



# Senate

General Assembly

**File No. 563**

January Session, 2023

Substitute Senate Bill No. 1147

*Senate, April 13, 2023*

The Committee on Environment reported through SEN. LOPES of the 6th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

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

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 Section 22a-20a of the general statutes is repealed and the  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, 2023*):

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 population  
7 consists of low income persons [who are not institutionalized] and have  
8 an income below two hundred per cent of the federal poverty level; or  
9 (B) a distressed municipality, as defined in subsection (b) of section 32-  
10 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 of  
14 more than fifty million gallons per day] publicly owned treatment  
15 works in a community with combined sewers that transport both storm  
16 water and sanitary sewage, or an expanded design flow rate for any  
17 publicly owned treatment works; (D) intermediate processing center,  
18 volume reduction facility, solid waste transfer station, resource recovery  
19 facility, chemical recycling facility or multitown recycling facility with a  
20 combined monthly volume in excess of twenty-five tons; (E) [new or  
21 expanded] landfill, including, but not limited to, a landfill that contains  
22 ash, construction and demolition debris or solid waste; (F) medical  
23 waste incinerator; [or] (G) major source of air pollution, as defined by  
24 the federal Clean Air Act; (H) pipeline, terminal or bulk commercial  
25 storage facility not providing direct-to-consumer retail or delivery for  
26 fossil fuels, including coal, oil, petroleum and natural gas; or (I) facility  
27 with a diversion of more than two million gallons of water per day.  
28 "Affecting facility" shall not include (i) the portion of an electric  
29 generating facility that uses nonemitting and nonpolluting renewable  
30 resources such as wind, solar and hydro power or that uses fuel cells,  
31 (ii) any facility for which a certificate of environmental compatibility  
32 and public need was obtained from the Connecticut Siting Council on  
33 or before January 1, 2000, [or] (iii) a facility of a constituent unit of the  
34 state system of higher education that has been the subject of an  
35 environmental impact evaluation in accordance with the provisions of  
36 sections 22a-1b to 22a-1h, inclusive, and such evaluation has been  
37 determined to be satisfactory in accordance with section 22a-1e; or (iv)  
38 a facility with a diversion of water greater than two million gallons in  
39 any twenty-four-hour period that diverts water for public water supply  
40 purposes within a service area, as defined in regulations adopted  
41 pursuant to subsection (b) of section 22a-377, that includes the origin of  
42 such diversion;

43 (3) "Meaningful public participation" means (A) residents of an  
44 environmental justice community have an appropriate opportunity to  
45 participate in decisions about a proposed facility or the expansion of an  
46 existing facility that may adversely affect such residents' environment  
47 or health; (B) the public's participation may influence the regulatory

48 agency's decision; and (C) the applicant for a new or expanded permit,  
49 certificate or siting approval seeks out and facilitates the participation  
50 of those potentially affected during the regulatory process; [and]

51 (4) "Community environmental benefit agreement" means a written  
52 agreement entered into by the chief elected official or town manager of  
53 a municipality and an owner or developer of real property whereby the  
54 owner or developer agrees to develop real property that is to be used  
55 for any new or expanded affecting facility and to provide financial  
56 resources for the purpose of the mitigation, in whole or in part, of  
57 impacts reasonably related to the facility, including, but not limited to,  
58 impacts on the environment, including, but not limited to, air quality  
59 and watercourses, quality of life, asthma rates, traffic, parking and  
60 noise;

61 (5) "Council" means the Connecticut Siting Council;

62 (6) "Department" means the Department of Energy and  
63 Environmental Protection;

64 (7) "Environmental or public health stressors" means: (A) Sources of  
65 environmental pollution, including, but not limited to, concentrated  
66 areas of air pollution, mobile sources of air pollution, contaminated  
67 sites, transfer stations or other solid waste facilities, recycling facilities,  
68 scrap yards and point-sources of water pollution, including, but not  
69 limited to, water pollution from facilities or combined sewer overflows,  
70 or (B) conditions that may cause potential public health impacts,  
71 including, but not limited to, asthma, cancer, elevated blood lead levels,  
72 cardiovascular disease and developmental problems in any  
73 environmental justice community;

74 (8) "Major source" means (A) a major source of air pollution, as  
75 defined by the federal Clean Air Act or rules or regulations adopted by  
76 the department, or (B) an affecting facility that directly emits, or has the  
77 potential to emit, one hundred tons per year or more of any air pollutant  
78 or other applicable criteria set forth in the federal Clean Air Act; and

