Provisions

The act allows the municipalities' legislative bodies to merge the districts into the municipalities if the districts fail to issue bonds by certain dates. The deadline for the Bridgeport district is July 1, 2009; the deadline for the East Lyme district is July 1, 2007. The municipalities may also vote to merge the districts after they pay off the bonds. In both cases, the districts must transfer their property to their respective municipalities.

TAX EXEMPTION

The act exempts the districts' revenues and real and personal property from state and municipal taxes. It also exempts the principal and interest on their bonds from taxes except state estate and gift, franchise, and excise taxes. But the state and the municipalities can still levy taxes on the incomes and properties of the people and businesses residing or operating in the districts.

TERMINATION

The requirements for terminating the district are the same as those for statutory districts. The decision must be made at a district meeting, which the officers can call for this purpose by voting to terminate the district. The voters can also trigger the meeting if at least 10% of qualified voters or 20 voters, whichever is less, sign a petition calling for a meeting on termination. Or, in lieu of the meeting, voters can petition for a referendum on termination, which requires a two-thirds affirmative vote. The petition requirements are the same as those for referenda on whether to form a district.

If the voters decide to terminate the district, it must still pay off its debt and transfer its remaining assets to the municipality. Alternatively, the district may dissolve if the municipality agrees to assume that debt.

The clerk must notify the Office of Policy and Management about the termination and record the fact in the municipalities' land records.

BACKGROUND

Related Acts

SA 05-14 authorizes the creation of a special taxing district in Redding to clean up and redevelop contaminated property and provide municipal services. PA 05-106 adds tick control to the services statutory districts may provide.

PA 05-59—sHB 6753
Program Review and Investigations Committee
Legislative Management Committee
General Law Committee

AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE RELATIVE TO THE TIMEFRAME FOR FILING A REMONSTRANCE PETITION UNDER THE LIQUOR CONTROL ACT

SUMMARY: This act extends the deadline for residents to state their objections to the Department of Consumer Protection (DCP) and compel a public hearing about the issuance of a proposed liquor permit from three weeks after an application's "filing date" to three weeks after the applicant's final notice was published in a local newspaper.

It requires DCP to report on its activities relating to issuing liquor permits and enforcing the Liquor Control Act.

EFFECTIVE DATE: Upon passage

OBJECTIONS TO A PROPOSED LIQUOR PERMIT

The law allows a group of 10 or more residents to file a "remonstrance" with DCP stating any objection they may have about the suitability of an applicant for an initial liquor permit or the proposed place of business. The act revises the deadline for filing it.

By law, a liquor permit applicant must publish at least two notices of his application in a local newspaper. They must be published in two successive weeks, with the first being published no more than seven days after the application's filing date and the second, no more than 14 days after. An application's "filing date" is the date on which the department approves an application for processing and sends the applicant a "placard" stating, among other things, the filing date. The law requires a liquor permit applicant to post a placard, or sign, outside of the proposed premises stating his name and the type of requested permit. Under prior law, the remonstrance had to be filed within three weeks after the application's filing date. Under the act, the remonstrance must be filed within three weeks after the last day that the permit applicant's notice was published. If a remonstrance is filed, the department must hold a public hearing after giving at least five days notice.

REPORT ON LIQUOR PERMITTING, COMPLIANCE, AND ENFORCEMENT

The act requires DCP to submit a report to the General Law Committee summarizing the licensing, compliance, and enforcement activities of its liquor control division during the preceding year. The report must include (1) the number of permit applications received, reviewed, withdrawn, approved, and denied; (2) the amount of permit fees collected; (3) any remonstrance petitions received and the outcome of any remonstrance hearings; (4) complaints received against any permittee, the result of any investigation, and any administrative action taken against the permittee; and (5) any informal or formal hearing held relating to permit suspension, revocation, or fine. It must be submitted by January 1, 2006, and updated by January 1, 2007 and 2008.

PA 05-212—sHB 6791
Program Review and Investigations Committee
Legislative Management Committee
General Law Committee
Judiciary Committee

AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE RELATIVE TO PHARMACY REGULATION

SUMMARY: This act authorizes long-term care facilities and outpatient surgical facilities to dispose of excess controlled substances. It also authorizes pharmacists to administer flu shots.

The act requires the Department of Consumer Protection (DCP) to (1) inspect retail pharmacies at least once every four years, (2) report to the General Law Committee on its pharmacy inspections and investigations, and (3) compile a quarterly regulatory action report. It requires the UConn Health Center to report to the Program Review and Investigations Committee on drug administration deficiencies in correctional institutions.

EFFECTIVE DATE: Upon passage

DESTRUCTION OF CONTROLLED SUBSTANCES BY LONG-TERM CARE FACILITIES AND OUTPATIENT SURGICAL FACILITIES

The act authorizes long-term care facilities and outpatient surgical facilities to destroy excess controlled substances under specified conditions. In each type of facility, two or more designated professionals may jointly dispose of excess stock. The facilities must keep records of any destruction for three years in a separate log and on a form prescribed by DCP. In long-term care facilities, the designated professionals are two or more of the following: the nursing home administrator, a pharmacist consultant, a director of nursing services, or

an assistant director of nursing services. In outpatient surgical facilities, the designated professionals are two or more of the following: an administrator, a clinical director or chief of staff, or a nursing supervisor.

PHARMACISTS AUTHORIZED TO ADMINISTER FLU SHOTS

The act authorizes licensed pharmacists to administer influenza vaccine to individuals at least 18 years old. The vaccination must be administered according to an order of a licensed health care provider and DCP's implementing regulations.

The act requires DCP, in consultation with the public health commissioner and the Commission of Pharmacy, to adopt regulations:

1. requiring pharmacists who administer influenza vaccine to successfully complete a training program;
2. defining the basic components of the training program, including training and instruction in pre-administration education and screening, vaccine storage and handling, subcutaneous and intramuscular injections, recordkeeping, vaccine safety, cardiopulmonary resuscitation, basic cardiac life support, and adverse event reporting;
3. identifying qualifying training programs accredited by the National Centers for Disease Control and Prevention, the Accreditation Council for Pharmacy Education, or other appropriate national accrediting body; and
4. establishing a control and reporting system.

RETAIL PHARMACY INSPECTIONS

The act requires DCP to inspect each retail pharmacy at least once every four years and to develop a methodology to sample dispensed prescriptions for compliance with relevant state law. The methodology must be based on the number of prescriptions received by a retail pharmacy. The law requires the DCP commissioner to employ inspectors to inspect pharmacies and every place where drugs are dispensed or sold to the public.

REPORT ON PHARMACY LAW ENFORCEMENT

The act requires DCP to report to the General Law Committee on its pharmacy inspections by January 1, 2006. The report must include the number, reason, subject matter, timeline, and outcome of each pharmacy investigation undertaken in the previous year. It must also include any action taken by a board within the Department of Public Health, the Commission of Pharmacy, or, with respect to a medical practitioner's controlled substance registration, DCP. Each investigation timeline must begin when a case investigation is opened and end with a final board or commission action. The report must be submitted by January 1, 2006, and updated and resubmitted on January 1, 2007, and January 1, 2008.

REGULATORY ACTION REPORT

The act requires DCP to compile a regulatory action report at least once every three months and post it on DCP's website. The report must include (1) any disciplinary action taken against someone holding a controlled substance registration, (2) any sanction imposed by the Pharmacy Commission against a pharmacy or pharmacist, and (3) the reasons for the sanction or action.

REPORT ON CORRECTIONAL FACILITY DRUG ADMINISTRATION DEFICIENCIES

The act requires the UConn Health Center to report to the Program Review and Investigations Committee, identifying drug administration deficiencies in correctional facilities found during the previous calendar year. The report must be submitted by January 1, 2006, and updated and resubmitted on January 1, 2007, and January 1, 2008.

BACKGROUND

Controlled Substances

Controlled substances are grouped in Schedules I through V, according to their decreasing tendency to promote abuse or dependency. Schedule I substances are the most strictly controlled because of their high potential for abuse. State and federal laws authorize prescribing drugs on Schedules II through V; most Schedule I drugs do not have any approved medical use. The law requires medical practitioners who distribute, administer, or dispense controlled substances to register with DCP.

PA 05-226—HB 6752
Program Review and Investigations Committee
Legislative Management Committee
General Law Committee
Finance, Revenue and Bonding Committee

AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE RELATIVE TO THE STRUCTURING OR PERMITS AND FEES UNDER THE LIQUOR CONTROL ACT

SUMMARY: This act requires the Department of Consumer Protection (DCP) to report by February 1, 2006 on the most feasible way to restructure the liquor permitting system by January 1, 2008. The restructuring must group businesses with similar activities under a single type of permit while keeping the current three liquor industry tiers: manufacturing, wholesaling, and retailing. The report must be submitted to the General Law Committee.

The act requires DCP, in consultation with the Department of Revenue Services, to report by February 1, 2006 on any statutory changes required to implement a permit fee structure that is in part based on volume. The report must be submitted to the General Law Committee.

The act amends PA 05-7, which prohibited brewpubs from selling alcoholic beverages for on-premises consumption on Sundays and certain holidays. This act eliminates that change, thereby allowing sales for on-premises consumption on those days.

EFFECTIVE DATE: Upon passage, except for the provision concerning brewpubs, which is effective on October 1, 2005.

LIQUOR PERMIT RESTRUCTURING REPORT

The act requires the permit restructuring report to include recommendations on how: (1) the retail permit system can reflect distinctions between on- and off-premises retailers; (2) to categorize on-premises retailers based on their primary activity and type and level of food sales, such as primarily drinking with optional food service and primarily dining with full food service; (3) to categorize off-premises retailers into primarily grocery and primarily alcohol; and (4) the new permit structure will authorize the consumer protection commissioner to issue (a) provisional licenses and (b) endorsements to limit: the type of alcohol sold, the number of permits that a permittee may hold, or any other restriction on a permittee's operation.

LIQUOR PERMIT FEE STRUCTURE

The act requires the fee structure report to include the statutory changes needed to implement a structure for liquor permit fees that requires commercial permit holders to pay the greater of a minimum fee large enough to cover the costs of application processing and routine inspections or a volume-based fee. The report must also include recommendations for (1) reasonable fees for temporary permits and permits issued to charitable and nonprofit organizations, (2) the most accurate and comprehensive source of information on which to base a volume-based fee for commercial permittees, and (3) the appropriate fee for all commercial permittees that will generate total revenues equal to or greater than current revenues.

PA 05-239—sHB 6662
Program Review and Investigations Committee
Planning and Development Committee
Public Health Committee
Legislative Management Committee
Appropriations Committee
Human Services Committee

AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE RELATING TO POPULATIONS IN STATE ELDERLY AND DISABLED HOUSING PROJECTS

SUMMARY: This act makes several changes to address concerns about elderly and non-elderly disabled people living in state-assisted elderly housing projects. It requires (1) state social service agencies to assist local housing authorities to identify and access their services and (2) several agencies to develop plans detailing their outreach efforts, available services, and crisis intervention activities.

The act also requires a comprehensive assessment of rental assistance needs for state-assisted elderly and disabled housing projects and a comprehensive inventory of all state and federally assisted housing in the state.

It requires a number of reports to legislative committees, including a report by February 1, 2006 from the Department of Economic and Community Development (DECD) to the Legislative Program Review and Investigations Committee. The report must describe DECD's progress in a number of areas, such as revising the elderly and disabled housing operating manual, providing specified training to housing authorities, addressing security issues, reassessing the duties and qualifications of resident service coordinators

at these housing projects, and planning for a statewide manager position for the resident service coordinator program.

EFFECTIVE DATE: Upon passage, except for the requirements concerning the inventory of assisted housing, which take effect July 1, 2005.

SOCIAL SERVICES AGENCIES' COLLABORATION REPORTS

The act requires state agencies that provide social services to elderly people and non-elderly disabled people in state-assisted elderly housing projects in Connecticut to help housing authorities identify and access the services they offer for such people. Specifically, it requires the departments of Mental Health and Addiction Services (DMHAS), Mental Retardation (DMR), and Social Services (DSS) to each develop a plan that details outreach efforts, available services, and crisis intervention. By October 1, 2005, each department must report a summary of its collaboration efforts with housing authorities to the Housing and Legislative Program Review and Investigations committees.

RENTAL ASSISTANCE NEEDS ASSESSMENT

The act requires DECD, in consultation with the Connecticut Housing Finance Authority (CHFA), to (1) annually conduct a comprehensive assessment of current and future rental assistance needs in state-assisted housing projects for the elderly and disabled and (2) present the results of the first such analysis to the Housing Committee by April 1, 2006.

ASSISTED HOUSING INVENTORY

The act also requires DECD, by July 1, 2006, to develop and maintain a comprehensive inventory of all "assisted housing" in the state. It defines "assisted housing" as housing that receives financial assistance under any government program for construction or rehabilitation of low- and moderate-income housing and housing occupied by people receiving federal or state rental assistance. The inventory must identify all existing assisted rental units by type and funding source, and include such information as (1) tenant eligibility, (2) rents charged, (3) available subsidies, (4) occupancy and vacancy rates, (5) waiting lists, and (6) accessibility features.

In order to help DECD complete the inventory, the act requires owners of such public or private housing units to report accessible units to the electronic accessible housing database of dwelling units suitable for people with disabilities maintained at DECD.

DECD PROGRESS REPORT

The act requires DECD, by February 1, 2006, to submit a report to the Legislative Program Review and Investigations Committee about its progress in a number of areas. One is its progress in working with CHFA to revise and update the operating manual for state-funded elderly and disabled housing programs. The revisions must include (1) a policy about, and documentation of, negative incidents and waiting list creation and maintenance and (2) in consultation with the state Commission on Human Rights and Opportunities, guidelines for tenant selection and suitability consistent with all state and federal laws. The report must also describe DECD's progress in consulting with CHFA, the Connecticut housing court specialists, and the Connecticut Association of Housing Authorities about developing possible training seminars or material on eviction proceedings for local housing authorities.

In addition, the DECD report must describe its progress in:

1. reinstating training for local housing authorities on state affirmative fair housing requirements such as the use and maintenance of waiting lists and tenant selection from the lists;
2. requiring local housing authority plans for safety and security measures to be part of the required management plans they submit annually for DECD review, encouraging housing authorities to establish rapport with local police departments, and outlining respective roles and responsibilities in responding to negative incidents;
3. reassessing, in consultation with DMHAS, DMR, and DSS, the job description and accompanying qualifications for resident service coordinators to reflect the services needed by all residents of state-funded disabled and elderly housing and setting their hours and salary rates to reflect the level of skills and qualifications required to adequately serve these populations;
4. enlisting professionals from mental health and other service agencies to train resident service coordinators and housing authority staff to better understand elderly and disabled residents' needs and related problems; and
5. establishing a plan, in consultation with DSS, DMHAS, and CHFA, for creating and funding a single statewide manager position for the resident service coordinator program.

At a minimum, the statewide manager must:

1. help measure housing authority interest in reopening availability of resident service coordinator grants;
2. revise the content and format of the existing resident service coordinator reporting requirements;
3. monitor the coordinators' activities periodically through a review of the newly revised reporting instrument;
4. provide technical assistance and guidance to the coordinators in their roles and responsibilities, such as assessing residents' needs;
5. evaluate the currently employed coordinators' training needs and arrange ongoing training for all coordinators as needed;
6. act as a liaison between the coordinators and the social service agencies to further collaboration efforts and develop opportunities for residents' education and disability awareness; and
7. prepare and maintain a resource guide that contains contact information and available services from social services agencies across the state.

PA 05-3—SB 933
Public Health Committee

AN ACT CLARIFYING LICENSING REQUIREMENTS FOR OUTPATIENT SURGICAL FACILITIES

SUMMARY: The law allowed an outpatient surgical facility to operate without a Department of Public Health (DPH) license until March 30, 2007 if the facility showed it (1) was operating before July 1, 2003 and (2) received an Office of Health Care Access (OHCA) determination by that date that a certificate of need (CON) was not required. The facility must be licensed by March 30, 2007 in order to continue operating after that date.

Under the act, only one of the conditions specified above must be met in order for the facility to operate without a license until March 30, 2007.
EFFECTIVE DATE: Upon passage

BACKGROUND

Outpatient Surgical Facilities

By law, an outpatient surgical facility is one (1) established, operated, or maintained by an entity, individual, firm, partnership, corporation, limited liability company, or association, other than a hospital (hospital-based outpatient surgical facilities are already subject to DPH and OHCA requirements), and (2) providing surgical services that include the use of moderate or deep sedation or analgesia or general anesthesia. It also includes facilities providing diagnostic procedures that use moderate or deep sedation, analgesia, or general anesthesia. An outpatient surgical facility does not include a medical office owned and operated exclusively by a licensed physician or physicians if certain statutory conditions are met.

Certificate of Need

CON is a regulatory process, administered by OHCA, for reviewing certain proposed capital expenditures by health care facilities, acquisition of major medical equipment, institution of new services or functions, termination of services, transfer of ownership, or decreases in bed capacity. Generally, a CON is a formal OHCA statement that a health care facility, medical equipment purchase, or service change is necessary.

PA 05-8—HB 6586
Public Health Committee

AN ACT CONCERNING MEDICAL TESTING BY RESPIRATORY THERAPISTS

SUMMARY: This act allows licensed respiratory care practitioners to perform purified protein derivative tests to identify tuberculosis (TB) exposure.

This test, a tuberculin skin test, is used to see whether a person exposed to someone with active TB is infected with the bacteria (has latent TB). The test will be positive if the person has ever had a TB infection.
EFFECTIVE DATE: October 1, 2005

PA 05-9—HB 6646
Public Health Committee

AN ACT MAKING PERMANENT THE ACQUIRED OR TRAUMATIC BRAIN INJURY GROUP HOME PILOT PROGRAM

SUMMARY: This act makes permanent the Department of Mental Health and Addiction Services' community-based, group home pilot program for people with acquired brain injury, which was scheduled to end on October 1, 2005.
EFFECTIVE DATE: October 1, 2005

PA 05-22—HB 6647
Public Health Committee

AN ACT REPEALING THE PILOT RESEARCH PROGRAM FOR PRESCRIPTION OF METHADONE OR OTHER THERAPIES

SUMMARY: This act repeals authorization of, and reporting requirements for, a Department of Mental Health and Addiction Services office-based, opioid treatment research pilot program, which ended in 2001.
EFFECTIVE DATE: Upon passage

PA 05-36—sHB 6820
Public Health Committee

AN ACT CONCERNING OPTOMETRY AND OPHTHALMOLOGY

SUMMARY: This act allows licensed optometrists and ophthalmologists to delegate to trained people the use and application of ocular agents. The delegated activity may be performed only under the supervision, control,

and responsibility of the optometrist or ophthalmologist. Prior law prohibited an optometrist from delegating to anyone the use, application, or prescription of any ocular agent-D or ocular agent-T. The law continues to allow a patient, under an optometrist's care and direction, to self-administer ocular agents.
EFFECTIVE DATE: October 1, 2005

DELEGATION BY OPTOMETRISTS

The act allows a licensed optometrist to delegate to an optometric assistant, optometric technician, or appropriately trained person the use and application of any ocular agent, but only under his supervision, control, and responsibility. The act defines "appropriately trained person" as one who has completed on-the-job training in the use and application of ocular agents under the supervision, control, and responsibility of an employing, licensed optometrist. The optometrist must keep a supporting affidavit about this training on the premises.

The act prohibits an optometrist from delegating the prescribing of ocular agents to anyone.

DELEGATION BY OPHTHALMOLOGISTS

The act allows an ophthalmologist (a licensed physician specializing in ophthalmology) to delegate to any appropriately trained medical assistant the use or application of any ocular agent, but only under his supervision, control, and responsibility. It defines "appropriately trained medical assistant" in the same manner as "appropriately trained person." The employing ophthalmologist must keep a supporting affidavit on the premises.

BACKGROUND

Ocular Agents

"Ocular agents-D" are topically administered agents used for diagnosing visual defects, abnormal conditions, or diseases of the eye and eyelid; certain vision training or optical devices; and fluorescein and similar dyes used in fitting contact lenses (CGS § 20-127(a)(4)).

"Ocular agents-T" are (1) topically administered ophthalmic agents and orally administered antibiotics, antihistamines, and antiviral agents used for treating or alleviating the effects of eye disease or abnormal conditions of the eye or eyelid and (2) orally administered analgesic agents for alleviating pain caused by these conditions or diseases (CGS § 20-127(a)(5)).

PA 05-55—sHB 6184
Public Health Committee

AN ACT CONCERNING RENEWAL OF LAPSED PARAMEDIC LICENSES

SUMMARY: This act allows a paramedic whose license has lapsed to (1) be recertified on a temporary basis as an emergency medical technician (EMT) under certain conditions and (2) apply for renewal of his paramedic license or for recertification as an EMT before the temporary certificate expires. The temporary certification is valid for up to one year and is not renewable.
EFFECTIVE DATE: October 1, 2005

APPLYING FOR TEMPORARY EMT CERTIFICATION

Under the act, the Department of Public Health (DPH) can issue a temporary EMT certificate to an applicant presenting satisfactory evidence that (1) he was certified by DPH as an EMT before becoming a licensed paramedic and (2) his EMT certification has expired and his paramedic license is void for failure to renew.

APPLYING FOR RENEWAL OF PARAMEDIC LICENSE

Under the act, a person receiving a temporary EMT certification can apply to DPH, before his temporary certificate expires, to renew his paramedic license. The applicant must give DPH his name, residence and business addresses, and other information DPH requests. The license renewal application must include satisfactory evidence that the applicant was under the medical control of a sponsor hospital on the date his license became void because of nonrenewal.

The act defines "medical control" as the active surveillance by physicians of mobile intensive care sufficient to assess overall practice levels, as defined by statewide protocols. "Sponsor hospital" means a hospital that has (1) agreed to maintain staff to provide medical control, supervision, and direction to an emergency medical service organization and its personnel and (2) been approved for such activity by the state Office of Emergency Medical Services.

APPLYING FOR RECERTIFICATION AS AN EMT

The act also allows an applicant receiving a temporary EMT certificate to apply, before the temporary certificate expires, for recertification as an EMT. The application must include satisfactory evidence that the person completed DPH-approved

EMT refresher training within one year of receiving temporary certification. DPH must recertify the person as an EMT without the exam required for initial certification.

PA 05-64—sHB 6897
Public Health Committee
Human Services Committee
Appropriations Committee

AN ACT CONCERNING NURSING OVERSIGHT OF PATIENTS RECEIVING HOME HEALTH SERVICES

SUMMARY: This act directs that any state regulations defining minimum service quality standards for home health care agencies and homemaker-home health aide agencies require a registered nurse (RN) to visit and assess each patient receiving homemaker-home health aide services at least once every 60 days. The RN must complete the assessment while the aide is providing services in the patient's home. By law, the Department of Public Health (DPH) can require home health care and homemaker-home health aide agencies to meet minimum service quality standards as a condition of licensure. If DPH requires this, it must adopt regulations defining these standards. Existing state regulations require an assessment at least every four weeks (Public Health Code, § 19-13-D69(a)(3)(J)).
EFFECTIVE DATE: Upon passage

PA 05-66—sHB 6947
Public Health Committee

AN ACT CONCERNING DIALYSIS PATIENT CARE TECHNICIANS

SUMMARY: This act allows dialysis patient care technicians employed in outpatient dialysis units to administer, as necessary, saline, heparin, or lidocaine if (1) the ratio of on-duty direct patient care staff to dialysis patients is at least three to nine and (2) at least one of the three on-duty direct care staff is a state-licensed registered nurse. These medications are used for initiating or terminating a patient's dialysis.

The act (1) defines a "dialysis patient care technician" as a person certified as such by an organization approved by the Department of Public Health (DPH) and (2) gives DPH regulatory responsibility for dialysis patient care technicians.
EFFECTIVE DATE: October 1, 2005, except for the provision giving DPH regulatory responsibility for the technicians, which takes effect on and after the later of October 1, 2000 or the date DPH publishes notice in the *Connecticut Law Journal* indicating that it is implementing the licensing of athletic trainers and physical therapy assistants.

PA 05-67—sSB 111
Public Health Committee
Judiciary Committee

AN ACT REQUIRING NOTIFICATION OF CRIMINAL CHARGES AGAINST CONNECTICUT PHYSICIANS

SUMMARY: This act requires the Office of the Chief State's Attorney to immediately notify the Department of Public Health (DPH) in writing when criminal charges are brought against a licensed physician for (1) reckless endangerment within the physician's scope of practice, (2) manslaughter, or (3) murder. After notification, DPH can begin an investigation of the physician, while the criminal charges are pending, to determine if the department should take any disciplinary action, including license suspension.

Existing law allows the Connecticut Medical Examining Board to take action against a physician's license if the physician has been found guilty or convicted of a felony. The law also allows a person to file a petition against a physician if that individual has information that appears to show that the physician is unable to practice with reasonable skill or safety.
EFFECTIVE DATE: October 1, 2005

PA 05-70—sSB 1262
Public Health Committee
Government Administration and Elections Committee

AN ACT CONCERNING THE SALE, LEASE OR TRANSFER OF STATE PROPERTY USED FOR RESIDENTIAL PURPOSES BY PERSONS WITH MENTAL RETARDATION

SUMMARY: This act imposes a moratorium from July 1, 2005 to June 30, 2007 on selling, leasing, or transferring state-owned property currently used to house people with mental retardation. A previous moratorium, which applied to property that housed people with mental illness and people with mental retardation, ended on July 1, 2004. The new moratorium does not apply to any agreement to sell, lease, or transfer property entered into before May 11, 2005.
EFFECTIVE DATE: Upon passage

PA 05-71—SB 42
Public Health Committee
Human Services Committee

AN ACT CONCERNING STATE LICENSING FOR CHANGE OF USE OF GROUP HOMES

SUMMARY: This act requires a child care facility licensed by the Department of Children and Families (DCF) to apply for a new license if it changes the types of children it serves. It requires the DCF commissioner to notify the chief executive officer of the town where the facility is located of the new application and specifies that she must not disclose any confidential client information.

DCF-licensed child care facilities include group homes, residential treatment facilities, emergency shelters, and other residential facilities that serve children with mental health and substance abuse problems and those in the juvenile justice system.
EFFECTIVE DATE: October 1, 2005

PA 05-75—SB 1143
Public Health Committee

AN ACT CONCERNING CERTIFICATE OF NEED APPLICANTS AND PUBLIC HEARING REQUESTS

SUMMARY: This act makes two changes to the certificate of need (CON) program administered by the Office of Health Care Access (OHCA). It (1) redefines "affiliate" for purposes of CON review and (2) establishes a deadline by which a person seeking a public hearing on a CON application must make a request to OHCA.

CON is a regulatory process for reviewing certain proposed capital expenditures by health care facilities, acquisition of major medical equipment, institution of new services or functions, termination of services, transfer of ownership, and decreases in bed capacity. Generally, a CON is a formal OHCA statement that a health care facility, medical equipment purchase, or service change is needed.
EFFECTIVE DATE: October 1, 2005

AFFILIATE DEFINITION

The act redefines "affiliate" more broadly to include not just a licensed provider of direct patient care services but also any unlicensed corporate holding company, affiliate, or subsidiary of that provider. Specifically, it defines "affiliate" as a person, entity, or organization controlling, controlled by, or under common control with another person, entity, or organization. By law, a CON is required whenever a health care facility or institution intends to (1) transfer all or part of its ownership or control, (2) change the governing powers of the board of a parent company or an affiliate, or (3) change or transfer the powers or control of a governing body or controlling body of an affiliate. A person is considered controlled by another if the other person or one of that person's affiliates, officers, agents, or management employees acts as a general partner of a general or limited partnership or manager of a limited liability company.

Prior law defined "affiliate" as any health-care-related person who directly or indirectly, through at least one intermediary, controls, or is controlled by, or is under common control with another health-care-related person. It defined "health-care-related person" as an entity licensed by the state to provide direct patient care services.

PUBLIC HEARINGS

By law, OHCA must hold a public hearing on a completed CON application if (1) the proposal has associated total capital expenditures or total capital costs exceeding $20 million for land, building, or non-clinical equipment acquisition, new building construction, or building renovation or (2) the proposal has associated total per-unit capital expenditures or capital costs exceeding $1 million for major medical equipment, imaging equipment, or linear accelerators that use new technology or technology being introduced to the state.

Also under the law, OHCA may hold a public hearing on a CON application involving (1) use of technology that is new or being introduced to the state; (2) new or additional health care functions or services being introduced; or (3) termination of any existing health care function or service, reduction of total beds, or closing of a health care facility. But OHCA must hold a public hearing in these situations if three people, or one person representing an entity of five or more people, request it in writing.

The act requires that, in the case of a person requesting a hearing, OHCA must receive the request within 21 calendar days from the date OHCA deems the CON application complete.

PA 05-80—sHB 5169
Public Health Committee

AN ACT CONCERNING QUALITY OF CARE IN CHRONIC DISEASE HOSPITALS

SUMMARY: This act requires the medical director of a chronic disease hospital to determine that the hospital

and its staff are capable of adequately caring for and treating prospective patients, consistent with the hospital's by-laws, before they can be admitted. The director must have access to patients' records before making these determinations and may examine patients.

The act also eliminates obsolete language concerning the Department of Public Health directly operating chronic disease hospitals. Under the act, the public health commissioner remains responsible for planning and contracting for statewide chronic disease control and treatment programs. And the act allows, rather than requires, him to provide and maintain facilities and personnel to diagnose and treat chronic diseases or contract for such services.

EFFECTIVE DATE: October 1, 2005

PA 05-81—sHB 5799
Public Health Committee
General Law Committee
Judiciary Committee

AN ACT CONCERNING DISPOSITION OF UNCLAIMED CREMATED REMAINS BY FUNERAL DIRECTORS

SUMMARY: This act establishes a process and requirements for funeral directors to dispose of the cremated remains of a deceased person, including unclaimed or unaccepted remains. It requires a funeral director to complete a written form when the person with custody and control of the deceased requests cremation or the deceased had executed a cremation authorization form according to law. The written form must state the place and time of cremation and the method of disposal of the remains. If the cremated remains are not accepted as agreed to in the written form, the act allows the funeral director to dispose of them using a number of specified methods after a certain time has passed and proper notice is sent to the responsible party.

The act establishes a parallel process for disposal of remains already in a funeral director's possession on July 1, 2005.

Finally, the act directs the Department of Public Health (DPH) to provide space on cremation permits for recording information about the intended manner of disposing of cremated remains.

EFFECTIVE DATE: July 1, 2005

DISPOSITION OF A DECEASED PERSON BY CREMATION

The act requires a funeral director to complete a written form containing specific information when (1) the person having custody and control of a deceased person requests disposal by cremation or (2) the deceased has executed a cremation authorization form according to law. The funeral director's form must include:

1. the name and address of the funeral service business responsible for disposing of the deceased and the funeral director's or embalmer's name;
2. the deceased's name;
3. the time and place of cremation;
4. the name and address of the person with custody and control of the deceased's remains;
5. a summary of how the cremated remains, if unclaimed, will be disposed of; and
6. a statement indicating how the person with custody and control wants the cremated remains to be disposed of, or a statement that the deceased had executed a cremation authorization.

This form must be signed and dated by the funeral director and person with custody and control of the deceased's remains. A copy must be given to the person with custody and control. The original must be kept at the funeral service business for at least 20 years from the date the person with custody and control signed it.

DISPOSITION OF UNACCEPTED CREMATED REMAINS

The act allows a funeral director to dispose of cremated remains that are not accepted by (1) burial in a cemetery or memorial garden; (2) storage in a crypt of a mausoleum or columbarium; (3) scattering; (4) funeral home storage; or (5) another method identified in the signed form, if the funeral director has provided proper notice.

After disposing of the cremated remains, the funeral director must give written notice of the manner of disposal to the registrar of vital records in the town where the cremation permit was issued. The notice must be attached to the cremation permit.

NOTICE REQUIREMENTS

If the funeral director or embalmer has the cremated remains for over 180 days after cremation because the person responsible for accepting them or designated to take custody fails to do so, he must notify (1) the person who signed the form and (2) the person responsible for accepting the remains or designated to take custody and control. The notice must be sent by certified mail and state that if the remains are unclaimed for over 90 days from the date of mailing, they will be disposed of as the act allows.

REMAINS IN POSSESSION OF FUNERAL DIRECTORS ON JULY 1, 2005

The act allows a funeral director possessing cremated remains on July 1, 2005 to dispose of them in a manner specified above if he has reasonably tried to notify the person who had custody and control of the remains or a relative of the deceased. The notice must state that the remains will be disposed of as allowed by the act if they are unclaimed for over 180 days from the notice's mailing.

PA 05-92—sSB 1027
Public Health Committee
Human Services Committee
Government Administration and Elections Committee
Judiciary Committee

AN ACT AUTHORIZING THE DEPARTMENTS OF MENTAL HEALTH AND ADDICTION SERVICES AND CHILDREN AND FAMILIES TO SHARE CERTAIN INFORMATION AND RECORDS

SUMMARY: This act permits the departments of Mental Health and Addiction Services and Children and Families to exchange information and records in their custody when a person both departments serve is involved in a serious injury or unexpected death. It allows them to share the information, in accordance with federal law, without the consent of the injured or deceased person. They can do this as long as it is needed to help the other department investigate the matter and identify risk factors that might prevent similar occurrences in the future.

The act exempts the findings of any investigation by these departments into an unexpected death or serious injury from disclosure under the Freedom of Information Act. And it prohibits subjecting the findings to disclosure or introduction as evidence in any civil action arising from the death or injury. The act specifies that it does not restrict disclosing confidential records or communications on which the findings are based when disclosure is required by law.

Under the act, no one who participates in an investigation can be required or allowed to testify in a civil action, with certain exceptions.
EFFECTIVE DATE: October 1, 2005

COURT TESTIMONY BASED ON INVESTIGATION

The act prohibits requiring or allowing anyone who participated in an investigation to testify in any civil action as to the "content of such action." (This term's meaning is uncertain, but it may encompass testimony not directly related to the facts of the case.) But it does not preclude introducing in a civil suit (1) documents created independently of the suit, (2) testimony concerning facts that were the basis for initiating the suit, or (3) the fact that a person's staff privileges were terminated or restricted and the specific restriction. It also permits data discussed or developed during an investigation to be introduced in proceedings to terminate or restrict a health care provider's staff privileges.

BACKGROUND

Federal Laws Applicable to Information and Record Sharing

The Health Insurance Portability and Accountability Act (HIPPA) generally prohibits heath care providers, including state health care providers like DMHAS and the agencies with which it contracts, from disclosing protected health information without a person's consent. HIPPA permits disclosure without consent (1) when required by law; (2) to appropriate government agencies about victims of abuse, neglect, or domestic violence; (3) in response to an order from a court or administrative tribunal; (4) to health oversight agencies for activities such as audits or investigations; and (5) for law enforcement activities.

The federal Child Abuse Prevention and Treatment Act requires states to keep all records confidential in order to protect the rights of children and their parents or guardians. But it permits disclosure (1) to state or local government entities, or their agents, that need the information to carry out their legal responsibilities to prevent children from abuse and neglect; (2) when abuse or neglect results in a child fatality or near fatality; and (3) to a court upon a finding that the record is needed to determine an issue before it.

PA 05-93—sSB 1207
Public Health Committee

AN ACT CONCERNING THE CAPITAL EXPENDITURE THRESHOLD FOR THE REGULATION OF EQUIPMENT ACQUISITIONS

SUMMARY: This act amends the certificate of need (CON) process by eliminating the $400,000 capital expenditure threshold for CON review of proposals involving the purchase, lease, or donation acceptance of various types of scanning equipment and linear accelerators. The act specifies that equipment acquisitions involving CT scanners, PET scanners, PET/CT scanners, MRI scanners, cineangiography equipment, linear accelerators, or similar equipment

with technology that is new or being introduced into the state will be subject to CON review, regardless of the proposed capital expenditure or capital cost associated with the CON proposal.

The act provides exemptions and waivers from CON for the specific type of equipment listed above under certain conditions.

CON is a regulatory process, administered by the Office of Health Care Access (OHCA), for reviewing certain proposed capital expenditures by health care facilities, acquisition of major medical equipment, institution of new services or functions, termination of services, transfer of ownership, and decreases in bed capacity. Generally, CON approval is a formal statement by OHCA that a health facility, medical equipment purchase, or service change is needed.

EFFECTIVE DATE: July 1, 2005

CERTIFICATE OF NEED

CON for Certain Types of Medical Equipment

By law, Connecticut health care facilities need to obtain a CON from OHCA prior to developing, expanding, or terminating certain services and expending more than $1 million on a capital project. Additionally, a CON is required when a facility proposes to acquire major medical equipment, imaging equipment, or linear accelerators with a capital cost in excess of $400,000.

This act retains the $400,000 threshold for CON review of major medical equipment acquisition but subjects the purchase, lease, or donation of specific types of medical equipment to CON review regardless of cost. This equipment includes a CT scanner, PET scanner, PET/CT scanner, MRI scanner, cineangiography equipment, a linear accelerator, or other similar equipment utilizing technology that is new or being introduced into the state.

By law, the CON process begins when the applicant submits a letter of intent (LOI) to OHCA. Once the LOI is filed, the applicant receives a CON application form and is notified of the filing window for the application. The applicant must file the CON application between the 60th and 120th day from the LOI filing. A one-time 30-day extension may be requested by the applicant, extending the filing date to the 150th day. The act specifies that OHCA must accept or reject the extension request within five business days from the date it receives the request.

Public Hearings

By law, OHCA must hold a public hearing on a completed CON application if (1) the proposal has associated total capital expenditure or total capital costs exceeding $20 million for land, building, or non-clinical equipment acquisition, new building construction, or building renovation; (2) the proposal has associated total per-unit capital expenditures or capital costs exceeding $1 million for major medical equipment, imaging equipment, or linear accelerators that use new technology or technology being introduced to the state; or (3) three individuals or one person representing an entity of five or more people submit a request in writing for a public hearing.

Under the act, a public hearing must be held on completed CON applications involving equipment utilizing technology that is new or being introduced into the state including scanning equipment, cineangiography equipment, linear accelerators, or any other similar equipment regardless of the capital costs.

Exemption From CON

The act provides an exemption from CON review for health care facilities, institutions, or providers proposing to purchase, lease, or accept donation of scanning or cineangiography equipment or a linear accelerator if the facility, institution, or provider (1) provides OHCA with satisfactory evidence that it purchased or leased the equipment for under $400,000 before July 1, 2005 or (2) obtained from OHCA, before July 1, 2005, a determination that a CON was not required for the purchase, lease, or donation acceptance of the equipment.

Waiver of CON

By law, a waiver of CON is considered when major medical equipment, imaging equipment, or a linear accelerator that was previously authorized under a CON needs replacement. A waiver authorizes the replacement of the equipment without an additional CON. OHCA must review the request and supporting evidence, which must include the previously obtained CON for the equipment being replaced, documentation that the replacement cost is less than $2 million, and a replacement expenditure not more than the original cost plus an increase of 10% for each 12-month period since the original CON. The act specifies that OHCA may provide such waivers for replacement of scanning, cineangiography, and linear accelerator equipment.

BACKGROUND

Related Act

PA 05-75 redefines “affiliate” for purposes of CON review and establishes a deadline by which a person seeking a public hearing on a CON application must make a request to OHCA.

Scanning and Cineangiography Equipment

"Cineangiography equipment" records sequential x-ray images of the heart and arteries after the selective injection of iodinated contrast medium. It is used to evaluate morphology, dimensions, and function of the heart, and morphology of the great arteries. Cineangiography employs a cine camera to record the images from the image intensifier onto cine film.

A "CT (computerized tomography) scanner" is a special kind of x-ray machine. Instead of sending out a single x-ray through the body as with ordinary x-rays, it sends several beams simultaneously from different angles. CT scans are far more detailed than ordinary x-rays.

A "PET (positron emission tomography) scanner" is a device that produces cross-sectional x-rays of metabolic processes by means of positron emission tomography. A PET scan combines CT and nuclear scanning. During a PET scan, a radioactive substance called a tracer is combined with a chemical (such as glucose). This mixture is generally injected into a vein. The tracer emits tiny positively charged particles (positrons) that produce signals. A PET scan can be used to study the brain's blood flow and metabolic activity, for example. It is also used to detect and evaluate cancer.

An "MRI (magnetic resonance imaging) scan" produces pictures of the inside of the body. Unlike an x-ray, an MRI scan does not use radiation. Rather, a magnetic field is used to make the body's cells vibrate. They then give off electric signals that are interpreted by a computer and turned into very detailed images of "slices" of the body.

A "linear accelerator" is used for external beam radiation treatments for patients with cancer. It delivers a uniform dose of high-energy x-rays to the region of the patient's tumor. These x-rays can destroy the cancer cells while sparing the surrounding normal tissue.

PA 05-102—sSB 1205
Public Health Committee
Insurance and Real Estate Committee

AN ACT CONCERNING APPEALS OF DENIALS OR DETERMINATIONS BY MANAGED CARE ORGANIZATIONS AND RENAMING THE OFFICE OF MANAGED CARE OMBUDSMAN

SUMMARY: The law allows an enrollee, or health care provider acting on an enrollee's behalf with his consent, who has exhausted the internal mechanisms provided by a managed care organization (MCO) or utilization review (UR) company, to appeal a claim denial based on medical necessity to the insurance commissioner up to 30 days after receiving written notice of the denial. It also allows appeals of determinations not to certify an admission, service, procedure, or extension of stay.

The act allows the insurance commissioner to issue an order specifying how an MCO or UR company must make determinations about procedural or diagnostic coding if she receives three or more appeals of denials or determinations by the same MCO or UR company about the same procedural or diagnostic coding. The commissioner can issue the order on her own motion.

The act also changes the name of the Office of Managed Care Ombudsman to the Office of Healthcare Advocate and makes a number of technical changes to accomplish this throughout the statutes. The duties and responsibilities of the office remain the same.
EFFECTIVE DATE: October 1, 2005

PA 05-119—sHB 6302
Public Health Committee
Judiciary Committee
General Law Committee

AN ACT RESTRICTING THE SALE OF COSMETIC CONTACT LENSES

SUMMARY: This act permits plano cosmetic contact lenses (nonprescription contact lenses with colors or patterns) to be sold at retail, but only under the supervision of a licensed optician and in a registered optical establishment, office, or store. The act also specifies that it is not meant to restrict the ability of (1) licensed physicians trained and specializing in eye diseases or (2) licensed optometrists, from dispensing contact lenses.

The act makes retail selling of plano cosmetic contact lenses or optical glasses or related products, except under the supervision of a licensed optician and in a registered optical establishment, an unfair trade practice under the Connecticut Unfair Trade Practice Act (CUTPA).
EFFECTIVE DATE: October 1, 2005

BACKGROUND

CUTPA

CUTPA prohibits businesses from engaging in unfair and deceptive acts or practices. It allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than $5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. The act also allows

individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to $5,000 for willful violations and $25,000 for violation of a restraining order.

PA 05-121—sHB 6717
Public Health Committee
Finance, Revenue and Bonding Committee
Transportation Committee

AN ACT CONCERNING ORGAN AND TISSUE DONORS

SUMMARY: This act expands the way in which a person can become an organ and tissue donor. By law, the Department of Motor Vehicles (DMV) commissioner and the chief information officer of the Department of Information Technology (DOIT) must enter into an agreement with an organ and tissue procurement organization to provide the organization access to information on drivers who intend to be donors. The act requires the departments also to provide the procurement organization with information on individuals holding identity cards who wish to be donors. Under the law, a person without a driver's license can apply to DMV for an identity card.
EFFECTIVE DATE: October 1, 2005

PA 05-122—sHB 6770
Public Health Committee
Appropriations Committee

AN ACT CONCERNING FOOD ALLERGIES

SUMMARY: This act directs that Department of Public Health (DPH) regulations require that the test administered to qualified food operators include elements testing their knowledge of food allergies.

Existing DPH regulations require anyone who owns, operates, or manages a Class III or Class IV food service establishment to be a qualified food operator or employ on site at least one qualified food operator in a supervisory position. In order to be designated as such, a qualified food operator must pass a test administered by a DPH-approved testing organization that addresses the individual's knowledge of safe food handling techniques (DPH Regs. § 19-13-B42(s)(4)).

A Class III establishment has on its premises potentially hazardous foods prepared by hot processes and consumed by the public within four hours of preparation. A Class IV establishment is the same except its food is held for more than four hours before public consumption.

EFFECTIVE DATE: October 1, 2005

PA 05-128—sSB 1095
Public Health Committee

AN ACT CONCERNING HOSPITAL PATIENTS' RIGHTS

SUMMARY: This act requires hospitals to notify each patient of his rights under the hospital's conditions of participation in Medicare. Notification must be made upon the patient's admission and can be made to his guardian or representative as allowed by state and federal law. The notice must (1) be written; (2) specifically state the rights identified in the Medicare conditions of participation; and (3) provide information on how the patient can complain, including contacting the Department of Public Health.
EFFECTIVE DATE: October 1, 2005

BACKGROUND

Medicare and Patients' Bill of Rights

In 1999, the federal Health Care Financing Administration (now the Center for Medicare and Medicaid Services) published the Patients' Rights Condition of Participation (COP), which hospitals must meet to be approved for, or to continue participation in, Medicare and Medicaid. Generally, the COP addresses a patient's right to:

1. notification of his rights,
2. exercise those rights in regard to his care,
3. privacy and safety,
4. confidentiality,
5. freedom from use of restraints for hospital care unless clinically necessary, and
6. freedom from seclusion and restraints used in behavior management unless clinically necessary.

