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| **Analysis of Selected 2020 Changes in Connecticut Law Governing Business Entities**  **A Practical Guidance® Article by Nancy A. D. Hancock, Pullman & Comley LLC** |

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|  | Nancy A. D. Hancock  Pullman & Comley [[C | **Real Property Development, Environmental and Transportation Developments** |

Governor Lamont's declaration of a public health and civil preparedness emergency on March 10, 2020 effectively suspended the 2020 legislative session of the Connecticut General Assembly. Despite an abbreviated term, several noteworthy laws affecting businesses were enacted, including:

* New environmental protection provisions
* Revisions to the Connecticut hemp program – and –
* New bond authorizations for state capital projects and grant programs

Below are summaries of key laws enacted in 2020 and other important developments that took place in 2020 that may be of interest to Connecticut businesses:

**Sept. Special Session, Public Act 20-9**

**(An Act Revising Provisions of the Transfer**

**Act and Authorizing the Development**

**and Implementation of a Release-Based**

**Remediation Program)**

The Connecticut Transfer Act (Conn. Gen. Stat. §§ 22a-134 et seq.) generally requires a transferor of real property or business operations that has or has experienced certain environmental conditions (each, an "establishment") to disclose the environmental condition of the establishment when a transfer of ownership occurs. Depending on the establishment involved, the Transfer Act may require investigation, remediation or monitoring.

A new law, once implemented by regulations, will transition the approach Connecticut takes to environmental remediation, from an approach based on the transfer of real property to an approach based on releases into the environment, or "spills." Current law (which remains in effect until regulations are adopted) requires an owner to investigate, disclose and potentially remediate certain environmental conditions on properties at which, or business operations from which, hazardous waste was generated or processed or a dry cleaning, furniture stripping or vehicle body repair business was operated, when the property is transferred. In contrast, the new law will prohibit any person from creating or maintaining a "release" without reporting and remediating the release in accordance with the standards in the yet-to-be drafted and adopted regulations. Failure to report and remediate in accordance with the new regulations will make the person liable for costs incurred to maintain, remove or mitigate the effects of the release.

The new release-based system will become effective only after the adoption of regulations by the Connecticut Department of Energy and Environmental Protection (DEEP). These new regulations must meet certain requirements, including provisions on remediation supervision, verification, auditing and required fees and must also provide for tiers of releases, based on risk, that assign a required level of professional supervision and verification to each tier. The new law permits, but does not require, the regulations to exempt certain releases from otherwise applicable reporting requirements under certain circumstances. The law establishes a working group to provide advice and feedback to the DEEP commissioner on the new regulations.

A late amendment to the bill was added before its passage to limit the liability of an officer, a member of a limited liability company, or the governing or managing body of an entity, to actions or inactions that influence or facilitate a violation.

Of interest to developers is the exemption of the conveyance of units in residential common interest communities from the defined term "transfer of establishment." Instead, the new law will require the community's declarant to take actions before conveying units in a community that is an "establishment."

The new law also makes a number of substantive changes to the Transfer Act. For example, it narrows the definition of "establishment" and amends the definition of "transfer of establishment" by eliminating certain exemptions and modifying other exemptions. See Conn. Gen. Stat. § 22a­134(1) and (3).

The law does not fix a deadline for promulgating the new regulations, so for now the Transfer Act, as amended, remains in place.

**Sept. Special Session, Public Act 20-6 (An Act Concerning Enhancements to the State's Environmental Justice Law)**

Connecticut's environmental justice law (Conn. Gen. Stat. § 22a-20a) applies to applicants seeking a permit, certificate, or approval from the Connecticut Department of Energy and Environmental Protection (DEEP) or the Connecticut Siting Council (CSC) for locating or expanding certain facilities (affecting facilities) in an environmental justice community. An "environmental justice community" is a distressed community or a defined census block for which 30 percent or more of the population consists of low-income persons who are not institutionalized and have an income below 200 per cent of the federal poverty level. The types of facilities that are considered "affecting facilities" include electric facilities, solid waste incinerators and sewage treatment plants.

