



House of Representatives

General Assembly

File No. 459

February Session, 2024

Substitute House Bill No. 5433

House of Representatives, April 11, 2024

The Committee on Commerce reported through REP. MESKERS of the 150th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

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

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2024*) (a) As used in this section:

2 (1) "Actions which may significantly affect the environment" has the
3 same meaning as provided in section 22a-1c of the general statutes;

4 (2) "Historic structures and landmarks" has the same meaning as
5 provided in section 10-410 of the general statutes;

6 (3) "Sponsoring agency" has the same meaning as described in
7 sections 22a-1 to 22a-1h, inclusive, of the general statutes;

8 (4) "State entity" means a state department, institution or agency
9 under sections 22a-1 to 22a-1h, inclusive, of the general statutes;

10 (5) "State funding recipient" means a recipient of state funding under
11 sections 22a-1 to 22a-1h, inclusive, of the general statutes; and

12 (6) "State Historic Preservation Officer" means the individual
13 appointed by the Governor pursuant to 54 USC 302301(1), as amended
14 from time to time, to administer the state historic preservation program

15 in accordance with 54 USC 302303, as amended from time to time.

16 (b) A sponsoring agency may, in accordance with sections 22a-1 to
17 22a-1h, inclusive, of the general statutes, consult with the State Historic
18 Preservation Officer to determine whether an individual activity or a
19 sequence of planned activities proposed to be undertaken by the
20 sponsoring agency, a state entity or a state funding recipient is within
21 the category of actions which may significantly affect the environment
22 because such activity or sequence of activities could have a major impact
23 on the state's historic structures and landmarks. The State Historic
24 Preservation Officer shall, in making such determination, collaborate
25 with the sponsoring agency, state entity or state funding recipient, as
26 applicable. An initial determination by the State Historic Preservation
27 Officer shall be made not later than thirty days after the officer receives
28 information the officer deems reasonably necessary to make such
29 determination.

30 (c) If the State Historic Preservation Officer determines that such
31 individual activity or sequence of planned activities will not have any
32 effect on historic structures and landmarks, or is not within the category
33 of actions which may significantly affect the environment because such
34 activity or sequence of activities will not have a major impact on historic
35 structures and landmarks, said officer shall provide written notice of
36 such determination to the sponsoring agency.

37 (d) (1) If the State Historic Preservation Officer determines that such
38 individual activity or sequence of planned activities is within the
39 category of actions which will significantly affect the environment
40 because such activity or sequence of activities will have a major impact
41 on historic structures and landmarks, the officer shall, in collaboration
42 with the sponsoring agency, state entity or state funding recipient, as
43 applicable, propose a mitigation plan requiring such sponsoring agency,
44 state entity or state funding recipient to mitigate such impact.

45 (2) The sponsoring agency, state entity or state funding recipient, as
46 applicable, shall, to the extent possible, submit to the State Historic
47 Preservation Officer all pertinent information regarding such individual

48 activity or sequence of planned activities that may affect such mitigation
49 plan. Such information shall be considered by the officer in the
50 development of the mitigation plan.

51 (3) The State Historic Preservation Officer shall memorialize the
52 mitigation plan in a proposed mitigation agreement that may be
53 executed by the officer and the sponsoring agency, state entity or state
54 funding recipient, as applicable. The execution of such mitigation
55 agreement shall constitute a determination by the State Historic
56 Preservation Officer that said officer is satisfied the environmental effect
57 will be mitigated.

58 (e) (1) If the sponsoring agency, state entity or state funding recipient
59 declines to execute a proposed mitigation agreement as described in
60 subdivision (3) of subsection (d) of this section, such sponsoring agency,
61 state entity or state funding recipient may, not later than fifteen days
62 after the State Historic Preservation Officer proposes such mitigation
63 plan, submit a request to the Commissioner of Economic and
64 Community Development to review the proposed mitigation plan and
65 to make recommendations to revise such plan. Such request shall be in
66 the form and manner prescribed by the commissioner and may include
67 a request for a conference with the commissioner, the State Historic
68 Preservation Officer, the sponsoring agency, the state entity or the state
69 funding recipient, as applicable, and any other interested party.

70 (2) (A) Not later than thirty days after receiving such request, the
71 commissioner shall (i) if such conference was requested, hold such
72 conference, and (ii) make recommendations, if any, for revisions to the
73 mitigation plan. If such revisions are recommended, the State Historic
74 Preservation Officer shall include such revisions in a revised mitigation
75 plan and shall memorialize such revised mitigation plan in a revised
76 mitigation agreement. Such revised mitigation agreement may be
77 executed by the officer and the sponsoring agency, state entity or state
78 funding recipient, as applicable. The execution of such revised
79 mitigation agreement shall constitute a determination by the State
80 Historic Preservation Officer that said officer is satisfied the

81 environmental effect will be mitigated.

82 (B) If the commissioner makes no recommendations for revisions to
83 the mitigation plan, the review by the commissioner pursuant to this
84 subsection shall be concluded. The sponsoring agency, state entity or
85 state funding recipient, as applicable, may subsequently elect to execute
86 the mitigation agreement proposed by the State Historic Preservation
87 Officer pursuant to subdivision (3) of subsection (d) of this section. The
88 execution of such mitigation agreement shall constitute a determination
89 by the State Historic Preservation Officer that said officer is satisfied the
90 environmental effect will be mitigated.

91 (f) A state funding recipient may, at any time while the State Historic
92 Preservation Officer is making a determination or developing a
93 mitigation plan pursuant to this section, elect to pay mitigation costs of
94 the lesser of fifteen per cent of such state funding or seven hundred fifty
95 thousand dollars. If such state funding recipient makes such election,
96 the State Historic Preservation Officer shall memorialize such election in
97 a mitigation agreement executed by the officer and such recipient. The
98 execution of such mitigation agreement shall constitute a determination
99 by the State Historic Preservation Officer that said officer is satisfied the
100 environmental effect will be mitigated.

101 (g) If the State Historic Preservation Officer proposes a mitigation
102 plan pursuant to subdivision (1) of subsection (d) of this section but a
103 mitigation agreement is not executed under subsection (d), (e) or (f) of
104 this section, the sponsoring agency may conduct an early public scoping
105 process in accordance with subsection (b) of section 22a-1b of the
106 general statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2024	New section

CE 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:** None**Municipal Impact:** None**Explanation**

The bill has no fiscal impact by establishing procedures relating to the State Historic Preservation Officer's (SHPO) project reviews. The bill generally codifies the recommendations of the SHPO working group which SHPO has begun to implement in current practice.

The Out Years**State Impact:** None**Municipal Impact:** None

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)