The first standard listed above (notice of rights) means that the hospital must notify the patient or his representative of his right to:

1. file a grievance;
2. participate in the development of his plan of care;
3. make decisions concerning his care;
4. be informed of his health status;
5. formulate advance directives;
6. maintain personal privacy;
7. receive care in a safe setting;
8. have medical records kept confidential; and
9. be free from restraints and seclusion in any form as a means of coercion, discipline, convenience, or retaliation.

PA 05-149—sSB 934
Public Health Committee
Judiciary Committee
Appropriations Committee
Commerce Committee
Government Administration and Elections Committee
Higher Education and Employment Advancement Committee
Finance, Revenue and Bonding Committee

AN ACT PERMITTING STEM CELL RESEARCH AND BANNING THE CLONING OF HUMAN BEINGS

SUMMARY: This act permits research in the state involving embryonic stem cells if (1) it is conducted with full consideration of its medical and ethical implications and before gastrulation; (2) before beginning the research, the researcher provides documentation to the Department of Public Health (DPH) commissioner, on a form and in a way he prescribes, verifying that any human embryos, embryonic stem cells, human unfertilized eggs, or human sperm used were donated voluntarily; (3) the general research program under which the stem cell research is conducted is reviewed and approved by an institutional review committee as required by federal law; and (4) the specific protocol used to derive stem cells from an embryo is reviewed and approved by an institutional review committee.

"Gastrulation" means the process immediately following the blastula state when the hollow ball of cells representing the early embryo undergoes a complex and coordinated series of movements resulting in the formation of the three primary germ layers (ectoderm, mesoderm, and endoderm). (PA 05-272 imposes a fine of up to $50,000, imprisonment up to five years, or both, for conducting embryonic stem cell research after gastrulation occurs.)

The act also:

1. requires physicians or other health care providers treating a patient for infertility to provide her with timely, relevant, and appropriate information sufficient to allow her to make an informed and voluntary choice about the disposition of any embryos or embryonic stem cells remaining after an infertility treatment;
2. prohibits a person from knowingly (a) engaging or assisting, directly or indirectly, in cloning a human being; (b) implanting human embryos created by nuclear transfer into a uterus or device similar to a uterus ("nuclear transfer" means replacing the nucleus of a human egg with the nucleus from another human cell); or (c) facilitating human reproduction through clinical or other use of human embryos created by nuclear transfer (violating any of these provisions results in a fine of up to $100,000, imprisonment up to 10 years, or both, with each violation a separate offense);
3. requires the DPH commissioner to enforce the provisions on information for infertility patients, cloning prohibitions, nuclear transfer, informed consent for donations, and research procedures and standards; allows him to adopt regulations to administer and enforce these provisions; and allows him to ask the attorney general to petition the Superior Court for appropriate enforcement orders;
4. establishes a "Stem Cell Research Fund," appropriates $20 million from the General Fund to it for FY 05, and directs that $10 million be disbursed from the Tobacco Settlement Fund to the Stem Cell Research Fund for each of FYs 08 to 15;
5. requires that for each of FYs 06 to 15, at least $10 million be available from the research fund for grants to eligible institutions for embryonic or human adult stem cell research, with any balance remaining in a fiscal year carried forward to the next year;
6. establishes a nine-member Stem Cell Research Advisory Committee responsible for (a) establishing and administering, in consultation with the DPH commissioner, a program to provide stem cell research grants; (b) directing the commissioner on awarding the grants; (c) monitoring grant-funded research; (d) developing, in consultation with DPH, a donated funds program for stem cell research; and (e) reporting to the governor and General Assembly on stem cell research in the state; and
7. establishes a five-member Stem Cell Research Peer Review Committee responsible for reviewing all grant applications and making recommendations to DPH and the advisory committee on the ethical and scientific merits of applications.

EFFECTIVE DATE: Upon passage

DEFINITIONS

Embryonic Stem Cells

The act defines embryonic stem cells as cells created by joining a human egg and sperm or through nuclear transfer that are sufficiently undifferentiated so that they cannot be identified as components of any specialized cell type.

Institutional Review Committee

Under the act, an institutional review committee is (1) the local institutional review committee established according to federal law to supervise the clinical testing of devices in facilities where clinical testing is to be conducted and (2) where applicable, an "institutional review board" (IRB), which, under federal law, is responsible for ensuring that human subjects engaged in research are treated with dignity, are protected from harm, and have given informed consent to participation in research. An IRB reviews and approves research protocols before any work is started and reviews ongoing research periodically to ensure the protection of subjects.

Cloning of a Human Being

The act defines cloning of a human being as inducing or permitting a replicate of a living human being's complete set of genetic material to develop after gastrulation begins.

PATIENTS UNDERGOING FERTILITY TREATMENT

Under the act, a patient undergoing infertility treatment who receives the required information on the disposition of remaining human embryos or embryonic stem cells must be given the option of storing them, donating them to another person or for research purposes, or otherwise disposing of them. People choosing to donate for research purposes any remaining embryos or embryonic stem cells, unfertilized human eggs, or human sperm must give written consent and cannot receive any direct or indirect payment for them.

Anyone violating these provisions, or a health care provider who fails to give the act's required information about disposition, is subject to a fine of up to $50,000, a prison term of up to five years, or both. Each violation is a separate offense.

STEM CELL RESEARCH FUND AND RESEARCH GRANTS

The act establishes a Stem Cell Research Fund as a separate, nonlapsing General Fund account. It can hold any funds required or allowed by law to be deposited in it and any public or private contributions, gifts, grants, donations, or bequests made to it. The DPH commissioner can make grants from the fund to eligible institutions for embryonic and human adult stem research.

The act appropriates $20 million to the research fund in FY 05 from the General Fund and requires that $10 million be disbursed to it for each of FYs 08 to 15 from the Tobacco Settlement Fund. Beginning with FY 06 and continuing through FY 15, it requires at least $10 million be available each year from the fund for grants to eligible institutions for embryonic or human adult stem cell research. Any end-of-year balance left in a fiscal year must be carried forward to the next fiscal year. An "eligible institution" is (1) a nonprofit, tax-exempt college or university, (2) a hospital conducting biomedical research, or (3) any entity conducting biomedical research or embryonic or human adult stem cell research.

STEM CELL RESEARCH ADVISORY COMMITTEE

Membership

This nine-member committee includes the DPH commissioner (who chairs the committee) and eight other members appointed as follows:

1. two by the governor, one who is a nationally recognized active investigator in stem cell research and one with background and experience in bioethics;
2. one each by the Senate president pro tempore and the House speaker with background and experience in private sector stem cell research and development;
3. one each by the House and Senate majority leaders who must be academic researchers specializing in stem cell research;
4. one by the Senate minority leader with background and experience in public or private sector research and development or related research fields including embryology, genetics, or cellular biology; and
5. one by the House minority leader with background and experience in business or financial investments.

Members serve staggered four-year terms beginning on October 1, with the members first appointed by the governor and majority leaders serving for only two years. Members cannot serve more than two consecutive four-year terms and no member can serve concurrently on the Stem Cell Research Peer Review Committee the act establishes. All initial appointments must be made by October 1, 2005, and the appointing authority must fill any vacancy. The first meeting must be held by December 1, 2005. The members must work to advance embryonic and human adult stem cell research. A member missing three consecutive meetings or failing to attend 50% of the meetings in a calendar year is deemed to have resigned.

Members are considered public officials and must follow the Code of Ethics for Public Officials. The act prohibits a member from reviewing or considering any grant application he filed or in which he has a financial

interest or one filed by someone with whom he engages in any business, employment, transaction, or professional activity.

Grants and Grant Applications

By June 30, 2006, the advisory committee must develop a grants application for conducting embryonic or human adult stem cell research. It may receive applications after that date from eligible institutions. A grant applicant must submit (1) a complete description of its organization; (2) its plans for stem cell research and proposed funding from non-state sources; and (3) proposed arrangements concerning financial benefits the state will receive as a result of any patent, royalty payments, or similar rights resulting from any stem cell research made possible by the grant.

The committee must direct the DPH commissioner on awarding the grants and monitor the research conducted by grant recipients.

Connecticut Innovations, Inc. serves as administrative staff for the committee and must assist in (1) developing the grant application, (2) reviewing applications, (3) preparing and executing any assistance or other agreements concerning grant awards, and (4) performing other necessary duties.

Other Committee Responsibilities

The act directs the committee to (1) develop, in consultation with the DPH commissioner, a program to encourage development of funds other than state appropriations for such research and (2) identify ways to improve and promote for-profit and not-for-profit stem cell and related research in the state. The latter can include identifying public and private funding sources; maintaining existing embryonic and adult stem cell-related business in the state; and recruiting new businesses, scientists, and researchers to the state.

Report

By June 30, 2007 and then annually through June 30, 2015, the advisory committee must report to the governor and the General Assembly on (1) the amount of grants awarded from the research fund, (2) grant recipients, and (3) the current status of stem cell research in the state.

STEM CELL RESEARCH PEER REVIEW COMMITTEE

The act creates a five-member Stem Cell Research Peer Review Committee that the DPH commissioner appoints. All members must (1) have demonstrated knowledge and understanding of the ethical and medical implications of embryonic and human adult stem cell research or related research fields such as embryology, genetics or cellular biology; (2) have practical research experience in these research areas; and (3) work to advance embryonic and human adult stem cell research.

Members serve staggered four-year terms beginning on October 1, with three members first appointed serving a two-year term. No member can serve more than two consecutive four-year terms or concurrently serve on the Stem Cell Research Advisory Committee. Initial appointments must be made by October 1, 2005. Members are subject to the same attendance, ethics, and conflicts of interest requirements as the advisory committee.

The peer review committee must review all applications for grants and make recommendations to DPH and the advisory committee concerning the ethical and scientific merit of each application. It must establish guidelines for the rating and scoring of the applications.

Peer review committee members must make themselves aware of the National Academies Guildelines for Human Embryonic Stem Cell Research. They may make recommendations to the advisory committee and the DPH commissioner concerning adoption of any or all of these guidelines as state regulations.

BACKGROUND

National Academies Guidelines

The National Academies is an independent organization chartered by Congress to advise the government on scientific, engineering, and health matters. In April 2005, it released guidelines and recommendations for human embryonic stem cell research to advance the science in a responsible manner. These guidelines are intended for use by the scientific community, including researchers in academic, industry, or other private sector organizations.

PA 05-150—SB 1092
Public Health Committee
Human Services Committee
Judiciary Committee

AN ACT CONCERNING MEDICATION ADMINISTRATION IN DEPARTMENT OF MENTAL RETARDATION RESIDENTIAL FACILITIES AND PROGRAMS

SUMMARY: This act permits people who receive special training to administer medication to people receiving individual and family support services from

the Mental Retardation, Children and Families, Mental Health and Addiction Services, and Correction departments. A licensed physician, dentist, advanced practice registered nurse, or physician assistant must prescribe the medication. The law already permits people with special training to administer medication to people in any of these agencies' residential facilities and day programs that are not licensed by the Public Health Department and to children in Judicial Department juvenile detention centers.

The agencies that license individual and family support programs or have authority over people who receive such services must adopt regulations governing medication administration and training.

EFFECTIVE DATE: October 1, 2005

PA 05-151—sSB 1145
Public Health Committee

AN ACT CONCERNING REVISIONS TO THE OFFICE OF HEALTH CARE ACCESS STATUTES

SUMMARY: This act makes several changes in the laws concerning applications and data that hospitals and other health care providers must submit to the Office of Health Care Access (OHCA). It extends penalties for failure to file to a wider range of health care entities. It revises OHCA's authority concerning hospital funds and eliminates a report OHCA must make on graduate medical education. It also eliminates obsolete language about school-based health centers and repeals several obsolete statutes.

EFFECTIVE DATE: October 1, 2005, except for the provisions on hospitals submitting financial data and price lists and repealing obsolete statutes, which are effective July 1, 2005.

APPLICATION AND DATA SUBMISSION REQUIREMENTS

Penalties for Failure to Submit Data

The act extends to all health care facilities and institutions, as well as their parent companies, subsidiaries, and affiliates, the civil penalties applicable for failing to submit data OHCA requires on major medical and imaging equipment they own, operate, or plan to acquire and any other information the law requires them to file. It also broadens the range of equipment on which they must report and extends the time in which they can ask for a hearing or a filing extension. The penalty is a fine of up to $1,000 per day.

Under prior law, the reporting requirements and penalties applied only to health care providers, which the law defines as state-licensed or -certified individuals or facilities that diagnoses or treats people on an inpatient or outpatient basis. The act applies these requirements or penalties to any person or "health care facility or institution." The law defines the latter term as any facility or institution that provides inpatient or outpatient prevention, diagnosis, or treatment and its parent company, subsidiary, affiliate, or joint venture. The certificate of need (CON) application process already applies to health care institutions and facilities.

The act extends reporting and penalty requirements to major medical equipment costing over $400,000, scanning and cineangiography equipment, linear accelarators, and any other similar equipment using technology that is developed or introduced into the state after September 30, 2005. They previously applied only to computer axial tomography (CT) scanners, medical imaging equipment, and linear accelerators. The act also extends the penalties to any information that must be reported under the law governing the conversion of a nonprofit hospital to for-profit status.

The act extends, from 10 calendar days to 15 business days, the time an entity has to ask for a hearing to contest the penalty or ask for more time to file the required information.

Failure to Submit CON Application Information

By law, OHCA can refuse to accept a CON letter of intent or an application if the entity seeking the CON fails to submit required information or submits incomplete information. The act changes the dates by which the entity must supply the information from 10 business days after receiving OHCA's notice of the defect to 15 business days after OHCA mailed it. It applies this provision to information involving CONs when a nonprofit hospital seeks to convert to for-profit status and also makes clear that it applies to health care facilities or institutions (and, consequently, their affiliates).

CON Exemption Renewal Applications

The act requires entities exempt from the CON process to apply every two years, rather than every year, to renew their status. The law exempts municipal, school, and health district outpatient clinics and programs; intermediate care residential facilities for people with mental retardation; certain outpatient rehabilitation services; clinical laboratories; assisted living services; outpatient dialysis units; HMO outpatient clinics; home health agencies; and certain nursing and rest homes.

Hospital Financial Data

OHCA regulations require acute-care hospitals to submit an annual report on their previous fiscal year (which runs from October 1 to September 30); an audit of their charges, payments, and uncompensated care; and a financial statement by the following February 28. The act requires hospitals also to submit by that date budget system data for their "twelve months actual filing requirements." It allows the OHCA commissioner to extend that deadline at her discretion for any of this required data.

OHCA AUTHORITY OVER INSTITUTIONS' FUNDS

The law requires OHCA to adopt regulations governing health care institutions and facilities transferring funds between line items in an approved operating budget. The act permits any institution or facility to transfer funds between line items by removing a restriction that allowed transfers only by entities whose spending was within their budget. It also makes clear that authority to approve operating budgets rests with the institution, not OHCA.

The act extends to CON applications a prohibition against OHCA directing the use of principal or income from a hospital's restricted or unrestricted grants, gifts, contributions, bequests, and endowments. Under prior law, which the act repeals, this restriction applied only to OHCA's review of hospitals' proposed budgets.

The act eliminates a requirement that hospitals include applicable taxes in the cost of each item they report in the "pricemaster" (the list of the prices they charge for services and goods) they file with OHCA. It specifies that hospitals must file their current pricemaster and include in it a detailed schedule of charges.

GRADUATE MEDICAL EDUCATION REPORT

The act eliminates a requirement for OHCA annually to review and report on the financial implications graduate medical education has for Connecticut hospitals and evaluate its effects on health care access and the health care workforce.

REPEALED SECTIONS

The act repeals (1) a requirement for hospitals to submit proposed budgets to OHCA for its review and approval, (2) a five-year pilot demonstration project that ended in 2001 that would have allowed an acute-care hospital to convert to other medical uses, and (3) an obsolete billing provision.

BACKGROUND

Related Acts

PA 05-93 changes the types of equipment for which a CON is required to include CT, positron emission tomography (PET), PET/CT, and MRI scanners; cineangiography equipment; linear accelerators; and similar equipment introducing new technologies into the state. PA 05-75 redefines "affiliate" more broadly to include unlicensed entities.

PA 05-167—sHB 6304
Public Health Committee
Legislative Management Committee

AN ACT CONCERNING THE IMPROVEMENT OF CARDIAC CARE

SUMMARY: This act requires the Department of Public Health's (DPH) Quality of Care Advisory Committee to examine and evaluate (1) possible ways that an existing data collection system can be used to measure cardiac outcomes and (2) the potential for statewide use of a cardiac outcome data collection system. The committee advises DPH on quality of care issues involving health care facilities, such as data collection and reporting and performance measurement. It must report its results and recommendations to the governor and Public Health Committee by December 1, 2007.
EFFECTIVE DATE: Upon passage

PA 05-168—sHB 6557
Public Health Committee
Appropriations Committee
General Law Committee

AN ACT CONCERNING ELECTRONIC PRESCRIPTIONS AND ELECTRONIC MEDICAL RECORDS

SUMMARY: This act allows licensed prescribing practitioners to use electronic prescribing systems. The Department of Consumer Protection (DCP) may, within available appropriations, help them comply with this voluntary effort.

The act allows licensed health care institutions to create, maintain, or use medical records or medical record systems in electronic format, paper, or both if the system can store medical records and patient health care information in a reproducible and secure manner.

It requires the Office of Health Care Access (OHCA), using its discretion, to exempt from certificate of need (CON) review any health care facility or institution proposing to purchase or operate an electronic medical record system after September 30, 2005.

The act also makes conforming changes.

EFFECTIVE DATE: October 1, 2005

BACKGROUND

CON

CON is a regulatory process, administered by OHCA, for reviewing certain proposed capital expenditures by health care facilities, acquisition of major medical equipment, institution of new services or functions, termination of services, transfer of ownership, and decreases in bed capacity. Generally, a CON is a formal OHCA statement that a health care facility, medical equipment purchase, or service change is needed.

Existing Law

PA 04-107 (codified at CGS § 20-614(d)) allows electronic data intermediaries to transfer data between a licensed prescribing practitioner and a pharmacy chosen by the patient and licensed in the United States. It defines "electronic data intermediaries" as entities that provide the infrastructure to connect a prescribing practitioner's computer system or other electronic devices with those of a pharmacy to transmit (1) electronic prescription orders, (2) refill authorization requests, (3) communications, and (4) other patient care information. It requires electronic data intermediaries to obtain the DCP commissioner's approval to adopt regulations setting approval criteria.

PA 05-171—HB 6649
Public Health Committee

AN ACT CONCERNING THE AUTHORITY OF THE COMMISSIONER OF MENTAL HEALTH AND ADDICTION SERVICES

SUMMARY: This act allows the mental health and addiction services commissioner to designate a deputy commissioner to sign contracts, agreements, and settlements on the department's behalf.

EFFECTIVE DATE: October 1, 2005

PA 05-172—sHB 6715
Public Health Committee
Judiciary Committee
Labor and Public Employees Committee
Human Services Committee

AN ACT CONCERNING STRIKE CONTINGENCY PLANS FOR HEALTH CARE INSTITUTIONS

SUMMARY: By law, a health care institution notified by a labor organization representing its employees of its intention to strike must file a strike contingency plan with the health commissioner. This act requires the institution to file the plan no later than five days before the scheduled strike, rather than immediately after receiving a strike notice.

The act allows the Department of Public Health (DPH) commissioner to issue a summary order to any nursing home failing to file within the specified time period. The order must require the home immediately to file a plan complying with the act and DPH regulations. A noncomplying nursing home is subject to a civil penalty of up to $10,000 for each day of noncompliance.

The act requires the commissioner to adopt regulations (1) establishing requirements for a strike contingency plan and (2) for imposing the civil penalty upon a nursing facility. The regulations must include a requirement that the plan contain documentation that the institution has arranged for adequate staffing and security, food, pharmaceuticals, and other essential supplies and services necessary to meet patients' needs if there is a strike. Prior law required the commissioner to adopt regulations to establish requirements for the contingency plans, but did not specify what the plans should include.

EFFECTIVE DATE: October 1, 2005

NONCOMPLIANCE BY NURSING HOME AND HEARING REQUEST

Under the act, if the DPH commissioner determines that a nursing home is not in compliance with the contingency plan provisions and regulations, he can send a notice, by certified mail, return receipt requested, to an authorized officer or agent of the home, or personally serve them notice. The notice must include a (1) reference to the section of the act or regulation involved, (2) short and plain statement of the matters asserted or charged, (3) statement of the maximum civil penalty that can be imposed for noncompliance, and (4) statement that the party has a right to request a hearing to contest the penalty.

The act allows a nursing home to contest the penalty within 20 days after the notice is mailed or served. All hearings must be conducted according to the Uniform Administrative Procedure Act. If (1) the nursing home fails to request a hearing or does not appear at one, or (2) after the hearing, DPH finds that the facility is in noncompliance, DPH can, in its discretion, order a penalty imposed up to the amount stated in the notice. DPH must send a copy of the order by certified mail, return receipt requested, to the facility.

BACKGROUND

Health Care Institution

"Health care institution" includes hospitals, residential care homes, health care facilities for the handicapped, nursing homes, rest homes, home health care agencies, homemaker-home health aide agencies, mental health facilities, substance abuse treatment facilities, outpatient surgical facilities, infirmaries operated by educational institutions, facilities providing services for the diagnosis and treatment of human health conditions, and residential facilities for the mentally retarded.

PA 05-213—sHB 6819
Public Health Committee
Judiciary Committee

AN ACT CONCERNING ACCESS TO ORAL HEALTH CARE

SUMMARY: This act revises the scope of practice for dentists, dental hygienists, and dental assistants, including establishing conditions under which licensed dentists can practice oral and maxillofacial surgery. It allows a candidate for a dentist's license to substitute a year of post-graduate training for the practical portion of the licensing exam and provides a way for foreign-trained dentists to become licensed as dentists or dental hygienists. And it creates continuing education requirements for dentists.
EFFECTIVE DATE: October 1, 2005

DENTAL SCOPE OF PRACTICE (§ 3)

General Scope

The act redefines a dentist's scope of practice as the diagnosis, evaluation, prevention, or treatment, by surgery or other means, of an injury, deformity, disease, or condition of the oral cavity or its contents or the jaws or structures associated with them. (The oral cavity includes portions of the tongue, the gums, the inside lining of the cheeks and lips, the bottom of the mouth and the hard palate above, and the small area behind the wisdom teeth). Under prior law, a dentist examined, diagnosed, treated diseases or lesions of, and performed operations in, the mouth and surrounding and associated structures.

The act specifies that dentistry does not include:

1. treating dermatological diseases or disorders of the skin or face;
2. performing microvascular free tissue transfer;
3. treating eye diseases or disorders or performing ocular procedures;
4. performing cosmetic surgery or other cosmetic procedures anywhere but the oral cavity, its contents, or the jaws; or
5. nasal or sinus surgery unrelated to the oral cavity, its contents, or the jaws.

It exempts licensed physicians from the dental scope of practice law. Prior law permitted physicians only to treat lesions or diseases of the mouth and remove teeth.

Oral-Maxillofacial Practice

The act permits a licensed dentist who successfully completes a post-doctoral training program in his practice specialty to:

1. diagnose, evaluate, prevent, or treat, surgically or by other means, injuries, deformities, diseases, or conditions of the hard and soft tissues of the oral and maxillofacial area (the maxillofacial area covers the upper portion of the face);
2. perform surgical treatment of sleep apnea involving the jaws;
3. perform salivary gland surgery;
4. harvest donor tissue; and
5. perform frontal and orbital surgery and nasoethmoidal procedures to the extent they are associated with trauma.

In order to perform sleep apnea, salivary gland, frontal, or orbital surgery or harvest tissue, the dentist must have hospital privileges to do so. By law, a dentist must complete at least two years of advanced or post-doctoral education in a specialty area approved by the American Dental Association before he can designate that he is limiting his practice to that specialty. The act requires qualifying post-doctoral training programs to be accredited by the Commission on Dental Accreditation or its successor.

High School Graduation

The act eliminates the requirement that applicants for a dentist's license show proof that they graduated

from high school or have an equivalency diploma unless they have been practicing dentistry in another state.

CONTINUING EDUCATION FOR DENTISTS (§§ 11, 1, & 9)

Requirements

Dentists must renew their licenses every year during their birth month. The act requires dentists applying to renew a license after October 1, 2007 to show they have completed at least 25 contact hours of continuing education during the previous 24 months. Under the act, a "contact hour" is 50 minutes or more.

All continuing education must be in an area of the dentist's practice and reflect his professional needs in order to meet the public's health care needs. It must include at least one contact hour in infectious diseases, which can include HIV and AIDS; access to care; risk management; care for special needs patients; and domestic violence, including sexual abuse. A dentist can substitute eight hours of volunteer work at a public health facility (any licensed health care institution such as a hospital, nursing home, outpatient clinic, or substance abuse treatment facility; community health center; group home; school or public school-operated preschool; or Head Start center) for one contact hour, and obtain up to 10 contact hours this way during a 24-month period.

Qualifying continuing education activities under the act include courses, including on-line courses, offered or approved by:

1. the American Dental Association or its state, district, or local affiliates;
2. the American Academy of General Dentistry or national, state, district, or local specialty organizations;
3. dental schools and other colleges accredited or recognized by the Council on Dental Accreditation or a regional accrediting agency;
4. hospitals and other health care institutions;
5. agency or business programs accredited or recognized by the Council on Dental Accreditation;
6. local, state, or national medical associations;
7. state or local health departments; and
8. the Accreditation Council for Graduate Medical Education.

The act makes failure to comply with its continuing education requirements grounds for the Dental Commission to discipline a dentist.

Procedures

A dentist applying for license renewal must attest in writing on a form the Department of Public Health (DPH) prescribes that he has satisfied these continuing education requirements. He must maintain attendance records or certificates of course completion for at least three years after the year in which the activity occurred and must submit them to DPH for inspection within 45 days if it asks for them.

A dentist who applies to have his license reinstated after it has lapsed must show DPH that he completed 12 contact hours during the preceding year. The act gives a dentist whose license lapsed while he was on active military service one year from his date of discharge to complete 12 contact hours; the law requires other health care providers in this situation to complete their continuing education requirements within six months of discharge.

Exemptions

The act exempts from its continuing education requirements first-time license renewal applicants and dentists who are not engaged in active practice. The latter must submit a notarized exemption application to DPH plus any other documentation DPH requires before the end of the month when he must renew his license. The exemption application, which must follow a form DPH prescribes, must state that the individual will not practice until he has met the act's continuing education requirements.

The act permits the DPH commissioner to waive continuing education requirements or extend the time for fulfilling them for a dentist who is ill or disabled. The individual must submit a waiver application and other documentation the commissioner may require. A waiver or extension can be for up to one year, and the commissioner can grant additional waivers or extensions if the illness or disability continues and the dentist applies again.

POST-GRADUATE TRAINING IN LIEU OF TESTING (§2)

The act allows a person to use successful completion of a year of postgraduate training as a dental resident to qualify for a license instead of taking the practical portion of the dental licensing exam. The training must be at a program accredited by the Commission on Dental Accreditation, and the resident's supervising dentist must attest that the resident is competent in all areas tested in the practicum. The act requires the Dental Commission, by December 1, 2005 and in consultation with DPH, to develop a form that applicants can use to submit documentation.

LICENSURE FOR FOREIGN-TRAINED DENTISTS (§5)

The act allows someone trained in a foreign dental school to obtain a Connecticut dentist license. The individual must:

1. have received a doctor of dental medicine or dental surgery degree or its equivalent;
2. pass Connecticut's written and practical dentistry exam;
3. successfully complete at least two years of graduate training as a resident in a program accredited by the Commission on Dental Accreditation; and
4. (a) successfully complete at least two more years of training as a resident or fellow, at a third-year or higher postgraduate level, in a program accredited by the Commission on Dental Accreditation in a community- or school-based health center affiliated with or supervised by the UConn Dental School or (b) serve for at least three years as a full-time faculty member at the UConn Dental School. (By law, a graduate of a foreign dental school can work in a state institution only if the Dental Commission finds that he has exceptional qualifications.)

VOLUNTEER DENTISTS (§ 8)

The act eliminates the license renewal fee for a dentist who provides at least 100 hours a year of free care at a licensed health care institution such as a hospital, nursing home, outpatient clinic, or substance abuse treatment facility; community health center; group home; school or public school-operated preschool; or Head Start center. Under prior law such dentists paid a $100 renewal fee.

DENTAL HYGIENISTS (§§ 7, 10)

Scope of Practice

The act permits licensed dental hygienists to administer certain kinds of local anesthesia—infiltration and mandibular blocks—under a dentist's indirect supervision. "Indirect supervision," under the act, means that the dentist prescribed the use of the anesthetic and is in the office or location where the hygienist is administering it. In all other situations hygienists work under a dentist's "general supervision," which means that a dentist knows what procedures the hygienist is performing but does not have to be on the premises while the hygienist performs it.

The act specifies the training a hygienist must complete before being allowed to administer these local anesthetics. He must successfully complete a course containing basic and current concepts of local anesthesia and pain control in a program accredited by the Commission on Dental Accreditation or its successor. The course must include:

1. 20 hours of classroom training in psychology of pain management, anatomy, physiology, anesthetic pharmacology, emergency precautions and management, client management, and safe and effective anesthetic administration, among other topics; and
2. eight hours of clinical training that includes direct observation of students' performance.

The act eliminates an obsolete statutory restriction on where dental hygienists can practice.

Foreign-Trained Dentists as Hygienists

The act allows someone trained in a foreign dental school to obtain a Connecticut dental hygienist license. The person must show he has (1) received a doctor of dental medicine or surgery degree or its equivalent; (2) passed Connecticut's written and practical dental hygienist exam; (3) enrolled in a dental hygiene program in Connecticut accredited by the Commission on Dental Accreditation; and (4) successfully completed at least one year of clinical training in a community health center affiliated with or supervised by that program.

DENTAL ASSISTANTS (§ 6)

The act allows a dentist to delegate the taking of dental x-rays to a dental assistant who has passed the dental radiography portion of an exam prescribed by the Dental Assisting National Board. The dentist must supervise the assistant and control the procedure.

PA 05-217—sHB 6970
Public Health Committee
Government Administration and Elections Committee
General Law Committee
Legislative Management Committee

AN ACT ESTABLISHING A COLLABORATIVE DRUG THERAPY MANAGEMENT AGREEMENT PILOT PROGRAM

SUMMARY: This act expands the settings in which pharmacists and physicians can enter into collaborative practice agreements to manage patients' drug therapy.

Under existing law, physicians and hospital pharmacists, as well as physicians and pharmacists working in nursing homes, can enter into such collaborative agreements. Hospital-based agreements

are limited to inpatient drug therapies. These agreements must be (1) based on patient-specific written protocols and (2) approved by the hospital and nursing home, respectively. The protocols can authorize a pharmacist to implement, modify, or discontinue a drug therapy the physician prescribes, order associated lab tests, and administer drugs. The law requires the hospital or nursing home facility employing the pharmacist to determine his competency to participate in the collaborative agreement.

This act allows hospital pharmacists to enter into written protocol-based collaborative drug therapy agreements to manage the drug therapy of patients receiving outpatient hospital care or services for:

1. diabetes,
2. asthma,
3. hypertension,
4. hyperlipidemia,
5. osteoporosis,
6. congestive heart failure, or
7. smoking cessation.

Patients include those who qualify as targeted beneficiaries under the new Medicare Part D prescription drug benefit. The protocols must be patient-specific and established by the treating physician in consultation with the pharmacist. The hospital must determine the pharmacist's competency to participate.

The act also establishes a pilot program for collaborative drug therapy arrangements between physicians and community pharmacies.

EFFECTIVE DATE: October 1, 2005, except that the pilot program provisions take effect upon passage.

PILOT PROGRAM

Program Basics and Eligibility

The act requires the consumer protection commissioner, in consultation with the Commission of Pharmacy, to establish a two-year pilot program allowing collaborative drug therapy agreements between physicians and pharmacists employed by, or under contract with, community pharmacies. They must establish and begin operating it by January 1, 2006. A "community pharmacy" is a licensed pharmacy storing and dispensing prescription drugs and devices and providing pharmaceutical care services primarily to noninstitutionalized patients living in a community setting.

The program is for up to 10 pharmacists working in community pharmacies. As with the other collaborative drug therapy management agreements allowed by law, the program must be based on patient-specific written protocols established by the treating physician in consultation with the pharmacist.

The program permits drug therapy management of patients with any of the conditions listed above for the outpatient setting, including patients qualifying as targeted beneficiaries under the Medicare Part D prescription drug benefit.

The collaborative agreements entered into under the program must meet the same standards and requirements covering existing agreements in the other settings discussed above. The commission must determine the competency of pharmacists seeking to participate in the program, based on existing continuing education requirements for pharmacists.

Evaluation and Report to Legislature

The consumer protection commissioner and the Pharmacy Commission must evaluate the pilot program and report their findings and recommendations to the Public Health, Human Services, and General Law committees by December 31, 2008. The report must evaluate the data collected on improved medication management and cost savings, based on patient outcomes.

Records Disclosure

The act prohibits disclosing, under a freedom of information request, program records or information collected or maintained for six months from the date they were created or collected. Also, this information is not subject to subpoena or discovery and cannot be introduced into evidence in any judicial or administrative proceeding except as allowed by law.

PA 05-219—sHB 5814
Public Health Committee

AN ACT EXPANDING THE PRESCRIPTIVE AUTHORITY OF PHYSICIAN ASSISTANTS

SUMMARY: This act expands the prescriptive authority of physician assistants by allowing them to prescribe and renew schedules II through V controlled substances in all settings. The act requires that in all cases where a physician assistant prescribes a schedule II or III controlled substance, the supervising physician must document his approval of the order in the patient's medical record within one calendar day, instead of cosigning the order within 24 hours, as under prior law.

Under prior law, a physician assistant, as delegated by the supervising physician, could (1) prescribe and administer schedules IV and V controlled substances in all settings; (2) renew prescriptions for schedules II and III controlled substances in outpatient settings; and (3) prescribe and administer schedules II and III controlled

substances to an inpatient in a short-term or chronic disease hospital, emergency room satellite of a general hospital, or after evaluation by a physician, in a chronic and convalescent nursing home.
EFFECTIVE DATE: October 1, 2005

BACKGROUND

Controlled Substances

Controlled substances are grouped in schedules I through V according to their decreasing tendency to promote abuse or dependency. Schedule I is the most addictive.

PA 05-256—sSB 1093
Public Health Committee

AN ACT CONCERNING REVISIONS TO THE DEPARTMENT OF MENTAL RETARDATION STATUTES

SUMMARY: This act makes a number of unrelated changes concerning Department of Mental Retardation (DMR) programs, services, and employees. It:

1. requires the DMR commissioner, when he sets the rates DMR pays for services in community living arrangements (such as group homes), to consider the actual, inflation-adjusted wage and benefit costs for services and service providers for each facility, and prohibits him from establishing a single fixed rate for wages and benefits applicable to all facilities;
2. establishes a hearing process for people to contest DMR decisions assigning priority for residential placement, services, or support;
3. revises the duties and membership of the regional interagency coordinating councils that advise DMR Birth-to-Three program managers;
4. revises the membership of the Birth-to-Three Coordinating Council;
5. requires DMR and the Office of Protection and Advocacy (OPA) to develop and implement an agreement on how they will investigate allegations of abuse against people with retardation and provide them protective services;
6. excludes disability policy specialists assigned to the Council on Developmental Disabilities from state classified service and collective bargaining coverage;
7. makes up to 10 people who DMR employs as self-advocates eligible for paid sick, vacation, personal, and holiday leave;
8. specifies that the director of DMR's Ombudsman Office remains in office until the governor appoints a successor, not until the legislature confirms one; and
9. eliminates a reference to the education council in DMR's Unified School District #3 in conformance with PA 04-54, which eliminated the council.

EFFECTIVE DATE: Upon passage, except for the provisions concerning (1) the Developmental Disabilities Council policy specialists, which are effective July 1, 2005, and (2) the ombudsman and hearing procedure for contesting residential service priority assignment, which are effective October 1, 2005.

RESIDENTIAL SERVICES PRIORITY ASSIGNMENT

DMR uses a four-tier system to assign individuals priority to receive residential services. This act allows anyone with mental retardation, or his or her parent, guardian, conservator, or other legal representative, to ask the DMR commissioner in writing for a hearing to contest the department's assignment decision. The hearing must be held in accordance with the Uniform Administrative Procedure Act, which permits a person to present evidence, examine witnesses, and appeal to Superior Court if aggrieved by a final decision.

LOCAL INTERAGENCY COORDINATING COUNCILS

The law requires DMR to establish at least one interagency coordinating council in each of its regions to advise regional Birth-to-Three program managers on service delivery and other program issues. The act eliminates the requirement that councils advise managers on:

1. planning, and assessing services, for eligible children and their families;
2. identifying reforms to the service delivery system that promote making services available in "natural environments";
3. identifying programs and services for children who are not eligible for Birth-to-Three services; and
4. coordinating public and private agencies.

It continues the requirement that councils advise on early intervention policies and procedures, including the transition from Birth-to-Three services to special education and other early childhood programs, brought to its attention by parents, providers, public agencies, and others. But, to reflect current practice, it shifts each council's focus from the DMR region to the towns it

serves. (Seven councils currently operate in DMR's three regions; two councils are inactive.)

The act eliminates the requirement that each council consist of at least four parents of children with disabilities and representatives of the medical community, Birth-to-Three providers, child care providers, and school districts. Instead, it sets membership at five or more people interested in the welfare of children between birth and age three with disabilities or developmental delays.

Finally, the act eliminates a requirement that the councils report annually to the regional Birth-to-Three managers and the state interagency coordinating council.

STATEWIDE BIRTH-TO-THREE COUNCIL

The act revises the number of parents and service providers who serve on DMR's State Interagency Birth-to-Three Coordinating Council, which helps DMR carry out its responsibilities as the program's lead agency. The council is composed of representatives from nine state agencies, two legislators, one person who trains early intervention service providers, a representative from a Head Start agency, and a pediatrician (a total of 14 people), plus six parents and five early intervention service providers.

The act replaces the fixed number of (1) parents and (2) service providers with requirements that each group comprise at least 20% of the council's total membership. It also specifies that either public or private service providers can serve on the council and removes the requirement that only DMR-approved providers can serve.

DMR AND OFFICE OF PROTECTION & ADVOCACY AGREEMENT

The act requires DMR and OPA jointly to develop and implement an interagency agreement on how they will communicate and collaborate in investigating complaints of abuse and neglect of people with mental retardation and other disabilities and provide them with protective services. The agreement must ensure that each agency investigate and provide protective services efficiently and in a way that protects the best interests of the people it serves. It must include:

1. a statement of common goals and principles,
2. guidelines identifying people in each agency responsible for communicating information about investigations and protective services,
3. guidelines identifying each agency's responsibilities for investigations and the individuals who will carry them out,
4. interagency documentation and reporting procedures,
5. operational safeguards and security and confidentiality guidelines that conform to applicable federal privacy laws,
6. dispute resolution procedures, and
7. standards for reviewing and evaluating third party investigations.

The agencies must implement the agreement by October 1, 2005 and submit it to the Public Health and Human Services committees by January 1, 2006.

BACKGROUND

Residential Services Priorities

The recent settlement agreement (*ARC/Connecticut v. O'Meara Settlement Agreement*), which resulted from a class action lawsuit involving people on DMR's waiting list, designates four priority levels: "E" for people needing immediate placement, services, and supports; "I" for people needing such help within one year; "II" for people who may need such help within two to five years; and "III" for people who may need such help more than five years in the future. The agreement calls for DMR to give priority for residential services to people designated as priority "E" and "I."

To the extent that a priority assignment determination results in a denial or limitation of Medicaid services, the agreement requires the Department of Social Services to conduct hearings.

Investigating Abuse and Neglect of People with Mental Retardation

The law requires specified professionals and others to report suspected abuse or neglect of people with mental retardation to OPA. When it receives a report, OPA must determine whether the person has mental retardation and whether the report warrants investigation. If it investigates, the law requires all state, local, and private agencies to cooperate in the investigation, including releasing client records. If the investigation substantiates abuse or neglect, or if before completing the investigation OPA determines the person is in serious need of immediate protective services, OPA must refer the case to DMR to develop a protective services plan (CGS § 46b-11a to –13a). The law also requires DMR to conduct or monitor investigations of alleged abuse or neglect and report as requested by the state agencies with statutory responsibility for these investigations (CGS § 17a-210).

PA 05-259—sSB 1208
Public Health Committee
Public Safety and Security Committee
Judiciary Committee

AN ACT CONCERNING PUBLIC HEALTH PREPAREDNESS AND EMERGENCY MEDICAL SERVICE PERSONNEL

SUMMARY: This act places emergency medical technicians and paramedics who are part of the (1) Connecticut Disaster Medical Assistance Team or the Medical Reserve Corps, under the auspices of the Department of Public Health (DPH) or (2) Connecticut Urban Search and Rescue Team, under the Department of Public Safety, under the active surveillance, medical control, and direction of the chief medical officer of such team or corps while involved in officially authorized civil preparedness duty or training. The act specifies that licensed or certified emergency medical service (EMS) personnel are part of the statutory definition of "civil preparedness forces."

By law, a physician assistant (PA) must work under the supervision of a licensed physician registered with the DPH as a supervising physician. This act allows a PA to work under the supervision of an unregistered physician if the PA (1) is part of the Connecticut Disaster Medical Assistance Team, Medical Reserve Corps, or Connecticut Urban Search and Rescue Team and (2) engaged in officially authorized civil preparedness duty or training conducted by such teams or corps.

The act requires the state to provide immunity from liability, under certain circumstances, to certain hospitals and their staff who oversee the training, distribution, and quality assurance of nerve antidote kits. It also provides immunity from liability, in certain situations, to any person voluntarily operating an automatic external defibrillator.

Finally, the act specifies that the scope of practice of certified or licensed emergency medical technician (EMT)-basic, EMT-intermediate, and EMT-paramedic can include treatment modalities not specified in state regulations if they are (1) approved by the Office of Emergency Medical Services (OEMS) Medical Advisory Committee and DPH commissioner and (2) administered at the medical control and direction of a sponsor hospital.

EFFECTIVE DATE: Upon passage

LIABILITY PROTECTION FOR SPONSOR HOSPITALS CONCERNING NERVE ANTIDOTE KITS

The act defines a "sponsor hospital" as one agreeing to maintain staff to provide medical control, supervision, and direction to an EMS organization and its personnel and approved to do so by OEMS.

Under the act, the state must hold harmless and indemnify any sponsor hospital, its medical director, or designated staff certified by DPH to oversee the training, distribution, or quality assurance of nerve agent antidote kits. It must protect them from any financial loss and expense, including legal costs and fees, arising from any claim, demand, suit, or judgment because of alleged negligence or other act resulting in personal injury if (1) the acts were not wanton, reckless, or malicious and (2) the person was discharging his duties in providing the training, distribution, or quality assurance of nerve antidote kits when the act resulted in the injury.

By law, any paid or volunteer firefighter, police officer, or EMS personnel successfully completing a training course in the use of automatic prefilled cartridge injectors containing nerve agent antidote medications can carry and use them for self or unit preservation in the event of nerve agent exposure.

LIABILITY PROTECTION FOR EXTERNAL DEFIBRILLATOR USE

The act extends immunity from liability to any person operating an automatic external defibrillator who voluntarily, gratuitously, and not in the ordinary course of his employment or practice, gives emergency or medical assistance to a person in need. It specifies that the person providing assistance is not liable for civil damages for acts or omissions in providing the emergency care that might constitute ordinary negligence. The immunity does not apply to acts or omissions constituting gross, willful, or wanton negligence. Existing law provides such liability protection to a person trained in the use of an automatic external defibrillator according to standards of the American Heart Association or American Red Cross.

The act specifies that it should not be construed as exempting paid or volunteer firefighters, police officers, or EMS personnel from completing training in cardiopulmonary resuscitation or in the use of an automatic external defibrillator according to the standards of the Red Cross or Heart Association.

