

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 22-143—sSB 238
Environment Committee
Judiciary Committee

**AN ACT CONCERNING REVISIONS TO CERTAIN ENVIRONMENT
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Requires the DEEP commissioner to complete and publish a hazardous tree mitigation policy that applies to state parks and campgrounds and report on tree replanting strategies for removed hazardous trees; requires DEEP to implement a tree replanting demonstration project at Housatonic Meadows State Park

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Limits when waterfront property owned by shellstock shippers is eligible for the PA 490 program

§ 19 — NIPS SURCHARGE REMITTANCE

Extends the deadline by which alcohol wholesalers must remit the five-cent nip surcharge to municipalities

SUMMARY: This act makes various changes in environment-related statutes, such as those on wastewater treatment plant operator certification, noise control ordinances, air emission regulation, forest fire resources, forestry practitioner certification, pesticide applicator licensure and product registration, radiation and radioactive material, and state park tree maintenance.

EFFECTIVE DATE: Upon passage, except as noted below.

§ 1 — WASTEWATER TREATMENT PLANT OPERATOR CERTIFICATION

Limits the exam requirement for class III and IV wastewater treatment plant operator certification applicants to a national standardized exam; expands the DEEP commissioner's authority to adopt regulations on operator certification and continuing education; requires the commissioner or her designated agent to approve continuing education in consultation with the operator certification advisory board

The act limits the exam requirement for class III and class IV wastewater treatment plant operator certification applicants to the standardized national exam prepared by the Association of Boards of Certification for Wastewater Treatment Facility Operators. Under prior law, the exam included additional questions from the Department of Energy and Environmental Protection (DEEP) commissioner. The act also allows the commissioner to designate an agent to administer and

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proctor the exam.

The act authorizes the commissioner to adopt regulations on wastewater treatment plant operators' certification, application, renewal, and continuing education requirements. Prior law allowed her to adopt regulations on a regular state-certified training course for operators. The act also requires the commissioner or her designated agent, in consultation with the state's operator certification advisory board, to approve continuing education and associated courses. The board advises and helps to administer the certification program (Conn. Agencies Regs. § 22a-416-10).

§ 2 — AQUACULTURE STRUCTURES

Exempts certain aquaculture structures in tidal, coastal, or navigable waters from a DEEP permitting requirement

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

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

Aquaculture includes the controlled rearing, cultivation, and harvest of aquatic plants and animals. Aquaculture structures include things like racks, cages, bags, and buoys.

§ 3 — NOISE REGULATION

Eliminates the DEEP commissioner's role in approving municipal noise ordinances

By law, municipalities may adopt and enforce a noise control ordinance that includes certain elements set in statute, including noise levels and implementation procedures. Prior law required (1) the commissioner's approval before a noise control ordinance could take effect and (2) the ordinance to conform to applicable federal and state noise standards or regulations (e.g., Conn. Agencies Regs. § 22a-69-1 et seq.). The act (1) eliminates the commissioner's approval requirement and (2) specifically requires the ordinances to be at least as stringent as applicable federal and state noise standards or regulations.

§ 4 — STATIONARY AIR POLLUTION SOURCE REGULATION

Authorizes the DEEP commissioner to require air pollution sources that are permitted under federal law to comply with applicable federal incineration standards that have been incorporated into state regulations

The act authorizes the DEEP commissioner to require air pollution sources that

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are permitted under federal law (i.e., Title V of the Clean Air Act Amendments of 1990) to comply with applicable federal incineration standards (40 C.F.R. Part 62), which have already been incorporated into state air regulations (Conn. Agencies Regs. § 22a-174-1 et seq.).

§§ 5 & 6 — INTERSTATE FOREST FIRE RESOURCES

Clarifies that the state's forest fire warden may supplement forest fire control personnel with temporary emergency workers to help fight fires in other states and allows Connecticut to exchange forest fire protection and control resources with states beyond New England and New York

The act makes a minor change to clarify that the state's forest fire warden may supplement state forest fire control personnel with specially trained temporary emergency workers to help fight a forest fire in a state with which Connecticut has agreed to provide reciprocal aid, rather than only for in-state fires (§ 5).

