



House of Representatives

General Assembly

File No. 434

January Session, 2001

Substitute House Bill No. 6999

House of Representatives, April 24, 2001

The Committee on Environment reported through REP. STRATTON of the 17th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING REVISIONS TO THE CONNECTICUT ENVIRONMENTAL POLICY ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22a-1b of the general statutes is repealed and the
2 following is substituted in lieu thereof:

3 [The General Assembly directs that, to the fullest extent possible:]

4 (1) As used in sections 22a-1b to 22a-1e, inclusive:

5 (A) "Environmental assessment" means a process to determine if a
6 proposed action by a state department, institution, or agency for which
7 the degree of environmental impact is indeterminate, in the absence of
8 information on the proposed location and scope of a specific action,
9 could have significant environmental impacts.

10 (B) "Environmental classification document" means a document
11 used by a sponsoring agency in conjunction with sections 22a-1a to

12 22a-1f, inclusive, and the regulations adopted pursuant to said
13 sections, to determine which of its actions may have significant
14 environmental impacts.

15 (C) "Environmental impact evaluation" means a detailed written
16 document concerning the environmental impacts of a proposed action,
17 as described in subdivision (5) of this section.

18 (D) "Finding of no significant impact" means a written document
19 concerning the environmental impacts listed in an environmental
20 classification document that would not have a significant
21 environmental impact.

22 (E) "Sponsoring agency" means a state agency, department or
23 institution responsible for the preparation of environmental
24 classification documents, environmental impact evaluations, and
25 findings of no significant impact.

26 (F) "Early public scoping process" means a public comment period
27 and a public scoping meeting.

28 (G) "Public scoping meeting" means a meeting in which members of
29 the public and interested agency representatives may participate in an
30 informational discussion regarding the proposed action by the
31 sponsoring agency.

32 (H) "Environmental Monitor" means a publication issued by the
33 Council on Environmental Quality that contains notices of proposed
34 agency actions, facilities or projects.

35 [(a)] (2) Each [state department, institution or] sponsoring agency
36 shall review its policies and practices to insure that they are consistent
37 with the state's environmental policy as set forth in sections 22a-1 and
38 22a-1a.

39 [(b)] (3) Each [state department, institution or] sponsoring agency

40 [responsible for the primary recommendation or initiation of actions
41 which may significantly affect the environment] shall in the case of
42 each [such] proposed action [make] that may significantly affect the
43 environment, prior to deciding whether to undertake or approve such
44 proposed action, conduct an early public scoping process in order for
45 interested parties to present their views on the proposed action. To
46 initiate an early public scoping process, the sponsoring agency shall
47 simultaneously deliver notice on a form that has been approved by the
48 Council on Environmental Quality to the council, the Department of
49 Environmental Protection, the Department of Economic and
50 Community Development, the Department of Transportation, the
51 Department of Public Health, and any other state agency that will be
52 affected by the proposed action, that includes, but is not limited to, an
53 identification of all reasonably available sites that would satisfy the
54 purpose and need of such proposed action and the date, time and
55 location of the proposed public scoping meeting on the proposed
56 action. The council shall publish notice of the availability of the notice
57 of the early public scoping process, and the date, time and location of
58 the public hearing in the Environmental Monitor pursuant to
59 subdivision (7) of this section. Members of the public and any
60 interested agency representatives may submit public comments on the
61 proposed action during the forty-five days following the filing of the
62 notice of the early public scoping process pursuant to this section. The
63 sponsoring agency shall conduct a public scoping meeting between
64 twenty-five to thirty-five days after the initiation of the early public
65 scoping process. The sponsoring agency shall make comments at such
66 public scoping meeting that include, but are not limited to, information
67 about sites that are available to the agency, the reasons for the
68 proposed action, any permits or approvals that are necessary to carry
69 out the proposed action, any mitigation measures that the agency
70 plans to institute in connection with the proposed action, including
71 recommendations as to preferred alternative actions or, if applicable,
72 sites, including a discussion of any alternative sites not previously

73 identified. The sponsoring agency shall use the comments received
74 during the early scoping process to assist in selecting the alternative
75 actions or sites, where applicable, and issues to be addressed in any
76 subsequent environmental review process. Any substantive issues
77 raised in the scoping process that pertain to sites or alternatives must
78 be addressed in the environmental impact evaluation or finding of no
79 significant impact.

80 (4) (A) No later than ninety days following a scoping meeting
81 pursuant to subdivision (3) of this section, the sponsoring agency shall
82 prepare, in accordance with the regulations adopted pursuant to
83 sections 22a-1 to 22a-1f, inclusive, either an environmental assessment,
84 followed by a finding of no significant impact, or an environmental
85 impact evaluation.

