

Raised Bill No. 814
An Act Concerning Intervention in Permit Proceedings Pursuant to the Environmental Protection Act of 1971

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My name is Elizabeth C. Barton and I am a partner with the law firm of Day Pitney LLP, resident in the firm's Hartford office. I have been practicing in the field of environmental law for over 30 years, working in the areas of environmental and land use consultation, permitting and litigation. Over the years, we have represented many developers, owners, lenders, and municipalities in connection with contemplated or proposed development projects in Connecticut. I have worked with federal, state and local authorities on innovative development projects, including Blue Back Square, a mixed use redevelopment in West Hartford, Connecticut, large restoration brownfield projects such as the Brass Mill Center in Waterbury, Connecticut, and smaller urban initiatives, such as the Learning Corridor in Hartford, Connecticut. Recently, I was pleased to be part of an informal group of environmental practitioners involved in the development of the so-called Section 17 or Brownfield Liability Relief Program passed by the Connecticut General Assembly during the 2011 legislative session and amended during the 2012 legislative session.

I am writing in support of Raised Bill No. 814 as a vehicle for the enactment of proposed revisions to Section 22a-19 of the Connecticut General Statutes. I support and would encourage the Committee's acceptance of the substitute language attached to the testimony of Bill Ethier, Chief Executive Officer of the Home Builders & Remodelers Association of Connecticut, Inc. A copy of that substitute language is attached to this statement.

Drawing on over 40 years of experience with the Connecticut Environmental Protection Act, including specifically Section 22a-19 governing intervention in environmental permitting proceedings, this bill and the proposed substitute language seek to refine and better define processes and procedures for intervention in these proceedings. The language addresses the timeliness of, and the requirements for, intervention in permitting proceedings. This substitute language does not either alter or diminish a prospective intervenor's right and ability to raise environmental matters within the scope of the permitting agency's authority. Subsection (a)(2) of the substitute language is consistent with the Connecticut Supreme Court's 2002 decision in Nizzardo vs. State Traffic Commission, making clear the information that an intervenor is required to provide in a verified pleading in order that the permitting agency can make an informed determination that the intervenor's claim is within the scope of its authority.

Subsections (a)(3) and (c)(1) and (2) look to assure that intervenors' claims under Section 22a-19 are raised and addressed in a predictable and timely manner. Like the permit applicant, the intervenor would be required to clearly and properly articulate what it wishes to place before the agency for consideration within statutory deadlines. The absence of procedures that apply to the filing of intervention petitions has resulted in inefficiencies as well as unnecessary and costly

delays in the processing of permit applications, and of appeals of permitting decisions, without attendant environmental benefit.

There are many examples of the misuse or abuse of Section 22a-19 and the inefficiencies and unnecessary costs referenced above. Of equal if not even greater concern, however, is the extent to which potential developments, including the jobs and taxes that come with such developments, do not even get to the permitting stage because, faced with the prospect of these inefficiencies, unnecessary costs and risk of delay, the prospective developer or property owner elects early on to not pursue a project in Connecticut.

I urge the Committee's support of Raised Bill No. 814. With the substitute language, this bill will provide reform and clarification that are long overdue, while preserving the opportunity for any person to constructively and timely advance environmental concerns.

Attachment: Substitute Language

Proposed substitute language for SB 814

New language is underlined; omitted language is in [brackets].

Sec. 22a-19 Administrative Proceedings.

1 (a)(1) In any administrative proceeding where a public hearing is required
2 or held, and in any judicial review thereof made available by law, the Attorney
3 General, any political subdivision of the state, any instrumentality or agency of
4 the state or of a political subdivision thereof, any person, partnership,
5 corporation, association, organization or other legal entity may intervene as a
6 party on the filing of a verified pleading demonstrating [asserting] that the
7 proceeding or action for judicial review involves conduct [which has, or which]
8 that will, or that is reasonably likely to [have the effect of unreasonably polluting,
9 impairing or destroying] unreasonably pollute, impair or destroy the public trust
10 in the air, water or other natural resources of the state.

11
12 (2) The verified pleading shall: (A) contain specific factual allegations
13 setting forth the environmental issue that the intervenor intends to raise, and (B)
14 state the material facts upon which the intervention is based in sufficient detail to
15 allow the reviewing authority to determine from the face of the petition whether
16 the intervention implicates an issue within the reviewing authority's jurisdiction.

17
18 (3) In administrative proceedings to which statutory deadlines apply, the
19 verified petition must be submitted within the requirements of the statutory
20 deadlines applicable to accepting evidence or testimony, giving the agency
21 involved adequate time to consider and rule on the petition. In court
22 proceedings, verified petitions must be submitted within the deadlines that
23 otherwise apply to pleadings in such proceedings. Petitions shall be rejected by
24 administrative agencies or courts if not filed within the applicable time frames
25 for such proceedings. Petitions rejected for untimely filing are not subject to
26 appeal.

27
28 (b) In any administrative, licensing or other proceeding, the agency
29 shall consider the alleged unreasonable pollution impairment or destruction of
30 the public trust in the air, water or other natural resources of the state and no
31 conduct shall be authorized or approved which does, or is reasonably likely to,
32 have such effect as long as, considering all relevant surrounding circumstances
33 and factors, there is a feasible and prudent alternative consistent with the
34 reasonable requirements of the public health, safety and welfare.

35
36 (c)(1) The decision of an administrative agency may be appealed to
37 Superior Court by intervenors whose petition to intervene in the underlying
38 matter was granted by the agency.

39
40 (2) In the case of an appeal to Superior Court from a decision of an
41 administrative agency, a party may intervene in that appeal under authority of
42 this section only if that party has successfully intervened in the administrative
43 proceeding from which the appeal is taken.

