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## OLR Bill Analysis

### sSB 1147

#### ***AN ACT CONCERNING THE ENVIRONMENTAL JUSTICE PROGRAM OF THE DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION.***

#### **SUMMARY**

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

1. expands the law's scope to include (a) institutionalized people in its census block group income determination and (b) additional "affecting facilities" subject to its requirements, such as transfer stations, certain bulk commercial storage facilities, and certain facilities that daily divert more than 2 million gallons of water;
2. requires applicants subject to the law to (a) file an assessment of environmental or public health stressors and (b) submit and receive approval of a public participation report to show compliance with the requirements for informal public meetings (e.g., notice, public comment, and video recording);
3. expands the notice that must be given about an upcoming informal public meeting to include online posts and direct mail to households within one-half mile of the involved affecting facility;
4. requires the newspaper advertisement, that must be published under existing law between 10 and 30 days before the public meeting, to include information on how interested people can review project documents (i.e., any complete needs assessment, alternative assessment, environmental impact analysis, and assessment of environmental and public health stressors);

5. requires the facility's applicant to accept oral and written comments from any interested person and provide an opportunity for meaningful public participation at the informal public meeting;
6. requires the chief elected official or town manager, when negotiating a community environmental benefit agreement to mitigate an affecting facility's impacts, to select a resident of the potentially affected environmental justice community to participate in the negotiations (see BACKGROUND); and
7. allows the Department of Energy and Environmental Protection (DEEP) or the Connecticut Siting Council, as applicable, to assess a reasonable fee on an applicant to cover the costs of implementing the environmental justice law, including costs for providing technical assistance to applicants and environmental justice communities, in addition to any other fee authorized by law, rule, or regulation.

The bill (1) requires the DEEP commissioner to adopt any necessary and proper regulations to carry out the environmental justice law's purposes and (2) allows her to subject an affecting facility's permit renewal to the environmental justice law's provisions, as amended by the bill, and associated regulations. It allows the Siting Council to follow the same regulations in its decision to approve an application.

The bill also allows DEEP or the Siting Council, as applicable, to deny a permit for a new affecting facility if it finds that approving the permit would result in adverse cumulative environmental or public health stressors in the environmental justice community that are greater than those experienced in other communities. They may additionally impose conditions on a permit to mitigate environmental and public health impacts if it makes the same findings.

Lastly, the bill makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2023

## **SCOPE OF THE LAW**

The environmental justice law's requirements generally apply to applications for a certificate of environmental compatibility and public need, a new or expanded permit, or siting approval from DEEP or the Siting Council involving an "affecting facility" in an "environmental justice community."

Under the bill, a "permit" collectively refers to the approval issued in the above applications. Specifically, it is any individual facility permit, license, certificate, or siting approval DEEP or the Siting Council issues to a facility that sets the regulatory and management requirements for an activity regulated under the laws for certificates of environmental compatibility and public need, and air pollution, solid waste facility, or water discharge permits. It does not include the following approvals:

1. an authorization or approval needed to remediate certain hazardous waste sites;
2. applications and registrations for an activity covered by a DEEP general permit;
3. a permit for a facility to daily divert more than 2 million gallons of water for public water supply use within the exclusive service area from where the diversion occurs; and
4. an authorization or approval needed to (a) make a minor modification of a facility's major source permit for activities or improvements that do not increase emissions or (b) extend the time to complete a facility's construction.

### ***Environmental Justice Communities***

Under current law, an "environmental justice community" is (1) any U.S. census block group, as determined by the most recent census, for which at least 30% of the population consists of low-income people who are not institutionalized and have an income below 200% of the federal poverty level or (b) a distressed municipality (see BACKGROUND). The bill eliminates the exclusion of institutionalized persons from the census block group definition, potentially increasing the locations covered by

the law.

***Affecting Facilities***

The bill also broadens the scope of the law by adding facility types subject to its requirements (“affecting facilities”).