86 (B) Upon issuance of a finding of no significant impact, the
87 sponsoring agency shall publish notice of its availability in the
88 Environmental Monitor pursuant to subdivision (7) of this section.
89 Any state agency or person may submit written comments on a finding
90 of no significant impact no later than thirty days after the date of notice
91 in the Environmental Monitor of such a finding. The agency shall
92 forward such written comments to the Council on Environmental
93 Quality and the Secretary of the Office of Policy and Management.

94 (C) If no dissenting comments regarding the finding of no
95 significant impact are filed during the thirty-day comment period, the
96 department, institution or agency may proceed with the
97 implementation of the proposed action following notice of such
98 implementation to the Council on Environmental Quality.

99 (D) If one or more dissenting comments are filed during the thirty-
100 day comment period, the Council on Environmental Quality shall
101 consult with the Department of Environmental Protection and
102 sponsoring agency no later than fifteen days following the end of the
103 comment period and either issue a finding of no significant impact, in

104 which case the department, institution or agency may proceed with the
105 proposed action, or direct the sponsoring agency to prepare an
106 environmental impact evaluation in accordance with subdivision (5) of
107 this section no later than ninety days following the end of the public
108 comment period pursuant to subdivision (3) of this section.

109 (E) Upon completion of an environmental impact evaluation
110 pursuant to subdivision (5) of this section, the sponsoring agency shall
111 publish notice of the availability of the environmental impact
112 evaluation in the Environmental Monitor.

113 (F) The sponsoring agency shall hold a hearing in accordance with
114 the provisions of subdivision (3) of this section on an environmental
115 impact evaluation no later than thirty days after publishing notice in
116 the Environmental Monitor of the availability of the environmental
117 impact evaluation. There shall be a forty-five-day public comment
118 period on the environmental impact evaluation following such notice.

119 (G) The sponsoring agency shall submit to the Council on
120 Environmental Quality any supplemental documentation ninety days
121 following the completion of an environmental impact evaluation. If
122 such supplemental documentation is, in the opinion of the Council on
123 Environmental Quality, a significant change in the information
124 contained in the environmental impact evaluation, the sponsoring
125 agency shall hold a second public scoping meeting in accordance with
126 the provisions of subdivision (3) of this section within thirty days of
127 the submission of the supplemental documentation to the council on
128 such supplemental information.

129 (5) An environmental impact evaluation shall include a detailed
130 written evaluation of [its environmental impact before deciding
131 whether to undertake or approve such action. All such environmental
132 impact evaluations shall be detailed statements setting] the impact of
133 the proposed action that sets forth the following: [(1)] (A) (i) A
134 description of the proposed action; (ii) a detailed description of the

135 purpose of and need for the proposed action; and (iii) in the case of a
136 proposed facility, a description of the required floor area, parking,
137 water supply, wastewater treatment, and other infrastructure needs;
138 [(2)] (B) the environmental consequences of the proposed action,
139 including direct and indirect effects which might result during and
140 subsequent to the proposed action; [(3)] (C) any adverse environmental
141 effects which cannot be avoided and irreversible and irretrievable
142 commitments of resources should the proposal be implemented; [(4)]
143 (D) (i) alternatives to the proposed action, including the alternative of
144 not proceeding with the proposed action, [(5)] in priority of whether
145 such alternatives avoid, minimize or mitigate environmental impacts;
146 (ii) in the case of a proposed facility, all of the sites controlled by or
147 reasonably available to such sponsoring agency that would meet the
148 description of the purpose of and need for such facility and, where
149 possible, a detailed description of the mitigation measures proposed to
150 minimize environmental impacts at the proposed alternative sites and
151 a plan for monitoring such mitigation measures as approved by the
152 Department of Environmental Protection; (E) a detailed description of
153 the mitigation measures proposed to minimize environmental impacts
154 of the proposed action as approved by the Department of
155 Environmental Protection; [(6)] (F) an analysis of the short term and
156 long term economic, social and environmental costs and benefits of the
157 proposed action; [(7)] (G) the effect of the proposed action on the use
158 and conservation of energy resources; and [(8)] (H) a description of the
159 effects of the proposed action on sacred sites or archaeological sites of
160 state or national importance. In the case of an action which affects
161 existing housing, the evaluation shall also contain a detailed statement
162 analyzing [A] (i) housing consequences of the proposed action,
163 including direct and indirect effects which might result during and
164 subsequent to the proposed action by income group as defined in
165 section 8-37aa and by race, and [B] (ii) the consistency of the housing
166 consequences with the long-range state housing plan adopted under
167 section 8-37t. As used in this section, "sacred sites" and "archaeological

168 sites" shall have the same meaning as in section 10-381.