79       (9) "Permit" means any individual facility permit, license, certificate  
80 or siting approval issued by the department or council to a facility that  
81 establishes the regulatory and management requirements for a  
82 regulated activity pursuant to section 16-50k, 22a-174, 22a-208a or 22a-  
83 430. "Permit" does not include (A) any authorization or approval  
84 necessary to perform a remediation conducted in accordance with the  
85 regulations established pursuant to section 22a-133k; (B) applications  
86 for or registrations under general permits issued by the department,  
87 provided the Commissioner of Energy and Environmental Protection  
88 shall evaluate the potential for environmental and health stressors when  
89 issuing or renewing any general permit; (C) any permit for a facility  
90 with a diversion of more than two million gallons per day where such  
91 diverted water is used for public water supply purposes within the  
92 exclusive service area from where such water is diverted; (D) any  
93 authorization or approval required for a minor modification of a  
94 facility's major source permit for activities or improvements that do not  
95 increase emissions; or (E) any authorization or approval required for an  
96 extension of time to complete construction of a facility.

97       (b) (1) Applicants who, on or after January 1, 2009, seek to obtain any  
98 certificate under chapter 277a, new or expanded permit or siting  
99 approval from the Department of Energy and Environmental Protection  
100 or the Connecticut Siting Council involving an affecting facility that is  
101 proposed to be located in an environmental justice community or the  
102 proposed expansion of an affecting facility located in such a community,  
103 shall (A) file an assessment of environmental or public health stressors  
104 and a meaningful public participation plan with such department or  
105 council and shall obtain the department's or council's approval of such  
106 public participation plan prior to filing any application for such permit,  
107 certificate or approval; [and] (B) consult with the chief elected official or  
108 officials of the town or towns in which the affecting facility is to be  
109 located or expanded to evaluate the need for a community  
110 environmental benefit agreement in accordance with subsection (d) of  
111 this section; and (C) submit and receive approval of a public  
112 participation report that shall include, but not be limited to, (i) an  
113 affidavit that the applicant satisfied the requirements of subdivisions (2)

114 to (5), inclusive, of this subsection; (ii) all written comments received;  
115 and (iii) responses to concerns and questions presented in such written  
116 and verbal comments, including any changes to the activity or affecting  
117 facility proposed. Each assessment of environmental or public health  
118 stressors prepared pursuant to this subsection shall contain an  
119 assessment of the potential environmental and public health stressors  
120 associated with the proposed new or expanded affecting facility, as  
121 applicable, and shall identify any adverse environmental or public  
122 health stressors that cannot be avoided if the permit is granted, and the  
123 environmental or public health stressors already borne by the applicable  
124 environmental justice community.

125 (2) Each such meaningful public participation plan shall contain  
126 measures to facilitate meaningful public participation in the regulatory  
127 process and a certification that the applicant will undertake the  
128 measures contained in the plan. Such plan shall identify a time and place  
129 where an informal public meeting will be held that is convenient for the  
130 residents of the affected environmental justice community. In addition,  
131 any such plan shall identify the methods, if any, by which the applicant  
132 will publicize the date, time and nature of the informal public meeting  
133 in addition to the notice by mail required by subdivision (3) of this  
134 subsection and the publication required by subdivision [(3)] (4) of this  
135 subsection. Such methods shall include, but not be limited to, (A)  
136 posting a reasonably visible sign on the proposed or existing affecting  
137 facility property, printed in English, in accordance with any local  
138 regulations and ordinances, (B) posting a reasonably visible sign,  
139 printed in all languages spoken by at least fifteen per cent of the  
140 population that reside within a one-half of a mile radius of the proposed  
141 or existing affecting facility, in accordance with local regulations and  
142 ordinances, [and] (C) notifying local and state elected officials, in  
143 writing, and (D) a posting on electronic media, including, but not  
144 limited to, relevant Internet web sites and social media platforms,  
145 provided such notice is readily found by searching for the name of the  
146 affecting facility on the Internet. Such methods may include notifying  
147 neighborhood and environmental groups, in writing, in a language  
148 appropriate for the target audience. The determination of the percentage

149 of persons that speak a language, for purposes of subparagraph (B) of  
150 this subdivision, shall be made in accordance with the most recent  
151 United States census.

