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## **OLR Bill Analysis**

### **sHB 6551**

#### ***AN ACT CONCERNING ENVIRONMENTAL AIR QUALITY.***

#### **SUMMARY**

This bill does the following:

1. establishes a 13-member environmental equity working group within the Department of Energy and Environmental Protection (DEEP) to identify disadvantaged communities for such things as pollutant reductions and regulatory impact statements (§ 1);
2. beginning October 1, 2023, generally prohibits DEEP or the Connecticut Siting Council, as applicable, from approving an application or permit for certain facilities in environmental justice communities if either one determines that there are less harmful alternatives (§ 2);
3. requires (a) fossil fuel burning generators for qualified data centers to meet certain emissions standards and (b) these centers to be certified as meeting green building standards (§ 4); and
4. requires that DEEP's triennial schedule of recommended policies and actions on greenhouse gas (GHG) emissions be for ensuring that the state meets its statutory GHG targets, rather than for showing reasonable progress towards meeting them (§ 3).

**EFFECTIVE DATE:** Upon passage for the working group provision; the changes to the environmental justice law take effect October 1, 2023; July 1, 2021, for the data center provision; and the change to the GHG schedule is effective October 1, 2021.

#### **§ 1 — ENVIRONMENTAL EQUITY WORKING GROUP**

##### ***Purpose***

Under the bill, by October 1, 2022, the environmental equity working group must establish criteria to identify disadvantaged communities and use it to identify the communities. The group must do this in consultation with DEEP and the public health and labor departments.

The purpose of identifying the communities is for reducing GHG emissions and co-pollutants, regulatory impact statements, and allocating investments under the state's GHG reduction goals. (By law, the GHG reduction goals do not include investments or methods for allocating them, but provisions on the Regional Greenhouse Gas Initiative do (CGS § 22a-200c).)

### ***Membership***

Under the bill, the working group consists of the following 13 members:

1. five representatives of environmental equity communities (see below), appointed by the DEEP commissioner;
2. two representatives of DEEP's Environmental Justice Program, appointed by the DEEP commissioner; and
3. two representatives each from the public health, housing, and labor departments, appointed by their respective department commissioners.

Under the bill, the representatives of environmental equity communities must be members of (1) communities of color, (2) low-income communities, and (3) communities with disproportionate pollution and climate change effects. The representatives may be from community-based organizations with experience and a history of advocacy on environmental equity issues.

The bill requires initial appointments to be made within four months after the bill's passage and vacancies to be filled by the appointing authorities. The DEEP commissioner must select the working group's chairpersons from among the group's members.

### ***Meetings***

The bill requires the working group's chairpersons to schedule the group's first meeting, which must be held within six months after the bill's passage. The bill further requires the working group to meet at least annually to (1) review the criteria for identifying disadvantaged communities and (2) modify the criteria to incorporate new data and scientific findings. Similarly, the group must review the identified disadvantaged communities and change the designations as necessary.

### ***Process for Identifying Criteria***

Under the bill, after creating the draft criteria for identifying disadvantaged communities and the draft list of these communities, DEEP must publish both documents and make them available on the department's website.

The bill requires that disadvantaged communities be identified based on geographic, public health, environmental hazard, and socioeconomic criteria. This includes areas:

1. burdened by cumulative environmental pollution and other hazards that can negatively affect public health;
2. with concentrations of people who have low income, home ownership, or educational attainment levels; high rent burden or unemployment; or historically experienced discrimination based on race or ethnicity; and
3. vulnerable to climate change impacts such as flooding, storm surge, and urban heat island effects.

The bill requires the working group to (1) have at least one public hearing on the draft criteria and draft list and (2) provide a public comment period of at least 45 days. It also requires the working group to ensure that all population segments that may be impacted by the criteria (e.g., people living in areas that may be identified as disadvantaged communities) have meaningful opportunities for public comment.

## **§ 2 — AFFECTING FACILITY ALTERNATIVES**

The state’s environmental justice law generally requires applicants seeking to construct, site, or modify certain facilities (“affecting facilities”) in environmental justice communities to engage in a public participation process and consult with local officials about mitigating facility impacts (see BACKGROUND). Under the 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.