PA 05-272—sHB 6713
Public Health Committee
Judiciary Committee
Higher Education and Employment Advancement Committee
Planning and Development Committee
Education Committee
Human Services Committee

AN ACT CONCERNING REVISIONS TO DEPARTMENT OF PUBLIC HEALTH STATUTES

SUMMARY: This act makes a number of substantive and technical changes related to various health care practitioners, institutions, and activities regulated by the Department of Public Health (DPH), Department of Social Services (DSS), and the Department of Consumer Protection (DCP). It amends the stem cell research act (PA 05-149) to add a penalty for research conducted in violation of the act's requirements (§ 36, effective upon passage). The act also:

1. expands reporting requirements regarding the prevalence of asthma among students (§ 2, effective October 1, 2005);
2. addresses protection and access to medical records in the possession of health care institutions when they cease operations (§ 5, effective October 1, 2005);
3. allows medical school graduates in internships, residencies, and clinical clerkships to participate in hospital-based programs (§ 7, effective October 1, 2005);
4. specifies conditions under which veterinarians can practice under temporary permits (§ 9, effective October 1, 2005);
5. changes the procedure for amending a birth certificate in the case of a gestational agreement (§ 1, effective October 1, 2005);
6. redefines the practice of "speech pathology," renames the profession as "speech and language pathology" and makes numerous conforming changes, and allows DPH to waive postgraduate supervised employment requirements for speech-language pathologists and audiologists who meet certain standards (see below for section numbers and effective dates);
7. changes one of the requirements for reciprocity for emergency medical technicians from other states (§ 4, effective October 1, 2005);
8. directs the DSS commissioner to disclose to any authorized representative of the DPH commissioner information to carry out his responsibilities under programs regulating child day care services or youth camps (§ 3, effective October 1, 2005);
9. deletes an obsolete reference to passage of an equivalency examination contained in the licensing statutes for barbers, hairdressers, and cosmeticians, and requires licensure of a foreign barber for a limited time under certain circumstances (§§ 10-12, effective October 1, 2005; § 31, effective upon passage);
10. removes incorrect language concerning "no charge" for certain health care institution licenses because another statute (CGS § 19a-491(a)) lists a fee schedule (§ 6, effective upon passage);
11. exempts facilities accepting bodies for anatomical donation from the laws on funeral directing (§§ 33 and 34, effective upon passage);
12. directs a town registrar of vital statistics to issue a permit for disinternment to a licensed funeral director or embalmer upon an order of a probate judge (§ 13, effective upon passage);
13. requires the DCP commissioner to convene a working group concerning development of a program to authenticate the pedigree of prescription drugs distributed in Connecticut (§ 29, effective upon passage);
14. requires an amendment to the protocol on collecting evidence in sexual assault investigations (§ 16, effective July 1, 2005);
15. requires DPH to amend the rate schedule of ambulance services under certain conditions (§ 17, effective upon passage);
16. requires that protocols between nurse midwives and OB/GYNs be written and made available upon request to, rather than filed with, DPH (§ 19, effective upon passage);
17. allows a dental office to be operated by certain professional service corporations in the event of a dentist's death or incompetency and subjects those providing dental services in a location in violation of the law to disciplinary action (§ 20, effective upon passage);
18. sets conditions under which out-of-state massage therapists may provide services in this state during Special Olympics or other similar competitions for people with disabilities (§ 21, effective upon passage);
19. requires a review of best practices addressing breast cancer screenings (§ 30, effective October 1, 2005);
20. adds continuing education courses offered or approved by the Association for Long Term Care Financial Managers to those accepted for required continuing education for nursing home administrators (§ 32, effective October 1, 2005);

21. requires the DPH commissioner to establish an ad hoc committee to examine the feasibility of a nurse intervention program (§ 39, effective upon passage);
22. amends PA 05-144 on emergency use of cartridge injectors (§ 35, effective October 1, 2005);
23. exempts drop-in programs administered by a nationally chartered Boys and Girls Club from daycare licensing requirements (the law already exempts recreation operations in boys and girls clubs) (§ 40, effective upon passage);
24. subjects personally identifiable data in DPH's traumatic brain injury registry to certain confidentiality laws (§ 42, effective upon passage);
25. requires DPH to publish a list of all the abnormal conditions for which DPH screens newborns under its newborn screening program (§ 43, effective upon passage);
26. specifies that DCP regulatory procedures regarding electronic data intermediaries are consistent with the law's purpose (§ 41, effective upon passage);
27. amends PA 05-187 to require nursing home plans for employee fire safety training to be submitted to the Labor Department and comply with the Occupational Safety and Health Administration (OSHA) standards (§§ 37- 38, effective upon passage);
28. amends PA 05-118 concerning the acceptance of electronic signatures by the DSS commissioner when auditing home heath care and homemaker-home health aide agencies' reimbursement claims (§ 44, effective October 1, 2005); and
29. repeals a revolving loan program to provide loans to federally qualified health centers (FQHCs) to establish pharmacies or contract pharmacy arrangements with community pharmacies or other pharmacy contractors (§ 45, effective July 1, 2005).

EFFECTIVE DATE: Various, see below.

REPORTING OF STUDENTS WITH ASTHMA (§ 2)

The law requires each local or regional school board to report to the local health department and DPH the number of pupils per school and per district with an asthma diagnosis as recorded on the required student health assessment forms. By law, students must undergo health assessments when they enroll, in either grade six or seven, and in either grade 10 or 11. This act requires reporting of an asthma diagnosis, whether or not it is recorded on the health assessment form, at the intervals listed above.

EFFECTIVE DATE: October 1, 2005

MEDICAL RECORDS OF A HEALTH CARE INSTITUTION CEASING OPERATIONS (§ 5)

The act requires each licensed health care institution ceasing operations to give DPH, at the time it turns over its license to the department, a certified document specifying where patient records will be stored and how patients, former patients, and authorized representatives can access them.
EFFECTIVE DATE: October 1, 2005

GRADUATE MEDICAL EDUCATION (§ 7)

Existing law on permits issued to medical school graduates allows them to participate in graduate medical education as interns, residents, or medical officer candidates in a hospital. The law governing clinical clerkships also allows medical students to participate in training in a hospital. The act allows them to participate in graduate medical education as interns, residents, or medical officer candidates or in clinical clerkships outside of the hospital in "hospital-based" programs.
EFFECTIVE DATE: October 1, 2005

VETERINARIANS (§ 9)

The act allows DPH to issue a 120-day temporary permit to a veterinarian license applicant seeking licensure without examination who holds a license in good standing from another state or jurisdiction. The applicant must complete an application form, pay a $450 fee, provide a copy of his license from another state or jurisdiction of the United States, and present a notarized affidavit attesting to its validity. The temporary permit is not renewable. DPH cannot issue a temporary permit to an applicant facing professional disciplinary action or who is the subject of an unresolved complaint.
EFFECTIVE DATE: October 1, 2005

BIRTH CERTIFICATES (§ 1)

The act changes the procedure for amending a birth certificate in the case of a gestational agreement by specifying that the hospital must record the name of the birth mother on the birth record regardless of whether a court order has been issued. By law, it is DPH's responsibility to follow up on the court order and subsequently make a replacement birth record to reflect the names of the intended parents.
EFFECTIVE DATE: October 1, 2005

SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS (§§ 14, 15, 18, 22-28)

The act redefines the practice of speech pathology to mean speech and "language" pathology, which also includes the application of principles, methods, and procedures related to feeding and swallowing or other upper aerodigestive functions. The act makes many conforming technical changes.

One of the requirements for licensure as a speech pathologist or audiologist is a minimum of 36 weeks and 1,080 hours of full-time or a minimum of 48 weeks and 1,440 hours of part-time professional employment in speech pathology or audiology under the supervision of a licensed or certified speech pathologist or audiologist. This act waives the supervised employment requirements for those meeting the January 1, 2007 Standards for the Certificate of Clinical Competence in Audiology of the American Speech-Language Hearing Association, or its successor.

EFFECTIVE DATE: October 1, 2005, except for § 15 which takes effect on the later of October 1, 2000 or the date the DPH commissioner publishes notice in the *Connecticut Law Journal* that the licensing of athletic trainers and physical therapist assistants is being implemented.

EMERGENCY MEDICAL TECHNICIANS (§ 4)

The law allows DPH to issue an emergency medical technician (EMT) certificate to an applicant presenting satisfactory evidence of (1) current certification in good standing in any New England state, New York, or New Jersey; (2) completion of an initial training program consistent with the U.S. Department of Transportation, National Highway Traffic Safety Administration paramedic curriculum; and (3) no pending disciplinary action or unresolved complaint.

The act amends the second criterion by referencing the "emergency medical technician" curriculum instead of the "paramedic curriculum."

EFFECTIVE DATE: October 1, 2005

STEM CELL RESEARCH (§ 36)

The act amends the stem cell research act (PA 05-149) to impose a fine of up to $50,000, imprisonment up to five years, or both, on any person conducting embryonic stem cell research after gastrulation occurs. "Gastrulation" is the process whereby the hollow ball of cells representing the early embryo undergoes a complex and coordinated series of movements resulting in formation of the three primary germ layers.

EFFECTIVE DATE: Upon passage

VICTIMS OF SEXUAL ASSAULT (§ 16)

By law, the Commission on the Standardization of the Collection of Evidence in Sexual Assault Investigations must recommend to the chief state's attorney to adopt as regulations a protocol known as the "Connecticut Technical Guidelines for Health Care Response to Victims of Sexual Assault." The act requires the protocol to include nonoccupational post-exposure prophylaxis for human immunodeficiency virus as recommended by the federal Centers for Disease Control.

EFFECTIVE DATE: July 1, 2005

AMBULANCE SERVICE RATES (§ 17)

By law, DPH sets the maximum allowable rates for ambulance services. Requests for rate increases can be made no more than once a year. The act requires DPH to immediately amend the ambulance services' rate schedule when its maximum allowable rates fall below its Medicare allowable rates so that the ambulance service rates are at or above the Medicare allowable rates.

EFFECTIVE DATE: Upon passage

DENTAL OFFICES (§ 20)

By law, a dental office can only be operated by a licensed dentist or a professional service corporation organized to render professional dental services. The act subjects any other licensed practitioner providing dental services in a dental office or other location in violation of the law to disciplinary action by the Dental Commission. Discipline can include license suspension or revocation, probation, or a civil penalty.

The act allows a professional service corporation whose capital stock is held by or under control of a personal representative or the estate of a deceased or incompetent dentist to operate a dental office or other location for providing dental services for up to 18 months from the date of the dentist's death or date the dentist is lawfully determined incompetent, as applicable.

EFFECTIVE DATE: Upon passage

MASSAGE THERAPISTS (§ 21)

The act allows certain out-of-state massage therapists to provide uncompensated massage therapy during the Special Olympics or similar competitions for people with disabilities if the massage therapist (1) does not represent himself as Connecticut-licensed, (2) provides therapy under the supervision of a Connecticut-licensed massage therapist, and (3) provides therapy only to those participating in the

competition. It applies to out-of-state massage therapists who are (1) licensed or certified in another state with standards substantially equivalent to Connecticut's or (2) if a license or certificate is not required in the other state, members in good standing of the American Massage Therapy Association.
EFFECTIVE DATE: Upon passage

PRESCRIPTION DRUG AUTHENTICATION WORKING GROUP (§ 29)

The act requires the DCP commissioner to convene a working group responsible for submitting recommendations to the governor and the Public Health Committee on the development and implementation of a program to authenticate the pedigree of prescription drugs distributed in Connecticut. The group consists of the commissioners of consumer protection and emergency management and homeland security or their designees; a member of the pharmacy commission; the chairs of the Public Health Committee or their designees; and representatives of retail drug establishments, independent pharmacies, and pharmaceutical manufacturers.

Under the act, "authenticate" means to affirmatively verify, before any distribution of a prescription drug occurs, that each transaction listed on the pedigree has occurred. "Pedigree" means a document or electronic file containing information that records each distribution of any given prescription drug, from sale by a pharmaceutical manufacturer, through acquisition and sale by any wholesale distributor or repackager, to final sale to a pharmacy or other person dispensing or administering the drug. A "prescription drug" is any drug, including any biological product, except for blood and blood components intended for transfusion or biological products that are also medical devices required by federal law or regulations to be dispensed only by a prescription. It includes dosage forms and bulk drug substances subject to the federal Food, Drug and Cosmetic Act.
EFFECTIVE DATE: Upon passage

BREAST CANCER SCREENING (§ 30)

The act requires the best practices subcommittee of DPH's Quality of Care Advisory Committee to review and make recommendations, by January 1, 2006, concerning best practices for when breast cancer screening should be done by using comprehensive ultrasound screening or mammogram examinations.
EFFECTIVE DATE: October 1, 2005

FOREIGN BARBER LICENSURE (§ 31)

The act requires DPH to license, within 30 days of this provision's effective date, a barber who (1) was employed under the direction of a professional barber in Portugal for at least five years, (2) served for at least three years in the Portugese armed forces before January 1978 and before his barber employment, and (3) completed a minimum 600 hour course in an approved school.
EFFECTIVE DATE: Upon passage

NURSE INTERVENTION PROGRAM (§ 39)

The act establishes an ad hoc committee to help the DPH commissioner examine and evaluate the feasibility of a nurse intervention program as an alternative, voluntary, and private mechanism for the rehabilitation of any licensed nurse (1) with a chemical dependency or mental or physical illness, (2) who does not pose a threat to the health and safety of anyone in her nursing practice while participating in the program, and (3) agrees to have her rehabilitation monitored by program staff in lieu of disciplinary action. The committee includes the chairpersons and ranking members of the Public Health Committee or their designees, and the following members appointed by the DPH commissioner: (1) two DPH employees, (2) two Department of Mental Health and Addiction Services employees, (3) two representatives of the Connecticut State Board of Examiners for Nursing, (4) two representatives of a registered nurse professional organization in the state, (5) two representatives of a licensed practical nurse organization in the state, and (6) two representatives from the nursing community at large with a background in substance abuse issues among nurses. The commissioner is an ex-officio member with full voting rights. He may expand the committee's membership from related fields if determined useful.

The commissioner must report the results of his examination with recommendations for any statutory changes by February 1, 2006 to the governor and Public Health Committee.
EFFECTIVE DATE: Upon passage

EMERGENCY USE OF CARTRIDGE INJECTORS (§ 35)

The act exempts private providers from the requirement imposed by PA 05-144 that the owner or operator of a before- or after-school program select and supervise an identified staff member trained to administer medication with a cartridge injector to a child in attendance who has a medically diagnosed allergic condition that may require prompt treatment in

order to protect him against serious harm or death. The act limits this requirement to programs administered in school buildings or grounds by local or regional boards of education and municipal agencies. The act also specifies that the programs be administered, rather than offered, by a school board or municipality.

Prior law required the staff member to be trained in cartridge injector use by a physician, physician assistant, advanced practice registered nurse, or registered nurse and to complete a first aid course. This act instead requires either the training or the first aid course.

EFFECTIVE DATE: October 1, 2005

ELECTRONIC DATA INTERMEDIARIES (§ 41)

By law, DCP must adopt regulations governing its approval of electronic data intermediaries that include procedures these intermediaries must use to transmit and keep prescription data and the mechanisms they must use to safeguard data confidentiality. The act specifies that the regulations must ensure that these procedures and mechanisms are consistent with the law's purposes. Electronic data intermediaries provide the computer infrastructure that connects prescribers with pharmacies.

EFFECTIVE DATE: Upon passage

TRAUMATIC BRAIN INJURY REGISTRY DATA (§ 42)

The act subjects personally identifiable data in DPH's traumatic brain injury registry to the law governing confidentiality of DPH morbidity and mortality records, which generally precludes their use for any purpose but research and specifically makes them inadmissible as evidence in any court or administrative action. Under prior law, personally identifiable data in the registry could not be disclosed without the consent of the person or his authorized representative. The law governing DPH records confidentiality permits the department to disclose personal information to other government agencies or private research organizations, provided the recipient does not disclose it further.

EFFECTIVE DATE: Upon passage

FIRE SAFETY IN NURSING HOMES (§§ 37-38)

The act amends PA 05-187 to require each nursing home to submit a plan for employee fire safety training and education to the Labor Department as well as to the departments of public health and public safety. Under the act, the plan must minimally comply with standards adopted by the federal OSHA.

EFFECTIVE DATE: Upon passage

DSS ACCEPTANCE OF ELECTRONIC SIGNATURES (§ 44)

PA 05-118 requires DSS, when it processes or audits home health care and homemaker-home health aide agencies' reimbursement claims, to accept electronic records and records containing the electronic signature of an individual the agency has authorized to submit such records. This act instead requires DSS to accept those electronic records and signatures of a licensed physician or licensed health care practitioner that has been submitted to the agency. The act also provides that, if the transmitted electronic record or signature is illegible or DSS cannot determine its validity, DSS must review additional evidence of its accuracy or validity including (1) the original of the record or signature or (2) a written statement, made under penalty of false statement, from (a) the licensed physician or practitioner who signed it or (b) if the physician or practitioner is unavailable, the agency's medical director who verified the accuracy of the record or signature. DSS must determine whether the signature or record is valid.

PA 05-118 requires DSS, when auditing such agencies' claims, to consider a physician's or other licensed practitioner's signature on the patient's care plan to be timely if the agency received the signed document before it sought reimbursement from DSS. The act specifies that the signature is considered timely if (1) the document was signed prior to the time the agency sought DSS reimbursement and (2) verbal or telephone orders from the physician or practitioner were received before services covered by the care plan began and the orders were subsequently documented. The act specifies that it does not limit DPH's powers to enforce state and federal regulations concerning patients' care plans and medication administration.

EFFECTIVE DATE: October 1, 2005

PA 05-11—HB 5433
Public Safety and Security Committee

AN ACT INCREASING THE VALUE OF PRIZES AWARDED AT RECREATIONAL BINGO GAMES FOR SENIOR CITIZENS

SUMMARY: This act increases, from $5 to $20, the maximum value of the prize or prizes that senior citizen organizations may award for senior citizens' recreational bingo.
EFFECTIVE DATE: Upon passage

BACKGROUND

Senior Citizens' Recreational Bingo

Organizations whose members are age 60 or over may register with the Division of Special Revenue (DSR) and get an identification number that allows their members to operate and conduct bingo for recreational purposes without the DSR permit required by other organizations authorized to conduct and operate bingo pursuant to the charitable gaming statutes. Only active members may help organize these games and they cannot receive any compensation for doing so. Such organizations may not charge more than $1 for admission.

PA 05-31—sSB 1032
Public Safety and Security Committee
Education Committee
Judiciary Committee

AN ACT CONCERNING SPRINKLERS IN EDUCATIONAL OCCUPANCIES

SUMMARY: By law, each floor of any building project classified as an educational occupancy, eligible for school construction project grants, and put out to bid on or after July 1, 2004 must have an automatic fire extinguishing system approved by the state fire marshal. This act allows the state fire marshal and state building inspector jointly to grant variations or exemptions from, or approve equivalent or alternate compliance with, this requirement if:

1. strict compliance would entail practical difficulty or unnecessary hardship or is otherwise considered unwarranted;
2. both officials approve and, in their opinion, their action will secure the public safety; and
3. the town where the project is located complies with all other fire safety requirements in the state fire and building codes for the project.

The officials' determination must be in writing.

Anyone aggrieved by their decision has 14 days after the decision is issued to appeal to the Codes and Standards Committee, which works with the state building inspector and state fire marshal to enforce the state building and fire codes. Anyone aggrieved by the committee's ruling may appeal to the Superior Court.
EFFECTIVE DATE: Upon passage

BACKGROUND

Educational Occupancies

The fire safety code defines "educational occupancies" as "all buildings or portions of buildings used for educational purposes through the twelfth grade by six or more persons for four or more hours per day or more than 12 hours per week." They include academies, kindergartens, nursery schools, and schools (NFPA 101 Life Safety Code § 4-1.3, adopted by reference).

PA 05-37—SB 156
Public Safety and Security Committee

AN ACT ALLOWING SOCIAL CLUBS TO CONDUCT BAZAARS OR RAFFLES

SUMMARY: This act adds social clubs to the list of organizations that may conduct bazaars and raffles, pursuant to the charitable gaming laws and subject to Division of Special Revenue regulation.
EFFECTIVE DATE: Upon passage

BACKGROUND

Organizations that May Conduct Bazaars and Raffles

The law allows the following to conduct, operate, or sponsor bazaars or raffles if the town where they are located has adopted the Bazaar and Raffles Act: veterans,' religious, civic, fraternal, educational, and charitable organizations; volunteer fire companies; and political parties and their town committees. Raffles may also be promoted and conducted if sponsored by the town acting through a designated centennial, bicentennial, or other centennial celebration committee. To conduct a bazaar or raffle, an organization must have a local permit. To qualify for the permit, the organization, except a town committee, must have been organized in good faith and actively functioning as a nonprofit organization within the municipality that is to issue the permit for at least six months before applying.

Only the sponsoring organization's qualified members age 18 or older may promote and operate or

work at bazaars and raffles. And people under age 16 may not sell or promote raffle tickets.

PA 05-52—SB 1135
Public Safety and Security Committee
Judiciary Committee

AN ACT CONCERNING THE ELECTRONIC TRANSMISSION OF PHOTOGRAPHS AND FINGERPRINTS

SUMMARY: By law, anyone arrested for a crime of moral turpitude must submit to the taking of his fingerprints and physical description, and constables, police chiefs, and the commanding officers of state police stations must immediately furnish the State Police Bureau of Identification with two copies of a standard identification card imprinted with the fingerprints, description, and other information the bureau requires. The act requires the arrested person to submit to being photographed as well. And it requires the police to send the photograph to the bureau on the standard identification card with the fingerprints and physical description. If they take the fingerprints or photographs electronically, the act requires them to send the electronic images. The act requires the public safety commissioner, or his designee, to approve any electronic imaging equipment used for these purposes.
EFFECTIVE DATE: October 1, 2005

PA 05-82—HB 5996
Public Safety and Security Committee
Finance, Revenue and Bonding Committee

AN ACT ALLOWING THE CONDUCT OF A FROG-RACE RAFFLE IN THE TOWN OF WINDHAM

SUMMARY: This act allows organizations throughout the state qualified to conduct bazaars and raffles also to conduct frog-race raffles once each calendar year pursuant to the state's charitable gaming laws and Division of Special Revenue (DSR) regulation.

It defines "frog-race raffle" as one in which artificial frogs conforming to specifications approved by the DSR executive director and numbered consecutively to correspond with the number of tickets sold are placed in a naturally moving stream at a designated starting point. The winning ticket is the one that corresponds to the number of the first frog to pass the designated finishing point.

The act requires the executive director, with the Gaming Policy Board's advice and consent, to adopt regulations establishing race procedures.

EFFECTIVE DATE: Upon passage

BACKGROUND

Organizations Qualified to Conduct Bazaars and Raffles

The law allows the following to conduct, operate, or sponsor bazaars or raffles if the town where they are located has adopted the Bazaar and Raffles Act: veterans,' religious, civic, fraternal, educational, and charitable organizations; volunteer fire companies; and political parties and their town committees. Raffles may also be promoted and conducted if they are sponsored by the town acting through a designated centennial, bicentennial, or other celebration committee. To conduct a bazaar or raffle, an organization must have a local permit. The organization, except a town committee, must have been organized in good faith and actively functioning as a nonprofit organization within the municipality that is to issue the permit for at least six months before applying.

Only the sponsoring organization's qualified members age 18 or older may promote and operate or work at bazaars and raffles. And people under age 16 may not sell or promote raffle tickets.

PA 05-161—sHB 6894
Public Safety and Security Committee
Planning and Development Committee

AN ACT REQUIRING THE INSTALLATION OF CARBON MONOXIDE DETECTORS IN NEW RESIDENTIAL BUILDINGS

SUMMARY: This act requires one- and two-family dwellings to be equipped with carbon monoxide (CO) detectors and warning equipment complying with the state Fire Safety Code if they (1) are issued a permit for new occupancy after September 30, 2005 and (2) pose a risk of CO poisoning. The act requires the code to provide for CO detection and warning equipment in such buildings. The code must include requirements and specifications for installing CO detection and warning equipment and provisions that address placement, power requirements, and standards for such equipment. It must also include exemptions for buildings that do not pose a risk of CO poisoning because they rely solely on systems that do not emit CO.

The act prohibits the issuance of a certificate of occupancy to any non-exempt one- and two-family dwelling issued a building permit for new occupancy after September 30, 2005, unless the local fire marshal or building official certifies that the building is equipped

with CO detection and warning equipment complying with the Fire Safety Code.
EFFECTIVE DATE: Upon passage

PA 05-178—sHB 6893
Public Safety and Security Committee
Judiciary Committee
Government Administration and Elections Committee

AN ACT CONCERNING THE CRIMINAL JUSTICE INFORMATION SYSTEM GOVERNING BOARD

SUMMARY: This act makes data in the offender-based tracking system available to the Department of Information Technology's chief information officer and executive director of a Judicial Department division or unit that oversees information technology, or their designees, for maintaining and administering the system.

Under the act, publicly available data in the system from a criminal justice agency must be obtained from the agency where the data originated. The act requires the Office of Policy and Management (OPM) secretary to give the name and address of the agency of origin to anyone who submits a Freedom of Information Act request for such data to the Criminal Justice Information System Governing Board.

The act also puts the board in OPM for administrative purposes only.
EFFECTIVE DATE: October 1, 2005

BACKGROUND

Offender-Based Tracking System

The system allows criminal justice agencies and the Division of Public Defender Services to (1) share criminal history records and (2) electronically access offender and case data on felonies, misdemeanors, violations, motor vehicle violations, motor vehicle offenses punishable by imprisonment, and infractions.

Criminal Justice Information System Governing Board

The Criminal Justice Information System Governing Board oversees the offender-based tracking system. It determines how criminal justice agencies and the Division of Public Defender Services access and share information, subject to statutory requirements for record erasure, security, and privacy.

PA 05-180—sSB 1033
Public Safety and Security Committee
Judiciary Committee
Finance, Revenue and Bonding Committee

AN ACT CONCERNING SPECIAL POLICEMEN IN THE SPECIAL INVESTIGATION SECTION OF THE DEPARTMENT OF REVENUE SERVICES

SUMMARY: This act allows Department of Revenue Services (DRS) special policemen (tax enforcement agents) to use physical and deadly physical force to the same extent, under the same circumstances, and with the same protections as peace officers. It also allows civilians to use such force and provides them with the same protections when they are directed by peace officers to help them make an arrest or prevent an escape from custody. It treats the agents the same as peace officers with respect to those who assault or use physical force against them, interfere with the performance of their duties, resist arrest by them, or fail to help them when asked to do so.
EFFECTIVE DATE: October 1, 2005

BACKGROUND

DRS Special Policemen

By law, the public safety commissioner may appoint special policemen in the DRS special investigation section. DRS special policemen are trained and certified by the Police Officer Standards and Training Council as police officers. By law, they have all the powers of state policemen. But they are not among the special policemen included in the definition of peace officers in CGS § 53a-3(9). The special policemen included in the definition are those appointed (1) to act on state- owned or -managed property, (2) in the Public Safety Department to investigate public assistance fraud, and (3) to protect the property of utility and transportation companies (CGS §§ 29-18, 29-18a, & 29-19).

When Peace Officers May Use Physical Force or Deadly Force

The law prohibits the use of physical force to resist an arrest by a reasonably identifiable peace officer, whether the arrest is legal or illegal (CGS § 53a-23).

A peace officer is justified in using physical force, when and to the extent he reasonably believes it necessary, to (1) make an arrest or prevent an escape from custody, unless he knows that the arrest or custody is unauthorized, or (2) defend himself or another person from the use or imminent use of physical force while

making or attempting to make an arrest or while preventing or attempting to prevent an escape (CGS § 53a-22(b)).

A peace officer is justified in using deadly physical force when he reasonably believes it is necessary to (1) defend himself or another person from the use or imminent use of deadly physical force and (2) arrest or prevent the escape from custody of someone whom he reasonably believes committed or attempted to commit a felony involving the infliction or threatened infliction of serious physical injury, and if, where feasible, he warned of his intent to use deadly physical force (CGS § 53a-22(c)).

The law exempts peace officers and civilians assisting them and acting under their direction and pursuant to law from the general duty to retreat rather than use reasonable deadly physical force (CGS § 53a-19(b)).

Use of Physical and Deadly Physical Force When Assisting Peace Officers

By law, anyone directed by a peace officer to help make an arrest or prevent an escape from custody is justified in using reasonable physical force, when and to the extent necessary, to carry out the official's direction. Under the same circumstances, the person may use deadly physical force if (1) he believes it necessary to defend himself or another person from what he reasonably believes to be the use or imminent use of deadly physical force or (2) the official directed or authorized him to use deadly physical force, unless he knows that the official is not authorized to use such force under the circumstances.

Crimes Against Peace Officers

A person is guilty of interfering with an officer if he obstructs, resists, hinders, or endangers any peace officer or firefighter performing his duties. A person is guilty of failure to assist a peace officer when he refuses to help a peace officer who asks for help to perform his duties. Both crimes are class A misdemeanors (CGS §§ 53a-167a & 167b) (see Table on Penalties).

A person commits assault of public safety or emergency medical personnel if he assaults a reasonably identifiable officer performing his duties, with intent to prevent him from performing them, by doing any of the following to him:

1. injuring;
2. throwing potentially damaging objects;
3. using tear gas, Mace, or a similar agent;
4. throwing paint, dye, or any other offensive substance; or
5. throwing bodily fluid, such as feces, blood, or saliva.

This crime is a class C felony (see Table on Penalties).

PA 05-181—sSB 1276
Public Safety and Security Committee
Planning and Development Committee
Appropriations Committee

AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE E 9-1-1 COMMISSION

SUMMARY: This act increases (1) the number of towns eligible for enhanced subsidies under the enhanced 9-1-1 (E 9-1-1) program and (2) funding under two other components of the program. Funding for the program comes from a surcharge on telephone lines, which customers pay to their telephone service providers and the providers remit to the Office of Statewide Emergency Telecommunications (OSET).
EFFECTIVE DATE: July 1, 2005

E 9-1-1 SUBSIDIES

Enhanced Subsidies

OSET provides subsidies to regional public safety emergency telecommunications centers and, under prior law, provided enhanced subsidies to towns with more than 70,000 people. The act lowers the population threshold for enhanced subsidies, adding towns with populations of 40,000 to 70,000. Based on the 2000 U.S. Census Bureau data, there are currently 14 such towns: Bristol, East Hartford, Enfield, Fairfield, Greenwich, Hamden, Manchester, Meriden, Middletown, Milford, Stratford, Wallingford, West Hartford, and West Haven.

Emergency Telecommunications Service Credit

By law, the regional emergency telecommunication service credit supports coordinated medical emergency direction (CMED) services. The act increases the 15 cents per capita annual subsidy for CMED services to 30 cents per capita. As under prior law, the per capita amount cannot be reduced each year.

Public Safety Services Data Networks

The act requires the public safety commissioner, in determining the funding needed to develop and administer the various components of the E 9-1-1 system, to include the recurring expenses and future capital costs associated with public safety services data networks. By law, the commissioner must already

specify a range of expenses for the various components of the system. These include:

1. buying and maintaining new public safety answering point terminal equipment,
2. subsidizing regional public safety emergency centers,
3. establishing a transition grant program to encourage regionalization of public safety communication,
4. necessary personnel training,
5. OSET administrative expenses, and
6. recurring expenses and future capital costs of the telecommunications network used to provide E 9-1-1 services.

BACKGROUND

E 9-1-1 Funding

By law, the public safety commissioner annually must determine and inform the Department of Public Utility Control (DPUC) of the amount of funding needed for the E 9-1-1 program. The law requires DPUC to establish a monthly assessment (surcharge) on each subscriber of local telephone and commercial mobile radio (e.g., cellular service as defined in federal law). By June 1, annually, DPUC must determine the amount of the assessment. It must base the assessment on the commissioner's determination and the amount of money in the E 9-1-1 Telecommunications Fund. The assessment cannot exceed 50 cents per line per month and must decline for additional lines (CGS § 16-256g).

PA 05-265—sHB 6755
Public Safety and Security Committee
Labor and Public Employees Committee
Judiciary Committee
Government Administration and Elections Committee

AN ACT CONCERNING PERSONNEL TEMPORARILY ASSIGNED TO THE DEPARTMENT OF EMERGENCY MANAGEMENT AND HOMELAND SECURITY AND VOLUNTEERS PARTICIPATING IN HOMELAND SECURITY DRILLS

SUMMARY: This act specifies that the Public Safety and Military departments retain administrative control over state police officers and military personnel they assign to work in the Department of Emergency Management and Homeland Security (DEMHS) under any interagency memorandum of understanding. Under prior law, assigned personnel were under the sole direction of the DEMHS commissioner. The act limits personnel assignments under the memorandum to temporary assignments.

It allows the DEMHS commissioner to request and receive cooperation and assistance, including temporary assignment of personnel, from federal, state, or local agencies to perform the department's functions. Assigned personnel must act under his direction, but the assigning agency retains administrative control over them. For indemnification purposes, they are deemed to be state employees while performing department duties. This means (1) the state will hold harmless assigned personnel who face a civil suit for actions they took in the scope of their employment if the action was not wanton, reckless, or malicious and (2) the attorney general will provide legal defense for them.

The act also requires DEMHS to compensate employed members of volunteer organizations who participate in any of the organizations' DEMHS-authorized homeland security drills that last more than 24 consecutive hours. The compensation rate must be the same as they would receive in their public- or private-sector jobs, less any employer compensation they receive for the drill. The act gives volunteers who die or are disabled or injured in the course of any such drill the same workers' compensation benefits that they would have received if these events had occurred in the course of their employment in the public or private sector.

The act defines a "volunteer organization" as one that (1) provides first responder, rescue, or emergency medical transportation services, or is a volunteer fire company that provides emergency medical or rescue services, as part of its duties and (2) relies exclusively or primarily upon volunteers to provide such services.

EFFECTIVE DATE: Upon passage, except for the DEMHS compensation provision, which takes effect October 1, 2005.

BACKGROUND

Indemnification of State Employees

Existing law requires the state to hold harmless and indemnify any state officer or employee from financial loss and expense from a claim, demand, suit, or judgment caused by his alleged negligence or deprivation of a person's civil rights or other acts or omissions causing damage or injury. The officer or employee must have acted in the discharge of his duties or within the scope of his employment. The protection does not apply if the conduct is wanton, reckless, or malicious. The attorney general must provide the person's defense unless he determines that it would be inappropriate and he notifies the person. If the attorney general does not provide representation, the state must pay the officer's or employee's reasonable legal fees

and costs if a final decision determines that the person acted in the scope of his duties or employment and not wantonly, recklessly, or maliciously (CGS § 5-141d).

PA 05-283—sSB 1133
Public Safety and Security Committee
Judiciary Committee
Public Health Committee

AN ACT REVISING STATUTES RELATIVE TO FIREARMS

SUMMARY: This act expands the crimes of (1) criminal possession of a handgun (pistol or revolver) and (2) criminal possession of a firearm or electronic defense weapon to include possession by anyone prohibited from shipping, transporting, possessing, or receiving firearms under federal law because "he has been adjudicated as a mental defective or has been committed to a mental institution." By law, these crimes are class D felonies (see Table on Penalties). But criminal possession of a firearm or electronic defense weapon carries a mandatory minimum two-year sentence.

The act expands the list of people who cannot get a gun permit or gun eligibility certificate under state law to include anyone prohibited by federal law from shipping, transporting, possessing, or receiving firearms because he "has been adjudicated as a mental defective or has been committed to a mental institution."

It requires the Public Safety (DPS), Mental Health and Addiction Services, and Judicial departments to enter into a memorandum of understanding with the Federal Bureau of Investigation to implement the National Instant Criminal Background Check System (NICS) in the state. They must do this in accordance with state and federal confidentiality laws. The act requires DPS to report to the NICS Index, Denied Persons Files, the name, date of birth, and physical description of anyone barred from possessing guns under federal law.
EFFECTIVE DATE: October 1, 2005

BACKGROUND

Criminal Possession of a Firearm or Electronic Defense Weapon

Under state law, a person is guilty of criminal possession of a firearm or electronic defense weapon if he possesses a firearm (other than a handgun) or an electronic defense weapon and:

1. was convicted of a felony;
2. was convicted of a serious juvenile offense;
3. knows that he is subject to a restraining or protective order for the use, attempted use, or threatened use of physical force; or
4. knows that he is subject to a firearms seizure order.

Criminal Possession of a Handgun

Under state law, a person is guilty of criminal possession of a handgun if he possesses a handgun and:

1. was convicted of a felony or specified misdemeanors;
2. was convicted of a serious juvenile offense;
3. was discharged from custody in the last 20 years after having been found not guilty of a crime because of mental illness;
4. was involuntarily confined in a psychiatric hospital in the past 12 months;
5. knows that he is subject to a restraining or protective order for the use, attempted use or threatened use of physical force;
6. knows that he is subject to a firearms seizure order; or
7. is an illegal alien.

NICS

NICS is a national computerized database that allows authorized users to check available records for an immediate response on persons disqualified from possessing firearms. Connecticut is among 14 states that have entered into a memorandum of understanding to access the system and conduct firearm background checks on behalf of federal firearms licensees (FFL). (In some states, the FFLs must contact the FBI directly.) Under current practice, DPS reports all disqualifying information to NICS, except disqualifications based on mental illness.

PA 05-54—sHB 5446
Transportation Committee

AN ACT CONCERNING ADDITIONAL TRAINING AND RESTRICTIONS FOR DRIVERS UNDER THE AGE OF EIGHTEEN

SUMMARY: This act increases from eight to 20, the minimum hours of behind-the-wheel instruction 16- and 17-year olds learning to drive under learner's permits must have before they qualify for licensure. It also prohibits 16- or 17-year old licensed drivers, with some exceptions, from driving from 12:00 a.m. to 5:00 a.m. and creates an exception to driving hour and passenger restrictions for teenage drivers performing official emergency response duties for certain fire or emergency medical service organizations. Finally, it permits 16- and 17-year olds to transport more than one of their parents during the first three months they are licensed.
EFFECTIVE DATE: October 1, 2005

INCREASE IN BEHIND-THE-WHEEL INSTRUCTION REQUIREMENT

Previously, a 16- or 17-year old learning to drive under a learner's permit had to complete, among other things, at least eight hours of behind-the-wheel, on-the-road training before he qualified for a driver's license. By law, this training can come from a commercial driving school, through a school-based driver education program, or from "home training" provided by a qualified relative who meets certain statutory requirements.

The act increases the minimum amount of behind-the-wheel, on-the-road training a 16- or 17-year old must have before qualifying for licensure from eight to 20 hours. It allows any training, including both classroom instruction and behind-the-wheel training, to be done through a combination of any of the approved methods described above.

PASSENGER AND HOUR RESTRICTIONS

Previously, during the first three months a 16- or 17-year old held a driver's license, he could transport no more than one passenger, who had to be either a (1) parent or legal guardian who is at least age 25 and a licensed driver, (2) person at least age 20 and who has held an unsuspended driver's license for at least the preceding four years, or (3) licensed driving instructor. The act, instead, allows him to transport during the first three months of licensure either (1) his parents or legal guardian, regardless of age as long an one is a licensed driver, or (2) one passenger only who must be either a licensed driving instructor or someone at least age 20 with an unsuspended driver's license for the four preceding years.

The act prohibits a 16- or 17-year old licensed driver from driving from 12:00 a.m. through 5:00 a.m. unless he is traveling because of his employment, school or religious activities, or medical necessity.

The act exempts a 16- or 17-year old licensee from the passenger and hour restrictions if he is an active member of a volunteer fire company or department, a volunteer ambulance service or company, or an emergency medical service organization and is responding to an emergency or carrying out his duties as a member.

PA 05-58—sHB 6660
Transportation Committee
Planning and Development Committee
Judiciary Committee

AN ACT CONCERNING CHILD RESTRAINT SYSTEMS

SUMMARY: This act (1) with one exception, extends child restraint system use requirements from children under age four weighing less than 40 pounds to children under age seven or who weigh less than 60 pounds, regardless of age; (2) requires any child under age one or weighing less than 20 pounds to be transported in his child restraint system in a rearward-facing position; and (3) requires children restrained in booster seats to be anchored by a seat belt that includes a shoulder belt.
EFFECTIVE DATE: October 1, 2005

CHILD RESTRAINT SYSTEM REQUIREMENTS

General Requirement

Previously, a person transporting a child under age four weighing less than 40 pounds had to secure the child in a child restraint system approved under Department of Motor Vehicles (DMV) regulations. A child under age four weighing 40 pounds or more had to be transported in either an approved child restraint system or a seat safety belt. The driver was responsible for assuring that any child passenger age four through age 15 was secured in a seat safety belt.

The act extends the child restraint system requirements to children under age seven or weighing less than 60 pounds, regardless of their age, except for children being transported in a student transportation vehicle. Children age seven or older and weighing 60 pounds or more may be transported in either a child restraint system or seat safety belt. The driver continues to be responsible for making sure that passengers under age 16 are appropriately restrained.

Children transported in student transportation vehicles remain under the prior law's requirements (i.e., use of a child restraint system if the child is under age four and under 40 pounds). The act also provides the additional option of transporting a child age four or older in either a child restraint system or a seat belt, instead of only a seat belt, in such vehicles.

Other Requirements

The act requires that children be restrained in booster seats only when the restraining seat belt includes a shoulder belt and meets other applicable statutory requirements on belt strength and latch release. Use of only a lap belt is prohibited.

Under the act, violators of the rear-facing positioning requirement for infants and the booster seat anchorage requirements are subject to the same penalties that apply to child restraint use violations. A first offense is an infraction, a second offense is punishable by a fine of up to $199, and a third and subsequent offenses are class A misdemeanors (see Table on Penalties). Mandatory attendance at an approved child car seat safety course is required following a first or second violation of any of the child restraint requirements.

BACKGROUND

Student Transportation Vehicles

The law defines a "student transportation vehicle" as any motor vehicle, other than a registered school bus, used by a carrier for transporting students, including children requiring special education. A "carrier" is (1) a local or regional school district; any educational institution providing elementary or secondary education; or any person, firm, or corporation under contract to such a district or institution engaged in the business of transporting school children; (2) any person, firm, or corporation providing transportation for compensation exclusively to people under age 21; or (3) any corporation, institution, or nonprofit organization providing transportation as an ancillary service primarily to people under age 18.

PA 05-127—SB 937
Transportation Committee
Appropriations Committee

AN ACT IMPLEMENTING THE FEDERAL MOTOR CARRIER SAFETY IMPROVEMENT ACT

SUMMARY: In 2004, the legislature significantly revised the system of license classes, endorsements, and restrictions for both drivers' and commercial drivers' licenses the Department of Motor Vehicles (DMV) issues. The changes became effective on January 1, 2005. This act establishes a transition period for DMV to implement the new requirements. During the transition period:

1. any operator's license or commercial driver's license DMV issued before January 1, 2005 and that is otherwise valid remains so based on the classification, endorsements, or restrictions in effect before January 1, 2005;
2. from January 1, 2005 through December 31, 2005, DMV may issue or renew licenses with the classification, endorsement, or restriction designations in effect before January 1, 2005, rather than those that became effective on January 1, 2005; and
3. any license DMV issues or renews after December 31, 2005 must contain the classification, endorsements, and restrictions that became effective on January 1, 2005.

In effect, the act eliminates the need for the DMV to recall valid licenses that are already in operators' possession in order to reissue them with the new designations and gives the DMV, at its discretion, until January 1, 2006 before it must begin issuing licenses with the new classifications, endorsements, and restrictions the law requires.

EFFECTIVE DATE: Upon passage

BACKGROUND

Revised License Classifications, Endorsements, and Restrictions

PA 04-217 changed the way Connecticut classifies its motor vehicle operators' licenses as well as the types of endorsements or restrictions that are coded onto the license to show special circumstances that apply to a particular operator. These include authority to operate certain types of special vehicles like tanker trucks, twin trailers, buses, school buses, and vehicles carrying hazardous materials. The law increased the number of license classifications from two to four, modified some of the endorsements and restrictions, and created several new ones. These changes have been in effect since January 1, 2005.

PA 05-131—sHB 5858
Transportation Committee
Government Administration and Elections Committee
Judiciary Committee

AN ACT CONCERNING THE ROUTE 11 GREENWAY AUTHORITY COMMISSION

SUMMARY: This act authorizes the Route 11 Greenway Authority Commission to request the transportation commissioner to acquire an interest in real property for use as part of the Route 11 Greenway trail system and, if the commissioner acquires any such interest, to transfer custody and control of it to the commission pursuant to a legislative act. It authorizes the commissioner to acquire property interests at the request of the commission in the same ways he can acquire real property for highway purposes, including through condemnation.

The act also specifically immunizes the commission from liability for use of any pedestrian walks, bicycle paths, bridle paths, entrances, or exits it provides in the Route 11 Greenway by making use of such facilities at the user's own risk. By law, this immunity from liability exists generally for state agencies and employees with respect to the use of such facilities or connections to them along state-maintained highways.
EFFECTIVE DATE: October 1, 2005

BACKGROUND

Route 11 Greenway Authority Commission

The law allows the towns of East Lyme, Montville, Salem, and Waterford to establish the Route 11 Greenway Authority Commission, which they have done. Each town has one member and one alternate member on the commission, as does the Southeastern Connecticut Council of Governments. The transportation and environmental protection commissioners also are members. The commission must hold public hearings to develop standards for (1) defining the initial boundaries of the Route 11 Greenway; (2) planning its design, construction, maintenance and management; (3) identifying and prioritizing land that should be added to the greenway; (4) recommending land use within the greenway; and (5) acquiring land and securing conservation easements for the greenway. The commission may not use state funds for acquisitions. It may transfer to the state land or interests in land it acquires, but has no specific authority to directly request state agencies to purchase land or easements for the greenway.

PA 05-159—sHB 6722
Transportation Committee
Judiciary Committee
Finance, Revenue and Bonding Committee
Energy and Technology Committee

AN ACT CONCERNING THE USE OF HAND-HELD MOBILE TELEPHONES BY OPERATORS OF MOTOR VEHICLES

SUMMARY: Except under certain circumstances, this act prohibits (1) a driver from using a mobile telephone to engage in a call while the vehicle is moving unless he uses a hands-free telephone; (2) drivers operating under learners' permits or with licenses issued pursuant to requirements applicable to 16- or 17-year old license applicants from using any mobile telephone while the vehicle is moving, whether or not it has a hands-free accessory; (3) a school bus driver from using either a mobile telephone or any other electronic device in a moving bus containing passengers; and (4) any driver from engaging in an activity not directly related to the actual operation of the vehicle in a manner that interferes with its safe operation.

Violations of the mobile telephone use prohibitions are punishable by a fine of up to $100, although if a person other than a school bus driver or a driver operating under a learner's permit or a license issued subject to requirements that apply to 16- and 17-year olds is charged with violating the mobile telephone use prohibition for a first time, the fine must be suspended if the person provides proof that he has acquired a hands-free accessory for the phone between the time the violation occurred and the fine is imposed.

