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

Researcher: KLM  Page 5  4/15/19
COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute
Yea  21  Nay  8  (03/25/2019)