

2018 Environmental Legislative Update No. 2

March 8, 2018

by Christopher P. McCormack

Welcome to our Environmental Legislative Updates.

Throughout Connecticut’s legislative session, these updates highlight developments concerning environmental law and policy. The author prepares updates as Legislative Liaison of the Connecticut Bar Association’s Environmental Law Section. Pullman & Comley is pleased to offer them in this format to a wider audience.

As the session proceeds, early updates will alert readers to proposals on a broad range of issues concerning the environment, narrowing focus over time on bills that continue to progress, and concluding with a post-session wrap-up of bills that pass as well as noteworthy also-rans. Along the way they’ll summarize and challenge arguments pro and con, examine the policy and science behind proposals, and occasionally cast a side glance at the vicissitudes and vagaries of the process. The views expressed will be the author’s own, not necessarily those of Pullman & Comley LLC.

Questions, comments, requests and suggestions are always welcome. Please contact one of our Environmental attorneys.

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In today’s update, along with the usual commentary on pending bills, we’re pleased to include a cultural sidelight in addition to the bonus legislative update. Legislators gotta legislate.

First, however: used tires. We reported previously on HB 5128 concerning beneficial uses for old tires, but as Sir Isaac Newton may or may not have observed, for every public policy there’s an equal and opposite public policy. Thus we have HB 5188 to establish a moratorium on use of recycled tire rubber at municipal and public school playgrounds. This has been a regular subject of legislative proposals the last few sessions. As a case study in the tradeoffs of risk-based decision-making, a concept we seem to recall hearing about elsewhere, it’s worth a slightly deeper dive.

2018 Environmental Legislative Update No. 2

The variation this time is to hold off on installing more crumb rubber fields pending a specific development – completion of an ongoing EPA study on the subject anticipated in mid-2018. Our own DPH has been tracking this issue and says prior studies “do not show an elevated health risk from playing on fields with artificial turf or tire crumbs,” but also allows as how “there is still uncertainty ... and additional investigation is warranted.”

As always, anecdotal evidence can be yours for the Googling, and in the absence of definitive proof of safety, one might think the “precautionary principle” of Eurozone regulatory thinking could tip the balance toward moratorium. Oh, really? We happen to have the Eurozone right here: the European Chemicals Agency last year issued a report on the health effects of crumb rubber fields concluding, in a word, “meh.” But ECHA has also acknowledged use of crumb rubber fields for, among other things, “Gaelic sports.” So don’t discount the influence of the powerful Gaelic sports lobby in the EU. We’ll await the conclusions of our own EPA, happily beyond the influence of smooth talk from K Street.

HB 5266 takes another run at an idea embodied in numerous bills last session – excusing business entities from administrative penalties for first-time regulatory violations that are promptly “remediated.” “Remediation” obviously means something specific where contaminated soil or groundwater is concerned, but the bill isn’t limited to environmental violations. No relief, however, if the violation is willful or grossly negligent, or causes personal injury, or poses a significant environmental or human health threat. Those provisos being virtually certain to precipitate disagreements, the proposal thoughtfully includes a right of appeal.

SB 181 will not be of immediate interest to anyone outside Bethany, Bolton, Lyme and New London, for which the bill would create a pilot program to fund open space acquisitions by a modest conveyance fee on residential real estate sales. But it’s dubbed a “pilot” program, so we could be seeing it on a wider scale if it succeeds there. This isn’t exactly a new idea and has been the subject of proposals as recently as last session. The Connecticut League of Conservation Voters has previously expressed support for the concept. The obvious disadvantage – making conveyances more expensive – may have loomed larger when the state had funds to share for open space preservation. In a resource-constrained era, this is an interesting alternative. And maybe we don’t need to worry about the rational reaction to the cost effect. The buyer’s endorphin rush takes the edge off all sorts of Monopoly-money sums in the residential closing statement. What’s another line item for a couple grand?

Notwithstanding last session’s passage of a 90-day processing time limit on applications for environmental permits (and the likelihood of further developments on that issue), SB 265 takes an interesting tack on the same topic. It would apply to permits submitted to DEEP in connection with initiation of a new business, expansion of an existing business, or production of a new product. DEEP would have to meet with the applicant within thirty days to confer on the application, and inform the applicant of the projected processing time. DEEP would then report annually on the number of applications submitted and the actual processing time. Given the controversy over the per se processing limit, this is an interesting synthesis – focus on a subset of applications with economic development nexus, and mandate prompt helpfulness and

2018 Environmental Legislative Update No. 2

transparency about timing.