169 (6) The provisions of this section shall not apply if a sponsoring
170 agency proposes to develop a number of facilities or a number of
171 phased development projects and develops a comprehensive
172 environmental siting impact evaluation in order to identify sites where
173 development is appropriate as well as those areas of environmental
174 sensitivity where development should be avoided. In developing such
175 a comprehensive environmental siting impact evaluation, the
176 sponsoring agency shall conduct an early public scoping process as set
177 forth in subdivision (3) of this section. After considering all comments
178 received pursuant to such process, the sponsoring agency shall
179 prepare an environmental impact evaluation pursuant to subdivision
180 (5) of this section, as applicable, the purpose of which shall be broadly
181 defined to include the full breadth of the proposed facilities
182 contemplated by the sponsoring agency over a foreseeable time frame.
183 Such environmental impact evaluation shall also consist of a natural
184 resource assessment, as approved by the Department of
185 Environmental Protection, that considers all reasonably likely direct
186 and indirect effects of the proposed facilities and identifies those sites
187 or portions of sites for which development of the proposed facilities
188 will have the least environmental impact, and therefore are the most
189 appropriate for development, as well as those sites, or portions of
190 those sites that are the most environmentally sensitive, and therefore
191 are inappropriate for development. The sponsoring agency shall utilize
192 such environmental impact evaluation to develop a master site plan
193 for the proposed facilities. The Secretary of the Office of Policy and
194 Management shall approve such master site plan. No agency may
195 utilize such master plan pursuant to this section for greater than ten
196 years without resubmitting such master plan to the secretary for
197 approval. Specific projects are then subject to a subsequent master site
198 plan review by the secretary to determine whether the specific project
199 conforms with the master site plan and to avoid, minimize, and
200 mitigate environmental impact. The secretary shall issue a decision as

201 to whether the specific projects conform to the master site plan within
202 ninety days following the date in which the sponsoring agency
203 requests the secretary to perform such a review.

204 (7) (A) The Council on Environmental Quality shall publish notices
205 of proposed agency actions, facilities or projects twice each month in
206 the Environmental Monitor. Filings of such notices received by five
207 o'clock p.m. on the fifteenth day of each month shall be published in
208 the Environmental Monitor that is issued seven to ten days thereafter.
209 Filings of such notices received between the fifteenth day of each
210 month and five o'clock p.m. on the last day of each month shall be
211 published in the Environmental Monitor that is issued seven to ten
212 days thereafter. (B) The council shall distribute a subscription or a copy
213 of the Environmental Monitor to any state agency or member of the
214 public upon request. The council may remove any person from the
215 Environmental Monitor subscription list who fails to respond to a
216 written request from the council that asks the recipient to verify the
217 person's desire to continue to receive the Environmental Monitor. The
218 council shall also distribute the Environmental Monitor to each
219 municipality for posting in public libraries or town halls.

220 (8) The Council on Environmental Quality shall publish an annual
221 report that includes, but not be limited to, a discussion of the extent to
222 which the processes in this section have furthered the goals of the
223 state's environmental policies.

224 Sec. 2. Section 22a-1d of the general statutes is repealed and the
225 following is substituted in lieu thereof:

226 (a) Evaluations required by sections 22a-1a to 22a-1f, inclusive, and
227 a summary thereof, including any negative findings, and
228 environmental statements otherwise required and prepared
229 subsequent to July 8, 1975, shall be submitted for comment and review
230 to the Council on Environmental Quality, the Department of
231 Environmental Protection, the Connecticut Historical Commission, the

232 Department of Economic and Community Development in the case of
233 a proposed action that affects existing housing, and other appropriate
234 agencies, and to the town clerk of each municipality affected thereby,
235 and shall be made available to the public for inspection and comment
236 at the same time. The department, institution or agency responsible for
237 preparing an evaluation shall publish forthwith a notice of the
238 availability of such evaluation and summary in a newspaper of general
239 circulation in the municipality at least once a week for three
240 consecutive weeks and in the [Connecticut Law Journal]
241 Environmental Monitor published pursuant to subdivision (7) of
242 section 22a-1b, as amended by this act. The department, institution, or
243 agency preparing an evaluation required by section 22a-1b or finding
244 that proposed action shall have no significant environmental impact,
245 shall hold a public hearing on the evaluation or finding that proposed
246 action shall have no significant environmental impact if twenty-five
247 persons or an association having not less than twenty-five persons
248 requests such a hearing within ten days of the publication of the notice
249 in the [Connecticut Law Journal] Environmental Monitor.

