

House of Representatives, April 8, 1998. The Committee on Judiciary reported through REP. LAWLOR, 99th DIST., Chairman of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING LICENSING OF ARBORISTS.

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

1 Section 1. Section 23-61a of the general
2 statutes is repealed and the following is
3 substituted in lieu thereof:

4 (a) As used in sections 23-61a to 23-61f,
5 inclusive, AS AMENDED BY THIS ACT, "arboriculture"
6 means any work done for hire to improve the
7 condition of fruit, shade or ornamental trees by
8 feeding or fertilizing, or by pruning, trimming,
9 bracing, treating cavities or other methods of
10 improving tree conditions, or protecting trees
11 from damage from insects or diseases or curing
12 these conditions by spraying or any other method;
13 "arborist" means one who is qualified to perform
14 arboriculture and is licensed by the [State Tree
15 Protection Examining Board] COMMISSIONER OF
16 ENVIRONMENTAL PROTECTION as provided in section
17 23-61b, AS AMENDED BY SECTION 2 OF THIS ACT;
18 "board" means the State Tree Protection Examining
19 Board established under subsection (b);
20 "fungicide" means any substance or mixture of
21 substances intended for preventing, destroying,
22 repelling or mitigating any fungus; "fungus" means
23 any non-chlorophyll-bearing thallophyte; that is,

24 any non-chlorophyll-bearing plant of a lower order
25 than mosses and liverworts; for example, rusts,
26 smuts, mildews, molds and yeast, except those on
27 or in any living human or other vertebrate animal;
28 "herbicide" means any substance or mixture of
29 substances intended for preventing, destroying,
30 repelling or mitigating any weed; "insect" means
31 any of the numerous small invertebrate animals
32 generally having the body more or less obviously
33 segmented, for the most part belonging to the
34 class insecta, comprising six-legged, usually
35 winged forms, as for example, beetles, bugs, bees,
36 flies and to other allied classes of arthropods
37 whose members are wingless and usually have more
38 than six legs, as for example, spiders, mites,
39 ticks, centipedes and wood lice; "insecticide"
40 means any substance or mixture of substances
41 intended for preventing, destroying, repelling or
42 mitigating insects; "plant regulator" means any
43 substance or mixture of substances determined to
44 be a plant regulator under chapter 441;
45 "pesticide" means any substance or mixture of
46 substances determined to be a pesticide under said
47 chapter; "weed" means any plant which grows where
48 not wanted.

49 (b) There shall be in the Department of
50 [Consumer] ENVIRONMENTAL Protection a State Tree
51 Protection Examining Board which shall consist of
52 the plant pathologist and forester of the
53 Connecticut Agricultural Experiment Station, who
54 shall serve as ex-officio members, and five
55 electors of the state, three of whom shall be
56 public members, and two of whom shall be licensed,
57 practicing arborists to be appointed by the
58 Governor. Any vacancy in the appointed membership
59 of the board shall be filled by the Governor for
60 the unexpired portion of the term.

61 (c) The board shall have a seal and, in any
62 proceeding in court, a certificate under such seal
63 shall be bona fide evidence of any proceeding or
64 action by or before the board stated in such
65 certificate. A majority of members acting as a
66 board shall constitute a quorum for the
67 transaction of business.

68 (d) Repealed by P.A. 82-419, S. 46, 47.

69 (e) The Commissioner of [Consumer]
70 ENVIRONMENTAL Protection, with the advice and
71 assistance of the board, may adopt such

72 regulations as are necessary for the purpose of
73 giving examinations, issuing and renewing
74 licenses, inspection of work or revocation of
75 licenses.

