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## 2019 Connecticut Environmental Legislative Update No. 10

**March 19, 2019**

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 case you were wondering, your Legislative Liaison has not forgotten about the General Assembly. We sort of thought we'd keep up with developments while in Florida on vacation, but of course we were kidding ourselves. Then there was the shock of finding the car in a snowdrift at Westchester County Airport (boat shoes for snow removal: not a good look), followed by a persistent cold and the added indignity of losing an hour's sleep to Daylight Savings Time. But enough whining. We have quite a bit of catching up to catch up on.

At this point in the session, new bills are relatively few and far between, but we'll mention a couple that bear noting.

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Where can we begin but with SB 1030 concerning the Transfer Act. Who among us has not had the pleasure of explaining to an incredulous out-of-state client that, yes, we filed the verification, but the process technically remains open for up to three years because that's how long the state has to audit it? If this bill passes, those days will be over, sort of – it proposes to shrink the audit period to sixty days, which is in line with other review loops in the statute. Predictably, and perhaps justifiably, DEEP thinks this is cutting it too short (although speaking of cutting things short, the online copy of the Commissioner's written testimony is missing at least one page). Also predictably, and also perhaps justifiably, numerous other commenters representing the commercial realty perspective expressed strong support. They may have thought they were supporting more; at least one included a markup containing additional revisions far too numerous to summarize here but interesting to contemplate. And while anecdotal evidence gets you only so far, we have to say we recognize the sense of frustration in testimony about people who, exhausted by the process, conclude it's just too much trouble to invest in Connecticut property. Apparently so did the Commerce Committee, which gave SB 1030 a joint favorable report on March 14, a scant week after introduction.

In the pesticide department, HB 7346 proposes to ban chlorpyrifos. The summary on the current EPA information page does not quite do justice to the *sturm und drang* over this stuff. The Ninth Circuit last summer ordered EPA to ban it, but recently agreed to rehear the case *en banc*. The environmental advocacy organization litigating the question does not think this is a good idea. No word on whether any of this is related to Former Administrator Pruitt's Cone of Silence. Meanwhile states may try to proceed on their own, as this bill would have Connecticut do.

The 2017 Land Banking legislation authorized the creation of private nonstock corporations to enable municipalities to pool resources and facilitate brownfield remediation. With that program up and running, HB 7277 proposes a complementary concept – municipal land bank authorities, which would be charitable nonstock corporations possessing similar capabilities and possessing nifty collateral powers such as issuing bonds. And could be shared among multiple municipalities under appropriate intergovernmental cooperation agreements. Can you say “regionalization”?

We'll just mention a couple new ones in the climate change spectrum – SB 979 (task force to study climate change and insurance), SB 1062 (authorizing municipal climate change and resiliency reserve funds for property losses and land acquisition), and SB 1064 (carbon pricing for fossil fuels).

As far as pending bills are concerned, we're past the initial phase when everyone was introducing bills on everything, and down to the relatively serious business of committee deliberations. A great many bills we noted in the early going appear to be going no further; of the ones that are progressing, there is committee drafting activity and a handful of file copies. We will be updating those selectively as they progress. If you have any favorites you think deserve close attention, let us know.

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With talk of a “Green New Deal” in the air, it’s worth mentioning the fate of HB 5002, which charged out of the gate with that title – and sixty-six co-sponsors (!) – proposing unspecified new programs for energy efficiency, renewable energy, sustainability and resiliency. Judging from the written public testimony, people projected onto this blank slate a wide variety of noble aspirations and high hopes. So is the committee bill a grand synthesis of transformational change? Not so much. Section 1 would require DEEP to solicit proposals from providers of energy derived from anaerobic digestion, an idea (and text) lifted directly from SB 845. Section 2 directs OPM to study the return on investment from fully implementing the mandates of General Statutes Section 16a-37u concerning energy efficiency in state buildings. That’s close enough to HB 5789 to suggest they have something to do with one another. The original text of 5002 and its soaring promise of a verdant tomorrow? Superseded, alas, by these worthy but relatively earthbound proposals.

On the subject of unilateral DEEP revocation of consent orders, the committee version of HB 5185 revives the proposal left on the field last session – limiting revocation and modification to situations of material breach or material nondisclosure by the respondent, providing for either party to seek declaratory or injunctive relief if there’s disagreement about whether such a breach had occurred, and making the changes applicable only to orders entered after the bill takes effect. As we’ve previously observed, these changes bring the issues more in line with the contract view of consent orders, but don’t address a significant consideration raised – and not just by DEEP – in support of a right of unilateral revocation. Brownfield assistance isn’t available when there’s an outstanding remediation order on a property. That’s as it should be when there’s a viable CO signatory – public money shouldn’t go to bail them out – but it’s a problem when the signatory’s nonperforming and defunct. So, the argument goes, the signatory would be in no position to object and DEEP should be able to revoke these “zombie consent orders” unilaterally to make brownfield incentives available to “white knight” third-party redevelopers. DEEP still doesn’t like this version but pronounces it less bad than past versions; written public testimony (including that submitted in favor on behalf of the CBA Environmental Section) reflects that reasonable minds may differ.

No matter how hectic the legislative activity becomes, we’ll always make time for the Bonus Legislative Update. Today we recognize SB 825, which would create a penalty for “distracted walking” – crossing a highway on foot “while viewing a mobile electronic device.” We will not even bother linking to the inexhaustible supply of internet memes and clickbait on this subject; if you have not seen them, you are in for a treat, but will then join us in agreeing that there ought to be a law. For the record, this reinforces our dictum about smart phones: they let you stay in touch with the people in your life while ignoring the people in your presence. On the bright side, since they’re tracking us everywhere anyhow, perhaps they could remind us to look both ways before crossing.

Comments, questions, suggestions and corrections earnestly sought and gratefully welcomed.

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