
OLR Bill Analysis

sHB 6486 (as amended by House "A")*

AN ACT CONCERNING EXTENDED PRODUCER RESPONSIBILITY FOR TIRES.

SUMMARY

This bill requires the establishment of a state-wide stewardship program to manage certain discarded tires that, among other things, provides free access to a collection system and ensures discarded tires are resold or recycled. It prohibits tire producers who fail to participate in a program from supplying tires in Connecticut.

The bill requires tire producers, or their designees, to join a stewardship organization that they create or select by January 1, 2025. The stewardship organization must develop a plan to implement the program which must, in turn, be submitted to the Department of Energy and Environmental Protection (DEEP) for approval.

Among other things, the plan must detail how the program will be financed, which may be through a fee structure. The bill also authorizes the DEEP commissioner to assess a reasonable fee, up to 10% of the total program costs, on a tire stewardship organization for program administration.

The bill (1) allows the DEEP commissioner to civilly enforce the program's requirements, (2) sets auditing and reporting requirements, and (3) gives immunity to producers and organizations from claims of antitrust or unfair trade practice violations under certain circumstances. It also generally allows an organization to collaborate with another state with a tire stewardship or recycling program.

Lastly, the bill requires the Department of Transportation (DOT) commissioner to do needed laboratory testing related to a pilot program on using tire-derived asphalt on primary state roadways throughout the

state. By January 1, 2025, the DOT commissioner must submit a report to the Environment Committee on the efficacy and suitability of using tire-derived asphalt on these roadways. The report must include (1) a recommendation on its use and (2) an estimate of the volume or number of tires needed to sustain any recommended use.

*House Amendment "A" (1) specifies that "recycling" may include using tires or processed materials that are incinerated out-of-state or used as fuel or fuel supplement and (2) adds the DOT pilot program and reporting provisions.

EFFECTIVE DATE: October 1, 2023, except the DOT pilot program and reporting provisions are effective upon passage.

TIRE PRODUCERS

The bill applies to tire "producers," which are generally tire manufacturers if the tire brand holder is a U.S. resident. A "brand" is a name, symbol, word, or mark that attributes a tire to its producer.

If there is no manufacturer meeting the above requirement, then the following, in order, would be considered the producer:

1. an owner or licensee of a trademark under which the tire is supplied in Connecticut, regardless of trademark registration;
2. an importer of the tire for supply to a consumer; or
3. the retailer who supplies the tire to a consumer.

Under the bill, a "discarded tire" is a whole tire (including a tire on a rim) a consumer discarded, abandoned, or intends to discard or abandon. Tires the bill covers include products made primarily of rubber that are mounted on wheels of passenger or commercial motorized vehicles, whether on- or off-road, including passenger vehicles; motorcycles; trucks; buses; mobile homes; trailers; noncommercial aircraft; and earthmoving, road building, mining, logging, agricultural, industrial, and other vehicles providing mobility. The bill excludes tires from toys, bicycles, commercial aircrafts, or

personal mobility devices.

To “supply” is to transfer a tire’s title for consideration, including through a sales outlet, catalog, or website or similar electronic means.

PROGRAM PURPOSES AND ESTABLISHMENT

By January 1, 2025, the bill requires producers, or their designees, to join a tire stewardship organization, which is a producer-created or -selected organization to design, submit, and implement a tire stewardship plan. The bill allows retailers to participate in the stewardship organization.

Under the bill, the tire stewardship program must, to the extent that it is technologically feasible and economically practical, establish and manage a state-wide collection system using covered entities (e.g., transfer stations, tire retailers, dealerships, see below) and provide for the following:

1. free public access to the collection system (i.e., drop-off) for discarded tires;
2. suitable storage containers for tires, as needed, throughout the collection system;
3. public promotion and education about the program;
4. market development, as needed, to meet performance goals; and
5. financing program activities only by producer funding.

The program must also ensure that discarded tires are (1) picked up from the collection system and transported for recycling and (2) resold or recycled. Under the bill, “recycling” includes any process in which discarded tire parts and by-products may lose their original identity or form as they are transformed into new, usable, or marketable materials. The bill specifies that recycling may include the use of tires or processed materials that are incinerated out-of-state or used as a fuel or fuel supplement.

“Covered entities” include permitted transfer stations, tire retailers, car dealerships, automotive garages, public or private fleet maintenance garages, and other locations identified in the plan.

PLAN DEVELOPMENT AND SUBMISSION

By the same date (January 1, 2025), a tire stewardship organization must submit a plan to establish a state-wide tire stewardship program to the DEEP commissioner for approval.

The plan must:

1. identify each participating producer;
2. describe program’s financing and public education program;
3. establish performance goals for the program’s first two years (see below);
4. describe the industry transition timeline needed to achieve the performance goals and how it will use, to the greatest extent economically feasible, existing service providers and infrastructure in Connecticut;
5. identify proposed program facilities for collection, transportation, and recycling; and
6. detail how the program (a) follows the state’s solid waste hierarchy (see BACKGROUND) and (b) will promote sustainability and recycling discarded tires to higher value products.