The act also requires a $100 fine to be assessed whenever a driver commits a moving violation while engaged in any non-driving related activity that interferes with safe vehicle operation. The $100 fine is in addition to any fine or penalty imposed for the moving violation, but appears to be a secondary violation, that is, the driver must be cited for the moving violation in order to be subject to the fine for engaging in a non-driving related activity that interferes with safe vehicle operation.

The act allows people to mail fines for violations to the Centralized Infractions Bureau instead of appearing in court. Mailing in the fine constitutes a plea of *nolo contendere* (no contest) to the charge and is inadmissible in any civil or criminal proceeding to establish the person's conduct.

A law enforcement officer who issues a summons for a violation of any of the act's prohibitions must record on the summons form the specific nature of any distracted driving behavior he saw that contributed to his issuing the summons.

PA 05-220 subsequently amended this act to (1) expand its prohibitions to apply to the use of mobile electronic devices as well as mobile telephones; (2) eliminate exemptions from the hand-held mobile telephone prohibitions for drivers of taxicabs, tow trucks, or buses without passengers; and (3) make it clear that this act prohibits the use of any type of mobile telephone by drivers under age 18, except in the emergency situations it defines.
EFFECTIVE DATE: October 1, 2005

DEFINITIONS

The act defines a mobile telephone as a cellular, analog, wireless, or digital telephone capable of sending or receiving telephone communications without an access line for service. A hands-free mobile telephone is one that has an internal feature or function or is equipped with an attachment or addition through which the user engages in a call without using either hand, whether or not using a hand is necessary to activate, deactivate, or initiate a function of the phone. A "hands-free accessory" is defined as an attachment, add-on, built-in feature, or addition to a mobile telephone, whether permanent or not, that allows the driver to keep both hands on the steering wheel. A hand-held mobile telephone is one where the user engages in a call using at least one hand.

PROHIBITIONS

The act prohibits a driver from using a hand-held mobile telephone to engage in a call while his vehicle is moving, but it still allows him to hold the phone to activate, deactivate, or initiate a function of the phone. It defines engaging in a call to include talking into or listening on the phone. The act does not prohibit holding the phone to use it for any purposes other than talking into it or listening to it. The act creates a rebuttable presumption that someone who holds a hand-held mobile telephone to or in the immediate proximity of his ear while the vehicle is moving is engaging in a call. The presumption can be rebutted by evidence tending to show that the driver was not engaged in a call. A hand-held mobile telephone used in violation of the prohibition may not be seized or subject to forfeiture unless otherwise provided by law.

The act prohibits a school bus driver from using a hand-held mobile telephone, including one with hands-free accessories, as well as any "other electronic device" (not defined) while the school bus is moving and carrying passengers.

The act also prohibits a driver who holds a learner's permit or one who has a driver's license subject to the issuance requirements that apply to 16- and 17-year olds from using any type of mobile telephone while driving a moving vehicle, including those with a hands-free accessory

EXCEPTIONS TO MOBILE TELEPHONE USE PROHIBITION

A driver who is at least age 18 may use a hand-held mobile telephone regardless of the prohibition (1) for the sole purpose of communicating an emergency situation with an emergency response operator, hospital, physician's office or health clinic, ambulance company, or fire or police department; (2) if he is a peace officer, firefighter, ambulance or authorized emergency vehicle driver, taxi or tow truck driver, or a bus driver in a bus without passengers and performing his official duties within the scope of employment; or (3) if the telephone is hands-free. An authorized emergency vehicle includes a fire department or police vehicle or public service company or municipal department ambulance or emergency vehicle designated or authorized for use by the motor vehicle commissioner as an emergency vehicle. (The exception for drivers of taxicabs, tow trucks, or buses without passengers was subsequently eliminated by PA 05-220.)

The exceptions for communicating an emergency situation also apply to school bus drivers and drivers operating under learners' permits or with licenses issued pursuant to requirements applicable to 16- and 17-year olds who apply for licenses.

In addition, school bus drivers may use a hand-held mobile telephone or other electronic device to place an emergency call to school officials without violating the prohibition.

MOVING VIOLATIONS FOR WHICH THE ADDITIONAL PENALTY APPLIES FOR ENGAGING IN A NON-DRIVING ACTIVITY INTERFERING WITH SAFE VEHICLE OPERATION

The table below indicates the moving violations for which the additional $100 fine applies if the driver was engaging in an activity not directly related to driving that interferes with safe vehicle operation while committing the moving violation.

Statute Section	***Moving Violation***	***Statute Section***	***Moving Violation***
14-218a	Traveling Unreasonably Fast	**14-241**	Improper turn
14-219	Speeding	**14-242**	Restricted Turns-Failure to Signal
14-222	Reckless Driving	**14-243**	Unsafe Backing

14-223	Disobeying Signal of Officer	**14-244**	Improper Signaling
14-230	Failure to Drive to the Right	**14-245**	Failure to Grant Right of Way at Intersection
14-230a	Commercial Vehicle Use of Restricted Left Lane	**14-246a**	Failure to Grant Right of Way at Highway Junction
14-231	Failure to Grant One-Half of the Highway	**14-247**	Failure to Grant Right of Way at Private Road or Driveway
14-232	Improper Passing	**14-247a**	Failure to Grant Right of Way to Pedestrian or Traffic When Emerging From Alley, Driveway, or Building
14-233	Passing on the Right	**14-248a**	Failure to Slow or Stop at Cattle Crossing
14-234	Passing in No Passing Zone	**14-248b**	Failure to Grant Right of Way at Cattle Crossing
14-235	Failure to Keep Right on Curve or Hill or at Intersection or RR Crossing	**14-249**	Failure to Stop at Railroad Crossing When Signals are Operating
14-236	Failure to Drive in Proper Lane on Limited Access Highway	**14-279**	Passing Stopped School Bus
14-237	Driving Wrong Way on Divided Highway	**14-289b**	Violating Motorcycle Operating Rules
14-238	Entering Controlled Access Highway at Other Than Designated Entry or Exit	**14-299**	Failing to Obey Traffic Control Signal
14-238a	Entering Limited Access Highway at Other Than Designated Point	**14-301**	Failing to Grant Right of Way to Pedestrian in Crosswalk and Related Violations
14-239	Wrong Way on One-Way Highway	**14-302**	Disregarding Yield Signs
14-240	Following Too Closely	**14-303**	Driving Wrong Way on One-Way Street
14-240a	Tailgating to Intimidate or Harass		

BACKGROUND

Definition of Peace Officer

Besides members of the Division of State Police and local police officers, "peace officer" includes inspectors of the Division of Criminal Justice, state and judicial marshals while performing their duties, conservation or special conservation officers, constables who perform criminal law enforcement duties, certain special policemen (for state property, public assistance fraud investigation, or public utility or transportation companies), adult probation officers, Department of Correction personnel authorized by the commissioner to make arrests in correctional facilities, investigators from the office of the State Treasurer, or special federal agents authorized to enforce federal food and drug laws.

PA 05-210—sHB 6720
Transportation Committee
Judiciary Committee
Government Administration and Elections Committee
Energy and Technology Committee
Commerce Committee

AN ACT CONCERNING THE DEPARTMENT OF TRANSPORTATION

SUMMARY: This act:

1. (a) changes cost sharing requirements for necessary adjustments to electric transmission and trunkline facilities in Department of Transportation (DOT) highway rights-of-way, (b) modifies what DOT may charge state-regulated utility companies using the length of certain rights-of-way, (c) creates a new mechanism for recovering the costs of electric

transmissions lines in rates, and (d) requires the transmission rate adjustment to appear as a separate item on electric bills;

2. expands the enabling language for the Connecticut-New York railroad passenger service compact to allow it to cover passenger service outside the New Haven-New York service area;
3. increases penalties for violations of requirements relating to DOT permits for outdoor advertising installations, broadens their application, and makes related changes;
4. grants immunity from liability to outdoor advertising establishments that participate in voluntary emergency alert programs with law enforcement agencies;
5. modifies an escort vehicle requirement for vehicles traveling under DOT overwidth vehicle permits on undivided highways;
6. replaces references to rotary traffic islands in the law with two new terms, rotaries and roundabouts, and establishes right-of-way requirements for motor vehicles using them;
7. designates commemorative names for 17 state highway segments, 12 state bridges, and a rest area, and changes the designation for another highway segment; and
8. requires installation of directional or informational signs on certain state highways with respect to three state attractions.

The act also makes it an infraction to cross railroad tracks at a designated crossing after being warned by signals, gates, or other means that a train is approaching (see Table on Penalties).

EFFECTIVE DATE: Upon passage, except the provisions relating to (1) rotaries and roundabouts, and (2) increased penalties for violations of requirements relating to DOT permits for outdoor advertising structures and displays are effective on July 1, 2005; the provisions relating to (1) DOT overwidth vehicle permits, (2) crossing railroad tracks after being warned of an approaching train, and (3) immunity from liability for outdoor advertising establishments participating in emergency alert programs with law enforcement agencies are effective on October 1, 2005; and the provision expanding the authorization for the Connecticut-New York rail passenger service interstate compact is effective when similar legislation adopted by New York becomes effective.

UTILITIES IN STATE HIGHWAY RIGHTS-OF-WAY (§§ 28-31)

Costs Associated with Adjustment, Relocation, or Removal of Electric Transmission Facilities or Trunklines from Highway Rights-of-Way

Previously, when the transportation commissioner determined that a utility facility (such as power lines or pipelines) within, on, along, or under a state or other public highway right-of-way had to be adjusted, relocated, or removed due to highway construction or reconstruction, he issued an appropriate notice to the owner of the public service facility. The state had to bear an "equitable" share of the cost of adjusting, relocating, or removing the facility, including constructing a facility of equal capacity on a new location. In practice, this was frequently about 50% of the costs.

The act exempts the state from bearing any cost for adjustment, relocation, or removal of a utility facility that is subject to the Siting Council's jurisdiction and that is used for transmitting electricity or as an electric trunkline.

The act requires DOT to evaluate the total costs of such a project, including its costs for construction or reconstruction, and the electric distribution company's costs for adjusting, relocating, or removing its transmission facility or trunkline, to minimize the overall costs. The electric distribution company may provide DOT with proposed alternatives to relocation, adjustment, or removal and is responsible for any increased project costs from such alternative designs. If the company and DOT cannot agree on a plan for the project, the DOT commissioner and Department of Utility Control (DPUC) must jointly determine the alternative for the project.

Longitudinal Use of State Highway Rights-of-Way by Utility Companies

By law, the transportation commissioner may make agreements with the owners of public service facilities wanting longitudinal (lengthwise) use of a state highway right-of-way to accommodate a trunkline or transmission facility. The agreement sets the terms, conditions, rates, and charges for use of the right-of-way. Under the act, if a facility is owned by a state-regulated utility company and the agreement involves use of the right-of-way of a nonlimited access highway, the charges or rates set by the agreement cannot exceed DOT's actual administrative, construction, operation, and maintenance costs. DOT may estimate the rates and charges and require prepayment provided it refunds to the company any amount that exceeds the actual costs.

Electric Transmission Cost Recovery

The act creates a new administrative process through which the DPUC must implement federally approved rates before transmission costs become eligible for recovery by the electric distribution company through a new transmission rate adjustment clause. It requires the rate charged by an electric distribution company for transmission services to be adjusted periodically pursuant to Federal Energy Regulatory Commission-approved wholesale transmission rates, tariffs, and charges. DPUC, after notice and hearing, must design the transmission rate to provide for recovery of transmission costs prudently incurred by the electric distribution company. DPUC's review process must be conducted pursuant to the act's provisions rather than as a comprehensive rate case. The adjustment clause must apply to all electric distribution companies similarly affected by transmission costs. The act specifies that DPUC's authority to review the prudence of costs does not apply to any matter over which a federal agency has exclusive jurisdiction or has exercised its authority in cases where it has concurrent jurisdiction with the state.

The act requires the transmission rate adjustment to appear as a new line item on consumers' electric bills.

DPUC must hold a public hearing on the transmission rate adjustment at least every six months. If it finds that the adjustment does not reflect the company's actual costs, DPUC must order the company to provide a credit to its customers or take other steps to ensure that the rate reflects actual costs.

CONNECTICUT-NEW YORK PASSENGER RAIL SERVICE COMPACT (§ 47)

The act expands the enabling law authorizing an interstate compact between Connecticut and New York to provide passenger rail service between New Haven and New York City, as well as along the New Canaan, Danbury, and Waterbury branch lines, to allow the compact to include passenger service outside of the direct New Haven-New York City corridor. Previously, the compact could cover only service between the two cities and the three tributary branch lines. The act would allow additional service, such as the Shoreline East service east of New Haven to be included in the agreement between Connecticut and the Metropolitan Transportation Authority of New York. The act also makes the DOT, rather than the Connecticut Public Transportation Authority (CPTA), the Connecticut party to the agreement to reflect the fact that the CPTA no longer has the statutory responsibility to act on behalf of Connecticut in this regard.

The change in the compact enabling language becomes effective on the effective date of legislation enacted by New York having like effect.

PROVISIONS RELATING TO OUTDOOR ADVERTISING BUSINESSES (§§ 33, 35-36)

Penalties for Violating Statutory and Regulatory Requirements for Outdoor Advertising Structures or Displays

The act increases the penalty for violations of the statutory requirements relating to outdoor advertising structures or displays from a fine of up to $100 to a civil penalty imposed by the commissioner of $100 for each day the violation continues. A violation that continues for longer than 60 consecutive days must be considered grounds for revocation of the permit with which the violation is associated. The act also applies the increased penalty and permit revocation to violations of any DOT regulation, license, permit, or order adopted or issued pursuant to the law governing outdoor advertising structures. Before the commissioner may impose the civil penalty, he must send written notice of the violation by certified mail with return receipt. If the violator corrects or terminates the violation within 15 days following receipt of the notice, the civil penalty may not be imposed.

Immunity From Liability for Outdoor Advertising Companies Participating in Emergency Alert Programs

The act immunizes an outdoor advertising establishment as described in U.S. Department of Labor Standard Industrial Classification System Code 7312 (i.e., Outdoor Advertising Services) from any claim for damages arising from a voluntary program in which it participates with law enforcement agencies for broadcasting or disseminating emergency alerts relating to child abductions (commonly known as "Amber Alerts").

DOT OVERWIDTH VEHICLE PERMITS (§ 32)

The act requires the permits that DOT grants for vehicles or vehicle loads that are between 12 feet and 13 feet six inches in width and traveling on undivided highways to require a single escort vehicle preceding the vehicle or load. By law, any vehicle or load cannot be moved on a highway or bridge if it is more than eight feet six inches wide unless it has a DOT permit.

ROTARIES AND ROUNDABOUTS (§§ 24-27)

The act replaces and modernizes the prior definition of a rotary traffic island with two new terms, "rotary" and "roundabout," and establishes right-of-way requirements for vehicles using them. Both are circular intersections, but roundabouts generally incorporate more safety elements such as geometry that slows entering traffic to a maximum of 30 miles per hour, denial of pedestrian access to the center island, and prohibition of parking within the traffic circle. Both types of circular intersections are currently in use in Connecticut.

Prior law did not state which vehicle must yield the right of way in circular intersections. The act gives the vehicles already traveling in the rotary or roundabout the right of way and requires vehicles entering the intersection to yield to them, unless otherwise directed by signs.

COMMEMORATIVE ROAD AND BRIDGE NAMES (§§ 1-23, 37-41, 45&46)

The act designates commemorative names for 17 state highway segments, 12 state bridges, and a highway rest area as follows:

1. Route 174 from Route 71 east to East Street in New Britain as the "Destroyer USS Braine Memorial Highway,"
2. Route 71 from the Routes 71A and 71 intersection north to Main Street in Berlin as the "Officer Jeffery G. Casner Memorial Highway,"
3. the road to the Firemen Memorial at Bradley International Airport as "Firefighter Memorial Drive,"
4. Route 10 from the intersection of Route 10 and the Farmington Canal Greenway overpass east to the junction with Whitney Avenue in Hamden as the "Hamden Veterans' Memorial Highway,"
5. Route 110 from Stratford to Monroe as the "Veterans Memorial Highway,"
6. Route 174 from the New Britain-Newington town line to Maple Hill Avenue in Newington as the "Officer Peter Lavery Memorial Highway,"
7. Route 618 from Route 85 east to the Colchester-Lebanon town line as the "Major Peter M. Cleary Memorial Highway,"
8. Route 5 in North Haven between Washington Avenue and State Street as the "Officer Timothy W. Laffin Memorial Highway,"
9. Route 195 in Mansfield running north to I-84 in Tolland as "UCONN Husky Way,"
10. Route 78 in Stonington from Route 2 running east to the Connecticut-Rhode Island state line as "Veterans Way,"
11. Route 2A in Montville running east from I-395 to the beginning of bridge No. 3426 as the "Officer Joseph N. Sachatello III Memorial Highway,"
12. Route 287 in Wethersfield running east from the Newington-Wethersfield town line to Route 3 as the "Bohdan 'Bo' Kolinsky Memorial Highway,"
13. Route 71 in West Hartford running east from Ridgewood Road to Route 173 as the "Eric N. Jefferson Memorial Highway,"
14. State Road 529 (New Britain Avenue) in West Hartford running east from Route 173 easterly to the West Hartford-Hartford town line as the "West Hartford Memorial Highway,"
15. Route 34 in Orange running east from the junction with Route 152 east to the Orange-New Haven town line as the "Staff Sergeant Thomas E. Vitagliano Memorial Highway,"
16. Route 53 in Bethel as the "John L. Tiele Memorial Highway,"
17. the I-95 southbound bridge over the Thames River in Groton as the "U.S. Submarine Veterans World War II Memorial Bridge,"
18. Bridge No. 1491 in the Collinsville section of Canton as the "Sergeant Michael Dubiel Memorial Bridge,"
19. Bridge No. 00157 on I-95 in West Haven as the "Nacca Memorial Bridge,"
20. Bridge No. 03391 in Colchester on Route 16 over Route 2 as the "William 'Jimmy' Johnston Memorial Bridge,"
21. Bridge No. 1744 on I-84 eastbound over Berkshire Road in West Hartford as the "Lt. Colonel Charles E. Spencer Memorial Bridge,"
22. Bridge No. 1477 on Route 173 in Newington as the "Stanley Sobieski Memorial Bridge,"
23. Bridge No. 5801 on Route 9 southbound over Route 372 in Berlin as the "Steven Douglas Smart Memorial Bridge,"
24. the Route 25 bridge crossing the Still River in Brookfield as the "Nancy DuBois Hagmayer Memorial Bridge,"
25. the part of the I-91 northbound rest area in Middletown as the "Jennifer Hodges Memorial Rest Area,"
26. Bridge No. 1459 on I-91 in Wethersfield over Great Meadow Road as the "Frank Maratta Sr. Memorial Bridge,"
27. Bridge No. 0916 on U.S. 202 in Canton over the Farmington River as the "Lieutenant David M. Whirty Memorial Bridge,"

28. Bridge No. 3582 on Route 83 in Manchester over I-384 as the "William R. Johnson Memorial Bridge," and
29. the bridge on Route 133 in Brookfield over Route 7 as the "Lance Corporal John T. Schmidt Memorial Bridge."

The act also changes the designation of Route 796 in Milford from the "Daniel S. Wasson Connector" to the "Officer Daniel S. Wasson, Milford Police Department, Connector."

PA 05-288 subsequently corrected the memorial designation of Route 53 in Bethel from the "John L. Tiele Memorial Highway" to the "John L. Thiele Memorial Highway." The act also changed the segment of Route 10 being designated as the "Hamden Veterans' Memorial Highway." It begins the commemorative designation from the intersection of Route 10 and Route 15, instead of the Route 10 and Farmington Canal Greenway overpass, and includes the segment of Route 717 from Whitney Avenue eastward to its intersection with Route 15 in the designation.

DIRECTIONAL SIGNS TO STATE ATTRACTIONS (§§ 42-44)

The act requires DOT to install directional signs on Route 2 in Colchester indicating the presence of wineries as part of the Connecticut Wine Trail. It also requires DOT to install signs on I-84 in Danbury for the Danbury Railway Museum and on I-84 in Waterbury and Route 8 in Thomaston for the Railway Museum of New England.

CROSSING RAILROAD TRACKS (§ 34)

The act prohibits anyone from crossing railroad tracks at a designated grade crossing when an automatic signal, crossing gate, flagman, or law enforcement officer warns of the approach of a locomotive, train car, or train or when otherwise warned of its approach. Violations are designated as infractions.

PA 05-218—sSB 1116
Transportation Committee
Judiciary Committee
Planning and Development Committee

AN ACT AMENDING CERTAIN MOTOR VEHICLE STATUTES

SUMMARY: This act changes the motor vehicle laws in a number of areas, including:

1. personal identification and other requirements for vehicle registration applicants,
2. disqualification from driving a commercial motor vehicle for alcohol use in a private vehicle,
3. notice requirements to holders of non-driver photo identification cards,
4. a license exemption for utility trailer manufacturers,
5. ignition interlock requirements for second-time drunk driving offenders,
6. joint owners listed on motor vehicle title certificates,
7. service buses and student transportation vehicles,
8. combination vehicle registrations and pick up trucks,
9. proof of financial responsibility for special use registrations,
10. local approval of motor vehicle dealer or repairer business locations,
11. Department of Motor Vehicle (DMV) review of wrecker rates and charges,
12. engine compression braking devices on trucks,
13. video monitoring devices in vehicles,
14. towed motor vehicles,
15. postponement of requirements for checking the out-of-state driver histories of commercial drivers' license renewal applicants,
16. defining camp vehicles and requiring a special license endorsement for their drivers,
17. suspending dealer or repairer licenses for failing to secure or account for certain official materials,
18. flashing lights and flashing light permits for certain vehicles,
19. requirements when filing a driver's license application,
20. requirements for vehicles to stop at railroad-highway grade crossings,
21. use of DMV's on-line registration system by motor vehicle dealers licensed elsewhere,
22. motor cross racing facilities,
23. motor vehicle rental agencies, and
24. antique or modified antique motor vehicles.

The act also (1) prohibits carrying a dog in a pickup truck bed unless the dog is secured or protected from being thrown, falling, or jumping from the vehicle; (2) makes it an infraction to drive a motor vehicle over, through, or under any highway bridge or structure if its height or load exceeds the vertical clearance or load restriction posted for the bridge or structure; and (3) eliminates DMV's authority to issue dealer plates and temporary registrations to snowmobile and all-terrain vehicle dealers.

EFFECTIVE DATE: Various, see below.

EXPIRATION NOTICE FOR NON-DRIVER PHOTO IDENTIFICATION CARDS (§ 1)

By law, DMV-issued non-driver photo identification cards are valid for four years. The act requires DMV to notify cardholders prior to expiration of their identity cards.
EFFECTIVE DATE: July 1, 2005

UTILITY TRAILER MANUFACTURERS (§ 2)

The act exempts businesses that build utility trailers from requirements that they obtain a DMV motor vehicle manufacturer's license. Utility trailers are designed and used to transport personal property, materials, or equipment and have a manufacturer's gross vehicle weight rating of 10,000 pounds or less.
EFFECTIVE DATE: July 1, 2005

CAMP VEHICLES (§§ 3, 5 & 6)

The act defines a "camp vehicle" as a motor vehicle that is regularly used to transport passengers under age 18 in connection with the activities of a youth camp. It requires anyone who drives a camp vehicle to have an "A" endorsement on his driver's license.

By law, a youth camp is a regularly scheduled program or organized group activity advertised as a camp or operated by a public or private entity for recreational or educational purposes accommodating five or more children under age 18 who are (1) not bona fide personal guests in a person's private home and (2) living apart from their relatives, parents, or legal guardian for three or more days, or portions of days, per week provided a relative, parent, or guardian employed by the camp may not be considered in the position of *loco parentis* to his child.
EFFECTIVE DATE: July 1, 2005 for the definition provisions; October 1, 2005 for the license endorsement requirement.

REQUIREMENTS FOR VEHICLE REGISTRATION (§ 4)

The act authorizes the motor vehicle commissioner to require any applicant for a motor vehicle registration (1) to provide satisfactory personal identification and (2) if they have established residence in Connecticut for more than 30 days, to get a Connecticut driver's license or non-driver photo identification card. By law, a person may not operate his motor vehicle in Connecticut for more than 60 days after establishing a residence here unless he gets a Connecticut registration for the vehicle.
EFFECTIVE DATE: July 1, 2005

OUT-OF-STATE DRIVING RECORD REQUESTS FOR COMMERCIAL DRIVER'S LICENSE APPLICANTS (§ 7)

The act delays, from January 1, 2005 to September 1, 2005, a requirement that DMV request copies of a commercial driver's license applicant's driving record at the time of first renewal from all states where he has previously been licensed to drive.
EFFECTIVE DATE: Upon passage

FAILURE OF DEALERS OR REPAIRERS TO SECURE, ACCOUNT FOR, OR SURRENDER OFFICIAL REGISTRATION PLATES AND MATERIALS (§ 8)

The act allows the commissioner to suspend or revoke the license of, or impose a civil penalty of up to $1,000 on, or both, any licensed motor vehicle dealer or repairer who fails to secure, account for, or surrender to the commissioner on demand any official registration plates or any other official materials in his custody.
EFFECTIVE DATE: July 1, 2005

FLASHING LIGHTS AND FLASHING LIGHT PERMITS (§§ 9 & 10)

Previously, flashing or revolving white lights could be displayed on the motor vehicles of up to four paid fire chiefs and their deputies and assistants and up to four volunteer fire chiefs and their deputies and assistants per municipality. The act expands this authorization to up to a total of five paid and five volunteer fire chiefs, deputies, and assistants per fire department.

The act requires the DMV commissioner to issue flashing light permits for an ambulance when it is being registered or having its registration renewed and requires "special" rather than written permits for all flashing light permits the commissioner issues, which appears to allow him to indicate the permit by alternate means, for example, through a stamp on the registration certificate.

The act also authorizes the first or second deputies, or first or second assistants of a municipal or volunteer emergency medical services organization, to display flashing or revolving red lights or flashing headlamps and a flashing amber light while on the way to an emergency scene. Previously, these lights were only authorized for a vehicle being operated by the chief executive officer of an emergency medical services organization.
EFFECTIVE DATE: Upon passage

SERVICE BUS SAFETY INSPECTIONS (§ 11)

The act requires a service bus to undergo a safety inspection before it is initially registered by DMV, as well as before each registration renewal as required by existing law. It exempts service buses owned by the state or a municipality from the $40 inspection fee and allows DMV to use both licensed motor vehicle dealers and repairers, rather than only repairers, to conduct these inspections. It also limits the inspection fee dealers and repairers may charge for service bus inspections to $40, or $80 if the service bus has a gross vehicle weight rating of more than 26,000 pounds. Service buses are vehicles other than vanpool vehicles or school buses designed and regularly used in private service to carry 10 or more passengers without individual charges.
EFFECTIVE DATE: July 1, 2005

TITLE CERTIFICATES FOR JOINTLY OWNED MOTOR VEHICLES (§ 12)

When a motor vehicle title certificate lists two or more people as joint owners, the act allows any of the listed owners, unless precluded by law, to transfer ownership of the vehicle to himself or anyone else in the manner provided by law. The act permits the commissioner to presume that if someone's name appears on both the title certificate and registration certificate, he is a joint owner empowered to transfer ownership.
EFFECTIVE DATE: July 1, 2005

DISTINCTIVE LICENSE PLATES FOR STUDENT TRANSPORTATION VEHICLES (§§ 13 & 14)

The act requires the commissioner to issue distinctive license plates to any vehicle, except a taxicab or motor vehicle in livery service, used as a student transportation vehicle (STV). It requires STV registrations to be renewed annually and subjects STVs to safety inspections prior to initial registration and before registration renewal. The STV inspection fee is $20, except STVs owned by the state or municipalities are exempt from the fee.

Vehicles eligible for STV marker plates are subject to one half of the fee applicable to service buses or passenger vehicles, depending on their design, to reflect the one-year, rather than two-year registration cycle.

An STV is any motor vehicle other than a registered school bus used by a carrier for transporting students, including children requiring special education.
EFFECTIVE DATE: July 1, 2005

COMBINATION REGISTRATIONS AND PICKUP TRUCKS (§§ 15-17)

The act increases the maximum gross vehicle weight-rating (GVWR) limit for vehicles to qualify for a combination registration from 10,000 to 12,500 pounds. A combination registration is issued to a vehicle that is used for both commercial and private passenger transportation purposes.

The act eliminates the limitation in the definition of a pickup truck specifying that, to be considered a pickup truck, a vehicle must have a GVWR of less than 10,000 pounds. It conforms the combination registration fee statute to the change in the weight threshold, thus allowing pickup trucks up to 12,500 pounds GVWR to be treated the same way as pickup trucks up to 10,000 pounds GVWR were previously.
EFFECTIVE DATE: October 1, 2005

CARRYING DOGS IN PICKUP TRUCKS (§ 18)

The act prohibits someone from transporting a dog in the rearward compartment of a pickup truck unless it is secured in a cage or other container or otherwise protected or secured in a way that prevents it from being thrown, falling, or jumping from the vehicle. The act specifies no penalty for violations, but, depending on where the provision is codified, a general penalty might apply. If, for example, it is codified in the motor vehicle laws governing vehicle and highway use, it would fall under a general penalty provision that specifies a maximum fine of $50 for violations that are not designated as infractions and for which no other penalty is provided. However, if codified elsewhere, for example, with the laws governing the health and protection of animals, a different general penalty might apply.
EFFECTIVE DATE: October 1, 2005

PROOF OF FINANCIAL RESPONSIBILITY FOR VEHICLES WITH SPECIAL USE REGISTRATIONS (§ 19)

By law, DMV may issue a special use registration good for up to 30 days to a vehicle for the sole purpose of allowing it to be driven to another state where it is to be registered and exclusively used. For vehicles with such registrations, the act allows the commissioner to accept, in lieu of the proof of insurance required by Connecticut law, proof he finds satisfactory of substantially similar insurance issued by an insurer licensed to do business in the state where the vehicle is to be registered.
EFFECTIVE DATE: October 1, 2005

DRIVER'S LICENSE APPLICATIONS (§ 20)

Previously, a driver's license applicant had to sign and file the application under oath. The act allows such applications to be made subject to the statutory penalties for false statement in the second degree in lieu of being made under oath. False statement in the second degree is a class A misdemeanor (see Table on Penalties).
EFFECTIVE DATE: October 1, 2005

DISQUALIFICATION FROM DRIVING A COMMERCIAL MOTOR VEHICLE (§ 21)

Previously, someone holding a commercial driver's license was disqualified from driving a commercial motor vehicle for one year if the DMV commissioner found that, while operating any motor vehicle, he refused to submit to a chemical test of his blood-alcohol content (BAC) or, as a result of such a test, was found to have a BAC of .04% or more. While it retains the .04% BAC disqualification threshold if driving a commercial vehicle, the act requires, instead, that a BAC test result be .08% or more, if the person was driving a motor vehicle other than a commercial motor vehicle. It thus eliminates a situation where the person might not be charged with any violation of law since the per se limit for driving under the influence of alcohol is .08%, but would still be disqualified from driving a commercial motor vehicle for one year.
EFFECTIVE DATE: October 1, 2005

LOCAL APPROVAL OF LOCATION OF A LICENSED MOTOR VEHICLE DEALER OR REPAIRER (§ 22)

Previously, someone who applied for a motor vehicle dealer or repairer license had to present DMV with a certificate of location approval from the appropriate local authority designated by local charter, regulation, or ordinance, except that in any municipality with a zoning commission, combined planning and zoning commission, and zoning board of appeals, the certificate had to come from the board of appeals. In addition, the certificate had to be approved by the local chief of police, if any, or the commander of the state police barracks nearest the proposed location if none.

The act eliminates the requirement for police approval of a location certificate and, when the municipality has a zoning commission, combined planning and zoning commission, and zoning board of appeals, it requires the location approval certificate to be issued by the zoning commission instead of the board of appeals.
EFFECTIVE DATE: October 1, 2005

DMV REVIEW OF WRECKER RATES (§ 23)

By law, the DMV commissioner must establish a schedule of reasonable rates and charges wrecker operators may charge for nonconsensual vehicle towing and storage. Previously, the commissioner could amend these schedules "from time to time." The act, instead, requires the commissioner to reconsider the established rates and charges when petitioned by a licensed wrecker operator, but not more than once every two years. It permits the commissioner to amend the rates and charges if he determines, after considering the various factors the law specifies, that the rates and charges are no longer just and reasonable. These factors include rates set by other jurisdictions, charges for towing pursuant to a contract with a DMV-licensed automobile club or association, and rates published in standard service manuals.

By law, only licensed motor vehicle dealers and repairers may engage in the business of towing motor vehicles for compensation.
EFFECTIVE DATE: Upon passage

TRUCKS EQUIPPED WITH ENGINE COMPRESSION BRAKE DEVICES (§ 24)

The act requires any truck equipped with an engine compression brake device (commonly known as "Jake brakes") to be equipped with a muffler for the device that is in good working condition. Violations of this requirement are punishable by a fine of up to $500, in addition to any penalty that may apply for violating the maximum motor vehicle noise limits of existing law. The act authorizes the motor vehicle commissioner to adopt implementing regulations.
EFFECTIVE DATE: October 1, 2005

VIDEO DISPLAYS IN MOTOR VEHICLES (§ 25)

Prior law prohibited any television screen or similar device that is visible to the driver of a motor vehicle, except a video display unit used for instrumentation purposes or a closed video monitor for backing, provided the monitor screen is disabled when the vehicle's transmission is shifted out of reverse. The act, instead, allows these rear-view monitors to remain active for up to 15 seconds after the vehicle is shifted out of reverse.
EFFECTIVE DATE: October 1, 2005

TOWED VEHICLES (§ 27)

Previously, when a private property owner or lessee, or his agent, had a motor vehicle left on his property without authorization removed, the vehicle had to be released by the tower to its owner, or the owner's

agent, if certain conditions were met, one of which could be a signed declaratory statement that the vehicle was removed illegally. The act, instead, prohibits the tower from requiring from the owner any such general release from liability for any claim that the vehicle was towed without justification as a condition of releasing of the vehicle.
EFFECTIVE DATE: October 1, 2005

MOTOR VEHICLE IGNITION INTERLOCK DEVICES (§§ 28 & 29)

Previously, someone convicted for driving under the influence of alcohol, drugs, or both (DWI) was subject to, among other things, a three-year driver's license suspension. However, if someone qualified and had served at least one year of the suspension, the DMV commissioner had to allow them, in lieu of the remainder of the suspension, to drive vehicles that have been equipped with approved ignition interlock devices. This applied to all motor vehicles the person owns or operates. The act limits the ignition interlock requirements only to passenger motor vehicles. This change was subsequently rescinded by a later 2005 act.

Previously, if the commissioner determined that someone whose license was suspended for DWI might have a condition that would make him incapable of safely driving a motor vehicle, he could require the person to operate only an ignition interlock vehicle for any period he determined as a condition for license reinstatement. The act eliminates this authority.

The act also eliminates a law making someone who has not enrolled in the statutorily required substance abuse treatment program for DWI offenders ineligible for operation of ignition interlock equipped vehicles in lieu of two years of the three-year license suspension. This provision had no current application since the ignition interlock requirements apply to second DWI offenders and the substance abuse treatment program requirement is applied to first offenders. DWI offenders are not required to participate in the treatment program more than once and if they fail to satisfy the requirements after their first offense, their license is not reinstated.

Ignition interlock devices are special equipment that requires a driver to provide a breath sample before the vehicle can be started. If the sample yields a BAC above a threshold level, which in Connecticut has been set by statute at .025%, the vehicle cannot be started. The ignition interlock system also requires the driver to provide breath samples periodically while the vehicle is in use in order for it to remain running.
EFFECTIVE DATE: October 1, 2005

VIOLATING POSTED BRIDGE HEIGHT AND WEIGHT RESTRICTIONS (§ 30)

The act prohibits someone from driving or moving a motor vehicle over, on, through, or under any bridge or structure on a highway if the height of the vehicle or its load exceeds the vertical clearance or load limit shown by an official traffic control device (i.e., a traffic regulatory sign). Violations are designated as infractions (see Table on Penalties).
EFFECTIVE DATE: October 1, 2005

ELIMINATION OF DEALER AND TEMPORARY REGISTRATION FOR SNOWMOBILES AND ALL-TERRAIN VEHICLES (§§ 31-34, 45)

The act eliminates requirements that the DMV commissioner issue snowmobile and all-terrain vehicle dealers (1) general distinguishing number plates, (i.e., dealer plates) for demonstration or sale purposes and (2) 10-day temporary registration plates that the dealer may attach when a snowmobile or all-terrain vehicle is sold at retail.
EFFECTIVE DATE: July 1, 2005

USE OF DMV ON-LINE REGISTRATION SYSTEM (§ 35)

The act authorizes any motor vehicle dealer, including those doing business in other states, rather than only dealers licensed by DMV under Connecticut law, to electronically file an application for a vehicle registration and certificate of title on behalf of a purchaser to whom they are selling a vehicle, provided the dealer complies with DMV procedures for use of its on-line registration system.
EFFECTIVE DATE: October 1, 2005

MOTOR VEHICLE LEASING COMPANIES (§ 36)

The act allows motor vehicle leasing and rental businesses (entities that rent or lease vehicles without drivers for periods of 30 days or less) to require any customer who wants to rent for cash to apply for approval up to three business days before the expected rental.
EFFECTIVE DATE: July 1, 2005

REQUIREMENTS FOR VEHICLES TO STOP AT RAILROAD GRADE CROSSINGS (§§ 38 & 39)

The act requires all drivers to stop at a rail-highway grade crossing when warned of an approaching train by a law enforcement officer or flashing lights. Previously, the driver had to stop only when flashing lights are

active. It also reduces the penalty for violations from a $150 fine to an infraction (see Table on Penalties).

The act makes several changes to the requirements for commercial motor vehicles crossing rail-highway at-grade crossings, most of which are to comply with federal requirements for commercial vehicles. It requires a commercial motor vehicle driver to refrain from going over the grade crossing, whether or not flashing lights are erected or operable at the crossing, unless all the tracks are clear. It also requires the driver to approach a grade crossing at a speed that will enable him to stop as the law requires.

Finally, the act prohibits the driver from trying to cross the grade crossing if his vehicle does not have sufficient space to drive completely across and clear of the tracks without stopping.

The act makes violations of the new requirements for commercial vehicle drivers infractions and reduces the penalty to an infraction for one existing prohibition: attempting to cross a grade crossing when, due to its insufficient undercarriage clearance, the vehicle cannot be driven completely through the crossing without shifting gears. Previously, the fine for such violations was $150 to $250.

The act also makes several technical changes to the grade crossing laws.
EFFECTIVE DATE: July 1, 2005

SECONDARY SCHOOL DRIVER EDUCATION COURSES (§ 40)

The act increases the number of behind-the-wheel instruction hours that secondary school driver education courses may contain from eight to 20. The change conforms the driver education program law to the increase in the mandatory number of on-the-road, behind-the-wheel hours of training 16- and 17-year olds must complete before they qualify for a driver's license that was previously enacted in PA 05-54.
EFFECTIVE DATE: July 1, 2005

MOTOR CROSS RACING FACILITIES (§ 41)

The act exempts motor cross racing facilities from the requirement to have a posted restricted area in which only those with appropriate credentials may be admitted. Previously, all facilities where motor vehicle racing events were conducted had to have such a restricted area that included, at least, the pit area and pit lane, media area, and any other area that was unprotected from participating vehicles.
EFFECTIVE DATE: July 1, 2005

REDEFINITION OF ANTIQUE, RARE OR SPECIAL INTEREST AND MODIFIED ANTIQUE VEHICLES (§§ 42-44)

Previously, an antique, rare, or special interest motor vehicle was one that was at least 25 years old and being preserved because of historic interest without being altered or modified from the original manufacturer's specifications. A modified antique motor vehicle was one that was at least 25 years old and which has been modified for safe road use with respect to its drive train, brakes, suspension, safety or comfort apparatus, or other equipment. The act lowers the age threshold for qualifying for these classifications from 25 to 20 years and makes a conforming technical change to the motor vehicle emissions inspection law so it continues to require these vehicles be at least 25 years old before they are exempt from emissions inspections.
EFFECTIVE DATE: July 1, 2005

BACKGROUND

Related Act on Use of Ignition Interlock-equipped Motor Vehicles

PA 05-3, June Special Session (§§ 111 & 112) reverses the change to motor vehicle ignition interlock device requirements made by this act that limits application of the ignition interlock requirements only to passenger vehicles. It restores the prior law's application to all motor vehicles a person subject to the requirements owns or operates.

PA 05-242—sHB 5165
Transportation Committee
Judiciary Committee
Finance, Revenue and Bonding Committee

AN ACT RESTRICTING TRAFFIC SIGNAL PREEMPTION DEVICES

SUMMARY: This act prohibits, with exceptions, anyone from using a traffic signal preemption device. A traffic signal preemption device is a device capable of changing a traffic control signal or altering the timing or phasing of the signal. Someone is exempt from the prohibition who, in furtherance of his duties, is (1) installing or maintaining a traffic control signal, or (2) operating (a) railroad equipment or a movable bridge; (b) a transit vehicle on behalf of the Department of Transportation; (c) a vehicle owned by the federal, state, or a municipal government or a fire district responding to an emergency; or (d) an ambulance responding to an emergency.

The act prohibits an unauthorized person from possessing a traffic signal preemption device and prohibits the device, with exceptions, from being in or part of a motor vehicle. It also prohibits someone from selling or transferring a preemption device except in certain circumstances.

The act establishes a criminal penalty for illegal use of a traffic signal preemption device and an enhanced penalty if the violation results in a traffic accident.
EFFECTIVE DATE: July 1, 2005

POSSESSION, SALE, OR PRESENCE OF A DEVICE IN A MOTOR VEHICLE

No one may possess a signal preemption device unless he is a manufacturer specializing in making them, a vendor authorized by such a manufacturer, or a repairer of such devices.

No one may sell or transfer possession of a preemption device unless he is a manufacturer, a manufacturer-authorized vendor, or a repairer and the sale or transfer is to the federal, state, or a municipal government, a fire district, an ambulance operator, or an authorized vendor or repairer.

A signal preemption device may not be in or part of a motor vehicle unless it is (1) owned or controlled by the federal, state, or a municipal government or fire district; (2) an ambulance; or (3) used in the course of manufacturing, installing, or maintaining the device.

PENALTIES

Anyone who violates the prohibitions on using, possessing, equipping a vehicle with, or selling or transferring possession of a signal preemption device can be fined up to $5,000, or imprisoned for up to 90 days, or both. However, if use of the device results in a traffic accident, the violator can be fined up to $15,000, imprisoned for up to five years, or both.

PA 05-282—sSB 1102
Transportation Committee
Finance, Revenue and Bonding Committee
Insurance and Real Estate Committee

AN ACT CONCERNING ENFORCEMENT OF MANDATORY INSURANCE REQUIREMENTS FOR MOTOR VEHICLES

SUMMARY: This act replaces the statutorily required registration cancellation mechanism the Department of Motor Vehicles (DMV) uses for vehicles operating without required insurance coverage with DMV's standard registration suspension process. It also increases, from $100 to $200, the civil penalty a vehicle owner must pay when he enters a consent agreement with DMV for reinstatement of registration after DMV imposes the registration sanction and the owner provides satisfactory evidence of mandatory security.
EFFECTIVE DATE: October 1, 2005

REGISTRATION SANCTION FOR FAILURE TO MAINTAIN INSURANCE COVERAGE

By law, private passenger motor vehicles and vehicles with commercial registrations cannot be operated in Connecticut unless the vehicle owner has insurance meeting minimum statutory requirements. Periodically, vehicle insurers must provide DMV with data identifying vehicles for which they have cancelled coverage. This data is compared to active vehicle registrations to determine vehicles potentially operating without the required insurance.

When DMV finds that a vehicle owner failed to maintain required insurance coverage throughout the vehicle's registration period, prior law prescribed a specific process it had to follow to cancel the vehicle's registration. This process was different and distinct from the process DMV uses to suspend vehicle registrations for other reasons. The act replaces the registration cancellation procedure with DMV's suspension process.

Previous Cancellation Process

Under the previous cancellation sanction for uninsured vehicles, DMV sent a notice of registration cancellation to the vehicle owner notifying him that (1) after the cancellation was final and effective the vehicle was subject to seizure, impoundment, and potential forfeiture if seen operating on a public highway or in a public parking area and (2) he could return the marker plates and registration to avoid impoundment and suspension of his driver's license. The registration cancellation was final and effective 14 days after the notice was mailed.

If the owner contended that coverage had been maintained throughout the registration period, he could contact DMV at least two days before the effective date of the cancellation to request an administrative hearing. The cancellation was stayed upon such request pending the final decision. The hearing had to be scheduled promptly but was limited to determining if the person was the registered owner of the vehicle in question and if he failed to maintain coverage throughout the registration period. The cancellation was upheld unless the commissioner or designated hearing officer found either assertion was not true. The commissioner's final decision had to be mailed to the owner no more than 30 days from conclusion of the hearing, and cancellation, if

upheld, became effective three days after the mailing date.

If, before the cancellation became final, the owner did not contest the determination that he had failed to maintain insurance and provided DMV with satisfactory evidence that he currently had insurance coverage, he could enter into a consent agreement with DMV and pay a $100 fee. Entrance into a consent agreement resulted in a termination of the cancellation order or rescission of a cancellation previously imposed unless the commissioner determined that the owner failed to maintain insurance or could not satisfy the commissioner that he had maintained it continuously after the effective date of the agreement.

