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## OLR Bill Analysis

### sHB 5433

#### ***AN ACT ESTABLISHING A PROCEDURE FOR THE STATE HISTORIC PRESERVATION OFFICER TO MAKE DETERMINATIONS CONCERNING CERTAIN ENVIRONMENTAL EFFECTS.***

#### **SUMMARY**

This bill codifies in statute and revises procedures relating to the State Historic Preservation Officer's (SHPO) project reviews under the Connecticut Environmental Policy Act (CEPA). Currently, SHPO reviews projects under CEPA to determine whether there could be an impact on the state's historic structures and landmarks, but neither CEPA nor its regulations specify requirements for SHPO's reviews (see BACKGROUND).

Among other things, the bill requires SHPO to make an initial determination of a project's impact within 30 days after receiving information it deems reasonably necessary to make the determination. If SHPO determines that there will be a major impact on historic structures and landmarks, then it must propose a mitigation plan in collaboration with the sponsoring agency; state entity (i.e., a state department, institution, or agency); or state funding recipient (collectively, "project proponent").

The bill allows the project proponent, if it declines to execute the proposed mitigation agreement, to request the Department of Economic and Community Development (DECD) commissioner to review the plan and recommend revisions. (SHPO is within DECD.) It also allows state funding recipients, instead of executing a mitigation agreement with SHPO, to elect to pay mitigation costs of 15% of the state funding or \$750,000, whichever is less, to resolve the impact. It also allows the sponsoring agency to conduct public scoping in accordance with CEPA if no agreement is reached.

EFFECTIVE DATE: October 1, 2024

## **SHPO REVIEW**

### ***CEPA and Historic Preservation***

Generally, CEPA provides a declaration of state policy and establishes a process by which state agencies must identify and review their proposed actions that may significantly affect the environment (CGS § 22a-1a et seq.). Under CEPA and the bill, “actions which may significantly affect the environment” include individual activities or a sequence of planned activities proposed to be undertaken by state departments, institutions, or agencies, or funded in whole or in part by the state, which could have a major impact on, among other things, historic structures and landmarks (CGS § 22a-1c).

By law and under the bill, “historic structures and landmarks” means any building, structure, object, or site that is significant in American history, architecture, archaeology, and culture or property used in connection with it, including sacred sites and archaeological sites (CGS § 10-410).

### ***SHPO Reviews***

Under the bill, a sponsoring agency may consult with SHPO to determine whether a project proponent’s proposed individual activities or sequence of planned activities could have a major impact on the state’s historic structures and landmarks (and potentially significantly affect the environment). Although CEPA does not define “sponsoring agency,” under CEPA regulations each agency responsible for recommending or initiating an action is considered a sponsoring agency (Conn. Agencies Regs., § 22a-1a-2(a)).

The bill requires SHPO to make an initial determination within 30 days after receiving information it deems reasonably necessary to make the determination. SHPO must collaborate with the project proponent in making this determination. It must provide written notice to the sponsoring agency if it determines that there is no effect or no major impact on historic structures or landmarks.

***Determination of Major Impact***

If SHPO determines that there will be a major impact on historic structures and landmarks, then it must propose a mitigation plan in collaboration with the project proponent. To the extent possible, the project proponent must submit to SHPO all pertinent information that may affect the mitigation plan, and SHPO must consider this information in developing the plan.

The bill requires SHPO to memorialize the mitigation plan in an agreement that the project proponent may execute. Executing the original agreement or a revised agreement (see below) constitutes a determination by SHPO that it is satisfied the environmental impact will be mitigated.

***DECD Review.*** The bill allows the project proponent, if it declines to execute the agreement, to request the DECD commissioner to review the plan and recommend revisions. The proponent may make this request within 15 days after SHPO proposes the mitigation plan. The request must be in a form and manner the commissioner prescribes and may include a request for a conference with the commissioner, SHPO, project proponent, and any other interested party.

Within 30 days after receiving the request, the commissioner must hold the conference (if requested) and make recommendations (if any) for revising the proposed mitigation plan, which SHPO must incorporate into a revised plan. Under the bill, SHPO must memorialize the revised plan into a revised agreement that the office and project proponent may execute. If the commissioner does not recommend revisions, then the proponent may elect to execute the originally proposed agreement.

***Payment Option.*** The bill allows state funding recipients to elect to pay mitigation costs of 15% of the state funding or \$750,000, whichever is less. The recipient may elect to do so at any time while SHPO is making a determination or developing a mitigation plan. SHPO must memorialize the election in a mitigation agreement executed by SHPO and the recipient. Executing the agreement constitutes a determination

by SHPO that it is satisfied the environmental effect will be mitigated.

***Public Scoping if Agreement not Executed.*** The bill allows a sponsoring agency to conduct an early public scoping under CEPA if no mitigation agreement is executed. Generally, public scoping is when the sponsoring agency solicits comments from other agencies and the public about the proposed action's environmental effects and whether an environmental impact evaluation (EIE) is required (CGS § 22a-1b(b)).

## **BACKGROUND**

### ***CEPA Overview***

Generally, CEPA provides a declaration of state policy and establishes a process by which state agencies must identify and review their proposed actions that may significantly affect the environment (CGS § 22a-1a et seq.). CEPA reviews have three primary stages:

1. an initial assessment by a sponsoring agency (i.e., the agency administering or funding the project) to determine whether public scoping is required;
2. a public scoping process to determine whether an EIE is required (CGS § 22a-1b(b)); and
3. an EIE, which is the most extensive level of review under CEPA (CGS § 22a-1b(c)).

SHPO's reviews generally occur at the first stage of the process (i.e., before public scoping). During this stage, agencies consult an environmental classification document, which lists examples of agency actions that typically require (or do not require) public scoping. If the sponsoring agency determines that its action does not have the potential to significantly affect the environment, then it does not proceed to public scoping.

### ***SHPO***

SHPO is located within DECD and has responsibilities under both federal and state law, including the following:

1. historic designations to the National and State Registers of Historic Places;
2. regulatory review and compliance related to the National Historic Preservation Act (i.e., Section 106 reviews) and CEPA;
3. local historic preservation programs;
4. federal and state tax credit programs; and
5. state museums.

The term “SHPO” is often used interchangeably to refer to either the “State Historic Preservation Office” or the “State Historic Preservation Officer.” In practice, the responsibilities of the designated officer are fulfilled by the office as a whole.

#### **COMMITTEE ACTION**

Commerce Committee

Joint Favorable Substitute

Yea 22 Nay 2 (03/26/2024)