250 (b) All comments received by the sponsoring agency, [department
251 or institution] preparing the evaluation shall be forwarded to the
252 Secretary of the Office of Policy and Management and the Council on
253 Environmental Quality.

254 (c) All comments so forwarded to the Secretary of the Office of
255 Policy and Management and the Council on Environmental Quality
256 shall be available for public inspection.

257 (d) The Department of Environmental Protection may enforce the
258 application of any mitigation measures proposed by the sponsoring
259 agency pursuant to subdivision (3) or (5) of section 22a-1b, as amended
260 by this act, or for which the department does not have independent
261 jurisdiction pursuant to the general statutes.

262 Sec. 3. Section 22a-1e of the general statutes is repealed and the

263 following is substituted in lieu thereof:

264 (a) The Office of Policy and Management shall review all such
265 evaluations and statements, together with the comments thereon, and
266 shall make a written determination as to whether such evaluation
267 satisfies the requirements of this part and regulations adopted
268 pursuant thereto, which determination shall be made public and
269 forwarded to the agency, department or institution preparing such
270 evaluation. Such determination may require the revision of any
271 evaluation found to be inadequate. Any member of the Office of Policy
272 and Management which has prepared an evaluation and submitted it
273 for review shall not participate in the decision of the office on such
274 evaluation. The agency, department or institution preparing the
275 evaluation shall take into account all public and agency comments
276 when making its final decision on the proposed action.

277 (b) The Commissioner of Environmental Protection shall, upon
278 reviewing all public comments received during a public hearing held
279 pursuant to subdivision (3) of section 22a-1b, as amended by this act,
280 and any environmental impact statement prepared by a sponsoring
281 agency pursuant to subdivision (3) of section 22a-1b, as amended by
282 this act, and as early as practicable, issue a written determination to the
283 sponsoring agency responsible for any proposed actions that states
284 which of the alternative sites, or portions of alternative sites that meet
285 the stated purpose and need of the proposed action constitute the least
286 environmentally sensitive practicable site. Such determination shall be
287 issued after consideration of which site would avoid and minimize any
288 likely direct and indirect effects, as defined by section 22a-1a-3 of the
289 Regulations of Connecticut State Agencies, of the proposed action by
290 comparing each site and its surrounding affected environment. The
291 sponsoring agency shall select the alternative or the site that the
292 commissioner determines is the least environmentally damaging.

293 Sec. 4. The Council on Environmental Quality shall, on or before

294 December 31, 2001, and after holding at least one public hearing,
295 submit a report to the joint standing committee of the General
296 Assembly having cognizance of matters relating to the environment, in
297 accordance with the provisions of section 11-4a of the general statutes.
298 Such report shall contain recommendations to such committee and the
299 Governor for the further streamlining and revision to the
300 Environmental Policy Act pursuant to sections 22a-1 to 22a-1i,
301 inclusive, of the general statutes to allow a streamlined review for
302 proposed projects with little likely environmental impact, while
303 strengthening the quality and consistency of the environmental review
304 for those state and private projects likely to have a significant
305 environmental impact. In preparing its report, the council shall
306 consider recommendations for: (1) Achieving consistency among the
307 environmental classification documents of each state agency; (2)
308 categories of state projects, based on their proposed location, which
309 have little likely environmental impact and as a result should be
310 presumed to be subject to a streamlined finding of no significant
311 impact; (3) categories of state and private projects, based on their
312 proposed location, that are likely to have a significant environmental
313 impact, and as a result should be presumed to require an
314 environmental impact evaluation; (4) a system for enforcing the
315 outcomes of the environmental review process; (5) the relationship of
316 the processes pursuant to the Environmental Policy Act to existing
317 permit programs; and (6) projects where cumulative impacts are of
318 particular concern.

319 Sec. 5. Section 22a-16 of the general statutes is repealed and the
320 following is substituted in lieu thereof:

321 (a) The Attorney General, any political subdivision of the state, any
322 instrumentality or agency of the state or of a political subdivision
323 thereof, any person, partnership, corporation, association, organization
324 or other legal entity may maintain an action in the superior court for
325 the judicial district wherein the defendant is located, resides or

326 conducts business, except that where the state is the defendant, such
327 action shall be brought in the judicial district of Hartford, for
328 declaratory and equitable relief against the state, any political
329 subdivision thereof, any instrumentality or agency of the state or of a
330 political subdivision thereof, any person, partnership, corporation,
331 association, organization or other legal entity, acting alone, or in
332 combination with others, for the protection of the public trust in the
333 air, water and other natural resources of the state from unreasonable
334 pollution, impairment or destruction provided no such action shall be
335 maintained against the state for pollution of real property acquired by
336 the state under subsection (e) of section 22a-133m, where the spill or
337 discharge which caused the pollution occurred prior to the acquisition
338 of the property by the state.

