



Senate

General Assembly

File No. 217

February Session, 2002

Substitute Senate Bill No. 374

Senate, March 28, 2002

The Committee on Environment reported through SEN. WILLIAMS of the 29th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE OFFICE OF THE ENVIRONMENTAL ADVOCATE.

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

1 Section 1. (NEW) (*Effective October 1, 2002*) (a) There is established
2 an Office of the Environmental Advocate. The Governor, with the
3 approval of the General Assembly, shall appoint a person with
4 experience in and a demonstrated commitment to environmental
5 protection to fill the Office of the Environmental Advocate. Such
6 person shall be qualified by training and experience to perform the
7 duties of the office as set forth in section 2 of this act. The appointment
8 shall be made from a list of no less than three and no more than five
9 persons prepared and submitted by the advisory committee
10 established pursuant to section 6 of this act. Upon any vacancy in the
11 position of Environmental Advocate, the advisory committee shall
12 meet to consider and interview successor candidates and shall submit
13 to the Governor a list of no less than three and no more than five of the
14 most outstanding candidates, on or before sixty days after such

15 vacancy. Such list shall rank the candidates in the order of committee
16 preference. Upon receipt of the list of candidates from the advisory
17 committee, the Governor shall designate a candidate for
18 Environmental Advocate from among the choices not later than four
19 weeks after receipt of such list. If at any time any of the candidates
20 withdraw from consideration prior to confirmation by the General
21 Assembly, the designation shall be made from the remaining
22 candidates on the list submitted to the Governor. If a candidate has not
23 been designated by the Governor within the four-week time period,
24 the candidate ranked first shall receive the designation and be referred
25 to the General Assembly for confirmation by a two-thirds majority. If
26 the General Assembly is not in session, the designated candidate shall
27 serve as acting Environmental Advocate, and be entitled to the
28 compensation, privileges and powers of the Environmental Advocate
29 until the General Assembly meets to take action on said appointment.
30 The person appointed Environmental Advocate shall serve for a term
31 of five years and may be reappointed or shall continue to hold office
32 until such person's successor is appointed and qualified. Upon any
33 vacancy in the position of Environmental Advocate and until such
34 time as a candidate has been confirmed by the General Assembly or, if
35 the General Assembly is not in session, has been designated by the
36 Governor, the Associate Environmental Advocate shall serve as the
37 acting Environmental Advocate and be entitled to the compensation,
38 privileges and powers of the Environmental Advocate. The
39 Environmental Advocate shall not be removed from office except for
40 cause, as determined by a two-thirds majority of the General
41 Assembly.

42 (b) The Office of the Environmental Advocate shall be in the
43 Freedom of Information Commission for administrative purposes
44 only.

45 (c) Notwithstanding any other provision of the general statutes, the
46 Environmental Advocate shall act independently of any state
47 department or any officer, agent or employee of the state or a political
48 subdivision thereof in the performance of his or her duties.

49 (d) The Environmental Advocate may, within available funds,
50 appoint such staff as may be deemed necessary for the fiscal years
51 ending June 30, 2003, and June 30, 2004. The duties of the staff may
52 include the duties and powers of the Environmental Advocate if
53 performed under the direction of the Environmental Advocate.

54 (e) The General Assembly shall annually appropriate such sums as
55 necessary for the payment of the salaries of the staff and for the
56 payment of office expenses and other actual expenses incurred by the
57 Environmental Advocate in the performance of his or her duties. Any
58 monetary judgment or award obtained by the state in actions brought
59 by the Environmental Advocate shall be deposited in the General
60 Fund.

61 Sec. 2. (NEW) (*Effective October 1, 2002*) (a) The Environmental
62 Advocate shall:

63 (1) Evaluate the delivery of services by and the mandates of the
64 Department of Environmental Protection and recommend such
65 changes, including recommendations as to funding and organization,
66 so that the department has adequate resources and direction to
67 properly deliver services and meet its mandates;

68 (2) Review periodically the procedures established by the
69 Department of Environmental Protection with a view toward the
70 timely enforcement of environmental protection requirements, and to
71 recommend revisions to such procedures;

72 (3) Review complaints of persons and investigate those that appear
73 to constitute a violation of environmental quality standards or
74 improper enforcement thereof and that appear to require systemic or
75 legislative change;

76 (4) Investigate and report to the director or person in charge of any
77 state agency, instrumentality, or political subdivision, and the
78 chairmen and ranking members of the joint standing committee of the
79 General Assembly having cognizance of matters relating to the

80 environment, any occurrences, conditions, or practices with respect to
81 procedures, personnel, environmental quality standards or facilities
82 which reflect inadequacies in evaluating or protecting the state's
83 environment;

84 (5) Take action including, but not limited to, conducting programs
85 of public education, undertaking legislative advocacy, making
86 proposals for systemic reform, and formal legal action, in order to
87 secure and ensure compliance by any state or municipal offices or
88 agencies with the provisions of any promulgated environmental
89 quality standards;

90 (6) Take appropriate steps to advise the public of the services of the
91 Office of the Environmental Advocate, the purpose of the office and
92 procedures to contact the office; and

93 (7) Initiate or intervene in any pro-environmental effort to further
94 the goal of a clean and safe environment.

