
OLR Bill Analysis

sSB 1147 (File 563, as amended by Senate "A")*

AN ACT CONCERNING THE ENVIRONMENTAL JUSTICE PROGRAM OF THE DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION.

SUMMARY

This bill makes changes in the state's environmental justice law, which generally requires applicants seeking to construct, expand, or site certain facilities in environmental justice communities to engage in a public participation process. Specifically, the bill does the following:

1. exempts minor modifications of an existing permit for an affecting facility from the law's requirements;
2. generally requires applicants subject to the law to (a) file an assessment of environmental or public health stressors and (b) submit and receive approval of a public participation report to show compliance with the requirements for informal public meetings (e.g., notice, public comment, and video recording);
3. expands the notice that must be given about an upcoming informal public meeting to include online posts and direct mail to households within one-half mile of the involved affecting facility;
4. requires the newspaper advertisement, which must be published under existing law between 10 and 30 days before the public meeting, to include information on how interested people can review project documents (i.e., any complete needs assessment, alternatives assessment, environmental impact analysis, and assessment of environmental and public health stressors);
5. requires the facility's applicant to accept oral and written

comments from any interested person and provide an opportunity for meaningful public participation at the informal public meeting;

6. requires the chief elected official or town manager, when negotiating a community environmental benefit agreement to mitigate an affecting facility's impacts, to select a resident of the potentially affected environmental justice community to participate in the negotiations;
7. requires mitigation in a community benefit agreement to have a nexus and be proportional to the impacts of the proposed facility;
8. allows the Department of Energy and Environmental Protection (DEEP) or the Connecticut Siting Council, as applicable, to assess a reasonable fee on an applicant to cover the costs of implementing the environmental justice law, including costs for providing technical assistance to applicants and environmental justice communities, in addition to any other fee authorized by law, rule, or regulation.

The bill requires the DEEP commissioner to adopt any necessary and proper regulations to carry out the environmental justice law's purposes. It allows the Siting Council to follow the same regulations in its decision to approve an application.

The bill also allows DEEP or the Siting Council, as applicable, to deny a permit for a new affecting facility if it finds that approving the permit would result in adverse cumulative environmental or public health stressors in the environmental justice community that are greater than those experienced in other communities. They may additionally impose reasonable conditions on a permit to mitigate environmental and public health impacts if it makes the same findings.

Lastly, the bill makes technical and conforming changes.

*Senate Amendment "A" principally (1) reinstates the exclusion of institutionalized persons from the definition of an environmental justice

community, which the underlying bill removed; (2) reverses the underlying bill's expansion of the law to apply to additional affecting facilities (e.g., solid waste transfer stations, pipelines, and certain large-scale water diverters); (3) exempts minor modifications of existing permits from the law's requirements and provides specific exemptions for expanded permit applicants; (4) delays the requirement for filing an environmental or public health stressors assessment until after the adoption of DEEP's regulations; (5) adds the nexus and proportionality requirement for community benefit agreements; and (6) specifies that the law does not apply to permit renewals or permit modifications.

EFFECTIVE DATE: October 1, 2023

SCOPE OF THE LAW

The environmental justice law's requirements generally apply to applications for a certificate of environmental compatibility and public need, a new or expanded permit, or siting approval from DEEP or the Siting Council involving an "affecting facility" in an "environmental justice community" (see BACKGROUND). The bill exempts minor modifications of existing permits from the law's requirements.

Under the bill, a "permit" collectively refers to the approval issued in the above applications. Specifically, it is any individual facility permit, license, certificate, or siting approval DEEP or the Siting Council issues to a facility that sets the regulatory and management requirements for an activity regulated under the laws for (1) certificates of environmental compatibility and public need and (2) air pollution, solid waste facility, or water discharge permits. It does not include an authorization or approval needed to (1) remediate certain hazardous waste sites or (2) extend the time to complete a facility's construction.