339 (b) No party shall file an action pursuant to subsection (a) of this
340 section that challenges the Secretary of the Office of Policy and
341 Management's decision that a specific project proposed by a
342 sponsoring agency conforms with its master site plan developed
343 pursuant to subdivision (6) of section 22a-1b, as amended by this act,
344 forty-five or more days after the secretary issues such a ruling.

345 (c) The University of Connecticut may request a probable cause
346 hearing no later than thirty days after the filing of a complaint against
347 it pursuant to subsection (a) of this section at which the complainant
348 shall identify (1) the natural resource likely to be impaired; (2) the
349 offending activity; and (3) the probable harm from such offending
350 activity. The complainant shall demonstrate that it will, more likely
351 than not, be able to prevail on a full trial on the merits.

352 Sec. 6. Section 22a-19 of the general statutes is repealed and the
353 following is substituted in lieu thereof:

354 (a) In any administrative, licensing or other proceeding, and in any
355 judicial review thereof made available by law, the Attorney General,
356 any political subdivision of the state, any instrumentality or agency of

357 the state or of a political subdivision thereof, any person, partnership,
358 corporation, association, organization or other legal entity may
359 intervene as a party on the filing of a verified pleading asserting that
360 the proceeding or action for judicial review involves conduct which
361 has, or which is reasonably likely to have, the effect of unreasonably
362 polluting, impairing or destroying the public trust in the air, water or
363 other natural resources of the state.

364 (b) In any administrative, licensing or other proceeding, the agency
365 shall consider the alleged unreasonable pollution, impairment or
366 destruction of the public trust in the air, water or other natural
367 resources of the state and no conduct shall be authorized or approved
368 which does, or is reasonably likely to, have such effect so long as,
369 considering all relevant surrounding circumstances and factors, there
370 is a feasible and prudent alternative consistent with the reasonable
371 requirements of the public health, safety and welfare.

372 (c) The University of Connecticut may request a probable cause
373 hearing no later than thirty days after the filing of a complaint against
374 it pursuant to this section at which the complainant shall identify (1)
375 the natural resource likely to be impaired; (2) the offending activity;
376 and (3) the probable harm from such offending activity. The
377 complainant shall demonstrate that it will, more likely than not, be
378 able to prevail on a full trial on the merits.

ENV *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Significant Cost

Affected Agencies: Departments of Environmental Protection, Economic and Community Development, Transportation, University of Connecticut, Council on Environmental Quality, Office of Policy and Management, Various

Municipal Impact: None

Explanation

State Impact:

The bill substantially changes the Connecticut Environmental Policy Act (CEPA) and significantly increases costs to the state.

Due to the demands that the “early public scoping process” would place on the Department of Transportation (DOT), additional costs to complete State Finding of No Significant Impacts (FONSIs) could be approximately \$563,000. (This is based on an average of 6 FONSIs a year at an average cost of \$125,000 each). Similarly, average costs for the preparation of Environmental Impact Statements/Environmental Impact Evaluations (EIS/EIE) is \$6.0 million annually. The additional processes required under the bill could result in additional annual

costs totaling \$1.5 million. Moreover, there are other unidentifiable costs. For instance, most transportation projects using federal transportation funding require review under the National Environmental Policy Act (NEPA). At present, CEPA requirements are similar to NEPA and the review process for both NEPA and CEPA are conducted jointly. The bill would create a CEPA process different from NEPA, which could result in potential additional costs to the process. Similarly, the provisions regarding Master Site Plans are inconsistent with the Federal Aviation Administration (FAA) planning process used in the preparation of airport master plans at Bradley, the five state-owned airports and the three municipally owned airports. The inconsistencies could add to the costs in the preparation of the master plans.

The Council of Environmental Quality (CEQ) which currently has a staff of two, will require a part-time employee and associated Other Expenses to produce the Environmental Monitor costing approximately \$35,000 a year. CEQ will need a minimum of 2 analysts and a clerical and associated other expenses, at a cost of approximately \$165,000 a year for the reviews required due to changes in the CEPA process and the increased administrative workload. Estimated total costs to CEQ would be \$200,000 a year.

The bill will increase costs to the Department of Environmental Protection. It adds several additional steps to CEPA, and requires consultation on the adequacy of finding no significant impact and determinations for identifying the least environmentally sensitive site. These steps will require two to three additional employees and

associated expenses at a cost of approximately \$125,000 to \$175,000 a year.