152 (3) Not less than thirty days prior to the informal public meeting, the  
153 applicant shall send a notice of such informal public meeting by mail to  
154 all residential households located within a one-half-mile radius of the  
155 proposed or existing affecting facility. Such notice shall provide the  
156 date, time and location of such meeting, a description of the proposed  
157 or expanded affecting facility, a map indicating the location of the  
158 affecting facility, information on how an interested person may review  
159 project documents, including any complete needs assessment,  
160 alternatives assessment, environmental impact analysis or assessment  
161 of environmental or public health stressors, addresses for mailed and  
162 Internet-based submission of written public comments and any other  
163 information deemed appropriate by the department or council. The  
164 applicant shall provide such notice in writing in all languages spoken  
165 by not less than fifteen per cent of the population that resides within  
166 such one-half-mile radius of the proposed or existing affecting facility.  
167 Such applicant shall subsequently send notice by mail to all such  
168 residential households of any subsequent public participation  
169 opportunities that occur as part of the permit approval process before  
170 the department or council, and to notify such residential households of  
171 any notice of tentative or final determination by the department or  
172 council.

173 ~~[(3)]~~ (4) Not less than ten days prior to the informal public meeting  
174 and not more than thirty days prior to such meeting, the applicant shall  
175 publish the date, time and nature of the informal public meeting with a  
176 minimum one-quarter page advertisement in a newspaper having  
177 general circulation in the area affected, and any other appropriate local  
178 newspaper serving such area, in the Monday issue of a daily publication  
179 or any day in a weekly or monthly publication. Such advertisement shall  
180 include information on how an interested person may review project  
181 documents, including any complete needs assessment, alternatives  
182 assessment, environmental impact analysis and assessment of

183 environmental and public health stressors. The applicant shall post a  
184 similar notification of the informal public meeting on the applicant's  
185 web site, if applicable.

186 ~~[(4)]~~ (5) At the informal public meeting, the applicant shall make a  
187 reasonable and good faith effort to provide clear, accurate and complete  
188 information about the proposed affecting facility or the proposed  
189 expansion of [a] such facility and the potential environmental and  
190 health impacts of such affecting facility or such expansion. The applicant  
191 shall accept written comments, submitted via mail or electronic mail,  
192 and oral comments from any interested party, and provide an  
193 opportunity for meaningful public participation at the informal public  
194 meeting. Not later than thirty days after such informal public meeting,  
195 the applicant shall submit to the department or council a public  
196 participation report, as described in subdivision (1) of this subsection.  
197 The applicant shall video record the informal public meeting and submit  
198 the recording to the department or council with the public participation  
199 report.

200 ~~[(5)]~~ (6) The Department of Energy and Environmental Protection or  
201 the Connecticut Siting Council shall not take any action on the  
202 applicant's application for a permit, license, certificate or approval  
203 earlier than [sixty days after the informal public meeting] the date the  
204 department or council approves the public participation report. For any  
205 such application filed on or after November 1, [2020] 2023, if the  
206 applicant fails to undertake the requirements of [subparagraphs (B) to  
207 (D), inclusive, of subdivision (2) of this subsection or subdivision (3) or  
208 (4) of] this subsection, any such application shall be deemed insufficient.  
209 The application of an applicant who fails to receive approval of such  
210 public participation report by the department or council, as applicable,  
211 shall be deemed insufficient.

212 ~~[(6)]~~ (7) In the event that the Connecticut Siting Council has approved  
213 a [meaningful public participation plan] public participation report  
214 concerning a new or expanded affecting facility and an informal public  
215 meeting has been held in accordance with this subsection, the

216 Department of Energy and Environmental Protection may [approve  
217 such plan and] waive the requirement that an additional informal public  
218 meeting be held in accordance with this subsection.

219 (8) In addition to any other fee authorized by law, rule or regulation,  
220 the department or council, as applicable, may assess each permit, license  
221 or certificate applicant a reasonable fee in order to cover the costs  
222 associated with the implementation of this section, including all costs to  
223 provide technical assistance to permit applicants and environmental  
224 justice communities to comply with the provisions of this section.

