



House of Representatives

General Assembly

File No. 649

January Session, 2019

Substitute House Bill No. 5395

House of Representatives, April 15, 2019

The Committee on Environment reported through REP. DEMICCO, M. of the 21st Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT REQUIRING AN EVALUATION OF THE STATE'S ENVIRONMENTAL JUSTICE LAW.

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

1 Section 1. Section 22a-20a of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2019*):

3 (a) As used in this section:

4 (1) "Environmental justice community" means (A) a United States
5 census block group, as determined in accordance with the most recent
6 United States census, for which thirty per cent or more of the
7 population consists of low income persons who are not
8 institutionalized and have an income below two hundred per cent of
9 the federal poverty level, or (B) a distressed municipality, as defined in
10 subsection (b) of section 32-9p;

11 (2) "Affecting facility" means any (A) electric generating facility with
12 a capacity of more than ten megawatts; (B) sludge or solid waste

13 incinerator or combustor; (C) sewage treatment plant with a capacity
14 of more than fifty million gallons per day; (D) intermediate processing
15 center, volume reduction facility or multitown recycling facility with a
16 combined monthly volume in excess of twenty-five tons; (E) new or
17 expanded landfill, including, but not limited to, a landfill that contains
18 ash, construction and demolition debris or solid waste; (F) medical
19 waste incinerator; or (G) major source of air pollution, as defined by
20 the federal Clean Air Act. "Affecting facility" shall not include (i) the
21 portion of an electric generating facility that uses nonemitting and
22 nonpolluting renewable resources such as wind, solar and hydro
23 power or that uses fuel cells, (ii) any facility for which a certificate of
24 environmental compatibility and public need was obtained from the
25 Connecticut Siting Council on or before January 1, 2000, or (iii) a
26 facility of a constituent unit of the state system of higher education that
27 has been the subject of an environmental impact evaluation in
28 accordance with the provisions of sections 22a-1b to 22a-1h, inclusive,
29 and such evaluation has been determined to be satisfactory in
30 accordance with section 22a-1e;

31 (3) "Meaningful public participation" means (A) residents of an
32 environmental justice community have an appropriate opportunity to
33 participate in decisions about a proposed facility or the expansion of
34 an existing facility that may adversely affect such residents'
35 environment or health; (B) the public's participation may influence the
36 regulatory agency's decision; and (C) the applicant for a new or
37 expanded permit, certificate or siting approval seeks out and facilitates
38 the participation of those potentially affected during the regulatory
39 process; and

40 (4) "Community environmental benefit agreement" means a written
41 agreement entered into by a municipality and an owner or developer
42 of real property whereby the owner or developer agrees to develop
43 real property that is to be used for any new or expanded affecting
44 facility and to provide financial resources for the purpose of the
45 mitigation, in whole or in part, of impacts reasonably related to the
46 facility, including, but not limited to, impacts on the environment,

47 including, but not limited to, air quality and watercourses, quality of
48 life, asthma rates, traffic, parking and noise.

49 (b) (1) Applicants who, on or after January 1, 2009, seek to obtain
50 any certificate under chapter 277a, new or expanded permit or siting
51 approval from the Department of Energy and Environmental
52 Protection or the Connecticut Siting Council involving an affecting
53 facility that is proposed to be located in an environmental justice
54 community or the proposed expansion of an affecting facility located
55 in such a community, shall (A) file a meaningful public participation
56 plan with such department or council and shall obtain the
57 department's or council's approval of such plan prior to filing any
58 application for such permit, certificate or approval; and (B) consult
59 with the chief elected official or officials of the town or towns in which
60 the affecting facility is to be located or expanded to evaluate the need
61 for a community environmental benefit agreement in accordance with
62 subsection (d) of this section.

63 (2) Each such meaningful public participation plan shall contain
64 measures to facilitate meaningful public participation in the regulatory
65 process and a certification that the applicant will undertake the
66 measures contained in the plan. Such plan shall identify a time and
67 place where an informal public meeting will be held that is convenient
68 for the residents of the affected environmental justice community. In
69 addition, any such plan shall identify the methods, if any, by which the
70 applicant will publicize the date, time and nature of the informal
71 public meeting in addition to the publication required by subdivision
72 (3) of this subsection. Such methods [may] shall include, but not be
73 limited to, (A) posting a reasonably visible sign on the proposed or
74 existing facility property, printed in English, in accordance with any
75 local regulations and ordinances, (B) posting a reasonably visible sign,
76 printed in all languages spoken by at least twenty per cent of the
77 population that reside within a one-half of a mile radius of the
78 proposed or existing facility, in accordance with local regulations and
79 ordinances, (C) notifying neighborhood and environmental groups, in
80 writing, in a language appropriate for the target audience, and (D)

81 notifying local and state elected officials, in writing.