The act also expands the applicability of the Northeastern Interstate Forest Fire Protection Compact's interstate aid provisions by allowing aid to or from any state that belongs to a regional forest fire protection compact if that state's legislature agrees to the provisions (§ 6). In doing so, it allows Connecticut to exchange forest fire protection and control resources with up to 43 other states, instead of only member states. (Members of the northeastern compact include the New England states and New York.)

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

§ 7 — FOREST PRACTICES ADVISORY BOARD

Designates qualifications for appointed members of the Forest Practices Advisory Board

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

The act designates qualifications to the board's appointed members, as shown in the table below. Prior law provided qualifications, generally, for six appointments; it did not specify the qualifications for each appointment.

Forest Practices Advisory Board Member Qualifications

<i>Appointing Authority</i>	<i>Designated Qualifications</i>
Governor	<ul style="list-style-type: none">• Officer of an environmental organization headquartered in Connecticut that is concerned mainly with forests*• Representative of an environmental organization not mainly concerned with forests*• Inland wetlands agency member*

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<i>Appointing Authority</i>	<i>Designated Qualifications</i>
House speaker	<ul style="list-style-type: none"> • Owner of at least 10, but no more than 250, forest land acres*
Senate president pro tempore	<ul style="list-style-type: none"> • Professional forester in private practice*
House majority leader	<ul style="list-style-type: none"> • Forest products industry representative*
Senate majority leader	<ul style="list-style-type: none"> • Professor of forestry or natural resources from a college or university in Connecticut*
House minority leader	<ul style="list-style-type: none"> • Member of the public
Senate minority leader	<ul style="list-style-type: none"> • Member of the public

*Denotes a qualification generally listed in prior law

Under the act, the current board member’s terms expire on October 1, 2022, and the new members serve four-year terms. Members served four-year, staggered terms under prior law.

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

EFFECTIVE DATE: October 1, 2022

§§ 8 & 9 — FOREST PRACTITIONER CERTIFICATION AND CONTINUING EDUCATION

Authorizes the DEEP commissioner to grant a 60-day extension to renew a commercial forest practitioner certification and certify additional forest practitioners without examination; changes continuing education and associated reporting requirements for forest practitioners

60-Day Extension for Renewals

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

By law, there are three classifications of certified forest practitioners: forester, supervising forest products harvester, and forest products harvester. Certifications must be renewed every four years.

Alternative Certification

The act allows the DEEP commissioner to certify a forest practitioner without examination if he or she is certified through an examination given by the Society

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of American Foresters or a similar organization. The commissioner may do this only if the (1) organization's certification qualifications are substantially similar to Connecticut's and (2) practitioner can show knowledge of Connecticut's forestry laws to the commissioner's satisfaction.

Prior law allowed the commissioner to certify forest practitioners without examination if (1) they were certified in another state with substantially similar certification qualifications and (2) that state grants similar privileges to Connecticut residents. The act eliminates the reciprocity requirement.

Continuing Education

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

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

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

EFFECTIVE DATE: October 1, 2022

§ 10 — PESTICIDE APPLICATOR CERTIFICATION RENEWAL

Requires the DEEP commissioner to notify certified pesticide applicators at least 60 days before their certifications lapse and provides a one-year window to renew a certification without reexamination

Notice and Certification Lapse

The act requires the DEEP commissioner to give a certified pesticide applicator at least 60 days' notice before his or her certification expires and a renewal application.

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

Renewal Without Reexamination

The act allows the DEEP commissioner to renew a pesticide applicator's certification that has lapsed for less than one year if the applicator (1) submits a

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signed renewal application and (2) pays both the renewal fee and any late fee. By law, renewal fees range from \$80 to \$285, depending on the certification level. Under the act, the late fee is equal to 10% of the renewal fee plus 1.25% per month or part of a month, dating from when the certification lapsed.

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

§ 11 — PESTICIDE REGISTRATION

Allows pesticides to be registered annually instead of every five years

The act authorizes the DEEP commissioner to register pesticides either on an annual basis or, as required under prior law, for five-year periods, and correspondingly prorates the registration fee to account for an annual registration.