The owner of the vehicle with a cancelled registration was not eligible to get a new registration for it, or a new or renewal registration for any other motor vehicle in his name, until he appeared personally at DMV and (1) completed a registration application; (2) furnished proof of insurance; and (3) paid a $250 restoration fee for the first 31 days, or any part thereof, that the registration was cancelled and $5 for each additional day up to 90 days ($545). This fee was in addition to any other fees required to obtain a new registration. The commissioner could reduce the restoration fee to $100 if he found that the vehicle was not operated during the cancellation period and during the period the owner failed to maintain the insurance.

New Registration Suspension Process

The act eliminates this process and replaces it with registration suspension according to DMV's established process. But it keeps (1) the driver's license suspension as a potential sanction, imposing it if the vehicle owner has not entered into a consent agreement with DMV, cancelled the vehicle's registration, or transferred ownership of the vehicle within 30 days after the date of the registration suspension and (2) the consent agreement process.

In addition, the act maintains (1) the existing authority for police to seize and impound a vehicle observed operating with a suspended registration, (2) payment of a $50 confiscation fee, and (3) the requirement that a vehicle impounded for more than 45 days is subject to forfeiture to the state.

The act increases the penalty the vehicle owner must pay from $100 to $200 if he enters a consent agreement with DMV.

The act requires cancellation notices insurers may send to their policyholders to reflect the changed requirements the act imposes.

PA 05-21—HB 6629
Select Committee on Veterans' Affairs
Public Safety and Security Committee

AN ACT CONCERNING MOBILIZATION SERVICE AWARDS FOR MEMBERS OF THE CONNECTICUT NATIONAL GUARD

SUMMARY: This act allows the adjutant general of the Connecticut National Guard to issue service ribbons to members of the organized militia, instead of just guard members; changes the eligibility criteria for guard member ribbons; and establishes the same criteria for awards to militia members. The organized militia consists of the governor's guards, the state guard, and other military forces the governor designates.

The act also requires the adjutant general to issue a bronze star instead of "succeeding awards," and it requires a silver star to be worn instead of five bronze stars (although it does not specifically authorize the award of silver stars).
EFFECTIVE DATE: Upon passage

SERVICE AWARDS

Under prior law, the adjutant general issued service ribbons to guard members called to active service in the U.S. Armed Forces under Title 10 of federal law in support of Operation Desert Shield or Operation Desert Storm, irrespective of how long they served. The act allows him to issue ribbons to organized militia members as well. It (1) adds state active service and federal Title 32 active service to qualifying service; (2) allows awards for active service in support of any wartime military operation commencing after September 11, 2001, instead of just Operation Desert Shield or Operation Desert Storm; and (3) sets a minimum 30-consecutive day active-service requirement as a criterion for awards.

BACKGROUND

Active-Service Calls

Guard members may be called to active service under Title 10 (Armed Forces) and Title 32 (National Guard) of federal law and under Title 27 (Armed Forces and Veterans) of state law. Members of the organized militia may be called to active service under Title 27 of state law.

PA 05-49—sSB 585
Select Committee on Veterans' Affairs
Government Administration and Elections Committee

AN ACT DESIGNATING THE F4U CORSAIR AS THE STATE AIRCRAFT

SUMMARY: This act designates the F4U Corsair as the state aircraft. It requires the governor to proclaim May 29 of each year as Corsair Day to commemorate the first flight of the F4U Corsair and to honor Connecticut workers at United Aircraft, Pratt and Whitney, Hamilton Standard, and the Vought-Sikorsky companies for producing this aircraft—the only major combat aircraft of World War II produced by a single state. It requires that suitable exercises be held in the State Capitol and other places the governor designates to commemorate the day.
EFFECTIVE DATE: Upon passage

PA 05-51—SB 1008
Select Committee on Veterans' Affairs
Finance, Revenue and Bonding Committee

AN ACT CONSOLIDATING THE FITCH FUND AND THE POSTHUMOUS FUND FOR THE BENEFIT OF THE VETERANS' HOME

SUMMARY: Effective July 1, 2005, this act requires the state treasurer to consolidate the Fitch Fund and the Posthumous Fund of Fitch's Home for the Soldiers and names the consolidated fund the Fitch Fund. According to the state auditor, the Fitch Fund, which is not referred to in the statute, is, like the posthumous fund, a permanent fund in the state treasurer's custody.

As was the case with the former funds, the treasurer must hold the consolidated fund in trust and credit its income to the Veterans' Affairs Department. The department must use the income for the welfare and entertainment of residents of the Veterans' Home or other homes the state establishes to care for veterans, and to pay any lawful claims against the fund.
EFFECTIVE DATE: July 1, 2005

PA 05-79—sSB 1010
Select Committee on Veterans' Affairs
Judiciary Committee
Appropriations Committee

AN ACT CONCERNING THE INDEMNIFICATION OF MEMBERS OF THE ARMED FORCES OF THE STATE

SUMMARY: This act immunizes members of the state armed forces from personal liability for damage or injury caused when performing any state active-duty military service, as long as their actions are not wanton, reckless, or malicious. By law, they are already immune from civil and criminal liability if, when on riot duty service, they kill or injure anyone resisting the law or unlawfully or riotously assembled.
EFFECTIVE DATE: Upon passage

PERSONAL LIABILITY

By law, state officers or employees are not personally liable for damages or injury caused in the discharge of their duties or within the scope of their employment, unless their actions are wanton, reckless or malicious. The act extends this state protection to the state armed forces by including in the definition of "scope of employment" military duty performed by the armed forces of the state while in state active-duty service.

BACKGROUND

State Armed Forces

The state armed forces consist of the National Guard, the Governor's Guards, the State Guard, and other military forces the governor designates (CGS § 27-2). (They also include the Naval Militia and Marine Corps branch of the naval militia, but the state does not have a naval militia.)

PA 05-1, June 2005 Special Session—HB 7501
Emergency Certification

AN ACT CONCERNING ENERGY INDEPENDENCE

SUMMARY: This act establishes several initiatives to reduce costs associated with congestion on the electric transmission system. It creates incentives for customers for installing "distributed resources" on their premises. These resources include small- and medium-size generating facilities and conservation and load management measures. The incentives include capital- and operating-cost subsidies and the provision of long-term financing. The act also provides awards to electric companies for their efforts in connection with the installation of these resources.

The act requires the Department of Public Utility Control (DPUC) to identify near-term measures that could reduce the transmission congestion costs and order the electric companies to begin implementing the steps DPUC considers appropriate by January 1, 2006.

The act requires DPUC to issue a request for proposals to identify measures that would reduce congestion costs over the 2006 to 2010 period. Proposals can be submitted for distributed resources, larger generating plants, and contractual rights to the generating capacity of power plants. Electric companies can submit proposals but, if selected, the companies (1) can build only 250 megawatts of generation capacity statewide, (2) can only recover the costs they submitted in their bids, and (3) must sell off the plants or auction the power they produce within five years of the plants going into service, unless DPUC waives this requirement. Proposals submitted by entities other than electric companies that are selected by DPUC are eligible to enter into long-term contracts with the companies, with DPUC approval. Distributed resources projects are eligible for the incentives described above, other than the capital-cost subsidy. The act also entitles electric companies to an award for generation proposals submitted by other entities that are selected by DPUC.

The act specifies that its provisions apply to distributed resources developed in Connecticut that add capacity on or after January 1, 2006 and in accordance with its provisions.

The act facilitates the siting of the generation projects approved or ordered by DPUC and makes other changes in the Siting Council law.

The act requires that the groups that recommend how the electric conservation and Clean Energy funds are used give preference to funding projects that maximize the reduction in these congestion costs. It also requires these groups to evaluate the effectiveness of the funds' programs every five years, starting December 31, 2006. It modifies how the conservation funds are spent. It provides incentives for the electric companies to develop new conservation programs.

The act requires the electric companies and competitive suppliers to acquire 1% of their supply from distributed resources starting in 2007. This requirement increases to 4% by 2010.

Under the act, the companies must implement, with DPUC approval, (1) mandatory daily time-of-use rates for large commercial and industrial customers and voluntary time-of-use rates for other customers starting June 1, 2006 and (2) mandatory seasonal rates for all customers starting June 1, 2007.

The act entitles electric companies to recover the costs they prudently incur under the act. The recovery can be through the congestion charge, rate basing, or the energy adjustment clause. If the company's rate of return is below its authorized rate of return for six consecutive months, it is also eligible to offset lost earnings. In any case, it is eligible to earn an incentive on its costs in implementing the act. DPUC must hold a contested case to determine the appropriate recovery mechanisms.

The act requires DPUC to conduct a study on establishing a procurement fee for the default services electric companies must provide starting in 2007 and take various other steps. It allows DPUC to adopt regulations establishing the terms and conditions under which companies subject to its jurisdiction and municipal utilities may terminate service for reasons other than nonpayment of a delinquent account.

In addition, the act:

1. makes several changes to the requirements that electric companies enter into long-term contracts with renewable energy generators;
2. delays when electric companies can use non-New England sources to meet their requirements under the renewable portfolio standard;
3. sets a floor on municipal electric utility expenditures on renewable energy sources and conservation and load-management programs, phased in over five years;
4. reduces, from 500 to 100 kilowatts as of January 1, 2006, the demand a customer must have to be directly billed by a competitive supplier rather than an electric company and eliminates a provision that allows direct billing of customers whose demand does not reach the threshold but who use a demand meter;
5. establishes a process for the development and review of natural gas conservation programs;
6. increases, from $5,000 to $10,000 per violation, the maximum civil penalty for telecommunications companies, their affiliates, and representatives that the DPUC determines have violated telemarketing laws and laws

governing switching service and billing for telecommunication service;

7. exempts bonding by municipalities for cable TV systems from statutory bond limits;
8. requires that cable TV advisory councils report to the DPUC on the funding or services they receive from cable TV companies by January 31, rather than January 1, each year;
9. generally requires that utility dispositions of property be done by public auction or other public sale procedure;
10. modifies who can file a claim for a property tax exemption for air or water pollution-control equipment and structures and establishes procedures for continuing the exemption, under certain conditions, when the ownership of the equipment or structure changes;
11. increases DPUC's FY 06 appropriation for personal services from $10,754,193 to $10,940,000, and its FY 07 appropriation from $11,106,405 to $11,397,000; and
12. repeals obsolete provisions regarding electric companies.

EFFECTIVE DATE: Upon passage, except (1) the supplier billing, gas conservation, municipal bonding cap, and utility property disposition provisions, the requirement that DPUC investigate whether it is feasible to inform new electric customers about competitive suppliers, the requirement that the Siting Council consider other state and municipal laws in issuing declaratory rulings, the change in the way that the costs of the long-term contracts are recovered, and the appropriations increase are effective July 1, 2005; (2) the other changes with regard to these long-term contracts, the termination of service regulations, the increase in the DPUC civil penalty, the requirements regarding the information that electric companies and suppliers provide to DPUC, and the repeal of obsolete provisions are effective October 1, 2005; and (3) the renewable portfolio standard provision is effective July 1, 2006.

INITIATIVES TO REDUCE CONGESTION CHARGES

Definitions

The act renames "distributed generation" as "customer side distributed resources" and expands the definition to include conservation and load management, including peak-reducing and demand-response systems. It specifies that generation covered by this definition must have a capacity of no more than 65 megawatts. It defines "grid side distributed resources" as generating units, including those primarily used to meet peak demand, of up to 65 megawatts capacity that are connected to the transmission or distribution grid.

The act expands the definition of "federally-mandated congestion costs" (FMCC) to include Locational Installed Capacity payments made by utilities to electric generators and the costs of measures approved by DPUC that reduce FMCCs. It refers to FMCC as a charge, rather than a cost.

Incentives for Distributed Resources on Customers' Premises

Capital Subsidy. The act requires DPUC to establish, by January 1, 2006 a program to provide one-time capital subsidies to customers who install customer side distributed generation. The subsidy ranges from $200 to $500 per kilowatt (kw) of generating capacity. A subsidy can be granted only if the project reduces FMCCs more than the award, and no person can receive more than one award. The size of the award depends on the reduction of FMCCs. By October 1, 2005, DPUC must conduct a contested case (a quasi-judicial proceeding) to establish additional standards for the amount of the subsidies and criteria and procedures for awarding subsidies and their size.

The act also requires DPUC to establish, by January 1, 2006, a program to provide awards to the electric companies to educate, assist, and promote investments in these resources. The one-time award is paid when the resource becomes operational, under the following schedule, $200 per kw for resources developed by January 1, 2008, $150 per kw for resources developed by January 1, 2009, $100 per kw for resources developed by January 1, 2010, and $50 per kw for resources developed thereafter.

Both the customer and electric company subsidies are funded from the FMCC charge on electric bills. The company's revenues from its award do not count in DPUC's determination of whether the company's rates are just and reasonable.

Operating Subsidies. The act requires electric companies, by January 1, 2006, to institute programs to rebate their customers with natural gas customer-side distributed-resources projects for the customer's gas delivery charges from their local gas company. The costs are recoverable by the electric company through the FMCC charge. DPUC can adopt implementing regulations.

The act exempts new customer-side distributed resources from backup charges if the resource's capacity is less than peak load and the resources are available to the system during peak periods. The costs of this measure are recoverable through the FMCC charge. The customer has to pay other applicable charges.

Long-Term Financing. The act requires DPUC to select, by competitive bid, one or more entities other than electric companies to provide long-term financing for the capital and other costs of customer-side distributed resources and advanced power monitoring and metering equipment. DPUC must implement a mechanism that reduces the interest rate for people receiving this financing to no more than the prime rate. DPUC can retain a consultant to help it select these entities, which it must do by January 1, 2006.

Each selected entity must give preference to financing projects that maximize reductions in FMCCs. After receiving DPUC approval, the entity must enter into an agreement with an electric company to provide billing services on the entity's behalf. The company can recover its costs, including the cost of the interest rate reduction, from the FMCC charge.

Near-Term Utility Measures to Reduce FMCCs

The act requires DPUC to identify measures that could reduce FMCCs and that could be implemented, at least partially, by January 1, 2006. These measures can include (1) demand-response programs (programs designed to change when electricity is consumed in order to reduce demands on the electric system); (2) other distributed resources (such as conservation programs and small power plants); and (3) contracts between an electric company and power plant owners for rights to the capacity of the plant.

DPUC must complete the identification by November 1, 2005 and order the companies to begin implementing the measures that it considers appropriate by January 1, 2006. A company's cost in implementing these measures is recovered through the FMCC charge.

Request for Proposals (RFP)

Development. DPUC must develop, through a contested case completed by January 1, 2006, principles and standards for the RFP described below. Before it issues the RFP, DPUC must conduct a contested case to investigate the possible impact of long-term capacity contracts (one of the types of resources that can bid in the RFP) on the financial condition of the electric companies that would buy the capacity rights. If DPUC determines that there are such impacts, it must establish a method, before issuing the RFP, for compensating the companies for them. If DPUC subsequently determines that the contracts increase a company's costs, DPUC must annually allow it to recover the costs in its rates or in another way that DPUC considers appropriate. DPUC can determine whether or not to consider these potential costs in evaluating or selecting bids in the RFP.

DPUC must conduct the RFP by February 1, 2006. The RFP must seek proposals to reduce FMCCs over the period May 1, 2006 through December 31, 2010 (DPUC can specify a later end date). The proposals can be for customer-side or grid-connected distributed resources; other new generation resources, including expanded and repowered generation; or contracts between a company and another party for up to 15 years to buy generation capacity rights in the area where the company is authorized to operate. The RFP must be designed to encourage responses from various types of resources and encourage diversity in fuel types. DPUC can retain a consultant to develop the RFP and help it pick the winning bids. The cost for the consultant is recoverable through the FMCC charge. DPUC must allocate these costs between the two companies based on their revenue. DPUC must publicize the RFP in several ways.

Submission of Proposals. Electric companies can submit bids, subject to the following provisions:

1. the proposal must include its full projected cost including those borne by ratepayers, and
2. the company must demonstrate to DPUC's satisfaction that its bid is not being subsidized by its affiliates.

Electric company affiliates can also submit proposals, subject to the existing code of conduct that regulates interactions between the companies and their affiliates.

Proposals for generation resources and long-term contracts submitted by entities other than electric companies must include a draft contract for transferring the various capacity rights associated with the proposal, but not the actual energy produced by the plants, to the electric company. The draft contract can run for no more than 15 years and must include provisions that DPUC directs. All proposals must agree to forgo or credit locational-installed capacity payments and similar payments.

Evaluation of Proposals. By May 1, 2006, DPUC must evaluate all of the proposals and may approve one or more of them. In approving the proposals, DPUC must give preference to those that (1) result in the greatest reduction of FMCCs during the designated period, (2) make efficient use of existing sites and supply infrastructure, and (3) serve the long-term interests of ratepayers.

DPUC can approve a total of no more than 250 megawatts of electric-company-owned generation statewide under the initial and any subsequent RFPs. In approving such generation, DPUC must be guided by the company's relative shares of electric load in the state. Electric companies cannot submit proposals under any RFP after February 1, 2011. By January 1, 2010, DPUC must recommend to the Energy and Technology Committee whether this deadline should be extended.

Benefits for Approved Projects. All approved distributed resources projects are eligible for approval from the Siting Council by declaratory ruling under certain circumstances. Approved customer-side distributed-resources projects are eligible for long-term financing and the natural gas and backup power subsidies described above, but not the capital subsidy. Approved proposals from parties other than the electric companies are eligible to enter into long-term capacity-purchase contracts with the companies, with DPUC approval.

If an electric company proposal is selected in the RFP process, the company can own and operate the approved project. But it can recover no more than the full costs identified in its proposal. The revenues from the project do not count in DPUC's determination as to whether the company's rates are just and reasonable. After five years of operation, the company must either sell the plant or auction off the power and capacity associated with it. The auction must be conducted under a plan approved by DPUC; by law, sales of utility assets are subject to DPUC approval. DPUC must waive these requirements, after notice and hearing, if it determines that compliance with them would harm the company's customers. The company is entitled to recover, through the FMCC charge, that part of the project's full projected costs as identified in its bid that it had not previously recovered.

Approval of Long-Term Capacity Contracts. If DPUC approves a bid for a long-term contract, the electric company must negotiate in good faith the final terms of the contract with the bidder and must submit the contract to DPUC for its approval. After 30 days, either party can request DPUC's assistance in resolving any outstanding issues.

DPUC must, in a contested case, approve, reject, or modify a long-term contract. The contract must contain terms to mitigate the long-term risks assumed by ratepayers and cannot have a term exceeding 15 years. For DPUC to approve a contract, it must (1) result in the lowest reasonable costs, (2) increase reliability, and (3) minimize FMCC charges over time. Utilities that enter into such contracts must either sell capacity rights into the market or retain them for services they provide to customers who do not choose competitive suppliers, as determined by DPUC. Contract costs are recovered through the FMCC charge.

Electric Company Award for Generation Projects. Under the act, if DPUC selects a bid from an entity other than an electric company for grid-side distributed resource or new generation facilities, the electric company that serves the area where the project would be located receives an award for investments necessary for improvements to its transmission and distribution system to accommodate the facilities. For facilities that become operational by January 1, 2010, the award is $25 per kilowatt. For those that become operational by January 1, 2011, the award is $15 per kw, and for those that become operational by January 1, 2012, the award is $5 per kw. No award can be granted unless the projected reductions in FMCCs from the project are greater than the amount of the award. The costs of the awards are recovered from the FMCC charge. Revenues from the award do not count in DPUC's determination of whether the company's rates are just and reasonable.

Miscellaneous Provisions. The act exempts all of the DPUC-approved projects from a provision of existing law that requires applications for power plants to go through an RFP process administered by the Connecticut Energy Advisory Board.

Notwithstanding other provisions of law, DPUC may conduct additional RFPs to reduce FMCCs and approve proposals in order to meet its statutory obligations. DPUC can order an electric company to bid in the initial or subsequent RFPs.

The act allows electric companies to own power plants and other generation resources as described above.

SITING PROVISIONS

By law, a Siting Council certificate is needed to build most types of power plants, and one of the factors the council must consider is whether the plant produces a public benefit. The act establishes a rebuttable presumption that there is public benefit in building the projects approved by DPUC in the RFP and projects that DPUC has ordered a company to build.

The act allows the Siting Council to approve by declaratory ruling customer-side and grid-side distributed-resources projects with a capacity of up to 65 megawatts that meets Department of Environmental Protection (DEP) air quality standards.

By law, the Siting Council must approve, by declaratory ruling, a new power plant that is not coal or nuclear fueled and that is built on the site of a plant that was in existence before July 1, 1998. The act extends this provision to sites where plants were operating before July 1, 2004.

The act exempts gas pipelines that have a design capacity of less than 20% of its specified minimum yield strength from the Siting Council's jurisdiction, thereby subjecting them to local planning and zoning regulation.

The act requires the Siting Council to consider other state and municipal laws when issuing declaratory rulings for energy and telecommunications facilities.

ELECTRIC CONSERVATION FUNDS

By law, the electric companies must develop plans for implementing conservation programs. The plans are reviewed by the Energy Conservation Management Board, which completes a cost-effectiveness analysis, and are subject to DPUC approval. A charge on electric bills funds the programs in approved plans.

The act requires that the plans be consistent with the statewide Connecticut Energy Advisory Board plan. It requires that the company plans provide for the Energy Conservation Management Board's expenses for consultants and administrative costs. It specifically allows the company plans to target low-income consumers and establish joint fuel (electricity/natural gas) initiatives.

The act requires the management board to (1) give preference to programs that reduce FMCCs, (2) examine opportunities for joint fuel conservation programs, (3) consult with the Clean Energy Fund Advisory Committee before conducting its review, and (4) count system benefits, including FMCC reductions, in its cost-effectiveness analysis. In order to reduce FMCCs, the act allows for disparities between the amounts customer classes pay into the funds and the extent to which the programs will benefit each class.

The act adds a representative of the Connecticut Municipal Electric Energy Cooperative (CMEEC) and two representatives selected by gas companies to the board. The gas company representatives cannot vote on matters unrelated to gas conservation, and the electric utility members cannot vote on matters unrelated to electric conservation. It establishes a joint committee consisting of members of the board and the Clean Energy Fund Advisory Committee to coordinate programs to reduce long-term costs, environmental risk, and security risks. The joint committee must hold its first meeting by August 1, 2005.

The act eliminates the board's 2006 sunset on the date the board reports to the legislature. It expands the report to cover the board's collaboration with CMEEC and with the Clean Energy Fund. It requires the board, in consultation with the Clean Energy Fund Advisory Committee, to evaluate the conservation funds' performance by December 31, 2006, and every five years thereafter. The board must submit a copy of this evaluation to the Energy and Technology Committee.

UTILITY INCENTIVES FOR NEW CONSERVATION PROGRAMS

The act requires DPUC, by January 1, 2006, to establish a program to grant awards equal to $25 per kilowatt-year to the companies for specified conservation programs approved by DPUC and developed in Connecticut on or after January 1, 2006. The programs are for load curtailment, demand reduction, and retrofit conservation that reduce FMCCs from January 1, 2006 to December 31, 2010. No award can be made unless the projected reduction in FMCC costs exceeds the award amount.

Funding for the awards and the companies' costs in establishing the conservation program comes from the FMCC charge. Revenues from the awards do not count in DPUC's determination of whether a company's rates are just and reasonable. The companies must report to the Energy Conservation Management Board by January 31 annually on its activities under this section. The reporting requirement runs from 2007 to 2011, unless extended by DPUC.

CLEAN ENERGY FUND

Connecticut Innovations, Inc. administers this fund, which invests in various energy technologies. An advisory committee helps develop a plan to spend money in the fund, which comes from a charge on electric bills.

The act expands the types of technologies that the fund can invest in to include thermal storage systems and electricity production from systems that produce power and thermal energy from a single source with waste heat recovery. It requires the plan to (1) give preference to projects that maximize the reduction of FMCCs and (2) be consistent with the Connecticut Energy Advisory Board plan.

The act requires that the annual legislative report prepared by the advisory committee cover collaboration between the Clean Energy Fund and the utility conservation funds. It also requires the committee to evaluate the effectiveness of Clean Energy Fund programs and activities by December 31, 2006 and every five years thereafter and report its findings to the Energy and Technology Committee.

DISTRIBUTED RESOURCES PURCHASING REQUIREMENT

Under the act, electric companies and competitive suppliers must get part of their requirements from Class III resources. These resources are: (1) electricity savings from commercial and industrial facilities in the state under conservation and load-management programs established on or after January 1, 2006 and (2) electricity produced by generating electricity from the waste heat produced by combined heat and power units that (a) are part of customer-side distributed resources located in the state, (b) have an efficiency of at least 50%, and (c) go into operation on or after January 1, 2006.

Starting January 1, 2007, companies must get 1% of their standard service supply from these resources.

(The companies must provide standard service to small and medium size customers who do not choose a competitive supplier.) Suppliers must get 1% of their total output from Class III resources. This requirement increases by 1% in each of the following three years. The resources must meet DEP air standards to be eligible. An electric company can contract with its wholesaler for the wholesaler to meet the standard. DPUC must annually conduct a contested case to determine whether the wholesaler met its responsibility.

If a company, supplier, or wholesaler does not meet the standard, it must pay up to 5.5 cents for each kilowatt-hour of its shortfall. Three quarters of the penalty payment goes to the company's conservation fund and one quarter to the Clean Energy Fund. If the wholesaler is responsible for meeting the standards, the penalty goes first to the electric company, which must immediately transfer it into its conservation fund. Such money does not count as utility revenue or income.

Companies and suppliers can meet the standard by participating in a DPUC-approved credit trading program. DPUC must complete a contested case by February 1, 2006 to specify the program's administrative process and specifications. Among other things, this case must establish (1) the way that qualifying activities are certified, tracked, and reported; (2) how credits are created, accounted for, and transferred; (3) a mechanism to avoid double counting credits; and (4) the feasibility of expanding Class III resources to include conservation from residential customers. DPUC can retain a consultant to help it develop and operate the program.

At least 25% of the credit must go to the person who conserved or generated the electricity. DPUC must establish a schedule by January 1, 2007 for splitting the credit between such persons and the conservation funds, but can give the person a larger share. DPUC must consider the incentives received by such person and the impact of the measure on FMCCs in splitting the credit. The part of the credit going to the funds must be used for demand response/peak reduction programs.

TIME-OF-USE AND SEASONAL RATES

Under the act, the companies must submit time-of-use rate plans to DPUC by October 1, 2005. The plans must provide for (1) optional interruptible/load response for commercial and industrial customers with at least 350 kw of demand and (2) optional time-of-use and seasonal plans for all customers, both to go into effect June 1, 2006. By October 1, 2005, companies must also submit plans to implement mandatory peak, shoulder, and off-peak time-of-use rates for customers with 350 kw of demand to go into effect by January 1, 2007. Time-of-use rates can be provided through a procurement plan, revenue neutral rate adjustments, or both. Finally, the utilities must submit plans by November 1, 2005 to implement mandatory seasonal rates for all customers, going into effect on April 1, 2007.

Utilities must provide customers with comparative billing information regarding mandatory time-of-use and seasonal rates. Utilities must help customers manage loads and reduce peak consumption through their conservation plans.

DPUC must hold a contested case on whether to approve the rates. To be approved (1) rates must reasonably reflect costs, (2) the benefits must justify the costs of implementation and the impact on customers, and (3) the rates must alter consumption patterns without undue adverse effects on customers.

DPUC must hold a contested case to determine standards and the process by which commercial and industrial customers can opt out of mandatory time-of-use rates until July 1, 2010. It must issue its decision by January 1, 2006.

MUNICIPAL ELECTRIC UTILITY CONSERVATION PROGRAMS

The act requires municipal electric utilities to charge at least 1.0 mill per kilowatt-hour sold for conservation and load management programs in 2006, with the charge increasing in four steps to 2.5 mills by January 1, 2011. The charge does not apply to sales to U.S. naval facilities.

The money goes into a special non-lapsing fund held by CMEEC, which must develop an annual conservation plan for member utilities. The plan may direct the expenditures of the fund to any of the areas served by the municipal utilities. It may provide for (1) establishing goals and standards for measuring the cost effectiveness of the fund's expenditures, (2) maximizing the reduction in FMCCs, and (3) achieving appropriate geographic scope and coverage. The plan must be consistent with the comprehensive plan developed by the Energy Conservation Management Board. CMEEC must submit its plan to the board for review.

GAS CONSERVATION PROGRAMS

Under prior law, gas companies had to submit conservation plans to DPUC by October 1 in even-numbered years. The plan had to establish quantitative targets, describe conservation options, and estimate the costs and benefits of these options. DPUC had to hold a hearing on the plan and could require a company to update its plan in odd-numbered years.

The act instead requires gas companies to follow the same procedures as electric companies in developing and evaluating their conservation plans. The act specifies the types of programs that can be included

in the plan, which parallel existing provisions regarding electric conservation plans. The programs in the gas company plan must be screened on the basis of cost effectiveness. The company must submit the plan to the Energy Conservation Management Board for its review. The board must accept, reject, or modify the plan before passing it on to DPUC for final approval in an uncontested proceeding. By January 1 annually, starting in 2007, the board must report to the Energy and Technology Committee on gas company funding of conservation programs, how they spent the money, and the cost effectiveness of the programs. However, the act specifies that it cannot be construed to require DPUC to establish a conservation charge to support these programs.

UTILITY LONG-TERM CONTRACTS WITH RENEWABLE GENERATORS

By law, the electric companies must collectively enter into long-term contracts for 100 megawatts of capacity from renewable generating projects that meet specified characteristics. The act additionally requires that these projects be located in Connecticut. The act delays, from July 1, 2007 to July 1, 2008, the deadline for the utilities to submit their procurement plans to DPUC for its approval.

The act gives project developers an additional option on how the electricity from the selected projects will be priced. By law, the developer is entitled to the wholesale electricity price plus 5.5 cents per kilowatt-hour. The act allows the developer to opt to receive the sum of the following: (1) half of the wholesale electricity price; (2) the projected cost of natural gas used to fuel the project, based on the futures price of contracts measured at the Henry Hub, Louisiana; (3) the charge for delivering the fuel to the project; and (4) 5.5 cents per kilowatt-hour.

Under prior law, the electric companies' costs of entering into these contracts counted towards the cap on the rates they charge for the service they provide to customers who do not choose a competitive supplier. The act instead creates a separate rate adjustment, not subject to the cap, to recover the direct costs of the contracts and the utilities' costs in procuring the contracts. This adjustment will continue under the standard service the utilities' are required to provide starting in 2007. By law, utilities must provide this service to any customer with a demand of less than 500 kw who has not chosen a competitive supplier.

Under prior law, the companies received the renewable energy credits associated with the project. The act provides, that in the case of fuel cell projects that are principally manufactured in the state, the project developer keeps half of these credits, plus all of the air emission reduction and tax credits associated with the project.

DPUC RESPONSIBILITIES

Procurement Fee Study. The act requires DPUC to conduct a study on establishing a procurement fee for the services electric companies must provide starting in 2007 to customers who do not choose competitive suppliers. DPUC must, by October 1, 2005, conduct a study to determine (1) a reasonable amount of compensation for electric companies for providing standard service for small and medium size customers and (2) whether each company should receive compensation for providing last resort service for large customers. In making its determination, DPUC must consider the costs the companies will incur in providing such services, the risks they will sustain, the value to the companies' customers in providing such services, and the amount that a private third-party entity would seek as compensation for procuring contracts for the services. By February 1, 2006, DPUC must report its recommendations to the Energy and Technology Committee.

Information Regarding Electric Suppliers. The act requires DPUC to conduct a proceeding to determine whether there is a practical, cost-effective process for an electric company customer, when beginning service with the company, to receive information on selecting generation services from a qualified entity. DPUC must complete the proceeding by December 1, 2005 and implement its decision by March 1, 2006 or a later date it considers appropriate. The company can recover its costs in participating in the proceeding and implementing DPUC's decision in DPUC-approved generation services cost adjustment.

Assessment of Distributed Resources. The act requires DPUC, by January 1 annually starting in 2007, to assess the number and types of distributed resources (customer- and grid-side); the projects financed under the act; and projects' contribution to fuel diversity, transmission support, and energy independence. By January in odd-numbered years, DPUC must collect the information in the annual assessments and report on the awards program to the Energy and Technology Committee.

Uncoupling Investigation. The act requires DPUC to investigate how best to decouple earnings of gas companies and other utilities from their sales in order to promote the state's energy policy. DPUC must report findings and recommendations to the Energy and Technology Committee by January 1, 2006.

Consumer Education. The act requires DPUC, the Energy Conservation Management Board, and the utilities to establish links on their websites to the federal Energy Star energy efficiency program.

DISCLOSURE REQUIREMENTS FOR ELECTRIC COMPANIES AND SUPPLIERS

The act establishes new information disclosure requirements for electric companies and suppliers, changes the frequency and timing of reports they must make to DPUC, and makes related changes. Among other things, it requires the companies and suppliers to provide information at least annually to customers that DPUC considers relevant. It also allows DPUC to adopt implementing regulations.

RENEWABLE PORTFOLIO STANDARD

By law, electric companies and competitive suppliers must get part of their power from Class I renewable resources, such as wind, and Class II resources, such as trash-to-energy plants. The act delays, until January 1, 2010, when they can get such power from Delaware, Maryland, New Jersey, New York, or Pennsylvania.

DISPOSITION OF UTILITY PROPERTY

The act generally requires that any sale or other disposition of real property that is an essential part of a utility regulated by DPUC be done by public auction or other public sale procedure. (By law, such dispositions require DPUC approval.) The act gives DPUC the authority to allow the utility to use an alternative sale process if it makes a finding of good cause.

The act requires that there be notice of the auction or sale at least once per week in the two weeks before the auction or sale. The notice must run in a newspaper with substantial circulation in the county where the property is located. The utility must give DPUC evidence that it provided the notice.

TAX EXEMPTIONS FOR POLLUTION-CONTROL EQUIPMENT

By law, structures and equipment acquired for the purpose of air or water pollution control are exempt from the property tax. The act specifies, in the case of water pollution equipment and structures, the exemption applies to acquisitions by lease and purchase, as is already the law with regard to air pollution-control equipment and structures. The act specifies that an owner or lessee of the air or water pollution-control equipment or structure who wishes to claim the exemption, rather than any person who claims the exemption, may file the DEP certificate needed to obtain the exemption. It allows the assessor to specify the form and manner the application is made.

The act requires that, if there is a new owner or lessee of the structure or equipment, it must file a revised application with the assessor by the November 1st immediately following the end of the assessment year during which such change occurs. However, in the 2005 assessment year, a revised application may be filed when there has been a change in ownership during any assessment year and the exemption continued to be granted for each assessment year following such change. If the structures and equipment have not been altered in any manner, the new owner or lessee is entitled to a continuation of the exemption and does not have to obtain or provide a DEP certificate.

PA 05-2, June 2005 Special Session—SB 2004
Emergency Certification

AN ACT CONCERNING THE NO CHILD LEFT BEHIND ACT

SUMMARY: This act gives the Attorney General the authority to bring, in a court of competent jurisdiction, a lawsuit on behalf of the legislature and the state against the federal government to enforce provisions of the federal No Child Left Behind Act (NCLB).
EFFECTIVE DATE: July 1, 2005

BACKGROUND

No Child Left Behind Act

To measure student performance, NCLB requires states to administer math and reading assessments to students at least once in grades 3 through 5, 6 through 9, and 10 through 12. It requires annual reading and mathematics testing of all students in grades 3 through 8 beginning in the 2005-06 school year. The act also requires states to test students in science beginning in 2007-08.

The act provides that it cannot be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school's curriculum, program of instruction, or allocation of State or local resources, or mandate a State or any subdivision thereof to spend any funds or incur any costs not paid for under Act.

PA 05-3, June 2005 Special Session—HB 7502
Emergency Certification

AN ACT CONCERNING THE IMPLEMENTATION OF VARIOUS BUDGETARY PROVISIONS

SUMMARY: This act makes a wide variety of changes in state law necessary to implement the FY 2006-07 state budget (PA 05-251). It includes a number of transfers, carry-forwards, and other budget provisions.

The act includes:

1. numerous military service and veterans provisions including the creation of a state death benefit for military service,
2. provisions establishing a Commission on Child Protection and a chief child protection attorney,
3. revisions to the underground storage tank program,
4. estate tax provisions,
5. revisions to the license requirements for companies doing business with the Connecticut Lottery Corporation, and
6. revisions to PA 05-183, which abolished the State Ethics Commission and established the Office of State Ethics.

It makes revisions, corrections, and changes effective dates of a number of acts passed earlier in 2005. It also makes numerous miscellaneous changes.
EFFECTIVE DATE: Various, see below.

FEDERAL BLOCK GRANT APPROVAL PROCESS (§ 1)

The act eliminates a requirement that the Appropriations Committee and the committee of cognizance hold a public hearing on the governor's recommended allocations for federal block grants. Prior law required the hearing to be held within 15 days after the committees' received the recommendations from the House speaker and Senate president pro tempore. The act retains the requirement for the committees to submit their approval or changes within 30 days of receiving the governor's recommendations.
EFFECTIVE DATE: Upon passage

DEFICIENCY APPROPRIATIONS CARRY FORWARD, ENERGY CONTINGENCY APPROPRIATIONS TRANSFER, DEPARTMENT OF PUBLIC SAFETY TRANSFER (§ 2)

The act carries forward into FY 06 the FY 05 deficiency appropriations of $88.1 million made in the budget (PA 05-251). It permits the Office of Policy and Management (OPM) secretary to transfer the FY 05 energy contingency appropriation of $8 million to other agencies for energy costs and provides that up to $1.125 million transferred to the Department of Public Safety in accordance with the energy contingency appropriation must be for personal services.
EFFECTIVE DATE: Upon passage

CHILDREN'S HOSPICE PILOT PROGRAM (§ 3)

The act extends, from September 20, 2005 to September 20, 2007, Sunshine House, Inc.'s pilot program to create a comfort center for children with a limited life expectancy and their families.
EFFECTIVE DATE: Upon passage

LEGALIZED GAMBLING STUDIES (§ 4)

The act eliminates the 2007 deadline by which the Division of Special Revenue (DSR) must conduct its next required legalized gambling study and instead bars DSR from conducting the study before FY 09. By eliminating the deadline, the act potentially postpones the study indefinitely.

By law, DSR must conduct studies of legalized gambling's impact on the state as often it deems necessary, but not less than once every 10 years. The last study was conducted in June 1997; thus, the next study is due by June 2007. The act bars DSR from conducting a study before FY 09, but it does not set a deadline for conducting one. Thus, DSR may conduct the next study in FY 09 or anytime after, and then it must, as is required under existing law, conduct succeeding studies at least once every 10 years.
EFFECTIVE DATE: July 1, 2005

TAX CONFIDENTIALITY EXEMPTION EFFECTIVE DATE (§ 5)

PA 05-251 exempts tax returns and return information that the Department of Revenue Services (DRS) provides to the Business Tax Credit and Tax Policy Review Committee from statutory confidentiality requirements to allow the committee to evaluate corporation tax credits and policies. This act changes the effective date of that exemption to July 1, 2005 from upon passage and applicable to tax years starting on or after January 1, 2005. (See Section 36 below for an additional amendment to this provision.)
EFFECTIVE DATE: Upon passage

JUDGE TRIAL REFEREES PER DIEM (§ 6)

The act increases the $211 per diem fee paid to judge trial referees to (1) $215 beginning January 1, 2006 and (2) $220 beginning January 1, 2007.
EFFECTIVE DATE: January 1, 2006

CONSERVATION FUND AND CONSERVATION ACCOUNT (§ 7)

Starting July 1, 2005, the act requires the Department of Environmental Protection (DEP) to deposit into the Conservation Fund and credit to the conservation account within it, all fees it collects for parking, admission, boat launching, camping, and other recreational uses of state parks, forests, boat launches, and other state facilities.

By law, DEP must deposit into the fund certain amounts it receives from state park and forest and fish and game fees. Under existing law, DEP must deposit into the fund and credit to the account: (1) fees created, and fee increases implemented, since June 1, 1990 and (2) fees above the amount of such fees DEP received in FY 89. DEP uses the account for (1) conservation and preservation programs and (2) central office administration.

EFFECTIVE DATE: July 1, 2005

ACTIVE-DUTY SERVICE DEATH BENEFITS (§ 8)

The act gives death benefits to certain surviving dependents of Connecticut-domiciled armed forces members, including guard members and reservists, who are killed in action or die from illness or accident suffered while deployed and performing active-duty service in Southwest Asia in support of Operation Enduring Freedom (Afghanistan) or Operation Iraqi Freedom (Iraq) between September 11, 2001 and July 1, 2006. It requires the state treasurer to make the payments and reduce payments by any amount of death benefit paid under federal law for the member's death.

Table 1 shows the qualified survivors and payment amounts.

Table 1: Service Member Death Benefits

Survivor	***Amount Payable to Spouse, Guardian, or Dependent Parent***	***Amount Payable for Dependent Child***
Spouse and dependent children under age 18	$100,000 payable in equal monthly installments over at least 10 years to spouse but terminating should the spouse die or remarry during "said ten-year period"*	$50 monthly for each dependent child until the child reaches age 18, payable to the member's spouse or child's guardian
Dependent children under age 18 and no spouse	$100,000 payable in equal monthly installments over at least 10 years to the children's guardian until the youngest child reaches age 18 during "said ten-year period"*	$50 monthly for each dependent child payable to the guardian until the child reaches age 18
A spouse and no dependent children under age 18	$50,000 payable in equal monthly installments over at least five years but terminating should the spouse die or remarry during "such five-year period"*	Not applicable
No spouse and no dependent children under age 18 but dependent parents	$50,000 payable to the parent or parents in equal monthly installments over at least five years; if one parent dies, the payment continues for the other parent and ending if he or she dies during "such five-year period"*	Not applicable
*(The act terminates payments for death or remarriage, as applicable, during the minimum payment period. It is unclear if termination would apply if the state extends the payments beyond the minimum period.)		

EFFECTIVE DATE: July 1, 2006

PROPERTY TAX AMNESTY FOR SERVICE MEMBERS' SPOUSES (§ 9)

The act allows municipalities, by ordinance, to waive interest for one year on property tax or tax installment payable by any eligible spouse of a service member for real property assessed on the 2003 grand list. The waiver applies to any state resident who lives with, and is the spouse of, a U.S. Armed Forces member, including guard members and reservists, called to active service for military operations authorized by the President entailing military action in Iraq and who is serving in the Middle East on the final day that the tax or tax installment payment is due. (Existing law mandates the one-year interest waiver for service members themselves but without limiting it to the 2003 grand list).

EFFECTIVE DATE: Upon passage

MILITARY FAMILY RELIEF FUND (§ 10)

The act establishes the Military Family Relief Fund as a separate, nonlapsing General Fund account and requires the state treasurer to administer it. The fund contains (1) state appropriations; (2) any statutorily required deposits; and (3) gifts, grants, donations, or bequests made for the fund's purposes. Investment earnings credited to the fund become part of its assets.

Any fiscal year-end balance in the fund must be carried over to the next year.

Purposes of the Fund

The Military Department must use the fund for the act's purposes. It must make grants to immediate relatives of Connecticut-domiciled armed forces members on active duty, including guard members, to pay for essential personal or household goods or services in Connecticut, if paying for them would be a hardship for the relatives because of the member's service. Immediate relatives are an eligible member's spouse, child, or parent domiciled in Connecticut or other relatives living in his household. "Essential personal household goods or services" include repairs, uninsured medical services, transportation, babysitting, clothing, school supplies, and other goods or services essential to the relatives' well being.

The department must establish a simple grant application process and process applications within seven days after they are submitted. It cannot make grants that exceed what is in the fund.

Regulations

The act allows the department to begin to adopt implementing regulations after evaluating the program in its first six months, including available resources and applications received. The regulations may establish (1) a maximum amount of each grant, each type of grant, or grants to immediate relatives and (2) grant approval criteria. The department may implement the proposed policies and procedures while in the process of adopting the regulations. To do so, it must publish notice of intent to adopt regulations in the *Connecticut Law Journal* no later than 20 days after implementing the policies and procedures, which are valid until the regulations take effect or one year after the notice of intent is published, whichever is sooner.

Reporting Requirements

By October 15, 2005 and by the 15th day following the close of each calendar quarter thereafter, the department must submit a report to the Veterans' Affairs Committee for the previous quarter showing (1) the number of applications received; (2) the number of members whose relatives received grants; (3) the amount they got and for what purposes; and (4) any recommendations for the fund, including proposed legislation. It must not report the names of eligible members or recipients, and any information it gets with their names and addresses or that could be used to identify them is confidential and exempt from disclosure under the Freedom of Information Act.

The department may take from the account an amount equal to its costs for administering the program, which may be up to 2% of the deposits in any fiscal year.

EFFECTIVE DATE: Upon passage

MILITARY FAMILY RELIEF PROGRAM FUNDING (§ 11)

The act allows taxpayers filing returns for tax years starting on or after January 1, 2005 to contribute all or part of their personal income tax refund to the Military Family Relief Fund by indicating the amount on their tax returns, in a manner provided by the DRS commissioner.

If the amount of refund due to the taxpayer is at least as large as the contribution, the contribution must be for the full amount the taxpayer designates. If the refund is less than the indicated amount the entire refund must be contributed to the fund. The DRS commissioner must certify to the OPM secretary and state treasurer (1) the amount of the refund initially owing to the taxpayer, (2) the amount of the contribution, and (3) the difference. For purposes of any subsequent determination of the taxpayer's net tax payment, the contribution must be considered a part of the refund paid to the taxpayer. Contributions are irrevocable once the return is filed.