82 (3) Not less than ten days prior to the informal public meeting and
83 not more than thirty days prior to such meeting, the applicant shall
84 publish the date, time and nature of the informal public meeting with a
85 minimum one-quarter page advertisement in a newspaper having
86 general circulation in the area affected, and any other appropriate local
87 newspaper serving such area, in the Monday issue of a daily
88 publication or any day in a weekly or monthly publication. The
89 applicant shall post a similar notification of the informal public
90 meeting on the applicant's web site, if applicable.

91 (4) At the informal public meeting, the applicant shall make a
92 reasonable and good faith effort to provide clear, accurate and
93 complete information about the proposed facility or the proposed
94 expansion of a facility and the potential environmental and health
95 impacts of such facility or such expansion.

96 (5) The Department of Energy and Environmental Protection or the
97 Connecticut Siting Council shall not take any action on the applicant's
98 permit, certificate or approval earlier than sixty days after the informal
99 public meeting. In the event that the applicant fails to undertake the
100 requirements of subparagraphs (B) to (D), inclusive, of subdivision (2)
101 of this subsection or subdivision (3) or (4) of this subsection, any such
102 application shall be deemed insufficient.

103 (6) In the event that the Connecticut Siting Council has approved a
104 meaningful public participation plan concerning a new or expanded
105 facility and an informal public meeting has been held in accordance
106 with this subsection, the Department of Energy and Environmental
107 Protection may approve such plan and waive the requirement that an
108 additional informal public meeting be held in accordance with this
109 subsection.

110 (c) Any municipality, owner or developer may enter into a
111 community environmental benefit agreement in connection with an
112 affecting facility, provided any municipality that hosts five or more

113 permitted affecting facilities shall enter such an agreement in
 114 connection with any additional affecting facility. Mitigation may
 115 include both on-site and off-site improvements, activities and
 116 programs, including, but not limited to: Funding for activities such as
 117 environmental education, diesel pollution reduction, establishment of
 118 a wellness clinic, ongoing asthma screening, provision of air
 119 monitoring performed by a credentialed environmental professional,
 120 performance of an ongoing traffic study, watercourse monitoring,
 121 construction of biking and walking trails, staffing for parks, urban
 122 forestry, support for community gardens or any other negotiated
 123 benefit to the environment in the environmental justice community.
 124 Prior to negotiating the terms of a community environmental benefit
 125 agreement, the municipality shall provide a reasonable and public
 126 opportunity for residents of the potentially affected environmental
 127 justice community to be heard concerning the requirements of or need
 128 for, and terms of, such agreement.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2019	22a-20a

ENV *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.

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

The bill requires applicants who are building or siting new energy or solid waste facilities to use certain methods to notify the public about various ways to engage in the public participation process. This altered notification provision has no fiscal impact on the state or municipalities.

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

OLR Bill Analysis

sHB 5395

AN ACT REQUIRING AN EVALUATION OF THE STATE'S ENVIRONMENTAL JUSTICE LAW.

SUMMARY

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

1. requiring, instead of allowing, applicants to use four specific methods to notify the public about the informal public meeting about a proposed facility, including posting notices and notifying neighborhood groups in languages common to the area or groups;
2. deeming an application insufficient if certain notice and information disclosure requirements are not met;
3. requiring a community environmental benefit agreement in municipalities that already have at least five permitted affecting facilities (see BACKGROUND);
4. expanding the list of impacts reasonably related to the facility that may be mitigated through a community environmental benefit agreement; and
5. expanding the list of mitigation activities that may be funded through an agreement.

Under the state's environmental justice law, applicants seeking a permit, certificate, or approval from the Department of Energy and Environmental Protection (DEEP) or the Connecticut Siting Council for

locating or expanding an affecting facility in an environmental justice community must, before filing the permit request, take certain steps to (1) inform local officials and the public about the proposed facility and (2) consult with officials on providing financial resources to mitigate a facility's impact (see BACKGROUND).

EFFECTIVE DATE: October 1, 2019

PUBLIC NOTICE AND INVOLVEMENT

Public Participation Plan

State law requires applicants seeking a new or expanded permit or siting approval from DEEP or the Siting Council for an affecting facility in an environmental justice community to, among other things, file a "meaningful public participation plan" with the respective agency and obtain its approval of the plan before applying for the permit, certificate, or siting approval.

