
OLR Bill Analysis

sSB 1030 (File 237, as amended by Senate "A")*

AN ACT CONCERNING THE AUDIT PERIOD FOR THE TRANSFER OF HAZARDOUS WASTE ESTABLISHMENTS.

SUMMARY

This bill excludes certain property and businesses from the Transfer Act by narrowing the types of hazardous waste that count towards the 100 kilogram threshold that triggers the law's application.

The bill also (1) shortens, from **three years to one year**, the window for commencing audits of Transfer Act final verifications received on or after October 1, 2019, and (2) requires **DEEP to complete such audits within three years after receiving the final verification.**

Lastly, the bill requires the Commerce and Environment committee chairpersons to convene a working group to examine the Transfer Act law and recommend potential legislative changes to it. **The working group must report its findings and recommendations to the committees by February 1, 2020.**

*Senate Amendment "A" replaces the underlying bill, which (1) shortened the general audit window for **Transfer Act verifications from three years to 60 days** and (2) **modified the fee for filing certain Transfer Act forms.**

EFFECTIVE DATE: **October 1, 2019**, except that the working group provision is effective upon passage.

§ 1 — ESTABLISHMENTS EXEMPT FROM THE TRANSFER ACT

The Transfer Act applies to certain real property and business operations, known as "establishments." Under current law, establishments are real property and business operations from which more than 100 kilograms (about 220 pounds) of hazardous waste was generated in any one month after November 18, 1980, except from (1)

remediating polluted soil, groundwater, or sediment or (2) removing or abating building materials.

The bill narrows this definition by excluding property and businesses where this amount of waste was generated solely (1) one time in any one calendar month, either the first time, or since the last time a Transfer Act form (I-IV; see BACKGROUND) was required to be submitted, or (2) by removing one or more of the following:

1. building maintenance or operating materials;
2. unused chemicals or materials from emptying or clearing out a building, as long as the removal is supported by facts reasonably established at the time of the removal; and
3. waste within 90 days of a business ceasing operations, as long the cessation is supported by facts reasonably established at the time of such cessation.

As under current law, the exception also applies where this amount of waste was generated by remediating polluted soil, groundwater, or sediment or removing or abating building materials.

§ 2 — TRANSFER ACT AUDITS

Under current law, the DEEP commissioner may audit a final verification for an entire establishment (i.e., written opinion by a licensed environmental professional stating that an establishment has been remediated according to specific standards) within three years after the verification's submission. For verifications submitted after October 1, 2019, the bill (1) shortens, from three years to one year, the period of time after the verification's submission during which DEEP may begin an audit and (2) requires the commissioner to complete such audits within three years after receiving the final verification, except as described below.

As under current law, the commissioner (1) must send written audit findings to the certifying party and the verifying licensed environmental professional and (2) may suspend audits if she requests

information that is not provided in a timely manner.

The bill makes a conforming change to a provision allowing the DEEP commissioner to audit a final verification after the audit window under certain conditions. Under the bill, the same conditions apply, including if she determines that:

1. the verification was based on materially inaccurate, erroneous, or misleading information or that misrepresentations were made when the verification was submitted;
2. required monitoring, operations, or maintenance has not been done; or
3. information exists showing that the remediation may not prevent a substantial threat to public health or the environment (CGS § 22a-134a(g)(3)(C)).

The bill additionally provides that such audits do not need to be completed within three years.

§ 3 — TRANSFER ACT WORKING GROUP

The bill requires the Commerce and Environment committee chairpersons to convene a working group to examine the Transfer Act law and recommend potential legislative changes to it. The working group must report its findings and recommendations to the committees by February 1, 2020.

The working group must be composed of (1) the committee chairpersons, or their designees; (2) the DEEP and Department of Economic and Community Development commissioners, or their designees; and (3) environmental transaction attorneys, commercial real estate brokers, and licensed environmental professionals, each selected by the committee chairpersons. It may also include additional members of the Commerce or Environment committees selected by the chairpersons.

The Commerce and Environment committee chairpersons must

select the working group's chairperson, who must schedule and hold the group's first meeting within 60 days of the bill's passage. The group must meet monthly thereafter until it submits its final report. The working group terminates on the later of the date it submits its final report or February 1, 2020.

BACKGROUND

Transfer Act

Connecticut's property transfer law, commonly referred to as the "Transfer Act," regulates the transfer of certain real properties and business operations in the state ("establishments"). By law, an establishment includes real property on which, or a business operation from which, hazardous waste was generated or processed, or a dry cleaning, furniture stripping, or vehicle body repair business operated. The law generally requires the disclosure of (1) environmental conditions and (2) in some cases, investigation and remediation. It also protects a property transferee by allowing him or her to recover damages from a transferor who fails to comply with the act (CGS §§ 22a-134 to 134e).

To certify an establishment's condition, the law requires certain forms (Forms I to IV) to be completed and filed with DEEP, which reviews them for completeness and contacts the appropriate party if it needs more information. Based on the information provided, further investigation and remediation or monitoring may be required by DEEP or a licensed environmental professional.

COMMITTEE ACTION

Commerce Committee

Joint Favorable

Yea 22 Nay 0 (03/14/2019)