



General Assembly

Amendment

February Session, 2022

LCO No. 3114



Offered by:

REP. MICHEL, 146th Dist.
REP. REYES, 75th Dist.
REP. SIMMS T., 140th Dist.

REP. HUGHES, 135th Dist.
REP. PARIS, 145th Dist.
REP. WINKLER, 56th Dist.

To: House Bill No. 5297

File No. 457

Cal. No. 337

"AN ACT CONCERNING THE MULTIPLICITY OF AFFECTING FACILITIES IN CERTAIN CENSUS BLOCK GROUPS IN THE STATE."

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. Section 22a-20a of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective October 1, 2022*):

5 (a) As used in this section:

6 (1) "Environmental justice community" means (A) a United States
7 census block group, as determined in accordance with the most recent
8 United States census, for which thirty per cent or more of the population
9 consists of low income persons who are not institutionalized and have
10 an income below two hundred per cent of the federal poverty level; [or]
11 (B) a distressed municipality, as defined in subsection (b) of section 32-

12 9p; (C) a United States census block group, as determined in accordance
13 with the most recent United States census, for which the percentage of
14 the population which identifies as a racial or ethnic minority, or for
15 which the percentage of households with limited English proficiency,
16 exceeds the percentage for the state of Connecticut; (D) a tribal
17 community; or (E) as further defined by the Department of Energy and
18 Environmental Protection in consultation with community
19 representatives pursuant to section 502 of this act;

20 (2) "Affecting facility" means any (A) electric generating facility with
21 a capacity of more than ten megawatts; (B) sludge or solid waste
22 incinerator or combustor; (C) sewage treatment plant with a capacity of
23 more than fifty million gallons per day; (D) intermediate processing
24 center, volume reduction facility, solid waste transfer station, resource
25 recovery facility, transfer stations, recycling, compost or multitown
26 recycling facility with a combined monthly volume in excess of twenty-
27 five tons; (E) [new or expanded] landfill, including, but not limited to, a
28 landfill that contains ash, construction and demolition debris or solid
29 waste; (F) medical waste incinerator; [or] (G) major source of air
30 pollution, as defined by the federal Clean Air Act; (H) contractor yard
31 containing sand or silica; or (I) pipeline, termina or bulk commercial
32 storage facility not providing direct to consumer retail or delivery for
33 fossil fuels, including coal, oil, petroleum and natural gas. "Affecting
34 facility" shall not include (i) the portion of an electric generating facility
35 that uses nonemitting and nonpolluting renewable resources such as
36 wind, solar and hydro power or that uses fuel cells, (ii) any facility for
37 which a certificate of environmental compatibility and public need was
38 obtained from the Connecticut Siting Council on or before January 1,
39 2000, or (iii) a facility of a constituent unit of the state system of higher
40 education that has been the subject of an environmental impact
41 evaluation in accordance with the provisions of sections 22a-1b to 22a-
42 1h, inclusive, and such evaluation has been determined to be
43 satisfactory in accordance with section 22a-1e;

44 (3) "Meaningful public participation" means (A) residents of an
45 environmental justice community have an appropriate opportunity to

46 participate in decisions about a proposed facility or the expansion of an
47 existing facility that may adversely affect such residents' environment
48 or health; (B) the public's participation may influence the regulatory
49 agency's decision; and (C) the applicant for a new, renewed or modified
50 or expanded permit, certificate or siting approval seeks out and
51 facilitates the participation of those potentially affected during the
52 regulatory process; [and]

53 (4) "Community environmental benefit agreement" means a written
54 agreement entered into by the chief elected official or town manager of
55 a municipality and an owner or developer of real property whereby the
56 owner or developer agrees to develop real property that is to be used
57 for any new, modified or expanded affecting facility and to provide
58 financial resources for the purpose of the mitigation, in whole or in part,
59 of impacts reasonably related to the facility, including, but not limited
60 to, impacts on the environment, including, but not limited to, air quality
61 and watercourses, quality of life, asthma rates, traffic, parking and
62 noise; [.]

63 (5) "Racial or ethnic minority" means a person whose race is identified
64 as other than white alone, or is identified as Hispanic or Latino, as used
65 by the United States Census Bureau, or as further defined by the
66 Department of Energy and Environmental Protection in consultation
67 with community representatives pursuant to section 502 of this act;

68 (6) "Department" means the Department of Energy and
69 Environmental Protection; and

70 (7) "Council" means the Connecticut Siting Council.