Applicants are required to file a meaningful public participation plan with DEEP or the CSC that gives residents of the impacted community an opportunity to participate in decisions about the proposed facility. The plan must, among other things, identify the methods by which the applicant will publicize information about an informal public meeting on the proposed facility.

A new law, generally applicable to applications filed on or after November 1, 2020, requires (instead of allows) applicants to post signs on the facility property and to notify local and state elected officials in writing for the purpose of publicizing the required informal public meeting. If the applicant fails to comply with the now mandatory notice requirements in the statute, which include notifying neighborhood and environmental groups in writing "in a language appropriate for the target audience" (determined based on the percentage of persons that speak a language, in accordance with the most recent United States census), then the application for the facility shall be deemed insufficient.

As under prior law, municipalities, owners and developers may enter into a "community environmental benefit agreement" in connection with an affecting facility, but the new law revises the provisions governing these agreements. For example, applicants are now required to enter into such an agreement with a municipality if there are five or more affecting facilities in the municipality at the time the application is filed. Further, the municipal chief elected official or town manager of the affected municipality

must participate in any community environmental benefit agreement negotiations and, if the municipality's legislative body approves it, implement, administer, and enforce the agreement.

**Multi-Jurisdictional Memorandum of Understanding relating to the Transportation and Climate Initiative Program**

On December 21, 2020, Governor Lamont, along with the governors of Massachusetts and Rhode Island and the mayor of the District of Columbia, signed a memorandum of understanding (MOU) to cap and reduce greenhouse gases arising from the transportation sector and to accelerate investments in equitable, cleaner, and more resilient transportation systems. The signatories of the MOU have agreed to establish a multi-jurisdictional Transportation and Climate Initiative Program, whose goals include improving air quality and public health; providing more affordable access to clean transportation choices; promoting local economic opportunity; and advancing equity for communities overburdened by pollution and underserved by the transportation system. The MOU contemplates a coordinated final Model Rule that will establish (after public review and input) a base annual carbon dioxide emissions cap, starting in 2023.

**Changes to the Connecticut Hemp Pilot Program**

**Sept. Special Session, Public Act 20-2**

**(An Act Revising the State Hemp Program in**

**Accordance with Federal Requirements)**

In May 2019, the state Department of Agriculture (the State DOA) launched a pilot program to study methods of cultivating, processing and marketing hemp. See Conn. Gen. Stat. § 22-61l. A new law revises the state's hemp program, largely to conform to the United States Department of Agriculture's (USDA) Interim Final Rule for the establishment of domestic hemp production programs, which was issued on October 31, 2019.

For example, the new law combines previously separate "grower" and "processor" licenses into a single "producer" license, with all of the definitional and structural changes necessitated by that amendment. The new law also requires hemp producers to report their license, lot and hemp crop acreage information to the USDA Farm Service Agency. Producers are prohibited from harvesting any hemp crop before samples have been taken by an authorized enforcement agency, and new procedures apply for the disposal of noncompliant plants. (Compliant plants are

limited to those with an acceptably low hemp THC level, as defined by federal regulations.) The law codifies numerous other federal requirements that apply to the State DOA, including mandatory reports of licensee information to the USDA on at least a monthly basis and annual inspections of random samples of hemp producers to verify that the hemp is not produced in violation of the law and to enforce any violations. The law also sets forth new recordkeeping obligations of the State DOA in line with those imposed by federal law.

Notably, the law also provides hemp producers with a measure of protection against thieves by expanding the information exempt from disclosure under the Connecticut Freedom of Information Act to include a producer's location and test results, although this information remains available for law enforcement purposes. Other key provisions of the law include: an extension of the licensing period from two years to three years; an increase in the fees associated with licensing and lot size; and elimination of the requirement that hemp growers only acquire certified seeds. In addition, some of the penalties for violations of the state law have changed.