The bill requires DEEP or the Connecticut Siting Council, as applicable, to deny an application for a proposed facility or a new or expanded permit if it determines there are less harmful alternatives to the request. It allows the applicant to resubmit the application, if appropriate, with modifications.

If DEEP or the council, as applicable, determine that the proposed project could cause or contribute to adverse total environmental or public health stressors that are higher than in other communities, on average, then it must deny the application or permit or impose conditions on it as needed to avoid or reduce the stressors. The agencies must make this determination by considering existing environmental or public health stressors in the community.

The bill, however, allows DEEP or the council, as applicable, to approve an application or permit and impose conditions on the subject facility to protect public health and the environment if it finds that the facility, or its modification or expansion, will serve a compelling interest in the community.

The bill’s environmental justice provisions apply regardless of any other state law. The bill requires DEEP or the council, as applicable, to publish any determination related to this process on its respective website.

## **§ 4 — QUALIFIED DATA CENTERS**

The bill establishes (1) emissions requirements for fossil fuel burning generators used by qualified data centers and (2) green building standards for these centers. (PA 21-1 authorizes the Department of Economic and Community Development (DECD) commissioner to enter into agreements to provide tax incentives to qualified data centers that locate in Connecticut and make a minimum investment.)

Under the bill, as under existing law, a “qualified data center” is a facility developed, acquired, constructed, rehabilitated, renovated, repaired, or operated to house a group of networked computer servers in one location or contiguous locations. The purpose of a center is to centralize storing, managing, and disseminating data and information related to a particular business or classification or body of knowledge.

### ***Emissions Requirements***

Under the bill, a qualified data center owner or operator who enters into an agreement with the DECD commissioner beginning July 1, 2021, must provide that each fossil fuel burning emergency use generator the data center uses for its operation, including testing and maintenance, meet at least federal Environmental Protection Agency Tier II standards.

For these data centers, the bill requires each fossil fuel burning nonemergency use generator to continuously (1) emit no more than 0.72 g/KW-hr (grams per kilowatt hour) of nitrogen oxides and 0.036 g/KW-hr of ammonia and (2) comply with state air pollution regulations and federal regulations on stationary emission sources and emission standards for hazardous air pollutants. The bill also requires the exhaust stacks of the nonemergency use generators to be taller than 34 feet high.

Any exemption from the emissions requirements of either generator type must be approved by the DEEP commissioner.

### ***Green Building Certification***

The bill requires the owner or operator of a qualified data center to,

within 180 days after beginning operations, become certified under at least one of the following green building standards:

1. BREEAM for New Construction or BREEAM In-Use;
2. ENERGY STAR;
3. Envision;
4. ISO 50001-energy management;
5. LEED for Building Design and Construction or LEED for Operations and Maintenance;
6. Green Globes for New Construction or Green Globes for Existing Buildings;
7. UL 3223; or
8. an equivalent program approved by the DECD commissioner.

### **§ 3 — GHG POLICY AND ACTION SCHEDULE**

By law, the state must reduce its GHG emissions to at least the following levels:

1. 10% below 1990's emission level by January 1, 2020;
2. 45% below 2001's emissions level by January 1, 2030; and
3. 80% below 2001's emissions level by January 1, 2050 (CGS § 22a-200a(a)).

Current law requires the DEEP commissioner, every three years, to publish a schedule of recommended agency regulatory actions, policies, and other actions to show reasonable progress towards meeting these levels. The bill instead requires that these actions ensure that the state reach these levels.

### **BACKGROUND**

#### ***Related Bill***

sSB 882 (File 282), favorably reported by the Energy and Technology Committee, requires the state to eliminate GHG emissions from electricity supplied to electric customers in the state by January 1, 2040, and establishes this requirement as part of the state's GHG reduction policies.

***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 fuel cells or non-emitting and non-polluting renewable resources such as wind, solar, and hydropower; (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).

**COMMITTEE ACTION**

Environment Committee

Joint Favorable Substitute

Yea 22 Nay 10 (03/31/2021)