Under current law, an “affecting facility” is generally any:

1. electric generating facility with a capacity of more than 10 megawatts;
2. sludge and solid waste incinerator or combustor;
3. sewage treatment plant with a daily capacity of more than 50 million gallons;
4. intermediate processing center, volume reduction facility, or multi-town recycling facility with a combined monthly volume of more than 25 tons;
5. new or expanded landfill, including one with ash, construction and demolition debris, or solid waste;
6. medical waste incinerator; and
7. major air pollution source under the federal Clean Air Act (CAA; e.g., large factories).

The bill adds the following facilities to the above list:

1. solid waste transfer stations, resource recovery facilities, and chemical recycling facilities;
2. pipelines, terminals, or bulk commercial storage facilities that do not provide direct-to-consumer retail or delivery for fossil fuels (i.e., coal, oil, petroleum, and natural gas); and
3. facilities that divert more than 2 million gallons of water per day, but not those that do so in a 24-hour period for public water supply purposes within an identified service area that includes

the origin of the diversion.

The bill additionally (1) subjects all landfills to the law's requirements, rather than only new or expanded ones, and (2) instead of applying to sewage treatment plants with more than 50 gallons of daily capacity, applies the law to (a) publicly owed treatment works in a community with combined sewers that transport both storm water and sanitary sewage or (b) an expanded design flow rate for any publicly owed treatment works.

Lastly, it specifies that a "major source" of air pollution may be either as defined by the CAA, as under current law, or DEEP's rules or regulations, or a facility that directly emits, or has potential to emit, at least 100 tons of any air pollutant or other CAA applicable criteria.

Existing exemptions to the law, unchanged by the bill, include (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.

### **STRESSOR ASSESSMENT & PUBLIC PARTICIPATION DOCUMENTS**

By law, applicants for these affecting facilities must (1) file, and receive approval of, a meaningful public participation plan before filing their permit, certificate, or approval application and (2) consult with the chief elected officials of the towns in which the proposed facility will be located or expanded to evaluate the need for a community environmental benefit agreement (see *Public Participation Plan*, below, and BACKGROUND).

The bill requires the applicants to additionally (1) file an assessment of environmental and public health stressors and (2) submit and receive approval of a public participation report on compliance with the law's public participation plan requirements.

It also requires the DEEP commissioner to evaluate the potential for

environmental and health stressors when issuing or renewing a department general permit.

**Assessment of Environmental or Public Health Stressors**

The bill requires this assessment to evaluate the potential environmental and public health stressors related to the proposed new or expanded affecting facility. It must also identify (1) any adverse environmental or public health stressor that cannot be avoided if a permit is granted and (2) the environmental or public health stressors that the affected environmental justice community already experiences.

Under the bill, “environmental or public health stressors” are:

1. environmental pollution sources such as concentrated areas of air pollution, mobile sources of air pollution, contaminated sites, transfer stations or other solid waste facilities, recycling facilities, scrap yards, and point-sources of water pollution (e.g., from facilities or combined sewer overflows) or
2. conditions that may cause public health impacts like asthma, cancer, elevated blood lead levels, cardiovascular disease, and developmental problems.

**Public Participation Plan**

By law, a “meaningful public participation plan” is one that gives environmental justice community residents an appropriate opportunity to participate in decisions about a proposed new or expanded facility that may adversely affect their environment or health.

Among other things, the plan must identify how the applicant will publicize the date, time, and nature of the informal public meeting about the proposed facility, in addition to the newspaper notice existing law already requires and the direct mail notice the bill requires to be sent to nearby households (see *Direct Mail Notice*, below). Currently, these methods must include posting certain signs and giving written notice to local and state elected officials. The bill additionally requires postings on relevant websites and social media platforms to give notice about the meeting, but the notice must be readily found by searching for the

affecting facility's name.

**Public Participation Report**

The public participation report the bill requires to be submitted to and approved by DEEP must include (1) an affidavit stating that the applicant complied with the law's notice (e.g., signs, online, newspaper, direct mail) and public meeting requirements; (2) all written comments received; and (3) responses to concerns and questions presented in the written and verbal comments, along with any changes to the proposed activity or affecting facility. It must also include a video recording of the informal public meeting.

Under the bill, this public participation report must be submitted to DEEP or the Siting Council, as applicable, within 30 days after the informal public meeting.