The DRS commissioner, after notifying the OPM secretary and with his approval, may withhold from the amount collected an amount equal to his administrative costs, which, beginning on or after July 1, 2006, may be up to 4%. He must deposit the balance into the fund.

EFFECTIVE DATE: July 1, 2005 and applicable to taxable years commencing on or after January 1, 2005.

VOLUNTEER SERVICE PROGRAM IN NATIONAL GUARD'S FAMILY PROGRAM (§ 12)

The act requires the National Guard's Family Program to establish a volunteer service program for armed forces members, including guard members, on active duty and residing in Connecticut. The services may include repairs, gardening, transportation, babysitting, tutoring, cooking, or other services the recipient would find helpful.

Under the program, a volunteer service coordinator works with towns and local organizations throughout the state to provide volunteer services to the members and their families. Local organizations include nonprofit organizations that serve members, veterans, and their families and other organizations that seek to volunteer their services to such people. The volunteer services coordinator must identify and help towns and organizations that provide volunteer services to

members and their families in communities throughout the state.

By January 31, 2006, and annually thereafter, the National Guard's Family Program must report to the Veterans' Affairs Committee on the services and level of services the volunteers provide in different geographical areas.

The act prohibits anyone from volunteering any service for which a license, certificate of registration, permit, or other credential issued by a state agency is required unless such person holds the pertinent credential.

EFFECTIVE DATE: Upon passage

THERAPY SUPPORT GROUPS (§ 13)

The act requires the National Guard's Family Program to publicize to all members of the armed forces, including guard members, and their families the availability throughout the state of therapy support groups for them. The publicity must include contact information for referral to support groups in locations convenient for them.

EFFECTIVE DATE: Upon passage

BONUS PROGRAM FOR CERTAIN GUARD MEMBERS (§ 14)

The act establishes a bonus program for current or former guard members called to active service on or after September 11, 2001. The bonus is $50 for each month of active service or major part thereof, up to a maximum of $500 for such members who (1) are or were in active service for at least 90 consecutive days; (2) while in such service, are or were deployed in a combat zone; and (3) if discharged, were honorably discharged or discharged because of a line-of-duty injury. The member has three years after the date when the operation in which he served ends to apply for the bonus. The adjutant general must begin making the payments on July 1, 2005. He, in consultation with the veterans' affairs commissioner, must adopt implementing regulations that include application, eligibility verification, and payment procedures.

EFFECTIVE DATE: Upon passage

VETERANS' SERVICE RIBBONS (§ 15)

The act requires the veterans' affairs commissioner, in conjunction with the adjutant general, to award a ribbon and medal to wartime veterans who lived in Connecticut when they were called to active-duty service or are domiciled here on the date of the award. They cannot make awards posthumously.

The commissioner, in conjunction with the adjutant general, must adopt implementing regulations outlining the process for designing the ribbon and medal, identifying eligible veterans, and establishing procedures for distributing the ribbons and medals. The Military Department must pay for the ribbons and medals from funds appropriated to its military assistance account.

EFFECTIVE DATE: July 1, 2005

VETERANS' AND GUARD MEMBERS' TUITION WAIVER (§§ 16-18)

The act makes domicile, rather than residency, a criterion for tuition waivers for wartime veterans at Connecticut state colleges. It does not define domicile but specifies that it includes domicile for less than one year, notwithstanding the law that requires "domicile" for at least one year for in-state tuition purposes. (By law, tuition is waived at the University of Connecticut, Connecticut State University campuses, and community-technical colleges for certain groups. Generally, the laws granting the waivers require that applicants be Connecticut residents, but they do not define resident. In the absence of a definition, the colleges require one-year residency. Apparently, the basis for this interpretation is CGS § 10a-30, which, with some exceptions, requires students to be domiciled in Connecticut for at least one year to qualify for in-state tuition.)

The act also eliminates residency as a criterion for tuition waivers for Connecticut National Guard members. It retains the residency criterion for seniors age 62 or over, dependent children of prisoners of war or service members missing in action, and dependent children and surviving spouses of terrorist victims.

Domicile v. Residency

Domicile is a "person's true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere." "A person may have more than one residence at a time but only one domicile" (*Black's Law Dictionary*).

EFFECTIVE DATE: July 1, 2005

VETERANS' DEPARTMENT ANNUAL REPORTS (§ 19)

The act requires the Department of Veterans' Affairs (DOVA) Board of Trustees to submit an annual report of its activities and recommendations for program improvements and service delivery to the Veterans' Affairs Committee, instead of just the governor and Public Safety and Security Committee.

EFFECTIVE DATE: Upon passage

BOARD OF MEDIATION AND ARBITRATION (§ 20)

The act provides a two-step increase in pay rates for members of the State Board of Mediation and Arbitration, which hears and resolves disputes involving state and municipal employees and their employers. The board consists of two three-person panels, each of which includes an employer and union representative and a public member.

The new rates are as follows:

Event/Task	***Current Rate***	***Jan. 1, 2006***	***July 1, 2006***
End of proceedings	$150	$175	$225
Second and subsequent approved hearing days	75	100	150
Attendance at executive sessions	75	100	150
Write panel decision	100	125	175
Write single-member panel decision	250	275	325

EFFECTIVE DATE: January 1, 2006

VETERANS' TOLL-FREE PHONE NUMBER (§ 21)

The act requires DOVA to provide a toll-free number that armed forces members, including guard members and their families, can call every day, including holidays, for information about, and referrals to entities that provide, benefits and services available to them. DOVA must staff the number with trained volunteers or department employees on weekdays during regular business hours and on weekends and holidays from 9 a.m. to 5 p.m.
EFFECTIVE DATE: July 1, 2005

REGISTRY OF VETERANS AND ARMED FORCES MEMBERS (§ 22)

The act requires DOVA to develop and maintain a contact list of armed forces members, including guard members, and honorably discharged veterans living in Connecticut, to facilitate informing listed persons about benefits and services available to, and legislation affecting, them. The list must include only their names and mailing addresses. DOVA must compile the list from its own records and information it gets from the Military Department, town assessors, service members, and veterans.

By September 1, 2005, the Military Department must give DOVA a list of the names and mailing addresses, but no other information, of each resident service member in its record. By the 60th day after a veterans' property tax exemption takes effect, the town assessor must give DOVA the name and mailing address of each individual who has such an exemption. Veterans and service members may get listed by submitting their names and addresses to DOVA in person or by mail. The former must provide a copy of their military discharge document; the latter, a copy of their military identification card.

DOVA and the Military Department may use the list solely for notifying listed people of benefits, proposed or enacted legislation that affects them or their families, or other information that the departments believe will help them. DOVA must give a copy of the list to the Military Department upon receipt of a written, signed request from the adjutant general. The act prohibits the departments from disclosing information in the contact list except as it provides. The list is not subject to disclosure under the Freedom of Information Act.

Anyone can get his name removed from the list by notifying DOVA in writing.
EFFECTIVE DATE: July 1, 2005

NUCLEAR SAFETY EMERGENCY REPAREDNESS ACCOUNT (§ 23)

The act transfers, from the adjutant general to the Department of Emergency Management and Homeland Security (DEMHS) commissioner, several powers and responsibilities regarding the General Fund's nuclear safety emergency preparedness account. Specifically, it:

1. requires the Department of Public Utility Control to assess nuclear power plants to fund the account at the request of the commissioner rather than the adjutant general;
2. allows the commissioner, rather than adjutant general, to spend the money in conjunction with the DEP, including expenditures for administrative purposes; and
3. requires the commissioner, rather than the adjutant general, to submit an annual plan to OPM for carrying out the nuclear emergency preparedness program.

In addition, the act allows the account to be used to fund three staff positions in the DEMHS rather than the Military Department. It assesses all Nuclear Regulatory Commission licensees that own or operate nuclear power plants, rather than just licensees that operate such plants, for funding for the account.

EFFECTIVE DATE: July 1, 2005

FUNDING FOR WATERBURY VOCATIONAL-TECHNICAL TRAINING PROGRAM (§ 24)

The act extends an exemption from adult education grant requirements that permits WACE Technical Training Center in Waterbury to spend up to $300,000 of the grant it receives in FYs 06 and 07 for technical training. The exemption was scheduled to end on June 30, 2005.
EFFECTIVE DATE: Upon passage

TRANSFERRING UNEMPLOYMENT TRUST FUND MONEY (§ 25)

The act authorizes the transfer of $18 million in federal money credited to the state's Unemployment Trust Fund for the following Labor Department appropriations:

1. $10 million to improve the 20-year-old information technology infrastructure of the unemployment compensation program;
2. $2.5 million to transfer data and improve the CTWorks Business System that links three programs: One-Stop-Jobs First, Workforce Investment Act, and the Wagner-Peyser Act;
3. $3.5 million to improve linkages between employers and potential employees; and
4. $2 million to expand electronic storage for employer tax forms.

These amounts will be spent to the extent allowed under federal law (§ 903 of the Social Security Act, as amended by § 209 of P.L. 107-147).
EFFECTIVE DATE: Upon passage

POSTPONEMENT OF VISION SCREENING REQUIREMENT (§ 26)

The act postpones for two years, until July 1, 2007, the requirement that all licensed drivers undergo a vision screening performed by the Department of Motor Vehicles or a qualified licensed health care professional before every second license renewal. Screenings performed by health care professionals must have been performed within the 12 months preceding the renewal.
EFFECTIVE DATE: July 1, 2005

TRANSFERS FROM THE SPECIAL TRANSPORTATION FUND TO THE EMISSIONS ENTERPRISE FUND (§ 27)

Previously, $1,625,000 collected from the $10 Clean Air Act fee (collected at registration renewal) and emissions inspection late fees had to be transferred from the Special Transportation Fund to the Emissions Enterprise Fund on the first day of each calendar quarter. For the four transfers required in FY 06, the act reduces the quarterly transfer from $1.625 million to $400,000; for the four required transfers in FY 07, the act reduces the quarterly transfer to $1 million. Thereafter, beginning on July 1, 2007, the quarterly transfers return to $1.625 million.
EFFECTIVE DATE: July 1, 2005

PAYMENT FOR SERVICES PROVIDED BY VOLUNTEER FIRE COMPANIES (§ 28)

The act requires the state fire administrator, within available funds, to administer a supplemental grant award remittance program to support volunteer fire companies that provide emergency response services on any limited access highway, the section of the Berlin Turnpike from Meriden to Wethersfield, or the section of Route 8 within the Naugatuck State Forest. Eligible fire companies may get grant funds directly or may use the funds as credits for fee-based services the Commission on Fire Prevention and Control provides. They must use credits in the fiscal year in which they get them.
EFFECTIVE DATE: July 1, 2005

COMPTROLLER FRINGE BENEFIT TRANSFER (§ 29)

In FYs 06 and 07, the act requires $165,000 per year to be transferred from DAS' appropriation for personal services to the comptroller's appropriation for fringe benefits for state employee health services costs.
EFFECTIVE DATE: July 1, 2005

LEADERSHIP, EDUCATION, ATHLETICS IN PARTNERSHIP PROGRAM AND NEIGHBORHOOD YOUTH CENTERS (§§ 30 & 35)

The act requires applicants to match at least 50% of the grant amount to be eligible to receive funds from OPM for (1) the Leadership, Education, Athletics in Partnership (LEAP) Program or (2) the Neighborhood Youth Centers Program. It requires the cash portion of the match to be at least 25% of the grant amount.

The act appropriates $1,000,000 to OPM for Neighborhood Youth Centers, for FYs 06 and 07, which must be used for a grant to the Boys' and Girls' Clubs, if it provides a 100% cash match.

The act also appropriates $200,000 to OPM for Neighborhood Youth Centers for FYs 06 and 07, which must be used for a grant to San Jose Cooperative Youth, Hill Cooperative Youth, and Central YMCA in New Haven. The organizations must match at least 50% of the grant amount, and the cash portion of the match must be at least 25% of the grant amount.

LEAP is a mentoring program matching children age seven to 14 from high poverty urban neighborhoods with trained high school and college student counselors. Its programs and services help children develop academic skills and self-esteem, improve their ability to succeed in school, and become involved in their community.

The Neighborhood Youth Center Program is designed to increase the range and extent of positive experiences for at-risk youth. It focuses on supporting neighborhood youth centers that serve youth age 12 to 17 in Connecticut's seven largest cities.
EFFECTIVE DATE: July 1, 2005

WORKFORCE COMPETITIVENESS $300,000 TRANSFER (§ 31)

For FYs 06 and 07, the act transfers $300,000 for the Spanish-American Merchants Association from the Labor Department to the Office of Workforce Competitiveness.
EFFECTIVE DATE: July 1, 2005

PILOT FOR COAST GUARD ACADEMY (§ 32)

The act requires OPM to make an annual $500,000 payment in lieu of taxes (PILOT) to New London for the United States Coast Guard Academy, which is exempted from municipal property taxes. OPM must pay the amount before September 30 from the General Fund appropriation for PILOTs.

OPM cannot reduce the amount, as it must for other PILOTs in certain circumstances. By law, the PILOTs reimburse towns for a statutorily specified percentage of the taxes the town would have collected from a property if it were not tax-exempt. But it also requires OPM to reduce proportionally each town's PILOT if the budget is insufficient to pay all towns their entitled amount. The act exempts the Coast Guard PILOT from this requirement.
EFFECTIVE DATE: July 1, 2005

TESTS ON ARMED FORCES MEMBERS FOR DEPLETED URANIUM EXPOSURE (§ 33)

Beginning October 1, 2005, the act requires the adjutant general and the veterans' affairs commissioner to help eligible guard members and veterans get federal treatment services, including a best practice health screening test for exposure to depleted uranium, if they (1) are assigned a risk level I, II, or III for depleted uranium exposure by their branch of service; (2) are referred by a military physician; or (3) have reason to believe that they were exposed to depleted uranium during military service. The best practice test must use (1) a bioassay procedure involving methods sensitive enough to detect depleted uranium at low levels and (2) equipment capable of discriminating between different radioisotopes in naturally occurring levels of uranium and the characteristic ratio and marker for depleted uranium. The act prohibits the use of state funds to pay for the tests or other federal treatment services.

The act applies to (1) Connecticut National Guard members who served in the Persian Gulf War or in an area designated as a combat zone by the President during Operation Enduring Freedom or Operation Iraqi Freedom and (2) honorably discharged veterans who served as guard members under these same circumstances. The act defines "depleted uranium" as "uranium containing less uranium-235 than the naturally occurring distribution of uranium isotopes."

By October 1, 2005, the adjutant general must report to the Veterans' Affairs Committee on the scope and adequacy of the training guard members receive to detect whether their service is likely to entail or has entailed exposure to depleted uranium. The report must include an assessment of the cost and feasibility of adding predeployment training on potential exposure to uranium and other toxic chemical substances and recommended precautions in a combat zone.
EFFECTIVE DATE: Upon passage

HEALTH EFFECTS OF THE EXPOSURE TO HAZARDOUS MATERIAL TASK FORCE (§ 34)

The act establishes a task force to study the health effects of the exposure to hazardous material, including depleted uranium, as it relates to military service. Within available appropriations, the task force must:

1. commission a study to consider the health of service members who may have been exposed to hazardous material since August 2, 1990 and conduct a scientific conference on the health effects;
2. initiate a health registry for veterans honorably discharged from active service and military personnel returning from Afghanistan, Iraq, or other countries in which depleted uranium or other hazardous material may be found;
3. develop a plan for outreach to, and follow-up, of military personnel;
4. prepare a report for service members about potential exposure to depleted uranium and other toxic chemical substances and precautions recommended in combat and noncombat conditions while in a combat zone; and
5. make any other recommendations it considers appropriate.

The task force must commission the study with the approval of the Senate president pro tempore and House speaker. The person retained to conduct the study must

disclose to these officials any research he has conducted (1) on matters related to depleted uranium or (2) that was funded by an entity engaged in manufacturing processes that use depleted uranium.

The task force consists of:

1. the veterans' affairs commissioner or a designee;
2. the public health commissioner or a designee;
3. six legislators, one each appointed by the Senate president pro tempore, House speaker and the House and Senate majority and minority leaders;
4. two veterans that have experience with or knowledge of hazardous material, one each appointed by the Senate president pro tempore and the House speaker; and
5. four doctors or scientists who know about, or have experience in, the detection or health effects of exposure to depleted uranium or other hazardous material, appointed one each by the House and Senate majority and minority leaders.

Appointments must be made within 30 days after the act takes effect. Appointing authorities are responsible for filling vacancies. The Senate president pro tempore and House speaker must select one senator and one representative from among the appointees to be chairpersons. The chairpersons must schedule the first meeting no later than 60 days after the act takes effect. The Veterans' Affairs Committee administrative staff serves as administrative staff of the task force.

The task force must submit its findings and recommendations to the Veteran's Affairs Committee by January 31, 2006. It dissolves after it files this report.

EFFECTIVE DATE: Upon passage

TAX RETURN CONFIDENTIALITY (§ 36)

PA 05-251 allows the DRS commissioner to disclose tax returns and return information to the Business Tax Credit and Tax Policy Review Committee to allow the committee to evaluate corporation tax credits and policies. This act specifies that the commissioner may not disclose copies of tax returns filed with her to the committee.

By law, a "return" is any tax or information return; estimated tax declaration; refund claim; or license, permit, or registration application filed with DRS, along with any amendments or supporting documents. "Return information" is a taxpayer's identity; the source, nature, and amount of his income; his deductions, exemptions, credits, assets, liabilities, net worth, or tax liability; and his taxes paid, collected, withheld, or under- or over-reported. Return information also means information about whether a return was or is subject to examination or other investigation and all information in connection with any such investigation, including related liabilities, penalties, interest, fines, or forfeitures.

EFFECTIVE DATE: Upon passage

HOISTING EQUIPMENT OWNERS AND OPERATORS (§§ 37 & 86–88)

The law requires hoisting equipment operators to be licensed as crane operators or hoisting equipment operators. The act subjects hoisting equipment owners and operators to the same standards as crane operators with regard to accident reports, license discipline, penalty for violations, and Department of Public Safety (DPS) enforcement, and makes related changes. Specifically, it:

1. requires hoisting equipment owners or operators immediately to report accidents involving hoisting equipment to the Examining Board for Crane Operators, which may investigate and inspect the equipment to determine the cause of the accident and may take any action it deems appropriate, if, after notice and hearing opportunity, it determines that a violation occurred;
2. allows the board to suspend or revoke a hoisting equipment operator's license, after notice and hearing, for demonstrated incompetence or negligence;
3. allows the board to impose civil penalties of up to $1,000 on hoisting equipment owners and operators who violate the hoisting equipment laws or regulations; and
4. allows the DPS commissioner and employees, at all reasonable hours, to enter premises where hoisting equipment is located to enforce the law.

The act extends to October 1, 2005 the deadline by which people who were engaged in operating hoisting equipment on October 1, 2003 must be licensed. The previous deadline was October 1, 2004. It also extends from October 1, 2004 to October 1, 2005 the period during which the board must issue a hoisting equipment license to anyone who presents a notarized statement from his employer showing the dates when he operated the hoisting equipment and his duties or proof of ownership and control of a company using such equipment.

EFFECTIVE DATE: July 1, 2005

DIVISION OF SPECIAL REVENUE (DSR) LICENSING AUTHORITY (§§ 38–40 & 115)

The act expands the types of people and business organizations dealing with the Connecticut Lottery

Corporation (CLC) that must be licensed by DSR, making the law conform to regulations, in some cases, and codifying DSR practice, in others. The act gives DSR explicit authority to regulate CLC activities with regard to licensing to ensure the lottery's integrity. (DSR appears to have lost some explicit licensure authority when CLC was created as a separate quasi-public agency and the lottery provisions were codified in a separate chapter (Chapter 229a) from the other legalized gaming and DSR licensing provisions.)

The license fees, procedures, and penalties are generally the same as those that applied to licensees before the recodification and that currently apply to parimutuel wagering, which DSR regulates. DSR must issue all the licenses in accordance with the act and prescribe the form and manner of applications. The act requires the Gaming Policy Board to work in cooperation with DSR to administer the provisions for all the licensees, instead of just for the CLC occupational licensees (CGS § 12-802b).

Vendor License

Prior law required only the person or business organization awarded *the* primary contract to provide CLC with goods, services, facilities, or components necessary to operate the state lottery to undergo both state and national criminal history record checks. Additionally, the contractor had to either (1) undergo a State Police background check or (2) get a DSR vendor license (which involved successful completion of a DSR security background investigation (Conn. Agency Regs. § 12-568a-16(c)). Under DSR practice, *all* primary contractors must be licensed as vendors and undergo state and national criminal history record checks. (Current licensees include an advertising agency, an on-line vendor, and a cleaning company.)

The act requires every person or organization with *any* primary provider contract necessary for and directly related to CLC's secure operation to undergo both state and national criminal history record checks and be licensed as a vendor by DSR. It allows the DSR executive director to require them to undergo an international criminal history record check as well. It defines a:

1. "primary contract" as one under which a person or business organization (a) provides CLC with any lottery game or online wagering system-related facilities, components, goods, or services and receives or, in the exercise of reasonable business judgment, may be expected to receive more than $75,000 or 25% of its gross annual sales from CLC or (b) has access to CLC and provides services there without CLC supervision;
2. "person" as an individual; and
3. "business organization" as a partnership, incorporated or unincorporated association, firm, corporation, trust, or other form of business or legal entity.

The act codifies DSR policy by setting a $200 annual, nonrefundable fee for a vendor license. (This is the same fee the law sets for parimutuel vendor licenses under CGS § 12-578 for each vendor contract.)

Affiliate License

The act establishes a Class II affiliate license for any person or business organization, other than a shareholder in a publicly traded corporation, with a subcontract to provide facilities, components, goods, or services necessary for, and directly related to, the secure operation of CLC activities.

The act codifies existing DSR practice by requiring a Class II affiliate license for a person or business organization that exercises control in or over a vendor licensee (i.e., a parent company). (Current affliliate licensees in this category include Scientific Games Corporation, which owns Scientific Games International Inc., the company that provides the on-line gaming technology for the lottery.) Under the act, "control" means the power to exercise authority over or direct a licensee's management and policies.

The act codifies DSR practice by setting a $200 annual nonrefundable fee for an affiliate license. (This is the same fee the law sets for parimutuel affiliate licenses under CGS § 12-578 for each contract.)

Occupational License for CLC Employees

By law, CLC employees must have an occupational license, which is valid through an employee's term of employment (CGS § 12-802a). By regulation, officers and others who, in the executive director's judgment, will exercise control over CLC activities are licensed as Class II; all other employees are licensed as Class I (Conn. Agency Regs. § 12-568a-16(b)).

The act creates a Class IV occupational license for those employees who, in the executive director's judgment, will exercise authority over or direct CLC's management and policies. It also creates a Class III license for other employees. It retains the executive director's discretionary authority to have the former employees annually update information on their financial standing and credit but eliminates it for the other employees.

The fees are currently $10 for a Class I license and $50 for a Class II license. The act sets a $10 fee for the Class III license and a $50 fee for the Class IV license. The fees are nonrefundable. (Under existing practice, CLC pays for these licenses.)

Other Occupational Licenses

The act codifies DSR practice by requiring a Class I occupational license for vendors' and affiliates' employees who have access to, and work at, CLC facilities unsupervised by CLC staff or perform duties directly related to CLC activities.

The act also codifies DSR practice by requiring a Class II occupational license for officers, directors, partners, trustees, or owners of a business organization licensed as a vendor or affiliate and shareholders, executives, agents, or other people connected with such licensees if the executive director believes they will exercise control in or over the vendor or affiliate.

The act codifies DSR practice by setting a $10 annual, nonrefundable fee for these Class I licenses and a $50 fee for Class II. (This is the same fee the law sets for parimutuel occupational licenses under CGS § 12-578.)

License Issuing Considerations

In determining whether to grant any license, the executive director may require applicants to provide him with the same information that CLC occupational licensees must now provide by law. He may request information on their:

1. financial standing and credit;
2. moral character;
3. criminal record, if any;
4. previous employment;
5. corporate, partnership, or association affiliations; and
6. ownership of personal assets.

The director may also ask for other information he deems pertinent to secure the lottery's integrity.

The act requires all licensees to undergo state and national criminal history record checks, which are already required by law for the primary vendor and CLC occupational licenses and by DSR for other licensees. It allows the executive director to require applicants to undergo international criminal history record checks as well.

License Actions

If an applicant satisfies the licensing requirements and the executive director deems him qualified, the executive director must issue the license.

The act gives the executive director specific authority to (1) reject all license applications for good cause; (2) suspend or revoke licenses for good cause after a hearing held in accordance with the Uniform Administrative Procedure Act (UAPA); (3) suspend summarily any license, following UAPA; and (4) after a UAPA hearing, impose a civil fine of up to $2,500 on licensees who violate CLC laws or DSR regulations.

Under the act, aggrieved license applicants may appeal the executive director's decision on applications to the Gaming Policy Board within 15 days after the decision and may appeal the board's decision to Superior Court. Licensees may appeal license suspensions and revocations in the same manner.

Executive Director's Authority

The executive director may require that vendors and affiliate licensees maintain their books in any way he considers best and prepare financial or other statements based on them in accordance with generally accepted accounting principles in the form he prescribes. He or his designee may visit, investigate, and place expert accountants and others he considers necessary in a licensee's offices or business place to determine if the licensee is complying with DSR regulations.

The act allows the executive director to adopt necessary implementing regulations.

EFFECTIVE DATE: Upon passage

MASHANTUCKET PEQUOT AND MOHEGAN FUND (§§ 41-43)

For FY 07, this act distributes one-third of the $4.8 million increase ($1.6 million) in the appropriation to the Mashantucket Pequot and Mohegan Fund to towns that are members of the Southeastern Connecticut Council of Governments and to distressed municipalities that are members of the Northeastern Connecticut Council of Governments or the Windham Area Council of Governments. The distribution must be proportional based on the payments each received in FY 06.

The act also allocates $250,000 for FY 06, to Ledyard, Montville, Norwich, North Stonington, and Preston from the fund. It increases this allocation to $750,000 for FY 07 and following years. Beginning in FY 07, it terminates the annual $500,000 additional grants these towns currently receive. In effect, the act increases the annual grant these towns receive from $500,000 to $750,000 beginning in FY 06.

Both the distribution of one-third of the FY 06 increase and the allocation to the five towns are in addition to the grants already paid to the municipalities from the fund, are paid before other grants from the fund, and must not be reduced proportionately if the total payable to each municipality is more than the amount appropriated for the grants that year.

EFFECTIVE DATE: July 1, 2005

Background

*Mashantucket Pequot and Mohegan Fund***.** The fund is a separate, nonlapsing fund that receives revenue derived from casino gaming and provides grants to towns based on different criteria. It provides:

1. $20 million based on the criteria for making payments in lieu of taxes (PILOTs) for state-owned property,
2. $20.1 million based on the PILOT criteria for private hospitals and colleges,
3. $35 million based on the formula for providing property tax relief grants, and
4. $5.47 million to certain designated municipalities distributed according to the property tax relief fund.

These four types of grants and the impact grants the five towns currently receive must be proportionately reduced when the total grant for all towns exceeds the appropriated amount.

Southeastern Connecticut Council of Governments. The member towns are: Bozrah, Colchester, East Lyme, Franklin, Griswold, Groton, Ledyard, Lisbon, Montville, New London, North Stonington, Norwich, Preston, Salem, Sprague, Stonington, Voluntown, and Waterford.

Distressed Municipalities. Killingly, Putnam, and Windham have been designated as distressed municipalities and are members of the Northeastern Connecticut Council of Governments or the Windham Area Council of Governments.

QUALITY OF LEGAL REPRESENTATION IN CHILD PROTECTION PROCEEDINGS (§§ 44–47)

The act establishes the 11-member Commission on Child Protection, which must appoint a chief child protection attorney. The act requires that this attorney, by July 1, 2006, establish a system to deliver (1) legal services to indigent respondents in family contempt and paternity matters and (2) legal services and guardians ad litem to children and indigent parents in proceedings before the Superior Court for juvenile matters. (A guardian ad litem is a person the court appoints to protect a child's best interests in a legal proceeding.) Under the act, juvenile matters include proceedings concerning:

1. uncared-for, neglected, or dependent children and youth;
2. termination of parental rights of children committed to a state agency;
3. matters concerning families with service needs;
4. contested matters transferred from the Probate Court involving termination of parental rights or removal of a guardian;
5. the emancipation of minors and youth in crisis; and
6. appeals from probate concerning adoption, termination of parental rights, and removal of a parent as guardian.

The act specifies that the system does not cover representation of children in delinquency matters.

The act requires that the system the child protection attorney establishes also ensure that attorneys providing such services are assigned to cases in a way that avoids conflicts of interest, as defined by the Rules of Professional Conduct.

The attorney serves at the commission's pleasure, and the commission fixes his compensation.

Commission on Child Protection

Under the act, commission members are appointed as follows:

1. the chief justice of the Supreme Court appoints two Superior Court judges, or a Superior Court judge and a retired Superior Court judge;
2. the House speaker, the Senate president pro tempore, and the House and Senate majority and minority leaders each appoint one member; and
3. the governor appoints three members, one of whom serves as chairperson.

Each member serves three years and until the appointment and qualification of his successor. No more than three members, other than the chairperson, may belong to the same political party. At least two of the nonjudicial members, other than the chairperson, must not be lawyers.

If any vacancy occurs, the appointing authority appoints a person for the unexpired term. Members serve without compensation but are reimbursed for their actual expenses. The act prohibits commission members from being employed by the commission, or the agencies that provide legal representation under the act, and from being on the list of attorneys to provide such services.

The commission is assigned to the Division of Public Defender Services for administrative purposes only.

The act authorizes the commission to adopt whatever rules it deems necessary.

Chief Child Protection Attorney

The act authorizes the chief child protection attorney to:

1. contract with appropriate nonprofit legal services agencies and individual attorneys to provide legal services and

2. provide initial and in-service training for attorneys providing legal services under the act and establish training, practice, and caseload standards.

The training must be designed to ensure proficiency in relevant procedural and substantive laws and establish a minimum proficiency level in relevant subject areas, including family violence, child development, behavioral health, educational disabilities, and cultural competence.

Eligibility for Court-Appointed Counsel

The act requires the judge before whom a juvenile or family matter is pending to determine eligibility for having counsel appointed for a child or indigent parents and guardians. To determine eligibility, the judge must require the child's parent or guardian to complete a written statement under oath or affirmation listing his liabilities and assets, income and sources, and whatever other information the commission requires. If the judge finds that a party cannot afford counsel, he must appoint the chief child protection attorney.

If a judge appoints counsel, he must notify the chief child protection attorney, who must assign the case to an attorney under contract with the Commission on Child Protection to provide representation.

Payment of Counsel

The act requires that payment of any attorney appointed before July 1, 2006 to represent a child or indigent parent in any case the act covers, who continues to represent the child or parent after July 1, 2006, must be processed through the Commission on Child Protection and paid at the rate that was in effect at the time of the appointment.

Funding

Under the act, $234,000 for Personal Services, $125,000 for Other Expenses, and $30,000 for Equipment, appropriated to the Judicial Department for FY 06 for contracted attorneys and associated administration expenses, and $312,000 for Personal Services and $9,200,000 for Other Expenses, appropriated to it for FY 07 for this purpose are transferred to the Public Defender Services Commission for these years for contracted attorney services and associated administration expenses.

EFFECTIVE DATE: October 1, 2005, except for the provisions regarding the appointment and payment of counsel for indigent litigants, which take effect July 1, 2006.

CONTINUING EDUCATION FOR PLUMBERS (§ 48)

This act exempts plumbers who have served apprenticeships that included at least 700 hours of related classroom instruction from continuing education requirements. By law, the Department of Consumer Protection commissioner must adopt regulations establishing requirements for accredited continuing professional education for plumbers. The regulations in effect when the act was passed require plumbers to take at least three and as many as nine hours of continuing education per year, depending on the type of license the plumber holds.

EFFECTIVE DATE: Upon passage

FIRE SUPPRESSION SYSTEMS IN STATE POLICE PATROL VEHICLES (§ 49)

Prior law required any vehicle purchased for use primarily as a patrol car by a state police officer on or after January 1, 2006 to have a manufacturer-installed fire suppression system. The act requires that, by January 1, 2007, all vehicles purchased for such use be equipped with the system. By law, the systems must be integrated into the vehicle's structure and electrical system, be able to be activated either automatically or manually, and use sensors that measure post-impact vehicle movement to determine the best time to deploy chemicals to extinguish or suppress the spread of fire resulting from a high-speed rear-end collision.

EFFECTIVE DATE: July 1, 2005

SUCCESSION TAX (§§ 50 – 53)

PA 05-251 eliminates succession tax liability for estates of those who die on or after January 1, 2005. This act makes conforming changes by eliminating succession tax filing, appeal, and real property lien release requirements and procedures for such estates. It also duplicates the effective date of PA 05-251's succession tax elimination, applying it all estates of people who die on or after January 1, 2005 as PA 05-251 does.

EFFECTIVE DATE: Upon passage. The conforming changes apply to estates of those who die on or after January 1, 2005.

ESTATE TAXES IN EFFECT DURING 2004 (§ 54)

Connecticut had two estate taxes in 2004. One was the regular estate tax, which applied to estates of more than $1.5 million. The other was a temporary, higher estate tax that applied to taxable estates of more than $1 million of people who died between July 1, 2004 and December 31, 2004. This act reconciles these taxes by

specifying that the regular estate tax does not apply to resident and nonresident estates subject to the temporary estate tax.
EFFECTIVE DATE: Upon passage

FILING REQUIREMENTS FOR NEW ESTATE TAX (§ 55)

PA 05-251 imposes a new tax on taxable estates of more than $2 million. That act also requires all estates, regardless of taxable value, to file a Connecticut estate tax return if the decedent (1) died on or after January 1, 2005 and (2) was a Connecticut resident or owned real or personal property in the state when he died.

For taxable estates of more than $2 million, this act requires the estate representative to file the estate tax return with the DRS commissioner and file a copy with the probate court in the district where the decedent lived when he died or, if the decedent was a nonresident, with the probate court where his Connecticut real or tangible personal property is located.

For taxable estates of $2 million or less, the act requires estate representatives to file returns with the probate court in the district where the decedent lived, or if a nonresident estate, in the probate court district where the estate's Connecticut property is located and not with the DRS commissioner. The probate judge for the district where the return is filed must review it and issue a written opinion to the representative if he determines the estate is not subject to the estate tax.

The act also requires each probate court to report to the DRS commissioner, in a form the commissioner may prescribe, concerning the estate tax returns filed with it during each calendar quarter. Courts must file the reports by the last day of the month immediately following the end of each calendar quarter, starting with the quarter ending September 30, 2005.
EFFECTIVE DATE: Upon passage

PROBATE COURT COSTS FOR SETTLING AN ESTATE (§ 56)

The act changes the starting point for calculating the probate court costs for settling an estate. Under prior law, the starting point was the gross estate either for succession or estate tax purposes, whichever was greater. Under the act, the starting point is either the gross estate for succession tax purposes or the Connecticut taxable estate for estate tax purposes under the PA 05-251, whichever is greater. Since PA 05-251 eliminates the succession tax for estates of those dying on or after January 1, 2005, the act, in effect, establishes the Connecticut taxable estate as the basis for probate costs. (PA 05-5, June Special Session, revised this provision to restore the gross estate for estate tax purposes as an alternative starting point, if it is greater than the other two.)
EFFECTIVE DATE: Upon passage and applicable to estates of those who die on or after January 1, 2005.

ESTATE TAX LIEN RELEASES (§ 57)

By law, a person who does not owe, or who has paid, the estate tax receives a certificate releasing the lien on his interest in real property in the estate. Prior law allowed either DRS or the probate court where the decedent lived or where the property is located to issue the certificate. This act requires probate courts to issue all lien release certificates for taxable estates of $2 million or less.
EFFECTIVE DATE: Upon passage

APPLICABILITY OF CERTAIN TAX LAWS TO CIVIL UNIONS (§ 58)

The act requires the statutory provisions of the estate, gift, and personal income taxes to apply to parties to a state-recognized civil union as if the federal estate, gift, and income tax laws also recognized the civil union. All of these Connecticut tax laws incorporate federal tax provisions by reference and require taxpayers to use those provisions to calculate their state tax. The requirement starts with taxes owed for 2006 and thereafter.
EFFECTIVE DATE: Upon passage and applicable to tax years starting, gifts made, and estates of those who die, on or after January 1, 2006.

INSURER NOTIFICATION TO DAS OF FILED CLAIM (§ 59)

PA 05-251 (§ 88) requires certain insurers to (1) notify the Department of Administrative Services (DAS) when they receive liability or workers' compensation claims so DAS may determine if the claimant has a potential liability to the state and (2) delay any claim payment by 25 days after notifying DAS.

This act removes the applicability to workers' compensation insurers and limits the affected liability claims to those for a Connecticut resident's bodily injury or death. It adds requirements for the DAS commissioner, including (1) forms and process development and (2) compliance expense reimbursement to insurers.

The act also (1) expands the hold harmless provision for compliance with the notification requirement; (2) eliminates the requirement that insurers withhold claim payments for 25 days after DAS notification; and (3) changes the applicability of the notification requirement to insurers authorized to issue

liability policies in Connecticut, instead of domestic insurers.

Notification

The act requires an insurer authorized to issue liability policies in Connecticut to notify DAS when it receives a claim for damages because of a state resident's bodily injury or death. The notification is to determine if the claimant owes a debt to Connecticut that the DAS commissioner is authorized by law to collect.

The act requires DAS, in consultation with the affected insurers, to determine the notification method and process. But the process must allow insurers to submit notice to DAS directly or through a central reporting organization.

Confidentiality

The state must keep the information it receives from insurers confidential. PA 05-251 prohibits the state from storing or maintaining any of the information unless it determines that the claimant has a potential liability to the state.

Reasonable Cost Reimbursement

The act requires the DAS commissioner to reimburse insurers or central reporting organizations for their reasonable documented costs of complying with the notification requirement. The commissioner determines what is a "reasonable" cost.

Hold Harmless

The act holds (1) an insurer, its directors, agents, and employees and (2) a central reporting organization, its agents, and employees acting on an insurer's behalf harmless for any alleged or actual damages that result from complying with the notification requirement. It exempts from the hold harmless provision damages caused by intentional, willful, or wanton misconduct.

The act also specifies that compliance with the notification requirement does not subject any of the above parties and individuals to claims of unfair and deceptive insurance or trade practices, violations of the Connecticut Insurance Information and Privacy Protection Act, or market conduct examination penalties.

Freedom of Information Act

The act exempts the information contained in the required notification from public disclosure under the Freedom of Information Act.

EFFECTIVE DATE: September 1, 2005

CORRECTIONS OMBUDSMAN (§ 60)

The act requires DAS, rather than the Department of Correction (DOC) commissioner, to contract for ombudsman services and annually report the name of the person under contract to the Judiciary Committee. By law, the ombudsman receives complaints from inmates in DOC custody.
EFFECTIVE DATE: July 1, 2005

CRIMINAL JUSTICE POLICY TRANSFER (§ 61)

The act transfers all the funds from the newly created Office of Criminal Justice Policy and Planning to OPM's existing criminal justice unit. The budget contains partial-year funding of $200,000 in FY 07 for the new agency, which will coordinate and study criminal justice policy. PA 05-249, which takes effect July 1, 2006, created the new Office of Criminal Justice Policy as part of OPM.
EFFECTIVE DATE: July 1, 2005

VETERANS AND DAS TRANSFERS (§ 62)

This section transfers funds from:

1. the Military Department to DOVA to implement Sections 21 and 22 of this act for the veteran's contact list, registry, and toll-free number and
2. DOC to DAS to implement the transfer of ombudsman services in Section 60 of this act.

EFFECTIVE DATE: July 1, 2005

COSTS OF ADMINISTERING THE FARM LAND PRESERVATION, LAND PROTECTION, AFFORDABLE HOUSING AND HISTORIC PRESERVATION BILL (§ 63)

This act requires that the costs of administering PA 05-228 be paid from the land protection, affordable housing, and historic preservation account that PA 05-228 creates in the General Fund. Such costs include fringe benefits.
EFFECTIVE DATE: July 1, 2005

HIGHER EDUCATION MATCHING GRANTS (§§ 64–68)

The act reduces state matching grants to the UConn, Connecticut State University (CSU), community-technical college (CTC), and Charter Oak College endowment funds from one state dollar to every two dollars in private donations to one-to-four. The reduction affects donations made after December 31,

2004, which, as under existing law, will generate a state match beginning in FY 07. The state match remains one-to-two for multiyear gift commitments made before January 1, 2005 and that are scheduled to end before December 31, 2012. By law, the matching grant program ends on June 30, 2014.

The act imposes three conditions on matching grant appropriations:

1. No funds can be appropriated to the Department of Higher Education for the grants until the state's budget reserve fund equals 10% of the net General Fund appropriations for the current fiscal year.
2. The grants must be reduced proportionately if the amount available is less that the amount required for the grants.
3. The appropriation for any fiscal year cannot exceed $25 million.

EFFECTIVE DATE: July 1, 2005, except the provision imposing conditions on the matching grant is effective upon passage.

ARTS GRANT DISTRIBUTION (§ 69)

Prior law required OPM to give $50,000 of $6 million appropriated in section 35 of Special Act 00-13 to the Budney Museum and Visitors Cultural Center. The act instead requires OPM to distribute the $50,000 as follows: to the Deming-Young Farmhouse restoration, $10,000; Lucy Robbins Welles Library cultural programs, $20,000; and Newington Public School cultural programs, $20,000.
EFFECTIVE DATE: Upon passage

HIGHER EDUCATION TEXTBOOK SUMMIT (§ 70)

The act requires the higher education commissioner to convene a textbook summit along with the Connecticut Conference of Independent Colleges; the CTC, CSU, and UConn boards of trustees; higher education faculty representatives; textbook publishers; and campus bookstores. The summit must be convened by October 1, 2005. The group must look at the factors contributing to the cost and use of textbooks and supplemental instructional materials required at postsecondary schools. UConn, CSU, and the community colleges must develop recommendations for the use of textbooks and report on them to the Higher Education and Employment Advancement Committee by January 1, 2006.
EFFECTIVE DATE: July 1, 2005

CIVIL LEGAL SERVICES FOR THE POOR (§ 71)

The act requires funds appropriated to the Judicial Department for civil legal services to the poor by nonprofit corporations whose principal purpose is delivery of legal services, be deposited in a separate account and distributed to the organization administering the Interest on Lawyers Trust Account (IOLTA) program. That organization must make grants-in-aid to nonprofit organizations providing civil legal representation to poor people in Connecticut, using the same criteria as the law requires for IOLTA.
EFFECTIVE DATE: July 1, 2005

CARRYFORWARDS FOR CULTURE AND TOURISM, PUBLIC SAFETY, MENTAL HEALTH AND ADDICTION SERVICES, AND CORRECTION (§§ 72-75)

The act carries forward to FY 06:

1. an additional $400,000 within the Commission on Culture and Tourism for statewide marketing (§ 72),
2. the unexpended balance of funds appropriated to the Department of Public Safety for Other Expenses (estimated to be $2.5 million) (§ 73),
3. $90,000 with the Department of Mental Health and Addition Services to provide social worker support at Common Ground in Willimantic (§ 74), and
4. the unexpended balance of funds appropriated to DOC for Other Expenses (estimated to be $2.5 million) (§ 75).

EFFECTIVE DATE: July 1, 2005, except the Public Safety carry forward, which is effective upon passage.

TEACHERS' RETIREMENT CONTRIBUTIONS (§ 76)

The act specifies that $50 million of the $100 million in additional FY 05 appropriations (from the anticipated FY 05 surplus) provided in PA 05-251 for teachers' retirement contributions will be available in each of FYs 06 and 07. This funding, when combined with money provided in the 2005-2007 biennium, represents 69.7% and 69.5% of the actuarial funding requirement in FY 06 and FY 07, respectively.
EFFECTIVE DATE: July 1, 2005

MAGNET SCHOOL SUPPLEMENTAL GRANTS (§ 77)

PA 05-245 makes permanent the education commissioner's authority to provide, as she determines and within available appropriations, supplemental operating grants to interdistrict magnet schools. The grants must be used for enhancing educational programs in the schools. This act specifies that grants may be used for summer school programs at the schools.
EFFECTIVE DATE: July 1, 2005

OPEN CHOICE SUMMER SCHOOL PROGRAMS (§ 78)

The act allows the education commissioner, within available appropriations, to give grants to regional education service centers providing summer school educational programs for students who participate in the statewide interdistrict school attendance program known as Open Choice. To be eligible for a grant, the commissioner must approve the summer school program.
EFFECTIVE DATE: July 1, 2005

MAGNET SCHOOL PROGRAM ADMINISTRATION (§ 79)

The act restores a provision, eliminated by PA 05-245, allowing the State Department of Education to retain a percentage of the appropriation for magnet school operating grants for program administration and evaluation. But it reduces by half the maximum amount the department may retain, from 1% to .0.5% of the total appropriation.
EFFECTIVE DATE: July 1, 2005

EFFECTIVE DATE CHANGE CONCERNING STATE CLAIMING WELFARE RECIPIENTS' DISCRIMINATION SUIT OR SETTLEMENT PROCEEDS (§ 80)

The act changes the effective date, from October 1, 2005 to July 1, 2005, of §§ 44 and 45 of PA 05-280, which:

1. prohibit the state from claiming or applying a lien against welfare recipients' settlements or awards in housing or employment discrimination cases and
2. exempt payments welfare recipients receive as a result of a human rights complaint under state or federal antidiscrimination law, either as a claim settlement or judicial or administrative award, from being considered as income, resources, or assets for welfare eligibility purposes either in the month the money is received or in the following three months.