**New State Bond Issuances and Modifications to Existing Bond Authorizations**

**Public Act 20-1 (An Act Authorizing and Adjusting Bonds of the State for Capital Improvements, Transportation and Other Purposes, and Concerning Municipal Reports on Certain Property Tax Exemptions, Validation of a Referendum and Highway Projects)**

The 2020 legislative session authorized new general obligation bonds for state capital projects and housing projects (with priority given to areas of the state with low homeownership rates). The bonds have a maximum term of 20 years.

Other changes implemented by PA 20-1 include higher bond authorizations for certain statutory programs (including Urban Action, the Small Town Economic Assistance Program and the Local Capital Improvement Program); the authorization of special tax obligation bonds for transportation projects; expansion of the purposes for which the state Department of Transportation may use the proceeds of bonds authorized under the infrastructure improvement program established by former Governor Malloy in 2015; and new bond authorizations for the

establishment of a competitive grant program for nonprofit organizations to improve building security infrastructure. This law also requires Connecticut Innovations, Incorporated, a quasi-public agency, to provide a $350,000 grant to the Women's Business Development Council in Stamford for the fiscal years ending June 30, 2020, 2021 and 2022.

Other notable aspects of the new law include a modification of the allocation of the proceeds of existing bonds issued under the Economic Development and Manufacturing Assistance Act (Conn. Gen. Stat. §§ 32­220 et seq.) for the Apprenticeship Connecticut Initiative, which trains entry-level workers in manufacturing and other industry sectors with workforce shortages. The law now requires that at least $5 million of such proceeds be given to the workforce development boards in each of Bridgeport (serving the southwest region) and Hartford (serving the north central region).

**Town-Specific Tax and Other Relief Measures**

**Sept. Special Session, Public Act 20-7**

**(An Act Concerning the Deadlines for Certain Property Tax Exemptions and Municipal Matters)**

Under a new law, taxpayers in eleven municipalities were permitted to claim certain property tax exemptions-- even if they had missed the filing deadline to claim the exemption or failed to provide any required evidence of their federal tax-exempt status, provided the taxpayer filed the required documents within 30 days of the effective date of the law (October 2, 2020) and paid any applicable late filing fee. Upon approval, the taxpayer would be reimbursed in an amount equal to the amount by which the taxes, interest and penalties exceeded any taxes payable if the statement had been filed in a timely manner.

The new law provides for additional town-specific relief, including the following:

* The Bridgeport Steel Point Infrastructure Improvement Taxing District has been granted an additional five years, until July 1, 2025, to issue bonds for making public improvements before Bridgeport's city council may vote to merge the district with the city.
* The Town of Branford will be paid $500,000 by the Office of Policy and Management's Small Town Economic Assistance Program as a grant-in-aid for

the cost of demolishing and reconstructing the Indian Neck Firehouse, notwithstanding the performance date specified in the contract between the town and the Department of Economic and Community Development.

* Site plan approvals for the construction of residential multi-family structures granted by the Ridgefield Planning and Zoning Commission on May 15, 2007 have been extended indefinitely, provided that the applicant has obtained the necessary building permits and commenced construction on or before the approval's expiration date. The extension applies notwithstanding Conn. Gen. Stat. § 8-3(m), which generally provides that certain land use approvals are valid for no more than 14 years.

**COVID-19 Executive Orders Affecting Businesses**

**(PLEASE NOTE: Since this article was published, Governor Lamont has declared new and renewed states of emergency that are currently set to expire on May 20, 2021 unless earlier modified or terminated and, pursuant to these declarations, has issued new executive orders. See “Updates” below for more information.)**

Governor Lamont's declaration of a public health and civil preparedness emergency on March 10, 2020 was renewed on September 1, 2020 and again on January 26, 2021, along with the issuance of new emergency declarations. Both the new and renewed states of emergency run concurrently and are set to expire on April 20, 2021, unless earlier modified or terminated by the Governor.