It is anticipated that the Department of Economic and Community Development will incur significant costs due to the changes in the CEPA. Assuming 24 projects per year (last year's total) with 12 FONSI and 12 EIE documents, costs of just under \$3 million a year could be incurred. Increased costs to DECD for personnel, legal notices, transcripts and consultants would be incurred for the public scoping and hearings. These costs are estimated at \$200,000 a year. There would also be additional costs for project management and miscellaneous costs due to the expansion of the process. Additional costs would also be incurred for needed additional consultant services, including traffic, economic, historic, alternatives reviews, etc. Costs for these activities are currently built into the project cost, but that could not occur since this process takes place before the project is selected. These costs to DECD are estimated at \$2 to \$2.5 million a year.

This bill results in significant additional costs to the Department of Public Works (in excess of \$100,000). The DPW handles major construction and development projects for many state agencies. They utilize contracted environmental analysis to perform the environmental impact analysis and statements, which currently costs form \$100,000 to \$150,000 per project. The new requirements under the bill add an additional stage to the current process, which might require additional hearings, and require additional information to be provided at various stages of the process. DPW estimates that this could double the current contact costs, adding \$100,000 to \$150,000 to

the cost of each major project.

The DPW also indicates that this has the potential to significantly lengthen the time to begin construction on projects. This would add to the actual cost of the construction due to inflation of workers' salaries and of the cost of materials. It is estimated that construction costs in this state are currently increasing by 8% to 10% per year.

The bill requires sponsoring state agencies to submit master site plans (which are based on environmental impact evaluations) to the Office of Policy and Management (OPM) if they propose to develop a number of facilities or phased development projects. OPM must review the master site plan and issue a decision within ninety days following an agency's request for review as to whether or not a specific project conforms to the plan and how to avoid, minimize, and mitigate the project's impact. This provision of the bill conforms statute to current practice; consequently, there would be no fiscal impact to OPM associated with the bill. The bill requires parties to appeal decisions made by OPM regarding master site plans within forty-five days after the agency issues a ruling.

The bill could result in an additional workload increase to the Office of the Attorney General (AG) in the event that DEP determinations identifying alternative sites are challenged since the AG must defend the DEP. In addition, the AG would need to defend OPM against challenges to its decisions regarding master site plans. It is anticipated that these provisions would have no fiscal impact to the AG since the agency already handles appeals made under CGS Section 22a-16.

Moreover, it is anticipated that appeals of OPM decisions regarding master site plan would be infrequent. This would result in a minimal workload increase that can be absorbed within anticipated budgetary resources.

Provisions in the bill will not materially alter the fiscal or programmatic operations of the University of Connecticut. Therefore, there is no fiscal impact associated with the bill

Additional agencies could also incur costs not specified above for changes in CEPA. The exact costs are indeterminate at this time.

OLR BILL ANALYSIS

sHB 6999

AN ACT CONCERNING REVISIONS TO THE CONNECTICUT ENVIRONMENTAL POLICY ACT.**SUMMARY:**

This bill substantially amends the Connecticut Environmental Policy Act (CEPA), which specifies procedures state agencies must follow to evaluate the potential environmental impact of their actions. It modifies the applicability of CEPA, which primarily covers agency actions that may affect the environment significantly (see BACKGROUND). The bill expands the roles the Council on Environmental Quality (CEQ) and the Department of Environmental Protection (DEP) play under CEPA.

The bill adds a stage to the beginning of the procedure, called the "early public scoping process." This process must include a public meeting on the agency's proposal and a public comment period. The bill establishes a deadline for preparing the documents the law requires. It makes procedural changes with regards to findings of no significant impact (FONSI), one of the principal documents produced under the procedure. It requires additional information in an environmental impact evaluation (EIE), the other major document produced under the procedure. It requires the agency to hold an additional hearing and open a comment period after the EIE is completed.

The bill requires the DEP commissioner to identify which alternative site is the least environmentally sensitive based on the information gathered under the procedure. It requires the agency to select the site that the commissioner determines is the least environmentally damaging.

The bill establishes a separate environmental review procedure for certain phased developments. It limits when an individual or entity

can file suit challenging a decision by the Office of Policy and Management (OPM) that a project conforms to a master plan for such developments developed under the bill. It has related provisions on University of Connecticut-phased developments.

The bill requires CEQ to publish a bi-monthly publication called the Environmental Monitor. Notices of proposed agency actions and the availability of documents prepared under CEPA must be published in the Monitor.

The bill codifies many provisions on the procedure that are currently in regulations.

The bill requires CEQ to report to the Environment Committee by December 31, 2001 on ways to strengthen the environmental law for projects with little likely environmental impact.