The bill also specifies that a "major source" of air pollution for purposes of determining whether a facility is an affecting facility under the law may be either (1) as defined by the Clean Air Act (CAA), as under current law, or DEEP's rules or regulations or (2) a facility that directly emits, or has potential to emit, at least 100 tons of any air pollutant or other CAA applicable criteria.

STRESSOR ASSESSMENT & PUBLIC PARTICIPATION DOCUMENTS

By law, applicants for these affecting facilities generally must (1) file, and receive approval for, a meaningful public participation plan before filing their permit, certificate, or approval application and (2) consult with the chief elected officials of the towns in which the proposed facility will be located or expanded to evaluate the need for a community environmental benefit agreement (see *Public Participation Plan*, below).

The bill generally requires the applicants to additionally (1) file an assessment of environmental and public health stressors and (2) submit and receive approval of a public participation report on compliance with the law's public participation plan requirements. However, it exempts expanded permit applicants from filing the assessment, and no filing is required until DEEP adopts the new regulations required by the bill (see below).

It also requires the DEEP commissioner to evaluate the potential for environmental and health stressors when issuing or renewing a department general permit.

Assessment of Environmental or Public Health Stressors

The bill requires this assessment to evaluate the potential environmental and public health stressors related to the proposed new or expanded affecting facility. It must also identify (1) any adverse environmental or public health stressor that cannot be avoided if a permit is granted and (2) the environmental or public health stressors that the affected environmental justice community already experiences.

Under the bill, an "environmental or public health stressor" is any source of environmental pollution that causes a potential public health impact.

Public Participation Plan

By law, a "meaningful public participation plan" is one that gives environmental justice community residents an appropriate opportunity

to participate in decisions about a proposed new or expanded facility that may adversely affect their environment or health.

Among other things, the plan must identify how the applicant will publicize the date, time, and nature of the informal public meeting about the proposed facility, in addition to the newspaper notice that existing law already requires and the direct mail notice the bill requires to be sent to nearby households (see *Direct Mail Notice*, below). Currently, these methods must include posting certain signs and giving written notice to local and state elected officials. The bill additionally requires postings on relevant websites and social media platforms to give notice about the meeting, but the notice must be readily found by searching for the affecting facility's name.

Public Participation Report

The public participation report the bill requires to be submitted to and approved by DEEP must include (1) an affidavit stating that the applicant complied with the law's notice (e.g., signs, online, newspaper, direct mail) and public meeting requirements; (2) all written comments received; and (3) responses to concerns and questions presented in the written and verbal comments, along with any changes to the proposed activity or affecting facility. It must also include a video recording of the informal public meeting.

Under the bill, this public participation report must be submitted to DEEP or the Siting Council, as applicable, within 30 days after the informal public meeting. Applicants for an expanded permit are exempt from the report requirement.

DIRECT MAIL NOTICE OF INFORMAL PUBLIC MEETING

The bill adds a direct mail notice requirement to inform households near the proposed or existing affecting facility that is the subject of the informal public meeting.

Specifically, at least 30 days before the informal public meeting, the applicant must mail a notice about the meeting to all households within one-half mile of the new proposed, and not expanded, affecting facility.

The notice must be written in all languages spoken by at least 15% of the population that lives in this radius and include the following information:

1. the meeting's date, time, and location;
2. a description of the proposed or expanded affecting facility and a map showing its location;
3. how an interested person can review project documents, including any complete needs assessment, alternatives assessment, environmental impact analysis, or assessment of environmental or public health stressors;
4. addresses for mailed and online submissions for written public comments; and
5. any other information DEEP or the Siting Council deems appropriate.

The applicant must then mail notice to these same households about any (1) subsequent public participation opportunities that occur as part of the permit approval process before DEEP or the Siting Council and (2) notice of tentative or final determination. Applicants for an expanded permit are exempt from the notice requirement.

INFORMAL PUBLIC MEETING

Public Participation

The environmental justice law requires the applicant to make a reasonable and good faith effort to give the public clear, accurate, and complete information about the affecting facility proposal at an informal public meeting. The information must include the potential environmental and public health impacts.

