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:

Section 1. Section 22a-20a of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2023):

(a) As used in this section:

(1) "Environmental justice community" means (A) a United States census block group, as determined in accordance with the most recent United States census, for which thirty per cent or more of the population consists of low income persons [who are not institutionalized] and have an income below two hundred per cent of the federal poverty level; or (B) a distressed municipality, as defined in subsection (b) of section 32-9p;

(2) "Affecting facility" means any (A) electric generating facility with a capacity of more than ten megawatts; (B) sludge or solid waste incinerator or combustor; (C) sewage treatment plant with a capacity of
more than fifty million gallons per day] publicly owned treatment
works in a community with combined sewers that transport both storm
water and sanitary sewage, or an expanded design flow rate for any
publicly owned treatment works; (D) intermediate processing center,
volume reduction facility, solid waste transfer station, resource recovery
facility, chemical recycling facility or multitown recycling facility with a
combined monthly volume in excess of twenty-five tons; (E) [new or
expanded] landfill, including, but not limited to, a landfill that contains
ash, construction and demolition debris or solid waste; (F) medical
waste incinerator; [or] (G) major source of air pollution, as defined by
the federal Clean Air Act; (H) pipeline, terminal or bulk commercial
storage facility not providing direct-to-consumer retail or delivery for
fossil fuels, including coal, oil, petroleum and natural gas; or (I) facility
with a diversion of more than two million gallons of water per day.

"Affecting facility" shall not include (i) the portion of an electric
generating facility that uses nonemitting and nonpolluting renewable
resources such as wind, solar and hydro power or that uses fuel cells,
(ii) any facility for which a certificate of environmental compatibility
and public need was obtained from the Connecticut Siting Council on
or before January 1, 2000, [or] (iii) a facility of a constituent unit of the
state system of higher education that has been the subject of an
environmental impact evaluation in accordance with the provisions of
sections 22a-1b to 22a-1h, inclusive, and such evaluation has been
determined to be satisfactory in accordance with section 22a-1c; or (iv)
a facility with a diversion of water greater than two million gallons in
any twenty-four-hour period that diverts water for public water supply
purposes within a service area, as defined in regulations adopted
pursuant to subsection (b) of section 22a-377, that includes the origin of
such diversion;

(3) "Meaningful public participation" means (A) residents of an
environmental justice community have an appropriate opportunity to
participate in decisions about a proposed facility or the expansion of an
existing facility that may adversely affect such residents' environment
or health; (B) the public's participation may influence the regulatory
agency's decision; and (C) the applicant for a new or expanded permit, certificate or siting approval seeks out and facilitates the participation of those potentially affected during the regulatory process; [and]

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

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

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

(7) "Environmental or public health stressors" means: (A) Sources of environmental pollution, including, but not limited to, 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, including, but not limited to, water pollution from facilities or combined sewer overflows, or (B) conditions that may cause potential public health impacts, including, but not limited to, asthma, cancer, elevated blood lead levels, cardiovascular disease and developmental problems in any environmental justice community;

(8) "Major source" means (A) a major source of air pollution, as defined by the federal Clean Air Act or rules or regulations adopted by the department, or (B) an affecting facility that directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant or other applicable criteria set forth in the federal Clean Air Act; and
(9) "Permit" means any individual facility permit, license, certificate or siting approval issued by the department or council to a facility that establishes the regulatory and management requirements for a regulated activity pursuant to section 16-50k, 22a-174, 22a-208a or 22a-430. "Permit" does not include (A) any authorization or approval necessary to perform a remediation conducted in accordance with the regulations established pursuant to section 22a-133k; (B) applications for or registrations under general permits issued by the department, provided the Commissioner of Energy and Environmental Protection shall evaluate the potential for environmental and health stressors when issuing or renewing any general permit; (C) any permit for a facility with a diversion of more than two million gallons per day where such diverted water is used for public water supply purposes within the exclusive service area from where such water is diverted; (D) any authorization or approval required for a minor modification of a facility's major source permit for activities or improvements that do not increase emissions; or (E) any authorization or approval required for an extension of time to complete construction of a facility.