71 (b) (1) Applicants who, on or after January 1, 2009, seek to obtain any
72 certificate under chapter 277a, new, renewed, modified or expanded
73 permit or siting approval from the Department of Energy and
74 Environmental Protection or the Connecticut Siting Council involving
75 an affecting facility that is proposed to be located in an environmental
76 justice community or the proposed expansion of an affecting facility
77 located in such a community, shall (A) file a meaningful public

78 participation plan with such department or council and shall obtain the
79 department's or council's approval of such plan prior to filing any
80 application for such permit, certificate or approval; and (B) consult with
81 the chief elected official or officials of the town or towns in which the
82 affecting facility is to be located or expanded to evaluate the need for a
83 community environmental benefit agreement in accordance with
84 subsection (d) of this section.

85 (2) Each such meaningful public participation plan shall contain
86 measures to facilitate meaningful public participation in the regulatory
87 process and a certification that the applicant will undertake the
88 measures contained in the plan. Such plan shall identify a time and place
89 where an informal public meeting will be held that is convenient for the
90 residents of the affected environmental justice community. In addition,
91 any such plan shall identify the methods, if any, by which the applicant
92 will publicize the date, time and nature of the informal public meeting
93 in addition to the notice by mail required by subdivision (3) of this
94 subsection and the publication required by subdivision [(3)] (4) of this
95 subsection. Such methods shall include, but not be limited to, (A)
96 posting a reasonably visible sign on the proposed or existing facility
97 property, printed in English, in accordance with any local regulations
98 and ordinances, (B) posting a reasonably visible sign, printed in all
99 languages spoken by at least fifteen per cent of the population that
100 reside within a one-half of a mile radius of the proposed or existing
101 facility, in accordance with local regulations and ordinances, and (C)
102 notifying local and state elected officials, in writing. Such methods may
103 include notifying neighborhood and environmental groups, in writing,
104 in a language appropriate for the target audience. The determination of
105 the percentage of persons that speak a language, for purposes of
106 subparagraph (B) of this subdivision, shall be made in accordance with
107 the most recent United States census.

108 (3) Not less than thirty days prior to such informal public meeting,
109 the applicant shall send a notice, by mail, to all residential households
110 located not more than one-half of a mile in radius from the proposed or
111 existing facility. Such notice shall provide the date, time and location of

112 the informal public meeting, a description of the proposed facility, a
113 map indicating the location of the facility, information on how an
114 interested person may review project documents, including any
115 complete needs assessment, alternatives assessment or environmental
116 impact analysis, addresses for mailed and Internet-based submission of
117 written public comments and any other information deemed
118 appropriate by the department or council, as applicable. Such notice
119 shall be written in all languages spoken by not less than five per cent of
120 the population that resides not more than one-half of a mile radius from
121 the proposed or existing facility. The applicant shall use these same
122 means to notify the public of any subsequent public participation
123 opportunities that occur as part of the permit approval process before
124 the department or council, as applicable, and to notify the public of any
125 notice of tentative or final determination.

126 ~~[(3)]~~ (4) Not less than ten days prior to the informal public meeting
127 and not more than thirty days prior to such meeting, the applicant shall
128 publish the date, time and nature of the informal public meeting with a
129 minimum one-quarter page advertisement in a newspaper having
130 general circulation in the area affected, and any other appropriate local
131 newspaper serving such area, in the Monday issue of a daily publication
132 or any day in a weekly or monthly publication. The advertisement shall
133 include information on how an interested person may review project
134 documents, including any complete needs assessment, alternatives
135 assessment or environmental impact analysis. The applicant shall post
136 a similar notification of the informal public meeting on the applicant's
137 web site, if applicable.

138 ~~[(4)]~~ (5) At the informal public meeting, the applicant shall make a
139 reasonable and good faith effort to provide clear, accurate and complete
140 information about the proposed facility or the proposed modification or
141 expansion of a facility and the potential environmental and health
142 impacts of such modification, facility or such expansion. The permit
143 applicant shall accept written comments, via mail or electronic mail
144 submission, and oral comments from any interested party and provide
145 an opportunity for meaningful public participation at the informal

146 public meeting. Not later than thirty days after the public meeting, the
147 applicant shall submit to the department or council, as applicable, an
148 affidavit affirming that the applicant completed the public meeting
149 requirement and include (A) the written and oral comments received;
150 and (B) responses to concerns and questions presented in comments,
151 including any changes to the modification, facility or expansion
152 proposed. The applicant shall video record the informal public meeting
153 and submit the recording to the department or council, as applicable.