The bill requires the applicant to (1) accept written comments, submitted by mail or electronically, and oral comments from any interested party and (2) provide an opportunity for meaningful public participation at the meeting. The applicant must also video record the

meeting and submit the video with the public participation report (see above).

Multiple Public Meetings

Under the bill, if a permit applicant applies for more than one new proposed affecting facility, the applicant must only comply with the environmental justice law once unless DEEP or the Siting Council, as applicable, determines that more than one informal public meeting is needed due to the complexity of the permit applications involved. The bill specifies that this limitation does not restrict DEEP's or the Siting Council's authority to hold or require a public hearing under another state or federal law, rule, or regulation.

Current law also allows DEEP to waive the requirement for an additional informal public meeting if the Siting Council has already approved a meaningful public participation plan and the associated informal public meeting has been held. The bill instead allows this waiver if the Siting Council approves the plan or public participation report, as applicable.

COMMUNITY ENVIRONMENTAL BENEFIT AGREEMENT

By law, the applicant for a proposed or new affecting facility must consult with the chief elected officials of the towns in which the facility will be located to evaluate whether there must be a community environmental benefit agreement. For facilities that will be in a municipality that already has at least five affecting facilities, this agreement is required. The bill prohibits the DEEP commissioner from issuing a notice of tentative determination for a new or modified permit unless the applicant submits a copy of the executed agreement with the municipality.

A community environmental benefit agreement is a written agreement where an owner or developer of real property that will be used for an affecting facility agrees to provide financial resources to mitigate the facility's impacts. It is negotiated by the chief elected official or town manager and must be approved by the municipality's legislative body. The bill requires the chief elected official or town

manager to select a resident of the potentially affected environmental justice community to participate in the negotiations of a community environmental benefit agreement.

Under the agreement, mitigation may be on-site or off-site improvements, activities, and programs, including things like environmental education, electric vehicle charging infrastructure, asthma screening, air monitoring, urban forestry, and trails. But the bill requires any mitigation to have a nexus and be proportional to the impacts caused by the proposed facility.

IMPLEMENTING REGULATIONS

New or Expanded Facilities

The bill requires the DEEP commissioner to adopt needed and proper regulations to implement the environmental justice law, as amended by the bill, including provisions on the following:

1. procedures and requirements for creating the meaningful public participation plan and public participation report;
2. identifying and measuring the relative impact of environmental and public health stressors across communities;
3. tools for stakeholder industries and sectors to use that consider any environmental or public health stressors, including those that help inform decisions about potential locations for proposed affecting facilities that comply with the law; and
4. standards for denying or placing conditions on permits.

When developing the regulations, the commissioner must consult with the stakeholder industries and sectors.

PERMIT DECISIONS

Final Action

Complete Application. For applications filed on or after November 1, 2023, the bill deems them insufficient if the applicant fails to fulfill the law's notice and public meeting requirements, as amended by the bill.

Similarly, the bill makes an application insufficient if its applicant fails to receive approval of a required public participation report.

Timeframe for Decision. Current law prohibits DEEP or the Siting Council from acting on a permit, certificate, or approval within 60 days after the informal public meeting. The bill (1) extends this restriction to acting on license applications and (2) instead prohibits acting within the 60-day period or before it approves the public participation report, whichever is earlier.

New Review Requirements. The bill imposes a new review process for applications DEEP reviews for a proposed affecting facility (but not for an expanded permit), which is set out in the new regulations the bill requires (see *Implementing Regulations*, above). It allows the Siting Council to also use the regulation's process for reviewing applications. This new process does not take effect, however, until the regulations are adopted, and the bill does not set a deadline for doing this.

Under the bill, DEEP or the Siting Council, as applicable, may deny a permit application for a proposed affecting facility if it finds that approving it would, together with other environmental or public health stressors affecting the environmental justice community involved, produce adverse cumulative stressors that are higher than those experienced by other communities in the state, county, or other geographic area, as DEEP or the Siting Council determines. For DEEP, the determination must be made in accordance with the new regulations the bill requires; for the Siting Council, the determination may be made according to them.