76 Sec. 2. Section 23-61b of the general
77 statutes is repealed and the following is
78 substituted in lieu thereof:

79 (a) No person shall advertise, solicit or
80 contract to do arboriculture within this state at
81 any time without a license issued in accordance
82 with the provisions of this section, except that
83 any person may improve or protect any tree on his
84 own premises or on the property of his employer
85 without securing such a license provided such
86 activity does not violate the provisions of
87 chapter 441, subsection (a) of section 23-61a,
88 this section or section 23-61d. Application for
89 such license shall be made to the [Tree Protection
90 Examining Board, established under the provisions
91 of section 23-61a,] COMMISSIONER OF ENVIRONMENTAL
92 PROTECTION AND shall contain such information
93 regarding the applicant's qualifications and
94 proposed operations and other relevant matters as
95 the [board] COMMISSIONER may require and shall be
96 accompanied by a fee of [twenty] TWENTY-FIVE
97 dollars which shall not be returnable. [and which
98 shall be in lieu of the fee for initial licensure
99 if a license is issued.]

100 (b) The [board] COMMISSIONER shall require
101 the applicant to show upon examination that he
102 possesses adequate knowledge concerning the proper
103 methods of arboriculture and the dangers involved
104 and the precautions to be taken in connection with
105 these operations, together with knowledge
106 concerning the proper use and application of
107 [fungicides and insecticides] PESTICIDES and the
108 danger involved and precautions to be taken in
109 connection with their application. If the
110 applicant is other than an individual, the
111 applicant shall designate an officer, member or
112 technician of the organization to take the
113 examination, which designee shall be subject to
114 approval of the [board] COMMISSIONER except that
115 any person who uses [fungicides or insecticides]
116 PESTICIDES in arboriculture shall be licensed to
117 do arboriculture or shall be a licensed commercial
118 applicator under chapter 441. If the extent of the
119 applicant's operations warrant, the [board]

120 COMMISSIONER may require more than one such member
121 or technician to be examined. If the [board]
122 COMMISSIONER finds the applicant qualified, [it
123 shall authorize the Department of Consumer
124 Protection to] HE SHALL issue a license to perform
125 arboriculture within this state. A license shall
126 be valid for a period of [one year] FIVE YEARS. If
127 the [board] COMMISSIONER finds that the applicant
128 is not qualified, or if [it] HE refuses to issue a
129 license for any other reason, [it] HE shall so
130 inform the applicant in writing, giving reasons
131 for such refusal.

132 (c) The [board may authorize the Department
133 of Consumer Protection to] COMMISSIONER MAY issue
134 a license without examination to any nonresident
135 who is licensed in another state under a law that
136 provides substantially similar qualifications for
137 licensure and which grants similar privileges of
138 licensure without examination to residents of this
139 state licensed under the provisions of this
140 section.

141 (d) Each licensee shall pay a license renewal
142 fee of [forty] ONE HUNDRED FIFTY dollars for each
143 renewal. All examination and license renewal fees
144 shall be deposited as provided in section 4-32, AS
145 AMENDED, and any expenses incurred by the [board]
146 COMMISSIONER in making examinations, issuing
147 certificates, inspecting tree work or performing
148 any duties of the [board] COMMISSIONER shall be
149 charged against appropriations of the General
150 Fund.

151 (e) Each licensee shall maintain and, upon
152 request, furnish such records concerning licensed
153 activities as the [board] COMMISSIONER may
154 require.

155 (f) [Pending inquiry by the Department of
156 Consumer Protection, the board] THE COMMISSIONER
157 may suspend for not more than ten days and, after
158 notice and hearing as provided in [the] ANY
159 regulations established by the [Commissioner of
160 Consumer Protection, it] COMMISSIONER, HE may
161 suspend for additional periods, or [it] HE may
162 revoke, any license issued under this section if
163 [it] HE finds that the licensee is no longer
164 qualified or has violated any provision of
165 sections 23-61a to 23-61d, inclusive, AS AMENDED
166 BY THIS ACT, or any regulation adopted thereunder.

167 (g) The Commissioner of [Consumer]
168 ENVIRONMENTAL Protection, in consultation with the
169 board, [and the Commissioner of Environmental
170 Protection,] shall establish standards for
171 examining applicants and reexamining applicators
172 with respect to the proper use and application of
173 [fungicides and insecticides] PESTICIDES AND
174 AGRICULTURAL METHODS. Such standards shall provide
175 that in order to be certified, an individual shall
176 be competent with respect to the use and handling
177 of pesticides or the use and handling of the
178 pesticide or class of pesticides covered by such
179 individual's application or certification AND IN
180 THE PROPER AND SAFE APPLICATION OF RECOGNIZED
181 ARBORICULTURAL METHODS.