§§ 12-16 — RADIATION REGULATION

As part of Connecticut's shift to "agreement state status" with the U.S. Nuclear Regulatory Commission, (1) allows the DEEP commissioner to enter into agreements with NRC and certain other governmental agencies for inspections or other radiation control functions, (2) specifies that existing licenses that will become subject to state oversight will have a like-license until their expiration, and (3) makes associated technical and conforming changes

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

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

1. specifies that NRC keeps regulatory oversight over certain materials and activities that federal law and regulations reserves to it (e.g., operating uranium enrichment facilities; importing or exporting byproduct, sources, or special nuclear materials; disposing of certain products in the ocean; and storing spent fuel and radioactive waste) (§ 13);
2. requires the licenses (either with NRC or with another agreement state) in existence before the effective date of Connecticut's agreement with NRC to be like-licenses with Connecticut until (a) the license's expiration date or (b) 90 days after DEEP notifies the licensee that the license will be expired (§ 14); and
3. allows the DEEP commissioner to enter into any agreement with NRC or any other federal governmental agency, state, or interstate agency for the

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state to perform inspections or other radiation sources control functions (§ 15).

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

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

Existing law, unchanged by the act, imposes criminal penalties (fines, imprisonment, or both) for criminally negligent violations of the radiation and radioactive materials law and knowingly making false statements in associated documents (CGS § 22a-158c).

EFFECTIVE DATE: Upon passage, except certain technical changes (§ 12) are effective October 1, 2022.

§ 17 — STATE PARK HAZARDOUS TREE MAINTENANCE

Requires the DEEP commissioner to complete and publish a hazardous tree mitigation policy that applies to state parks and campgrounds and report on tree replanting strategies for removed hazardous trees; requires DEEP to implement a tree replanting demonstration project at Housatonic Meadows State Park

The act requires the following three actions concerning tree maintenance at state parks and campgrounds:

1. the DEEP commissioner must, by August 1, 2022, develop, finalize, and publish on DEEP's website a hazardous tree mitigation policy on designating, removing, and mitigating hazardous trees;
2. in consultation with state park or forest advocacy groups or organizations, DEEP must implement a tree planting demonstration project at Housatonic Meadows State Park; and
3. the DEEP commissioner must, by December 1, 2022, submit a report to the Environment Committee on replanting strategies for removed hazardous trees and any related funding needs.

Under the act, the hazardous tree mitigation policy must include (1) criteria for DEEP to designate a tree as hazardous and (2) procedures to follow when making the designation and for the tree's removal or mitigation. The procedures must include the following elements:

1. consultation with a licensed arborist before designating and removing or mitigating the tree;
2. notifying the public about DEEP's hazardous tree removal activities, including signs and publishing notice on the department's website; and

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3. considering replanting and other relevant improvements to offset a removed hazardous tree's aesthetic or ecological value.

The act requires the policy to also have provisions on the following:

1. maintenance of public safety;
2. ecological and natural resource protection;
3. transparency and public engagement practices for the tree designation, removal, and mitigation process;
4. state park maintenance and repair, trail maintenance, and effective stewardship of DEEP's resources;
5. public access to outdoor recreation;
6. decorative pruning and removing invasive species;
7. efforts for fire suppression or protection; and
8. post-storm impact mitigation or clean-up.

§ 18 — PA 490 PROGRAM: MARITIME HERITAGE LAND

Limits when waterfront property owned by shellstock shippers is eligible for the PA 490 program

PA 21-24 extended the state's PA 490 program to licensed shellstock (i.e., in-shell molluscan shellfish) shippers by including waterfront property they own in the definition of "maritime heritage land." (The PA 490 program allows farm, forest, open space, and maritime heritage land to be assessed for property tax purposes based on current use value rather than fair market value (CGS § 12-63).)

The act limits when waterfront property owned by shellstock shippers is eligible for the tax break by requiring that the shippers also either grow or harvest shellstock.

§ 19 — NIPS SURCHARGE REMITTANCE

Extends the deadline by which alcohol wholesalers must remit the five-cent nip surcharge to municipalities

The act extends the deadline by which alcohol wholesalers must remit to municipalities the five-cent surcharge assessed on beverage containers containing spirits or liquor of 50 milliliters or less ("nips"). By law, these payments must be made twice yearly, in April and October. Under prior law, wholesalers had to remit the funds at the beginning of those months. The act deems the payments timely if they are made on any day during those months.