EFFECTIVE DATE: October 1, 2001

APPLICABILITY OF CEPA

Under current law, CEPA applies to any state agency, department, or institution that is responsible for making the primary recommendation on, or initiating, actions that may significantly affect the environment. The bill instead applies CEPA to the agency responsible for deciding whether to approve or undertake such an action. As a result, CEPA will no longer apply when an agency makes a recommendation on an action but does not actually approve it.

EARLY PUBLIC SCOPING PROCESS

Under the bill, each agency must conduct an early public scoping process before deciding whether to undertake or approve an action that may significantly affect the environment. The purpose of this process is to let interested parties present their views on the proposal.

The agency must notify CEQ, DEP, the departments of Economic and Community Development, Transportation, and Public Health, and any other agencies that will be affected by the proposal. The notice must (1) identify all reasonably available sites that would satisfy the purpose of

and need for the proposed action and (2) specify the day, time, and place of the scoping meeting. CEQ must publish notice of the availability of this notice and the date, time, and place of the hearing in the Environmental Monitor. The public and interested agency representatives can submit comments on the proposal during the 45 days following the agency's filing.

The agency must conduct a meeting between 25 and 35 days after starting the scoping process. At the hearing, it must provide information about the reasons for the proposed action, any permits or approvals it needs to carry out the action, plans it has to mitigate the actions, sites available to the agency, and a discussion of preferred alternative actions (and if applicable, alternative sites and a discussion of alternative sites not previously identified).

The agency must use the comments it receives in this process to help it select (1) among alternative actions or sites and (2) issues to be addressed in the environmental review process. Any substantive issues raised in this process as to sites or alternatives must be addressed in the subsequent EIE or FONSI.

DEADLINE FOR PREPARING DOCUMENTS

Under current regulations, each agency must prepare an environmental classification document that divides typical agency actions into two categories: those that (1) require preparation of a detailed EIE and (2) might significantly affect the environment, but whose impact is indeterminate in the absence of a specific proposal. When such a proposal is made, the agency must conduct an environmental assessment to determine whether to issue a FONSI or to conduct an EIE.

Under the bill, within 90 days of holding the scoping meeting, the agency must prepare (1) an environmental assessment, followed by a FONSI or (2) an EIE.

FINDING OF NO SIGNIFICANT IMPACT

The bill requires the agency to publish a notice in the Environmental Monitor when it issues a FONSI. It codifies several of the comment

procedures about FONSI that are currently in regulations and modifies others. These changes include requiring the agency to (1) forward any comments received during the 30-day comment period to CEQ, in addition to OPM, and (2) notify CEQ, rather than OPM, when proceeding on action that drew no dissenting comments during this period.

Under current regulations, any dissent is filed, OPM must decide whether an EIE must be prepared. OPM must make this determination in consultation with CEQ, DEP, and the agency. The bill instead requires CEQ to make this decision, in consultation with DEP and the agency. If CEQ decides that an EIE is necessary, the agency must prepare it within 90 days after the comment period.

ENVIRONMENTAL IMPACT EVALUATIONS

The bill expands the requirements for EIEs. It requires that they include a detailed description of the purpose of and need for the proposed action, rather than just a statement on these issues. By law, an EIE must include the mitigation measures the agency proposes to minimize environmental impact. The bill specifies that this must be a detailed description and that DEP must approve the measures. By law, an EIE must present alternatives to the proposed action (including the alternative of not proceeding). The bill requires that the alternatives be ranked in order as to whether they would avoid, minimize, or mitigate environmental impact.

Under the bill, the EIE for a proposed facility must show (1) its required floor area, parking, water supply, wastewater treatment, and other infrastructure needs and (2) all of the sites the agency controls or that are reasonably available to it that would meet its description of the purpose and need for it; and (3) where possible, a detailed description of the proposed measures to mitigate the environmental impact of the proposed alternative sites and a DEP-approved plan for monitoring these measures.

Under the bill, upon completing the EIE, the agency must publish notice of its availability in the Environmental Monitor. The agency must hold a hearing within 30 days of the publication and must concurrently provide a 45-day comment period.

The agency must submit any supplemental documentation to CEQ 90 days after completing the EIE. If CEQ determines that the documentation constitutes a significant change from the information in the EIE, the agency must hold a second public scoping hearing within 30 days of submitting the documentation to CEQ.

DEP ROLE IN FINAL SITE SELECTION

Under the bill, DEP must review all public comments received at the public hearing in the early scoping process and any EIE prepared by the agency. It must consider which of the alternative sites would avoid and minimize the likely direct and indirect effects of the agency's actions. In doing so, DEP must compare each site and its surrounding affected environment. As soon as practical, DEP then must issue a written determination to the agency as to which alternative sites or portion of such sites, (1) meets the stated purpose and need for the site and (2) constitutes the least environmentally sensitive suitable site. The agency must select the site or alternative that the commissioner determines is least environmentally damaging.