154 [(5)] (6) The Department of Energy and Environmental Protection or
155 the Connecticut Siting Council shall not take any action on the
156 applicant's permit, certificate or approval earlier than sixty days after
157 the informal public meeting. For any such application filed on or after
158 [November 1, 2020] October 1, 2023, if the applicant fails to undertake
159 the requirements of [subparagraphs (B) to (D), inclusive, of subdivision
160 (2) of this subsection or subdivision (3) or (4) of] this subsection, any
161 such application shall be deemed insufficient.

162 [(6)] (7) In the event that the Connecticut Siting Council has approved
163 a meaningful public participation plan concerning a new, renewed,
164 modified or expanded facility and an informal public meeting has been
165 held in accordance with this subsection, the Department of Energy and
166 Environmental Protection may approve such plan and waive the
167 requirement that an additional informal public meeting be held in
168 accordance with this subsection.

169 (c) Any municipality, owner or developer may enter into a
170 community environmental benefit agreement in connection with an
171 affecting facility. For any application filed on or after [November 1,
172 2020] October 1, 2023, for such an affecting facility that: (1) Requires a
173 certificate under chapter 277a, or (2) constitutes a new, renewed,
174 modified or expanded permit or siting approval from the Department
175 of Energy and Environmental Protection or the Connecticut Siting
176 Council, and that is located in an environmental justice community or is
177 proposed to be located in such a community, the applicant shall enter
178 into such an agreement with the municipality if there are [five] three or

179 more affecting facilities in such municipality at the time such application
180 is filed. For such an application for an affecting facility that is not located
181 in an environmental justice community or proposed to be located in
182 such a community, the applicant shall enter into such an agreement with
183 the municipality if there are five or more affecting facilities in such
184 municipality at the time such application is filed. Mitigation may
185 include both on-site and off-site improvements, activities and programs,
186 including, but not limited to: Funding for activities such as
187 environmental education, diesel pollution reduction, electric vehicle
188 charging infrastructure construction, establishment of a wellness clinic,
189 ongoing asthma screening, provision of air monitoring performed by a
190 credentialed environmental professional, performance of an ongoing
191 traffic study, watercourse monitoring, construction of biking facilities
192 and multi-use trails, staffing for parks, urban forestry, support for
193 community gardens or any other negotiated benefit to the environment
194 in the environmental justice community. Prior to negotiating the terms
195 of a community environmental benefit agreement and not less than once
196 prior to seeking legislative approval of such agreement, the
197 municipality shall provide a reasonable and public opportunity for
198 residents of the potentially affected environmental justice community to
199 be heard concerning the requirements of or need for, and terms of, such
200 agreement.

201 (d) The chief elected official or town manager of a municipality shall
202 participate in the negotiations for any such community environmental
203 benefit agreement and shall implement, administer and enforce such an
204 agreement on behalf of the municipality, provided any such agreement
205 negotiated pursuant to this section on and after November 1, 2020, shall
206 be approved by the legislative body of the municipality prior to
207 implementation, administration and enforcement of such agreement.

208 (e) The terms of any community environmental benefit agreement
209 negotiated, entered into and approved in accordance with this section
210 on and after November 1, 2020, shall not constitute a separate and
211 distinct basis for a pleading to intervene in any administrative, licensing
212 or other proceeding pursuant to section 22a-19.

213 (f) Notwithstanding any provision of the general statutes, if the
214 department or the council, as applicable, determines that there are less
215 harmful alternatives to the applicant's proposed facility or new,
216 renewed, modified or expanded permit, then the department or council,
217 as applicable, shall deny the subject application or permit, as received,
218 and allow the applicant to resubmit such application, as appropriate,
219 with modifications. If the department or council, as applicable,
220 determines that, in consideration with other environmental or public
221 health stressors affecting the environmental justice community, the
222 proposed facility or new, renewed, modified or expanded permit is
223 reasonably likely to cause or contribute to adverse cumulative
224 environmental impacts upon such community that are unreasonably
225 higher than those of other communities in the state, on average, the
226 department or council, as applicable, shall deny the subject application
227 or permit or place conditions on the application or permit as necessary
228 in order to avoid or reduce such adverse stressors. If the department or
229 council, as applicable, determines that a new or renewed permit, or
230 expansion or modification of an existing facility will serve a compelling
231 public interest in the affected environmental justice community, the
232 department or council, as applicable, may approve such application or
233 permit and impose conditions on the construction and operation of the
234 facility to protect the public health and the environment. The
235 department or council, as applicable, shall publish any determination
236 made pursuant to this subsection on the department's or council's, as
237 applicable, Internet web site.