95 (b) The Environmental Advocate shall annually submit to the
96 Governor, the chairmen and ranking members of the joint standing
97 committee of the General Assembly having cognizance of matters
98 relating to the environment and the Council on Environmental Quality
99 a detailed report analyzing the work of the Office of the Environmental
100 Advocate.

101 Sec. 3. (NEW) (*Effective October 1, 2002*) (a) Notwithstanding any
102 provision of the general statutes concerning the confidentiality of
103 records and information, the Environmental Advocate shall have
104 access to, including the right to inspect and copy, any records
105 necessary to carry out the responsibilities of the Environmental
106 Advocate as provided in section 2 of this act. If the Environmental
107 Advocate is denied access to any records necessary to carry out said
108 responsibilities, he or she may issue a subpoena for the production of
109 such records as provided in subsection (b) of this section.

110 (b) The Environmental Advocate may issue subpoenas to compel

111 the attendance and testimony of any employees or contractors of any
112 state or municipal offices or agencies or the production of books,
113 papers and other documents from such offices and agencies and to
114 administer oaths to such employees or contractors in any matter under
115 his or her investigation. If any person to whom such subpoena is
116 issued fails to appear or, having appeared, refuses to give testimony or
117 fails to produce the evidence required, the Environmental Advocate
118 may apply to the superior court for the judicial district of Hartford
119 which shall have jurisdiction to order such person to appear and give
120 testimony or to produce such evidence, as the case may be.

121 (c) The Environmental Advocate may apply for and accept grants,
122 gifts and bequests of funds from other states, federal and interstate
123 agencies and independent authorities and private firms, individuals
124 and foundations, for the purpose of carrying out his or her
125 responsibilities. There is established within the General Fund an
126 environmental advocate account which shall be a separate nonlapsing
127 account. Any funds received under this subsection shall, upon deposit
128 in the General Fund, be credited to said account and may be used by
129 the Environmental Advocate in the performance of his or her duties.

130 Sec. 4. (NEW) (*Effective October 1, 2002*) (a) The name, address and
131 other personally identifiable information of a person who makes a
132 complaint to the Environmental Advocate as provided in section 2 of
133 this act, all information obtained or generated by the office in the
134 course of an investigation and all confidential records obtained by the
135 Environmental Advocate or a designee shall be confidential and shall
136 not be subject to disclosure under the Freedom of Information Act or
137 otherwise, except that such information and records, other than
138 confidential information concerning a pending law enforcement
139 investigation or a pending prosecution, may be disclosed if the
140 Environmental Advocate determines that disclosure is (1) in the
141 general public interest, or (2) necessary to enable the Environmental
142 Advocate to perform his or her responsibilities.

143 (b) No state or municipal agency shall discharge, or in any manner

144 discriminate or retaliate against, any employee who in good faith
145 makes a complaint to the Environmental Advocate or cooperates with
146 the Office of the Environmental Advocate in an investigation.

147 Sec. 5. (NEW) (*Effective October 1, 2002*) The state of Connecticut
148 shall protect and hold harmless any person employed by the Office of
149 the Environmental Advocate and any volunteer appointed by the
150 Environmental Advocate from financial loss and expense, including
151 legal fees and costs, if any, arising out of any claim, demand or suit for
152 damages resulting from acts or omissions committed in the discharge
153 of his or her duties with the program within the scope of his or her
154 employment or appointment which may constitute negligence but
155 which acts are not wanton, malicious or grossly negligent as
156 determined by a court of competent jurisdiction.

157 Sec. 6. (NEW) (*Effective October 1, 2002*) (a) There is established an
158 advisory committee to the Office of the Environmental Advocate
159 which shall prepare and submit to the Governor in accordance with
160 section 1 of this act a list of candidates for appointment as
161 Environmental Advocate. The advisory committee shall meet three
162 times a year with the Environmental Advocate and his or her staff to
163 review and assess the following: (1) National and state trends and
164 initiatives regarding environmental protection; (2) policy implications
165 of the findings of subdivision (1) of this subsection; and (3) necessary
166 systemic improvements. The advisory committee shall also provide for
167 an annual evaluation of the effectiveness of said office.

