

HB 523-FN – AS INTRODUCED

2013 SESSION

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HOUSE BILL **523-FN**

AN ACT relative to voluntary certification for road salt applicators.

SPONSORS: Rep. O'Connor, Rock 6; Rep. Ferrante, Rock 6; Rep. J. Webb, Rock 6; Rep. Chandler, Carr 1; Rep. Elliott, Rock 8; Sen. Morse, Dist 22; Sen. Carson, Dist 14; Sen. Rausch, Dist 19

COMMITTEE: Resources, Recreation and Development

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 Thirteen

AN ACT relative to voluntary certification for 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:

31 I. Policies and goals for applying salt.

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

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

4 IV. Procedures for commercial applicators to obtain certification.

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

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

7 489-C:4 Application for Certification.

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

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

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

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

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

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

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

22 489-C:5 Administration and Enforcement.

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

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

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

31 3 New Section; Limited Liability for Winter Maintenance by Private Parking Lot Owners.
32 Amend RSA 508 by inserting after section 21 the following new section:

33 508:22 New Section; Liability Limited for Winter Maintenance.

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

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

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

15 4 New Subparagraph; Salt Application Fund. Amend RSA 6:12, I(b) by inserting after
16 subparagraph (310) the following new subparagraph:

17 (311) Moneys deposited in the salt application fund established in RSA 489-C:4, III.

18 5 Effective Date. This act shall take effect 90 days after its passage.

HB 523-FN - FISCAL NOTE

AN ACT relative to voluntary certification for road salt applicators.

FISCAL IMPACT:

The Department of Environmental Services states this bill, **as introduced**, will increase state restricted expenditures by \$54,305 in FY 2014, \$103,733 in FY 2015, \$108,584 in FY 2016, and \$113,806 in FY 2017, and increase state restricted revenue by \$141,050 in FY 2015 and each year thereafter. There will be no fiscal impact on county and local revenues or expenditures.

METHODOLOGY:

This bill establishes a voluntary program for certification of commercial road salt applicators, to be managed by the Department of Environmental Services. The 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, Labor Grade (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 effective date of the bill is 90 days after passage. Given that additional time will be needed to hire staff, the Department assumes it will not hire staff until January 1, 2014. The Department estimates the bill's effect on state restricted expenditures as follows:

	FY 2014	FY 2015	FY 2016	FY 2017
Estimated Expenditures:				
Environmentalist IV Salary (LG 27, with annual steps)	\$24,385	\$50,915	\$53,138	\$55,497
Intern (LG 8, 10 weeks annually)	\$4,234	\$4,234	\$4,234	\$4,234
Benefits	\$16,117	\$33,666	\$35,876	\$38,261
Office Space	\$1,740	\$3,604	\$3,640	\$3,713
Current Expenses	\$950	\$950	\$950	\$950
Equipment	\$1,500	-	-	-
Travel	\$278	\$556	\$556	\$556
Department of Information Technology Costs	\$1,970	\$3,591	\$3,663	\$3,736
Indirect Costs (7% of salaries and benefits)	\$3,131	\$6,217	\$6,527	\$6,859
Total Cost to State	\$54,305	\$103,733	\$108,584	\$113,806

The bill establishes a master license and a subordinate license for road salt applicators. 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 2015, 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 2015 and each year thereafter. All revenue collected would be deposited into a newly created salt application fund and used for the salt certification program.