238 (g) Any person may provide evidence to the department or council,
239 as applicable, to make a prima facie showing that a proposed or
240 expanded affecting facility or a renewed or modified permit is
241 reasonably likely to unreasonably contribute to the cumulative
242 pollution in a downstream, downwind or adjacent environmental
243 justice community. Upon such showing, the department or council, as
244 applicable, shall require that the applicant comply with the provisions
245 of subdivision (1) of subsection (b) of this section for any such affected
246 environmental justice community.

247 (h) Any person may appeal the issuance of a certificate issued under
248 chapter 277a, for a new, renewed, modified or expanded permit, or a
249 department or council approval of a facility for the failure to comply
250 with any provision of subsections (b) and (c) of this section, in
251 accordance with the provisions of section 4-183. Failure to comply with
252 subsection (b) or (c) of this section shall constitute unreasonable
253 pollution pursuant to section 22a-16.

254 (i) If a permit applicant applies for more than one permit for a
255 proposed new or modified affecting facility, the applicant shall only be
256 required to comply with the provisions of this section once, unless the
257 department or council, as applicable, determines that more than one
258 informal public meeting is necessary due to the complexity of the permit
259 applications or the amount of pollution from the affecting facility.

260 (j) In addition to any other fee authorized for any such application,
261 the department or council, as applicable, may assess each permit
262 applicant a reasonable fee in order to cover the costs associated with the
263 implementation of the provisions of this section, including, but not
264 limited to, costs to provide technical assistance to permit applicants and
265 environmental justice communities to comply with and participate in
266 the provisions of this section, respectively.

267 Sec. 502. (NEW) *(Effective from passage)* (a) The Commissioner of
268 Energy and Environmental Protection shall adopt regulations, in
269 accordance with the provisions of chapter 54 of the general statutes, as
270 are necessary and proper to carry out the purposes of section 22a-20a of
271 the general statutes, as amended by this act.

272 (b) The commissioner, or the commissioner's designee, shall convene
273 a working group for the purpose of providing advice and feedback for
274 regulations to be adopted by the commissioner in accordance with the
275 provisions of this section. The commissioner, or the commissioner's
276 designee, shall select the chairpersons of the working group from
277 among the members of the working group. Such chairpersons shall
278 schedule the first meeting of the working group which shall be held not

279 later than nine months after the effective date of this section. Not less
 280 than one-third of the working group's membership shall be composed
 281 of representatives of environmental justice communities who are not
 282 state agency employees. Representatives of environmental justice
 283 communities shall be members of communities of color, low-income
 284 communities and communities bearing disproportionate pollution and
 285 climate change burdens and may include representatives of
 286 community-based organizations with experience and a history of
 287 advocacy on environmental justice issues. Such representatives of
 288 environmental justice communities shall be reasonably compensated for
 289 their participation in the working group. Members of the working
 290 group shall convene monthly meetings until such time as regulations
 291 are adopted pursuant to this section.

292 (c) The regulations adopted pursuant to subsection (a) of this section
 293 shall include, but are not limited to, provisions regarding (1) the
 294 designation of environmental justice communities, as defined in section
 295 22a-20a of the general statutes, as amended by this act; (2) procedures
 296 and requirements for creating a meaningful public participation plan;
 297 (3) identifying and measuring the relative impact of environmental and
 298 public health stressors across communities; (4) standards for denying
 299 permits due to expected adverse cumulative environmental impacts
 300 upon an environmental justice community; and (5) any required fees
 301 paid by an applicant pursuant to subsection (i) of section 22a-20a of the
 302 general statutes, as amended by this act."

This act shall take effect as follows and shall amend the following sections:		
Sec. 501	October 1, 2022	22a-20a
Sec. 502	from passage	New section