Pursuant to these declarations, the Governor has issued numerous executive orders that suspend or modify statutes and take other actions to protect public health. A number of these executive orders were directed at businesses. For example, Executive Order 7H, issued on March 20, 2020, classified businesses as either "essential" or "non-essential," and ordered non-essential businesses to eliminate their entire in-person workforce temporarily. Later executive orders specified when, and under what conditions, non­essential businesses could open. For example, Executive Order 7PP (May 18, 2020) provided for the partial reopening of some businesses in accordance with industry-specific rules to reduce the risk of transmission of the virus. Executive Order 9K (November 5, 2020) authorized the Department of Economic and Community Development to establish mandatory closing times for businesses and extended certain prohibitions set forth in prior executive orders barring the sale of alcohol without the sale of food by restaurants and other eating establishments. Of note, the authority of the Governor to issue certain executive orders relating to the sale of alcohol by restaurants and bars was challenged last year by a pub owner in Milford, but the Connecticut Supreme Court, in a unanimous preliminary opinion issued on December 31, 2020, affirmed a lower court's ruling that these executive orders are constitutional.

Executive Order 10A (February 8, 2021) sets the expiration date for most unexpired and currently effective executive orders issued pursuant to the COVID-19 public health emergencies through April 19, 2021 (a day earlier than the expiration date of the public health emergencies themselves), unless earlier modified or terminated by the Governor. The April 19, 2021 expiration date applies whether the executive orders by their terms are effective for the duration of the public health emergencies or any other period of time or are otherwise scheduled to expire on a specific date.

**UPDATES:**

On April 19, 2021, Governor Lamont renewed his declaration of public health and civil preparedness emergencies along with the issuance of new emergency declarations. Both the new and renewed states of emergency run concurrently and are set to expire on May 20, 2021, unless earlier modified or terminated by the Governor.

Pursuant to these declarations the Governor has issued a series of executive orders, including Executive Order 11 (April 19, 2021), which reduces the number of currently active executive orders under the states of emergency by approximately 60% and extends the expiration date of these executive orders through May 20, 2021. Other executive orders consolidate prior orders, in part to assist the public in understanding the current rules. For example, Executive Order 11A (April 19, 2021) renews the Department of Economic and Community Development’s authority to issue and enforce legally-binding sector rules for certain business and activity sectors that prescribe appropriate safety restrictions for the conduct of social, recreational, athletic and economic activity. Executive Order 11B (April 19, 2021) consolidates earlier orders related to the sale and service of liquor, and Executive Order 11D (April 19, 2021) consolidates earlier orders that provide flexibility in state contracting procedures.

The Connecticut Supreme Court, in a unanimous final decision, has affirmed the lower court’s ruling in Casey v. Lamont, --- A.3d --- (March 29, 2021).

**Nancy A. D. Hancock, Partner, Pullman & Comley LLC**

Nancy Hancock is Member at the Connecticut firm of Pullman & Comley whose practice encompasses corporate finance, technology, tax, venture capital, securities and e-commerce. Nancy serves as co-chair of the firm’s Business Organizations and Finance Department.

Nancy negotiates mergers, acquisitions, divestitures and strategic alliances and licenses involving traditional and technology-based businesses. Her work includes guiding companies through acquisitive and divisive reorganizations, drafting shareholders agreements, providing tax-based advice for business structures, and securities law compliance.

Nancy is a member of the firm's Executive Committee, and chairs the firm's Emerging Business and Venture Capital Practice and Intellectual Property and Technology Practice. As a member of the firm's Corporate Transactions and Securities practices, she guides privately-held businesses through their critical generational control and tax planning processes.

Nancy represents investment advisers, commodity pool operators, broker-dealers, crowdfunding platforms, and other securities professionals and advises them on compliance with state and federal securities laws. She has experience in dealing with complex fixed and equity financial products and securitized debt portfolios.

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