
OLR Bill Analysis

HB 7008

Emergency Certification

AN ACT CONCERNING ENHANCEMENTS TO 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 (see BACKGROUND) to engage in a public participation process:

1. requiring, instead of allowing, applicants to post certain notices and notify elected officials for purposes of informing the public about the informal public meeting on a proposed facility;
2. deeming an application insufficient if certain notice and information disclosure requirements are not met;
3. requiring a community environmental benefit agreement in municipalities already hosting at least five permitted affecting facilities (see BACKGROUND);
4. requiring the municipal chief elected official or town manager to participate in community environmental benefit agreement negotiations and, if the municipality's legislative body approves it, implement, administer, and enforce the agreement;
5. expanding the lists of (a) impacts reasonably related to the facility that may be mitigated through a community environmental benefit agreement and (b) mitigation activities that may be funded through an agreement; and
6. specifying that the terms of a community environmental benefit

agreement approved on or after November 1, 2020, are not a separate and distinct basis for someone to intervene in an administrative, licensing, or other proceeding on the grounds that the proceeding involves conduct that has or may cause environmental harm.

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.

EFFECTIVE DATE: November 1, 2020

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 for 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 non-exhaustive 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 post the signs and notify the elected officials. Notifying neighborhood and environmental groups remains discretionary.

The bill also decreases the population threshold, from 20% to 15%, that triggers the requirement for posting notices in languages other than English. Determining the percentage of individuals speaking a language must be made according to the most recent United States census.

The bill deems an application filed on or after November 1, 2020, insufficient if the applicant fails to meet any of the notice requirements, except for the one concerning an English 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. For applications filed on or after November 1, 2020, 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 acting on an applicant's permit, certificate, or approval request until at least 60 days after the public meeting.

Community Environmental Benefit Agreement

Under current 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. But the applicant must 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 requires the chief elected official or town manager of the municipality, as applicable, to (1) participate in the negotiations for a community benefit agreement; (2) be the person entering into the written agreement for the municipality; and (3) implement, administer, and enforce the agreement on the municipality's behalf. Agreements negotiated on or after November 1, 2020, must be approved by the municipality's legislative body before they can be implemented, administered, or enforced.

The bill also makes an agreement mandatory if, at the time the application is filed on or after November 1, 2020, the municipality in which a new or expanded facility is proposed already has at least five 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 non-exhaustive 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.

It also expands the non-exhaustive 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 electric vehicle charging infrastructure construction, biking facilities other than trails, ongoing asthma screening, air monitoring from a credentialed environmental professional, ongoing traffic study, watercourse monitoring, and establishing a wellness clinic. It expands the types of trails that may be funded by allowing for multi-use trails, rather than only those for biking and walking.

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 waste 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 with a satisfactory environmental impact evaluation (CGS § 22a-20a).

Environmental Justice Communities

Under the state’s environmental justice law, an environmental justice community is a (1) distressed municipality or (2) 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 (CGS § 22a-20a).

In 2020, the Department of Economic and Community Development designated the following 25 municipalities as distressed:

Ansonia	Bridgeport	Bristol
Chaplin	Derby	East Hartford
East Haven	Griswold	Hartford
Meriden	Montville	New Britain
New Haven	New London	Norwich
Preston	Putnam	Sprague
Stratford	Torrington	Voluntown
Waterbury	West Haven	Winchester
Windham		

The following 23 municipalities, while not currently “distressed municipalities,” have census block groups that are designated “environmental justice communities”:

Bloomfield	Danbury	East Windsor
Fairfield	Groton	Hamden
Manchester	Middletown	North Haven
Norwalk	Plainville	Shelton
Southington	Stamford	Stonington
Thompson	Wallingford	Waterford
West Hartford	Westbrook	Wethersfield
Windsor	Windsor Locks	