225 (c) Any municipality, owner or developer may enter into a  
226 community environmental benefit agreement in connection with an  
227 expanded or new affecting facility. For any application filed on or after  
228 November 1, 2020, for such an affecting facility that: (1) Requires a  
229 certificate under chapter 277a, or (2) constitutes a new or expanded  
230 permit or siting approval from the Department of Energy and  
231 Environmental Protection or the Connecticut Siting Council, and that is  
232 located in an environmental justice community or is proposed to be  
233 located in such a community, the applicant shall enter into such an  
234 agreement with the municipality if there are five or more affecting  
235 facilities in such municipality at the time such application is filed.  
236 Mitigation may include both on-site and off-site improvements,  
237 activities and programs, including, but not limited to: Funding for  
238 activities such as environmental education, diesel pollution reduction,  
239 electric vehicle charging infrastructure construction, establishment of a  
240 wellness clinic, ongoing asthma screening, provision of air monitoring  
241 performed by a credentialed environmental professional, performance  
242 of an ongoing traffic study, watercourse monitoring, construction of  
243 biking facilities and multi-use trails, staffing for parks, urban forestry,  
244 support for community gardens or any other negotiated benefit to the  
245 environment in the environmental justice community. Prior to  
246 negotiating the terms of a community environmental benefit agreement,  
247 the municipality shall provide a reasonable and public opportunity for  
248 residents of the potentially affected environmental justice community to  
249 be heard concerning the requirements of or need for, and terms of, such



250 agreement.

251 (d) The chief elected official or town manager of a municipality shall  
252 participate in the negotiations for any such community environmental  
253 benefit agreement and shall implement, administer and enforce such an  
254 agreement on behalf of the municipality, provided any such agreement  
255 negotiated pursuant to this section on and after November 1, 2020, shall  
256 be approved by the legislative body of the municipality prior to  
257 implementation, administration and enforcement of such agreement.  
258 Such chief elected official or town manager shall select a resident of the  
259 potentially affected environmental justice community to participate in  
260 such negotiations.

261 (e) The terms of any community environmental benefit agreement  
262 negotiated, entered into and approved in accordance with this section  
263 on and after November 1, 2020, shall not constitute a separate and  
264 distinct basis for a pleading to intervene in any administrative, licensing  
265 or other proceeding pursuant to section 22a-19.

266 (f) (1) The Commissioner of Energy and Environmental Protection  
267 shall adopt regulations, in accordance with the provisions of chapter 54,  
268 as are necessary and proper to carry out the purposes of this section. The  
269 provisions of subsection (g) of this section shall not take effect until the  
270 adoption of the regulations pursuant to this subsection. Such  
271 regulations shall include, but not be limited to, provisions regarding:  
272 (A) Procedures and requirements for creating the meaningful public  
273 participation plan and the public participation report required by this  
274 section; (B) the identification and measurement of the relative impact of  
275 environmental and public health stressors across communities; (C) tools  
276 for stakeholder industries and sectors to use that take account of any  
277 such environmental or public health stressors, including tools to help  
278 inform decisions about potential locations for new or expanded  
279 affecting facilities that comply with the provisions of this section; and  
280 (D) standards for denying or placing conditions on permits. The  
281 commissioner shall consult with stakeholder industries and sectors  
282 when developing the regulations pursuant to this section.

283       (2) Notwithstanding any provision of the general statutes, the  
284 commissioner may subject the renewal of any permit issued for an  
285 affecting facility to some or all of the provisions of this section and any  
286 regulation adopted pursuant to this subsection by adopting regulations,  
287 in accordance with the provisions of chapter 54, that include, but are not  
288 limited to, the identification of: (A) Each type of renewal permit subject  
289 to the provisions of this subdivision; (B) the types of affecting facilities  
290 subject to the provisions of this subdivision; and (C) the specific  
291 requirements of this section and any regulation adopted pursuant to this  
292 subsection that apply to each such renewal permit and affecting facility.  
293 No renewal permit shall be subject to the requirements of this section  
294 prior to the effective date of regulations adopted pursuant to this  
295 subdivision.

296       (g) (1) On and after the adoption of regulations pursuant to  
297 subdivision (1) or (2) of subsection (f) of this section, the department's  
298 review of any such application or renewal permit shall be conducted in  
299 accordance with any such regulations, as applicable, and the council's  
300 review of any such application may be conducted in accordance with  
301 any such regulations.

