



# Senate

General Assembly

**File No. 416**

*January Session, 2013*

Substitute Senate Bill No. 814

*Senate, April 9, 2013*

The Committee on Planning and Development reported through SEN. CASSANO, S. of the 4th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING INTERVENTION IN PERMIT PROCEEDINGS  
PURSUANT TO THE ENVIRONMENTAL PROTECTION ACT OF 1971.***

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

1 Section 1. Subsection (a) of section 22a-19 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective*  
3 *October 1, 2013*):

4 (a) (1) In any administrative, licensing or other proceeding, and in  
5 any judicial review thereof made available by law, the Attorney  
6 General, any political subdivision of the state, any instrumentality or  
7 agency of the state or of a political subdivision thereof, any person,  
8 partnership, corporation, association, organization or other legal entity  
9 may intervene as a party on the filing of a verified pleading asserting  
10 that the proceeding or action for judicial review involves conduct  
11 which has, or which is reasonably likely to have, the effect of  
12 unreasonably polluting, impairing or destroying the public trust in the  
13 air, water or other natural resources of the state. For purposes of this

14 section, "judicial review" means an appeal of a decision that is taken by  
 15 a party to the administrative, licensing or other proceeding or by a  
 16 person aggrieved by such decision, and "reviewing authority" means  
 17 the board, commission or other decision-making authority in any  
 18 administrative, licensing or other proceeding or the court in any  
 19 judicial review.

20 (2) The verified pleading shall: (A) Contain specific factual  
 21 allegations setting forth the nature of the alleged unreasonable  
 22 pollution, impairment or destruction of the public trust in air, water or  
 23 other natural resources of the state, and (B) state the material facts  
 24 upon which the intervention is based in sufficient detail to allow the  
 25 reviewing authority to determine from the face of the pleading  
 26 whether the intervention implicates an issue within the reviewing  
 27 authority's jurisdiction.

28 (3) In any administrative, licensing or other proceeding to which  
 29 statutory deadlines apply, the verified pleading shall be filed within  
 30 the requirements of any statutory deadlines applicable to the  
 31 acceptance of evidence, testimony or legal argument, except that a  
 32 verified pleading may be filed (A) not later than fifteen days after an  
 33 applicant in an administrative, licensing or other proceeding submits a  
 34 final modified application to a reviewing authority, or (B) prior to the  
 35 time a reviewing authority issues a decision on an application in an  
 36 administrative, licensing or other proceeding, whichever is earlier. For  
 37 any judicial review, a verified pleading shall be filed within the  
 38 deadlines that apply to such filings.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2013	22a-19(a)

**PD**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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**OFA Fiscal Note****State Impact:** None**Municipal Impact:** None**Explanation**

The bill sets conditions on verified pleadings by parties seeking to intervene in a proceeding on, or judicial review of, conduct that could harm the state's natural resources. There is no anticipated fiscal impact, as the bill is not expected to impact the ability of the state or municipalities to intervene in these proceedings.

**The Out Years****State Impact:** None**Municipal Impact:** None

**OLR Bill Analysis****sSB 814****AN ACT CONCERNING INTERVENTION IN PERMIT PROCEEDINGS PURSUANT TO THE ENVIRONMENTAL PROTECTION ACT OF 1971.****SUMMARY:**

This bill sets conditions on verified pleadings by parties seeking to intervene in a proceeding on, or judicial review of, conduct that could harm the state's natural resources. The bill (1) specifies the contents of such pleadings, (2) creates deadlines for intervention petitions, and (3) defines "judicial review" and "reviewing authority" for these purposes.

By law, any individual, the attorney general, a state agency or municipality, corporation, organization, association, or other legal entity may intervene as a party in any administrative, licensing, or other proceeding, or any judicial review of a proceeding, by filing a verified pleading asserting that the proceeding or review involves conduct that has, or likely will, unreasonably pollute, impair, or destroy the public trust in the state's natural resources.

EFFECTIVE DATE: October 1, 2013

**VERIFIED PLEADING**

Under the bill, a verified pleading in a proceeding under CGS § 22-19 must:

1. contain specific factual allegations setting forth the nature of the alleged unreasonable pollution, impairment, or destruction; and
2. state the material facts upon which the intervention is based in sufficient detail to allow the reviewing authority to determine,

based on the pleading itself, whether the intervention implicates an issue within its jurisdiction (see BACKGROUND).

### **FILING DEADLINE**

The bill generally requires intervenors' verified pleadings in such administrative, licensing, or other proceedings to be filed in accordance with any applicable statutory deadlines for filing evidence, testimony, or legal arguments. The bill also provides that a verified pleading may be filed on the earlier of the following:

1. within 15 days after an applicant's submission of a final modified application to the reviewing authority, or
2. before a reviewing authority issues a decision on an application.

Intervenors in a judicial review proceeding must file verified pleadings according to any applicable filing deadlines.

### **DEFINITIONS**

For the purposes of this statute, the bill defines:

1. "judicial review" as an appeal of decision resulting from an administrative, licensing, or other proceeding that is made by a party to the original proceeding or an aggrieved person; and
2. "reviewing authority" as the board, commission, or other decision-making authority in an administrative, licensing, or other proceeding, or the court in a judicial review proceeding.

### **BACKGROUND**

#### ***Nizzardo v. State Traffic Commission***

In 2002 the Connecticut Supreme Court held that verified pleadings made pursuant to CGS § 22a-19 "must contain specific factual allegations setting forth the environmental issue that the intervenor intends to raise" (*Nizzardo v. State Traffic Commission*, 259 Conn. 131, 164-165 (2002)). In addition, it found that intervenors may only raise environmental concerns that are within the jurisdiction of the authority

conducting the proceeding. It held “the facts contained [in a verified pleading] should be sufficient to allow the agency to determine from the face of the petition whether the intervention implicates an issue within the agency’s jurisdiction” (*Id.*).

**COMMITTEE ACTION**

Planning and Development Committee

Joint Favorable Substitute

Yea 17      Nay 2      (03/22/2013)