182 (h) Any licensed arborist shall be considered
183 to be a certified applicator under section 22a-54,
184 AS AMENDED, with respect to the use of [fungicides
185 or insecticides] PESTICIDES.

186 Sec. 3. Section 23-61f of the general
187 statutes is repealed and the following is
188 substituted in lieu thereof:

189 (a) Any person who violates any provision of
190 subsection [(a),] (b), (c) or (d) of section
191 23-61b, AS AMENDED BY THIS ACT, or section 23-61d
192 or of any regulation issued [by the board] under
193 subsection (e) of section 23-61a, AS AMENDED BY
194 THIS ACT, shall be fined not more than two hundred
195 dollars.

196 (b) Any person who violates any provision of
197 chapter 441 OR SECTIONS 23-61a TO 23-61d,
198 INCLUSIVE, AS AMENDED BY THIS ACT, shall be
199 considered under the jurisdiction of the
200 Commissioner of Environmental Protection. [Any
201 person who violates any provision of sections
202 23-61a to 23-61d, inclusive, shall be considered
203 under the jurisdiction of the Tree Protection
204 Examining Board.]

205 (c) ANY PERSON WHO VIOLATES ANY PROVISION OF
206 SUBSECTION (a) OF SECTION 23-61b, AS AMENDED BY
207 THIS ACT, OR SECTION 23-61d SHALL BE ASSESSED A
208 CIVIL PENALTY OF NOT LESS THAN ONE THOUSAND
209 DOLLARS BUT NOT MORE THAN TWO THOUSAND FIVE
210 HUNDRED DOLLARS FOR EACH DAY SUCH VIOLATION
211 CONTINUES. THE ATTORNEY GENERAL, UPON COMPLAINT OF
212 THE COMMISSIONER, SHALL INSTITUTE A CIVIL ACTION
213 IN THE SUPERIOR COURT FOR THE JUDICIAL DISTRICT OF
214 HARTFORD-NEW BRITAIN TO RECOVER SUCH PENALTY. ANY

215 SUCH ACTION SHALL HAVE PRECEDENCE IN THE ORDER OF
216 TRIAL AS PROVIDED IN SECTION 52-191.

217 ENV COMMITTEE VOTE: YEA 22 NAY 0 JFS C/R JUD
218 JUD COMMITTEE VOTE: YEA 37 NAY 0 JF

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"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

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FISCAL IMPACT STATEMENT - BILL NUMBER sHB 5500

STATE IMPACT	Minimal Cost, Minimal Savings and Minimal Revenue Impact, see explanation below
MUNICIPAL IMPACT	None
STATE AGENCY(S)	Departments of Environmental Protection and Consumer Protection, Agricultural Experiment Station, Office of the Attorney General

EXPLANATION OF ESTIMATES:

STATE IMPACT: Transferring the responsibility for licensing arborists from the State Tree Protection Examining Board (tree board) to the Department of Environmental Protection (DEP) and the tree board from the Department of Consumer Protection (DCP) to DEP will minimally increase DEP's workload. It is anticipated that DEP will need a part-time clerk and associated expenses, at a cost of \$18,000, to process the 601 (current number) licenses, making examinations or other administrative duties. No funds are provided for this purpose. The law states that expenses incurred will be charged against appropriations of the General Fund. This does not provide DEP a direct mechanism to receive funding for these purposes.

DCP had been reimbursing the Agricultural Experiment Station \$100 for costs associated with mailings. DCP will no longer incur these minimal costs. In addition, the Agricultural Experiment Station had not received reimbursement for costs incurred associated with testing. However, the staff person in charge of that

duty has retired. Two ex-officio members of the tree board are Station employees.