168 (b) The advisory committee shall consist of: (1) One representative
169 of the League of Conservation Voters, appointed by its board of
170 directors; (2) one representative of the Nature Conservancy, appointed
171 by its board of directors; (3) one representative of the Sierra Club,
172 appointed by its board of directors; (4) one representative of Clean
173 Water Action, appointed by its board of directors; (5) one member of
174 Save The Sound, appointed by its board of directors; (6) one member
175 of Toxics Action Center, appointed by its board of directors; (7) one
176 member of a land or open space preservation group, appointed by the

177 speaker of the House of Representatives; (8) one member of the
 178 Connecticut Fund for the Environment, appointed by the majority
 179 leader of the House of Representatives; (9) one member of either the
 180 National or Connecticut Audubon Society, appointed by the minority
 181 leader of the House of Representatives; (10) one physician, appointed
 182 by the president pro tempore of the Senate; (11) one attorney with
 183 expertise in environmental law, appointed by the majority leader of
 184 the Senate; and (12) one representative from the educational
 185 community with an expertise in environmental science, appointed by
 186 the minority leader of the Senate. Each member of the advisory
 187 committee shall serve a five-year term.

This act shall take effect as follows:	
Section 1	<i>October 1, 2002</i>
Sec. 2	<i>October 1, 2002</i>
Sec. 3	<i>October 1, 2002</i>
Sec. 4	<i>October 1, 2002</i>
Sec. 5	<i>October 1, 2002</i>
Sec. 6	<i>October 1, 2002</i>

Statement of Legislative Commissioners:

In subsection (e) of section 1, "legal or courts fees" was changed to "monetary judgment or award" for accuracy and in subdivision (3) of subsection (a) of section 2, "proper" was changed to "improper" for accuracy.

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:

Fund-Type	Agency Affected	FY 03 \$	FY 04 \$
GF - Cost	Office of the Environmental Advocate; Freedom of Information Commission	Significant	Significant
GF - Revenue Gain		Minimal	Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

Passage of this bill will result in significant costs to the state. It is anticipated that the following staffing and expenses would be required for the creation of the Office of the Environmental Advocate:

	<u>FY 03 (3/4 year)</u>	<u>FY 04</u>
1 Environmental Advocate	\$63,750	\$85,000
1 Administrative Assistant	33,750	45,000
1 Attorney	52,500	70,000
1 Investigator/ Analyst	45,000	60,000
Other Expenses	15,000	20,000
Equipment	30,000	3,000
Total	\$ 240,000	\$283,000

In addition to salary costs, there would be costs of approximately 42.29% for each additional employee for fringe benefits incurred by the Comptroller's fringe benefits account.

The Freedom of Information Commission will also incur costs for this office being placed within the Commission for administrative purposes only. These costs include:

	<u>FY 03 (3/4 Year)</u>	<u>FY 04</u>
1 Fiscal Administrative Assistant	\$34,000	\$46,000
Other Expenses	7,500	7,500
Equipment	17,000	1,000
Total	\$58,500	\$54,500

Part of the costs above include funds to restructure the current office. There is currently not enough space to accommodate these employees.

sHB 5019, the Appropriations Act, as favorably reported by the Appropriations Committee appropriates \$100,000 in FY 03 for the Office of the Environmental Advocate.

The bill also indemnifies the employees of the Office of the Environmental Advocate and volunteers appointed by the Environmental Advocate. By extending this protection, the state's risk of litigation increases. The potential cost of litigation involving the Office of the Environmental Advocate and resulting in judgments against the state is significant but not anticipated. Similar agencies such as the Office of the Victim Advocate and the Office of the Child Advocate have operated without resulting in judgments against the state. The Office of the Attorney General (AG) would have to represent the Office of the Environmental Advocate and provide legal counseling to the agency. It is anticipated that the AG would be able to absorb the additional workload within available resources.

Any revenue derived through grants, gifts, bequests or judgments is anticipated to be minimal at this time.

OLR Bill Analysis

sSB 374

AN ACT CONCERNING THE OFFICE OF THE ENVIRONMENTAL ADVOCATE**SUMMARY:**

This bill creates an independent environmental advocate with the authority to:

1. evaluate the services provided by the Department of Environmental Protection (DEP), and recommend changes in funding, organization, and other areas to ensure DEP has adequate resources and direction to meet its mandates;
2. periodically review and recommend ways to revise DEP enforcement procedures;
3. review and investigate complaints about violations of environmental quality standards or of improper enforcement that appear to require systemic or legislative change;
4. investigate and report to the heads of state agencies, instrumentalities or municipalities, and the Environment Committee, any inadequacies in evaluating or protecting the environment;
5. conduct public education programs and advocate in the legislature on behalf of the environment;
6. propose systemic reform and take legal action to ensure that state or municipal agencies comply with environmental quality standards;
7. inform the public about the advocate's mission; and
8. begin or intervene in any effort to promote a clean and safe environment.