Under the bill, DEP can enforce the application of any mitigation measure an agency proposes (1) as part of the early public scoping process or EIE or (2) under any circumstance where it does not have independent jurisdiction under current law.

PHASED DEVELOPMENTS

Environmental Evaluation Process

Under the regulations, an agency must prepare a single EIE when it proposes an action that is part of a broader sequence or program. The bill instead requires an agency to follow a separate process from those described above when it (1) plans to develop several facilities or a phased development project and (2) develops a comprehensive environmental siting impact evaluation. The evaluation must identify where development is appropriate and environmentally sensitive areas where it is not. The agency must conduct the early scoping review described above as part of this evaluation.

After considering the resulting comments, the agency must prepare an environmental impact evaluation, as applicable, to address the full breath of the facilities it contemplates in the foreseeable future. The evaluation must include a DEP-approved natural resources inventory that considers all likely direct and indirect effects of the facility. The assessment must identify the sites (or portions of them) that (1) the development would impact the least and therefore would be most appropriate (2) are the most environmentally sensitive and therefore the least appropriate for development.

The agency must use the evaluation to develop a master site plan for the site, which is subject to OPM approval. An agency cannot use the master plan for more than 10 years without resubmitting it for approval.

Specific projects under the plan are subject to a master site plan review by OPM. The review must determine whether the project conforms to the plan and how to avoid, minimize, and mitigate its environmental impact. OPM must complete its review of whether a project conforms to the plan within 90 days of the agency requesting the review.

Lawsuits

By law, a wide range of public and private entities, can file suit challenging the actions of a public or private body as harming the environment. The bill requires that anyone filing a suit under this law challenging OPM's decision that a specific project proposed by an agency conforms to the master plan do so within 45 days of OPM's decision.

By law, a wide range of public and private entities can intervene in administrative actions upon filing a complaint that asserts that proposed action will harm the environment. Under the bill, if the University of Connecticut is the target of a lawsuit or an intervention in an administrative proceeding, it may request a probable cause hearing within 30 days of the filing of the suit. At the hearing, the complainant must (1) identify the natural resource likely to be impaired, (2) the offending activity, and (3) the probable harm from the activity. At the hearing, the complainant must prove that it will be more likely than not able to win the case on its merits if it goes to trial.

ENVIRONMENTAL MONITOR

Under the bill, CEQ must publish a bi-monthly Environmental Monitor that contains notices of proposed agency actions, facilities, and projects. Notices filed by five p.m. on the 15th of each month must be published in the Monitor that is published seven to 10 days later. Filings received by five p.m. of the last day of the month must be published in the Monitor issued in the first seven to 10 days of the next month.

Under the bill, evaluations conducted pursuant to CEPA and summaries of these evaluations must be published in the Monitor rather than the Connecticut Law Journal.

CEQ must distribute the Monitor, by subscription or single issue, to any agency or individual upon request. CEQ must also send a copy to municipalities for posting in libraries and town halls. CEQ can purge its subscription list of people who fail to respond to a written request to verify that they wish to continue receiving the Monitor.

CEQ must also publish an annual report that discusses how the environmental evaluation processes described above have furthered the goals of the state's environmental policies.

CEQ REPORT TO THE ENVIRONMENT COMMITTEE

By December 31, 2001, CEQ must hold at least one public hearing and issue a report to the Environment Committee on the laws the bill affects. The report must include CEQ's recommendations to the committee and the governor on how to further amend CEPA to allow for a streamlined review of proposals with little likely environmental impact while strengthening the quality and consistency of reviews of state and private projects likely to have a significant impact.

In preparing its report, CEQ must consider recommendations for:

1. achieving consistency among the environmental classification documents each state agency produces;

2. establishing categories of state projects that, based on their proposed location, are likely to have little environmental impact and that should be presumed to be subject to a streamlined FONSI process;
3. identifying state and private projects that, based on their proposed location, are likely to have significant impact and should be presumed to require a full EIE;
4. establishing a system for enforcing the outcomes of the environmental review process;
5. articulating the relationship between the CEPA process and existing permit programs; and
6. identifying projects where the cumulative impact is of particular concern.

BACKGROUND

Actions Affecting the Environment

Under CEPA actions that may significantly affect the environment are those taken by state agencies or funded by the state that (1) could have a major impact on the state's land, air, water, other environmental resources, housing, or historic buildings or (2) serve the short term but disadvantage long term environmental goals. These activities include new state projects and program and new state-funded projects. However, they do not include (1) emergency public health or safety measures or (2) activities over which the agency has no discretion.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 25 Nay 1