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## OLR Bill Analysis

### sHB 6744

#### ***AN ACT CONCERNING COMPENSATORY REFORESTATION PLANS, THE CONSTRUCTION OF NOISE BARRIERS, DECIBEL TESTING FOR MOTOR VEHICLES AND IDLING MOTOR VEHICLES.***

#### **SUMMARY**

This bill establishes various initiatives to address transportation-related noise and the loss of trees along state highways.

Beginning July 1, 2024, the bill requires the Department of Transportation (DOT) to annually develop and submit to the Department of Energy and Environmental Protection (DEEP) for approval, a plan for compensatory (“no net less”) reforestation for all DOT-owned and -maintained areas of at least half an acre that are scheduled for deforestation. It also requires DOT to develop and implement a program to provide for building noise barriers along existing highways under federal law.

The bill requires the Department of Motor Vehicles (DMV) to establish a one-year pilot program to test a vehicle’s maximum decibel level during an emissions inspection. And it extends two related deadlines for the DMV commissioner to:

1. submit to the General Assembly an implementation plan, as well as legislation and funding recommendations, for a statewide decibel level testing program at official emissions inspection stations, from January 1, 2023, to October 1, 2023 (§ 4); and
2. with the advice of DEEP, amend current regulations setting maximum vehicle decibel levels and related testing procedures and submit them to the Regulation Review Committee, from January 1, 2024, to October 1, 2024 (§ 5).

The bill authorizes a municipality, by ordinance, to establish a fine of up to \$90 for violating the vehicle idling ban. It also makes minor and technical changes, including adding a missing statutory reference on unregistered vehicle citations (§ 7).

EFFECTIVE DATE: October 1, 2023, except the provisions on submitting the results of the (1) priority ranking system and list (§ 3) and (2) plan for a statewide decibel level testing program (§ 4) are effective upon passage, and the provision on amending vehicle decibel level regulations (§ 5) is effective July 1, 2023.

### **§ 1 — COMPENSATORY REFORESTATION (“NO NET LOSS”)**

DOT’s reforestation plan must set a goal of no net loss of existing forested areas based on a reasonable and practical tree replacement factor developed under regulations that the bill requires DEEP to adopt. Once submitted, the plan must be approved by DEEP before DOT can begin deforestation projects.

The bill requires each reforestation plan to include appropriate and approved methods for planting, protecting, caring for, and managing trees and other related natural resources. They also must provide a specified order of priority for planting locations, where DEEP and DOT proceed through the list until a suitable site is found, as described below.

#### ***Required Reforestation Plan Regulations***

Under the bill, DEEP must adopt regulations to develop plan requirements that specify the order of priority for planting, use of native species, the shape and configuration of reforested areas, tree density, and planting distance. More specifically, if DEEP and DOT determine that it is unfeasible to conduct the required tree-planting efforts on the deforested site, then the departments must determine the feasibility of planting according to the following specified order of priority, until a suitable location is found:

1. on state property within the municipality where the deforestation occurred;
2. on municipally owned property (including parks, streets,

schools, municipal facilities, open space, and recreational areas) where the deforestation occurred, as long as the municipality agrees;

3. within 5 miles of the deforestation, including on property owned or maintained by a state agency or another municipality, as long as the agency or municipality agrees; and
4. on an off-site property owned or maintained by a state agency, as long as the agency agrees.

The bill defines “state agency” as any office, department, board, council, commission, institution, constituent unit of higher education, technical education and career school, or other agency in the three branches of state government. The regulations must also require:

1. that the reforested area’s shape or configuration be substantially similar to the deforested area’s shape or configuration;
2. tree replacement to be based on accepted forestry research and practices that show the average tree density in urban areas is 204 trees per acre of tree cover and determined by the tree replacement factor (TRF), as follows:
  - a. 204 nursery-grown trees with a 2”-2 ½” diameter per acre;
  - b. 408 container-grown trees that are four to six feet tall and with at least a 1 ½” diameter per acre; or
  - c. 1,210 tree seedlings per acre;
3. seedlings to be planted six to 10 feet apart, or at a distance mutually agreed to by DEEP and DOT;
4. use of native species when practicable;
5. planting seedlings that are most suitable for the site;
6. choosing the species of nursery- and container-grown trees based on the plan and the American Horticulture Industry

Association's established standards; and

7. that similar tree species are not more than 30% of plantings to reduce the risk of widespread tree loss to single insect and disease infestation.