The bill also changes the annual renewal of a arborist license to a five-year renewal. Currently, \$24,040 is deposited annually from the \$40 renewal fee (based on 601 licenses). This bill would increase revenue in the renewal year (based on current expiration/renewal dates of 2/1), starting FY 1998-99, by \$66,110 (based on the \$150 fee and 601 renewals) and decrease revenue to the state by \$24,040 in each of the subsequent four years. Any increase in revenue due to the increase in the examination fee from \$20 to \$25 is anticipated to be minimal.

It is also anticipated that any increase in revenue due to increasing various penalties and fines is anticipated to be minimal. Any increase in the caseload of the Office of the Attorney General due to potentially bringing a civil suit is anticipated to be minimal and handled within existing agency resources.

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OLR BILL ANALYSIS

sHB 5500

AN ACT CONCERNING LICENSING OF ARBORISTS

SUMMARY: This bill transfers the responsibility for licensing arborists from the State Tree Protection Examining Board (tree board) to the Department of Environmental Protection (DEP) and the tree board from the Department of Consumer Protection (DCP) to DEP. It:

1. increases the initial arborist application fee from \$20 to \$25;
2. lengthens the period a license is valid from one to five years;
3. changes the renewal fee from \$40 each year to \$150 once every five years;
4. increases the penalty for working without a

license from a fine of up to \$200 to a civil penalty of between \$1,000 and \$2,500 for each day of a violation (the DEP commissioner must ask the attorney general to bring a civil suit to recover the penalty);

5. requires an applicant to be knowledgeable about all pesticides, not just fungicides and insecticides; and
6. makes technical and conforming changes.

EFFECTIVE DATE: October 1, 1998

FURTHER EXPLANATION

Licensing Arborists

Applications. Under the bill, the DEP rather than the tree board:

1. must accept applications for an arborist license,
2. may require that the application contain certain information,
3. must test an applicant's knowledge on the proper methods of arboriculture,
4. may refuse to issue a license if it finds the applicant not qualified or for any other reason and must inform the applicant in writing of these reasons,
5. may issue a license to a nonresident who is licensed in another state that has similar qualifications and grants reciprocity with Connecticut, and
6. may charge its expenses against the General Fund.

Under the bill DEP, rather than the DCP, with the tree board's assistance: (1) may adopt regulations necessary for testing applicants, issuing, renewing, and revoking licenses, and inspecting work and (2) must set standards for testing applicants on their knowledge.

The bill broadens this standard to require an applicant to be knowledgeable about all pesticides, not just fungicides and insecticides and about agricultural methods. It also requires an applicant to be competent in the proper and safe application of arboricultural methods.

Fungicides and Insecticides. Current law requires the applicant to be tested on his knowledge of the proper use and application of fungicides and insecticides. The bill broadens this test to require an applicant to know about all pesticides, not just fungicides and insecticides. Current law allows an organization that provides arborist services to designate one member of the firm to be licensed as an arborist but it requires anyone in the firm who uses fungicides or insecticides to be either licensed as an arborist or a commercial pesticide applicator. The bill instead requires anyone who uses pesticides, not just fungicides or insecticides, to be so licensed.

Pesticides are any substance intended to prevent, destroy, repel, or mitigate any pest (including fungus) or to defoliate, dehydrate, or regulate a plant.

Revoking Licenses. The bill authorizes the DEP, rather than the tree board pending DCP's inquiry, to suspend an arborist's license for up to 10 days following notice and hearing. The DEP, rather than DCP, can suspend the license for longer or may revoke it if it finds the licensee is no longer qualified or has violated the law.

Although the tree board, under the bill, is no longer authorized to make these orders or findings, the law continues to allow its order and findings to be appealed through the Uniform Administrative Procedure Act.

BACKGROUND

State Tree Protection Examining Board Membership

The board consists of the plant pathologist and forester of the Connecticut Agricultural Experiment Station who are ex-officio members; three public members; and two licensed practicing arborists. The governor appoints the members.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute Change of Reference
Yea 22 Nay 0

Judiciary Committee

Joint Favorable Report
Yea 37 Nay 0