302       (2) The department or the council, as applicable, may deny any  
303 application for a permit for a new affecting facility upon a finding that  
304 approval of the permit, as proposed, would, together with other  
305 environmental or public health stressors affecting the applicable  
306 environmental justice community, result in adverse cumulative  
307 environmental or public health stressors in such environmental justice  
308 community that are higher than those borne by other communities  
309 within the state, county or other geographic unit of analysis, as  
310 determined by the department or council. Any such determination by  
311 the department shall be made in accordance with the applicable  
312 regulations adopted pursuant to subsection (f) of this section and any  
313 such determination by the council may be made in accordance with such  
314 regulations.

315       (3) If such permit is granted, the department or council, as applicable,

316 may impose conditions on the construction and operation of the new  
317 affecting facility that are intended to mitigate environmental and public  
318 health impacts.

319 (4) The department or the council, as applicable, shall provide notice,  
320 in writing, to any applicant for any such new affecting facility of any  
321 tentative determination regarding compliance with the applicable  
322 regulations adopted pursuant to subsection (f) of this section.

323 (5) If any hearing is held on any application or renewal permit subject  
324 to the requirements of this section, compliance with the applicable  
325 regulations adopted pursuant to subsection (f) of this section shall be  
326 considered at such hearing.

327 (6) The department or council, as applicable, shall publish any  
328 determination made pursuant to this subsection to the department's or  
329 council's Internet web site.

330 (h) Notwithstanding any provision of the general statutes, the  
331 department or council, as applicable, may, after review of the public  
332 participation report and any other relevant information, including  
333 testimony and written comments received in connection with the  
334 meaningful public participation plan, apply conditions to a permit for  
335 the expansion of an existing affecting facility concerning the  
336 construction and operation of the facility to protect the environment and  
337 public health, upon a finding by the department or council, as  
338 applicable, that approval of such permit, as proposed, would, together  
339 with other environmental or public health stressors affecting the  
340 applicable environmental justice community, result in adverse  
341 cumulative environmental or public health stressors in such  
342 environmental justice community that are higher than those borne by  
343 other communities in the state, county or other geographic unit of  
344 analysis, as determined by the department or council. Any such  
345 determination by the department shall be made in accordance with the  
346 applicable regulations adopted pursuant to subsection (f) of this section  
347 and any such determination by the council may be made in accordance  
348 with such regulations.

349 (i) If a permit applicant applies for more than one permit for a  
 350 proposed new or expanded affecting facility, the permit applicant shall  
 351 only be required to comply with the provisions of this section once,  
 352 unless the department or council, as applicable, determines that more  
 353 than one informal public meeting is necessary due to the complexity of  
 354 the permit applications necessary for the proposed new or expanded  
 355 affecting facility. Nothing in this subsection shall be construed to limit  
 356 the authority of the department or council to hold or require any public  
 357 hearing, as may be required by any other provision of the general  
 358 statutes, federal law or rule or regulation.

359 (j) Nothing in this section shall be construed to limit the right of an  
 360 applicant to continue facility operations during the process of permit  
 361 approval to the extent such right is conveyed by an applicable law, rule  
 362 or regulation.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2023	22a-20a

LCO Statement: In Subsec. (b)(3) "not more than" was changed to "within" for consistency.

**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:**

Agency Affected	Fund-Effect	FY 24 \$	FY 25 \$
Department of Energy and Environmental Protection	GF - Revenue Gain	See Below	See Below
Department of Energy and Environmental Protection	GF - Cost	96,988	129,317
State Comptroller - Fringe Benefits <sup>1</sup>	GF - Cost	41,530	55,374

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill alters environmental justice (EJ) laws enforced by the Department of Energy and Environmental Protection (DEEP), resulting in both costs and a revenue gain to the agency beginning in FY 24. It is expected that DEEP would assess fees in an amount to cover their costs.

The bill results in costs to the state of \$138,518 in FY 24 (adjusting for the effective date of the bill) and \$184,691 in FY 25 as it requires DEEP to hire two Environmental Analyst 2 positions to handle the technical permitting requirements. Of this total, there would be \$96,988 in salary costs to DEEP in FY 24 and \$41,530 for fringe benefits. The FY 25 costs would be \$129,317 to DEEP for the two staff salaries and \$55,374 for their fringe benefits.

<sup>1</sup>The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 42.82% of payroll in FY 24.

The bill also results in a revenue gain to DEEP beginning in FY 24 as it authorizes the agency to assess a reasonable fee to cover the costs associated with implementation of the EJ program and provision of technical assistance related to permit issuance required under the law.

***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to changes in employee wages and benefits.

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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.



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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)