The bill gives the advocate access to, and the right to inspect and copy, any records he needs to carry out his duties, regardless of Freedom of Information laws concerning confidentiality. He may issue a subpoena (1) for the production of any such records, (2) to compel the attendance and testimony of any employees or contractors of any state or municipal agency, and (3) to obtain documents from those agencies. He may administer oaths to such employees or contractors in matters he is investigating, and if necessary, seek an order from Hartford Superior Court for the production of such testimony or documents.

The bill requires the advocate to keep confidential the name, address and other personally identifiable information of anyone who makes a complaint to his office. All information his office obtains or generates in the course of an investigation, and all confidential records he obtains, are confidential and exempt from disclosure under the Freedom of Information law. However, the advocate may disclose information, except for confidential information concerning a pending law enforcement investigation or prosecution, if he finds that disclosure is in the general public interest and necessary for him to perform his duties.

The bill prohibits state and municipal agencies from discharging, discriminating against, or retaliating against any employee who makes a good faith complaint to the advocate or cooperates with his office in an investigation.

It requires the state to indemnify anyone the advocate hires or appoints as a volunteer against financial loss from lawsuits claiming damages from his activities in discharging his duties. The protection applies to acts that may be negligent but which are not wanton, malicious or grossly negligent as determined by a court.

The bill establishes a five-year term for the advocate, who may be reappointed to more than one term. The bill prohibits his removal from office, except for cause as determined by a two-thirds vote of the legislature.

The bill requires the legislature to annually appropriate money for the salaries of the advocate and his staff and for the payment of its expenses. It requires the advocate to deposit any monetary judgment or award he obtains in the General Fund. The bill authorizes the advocate to appoint staff, within available funds, for FYs 2002-03 and 2003-04.

It authorizes the advocate to apply for and accept grants, gifts and bequests of funds from other states, federal and interstate agencies, independent authorities, private firms, individuals, and foundations to carry out his duties. It creates a separate, nonlapsing fund within the General Fund for the deposit of such funds and for the advocate to use in performing his duties.

The bill creates a 12-member advisory committee to prepare a list of candidates from whom the governor must choose the advocate, and to annually evaluate the office. The committee must meet three times a year with the advocate to review and assess national and state trends regarding environmental protection, their policy implications, and any necessary systemic improvements. Committee members serve five-year terms.

The advocate must report annually to the governor, the Environment committee, and the Council on Environmental Quality.

The bill places the advocate within the Freedom of Information Commission, for administrative purposes only.

EFFECTIVE DATE: October 1, 2002

APPOINTMENT PROCESS

The bill requires the governor to appoint the advocate with the legislature's approval. He must choose the advocate, who must have appropriate training and experience and a dedication to environmental protection, from a list of three to five candidates the advisory committee prepares. When a vacancy occurs, the committee must consider and interview candidates, and, within 60 days, give the governor a list of three to five candidates ranked in order of committee preference. If a candidate withdraws from consideration, the governor must choose from among the remaining candidates. If the governor fails to select an advocate within four weeks of receiving the list, the top-ranked candidate is designated, subject to confirmation by two-thirds of the legislature. If the legislature is not in session, the designated candidate must serve as acting advocate until the legislature meets to act on his appointment. The advocate may be reappointed or continue in office until a successor is named. When a vacancy occurs, the associate environmental advocate serves as acting advocate until the legislature confirms a new advocate, or, if the legislature is not in session, the governor designates one.

ADVISORY COMMITTEE DUTIES AND COMPOSITION

Committee members must include representatives of the following organizations, appointed by their respective boards:

1. League of Conservation Voters;
2. Nature Conservancy;
3. Sierra Club;
4. Clean Water Action;
5. Save The Sound; and
6. Toxics Action Center.

It must also include the following:

1. one member of a land or open space preservation group, appointed by the House speaker;
2. one member of the Connecticut Fund for the Environment, appointed by the House majority leader;
3. one member of either the National or Connecticut Audubon Society, appointed by the House minority leader;
4. one physician, appointed by the Senate president pro tempore;
5. one attorney with expertise in environmental law, appointed by the Senate majority leader; and
6. one representative of the educational community with expertise in environmental science, appointed by the Senate minority leader.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 16 Nay 8