**DIRECT MAIL NOTICE OF INFORMAL PUBLIC MEETING**

The bill adds a direct mail notice requirement to inform households near the proposed or existing affecting facility that is the subject of the informal public meeting.

Specifically, at least 30 days before the informal public meeting, the applicant must mail a notice about the meeting to all households within one-half mile of the affecting facility. The notice must be written in all languages spoken by at least 15% of the population that lives in this radius and include the following information:

1. the meeting's date, time, and location;
2. a description of the proposed or expanded affecting facility and a map showing its location;
3. how an interested person can review project documents, including any complete needs assessment, alternatives assessment, environmental impact analysis, or assessment of environmental or public health stressors;
4. addresses for mailed and online submissions for written public

comments; and

5. any other information DEEP or the Siting Council deems appropriate.

The applicant must then mail notice to these same households about any (1) subsequent public participation opportunities that occur as part of the permit approval process before DEEP or the Siting Council and (2) notice of tentative or final determination.

## **INFORMAL PUBLIC MEETING**

### ***Public Participation***

The environmental justice law requires the applicant to make a reasonable and good faith effort to give the public clear, accurate, and complete information about the affecting facility proposal at an informal public meeting. The information must include the potential environmental and public health impacts.

The bill requires the applicant to (1) accept written comments, submitted by mail or electronically, and oral comments from any interested party and (2) provide an opportunity for meaningful public participation at the meeting. The applicant must also video record the meeting and submit the video with the public participation report (see above).

### ***Multiple Public Meetings***

Under the bill, if an applicant applies for more than one permit for a proposed new or expanded affecting facility, the applicant must only comply with the environmental justice law once unless DEEP or the Siting Council, as applicable, determines that more than one informal public meeting is needed due to the complexity of the permit applications involved. The bill specifies that this limitation does not restrict DEEP's or the Siting Council's authority to hold or require a public hearing under another state or federal law, rule, or regulation.

Current law also allows DEEP to waive the requirement for an additional informal public meeting if the Siting Council has already approved a meaningful public participation plan and the associated



informal public meeting has been held. The bill instead allows this waiver if the Siting Council approves the public participation report, as opposed to the plan.

## **IMPLEMENTING REGULATIONS**

### ***New or Expanded Facilities***

The bill requires the DEEP commissioner to adopt needed and proper regulations to implement the environmental justice law, as amended by the bill, including provisions on the following:

1. procedures and requirements for creating the meaningful public participation plan and public participation report;
2. identifying and measuring the relative impact of environmental and public health stressors across communities;
3. tools for stakeholder industries and sectors to use that consider any environmental or public health stressors, including those that help inform decisions about potential locations for affecting facilities that comply with the law; and
4. standards for denying or placing conditions on permits.

When developing the regulations, the commissioner must consult with the stakeholder industries and sectors.

### ***Permit Renewals***

The bill allows the DEEP commissioner to impose on the renewal of any permit issued for an affecting facility (1) some or all of the environmental justice law's requirements, as amended by the bill, and (2) regulations adopted for this purpose. These specific regulations must identify the following:

1. each type of renewal permit and affecting facilities impacted and
2. the specific requirements of the law and regulations that apply to each renewal permit and affecting facility type.

## **PERMIT DECISIONS**

**Final Action**

**Complete Application.** For applications filed on or after November 1, 2023, the bill deems them insufficient if the applicant fails to fulfill the law’s notice and public meeting requirements, as amended by the bill. Similarly, the bill makes an application insufficient if its applicant fails to receive approval of its public participation report.

**Timeframe for Decision.** Current law prohibits DEEP or the Siting Council from acting on a permit, certificate, or approval within 60 days after the informal public meeting. The bill extends this restriction to acting on license applications and instead prohibits acting before it approves the public participation report.

**New Review Requirements.** The bill imposes a new review process for applications DEEP reviews (including permit renewals), which is set out in the new regulations the bill requires (see *Implementing Regulations*, above). It allows the Siting Council to also use the regulation’s process for reviewing applications. This new process does not take effect, however, until the regulations are adopted, and the bill does not set a deadline for doing this.

