

SB 392-FN – AS AMENDED BY THE SENATE

03/21/12 1211s

2012 SESSION

12-3051
06/04

SENATE BILL **392-FN**

AN ACT relative to road salt applicators.

SPONSORS: Sen. Morse, Dist 22; Sen. Carson, Dist 14; Sen. Rausch, Dist 19; Rep. Bettencourt,
Rock 4; Rep. Chandler, Carr 1; Rep. Azarian, Rock 4; Rep. Elliott, Rock 4

COMMITTEE: Energy and Natural Resources

ANALYSIS

This bill limits the liability of landowners and salt applicators who opt for certification and employ winter maintenance best practices.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twelve

AN ACT relative to road salt applicators.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Purpose. This chapter establishes a voluntary program for the certification of commercial road
2 salt applicators in order to encourage more efficient winter maintenance of roadways, parking lots,
3 and sidewalks and to provide certain liability protections for certified commercial applicators and
4 landowners whose premises are maintained by certified commercial applicators.

5 2 New Chapter; Salt Application Controls. Amend RSA by inserting after chapter 489-B the
6 following new chapter:

7 CHAPTER 489-C

8 SALT APPLICATOR CERTIFICATION OPTION

9 489-C:1 Definitions. In this chapter:

10 I. "Apply salt" means to apply salt or a salt alternative to roadways, parking lots, or
11 sidewalks for the purpose of winter maintenance.

12 II. "Commercial applicator" means any individual who applies or supervises others who
13 apply salt, but shall not include municipal or state employees.

14 III. "Commissioner" means the commissioner of the department of environmental services.

15 IV. "Department" means the department of environmental services.

16 V. "Salt" means sodium chloride, calcium chloride, magnesium chloride, or any other
17 substance containing chloride.

18 VI. "Salt alternative" means any substance not containing chloride used for the purpose of
19 de-icing or anti-icing.

20 489-C:2 Certification Option. Commercial applicators may elect to be annually certified by the
21 department. Applicator certificates shall be issued and fees shall be collected by the department.
22 Any business that employs multiple commercial applicators may obtain a master certificate for the
23 owner or chief supervisor, and commercial applicators employed by the business may obtain
24 certificates to qualify under the master certificate. Any business holding a master certificate shall
25 ensure that all commercial applicators operating under its master certificate receive the required
26 training and shall provide the required recordkeeping on behalf of all commercial applicators.
27 Annual fees for certificates obtained under a master certificate shall be significantly less than the
28 fees for a master certificate.

29 489-C:3 Rulemaking Authority. The commissioner shall adopt rules pursuant to RSA 541-A,
30 relative to:

1 I. Policies and goals for applying salt.

2 II. Receiving and allocating federal grants and other funds or gifts for the purpose of
3 carrying out any of the provisions of this chapter.

4 III. The types and frequency of training programs required for certification.

5 IV. Procedures for commercial applicators to obtain certification.

6 V. Establishing and collecting fees to cover the cost of program implementation.

7 VI. Recordkeeping required for commercial applicators to maintain certification.

8 489-C:4 Application for Certification.

9 I. Applications for certification shall be on a form prescribed by the department and shall
10 include the following:

11 (a) The full name and address of the person applying for the certification.

12 (b) The name and address of a person whose domicile is in the state, and who is
13 authorized to receive and accept service of summons and legal notices of all kinds for the applicant.

14 (c) The type of apparatus used to apply salt or salt alternative whether liquid or dry.

15 (d) Any other information deemed necessary by the department.

16 II. Fees collected from applicants for certification as commercial applicators under this
17 chapter shall be deposited in the salt application fund established in paragraph III.

18 III. There is hereby established in the office of the state treasurer the salt application fund.
19 This nonlapsing, revolving fund shall be used to implement the certification of commercial
20 applicators under this chapter. Certification fees collected by the department shall be deposited with
21 the state treasurer to the credit of such fund and may be invested as provided by law. Interest
22 received on such investment shall also be credited to the fund.

23 489-C:5 Administration and Enforcement.

24 I. The commissioner shall administer and enforce the provisions of this chapter.

25 II. The department may issue an order to any person who is in violation of any provision of
26 this chapter, an applicator certificate issued under this chapter, or a rule adopted under this chapter,
27 to cease and desist from any act in violation of such provision, certification, or rule. Orders of the
28 department under this section shall be effective immediately.

29 III. The commissioner, after notice and hearing pursuant to RSA 541-A, may revoke the
30 certification of any person who violates this chapter. Rehearings and appeals relating to revocation
31 shall be governed by RSA 541.

32 3 New Section; Limited Liability for Winter Maintenance by Private Parking Lot Owners.
33 Amend RSA 508 by inserting after section 21 the following new section:

34 508:22 New Section; Liability Limited for Winter Maintenance.