Under the bill, a stewardship organization must establish and implement a system to finance the program that covers, but does not exceed, the costs to (1) develop the plan, (2) operate and administer the program, and (3) maintain a financial reserve sufficient to operate the program for six months. The organization’s proposed “performance goals” are annual outcomes that measure the program’s performance including collection and diversion rates, economic and environmental benefits, beneficial recycling uses and targets, public education and

participation, and any other specified goal.

PLAN APPROVAL AND IMPLEMENTATION

The bill requires the DEEP commissioner to determine whether to approve the plan for the tire stewardship program within 90 days after its submission, but after she posts the plan on the department's website and solicits public comments. The bill specifies that the solicitation must not be done in accordance with the Uniform Administrative Procedure Act.

The commissioner must approve a plan if it meets the bill's program, plan, and financing requirements. If the commissioner disapproves the plan, she must give the stewardship organization a notice of determination describing her reasons. The organization must revise and resubmit its plan within 45 days after receiving the disapproval notice. The commissioner must review and either approve or disapprove a revised plan within 45 days after receiving it and give a notice of determination to the organization. The bill restricts resubmitting a revised plan for approval to no more than two occasions. If the organization fails to provide an acceptable plan, the commissioner must modify its submitted plan to conform with the requirements.

The bill requires the stewardship organization to implement the tire stewardship program within 120 days after plan approval.

CHANGES TO A PLAN

The bill requires a stewardship organization to submit substantial proposed plan changes to the DEEP commissioner for approval. Under the bill, a "substantial change" is a (1) change in the processing facilities used for collected discarded tires or (2) material change to the system for collecting them. The bill has no deadline by which the commissioner must approve a substantial change by the stewardship organization.

The bill also requires an organization to notify the commissioner of other material program changes on an ongoing basis and without resubmitting the plan for approval. These changes include things such as changes to the organization's composition, officers, or contact

information.

The bill requires an organization to submit updated performance goals to the commissioner two years after the program's implementation. The updated goals must be based on the program's experience during those first two years.

TIRE COLLECTION FEES

Once the program is implemented, the bill prohibits participating covered entities from charging for the receipt of tires discarded in Connecticut. However, it allows them to reasonably restrict accepting tires by number, source, or condition.

AUDIT REQUIREMENTS

Program Audits

Two years after program implementation, and then every three years, an organization must pay for a program audit by a commissioner-selected auditor. The bill also allows the commissioner to request an audit, but it does not permit more than one audit per year. The audit must (1) review the accuracy of the organization's program data and (2) provide any other program-related information the commissioner requests, but not any proprietary information or trade or business secrets.

The bill requires an organization to maintain all program records for at least three years.

Audited Financial Statements

Existing law requires any product stewardship organization operating in the state to, annually by May 1, submit to DEEP certified audited financial statements and the name of any contractor or organization that has a contract with it valued at \$2,000 or more. DEEP must post and maintain the information on its website (CGS § 22a-905g). This requirement also applies to a tire stewardship organization.

REPORTING REQUIREMENTS

Stewardship Organization

Annually by October 15, the bill requires a stewardship organization to submit a report to the DEEP commissioner, on a form she prescribes, with the following information:

1. tonnage of tires collected from municipal transfer stations, retailers, and all other covered entities;
2. tonnage of tires diverted for recycling;
3. a summary of the program's public education efforts;
4. an evaluation of the effectiveness of methods and processes used to achieve program performance goals; and
5. recommendations for any program changes.

The report must then be posted on the department's website.

DEEP

Within three years after a plan's approval, the DEEP commissioner must submit a report to the Environment Committee that evaluates the program. The report must also set goals for (1) the amount of discarded tires managed under the program and (2) diverting tires for recycling, considering technical and economic feasibilities.

CIVIL PENALTIES

The bill authorizes the DEEP commissioner to civilly enforce the program's requirements under her existing authority.

It allows the commissioner to ask the attorney general to bring an action for injunctive relief in the New Britain Superior Court if she believes that a person has engaged in, or is about to engage in, any act, practice, or omission that violates the program's requirements. It permits the court to issue a permanent or temporary injunction, restraining order, or other appropriate order, including remedial measures and directing compliance. The bill requires that these actions by the attorney general take precedence over other actions in the order of trial.

LIABILITY PROTECTION

Under the bill, to the extent a producer or an organization is exercising authority according to the bill's provisions, it is immune from liability for any antitrust or unfair trade practice claim based on a violation of antitrust law.

INTERSTATE COLLABORATION

The bill allows a stewardship organization to collaborate with another state that has a similar tire stewardship or recycling program to conserve efforts and resources. However, the collaboration must be consistent with the bill's requirements.

BACKGROUND

Solid Waste Hierarchy

Connecticut's Comprehensive Materials Management Strategy (i.e., the revised state-wide Solid Waste Management Plan) uses a hierarchy as a guide for solid waste management efforts. The hierarchy emphasizes source reduction, recycling, composting, and energy recovery. It lists landfilling and incineration as last resorts for solid waste disposal.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 27 Nay 6 (03/24/2023)