(b) (1) Applicants who, on or after January 1, 2009, seek to obtain any certificate under chapter 277a, new or expanded permit or siting approval from the Department of Energy and Environmental Protection or the Connecticut Siting Council involving an affecting facility that is proposed to be located in an environmental justice community or the proposed expansion of an affecting facility located in such a community, shall (A) file an assessment of environmental or public health stressors and a meaningful public participation plan with such department or council and shall obtain the department's or council's approval of such public participation plan prior to filing any application for such permit, certificate or approval; [and] (B) consult with the chief elected official or officials of the town or towns in which the affecting facility is to be located or expanded to evaluate the need for a community environmental benefit agreement in accordance with subsection (d) of this section; and (C) submit and receive approval of a public participation report that shall include, but not be limited to, (i) an
affidavit that the applicant satisfied the requirements of subdivisions (2) to (5), inclusive, of this subsection; (ii) all written comments received; and (iii) responses to concerns and questions presented in such written and verbal comments, including any changes to the activity or affecting facility proposed. Each assessment of environmental or public health stressors prepared pursuant to this subsection shall contain an assessment of the potential environmental and public health stressors associated with the proposed new or expanded affecting facility, as applicable, and shall identify any adverse environmental or public health stressors that cannot be avoided if the permit is granted, and the environmental or public health stressors already borne by the applicable environmental justice community.

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

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

[(3)] (4) Not less than ten days prior to the informal public meeting and not more than thirty days prior to such meeting, the applicant shall publish the date, time and nature of the informal public meeting with a minimum one-quarter page advertisement in a newspaper having general circulation in the area affected, and any other appropriate local newspaper serving such area, in the Monday issue of a daily publication or any day in a weekly or monthly publication. Such advertisement shall include information on how an interested person may review project
documents, including any complete needs assessment, alternatives assessment, environmental impact analysis and assessment of environmental and public health stressors. The applicant shall post a similar notification of the informal public meeting on the applicant's web site, if applicable.

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

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

[(6)] (7) In the event that the Connecticut Siting Council has approved 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
residents of the potentially affected environmental justice community to be heard concerning the requirements or need for, and terms of, such agreement.

(d) The chief elected official or town manager of a municipality shall participate in the negotiations for any such community environmental benefit agreement and shall implement, administer and enforce such an agreement on behalf of the municipality, provided any such agreement negotiated pursuant to this section on and after November 1, 2020, shall be approved by the legislative body of the municipality prior to implementation, administration and enforcement of such agreement.

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

(f) (1) The Commissioner of Energy and Environmental Protection shall adopt regulations, in accordance with the provisions of chapter 54, as are necessary and proper to carry out the purposes of this section. The provisions of subsection (g) of this section shall not take effect until the adoption of the regulations pursuant to this subsection. Such regulations shall include, but not be limited to, provisions regarding:

(A) Procedures and requirements for creating the meaningful public participation plan and the public participation report required by this section; (B) the identification and measurement of the relative impact of environmental and public health stressors across communities; (C) tools for stakeholder industries and sectors to use that take account of any such environmental or public health stressors, including tools to help inform decisions about potential locations for new or expanded affecting facilities that comply with the provisions of this section; and (D) standards for denying or placing conditions on permits. The commissioner shall consult with stakeholder industries and sectors when developing the regulations pursuant to this section.
(2) Notwithstanding any provision of the general statutes, the commissioner may subject the renewal of any permit issued for an affecting facility to some or all of the provisions of this section and any regulation adopted pursuant to this subsection by adopting regulations, in accordance with the provisions of chapter 54, that include, but are not limited to, the identification of: (A) Each type of renewal permit subject to the provisions of this subdivision; (B) the types of affecting facilities subject to the provisions of this subdivision; and (C) the specific requirements of this section and any regulation adopted pursuant to this subsection that apply to each such renewal permit and affecting facility. No renewal permit shall be subject to the requirements of this section prior to the effective date of regulations adopted pursuant to this subdivision.

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

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

(3) If such permit is granted, the department or council, as applicable,
may impose conditions on the construction and operation of the new affecting facility that are intended to mitigate environmental and public health impacts.

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

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

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

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

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

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

This act shall take effect as follows and shall amend the following sections:

| Section 1 | October 1, 2023 | 22a-20a |

Statement of Purpose:
To enhance the environmental and public health considerations made under the state's environmental justice statute and provide the Department of Energy and Environmental Protection and the Connecticut Siting Council with the ability to deny certain permits for a new affecting facility and apply conditions to the expansion of an existing facility.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]