EFFECTIVE DATE: July 1, 2005

PRESCRIPTION DRUG PURCHASING PROGRAM STUDY (§ 81)

The act amends § 68 of PA 05-280 by adding the commissioners of consumer protection and social services, or their designees, to the working group that must study whether the state should contract for development of a prescription drug purchasing program or enter into an existing program, that allows Connecticut residents to purchase drugs through pharmacies in Canada or other countries. The working group's membership includes the public health commissioner, the Public Health Committee chairpersons or their designees, the attorney general or his designee, an OPM representative, and any other person the health commissioner and Public Health Committee chairpersons deem necessary.
EFFECTIVE DATE: July 1, 2005

BODY ARMOR (§ 82)

The law makes it illegal for any person, firm, or corporation to sell or deliver body armor to another person unless the transferee meets in person with the transferor to accomplish the sale or delivery. The act makes this law inapplicable to the sale or delivery of body armor to (1) a sworn member or authorized official of the Division of Criminal Justice, (2) an authorized DAS official who purchases it on behalf of the Division of Criminal Justice, or (3) an authorized official of the Judicial Branch who purchases it on behalf of a probation officer.

"Body armor" means any material designed to be worn on the body and to provide bullet penetration resistance.
EFFECTIVE DATE: July 1, 2005

DSS SECURITY DEPOSIT GUARANTEE PROGRAM (§ 83)

PA 05-280 allows the Department of Social Services (DSS) commissioner to deny an applicant eligibility for DSS's security deposit guarantee program if he has made more than two claims in a five-year period.

This act instead allows the commissioner to deny program eligibility to an applicant only when she has paid two or more claims by landlords in the immediately preceding five-year period.

Generally, the law allows qualifying people who are on welfare or have a demonstrated financial need and are in emergency shelters or do not have permanent housing to apply to DSS and receive a security deposit guarantee for a rental apartment no more than once in an 18-month period without the DSS commissioner's express authorization. If the tenant does not fulfill his obligations, the landlord claims the appropriate amount of the security deposit from DSS.
EFFECTIVE DATE: July 1, 2005

GEOSPATIAL INFORMATION SYSTEMS (GIS) COUNCIL (§ 84)

Purpose

The act establishes a 21-member council to coordinate, within available appropriations, a GIS capacity for the state, regional planning agencies, municipalities, and others as needed. In doing so, the council must consult with these parties. The system must guide and assist state and local officials involved in transportation; economic development; land use planning; environmental, cultural, and natural resource management; public service delivery; and other areas as necessary.

In coordinating the GIS capacity, the council must specify how the system must be created, maintain, and disseminate geographic information or imagery that (1) precisely identifies certain locations or areas or (2) creates maps or information profiles in graphic or electronic form about them. The council must also promote a forum where GIS information can be centralized and distributed.

The council may apply for or accept and spend federal funds on the state's behalf through OPM.

GIS Council Membership

The council consists mostly of state officials and specific GIS users appointed by legislative leaders and the governor, as shown below. The council can add members, as it deems necessary. The appointing authority must fill any vacancies. The members are not paid for their services but are reimbursed for their necessary, council-related expenses.

Appointee	***Appointing Authority***
OPM Secretary	Statutory
Environmental Protection Commissioner	Statutory
Economic and Community Development Commissioner	Statutory
Transportation Commissioner	Statutory
Public Safety Commissioner	Statutory
Public Health Commissioner	Statutory
Public Works Commissioner	Statutory
Agriculture Commissioner	Statutory
Emergency Management and Homeland Security Commissioner	Statutory
Social Services Commissioner	Statutory
Department of Information Technology Chief Information Officer	Statutory
Connecticut State University System Chancellor	Statutory
University of Connecticut President	Statutory
Connecticut Siting Council Executive Director	Statutory
Public Utility Control Authority Chairman	Statutory
Military Department Adjacent General	Statutory
GIS user representing town with over 60,000 people	Senate President Pro Tempore
GIS user representing a regional planning agency	Senate Minority Leader
GIS User representing a town with between 30,000 and 60,000 people	Governor
GIS User representing a town with fewer than 30,000 people	House Speaker
GIS User	House Minority Leader

The act requires the governor to select the council's chairman from among its members.

Meetings

The council must meet at least once a month and may hold additional meetings as its rules require. The chairman or any three members can call special meetings if they notify the other members in writing at least 48 hours before the meeting.

Technical Assistance Program

The council must, within available appropriations, provide technical assistance to towns and regional planning agencies for developing GISs. It must recommend how the system it developed can be improved.

Report

Beginning January 1, 2006, the council must report annually on its activities to the Planning and Development Committee.

EFFECTIVE DATE: Upon passage

LAND USE EDUCATION (§ 85)

The act requires the OPM secretary to report on the land use training and education programs available to

members of local land use agencies and the extent to which members participate in them. He may include any recommendations for improving or expanding the programs, including recommendations for changing state law.

In preparing the report, the secretary must consult with:

1. the environmental protection commissioner;
2. Council on Soil and Water Conservation District;
3. regional planning agencies, regional councils of government, and regional councils of elected officials;
4. UConn's Agricultural Extension Service and Center of Land Use Education and Research;
5. the Connecticut Chapter of the American Planning Association; and
6. the Rural Development Council.

EFFECTIVE DATE: Upon passage

REVISIONS TO THE COMMERCIAL UNDERGROUND STORAGE TANK PROGRAM (§§ 89 – 96 & 116)

The act revises the commercial Underground Storage Tank (UST) Clean-Up program. Major changes include:

1. authorizing an inspection program of commercial USTs and permitting private licensed environmental professionals (LEPs) to evaluate USTs for compliance with the law and regulations;
2. authorizing the DEP to stop deliveries to, and operation of, noncompliant commercial USTs;
3. expanding the categories of people eligible for reimbursement from the UST account ("responsible parties");
4. allowing UST owners and operators to assign their claims;
5. requiring applicants to submit requests for reimbursement by certain deadlines and achieve remediation milestones;
6. requiring a compliance report before the UST review board acts on a request for reimbursement and allowing the commissioner to deny or reduce payment if she finds an applicant is not in compliance with UST regulations;
7. allowing the commissioner to create a price schedule that limits the amount the board can reimburse applicants for the costs of labor, equipment, and material;
8. authorizing the review board, with an applicant's consent, to pay up to 90% of certain requested costs in exchange for a review of the claim within 90 days;
9. limiting the amount of legal fees the board may reimburse;
10. requiring LEP or DEP commissioner approval of expenditures made after October 1, 2005;
11. allowing UST owners and operators to apply for reimbursement even if they have insurance, but requiring them to reimburse the board if they receive payments for leaks from insurance or other sources; and
12. authorizing the attorney general to recover damages from owners of property on which there is a leaking UST if certain conditions are met and changing some of the conditions under which he may sue.

EFFECTIVE DATE: Upon passage

Underground Storage Tank Petroleum Clean-up Account

The Underground Storage Tank Petroleum Clean-up Account reimburses UST owners and operators for remediation costs they incur because of leaking commercial USTs. The account is funded by a portion of the Petroleum Products Gross Earnings tax.

Tank Inspection and Removal From Service (§ 89)

The act authorizes the commissioner to adopt regulations establishing inspection requirements for tanks for compliance with laws and regulations concerning their design, construction, installation, and operation. She also may adopt regulations (1) to establish programs authorizing people to inspect USTs and determine if violations that caused them to be removed from service have been fixed and (2) barring deliveries to, and the use of, noncompliant tanks.

The inspection regulations must include requirements for the minimum frequency, method, and content of inspections; the maintenance and disclosure of results; and education and training requirement for inspectors and address whether inspectors may be employed by the owner or operator of the tanks they inspect.

Noncompliant USTs. The act authorizes the DEP commissioner to require a noncompliant tank owner or operator to (1) pump out the tank and place on it a plainly visible notice indicating it is not in compliance and cannot be used or accept deliveries or (2) install a device that prohibits deliveries and renders the UST unusable. She may do so if she finds that a tank (1) is not designed, built, installed, or operated according to law or regulations or (2) does not have, or operate, proper (a) release detection equipment or (b) overfill and spill protection measures or equipment. She cannot take such actions for violations solely of reporting or record-keeping requirements.

No one may deliver any product to a tank with such a notice or on which the commissioner has placed a disabling device until the commissioner or someone she authorizes determines the violation has been corrected. The UST owner or operator must ensure it does not dispense any product or receive deliveries, and people and towns must not remove, alter, deface, or tamper with a notice or disabling device. By law, the DEP commissioner may fine violators up to $25,000 a day.

The commissioner must provide the UST owner or operator with an opportunity for a hearing within two business days of placing a notice or disabling the UST. The hearing must deal only with the question of whether a violation occurred, and if it is continuing.

A UST may be returned to service only when the violation has been corrected to the satisfaction of the commissioner or a person authorized to make such a determination under the regulations the commissioner may adopt. The commissioner must determine if a violation has been corrected within 24 hours of receiving notice that such a correction has been made. If she fails to make a determination within 24 hours, and until she authorizes inspectors to make one, the owner or operator may return the UST to service if he provides the commissioner with a written affidavit (1) certifying he has corrected all violations and (2) fully describing all corrective action he has taken. He must provide this information the same day he returns the UST to service, or the next business day if the UST is returned to service on a weekend or holiday.

The commissioner may adopt regulations that establish additional or different requirements than the act.

Expanding Who is Considered a Responsible Party (§ 90)

Under prior law, a "responsible party" was anyone, including the state, that owned or operated a UST from which a release occurred. The act expands this definition for applications received before and after July 1, 2005.

For applications the board received between the act's effective date and July 1, 2005, a responsible party is any person who owns or operates a tank from which a release or suspected release takes place. The act defines person to include individuals, firms, partnerships, associations, syndicates, companies, trusts, corporations, LLCs, towns, state agencies, and all other legal entities.

For applications for payment received by the board after July 1, 2005, the act defines a responsible party as any person who, at any time (1) owns, leases, uses, operates, or has an interest in a UST from which a leak or suspected leak occurred or (2) owns, leases, uses, or has an interest in property on which such a tank is located. These people are responsible parties whether or not they had such an interest in the tank or property when the leak occurred. Under the act, a responsible party also includes anyone related to anyone in the first two groups through a family, contractual, corporate, or financial relationship.

The act does not affect any determination the board made before July 1, 2005 about an applicant's status for reimbursement purposes.

Reimbursement, Assignment, and Changes in Reimbursement (§ 91)

By law, the commissioner may reimburse responsible parties and parties supplying goods or services for costs, expenses, and other obligations incurred as a result of leaks and suspected leaks and the costs of their investigation. The act authorizes the commissioner also to reimburse them for the costs of remediating leaks or suspected leaks. Under prior law, the board could reimburse third parties for claims for bodily injury, property damage, and damage to natural resources. The act limits reimbursement for these claims to claims that have been finally adjudicated, or settled with the board's consent.

Under prior law, the board could reimburse an applicant for the cost of remediating or monitoring to a level more strict than that established by DEP only if the commissioner directed him to. The act requires the commissioner's order to be in writing.

Starting June 1, 2005, the act prohibits the board from reimbursing claims for (1) lost property value or interest and (2) attorneys' fees or other costs of legal representation (a) of more than $5,000 to any responsible party, (b) of more than $10,000 to any other party, or (c) by a responsible party for defending against claims brought by another party.

Assignment of Claims. Responsible parties may assign their claims. The act authorizes the commissioner to pay assignees from the UST Clean-Up account, providing: (1) the assignor has not yet been paid, (2) the assignor directs the commissioner to pay the assignee on a form the commissioner approves, (3) the account does not bear any of the assignment costs, and (4) neither the state nor any state agency bears any liability with respect to the assignment.

Application Deadlines. The act creates deadlines by which applicants must request payment. An applicant whose initial application was received by the board before July 1, 2005 cannot submit any supplemental request after September 30, 2009. An applicant whose initial request is received by the board after July 1, 2005 has five years from the date of receipt to submit any supplemental requests. These deadlines do not apply to requests for reimbursement for annual groundwater

remediation, including the preparation of annual progress reports.

Deadline Extensions. Under the act, the above deadlines must be extended by six months if the board fails to decide on a request for payment within six months of receiving it. However, the deadline for a particular request cannot be extended by a total of more than two years. And if the commissioner determines a request was ready for a decision by the board but was not placed on its agenda because the board was unable to meet or act on it, the deadline can be extended only for the length of time the board was unable to meet or act.

Insurance Coverage Reimbursement. Under the act, a person may apply to the board for reimbursement even if he has insurance or another agreement to reimburse him for costs incurred in response to a leak. But, he must (1) notify the board, in writing, of the payment or expected payment and (2) repay the account all the money he receives from such other sources within 30 days of receiving a payment. Another provision of the act allows for payment from the account only if the applicant's insurance or contract has been denied or is insufficient to cover the costs for which the applicant is seeking payment. If the board finds an applicant is seeking reimbursement from the account, and that reimbursement is available to him from another source, it may impose any conditions it deems reasonable on the amount it pays from the account.

Pay for Performance Subaccount. The act establishes a "pay for performance subaccount" in the clean-up account. The commissioner may use this subaccount for a program to pay applicants who achieve environmental milestones or results and may enter into contracts to implement the program.

Change in Board Responsibilities and Membership (§ 92)

Under the act, the board no longer reviews applications to determine if a release has occurred and the amount of damage it caused, but must decide whether to order reimbursement based on applicable laws and regulations affecting USTs.

Under prior law, the board included a member representing the Connecticut Gasoline Retailers Association, appointed by the House minority leader. The act replaces this member with a representative of the Gasoline and Automotive Services Dealers of America, Inc.

Price Schedule (§ 93)

The act authorizes the commissioner to prepare a price schedule of the maximum or range of amounts the UST clean-up account will reimburse applicants for costs incurred as a result of a leak or suspected leak. The schedule is not to be considered a regulation subject to the UAPA.

The amounts in the price schedule must be no more than the usual, customary and reasonable amounts charged for these services or materials, as determined by the commissioner. Once the commissioner adopts the schedule, the board cannot pay more for services or materials than it allows. The schedule may serve as a guide for costs paid or incurred before its adoption.

Anyone may ask the commissioner to adopt, revise, or revoke the schedule. If she decides to do so, she must, after consulting the board, publish notice of intent in a newspaper of substantial circulation in the affected area and allow 30 days for submittal of written comments. She must then publish notice of the schedule's adoption, revision, or revocation in a newspaper of substantial circulation in the affected area.

The act bars the commissioner from having to review the price schedule more than once every two years, but authorizes her to do so more often if she believes it necessary. She may revise or revoke the schedule, in whole or in part. Once she adopts a schedule that includes a price for a particular service, the act supersedes a regulatory requirement that applicants obtain three written bids for such a service. The act requires LEPs to use a seal, as provided in regulations, to provide the written approvals the act requires.

Claims and Notification (§ 94)

Claims Applications. By law, responsible parties who are not liable for a release may apply to the board for the costs of investigating the release. The act authorizes them to also apply for the costs of remediation.

Under prior law, third parties who claimed to have suffered damage or personal injury because of a release could apply to the board for reimbursement, if the responsible party (1) denied there was a release or (2) did not apply to the board for payment of a claim. The act instead requires that a person who claims to have suffered bodily injury, property damage, or damage to natural resources make a reasonable attempt to notify the responsible party in writing. If the claimant cannot provide such notice, or if the responsible party does not apply to the board for payment within 60 days of receiving the notice or such other time as the parties agree to, the third party may apply to the board for payment.

Prior Written Approval of Claims. The act requires prior written approval of claims made for payment for the costs of labor and materials provided after October 1, 2005 and for services and activities begun after that date. For such costs that total $250,000 or less, the

board cannot order payment unless the commissioner or an LEP has given written approval. For such costs exceeding $250,000, the commissioner must give written approval or authorize, in writing, an LEP to do so. The applicant must submit the required written approvals with his request for payment.

The fees an LEP charges may be (1) established in the price schedule the commissioner devises and (2) included in an applicant's request for reimbursement. The act contains a specific statement an LEP must submit concerning the factual basis of the work he is approving and its compliance with the law.

Conditions for the Board to Order Reimbursement. Under prior law, the board reimbursed responsible parties and third parties who suffered damage or personal injury because of a UST leak. The board had to order reimbursement when these applicants met certain conditions. The act modifies some of the conditions and adds new ones.

It eliminates a requirement that the board find a leak to be the proximate cause of the damage for which reimbursement is sought. The board must instead find that the expense for which reimbursement is sought is reasonable, and that the applicant has not violated certain notification or compliance provisions.

Under prior law, a responsible party had to notify the board of (1) a release as soon as practicable and (2) any resulting third-party claim. The act instead requires responsible parties to notify (1) the commissioner of a release according to regulations or as soon as practicable and (2) the board as soon as practicable of any claim resulting from the release made by someone other than a responsible party.

The board must determine what, if any, reductions should be made to the amount sought, based on the compliance evaluations the act requires.

The board must also find that the responsible party has completed a milestone the act establishes. If there is no operating UST on the property when a request for payment is made, the board must find that the leak was not caused by (1) failing to comply with UST laws and regulations or (2) a reckless, willful, wanton, or intentional act or omission or negligence that constitutes noncompliance with UST laws or regulations. If a UST is dispensing oil when a request is made, the request for payment must include a summary of the compliance status of all tanks on the applicant's property (see below).

Under the act, the person seeking reimbursement must show that:

1. he did not remediate the UST to a more stringent standard than DEP requires, except at the commissioner's written direction and
2. he does not have insurance, or a contract or other agreement to provide payment or reimbursement for costs, or that such insurance or contract has been denied or is insufficient to cover the costs for which the applicant is seeking payment.

The act requires the board to reimburse a third party who suffered bodily injury, property damage, or damage to natural resources as the result of a leak, if such a party can show (1) the cost was incurred after July 5, 1989; (2) the responsible party is subject to federal UST laws requiring financial responsibility; (3) the remediation for which reimbursement is sought is no more stringent than remediation standards require, unless the commissioner has directed the responsible party otherwise in writing; and (4) the responsible party does not have insurance or another agreement to pay the requested costs, or the insurance has been denied or is insufficient. The board must also determine that the party seeking damages (1) has suffered bodily injury, property damage, or damage to natural resources; (2) the costs are reasonable; (3) the party submitting them has provided or tried to provide written notice of its claim to the responsible party; and (4) the responsible party has not asked the board to pay the claim.

Compliance Evaluations. Under the act, for applications received starting January 1, 2006 where a UST is dispensing oil at the time of a request, the board cannot consider an initial or supplemental request for payment unless it includes a summary of the compliance status of all tanks on the applicant's property.

An independent consultant must prepare the compliance summary on a form the commissioner accepts or prepares. It must include an evaluation of compliance with regulations concerning the design, construction, installation, notification, general operating, release detection, system upgrading, abandonment, and removal date requirements. The consultant must base the summary on an evaluation conducted no more than 180 days before the board receives the payment request, except for the evaluation of record-keeping, monitoring, or testing, which must be based on a one-year period ending not more than 180 days before the board receives an application. The summary must fully describe all steps taken to correct any noncompliance the evaluation identified.

These requirements apply to initial applications received after January 1, 2006 and to supplemental applications submitted after that date, regardless of when the initial application was submitted. However, the board cannot require a compliance summary in a supplemental request if a request submitted in the prior year included one.

The board may reimburse an applicant a maximum of $1,000 per evaluation for the cost of hiring an independent consultant to perform a compliance evaluation, provided the evaluation is conducted according to law and includes all USTs on the property. If the price schedule the commissioner adopts under the

act includes an amount for performing a compliance evaluation, the amount eligible will be the amount the schedule prescribes.

The act does not affect any board decision to deny reimbursement or provide only partial payment from the account. The board cannot reconsider or reevaluate such a decision.

If there is no UST dispensing oil when an application is submitted, the application must show the leak was not caused by (1) failing to comply with UST laws and regulations or (2) reckless, willful, wanton or intentional conduct or negligence constituting noncompliance with UST laws or regulations, regardless of whether a previous application provided such information. This provision does not apply to a request for annual groundwater remediation actions, including the preparation of a groundwater remedial action progress report.

Reduction of Reimbursements. The act authorizes the board to reduce payments if the compliance summary shows the applicant failed to fully correct a violation when he requests payment. The board may completely disallow the payment if the applicant did not (1) meet tank or piping construction requirements or (2) properly report a leak. It may reduce the payment by 75% if it finds the applicant did not have proper (1) cathodic protection, (2) spill or overfill prevention, or (3) release detection. The board also may reduce payments for other violations of UST laws or regulations. In addition, the commissioner can take other enforcement actions against someone who failed to comply with applicable laws or regulations regarding ownership or operation of a UST.

Deadline Extension For Request For Payment. Under prior law, the board could not order payment from the account for work performed or services provided after October 1, 2004 unless it received an application or preauthorization request within 180 days of the time the work was performed or material provided. The act changes the deadline to one year after the completion of most or all of the work needed to prepare the plan or report required by the milestones the act creates.

Prior law prohibited the board from ordering payment for preauthorized work or services performed or provided before October 1, 2004 unless it received an application or preauthorization request by April 1, 2005. The act instead allows the board to order such payment if it received an application or any submission regarding preauthorized work, services, or material by that date.

Attorney General's Actions for Damages. The act expands the attorney general's power to sue for certain damages. Under prior law, the attorney general could, at the board's request, file suit in Hartford Superior Court to recover damages from responsible parties. The act authorizes the DEP commissioner to also make such a request.

It allows actions against anyone who (1) owns or operates the UST when the leak occurs or (2) owns the land where the UST is located at the time or after the leak occurred until a final remedial action report is submitted and approved as the act provides. The act changes several of the conditions under which the attorney general may sue such people.

1. Under prior law, the attorney general could sue if the responsible party knowingly and intentionally failed to notify the commissioner of a leak that was the result of the responsible party's reckless, willful, wanton, or intentional conduct. The act instead authorizes the attorney general to sue where the leak resulted from any person's reckless, willful, wanton, or intentional act or omission or negligence that constitutes noncompliance with UST laws and regulations.
2. Prior law authorized the attorney general to sue in cases where a UST leaked as a direct result of its noncompliance with either a commissioner's order or UST laws and regulations. The act eliminates the need for the attorney general to prove that noncompliance was the direct cause of the leak, but it limits lawsuits to instances of noncompliance with a final order of the commissioner or a final judgment of a court.
3. Under the act, the attorney general cannot bring a legal action unless the board paid money from the account to a party (including the commissioner) other than the person being sued.
4. The act allows the commissioner, as well as the board, to recover all payments made from the account and by the commissioner concerning the leak or suspected leak; interest on the payments at an annual rate of 10%; and the costs of recovering the payments, including reasonable attorneys' fees.
5. The act bars anyone whom the attorney general has sued, or to whom the commissioner has sent a demand letter, from requesting reimbursement for the amount the attorney general or commissioner is seeking, and it prohibits the board from acting on such a request.

Hearings on Board Decisions. The act requires the board to render a decision on an application from any person, rather than just a responsible or third party. It must do so, as under current law, within 90 days of an initial request and 45 days of a subsequent request. As under prior law, the act requires the board to hold a hearing when the commissioner or a party aggrieved by

the board's decision requests one. But the act requires the board to notify all parties, rather than just the applicant or responsible party, if it has affirmed or modified its decision following a hearing. And it bars an applicant from resubmitting a request for payment if he did not request a hearing after the board issued its decision.

Refusal of Responsible Party to Pay Third Party Claim for Deductible. By law, responsible parties must pay the first $10,000 of clean-up expenses. Third parties are not required to pay this deductible. With certain exceptions, responsible parties and third parties are responsible for costs over $1 million. The act eliminates a provision authorizing the commissioner, at the board's direction, to pay the first $10,000 of third party claims directly to a third party claimant if the responsible party (1) refused to do so and (2) did not pay the $10,000 deductible. Under prior law, the board could seek to recover this money.

Discounted Payments. The act authorizes the board to speed up consideration of a request for payment for certain activities, costs, or expenses in return for paying less than the full amount when considering a supplemental application or request for payment based on an initial application it received before June 1, 2005 and found eligible for payment.

Under the act, the commissioner may identify categories of activities that cost less than $100,000 for which the board may approve payments of less than the full amount in return for expediting a decision on reimbursement. In making her recommendation to the board, the commissioner must consider amounts previously paid and other information she believes relevant. The board may approve payments of up to 90% of the average amount previously paid for these categories.

The board can approve or disapprove, but not modify, payment of the percentage the commissioner recommends. This apparently refers to both the percentage agreed to in an individual case and to a percentage recommended for a particular category of activities. The commissioner also may recommend changing any percentage the board previously approved.

A party seeking payment who agrees to accept a percentage approved by the board must do so in writing. He must sign the acceptance and acknowledge he is agreeing to accept less than the full amount requested. The party must use such forms as the commissioner may prescribe. The board has 90 days from receiving the applicant's acceptance to determine whether to order payment from the account for the specified activity. It must only consider whether the costs are those for which the board has approved payment of a percentage.

The percentage the board pays is considered full payment, and the applicant cannot seek additional reimbursements for such costs. The categories or activities the commissioner identifies may represent all or a portion of the amount sought in a supplemental application.

Under the act, an applicant who notifies the commissioner of a leak according to regulations she adopts is considered to also have notified the board.

Milestones (§ 95)

For applications the board receives starting October 1, 2005, the board can reimburse an applicant only when he meets a milestone the act creates. Six of the seven milestones require one report. For the seventh milestone, annual groundwater remediation progress reports, the act allows a responsible party to file a maximum of four requests for payment per year. The milestone requirements apply to applications the board receives on and after October 1, 2005 regardless of when the release or suspected release took place, whether action has been taken in response to the release, or whether prior applications have been submitted to the board. The act authorizes the commissioner to adopt regulations establishing these or other milestones, including milestones that differ from those in the act. Once the regulations are adopted, its milestones will supplant those in statute.

The statutory milestones are:

- A "Release Response Report," prepared by an LEP and submitted to the commissioner, describing:
  1. all initial response actions taken to prevent a release and to mitigate a resulting explosion, fire, or other safety hazard;
  2. the results of an initial site investigation that determines the presence and extent of free product from the release, the potential for or existence of groundwater pollution that threatens the quality of drinking water wells, and whether the release threatens the public health; and
  3. all interim actions taken and proposed to:
     (a) remove such free product to the extent technically practicable;
     (b) provide potable water to anyone whose drinking water has been polluted by the release to a level above the groundwater protection criteria or above a level the public health commissioner determines poses an unacceptable risk of injury to people drinking the water or using it for other personal or domestic uses, whichever is more stringent; and

(c) mitigate any public health risk from polluted soil vapor or indoor air resulting from the release.

(The following reports must be approved in writing by (1) the commissioner or (2) an LEP and submitted to the commissioner.)

- An "Interim Remedial Action Report" describing in detail all remedial action taken to:
  1. remove free product to the maximum extent technically practicable;
  2. ensure that all people whose drinking water was polluted by the release have been provided potable water; and
  3. ensure that soil vapors that pose a public health risk are prevented from migrating into any buildings overhead.
- An "Investigation Report and Remedial Action Plan," including a detailed description of (1) an investigation that determines the existing and potential extent and degree of on and off-site soil, surface water, soil vapor, and groundwater pollution resulting from the release, and (2) all actions proposed to remediate this pollution according to regulations governing remediation of hazardous waste sites.
- A "Soil Remedial Action Report" describing in detail the extent of soil pollution resulting from the release, all remedial actions taken to abate it, and all documentation that demonstrates that it has been remediated according to regulations regarding remediation of hazardous waste sites.
- A "Groundwater Remedial Action Progress Report" including a detailed description of the remedial actions, the results of groundwater monitoring or any other monitoring conducted, an analysis of the effectiveness of the remedial actions, and a proposal for any changes in the groundwater remedial actions and monitoring that may be needed to comply with the hazardous waste site remediation regulations. This report may be submitted only after the completion of all construction needed to implement the approved groundwater remedial actions, and the actions have been operating and monitored for one year.
- An "Annual Groundwater Remedial Action Progress Report," including a detailed description of the remedial actions, the results of groundwater or any other monitoring conducted for the year covered by the report, an analysis of the effectiveness of these actions, and a proposal for any changes in the remedial actions and monitoring that may be needed to comply with the hazardous waste remediation regulations. A responsible party may submit to the board up to four separate applications or requests for payment or reimbursement per calendar year for costs, expenses, or obligations paid or incurred for annual groundwater monitoring or compliance.
- A "Final Remedial Action Report" documenting that the release has been investigated according to prevailing standards and guidelines and that the soil, surface water, groundwater, and air polluted by the release has been remediated according to the hazardous waste remediation regulations.

Application Processing Plan (§ 96)

Within 180 days of the act's passage, the commissioner, after consulting with the board, must develop and implement a plan to process applications submitted to the board, emphasizing applications submitted before June 30, 2005. The plan may include expedited procedures for processing certain categories of applications; identifying, providing notice, and processing incomplete applications; and helping applicants complete their applications. The commissioner must update the board regarding the plan's implementation every six months until July 31, 2007, and must, by that date, prepare a report, apparently for the board, describing (1) progress in processing applications submitted before June 30, 2005; (2) estimated results achieved by using the new procedures; (3) the number of pending applications; and (4) her recommendations for improving the application process. The commissioner must seek public comment before implementing the plan.

Repeal of UST Application Moratorium (§ 116)

By law, the Underground Storage Tank Review Board could not accept applications for reimbursement between September 1, 2003 and June 8, 2004. Under prior law, the moratorium on applications resumed July 1, 2005 and ended October 1, 2005. The act repeals those moratoria, allowing the board to consider applications submitted during those periods.

LAST SALE DATE ON MILK AND MILK PRODUCTS (§ 97)

The act restores a provision amended by § 12 of PA 05-175 and repealed by § 25 of the same act.
EFFECTIVE DATE: October 1, 2005

COMMUNITY MENTAL HEALTH RESTORATION SUBACCOUNT (§ 98)

The act requires the DMHAS commissioner, in consultation with DCF and DSS, to report on any

Medicaid reimbursement the state received for providing coverage of optional rehabilitation services for children and adults. He must submit the report by February 1, 2006 to the Public Health, Human Services, and Appropriations committees.
EFFECTIVE DATE: July 1, 2005

CORRECTION TO TECHNOLOGY EDUCATION STUDY (§ 99)

The act removes an erroneous reference to the Board for State Academic Awards in Special Act 05-13 requiring the higher education commissioner and the Office of Workforce Competitiveness to review and report to the Higher Education and Employment Advancement Committee on the inclusion of nanotechnology, molecular manufacturing, and advanced and developing technologies at higher education institutions.
EFFECTIVE DATE: Upon passage

PRIORITY SCHOOL DISTRICT GRANT DISTRIBUTION (§ 100)

The act adjusts the priority school district grant fund allocations specified in PA 05-245 for priority school districts and school readiness grants for FYs 06 and 07 as follows:

GRANT	*FY 06*		*FY 07*	
	PA 05-245	*This Act*	*PA 05-245*	*This Act*
Priority School Districts	$34,538,308	$34,925,166	$35,862,269	$36,513,547
School Readiness	$48,516,500	$48,129,642	$51,006,500	$50,355,222

Funds allocated to early reading success, extended school building hours, and school accountability grants remain unchanged.
EFFECTIVE DATE: July 1, 2005

SUPPORTIVE HOUSING AND MENTAL HEALTH (§§ 101–103)

The act amends the memorandum of understanding (MOU) and debt servicing provisions of PA 05-280 dealing with supportive housing.

Memorandum of Understanding (§ 101)

PA 05-280 requires the OPM secretary and DMHAS commissioner to enter into an MOU with the Social Services, Children and Families (DCF), and Economic and Community Development (DECD) departments to effectuate the Next Steps initiative to create 500 additional units of supportive housing. Under that act, the MOU must require (1) DMHAS and DCF to provide annual grants for support services and (2) DECD and the Connecticut Housing Finance Authority (CHFA) to provide grants, mortgage loans, and tax credits for projects. This act makes these agencies' actions optional. And it allows CHFA and DECD to provide combinations of these types of assistance. It also specifies that the rent subsidies DSS can provide to a project under the MOU can include payments to fund reasonable repair and replacement reserves.

The act permits the MOU to contain any provisions the parties (1) find necessary to implement the Supportive Housing Initiative (which includes an earlier 650-unit pilot program) and (2) appropriate for repaying state assistance (see below) if CHFA receives mortgage payments from federal or other sources. It eliminates a provision that the MOU provide for the state treasurer and OPM secretary to enter a debt service agreement with CHFA to pay debt service on tax-exempt bonds CHFA issues for the units, but it explicitly authorizes them to contract with CHFA to provide state assistance on bonds it issues.

PA 05-280 requires CHFA, by January 1, 2006, to issue requests for proposals to participate in the Next Steps Initiative. This act requires it to give priority to applicants that include organizations DMAHS, DSS, and DCF deem qualified to provide services.
EFFECTIVE DATE: July 1, 2005

Debt Service Agreement (§ 102)

PA 05-280 permits the treasurer and OPM secretary to contract with CHFA for the state to pay principal and interest and reasonable operating reserves on CHFA mortgages issued under both phases of the Supportive Housing Initiative. The act requires them to do so if the Bond Commission authorizes them to act. This act broadens the types of such "state assistance" they may provide to include interest-rate swap payments; liquidity, letter of credit, and trustee fees; and similar bond-related expenses on bonds issued to provide mortgages. It eliminates such state assistance for operating reserves, but it requires the state to pay up to $70 million for reasonable repair and replacement reserves and bond issuance costs.

The act excludes bonds or refunding bonds to which this state assistance applies from counting against the state's bond limit. It also eliminates a requirement that the contract with CHFA include provisions the secretary and treasurer find (1) needed to assure the initiative is put into effect, (2) appropriate for repaying the state when CHFA receives mortgage payments from federal or other sources, and (3) in the state's best interests by allowing direct payment to the bond trustee or paying agent.

The act makes any provision of the contract that provides for annual debt service payments a full faith and credit obligation of the state. PA 05-280 deems such a provision a state contract with the bondholders and, like this act, appropriates all amounts needed to make prompt payment.

PA 05-280 permits CHFA to pay off the original bonds at any time by issuing refunding bonds. This act permits the treasurer and OPM secretary to amend their contract with CHFA as needed in connection with such a refunding without Bond Commission authorization.
EFFECTIVE DATE: July 1, 2005

Certifying Behavioral Health Providers (§ 103)

The act makes a technical correction to the title of a Medicaid program referenced in PA 05-280.
EFFECTIVE DATE: July 1, 2005

CONTRACTS FOR LEGAL SERVICES (§ 104)

Beginning January 1, 2006, the act requires the attorney general to use request for proposal or request for qualification and negotiation procedures when awarding state agency contracts for legal services that will, or could reasonably be expected to, result in attorney's fees, including contingency fees, of at least $250,000.

It requires him to establish request for proposal or qualification and negotiation procedures for state agencies to follow when contracting for legal services expected to cost the state at least $250,000.
EFFECTIVE DATE: Upon passage

ETHICS (§§ 105-109)

Citizen's Ethics Advisory Board Members (§§ 105 & 106)

PA 05-183 abolishes the State Ethics Commission (SEC) and establishes the Office of State Ethics (OSE) and a nine-member Citizen's Ethics Advisory Board as its successor. It requires the governor, Senate president pro tempore, and House speaker to jointly appoint an interim executive director of the OSE to serve until the new Citizen's Ethics Advisory Board appoints the OSE executive director.

This act permits a member of the SEC on June 30, 2005 to serve on the Citizen's Ethics Advisory Board until September 30, 2005. After July 1, 2005, all board members, including any vacancies, must be appointed consistent with the provisions in PA 05-183. Any SEC member who elects to serve on the board during the three-month period is considered to fill a vacancy, and after the term expires he is eligible for appointment to one full four-year term.

If the advisory board does not have enough members from July 1, 2005 to September 1, 2005 to constitute a quorum, the governor can appoint members that the Senate president pro tempore and House speaker approve. Like the SEC members who elect to serve on the board, the gubernatorial appointees are considered to fill vacancies, and after their terms expire they are eligible for appointment to one full four-year term.

The act requires the full board to be in place and serving their initial terms, which begin on October 1, 2005, before they hire the executive director.
EFFECTIVE DATE: Upon passage, except the provision on the executive director is effective July 1, 2005.

Ethics Probable Cause Hearings (§ 107)

The act stipulates that any probable cause hearing pending with the SEC on June 30, 2005 continues after July 1, 2005 when the SEC ceases to exist. Once the OSE is established, it must resolve all matters the SEC started.
EFFECTIVE DATE: Upon passage

Ethics Regulations (§§ 108 & 109)

PA 05-183 authorizes the advisory board to adopt regulations to carry out the purposes of the State Ethics Code. This act specifies that the regulations do not govern the conduct of judge trial referees who (1) determine if probable cause exists to believe that an ethics violation was committed and (2) preside over ethics violation hearings.
EFFECTIVE DATE: July 1, 2005

STATE BUILDING CODE (§ 110)

The act eliminates the requirement that a state agency obtain a building permit from the state building inspector before it alters any state building or structure exceeding one or more threshold limits (threshold building) and requiring an independent structural review. It retains the requirement for new construction and adds residential occupancies of 25 or more people to the types of buildings for which state agencies must get a permit before construction. As is already required for threshold buildings, the contracting agency must submit plans and specifications for such residential buildings to the state building inspector who must review them for compliance with the State Building Code and, within 30 days of application, issue or deny the permit. He can also ask the state fire marshal to review the plans for compliance with the State Fire Safety Code.

The act eliminates the requirement that the state building inspector or his designee automatically inspect, or cause to be inspected, every building that a state agency constructs or alters. Instead it requires the inspector or his designee to inspect only residential occupancies of 25 or more, and it allows them to inspect other buildings at their discretion.
EFFECTIVE DATE: July 1, 2005

MOTOR VEHICLE IGNITION INTERLOCK REQUIREMENTS (§§ 111 & 112)

The act reverses a change to motor vehicle ignition interlock device requirements made by PA 05-218. That act limited the ignition interlock device requirements that apply to certain drivers only to passenger vehicles they own or operate. This act restores the prior law's requirement that applied the law to all motor vehicles the person owns or operates, not just passenger vehicles.
EFFECTIVE DATE: Upon passage

FARMLAND PRESERVATION, LAND PROTECTION, AFFORDABLE HOUSING, AND HISTORIC PRESERVATION ACT EFFECTIVE DATE CHANGE (§ 113)

The act makes all the sections of PA 05-228 effective October 1, 2005. That act creates new farmland preservation programs and institutes a new document-recording fee to fund them. It was to take effect July 1, 2005, except for the property tax exemption for agricultural buildings, which took effect upon passage. It applied to assessment years beginning on or after October 1, 2005.
EFFECTIVE DATE: Upon passage

PRIVATIZATION (§§ 114 & 115)

The act creates an exception to the moratorium on privatization contracts under PA 05-286 for emergency procurement contracts. (The governor vetoed PA 05-286, so this section appears to have no legal effect.) "Emergency procurement" means procurement made necessary by (1) a sudden, unexpected occurrence that poses a clear and imminent danger to public safety or requires immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services or (2) a court order, settlement agreement, or other similar legal judgment.

The act broadens the definition of "privatization contact" in PA 05-286 to include (1) contracts that do not result in state employee layoffs, transfers, or reassignments and (2) durational consultant services agreements for professional architectural or design services. PA 05-286 prohibits state agencies from entering most privatization contracts between its passage and June 30, 2007. From that date to June 1, 2009, privatization contracts must adhere to the act's standards and requirements, including a requirement that each contract contain a provision stating that it becomes effective after the contractor and the state agency have complied with the act and the uniform procurement code that the act requires the new State Contracting Standards Board to establish.
EFFECTIVE DATE: July 1, 2005

ELIMINATING TRUANCY PREVENTION INITIATIVE (§ 117)

The act repeals the 1998 law authorizing a demonstration project to establish a school- and community-based truancy prevention initiative for public school children with patterns of truancy.
EFFECTIVE DATE: July 1, 2005

PA 05-4, June 2005 Special Session—SB 2000
Emergency Certification

AN ACT CONCERNING THE AUTHORIZATION OF SPECIAL TAX OBLIGATION BONDS OF THE STATE FOR CERTAIN TRANSPORTATION PURPOSES

SUMMARY:

This act:

1. requires the transportation commissioner to acquire 342 new self-propelled rail cars for the New Haven Rail Line and construct maintenance facilities for them, construct operational improvements on I-95, purchase 25 transit buses, and, in consultation with the Transportation Strategy Board (TSB) and appropriate regional planning and governmental bodies, evaluate, design, and construct transportation improvements in places other than on I-95;
2. authorizes $485.65 million in bonding for the rail-related improvements the act requires and $344.5 million in bonding for the other required transportation improvements;
3. authorizes $136.9 million in bonding for general transportation purposes in FY 06, $144.6 million for these purposes in FY 07, and $49 million for capital resurfacing and related construction projects in FY 07;
4. establishes a $1 per-trip surcharge on tickets for travel on the New Haven Line for the seven-and-one-half year period from January 1, 2008 through June 2015 and dedicates the

revenue from the surcharge to the required rail line improvements;

5. increases the petroleum products gross earnings tax rate from 5% to 5.8% in FY 06, 6.3% in FY 07, 7% in FY 08, 7.5% in FY 09 through FY 13, and 8.1% for FY 14 and thereafter;
6. annually transfers specified amounts from the Special Transportation Fund (STF) to the TSB projects account and directs specified amounts to be spent from the projects account on the required rail-related improvements;
7. increases the $5.25 million quarterly transfer to the STF of petroleum products tax receipts attributable from motor vehicle fuel sales to $10.875 million in FY 06, $15.25 million in FY 07, $21 million in FY 08, $25.225 million in FY 09 through FY 13, and $29.85 million in FY 14 and beyond;
8. requires the TSB to spend $5 million in both FY 06 and FY 07 for the municipal dial-a-ride matching grant program and eliminates a requirement that it be funded within available General Fund appropriations;
9. eliminates the separate revenue stream from "incremental revenues" that formerly went into the TSB projects account as well as the $264 million in bonding authority supported by this dedicated revenue;
10. exempts the improvements for the New Haven Rail Line from certain requirements applicable to TSB projects; and
11. makes miscellaneous related changes and requirements.

EFFECTIVE DATE: July 1, 2005, except (1) the New Haven Rail Line $1-per-trip surcharge, rail revitalization account, and revitalization program status report provisions are effective January 1, 2006; (2) the $49 million bond authorization for capital resurfacing is effective May 1, 2006; (3) the FY 07 special tax obligation (STO) bond authorization for general transportation purposes and the provision requiring annual expenditures of $15 million from the TSB projects account for FY 08 through FY 15 for the rail revitalization program are effective on July 1, 2006; and (4) the FY 05 transfer of $5 million for the rail projects and the provision carrying forward current funding are effective on passage.

REQUIRED DEPARTMENT OF TRANSPORTATION (DOT) ACTIONS (§§ 19 & 20)

The act requires the transportation commissioner to:

1. acquire at least 342 self-propelled rail cars for use on the New Haven Rail Line;
2. design and construct rail maintenance facilities to support the self-propelled rail cars;
3. purchase 25 transit buses;
4. design and construct operational improvements to I-95 between Greenwich and North Stonington; and
5. in consultation with the TSB and the appropriate regional planning entities and councils of governments and elected officials, evaluate, design, and construct transportation improvements other than projects on I-95.

The New Haven Line consists of the rail passenger service between New Haven and Grand Central Station in New York and includes the Danbury, Waterbury, and New Canaan branch lines in Connecticut. The act designates the design, development, construction, and acquisition of the maintenance facilities, rail cars, and related equipment for use on the New Haven Line as the "New Haven Line Revitalization Program."

BOND AUTHORIZATIONS

Bonds Authorized for New Haven Line Revitalization Program (§§ 21-26)

The act allows the State Bond Commission to authorize issuance of a total of $485.65 million in STO bonds between July 1, 2005 and July 1, 2014 for rail rolling stock and maintenance facilities, including rights-of-way, other property acquisition, and related projects. The annual amounts available for these purposes are: $26.45 million on July 1, 2005; $32.8 million on July 1, 2006; $49.4 million on July 1, 2007; $55 million on July 1, 2008 and again on July 1, 2009; $54 million on July 1, 2010, July 1, 2011, July 1 2012, and July 1, 2013; and $51 million on July 1, 2014.

The act determines the issuance of these bonds to be in furtherance of one or more of the purposes authorized for the use of STO bonds. It declares them to be special obligations of the state and thus payable only from the revenues pledged by law for repayment of STO bonds.

The bond commission may authorize the bonds only after it finds that (1) a request for authorization signed by the appropriate state officer, department, or agency has been filed with it and (2) any capital development impact statement, human services facility collocation statement, advisory report regarding the state conservation and development policies plan, and statement regarding farmland that are required by law have been filed with it. The commission may authorize the bonds without finding that all the required reports and statements have been filed with it, if it has

authorized its secretary to accept any required reports and statements on its behalf.

Any request for issuance of bonds must identify the project for which the bond proceeds are to be used and the recommendation of the person signing the request as to the extent to which federal, private, or other money currently or soon to be available for the project should be added to the bond proceeds. Any bond proceeds in excess of the aggregate costs of all authorized projects must be used in accordance with existing statutory requirements for such excess proceeds.