Under the bill, DEEP or the Siting Council, as applicable, may deny a permit application for a new affecting facility if it finds that approving it would, together with other environmental or public health stressors affecting the environmental justice community involved, produce adverse cumulative stressors that are higher than those experienced by other communities in the state, county, or other geographic area, as DEEP or the Siting Council determines. For DEEP, the determination must be made in accordance with the new regulations the bill requires, and for the Siting Council, the determination may be made according to them.

If there is a hearing on an application or renewal permit that is subject to the environmental justice law, compliance with the applicable regulations must be considered at the hearing.

The bill requires DEEP or the Siting Council, as applicable, to give the

applicant of a proposed new affecting facility written notice about its tentative determination on compliance with the regulations. It also requires them to post any determination made under this new process on their respective website.

The bill allows DEEP or the Siting Council, as applicable, when granting a permit, to impose conditions on a new affecting facility's construction or operation to mitigate environmental and public health impacts.

### ***Expansion Permits***

The bill allows DEEP or the Siting Council, as applicable, to apply conditions on a permit for expanding an existing affecting facility related to its construction and operation to protect the environment and public health. They may only do this after:

1. reviewing the public participation report and any other relevant information like testimony and written comments and
2. finding that approval of the permit, as proposed, together with other environmental or public health stressors affecting the environmental justice community involved, produce adverse cumulative stressors that are higher than those experienced by other communities in the state, county, or other geographic area, as DEEP or Siting Council determines.

For DEEP, the determination must be made in accordance with the new regulations the bill requires, and for the Siting Council, the determination may be made according to them.

### ***Continuing Operations***

The bill specifies that it does not limit an applicant's right to continue facility operations when a permit approval is pending to the extent that it has that right by law, rule, or regulation.

## **BACKGROUND**

### ***Community Environmental Benefit Agreement***

By law, the applicant for a proposed or new affecting facility must

consult with the chief elected officials of the towns in which the facility will be located to evaluate whether there must be a community environmental benefit agreement. For facilities that will be in a municipality that already has at least five affecting facilities, this agreement is required.

A community environmental benefit agreement is a written agreement where an owner or developer of real property that will be used for an affecting facility agrees to provide financial resources to mitigate the facility's impacts. It is negotiated by the chief elected official or town manager and must be approved by the municipality's legislative body. Mitigation may be on-site or off-site improvements, activities, and programs, including things like environmental education, electric vehicle charging infrastructure, asthma screening, air monitoring, urban forestry, and trails.

### ***Current Distressed Municipalities & Applicable Census Block Groups***

The Department of Economic and Community Development annually designates distressed municipalities based on high unemployment and poverty, aging housing stock, and low or declining rates of job, population, and per capita income growth (CGS § 32-9p). The current (2022) distressed municipalities are Ansonia, Bridgeport, Bristol, Chaplin, Derby, East Hartford, East Haven, Griswold, Groton, Hartford, Meriden, Montville, New Britain, New London, North Stonington, Norwich, Plainfield, Putnam, Sprague, Sterling, Torrington, Waterbury, West Haven, Winchester, and Windham.

Towns with current designated census blocks (that are not also distressed municipalities) are Bethel, Bloomfield, Branford, Brooklyn, Canaan, Clinton, Columbia, Coventry, Cromwell, Danbury, East Haddam, East Lyme, East Windsor, Ellington, Enfield, Essex, Fairfield, Farmington, Glastonbury, Greenwich, Haddam, Hamden, Killingly, Ledyard, Lisbon, Manchester, Mansfield, Middletown, Milford, Naugatuck, New Fairfield, New Haven, New Milford, Newington, North Canaan, Norwalk, Plainville, Portland, Preston, Ridgefield, Rocky Hill, Sharon, Shelton, Simsbury, Southington, Stafford, Stamford,

Stonington, Stratford, Thomaston, Thompson, Vernon, Wallingford, Waterford, Watertown, West Hartford, Wethersfield, Willington, Windsor Locks, and Windsor.

**COMMITTEE ACTION**

Environment Committee

Joint Favorable Substitute

Yea 30 Nay 3 (03/24/2023)