If there is a hearing on an application that is subject to the environmental justice law, compliance with the applicable regulations must be considered at the hearing.

The bill requires DEEP or the Siting Council, as applicable, to give the applicant of a proposed affecting facility written notice about its tentative determination on compliance with the regulations. It also requires them to post any determination made under this new process on their respective websites.

The bill allows DEEP or the Siting Council, as applicable, when granting a permit, to impose reasonable conditions on a proposed affecting facility's construction or operation to mitigate environmental and public health impacts.

Permit Conditions

The bill allows DEEP or the Siting Council, as applicable, to apply reasonable conditions on a new permit for an affecting facility (not for an expanded facility) related to its construction and operation to protect the environment and public health. They may only do this after:

1. reviewing the public participation report and any other relevant information like testimony and written comments and
2. finding that approval of the permit, as proposed, together with other environmental or public health stressors affecting the environmental justice community involved, produce adverse cumulative stressors that are higher than those experienced by other communities in the state, county, or other geographic area, as DEEP or Siting Council determines.

For DEEP, the determination must be made in accordance with the new regulations the bill requires; for the Siting Council, the determination may be made according to them.

Continuing Operations

The bill specifies that it does not limit an applicant's right to continue facility operations when a permit approval is pending to the extent that it has that right by law, rule, or regulation. It also specifies that the law must not be construed to apply to permit renewals or permit modifications.

BACKGROUND

Affecting Facilities

By law, an "affecting facility" is generally any:

1. electric generating facility with a capacity of more than 10 megawatts;

2. sludge and solid waste incinerator or combustor;
3. sewage treatment plant with a daily capacity of more than 50 million gallons;
4. intermediate processing center, volume reduction facility, or multi-town recycling facility with a combined monthly volume of more than 25 tons;
5. new or expanded landfill, including one with ash, construction and demolition debris, or solid waste;
6. medical waste incinerator; and
7. major air pollution source under the CAA (e.g., large factories).

Exemptions to the law include (1) parts of electric generating facilities that use fuel cells or non-emitting and non-polluting renewable resources such as wind, solar, and hydropower; (2) facilities that obtained a Siting Council certificate by January 1, 2000; and (3) facilities under the state higher education system's control with a satisfactory environmental impact evaluation.

Environmental Justice Communities

An "environmental justice community" is (1) any U.S. census block group, as determined by the most recent census, for which at least 30% of the population consists of low-income people who are not institutionalized and have an income below 200% of the federal poverty level or (2) a distressed municipality.

The Department of Economic and Community Development annually designates distressed municipalities based on high unemployment and poverty, aging housing stock, and low or declining rates of job, population, and per capita income growth (CGS § 32-9p). The current (2022) list of distressed municipalities includes Ansonia, Bridgeport, Bristol, Chaplin, Derby, East Hartford, East Haven, Griswold, Groton, Hartford, Meriden, Montville, New Britain, New London, North Stonington, Norwich, Plainfield, Putnam, Sprague,

Sterling, Torrington, Waterbury, West Haven, Winchester, and Windham.

Towns with current designated census blocks (that are not also distressed municipalities) are Bethel, Bloomfield, Branford, Brooklyn, Canaan, Clinton, Columbia, Coventry, Cromwell, Danbury, East Haddam, East Lyme, East Windsor, Ellington, Enfield, Essex, Fairfield, Farmington, Glastonbury, Greenwich, Haddam, Hamden, Killingly, Ledyard, Lisbon, Manchester, Mansfield, Middletown, Milford, Naugatuck, New Fairfield, New Haven, New Milford, Newington, North Canaan, Norwalk, Plainville, Portland, Preston, Ridgefield, Rocky Hill, Sharon, Shelton, Simsbury, Southington, Stafford, Stamford, Stonington, Stratford, Thomaston, Thompson, Vernon, Wallingford, Waterford, Watertown, West Hartford, Wethersfield, Willington, Windsor Locks, and Windsor.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 30 Nay 3 (03/24/2023)

Appropriations Committee

Joint Favorable

Yea 41 Nay 11 (05/01/2023)