The law requires that a meaningful public participation plan include a certification by the applicant that he or she will undertake the plan's measures for public participation, including holding an informal public meeting that is convenient to the affected residents. The applicant must provide (1) certain newspaper notice of the meeting at least 10 days, but not more than 30 days, before it occurs and (2) if applicable, a similar notice on the applicant's website.

In addition to the newspaper and online notice, current law provides the following nonexhaustive list of ways an applicant can publicize the meeting:

1. post according to local requirements a reasonably visible sign, printed in English, on the proposed or existing facility property;
2. post according to local requirements a reasonably visible sign, printed in all languages spoken by at least 20% of the population that lives within a one-half mile radius of the proposed or existing facility property;

3. notify neighborhood and environmental groups, in writing, in languages appropriate for the target audience; and
4. notify local and state elected officials in writing.

The bill requires, rather than allows, an applicant to use all of these methods to inform the public about the informal public meeting. The bill deems an applicant insufficient if the applicant fails to comply with any of the notice requirements, except for the one concerning a sign on the facility property. It also does this with respect to existing law's newspaper and online notice requirements.

By law, "meaningful public participation" means that (1) environmental justice community residents have an appropriate opportunity to participate in decisions about a proposed new or expanded facility that may adversely affect their environment or health, (2) the public's participation may influence the regulatory agency's decision, and (3) an applicant seeks out and facilitates participation by those who may be affected during the regulatory process.

Informal Public Meeting and Further Action

By law, at the informal public meeting the applicant must make a reasonable and good faith effort to provide clear, accurate, and complete information about the proposed new or expanded facility and any potential associated environmental and health impacts. The bill deems a permit, certificate, or approval application insufficient if the applicant fails to provide this information at the informal public meeting.

Existing law prohibits DEEP and the Siting Council from taking action on an applicant's permit, certificate, or approval request until at least 60 days after the public meeting.

Community Environmental Benefit Agreement

By law, a municipality, facility owner, or developer may enter into a "community environmental benefit agreement," which is a written

agreement in which the owner or developer agrees to develop the real property that is to be used for the new or expanded facility and provide financial resources to mitigate impacts reasonably related to the facility. An applicant may consult with the chief elected official or officials in any municipality where the facility is to be located or expanded to evaluate if a community environmental benefit agreement is necessary.

The bill makes such an agreement mandatory if the municipality in which a new or expanded facility is proposed already has at least five permitted affecting facilities. Before negotiating an agreement, the law requires the municipality to provide a public opportunity for potentially affected residents to speak on the agreement.

The bill expands the nonexhaustive list of impacts that may be mitigated as part of a community environmental benefit agreement, to include quality of life, asthma rates, and for environmental impacts, air quality and watercourses. Existing law explicitly considers the environment, traffic, parking, and noise.

The bill also expands the nonexhaustive list of projects that may be funded by mitigation efforts. Existing law lists funding for environmental education, diesel pollution reduction, constructing biking and walking trails, park staffing, urban forestry, community gardens, and any other negotiated benefit to the environment. The bill adds ongoing asthma screening, air monitoring from a credentialed environmental professional, ongoing traffic study, watercourse monitoring, and establishing a wellness clinic.

BACKGROUND

Affecting Facilities

The state's environmental justice law applies to applicants seeking permits, certificates, or approval from DEEP or the Siting Council for the following types of new or expanded facilities:

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

2. sludge and solid waste incinerators or combustors;
3. sewage treatment plants with a capacity of more than 50 million gallons per day;
4. intermediate processing centers, volume reduction facilities, or multi-town recycling facilities with a combined monthly volume of more than 25 tons;
5. landfills, including those with ash, construction and demolition debris, or solid waste;
6. medical incinerators; and
7. major air pollution sources under the federal Clean Air Act (e.g., large factories).

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

Environmental Justice Communities

Under the state’s environmental justice law, an environmental justice community is a (1) U.S. census block group for which at least 30% of the population consists of low-income people who are not institutionalized and have an income of less than 200% of the federal poverty level or (2) distressed municipality.

In 2018, the Department of Economic and Community Development designated the following 25 municipalities as distressed:

Ansonia	Bridgeport	Bristol
Chaplin	Derby	East Hartford
East Haven	Enfield	Griswold
Hartford	Meriden	Montville
Naugatuck	New Britain	New Haven

New London	Norwich	Preston
Putnam	Sprague	Torrington
Waterbury	West Haven	Winchester
Windham		

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 21 Nay 8 (03/25/2019)