SB 268: increase duration of targeted brownfield loans from 20 to 30 years.

Your bonus legislative update: HB 5192, which proposes to allow the use of self-serve alcoholic liquor machines on certain permit premises. But for beer, only up to one 32 ounce “serving” at a time. Because you wouldn’t want that sort of thing to get out of hand.

And the cultural sidelight is HB 5274, concerning the term of the State Troubadour. We were not aware there even was one, but there is, and now that we know, we are delighted. Although for the State Troubadour’s sake, we hope her position is better than that of the sperm whale as the official State Animal, which celebrates a rich heritage of pursuit beyond seas with harpoons.

Comments and questions welcome, as usual. Best regards to all.

Christopher P. McCormack

H.B. No. 5128 (RAISED) ENVIRONMENT. 'AN ACT CONCERNING BENEFICIAL END USES FOR DISCARDED TIRES AND THE EFFICACY OF TIRE HAULING LICENSES OR PERMITS', to examine beneficial end uses for discarded tires in the state and the efficacy of tire hauler licenses in reducing the illegal dumping of discarded tires. **REF. ENVIRONMENT**

H.B. No. 5188 (RAISED) COMMITTEE ON CHILDREN. 'AN ACT ESTABLISHING A MORATORIUM ON THE USE OF RECYCLED TIRE RUBBER AT MUNICIPAL AND PUBLIC SCHOOL PLAYGROUNDS', to establish a moratorium on the installation of crumb rubber ground covers at municipal playgrounds and playgrounds under the jurisdiction of local or regional boards of education until the release of the Federal Research Action Plan on Recycled Tire Crumb Used on Playing Fields and Playgrounds. **REF. COMMITTEE ON CHILDREN**

H.B. No. 5266 (RAISED) GOVERNMENT ADMINISTRATION AND ELECTIONS. 'AN ACT PERMITTING THE SUSPENSION OF ADMINISTRATIVE PENALTIES IMPOSED ON CERTAIN BUSINESS ENTITIES PURSUANT TO STATE AGENCY REGULATIONS', to permit businesses to remediate first-time regulatory violations without civil penalty if such remediation is done in a timely manner. **REF. GOVERNMENT ADMINISTRATION AND ELECTIONS**

S.B. No. 181 (RAISED) PLANNING AND DEVELOPMENT. 'AN ACT ESTABLISHING A PILOT PROGRAM FOR THE PRESERVATION OF OPEN SPACE', to require the Secretary of the Office of Policy and Management to establish a pilot program to permit certain municipalities to impose a buyer's fee on the conveyance of certain real property sales to generate funds for the purchase, preservation or stewardship of open space. **REF. PLANNING AND DEVELOPMENT**

2018 Environmental Legislative Update No. 2

S.B. No. 265 (RAISED) COMMERCE. 'AN ACT CONCERNING EXPEDITED PERMITTING BY THE DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION FOR BUSINESS INITIATION, EXPANSION OR NEW PRODUCTION', to establish a process for expedited permitting by the Department of Energy and Environmental Protection for permits required for business initiation, physical expansion or production of new products. **REF. COMMERCE**

S.B. No. 268 (RAISED) COMMERCE. 'AN ACT INCREASING THE TERM LIMIT FOR LOANS UNDER THE TARGETED BROWNFIELD DEVELOPMENT LOAN PROGRAM', to extend the maximum loan term under the targeted brownfield development loan program from twenty years to thirty years. **REF. COMMERCE**

S.B. No. 269 (RAISED) COMMERCE. 'AN ACT CONCERNING THE ASSESSMENT OF CIVIL PENALTIES AGAINST SMALL BUSINESSES BY THE DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION', to permit certain businesses to remediate first-time regulatory violations without financial penalty if such remediation is done in a timely manner. **REF. COMMERCE**

H.B. No. 5192 (RAISED) GENERAL LAW. 'AN ACT CONCERNING CERTAIN ALCOHOLIC BEVERAGE MACHINES', to allow the use of self-serve alcoholic liquor machines on certain permit premises. **REF. GENERAL LAW**

H.B. No. 5274 (RAISED) COMMERCE. 'AN ACT CONCERNING THE TERMS OF THE STATE POET LAUREATE AND THE STATE TROUBADOUR', to align the terms of the state poet laureate and the state troubadour. **REF. COMMERCE**

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