### **Memorandum of Agreement (MOA)**

As part of DOT's plan, the bill requires the department to enter into an MOA with DEEP to reimburse DEEP for the actual labor hours attributable to reviewing and implementing DOT's compensatory reforestation plans. In the MOA, DEEP and DOT may agree that, if a plan's required reforestation cannot be accomplished for a DOT-commenced project, then DOT must pay the value of the required trees, under the regulations and the approved plan, to be deposited in a DEEP-controlled account for reforestation.

### **§§ 2 & 3 — NOISE BARRIER PROGRAM**

The bill requires DOT to develop and implement a Type II (i.e., retrofit; see BACKGROUND) program under federal law to provide for building noise barriers along an existing highway by:

1. conducting a state-wide evaluation of the feasibility and reasonableness of building noise barriers for Type II projects and identifying the benefits, length, location, and approximate associated construction costs; and
2. establishing a priority rating system to rank projects and establish a priority list.

By February 1, 2024, DOT must submit the evaluation's results, a description of the priority ranking system, and a copy of the priority list to the Transportation Committee.

### **§§ 6 & 7 — MUNICIPAL ENFORCEMENT OF IDLING VIOLATIONS**

The bill authorizes municipal legislative bodies to adopt an ordinance that sets a fine up to \$90 for violating the vehicle idling ban (see BACKGROUND). Any police officer or other person authorized by the municipality's chief executive may issue a citation to a violator. Under

the bill, a municipality that adopts an idling ordinance must also adopt a citation hearing procedure for imposing fines. Fines collected by the municipality must be deposited into its general fund or in any special fund it designates.

State regulations prohibit “mobile sources,” which includes cars, buses, trucks, and tractors, from idling for more than three minutes (except in certain instances). Since there is no specific penalty for this violation, DEEP must use its general enforcement powers, which call for a fine of up to \$25,000 a day (or up to one year in jail) for first-time offenders. However, the penalty cannot be imposed unless the offender violates the law knowingly or with criminal negligence (CGS § 22a-175).

### **§ 8 — DECIBEL LEVEL TESTING PILOT**

From October 1, 2023, until October 1, 2024, the bill requires the DMV to establish a pilot program at five selected official emission inspection stations. The program must test different methodologies for inspecting the maximum decibel level produced by a motor vehicle during an emission inspection, which may not exceed the levels established in statute and any adopted regulations (ranging from 72 to 92 decibels depending on the vehicle’s speed, weight, and the road surface) (Conn. Agencies Regs., § 14-80a-4a). Under the bill, the different methodologies used must reflect industry standards and advancements in technology.

By January 1, 2025, the DMV must submit a report to the Appropriations, Finance, Revenue and Bonding, and Transportation committees on the pilot’s implementation, the results of the different methodologies used, and recommendations for a state-wide decibel level testing program (see also § 4).

### **BACKGROUND**

#### ***Use of Noise Barriers***

State and federal regulation and policy separate noise barriers into two types, based on whether they are associated with an existing or new source of noise. Noise barriers are required under federal regulations to mitigate increased traffic noise exceeding allowable levels resulting from new highway or bridge construction or reconstruction (i.e., Type I

projects). The federal government generally pays most of the noise barrier costs as part of the approved project. Federal regulations allow federal funds to be used for retrofitting an area with noise barriers (i.e., Type II projects) if a state adopts a Type II program that includes a federally approved priority ranking system. In practice, however, federal funds are rarely made available for these projects (23 C.F.R. 772.7).

***Exceptions to the Idling Ban***

A car, truck, or motor bus may idle for more than three consecutive minutes only when:

1. it must remain motionless because of traffic conditions or mechanical difficulties over which the operator has no control;
2. it is necessary to operate defrosting, heating, or cooling equipment to ensure the health or safety of the driver and passengers;
3. it is necessary to operate auxiliary equipment located in or on the vehicle to accomplish its intended use;
4. it is necessary to bring the vehicle to the manufacturer's recommended operating temperature;
5. the outdoor temperature is below 20 degrees Fahrenheit;
6. maintenance or inspection requires the vehicle to be operated for more than three consecutive minutes; or
7. it is waiting in line to gain access to a U.S. military installation (Conn. Agencies Regs., § 22a-174-18(b)(3)(C)).

**COMMITTEE ACTION**

Transportation Committee

Joint Favorable Substitute

Yea 31 Nay 5 (03/17/2023)