Bond Authorizations for Other Specified Transportation Projects (§§ 27-32)

The act allows the bond commission to authorize issuance of a total of $344.5 million in bonds for the period from July 1, 2005 through July 1, 2009 to be used as follows: (1) $187 million for operational improvements to I-95 between Greenwich and North Stonington (including environmental assessment and planning and rights-of-way and property acquisition); (2) $150 million for transportation system improvements other than on I-95 (including environmental assessment, planning, rights-of-way, and property acquisition); and (3) $7.5 million for purchase of buses.

Of the $344.5 million in total authorizations for these purposes, the act makes $26.5 million available on July 1, 2005; $48 million on July 1, 2006; $70 million on July 1, 2007; and $100 million on July 1, 2008 and July 1, 2009.

The requirements and stipulations for issuance of bonds described above also apply to the bonds authorized under these provisions as well.

Bond Authorizations for General Transportation Purposes and Capital Resurfacing (§§ 1-17)

The act allows the State Bond Commission to authorize issuance of $136.9 million in STO bonds for various transportation purposes in FY 06 and $144.6 million in STO bonds in FY 07. It also authorizes up to $49 million in STO bonds, effective May 1, 2006, for capital resurfacing and related construction projects in FY 07.

The requirements and stipulations for issuance of bonds described above also apply to the bonds authorized under these provisions as well.

The FY 06 and FY 07 authorizations for transportation purposes must be allocated to specific programs as shown in Table 1.

Table 1: STO Bond Authorizations for General Transportation Purposes

STO Bond Authorizations for General Transportation Purposes		
Department of Transportation Programs	***FY 06 ($ million)***	***FY 07 ($ million)***
Interstate Highway Program	$11.5	$11.5
Urban Systems Projects	8.0	8.0
Intrastate Highway Program	22.5	28.1
Soil, water supply, and groundwater remediation at or near various maintenance facilities and former disposal areas	6.0	6.0
State bridge improvement, rehabilitation, and replacement projects	20.0	20.0
Reconstruction and improvements to the warehouse and State Pier in New London, including site improvements and improvements to ferry slips	0.2	0.3
Development and improvement to general aviation airport facilities (other than Bradley International Airport), including grants-in-aid to municipal airports	2.0	2.0
Bus and rail facilities and equipment, including rights-of-way, other property acquisition, and related projects	34.0	34.0
Department of Transportation facilities	6.4	6.4
Costs of issuing STO bonds and debt service reserve	26.3	28.3
Total Authorizations	$136.9	$144.6

DOT Annual Report on STO Bonds (§ 18)

The act requires the transportation commissioner to prepare a report on use of the STO bonds it authorizes for general transportation purposes for FY 06 and FY 07 (except for the capital resurfacing authorization) and submit it to the Finance, Revenue and Bonding; Transportation; and Appropriations committees by February 1, 2006 and annually thereafter. The report must include (1) information on any cost overruns for all projects financed with STO bonds in the five years preceding the report date and (2) an accounting of the unallocated balances remaining on all STO bonds authorized for transportation purposes.

NEW HAVEN LINE TRIP SURCHARGE AND REVITALIZATION ACCOUNT (§ 33)

For the seven-and-one-half year period beginning on January 1, 2008 and ending on July 1, 2015, the act imposes a surcharge of $1 per trip on each ticket for travel on the New Haven Line and its branches that either originates or terminates in Connecticut. The transportation commissioner must determine by regulation how the surcharge must be applied to weekly and monthly commutation tickets.

The act creates a restricted capital project account to be known as the New Haven Line revitalization account into which the proceeds of the ticket surcharge and any other funds required by law to be deposited into the account must be placed. Funds in the account may only be used for the capital costs of rail cars, maintenance facilities, and related equipment designated as the New Haven Line Revitalization Program.

The Office of Policy and Management (OPM) secretary must consult with the transportation commissioner and prepare an annual budget detailing how funds in the revitalization account must be spent in the next fiscal year. The commissioner may spend the money for the stated purposes once the governor approves the annual budget.

Once the trip surcharge terminates, the treasurer may use any funds remaining in the restricted account, after paying authorized capital costs, to retire bonds issued pursuant to the revitalization program as she deems appropriate.

PETROLEUM PRODUCTS GROSS EARNINGS TAX INCREASES (§§ 40-41)

Petroleum Products Gross Earnings Tax Increases

The act increases the quarterly gross earnings tax on companies that distribute certain products in Connecticut that contain or are made from petroleum or a petroleum derivative from 5% to:

1. 5.8% for FY 06 calendar quarters,
2. 6.3% for FY 07 calendar quarters,
3. 7% for FY 08 calendar quarters,
4. 7.5% for calendar quarters in FY 09 through FY 13, and
5. 8.1% for FY 14 and thereafter.

Petroleum products that were exempt from the tax remain so.

Transfer to STF

The act increases the amounts of the petroleum products tax receipts attributable to the sale of motor vehicle fuel that the revenue services commissioner must deposit in the Special Transportation Fund from $5.25 million per calendar quarter to:

1. $10.875 million for the FY 06 calendar quarters,
2. $15.25 million for the FY 07 calendar quarters,
3. $21 million for the FY 08 calendar quarters,
4. $25.225 million per quarter for FY 09 through 13, and
5. $29.85 million per quarter for FY 14 and beyond.

If, for any calendar quarter, petroleum products tax receipts are less than the total amount required for the STF transfers and any other transfers required by law, the act requires the revenue services commissioner to certify the amount of the shortfall to the State Treasurer who must then transfer an amount equal to the shortfall from the General Fund to the STF.

TRANSFERS FROM THE STF TO THE TSB PROJECTS ACCOUNT AND ANNUAL EXPENDITURES FOR THE NEW HAVEN LINE REVITALIZATION PROGRAM (§§ 34-36, 38, & 43)

The act requires a specific amount of funding to be transferred annually from the STF to the TSB projects account. It further directs a specified amount of funding from the TSB projects account to be included in the annual financing plan and spent on the New Haven Line Revitalization Program. The funds designated for the revitalization program must remain available until spent. These annual transfers and expenditures are shown in Table 2 below.

Table 2: Transfers and Expenditures for New Haven Line Revitalization Program

Fiscal Year	***Funds to be Transferred from STF to TSB Projects Account***	***Funds to be Spent From TSB Projects Account on New Haven Line Revitalization Program Projects***
FY 05	—	$5 million
FY 06	$25.3 million	$20 million
FY 07	$20.3 million	$15 million
FY 08-FY 15	$15.3 million	$15 million
FY 16 and After	$300,000	—

FUNDING FOR ELDERLY AND DISABLED DEMAND-RESPONSIVE (DIAL-A-RIDE) TRANSPORTATION PROGRAMS (§§ 37 & 39)

The act requires the TSB to spend $5 million in FY 06 and $5 million in FY 07 for the state matching grant program for municipal demand-responsive transportation programs for the disabled and those age

60 and older (dial-a-ride). It also removes the requirement that this program be funded within available General Fund appropriations. It requires any funding allocated to a municipality that chooses not to apply for it to be returned to the TSB projects account in the STF instead of to the General Fund. The act requires the funding to be included in the required annual financing plan and makes it available until it is expended. These funds may only be spent for grants to municipalities and administrative costs.

The dial-a-ride grant program was established by the legislature in 1999 to provide matching grants to municipalities based on an allocation formula that provides half of the municipality's apportionment based on its relative share of the state's elderly population and half based on its relative square mileage compared to the total area of the state. Municipalities must apply for the grants through a regional planning organization or transit district and must collaborate on service design to determine how to use the funding most effectively in the municipality and its surrounding region.

DOT ADMINISTRATION OF PROJECTS (§ 44)

The act allows the DOT to solicit bids or qualifications for equipment, materials, or service for any of the mandated projects funded under the act (i.e., rail revitalization, bus purchases, I-95 operational improvements, and transportation improvements other than on I-95) at any time in the fiscal year, even if all the required funds may not be available for expenditure until later in the same or a succeeding fiscal year.

RAIL REVITALIZATION PROGRAM STATUS REPORT (§ 45)

The act requires the transportation commissioner to report annually by September 1 to the governor, the TSB, and the Transportation and Finance, Revenue and Bonding committees on (1) the status of the New Haven Line Revitalization Program, (2) the capital needs of the state's passenger rail services, and (3) the status of the other projects the act mandates (bus purchases, operational improvements on I-95, and transportation improvements other than those on I-95).

UNEXPENDED FUNDS TO BE CARRIED FORWARD (§§ 46 & 47)

The act carries forward the unexpended balance of $150,000 transferred to the DOT from the TSB Projects Account in 2004 and makes these funds available for expenditure during FY 06 for implementing increased motorist assistance services recommended by the TSB.

The act also carries forward the unexpended balance of funds appropriated to DOT for the TSB during the last four years and makes them available for expenditure during FY 06 and FY 07 for TSB's programs and purposes.

REVISIONS TO TSB PROJECTS ACCOUNT AND RELATED OPERATIONS (§§ 42-43, 48-50, 52-53)

In 2003, the legislature created the TSB projects account as the repository for certain motor vehicle-related fee increases, known as "incremental revenues," that were made available to the TSB to fund several TSB strategy projects identified in the legislation as priority projects. The revenue from these incremental fee increases went into the Special Transportation Fund, but had to be set aside in the projects account. The legislation also authorized more than $264 million in bonding over a 10-year period for use in funding the projects and programs recommended by the TSB and identified as transportation strategy related projects. The bonds were backed by the dedicated incremental revenue stream going into the TSB projects account.

The act eliminates the separate incremental revenue stream going to the TSB projects account and combines the receipts from these fees with all of the other revenue in the Special Transportation Fund. The TSB projects account continues to exist but funds are transferred to it annually as explained above. The act also eliminates the $264 million in bonding authorizations that were supported by the dedication of the incremental revenues.

The act makes several changes to other TSB-related statutes that reflect the elimination of the dedicated incremental revenues and the associated bonding authority. These include modifying requirements for the annual financing plan DOT must prepare in consultation with OPM, the state treasurer, and TSB and eliminating references to the purposes for which STO bonds may be used that were specific to the separate bonding authority supported by the incremental revenue stream.

NEW HAVEN LINE REVITALIZATION PROGRAM NOT A TSB PROJECT (§ 51)

The TSB must coordinate preparation of a performance report on its projects that require accompanying economic development plans. By law, transportation strategy projects that require spending more than $1 million must be accompanied by an economic development plan. The act prohibits projects undertaken as part of the New Haven Line Revitalization Program from being considered TSB projects and thus exempts them from these requirements.

PA 05-5, June 2005 Special Session—SB 2001
Emergency Certification

AN ACT INCREASING CERTAIN BOND AUTHORIZATIONS FOR CAPITAL IMPROVEMENTS, CONCERNING THE COLLECTION OF COSTS BY THE PROBATE COURT AND CONCERNING A HOUSING TRUST FUND

SUMMARY: For the FY 06-07 biennium, this act authorizes $1,651.6 million in state general obligation (GO) bonds for various programs, such as urban development projects under the Urban Act, local capital improvement projects for cities and towns, the Small Town Economic Assistance Program (STEAP), farmland preservation, school construction projects, and the Manufacturing Assistance Act. The act also authorizes $100 million in revenue bonds for Clean Water Fund projects.

The act (1) expands eligibility for STEAP, (2) changes the basis for establishing probate court costs for settling an estate, (3) reduces certain GO bond authorizations to the Office of Policy and Management (OPM) and the Department of Social Services (DSS), and (4) gives Enfield an extra Clean Water Fund grant to pay additional costs for upgrading its wastewater treatment plant.

The act creates a Housing Trust Fund and authorizes the State Bond Commission to capitalize it by issuing up to $100 million in GO bonds, with $20 million effective each July 1, from 2005 to 2009. It establishes a Housing Trust Fund Program to expand affordable housing opportunities for low- and moderate-income people, sets program goals, and defines the types of housing to be developed and who is eligible for it. It (1) requires the Department of Economic and Community Development (DECD) to develop and administer the program, including adopting regulations and forming an advisory committee, and (2) authorizes the DECD commissioner to inspect records and other financial or project-related information of those who receive financial assistance under the program.

Finally, the act allows large municipalities to create water authorities and transfer all or part of their water systems to them. It establishes procedures for creating such authorities and specifies their powers, tax status, rights, and liabilities.

EFFECTIVE DATE: July 1, 2005, except for the following provisions, which are effective on passage:

1. the grant for Enfield,
2. the regulations the DECD commissioner must adopt for rating proposals for funds under the housing trust fund program and may adopt for the program as a whole,
3. establishment of the Housing Trust Fund Advisory Committee,
4. the DECD commissioner's ability to inspect records and other financial or project-related information,
5. the water authority provisions, and
6. the change in probate court costs for settling an estate which applies to estates of those who die on or after January 1, 2005.

BOND AUTHORIZATIONS (§§ 1-13)

The act authorizes bonds for FYs 06 and 07 in the amounts and for the purposes shown in Table 1. Unless otherwise stated, all authorizations are for GO bonds.

Table 1: Bond Authorizations for FY 06 & FY 07

Purpose/Fund	*Total Authorization*	*FY 2006*	*FY 2007*
Office of Policy and Management			
Urban development projects	$150,000,000	$85,000,000	$65,000,000
Small Town Economic Assistance Program	40,000,000	20,000,000	20,000,000
Capital Equipment Purchase Fund	52,550,000	27,500,000	25,050,000
Local Capital Equipment Improvement Program	60,000,000	30,000,000	30,000,000
State Department of Education			
School construction projects	1,230,000,000	580,000,000	650,000,000
School construction interest subsidy grants	50,000,000	25,000,000	25,000,000
Department of Agriculture			
Farmland Preservation	18,000,000	8,000,000	10,000,000
Department of Environmental Protection			
Clean Water Fund GO bonds	40,000,000	20,000,000	20,000,000
Clean Water Fund revenue bonds	100,000,000	0	100,000,000
Special Contaminated Property Remediation and Insurance Fund	1,000,000	0	1,000,000

Purpose/Fund	*Total Authorization*	*FY 2006*	*FY 2007*
Department of Economic and Community Development			
Manufacturing Assistance	10,000,000	5,000,000	5,000,000

URBAN ACT EARMARKS (§ 1)

Of the $150 million authorized for Urban Act projects, the act earmarks $1.4 million for renovating and rehabilitating the Black Rock Library in Bridgeport and $2.5 million for site acquisition, renovation, and rehabilitation of the Institute for the Hispanic Family in Hartford.

STEAP ELIGIBILITY (§ 2)

The act eliminates the population restrictions for STEAP eligibility, thus making the following six towns eligible for the program: Fairfield, Glastonbury, Greenwich, Southington, Trumbull, and Wallingford. Under prior law, towns with populations of 30,000 or more were ineligible. The act retains requirements that STEAP towns not be economically distressed, not have urban centers according to any state plan of conservation and development adopted by the General Assembly, and not be public investment communities.

REDUCED GO BOND AUTHORIZATIONS (§§ 7, 8)

The act reduces GO bond authorizations to:

1. OPM for compensating certain state and municipal bondholders for the state taking their rights to exclude certain bond interest from state corporation taxes, from $35.5 million to $33.26 million (§ 7) and
2. the Department of Social Services for grants to municipalities and state agencies for child care facilities primarily for their employees, from $7,775,000 to $6,024,798 (§ 8).

CLEAN WATER FUND GRANT TO ENFIELD (§ 14)

Despite limits on the amount of Clean Water Funds that may be distributed as grants, the act makes Enfield eligible for a grant of up to $2.8 million to pay for additional costs of upgrading its wastewater treatment plant.

PROBATE COURT COSTS FOR SETTLING AN ESTATE (§ 15)

The act changes the basis of probate court costs for settling an estate. Under prior law, the costs were based on, among other things, the gross estate for succession tax purposes. PA 05-251 eliminated the succession tax for deaths on or after January 1, 2005 and created a new estate tax. Because under PA 05-251 the succession tax applies only to estates of those who died before January 1, 2005, PA 05-3, June Special Session, expanded the basis for the probate court costs to either the gross estate for succession tax purposes or the Connecticut taxable estate under the new tax, whichever is greater. This act adds a third alternative, which is the gross estate for state estate tax purposes, if it is greater than the other two.

The gross estate for succession tax purposes is the fair market value of all the property transferred, except for (1) farmland, which is valued at its use value if certain conditions apply, and (2) certain types of payments, such as Social Security survivor benefits, which are excluded (CGS § 12-349).

The Connecticut taxable estate under the new state estate tax is (1) the gross estate minus all federally allowable deductions except the one for state death taxes paid plus (2) the aggregate value of all Connecticut taxable gifts the decedent made during his life starting on January 1, 2005 (PA 05-251, § 69). Federally allowable deductions include the value of property passing to a surviving spouse, debts owed at the time of death, and funeral expenses paid out of the estate (IRC § 2051 *et seq*.).

The gross estate for state estate tax purposes is the same as the gross estate under the federal estate tax (CGS § 12-391(c), as amended by PA 05-251). It includes the value of all the decedent's property at the time of death, including real property and tangible and intangible personal property (IRC § 2031 *et seq*.).

HOUSING TRUST FUND (§§ 16-22)

Funding and the Treasurer's Duties

The act establishes the "Housing Trust Fund" as a nonlapsing fund that the state treasurer holds separate from all other money, funds, and accounts. Under the act, the following must be deposited in it:

1. proceeds from the bonds the act authorizes for the trust fund;
2. all funds received in return for financial assistance awarded through the Housing Trust Fund Program; and
3. any private contributions.

The act specifies that (1) investment earnings credited to the fund's assets become part of the fund; (2) the treasurer must invest the money held by the Housing Trust Fund subject to use for financial assistance under the Housing Trust Fund Program, which the act establishes; and (3) the funds are in addition to any other resources from state, federal, or other entities that support affordable housing.

The act specifies (1) how the treasurer may invest, reinvest, or deposit proceeds and (2) that any unexpended or unallocated amounts in the Housing Trust Fund from one fiscal year may be carried over to the next fiscal year and that adjustments may be made for shortfalls.

Other Funding Sources

DECD, with OPM approval, may solicit contributions from private entities, nonprofit and for-profit corporations, philanthropic organizations, and financial institutions to support and expand the resources available through the Housing Trust Fund. But these funds must be distributed as designated by their contributor, except that no more than 50% of a contribution may be designated. If a contributor did not designate fund usage, the commissioner must use the funds for the program.

Housing Trust Fund Program Goals

The act establishes the Housing Trust Fund Program and requires DECD to develop and administer it. The program must:

1. encourage the creation of housing for homeownership at a cost that makes it affordable for low- and moderate-income people, meaning they pay no more than 30% of their gross household income for it;
2. promote the rehabilitation, preservation, and production of quality, well-designed rental and ownership housing affordable for these people;
3. maximize the leveraging of state and federal funds by encouraging private-sector investment in housing developments that receive assistance;
4. encourage housing that maximizes residents' housing choices;
5. enhance economic opportunity for low- and moderate-income people and their families;
6. promote (a) application of efficient land use that uses existing infrastructure and (b) conservation of open spaces; and
7. encourage the development of housing that aids community revitalization.

The act defines "low- and moderate-income families and persons" as people whose income falls within income levels the commissioner sets, except he may establish income levels up to 120% of the area median income, as determined by the U.S. Department of Housing and Urban Development. (Connecticut law bases affordability on the proportion of income a family spends on housing. A unit is affordable if a family earning no more than the town's median income pays no more than 30% of its income for the housing (CGS § 8-39a)).

Financial Assistance and Forms of Assistance

Under the act, Housing Trust Fund Program funding resources (e.g., no- and low-interest loans) must be available, at least semiannually, on a competitive basis in accordance with regulations and criteria the DECD commissioner and others establish.

Financial assistance under the program from the Housing Trust Fund may be in the form of (1) no-interest and low-interest loans, (2) loan guarantees, (3) grants, and (4) appraisal gap and other similar financing necessary to make rent or home prices affordable. Any financial assistance must supplement existing loan and tax credit programs available under state and federal law and grants, loans, or financial assistance from any nonprofit or for-profit entity.

Eligible Applicants

Financial assistance paid from the Housing Trust Fund for the development of quality rental and ownership housing for low- and moderate-income people is available to:

1. nonprofit entities;
2. municipalities and municipal developers;
3. housing authorities;
4. the Connecticut Housing Finance Authority (CHFA);
5. community development financial institutions;
6. businesses that have as one of their purposes the construction, financing, acquisition, rehabilitation, or operation of affordable housing, including (a) corporations incorporated or authorized to do business by law and (b) any partnership, limited partnership, limited liability company, joint venture, sole proprietorship, trust, or association; or
7. any combination of these.

Under the act, "housing," "housing development," or "development" means a work or undertaking whose primary goal is safe, well-designed, and adequate housing and related facilities for low- and moderate-income families and people. This (1) includes existing housing for low- and moderate-income people and (2) housing whose primary purpose is to provide dwellings for these people, but also has accommodations for others.

Other Program Requirements

In each fiscal year that the Housing Trust Fund has funds available for distribution, the DECD

commissioner must allocate $300,000 from it for matching grants dedicated to funding purchases of primary residences for people participating in the state's Individual Development Account (IDA) Program. (A statewide IDA program allows certain low-income and qualified disabled people to open savings accounts and receive matching funds from the Department of Labor as an incentive for saving for specified purposes – withdrawals are limited to certain activities, including a home purchase or a lease deposit on a primary residence.)

Under the act, the DECD commissioner, in consultation with the OPM secretary and CHFA, must establish regulations and criteria for rating the proposals for funds under the program. He must do so after considering recommendations of the Housing Trust Fund Program Advisory Committee that the act establishes.

Housing Trust Fund Program Advisory Committee

The act creates a Housing Trust Fund Program Advisory Committee. The committee must meet at least semi-annually and advise the commissioner on (1) the administration, management, and objectives of the Housing Trust Fund Program and (2) the development of regulations, procedures, and rating criteria for the program.

The committee includes the chairpersons and ranking members of the Housing and Planning and Development committees. The commissioner, in consultation with the treasurer and the OPM secretary, appoints the members, including representatives from:

1. the for-profit and nonprofit housing development communities;
2. a housing authority;
3. a community development financial institution;
4. CHFA;
5. a statewide housing organization;
6. an elected or appointed official of a municipality with a population of (a) less than 50,000, (b) between 50,000 and 100,000, and (c) more than 100,000; and
7. state employers, who may be representatives from a state business and industry association or regional chambers of commerce.

DECD Commissioner Duties and Powers

Under the act, the DECD commissioner (1) must establish regulations and criteria, with consultation and input from others, for rating the proposals for program funds and (2) may adopt regulations for the program in general. He may request, inspect, and audit reports, books, and records and any other financial or project-related information with respect to eligible applicants that receive financial assistance, including resident or employment information, financial and operating statements, and audits. The commissioner may investigate the accuracy and completeness of the reports, books, and records.

The act allows the commissioner to take all reasonable steps and exercise all available remedies necessary or desirable to protect the obligations or interests of the state regarding financial assistance from the Housing Trust Fund. This includes (1) amending any term or condition of a contract or agreement, provided it is allowed or agreed to pursuant to the contract or agreement, or (2) purchasing or redeeming, pursuant to foreclosure, bankruptcy, or other judicial proceedings, any property on which the commissioner or the department holds a mortgage or other lien or has an interest.

The act requires the commissioner to prepare and submit an annual report for the prior fiscal year to the governor and the legislature concerning (1) the activities of the Housing Trust Fund and the Housing Trust Fund Program and (2) DECD's efforts to obtain private support for the fund and the program. He must file a copy of the report with the clerks of each house of the General Assembly and the Housing Committee.

MUNICIPAL WATER AUTHORITIES (§§ 23 – 35)

Creation of Municipal Water Authorities (§ 23)

The act allows any municipality with a population greater than 100,000 (Bridgeport, Hartford, New Haven, Stamford, or Waterbury) to create, by ordinance, a water authority and transfer all or part of its water supply system to the authority. The transfer is subject to the provisions of the municipal charter governing the transfer of municipal property, including any requirements for a referendum. But the authority's creation is not subject to municipal bidding requirements. The ordinance creating the authority must include a brief statement of purpose specifying such things as the number of directors, how they are appointed, compensated, and removed; provisions for terminating the authority; and other provisions the municipality chooses to include in the ordinance.

The municipality must, by ordinance, prepare a preliminary operational plan for the proposed authority. The plan must be reviewed and approved by the departments of Environmental Protection and Public Health, in consultation with OPM. The departments must approve or reject the plan within 60 days of receiving it. These are the only state approvals needed to create the authority and transfer the water system to it. But, the authority is subject to all applicable laws regarding the ownership, lease, or operation of the system, except as provided in this act. The transfer of

the system is subject to all of the municipality's contractual obligations regarding the system.

The authority is created once the ordinance is adopted, the plan is approved, and the articles of incorporation are filed with the secretary of the state. The authority must promptly reimburse the municipality for its costs in creating the authority. It remains in existence until terminated by law or as prescribed in its articles of incorporation, after provision is made for satisfying its bonds and other obligations.

The authority must pay the municipality the fair market value of the transferred system based on the income approach to valuation and accepted by an ordinance adopted by the municipality's legislative body. In addition:

1. the system employees must either be transferred to the authority, with all of their leave and pension benefits, or remain municipal employees;
2. employees remaining with the municipality must provide services to the authority under an agreement between it and the municipality;
3. the authority must assume all of the municipality's pension obligations for current and former employees, other than those retained by the municipality;
4. the authority may enter into agreements with its employees' representatives on including them in state or municipal retirement plans, and is considered a municipality for this purpose;
5. the authority may enter into agreements with the employees' representatives regarding the transfer to or establishment of pension trust funds under their joint control; and
6. the authority must observe the municipality's collective bargaining agreements and personnel policies for all of the transferred employees.

The authority is subject to the municipal employee labor relations law. However, it has normal management prerogatives with regard to such things as employer promotion, demotion, and discharge.

Authority Powers (§ 24)

The act gives the authority a wide range of powers, including the ability to:

1. acquire real and personal property by purchase, gift, or condemnation;
2. sell and lease property that it no longer needs, including, under narrow conditions, class I and II water company land (land located close to water supply sources such as reservoirs);
3. locate, develop, and extend water supply systems, including performing engineering and other incidental studies and analyses;
4. own, operate, and maintain such systems;
5. enter into contracts for (a) professional services, (b) system construction, operation, and management, and (c) the provision of water and construction services to municipalities, other agencies, and private parties;
6. adopt bylaws, rules, and regulations consistent with the authority's articles of incorporation;
7. invest funds, borrow money, and issue bonds;
8. issue loans from the bond proceeds to municipalities, other agencies, and private parties for planning, designing, and building the authority's water supply system;
9. indemnify people, with the approval of a majority of the board's directors, in connection with the authority's business, including indemnification against federal, state, and local taxes;
10. establish fees and charges on the system's users and levy assessments on property that benefits from the system, with unpaid amounts treated as unpaid taxes; and
11. employ a staff and retain legal and other professional advisors.

Authority Tax Status (§ 25)

The authority's property is exempt from property taxes, but it must make equivalent payments in lieu of taxes (PILOTs). If the authority does not have funds to make its PILOTs, it must adjust its rates and charges in order to do so. In addition, the authority must reimburse the municipality for its expenses in providing services to improvements made by the authority, other than water pipes and improvements to them. Any municipality aggrieved by the authority's failure to make its PILOT can appeal to the courts.

The authority is exempt from state taxes, other than the gift and estate tax.

Audits (§ 26)

The authority must be audited annually by a certified public accountant it selects. A copy of the audit must be filed with the clerk of the municipality and the Department of Public Utility Control (DPUC).

Independence from Department of Public Utility Control (§ 27)

The DPUC does not have jurisdiction over the authority's rates or charges.

Authority Rights (§ 28)

The authority has all of the rights as a municipality, including the right to take and use water supply sources. In condemning land it must follow the same procedures as a municipality.

Assignments (§ 29)

The authority can assign liens it has filed in connection with unpaid rates and charges, for consideration negotiated between the authority and the assignee. The assignee has the same rights to enforce the lien as any private party, including foreclosure and suit on debt.

Authority Liability (§ 30)

Neither the authority nor a person acting on its behalf is subject to personal liability resulting from erecting, maintaining, or operating the water supply system or from carrying out the authority's powers.

State Pledges (§ 31)

The state pledges to the authority's bondholders that it will not limit or alter the authority's rights or impair the bondholders' rights until the bonds are paid off.

Authority Bonds (§§ 32 & 33)

Public agencies and financial institutions can invest in the authority's bonds. The authority has the same powers as a municipality in issuing bonds.

Conflict of Laws (§ 34)

If there is a conflict between the act and the statutes, a special act, or municipal charter, this act is controlling.

Judicial Appeals (§ 35)

The act establishes procedures by which a person aggrieved by the authority can appeal to the courts. The appeal must be filed within 30 days of the authority's decision. The appeal in itself does not stay the decision, but the authority or the court can grant a stay. The authority is not considered an agency for purposes of the Uniform Administrative Procedures Act. The court may not substitute its judgment for that of the authority as to the weight of evidence on questions of fact. The court may reverse or modify the authority's decision if the applicant's rights were prejudiced because the decision (1) violated the law or the constitution; (2) exceeded the authority's powers; (3) was made under unlawful procedure; (4) was affected by other legal errors; (5) was clearly erroneous based on the entire record; or (6) was arbitrary, capricious, or an abuse of discretion.

PA 05-6, June 2005 Special Session—SB 2002
Emergency Certification

AN ACT CONCERNING AUTHORIZATION OF STATE GRANT COMMITMENTS FOR SCHOOL BUILDING PROJECTS AND OTHER MISCELLANEOUS PROVISIONS

SUMMARY: This act authorizes $605 million in state grant commitments for 49 school construction projects and $101 million in increased grant commitments for 28 previously authorized projects that have changed substantially in cost or scope.

It establishes two grant programs for state charter school capital projects—one provides financing for facility upgrades and debt repayment and the other is a pilot grant to one charter school for FY 06 to fund the purchase and renovation of a building for use as a charter school facility. It authorizes $10 million in bonding over two years to fund the facility upgrade and debt repayment grants.

The act:

1. restricts increases in certain types of professional or consulting fees during a state-assisted school construction project;
2. sets accoustical standards for school building projects and provides for limited exemptions from those standards;
3. exempts very small school districts from standard space specifications for state-assisted school projects;
4. allows regional school districts to issue bond anticipation notes with longer terms under certain conditions; and
5. extends through FY 07 a grant authorization for Hartford school students to participate in all-day kindergarten programs in other districts.

It also:

1. adds several projects to the 2005 priority list,
2. increases existing grant authorizations to include improvements for athletic fields at two vocational-technical (V-T) schools, and
3. exempts various local school projects from state laws and regulations to make them eligible for state reimbursement under the school construction grant program.

Finally, the act establishes a task force to study the long-term capital needs of charter and other public

schools and the process for funding charter schools' capital needs. The commission must report to the Education and Finance, Revenue and Bonding committees by January 1, 2006.

EFFECTIVE DATE: Upon passage, except for (1) the exemption from standard space specifications for very small districts, (2) changes in regional school district temporary bond anticipation notes, and (3) the charter school construction grants and bond authorization, which are effective July 1, 2005.

SCHOOL CONSTRUCTION PROJECT AUTHORIZATIONS (§ 1)

2005 Priority List Authorizations

The act authorizes $605 million in state grant commitments for 49 school construction projects of various types as shown in Table 1.

Table 1: New School Projects Authorized

Number	*Project Type*	*Estimated Total Cost*	*Estimated Total State Grants*
11	New schools	$358,092,336	$295,093,055
14	Combined extentions and alterations	180,761,960	80,124,595
2	Extensions	340,000	133,792
16	Alterations	96,536,167	63,638,991
1	Energy conservation	381,332	260,107
1	Facility purchase	3,300,000	1,449,690
4	Regional vocational-technical schools	164,575,000	164,575,000

Reauthorizations

The act reauthorizes 28 previously authorized projects that have changed substantially (more than 10%) in scope or cost. The reauthorizations increase estimated state grant commitments for the projects by $109.2 million.

CHARTER SCHOOL FACILITY GRANTS

Facility, General Improvement, and Debt Repayment Grant (§§ 36, 37)

The act authorizes $5 million in bonding each year for FYs 06 and 07 to fund grants to state charter schools to assist them with capital costs. It requires the State Department of Education (SDE) to provide grants in each year, within available bond authorizations, to help charter schools:

1. renovate, build, buy, extend, replace, or carry out major alterations in their facilities;
2. (a) replace windows, doors, boilers and other heating and ventilation system components, internal communication systems, lockers, and ceilings, (b) upgrade restrooms, (c) replace and upgrade lighting, or (d) install security equipment; or
3. repay debt incurred before July 1, 2005 for school building projects.

The act requires the education commissioner, in selecting schools to receive grants, to give preference to those that provide matching funds from nonstate sources.

The program is similar to a charter school capital grant program that operated for FYs 02 through 04. But the act's program differs in three ways.

1. It must be operated only with available bonding and not also with appropriations.
2. It is not limited to schools whose charters have been renewed.
3. It does not limit either the number or size of grants to a single school. The former program limited each school to one grant of no more than $500,000.

Pilot School Construction Grant (§ 39)

For FY 06, the act requires the education commissioner to establish a pilot program to provide a grant to one state charter school to buy and renovate a building for use as a charter school facility. The grant must equal the net eligible expenditures for the charter school project multiplied by the state school construction grant reimbursement rate applicable to projects undertaken by the school district where the charter school will be located. (The state reimburses school districts for between 20% and 80% of the eligible costs of school construction projects, depending on the district's wealth.) The charter school project must comply with all laws and regulations governing state-reimbursed school construction projects.

State law caps charter school enrollment at 250 students or, for a school with grades K-8, 300 students. This act allows the enrollment projections a charter school identifies in its application for a pilot grant to exceed those limits if the education commissioner approves.

To be eligible for a grant, a successful charter school's governing board must have operated the school for at least five years and the State Board of Education must have renewed the school's operating charter. Eligible charter schools must apply to the education commissioner for the grant when and how the commissioner determines. The grant application must include information describing the charter school's:

1. academic success, including Connecticut mastery test results;
2. student attendance records;
3. student success in completing its program;
4. parental involvement in the governing board's decisions and operations; and
5. other information the commissioner requires.

When the commissioner selects a school to receive the grant, she must notify the legislative school construction committee, when she submits the list of eligible school construction projects for the year by December 15, of her selection and the proposed project funding. The committee must consider the charter school project along with the overall school project priority list. If it approves the charter project's funding, it must include the request as a separate item on a special supplementary schedule of the priority list.

If a state charter school facility that receives this state grant ceases to be used as a charter school, the act requires the education commissioner to decide whether the facility's title reverts to the state.

Professional and Consulting Fee Restriction (§ 19)

When a school building project is receiving a state school construction grant, the act prohibits any professional or consulting fee that is based on a percentage of the total project cost from being raised because of increased prices for construction materials.

Accoustical Standards for School Construction Projects (§ 20)

The act requires that school building projects for classrooms or libraries approved by the General Assembly on or after July 1, 2005 be constructed or altered in accordance with the American National Standard for acoustical performance criteria, design requirements, and guidelines for schools. It exempts situations where adequate acoustical modifications cannot be made without compromising health and safety or the educational purpose or function of the space.

The act also allows local or regional boards of education to apply to the education commissioner for a waiver of the requirements for relocatable classrooms that will be used by the same school for less than 36 months. The commissioner must grant the waiver if the board shows that it held a public hearing on the effects the required acoustical standards might have on a student's ability to learn and provided notice about the hearing to parents, students, and teachers.

Small District Exemption from Standard Space Specifications (§ 21)

The act exempts very small school districts from standard space specifications for school construction projects. In general, school construction grant reimbursements are limited by maximum per-student square footage allowances specified in SDE regulations.

Starting July 1, 2005, this act exempts any school district that has a total enrollment of fewer than 150 students in grades K-8 from the limits and requires the education commissioner to modify the standard limits for school construction projects in such districts. The 150-student K-8 enrollment limit applies only to Union.

Regional School District Temporary Bond Anticipation Notes (§ 33)

By law, regional school districts may issue temporary notes in anticipation of receiving the proceeds from a general obligation (GO) bond issue. This act doubles the maximum term of such notes from four to eight years. For any notes whose term is longer than four years, the act requires the district to (1) annually budget enough to retire at least 5% of the net project cost, and (2) reduce the maximum authorized GO bond term by at least the number of months by which their issue date exceeds two years from the date the orginal notes were issued. For such notes it also requires repayment of the GO bond principal to begin no later than nine years after the original bond anticipation notes were issued.

By law, the term of the notes is not counted in computing when the GO bonds must mature. This act allows that exemption only if the term of the temporary notes does not exceed four years.

Hartford Interdistrict All-Day Kindergarten Grants (§ 41)

For FY 05, PA 05-245 allowed (1) the education commissioner to provide grants for Hartford students to participate in an all-day kindergarten program under the Open Choice interdistrict school attendance program and (2) grants to be used to pay for before- and after-school care and remedial services for the kindergarten students in the program as well as for subsidies to receiving districts.

This act extends the commissioner's authority to offer these grants to FYs 06 and 07.

V-T SCHOOL PROJECT AUTHORIZATION INCREASES (§§ 30, 34)

The act increases grant authorizations for projects at (1) Howell Cheney Tech by $1.2 million for artificial turf for the school's athletic fields and (2) Ellis Tech by $500,000 for athletic field lighting and other improvements.

PROJECTS ADDED TO 2005 PRIORITY LIST (§§ 32, 35)

The act waives (1) the requirement that local funding for a school project be authorized before the district applies for a state school construction grant and (2) restrictions on adding projects to a priority list after the list has been approved by the legislative school construction project committee, to add the following projects to the 2005 priority list:

1. three New Britain High School projects for extension and alteration, extension, and relocatable classrooms and
2. library reconstruction at Duffy School and air conditioning at King Philip Middle School, both in West Hartford.

The districts must file completed school construction grant applications and secure local funding authorization by June 30, 2006 and meet all other requirements for receiving a school construction grant.

ATHLETIC FIELD PROJECTS (§§ 11, 17, 22)

The act overrides all provisions of the school construction law and regulations to make the three stand-alone athletic field renovation and improvement projects eligible for reimbursement and sets the reimbursement rate at 50% of the total project costs. To be eligible to be considered for a grant, the towns must submit completed grant applications for the projects to SDE before June 30, 2006.

The act makes Meriden eligible for a grant for a project costing up to $4 million to renovate and improve Falcon Field, which is adjacent to Washington Middle School. The renovated and improved field must be used primarily for school-related activities. It also makes West Hartford eligible for a grant for two projects costing up to $1 million each to renovate and improve athletic fields at Conard and Hall high schools.

OTHER PROJECT WAIVERS AND EXEMPTIONS

Newington – Three Projects (§ 5)

For three previously authorized projects in Newington, the act waives requirements that districts (1) obtain local funding approval within one year of state authorization and (2) start construction within two years. It requires projects at Newington High, John Wallace Middle, and Martin Kellogg schools to get local approval by June 30, 2006, instead of June 30, 2005, and requires Newington to start construction by June 30, 2007, instead of June 30, 2006.

Oxford High School (§ 6)

The act waives requirements for calculating the projected enrollment for a school project to allow Oxford to increase projected enrollment for the new Oxford High School to 750 students.

New London - Marine Sciences Magnet High School (§§ 7, 8)

The act allows New London to convey park property to LEARN for a site for the Marine Sciences Magnet High School without providing other property to replace it as the law ordinarily requires. (LEARN is the regional education service center for the New London area.) It also requires LEARN to begin building the school by June 30, 2006 and makes the project eligible for a state school construction grant.

Wethersfield - Webb School (§ 10)

The act exempts an extension and alteration project at Wethersfield's Webb School from square footage limitations for school construction projects.

Region 11 – Parish Hill High School (§§ 12, 13)

The act exempts emergency repairs and maintenance costing up to $1 million needed to maintain accreditation at Parish Hill High School from the following provisions ordinarily applicable to school construction projects: (1) standard space specifications, (2) limits on redirecting use of a school building funded by a state grant, (3) competitive bidding, and (4) requirements for prior SDE approval of project plans and specifications.

It adds a Parish Hill High School extension and alteration project, with an estimated cost of $40 million, to the 2005 priority list. It waives requirements that, to be on the list, the district must have filed an application for the project before June 30, 2004 and that local funding for the project must have been approved prior to application. The waiver depends on Region 11 completing an application for the project by June 30, 2006.

Finally, the act makes the Parish Hill High School extension and alteration project eligible for the 10-percentage-point school construction grant reimbursement bonus for cooperative arrangements if

Region 11 concludes a cooperative arrangement with other districts before completing the project.

West Hartford – Whiting Lane School (§ 18)

The act exempts an addition and renovation project at Whiting Lane School from the requirement for prior SDE approval of the site acquisition for a school construction project, thus making the project's site acquistion costs eligible for state reimbursement.

North Branford Middle/High School (§ 25)

The act grants an exemption from a requirement to describe the project type at the time of application to allow North Branford to change the scope of a project at North Branford Middle/High School from an extension and alteration project to a renovation project for the school's middle school portion.

Canton Intermediate School (§ 27)

The act gives Canton an exemption from the requirement to describe a project at time of application to allow it to expand the scope of an extension and alteration project at Canton Intermediate School.

Manchester (§§ 28 & 29)

The act allows Manchester to include in its school construction costs eligible for state reimbursement, the prorated salaries and benefits of up to two legally qualified town employees it designates to be the architects of record for elementary school projects. Ordinarily, salary and benefit costs for town employees are not reimbursable. The act limits eligibility to the salary and benefits the employees earn while doing design- or construction-related work on the projects. It also requires that (1) the town submit documented and certified records to SDE, including timesheets, showing the number of hours the employees worked on the project and (2) only architects who are town employees provide services to the project that are included in the eligible project cost.

Ordinarily, SDE must subtract any other state funds for a school project before calculating the school construction grant reimbursement. The act allows Manchester to use, as part of its required local share of the cost of a school construction project, money from loans for child-care facilities financed through Connecticut Health and Educational Facilities Authority bonds. But, it requires the town to pay the debt service on such a loan itself instead of accessing Department of Social Services grants for debt service on such loans. The authority applies to Manchester's share of the project costs for building the Manchester Head Start/Preschool Center so it may offer a full-day, town-wide preschool program.

Wallingford – Three Projects (§ 31)

The act exempts Wallingford from the requirement that the public health commissioner issue a permit to authorize a change in use for Class I watershed lands so it may continue with renovation projects at the Moran Middle, Parker Farms Elementary, and Sheehan High schools.

Danbury Head Start Facility (§ 40)

The act overrides the project eligibility provisions of the school construction law and regulations to make Danbury eligible for a state school construction grant to build a Head Start education facility. It (1) requires the facility to be considered a pilot program to support early childhood education and (2) allows a nonprofit agency to run it. The act also requires the city to file a grant application for the project with the SDE before October 1, 2005.

Bid and Plan Approval Order Waivers (§§ 2-4, 9, 14-16, 23, 24, 26)

For districts and projects shown in Table 2, the act waives the requirement to obtain SDE's approval of project plans and specifications before offering the projects for competitive bid. It allows the districts to begin the projects and later be eligible for grants, if SDE approves their plans and specifications.

Table 2: Bid-Plan Approval Order Waivers

§	*District*	*School*	*Project*
2	West Hartford	King Philip Middle	Relocatable classrooms
3	Simsbury	Central School	Relocatable classrooms
4	Waterbury	Wilson Elementary	Roof replacement
4	Waterbury	Kennedy High	Code updates
4	Waterbury	Barnard Elementary	Renovations
4	Waterbury	Tinker Elementary	Renovations
4	Waterbury	Barnard Elementary	Asbestos abatement in gym
4	Waterbury	Barnard Elementary	Asbestos abatement in tunnel
9	Old Saybrook	Old Saybrook Middle	Alteration
14	West Hartford	Bristow Middle	New school
15	West	Whiting Lane	Portable

§	District	School	Project
	Hartford	Elementary	classrooms
16	West Hartford	Hall High	Portable classrooms
23	Trumbull	Trumbull High	Renovation as new (waiver is contingent on district submitting a completed grant application prior to July 1, 2006)
24	Canterbury	Canterbury Elementary	Code violation
26	Stamford	Toquam Elementary	Roof replacement

CHARTER SCHOOL CAPITAL NEEDS STUDY (§ 38)

The act establishes a 16-member task force to study state charter schools' long-term capital needs, including the funding process for those needs, and the overall capital needs of all public schools. The task force consists of the chairmen and ranking members of the Education and Finance, Revenue and Bonding committees or their designees; the education commissioner and the Office of Policy and Management secretary, or their designees; and six members appointed by the legislative leaders and representing various groups as shown in Table 3.

Table 3: Legislative Leaders' Task Force Appointments

Number	Appointing Authority	Member Represents
1	House speaker	Regional educational service center
1	Senate president pro tempore	State charter school
1	House majority leader	Teachers' union
1	Senate majority leader	Parent of state charter school student
1	House minority leader	Connecticut Association of School Business Officers
1	Senate minority leader	School superintendent

Legislative leaders must make their appointments within 30 days after the act's passage. Appointing authorities fill any vacancies. The Education Committee chairmen are the task force chairmen and must call the first meeting within 60 days after passage. The task force must report by January 1, 2006 and terminates either on that date or its report date, whichever occurs first.

BACKGROUND

State Charter Schools

Charter schools are public schools established under charters (authorizations) issued by the State Board of Education. Charters must be renewed every five years. Schools operate independently of local and regional school boards. They must be nonsectarian and organized as nonprofit corporations. They are state-funded and open to all students unless their charters limit the geographic area from which students may attend.

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