35 I. No commercial applicator as defined in RSA 489-C:1, II and certified under RSA 489-C:2,
36 or owner, occupant, or lessee of land whose premises is maintained by a commercial applicator
37 certified under RSA 489-C:2, shall be liable for damages arising from insufficiencies or hazards on

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1 any premises owned, occupied, maintained, or operated by them, even with actual notice thereof,
2 when such hazards are caused solely by snow or ice, and the commercial applicator's, owner's,
3 occupant's, or lessee's failure or delay in removing or mitigating such hazards is the result of its
4 implementation, absent gross negligence or reckless disregard of the hazard, of best management
5 practices for winter road, parking lot, and sidewalk maintenance adopted and published by the
6 department of transportation and the department of environmental services. All commercial
7 applicators, owners, occupants, or lessees who adopt such best management practices shall be
8 presumed to be acting pursuant to the best management practices in the absence of proof to the
9 contrary.

10 II. In order to receive the liability protection provided in paragraph I, a commercial
11 applicator as defined in RSA 489-C:1, II, or an owner, occupant, or lessee of land shall keep a written
12 record describing its winter road, parking lot and property maintenance practices. The written
13 record shall include the type and rate of application of de-icing materials used, the dates of
14 treatment, and the weather conditions for each event requiring de-icing. Such records shall be kept
15 for a period of 3 years.

16 4 New Subparagraph; Salt Application Fund. Amend RSA 6:12, I(b) by inserting after
17 subparagraph (307) the following new subparagraph:

18 (308) Moneys deposited in the salt application fund established in RSA 489-C:4, III.
19 5 Effective Date. This act shall take effect July 1, 2012.

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SB 392-FN - FISCAL NOTE

AN ACT relative to road salt applicators.

FISCAL IMPACT:

The Department of Environmental Services states this bill will increase state restricted expenditures by \$51,989 in FY 2013, \$101,461 in FY 2014, \$106,682 in FY 2015, and \$112,131 in FY 2016, and increase state restricted revenue by \$141,050 in FY 2014 and each year thereafter. This bill will have no fiscal impact on county and local revenues or expenditures.

METHODOLOGY:

The Department of Environmental Services states this bill limits the liability of landowners and salt applicators who choose to be certified and employ winter maintenance best practices. The Department assumes most, if not all, salt applicators will choose to be certified. The Department states it will need to hire one full-time staff person (environmentalist IV, LG 27) and an intern to implement the certification program. The intern would be at a LG 8 and hired for approximately 10 weeks each year. The Department assumes it will not hire staff until six months after the bill's effective date of July 1, 2012 and the revenue from fees will not start until FY 2014. The start-up costs and ongoing supervisory costs are assumed to be absorbed by the Department. The following are the costs for the two positions:

	FY 2013	FY 2014	FY 2015	FY 2016
Environmentalist IV (LG 27)	\$24,385	\$49,843	\$52,027	\$54,318
Intern	4,384	4,384	4,384	4,384
Benefits	13,314	28,179	30,455	32,937
Additional Fringe Benefits	2,782	5,687	5,936	6,198
Current Expenses	475	950	950	950
Equipment	750	-	-	-
Office Space	1,612	3,273	3,306	3,372
Department of Information Tech Costs	2,030	3,976	4,056	4,137
Travel	250	500	650	650
Indirect Costs (5.3% of Salary and Benefits)	<u>2,007</u>	<u>4,669</u>	<u>4,918</u>	<u>5,185</u>
Total Expenditures	\$51,989	\$101,461	\$106,682	\$112,131

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The bill establishes a master licenses and a subordinate license. The Department assumes the fee for the master certification will be \$100, and the fee for a subordinate license will be \$25. From a review of the yellow pages, the Department estimates there are 220 snow removal companies with an average of 6 operators per company, and an additional 500 operators directly employed by businesses and institutions for a total of 1,820 operators (220 companies *6 operators = 1,320 company operators + 500 individual operators = 1,820). The Department assumes starting in FY 2014, 70 percent of operators will file for a master's license resulting in \$109,900 increase in state restricted revenue ($1,820 * 70\% = 1,274 * \$100 = \$127,400$). The Department assumes the other 30 percent of operators will file for a subordinate license under a supervisor's master license resulting in \$13,650 increase in state restricted revenue ($1,820 * 30\% = 546 * \$25 = \$13,650$) for a total of \$141,050 ($\$127,400 + \$13,650$) increase in state restricted revenue in FY 2014 and each year thereafter. All revenue collected would be deposited into a newly created salt application fund and used for the salt certification program.

This bill does not contain an appropriation or authorization for additional positions.