PA 24-1, June 2024 Special Session—SB 501
Emergency Certification

AN ACT CONCERNING MOTOR VEHICLE ASSESSMENTS FOR PROPERTY TAXATION, INNOVATION BANKS, THE INTEREST ON CERTAIN TAX UNDERPAYMENTS, THE ASSESSMENT ON INSURERS, SCHOOL BUILDING PROJECTS, THE SOUTH CENTRAL CONNECTICUT REGIONAL WATER AUTHORITY CHARTER AND CERTAIN STATE HISTORIC PRESERVATION OFFICER PROCEDURES

TABLE OF CONTENTS:

§§ 34-42 — SOUTH CENTRAL CONNECTICUT REGIONAL WATER AUTHORITY (RWA) AND CREATION OF AQUARION WATER AUTHORITY

Amends RWA's charter to contemplate the acquisition of Aquarion Water Company or its subsidiaries, including giving RWA specific authority to borrow or bond for this purpose; upon such acquisition, creates a state-chartered regional water authority and generally gives the new Aquarion Water Authority the same powers and structure as RWA, including giving both authorities the same governing board

§ 43 — SHPO PROJECT REVIEW

Codifies in statute procedures for SHPO reviews to determine a proposed project's impact on historic structures and landmarks; requires SHPO to make a determination within 30 days and develop a mitigation plan with the project proponent under certain circumstances; allows a project proponent to request that DECD review the proposed plan

§§ 1-12 — MOTOR VEHICLE PROPERTY TAX ASSESSMENTS

Changes various laws on motor vehicle assessment and property tax billing procedures set to take effect on October 1, 2024, including (1) adjusting the depreciation schedule assessors must use to value motor vehicles, (2) eliminating a requirement that OPM define a class of motor vehicles to be treated as personal property for taxing purposes, (3) specifying how assessors must value commercial vehicle modifications and attachments, and (4) eliminating certain statutory deadlines for supplemental motor vehicle tax bills

The act changes laws on motor vehicle assessments and property tax billing procedures that, by law, take effect October 1, 2024 (see *Background — Changes to Motor Vehicle Assessment Laws in 2023 and 2024*). Principally, the act does the following:

1. adjusts the depreciation schedule, increasing the taxable portion of each vehicle's manufacturer's suggested retail price (MSRP) by five percentage points and making corresponding changes to the increments over the 20-year depreciation schedule (§ 3);
2. eliminates a requirement that the Office of Policy and Management (OPM) define a class of motor vehicles that would be treated as non-vehicle personal property for certain property tax purposes (§§ 1, 2, 4, 5 & 7);
3. requires assessors to determine whether to value modifications and attachments to commercial vehicles, as well as the vehicles to which they are affixed, as motor vehicles or as non-vehicle personal property (§§ 3 & 4);
4. restores a provision in the underlying law specifying that registered motor vehicles are not to be listed on a personal property declaration (§ 4); and
5. eliminates certain statutory deadlines for supplemental motor vehicle tax bills and re-establishes prior law's time limit for taxpayers to apply for certain credits (e.g., for stolen or totaled vehicles) (§§ 8-10).

With respect to how vehicles are assessed, the act additionally:

1. requires OPM to annually establish valuation guidelines, in consultation with the Department of Motor Vehicles (DMV), that assessors must use to determine vehicles' use for property tax purposes (§ 2), and

2. requires assessors to value tax-exempt commercial trucks, truck tractors, and tractors and semitrailers used exclusively to transport freight for hire in the same way as other vehicles (i.e., using their MSRP subject to depreciation or assessor-determined values, as applicable), rather than using their purchase cost subject to depreciation (§ 10).

The act also explicitly authorizes taxpayers to contest the MSRP used to assess their vehicles in the same way existing law sets for appeals of the prior valuation method (i.e., at the next board of assessment appeals meeting after the tax bill becomes due and then to the Superior Court) (§§ 3 & 8). Lastly, it makes numerous minor and conforming changes.

EFFECTIVE DATE: July 1, 2024, and applicable to assessment years starting on or after October 1, 2024, except for a conforming change in § 11, which is effective July 1, 2024, and a technical correction in § 12, which is effective upon passage.

Depreciation Schedule (§ 3)

Beginning October 1, 2024, prior law required vehicles to be valued for property tax purposes as a percentage of their MSRP, based on a 20-year depreciation schedule. The act increases the taxable portion of vehicles' MSRP by five percentage points, as shown in the table below. Additionally, under the act, no motor vehicle can be assessed, rather than valued, at less than $500.

Motor Vehicle Valuations Under the Act

Vehicle Age (in years)	% of MSRP	
	Prior Law	Act
Up to 1	80	85
2	75	80
3	70	75
4	65	70
5	60	65
6	55	60
7	50	55
8	45	50
9	40	45
10	35	40
11	30	35
12	25	30
13	20	25
14	15	20
15-19	10	15
20+	≥ $500	≥ $500

Commercial Vehicle Modifications and Attachments (§§ 3 & 4)

Beginning October 1, 2024, the act requires assessors to determine whether to value commercial motor vehicles with modifications or certain attachments (i.e., those designed, manufactured, or modified to be affixed to the vehicle) as motor vehicles or as personal property. It requires assessors to do the same for the modifications and attachments. (By law, motor vehicles and other, non-vehicle personal property are valued differently (e.g., using different methods and depreciation schedules).) Under the act, the assessor must determine the valuation of any modifications or attachments to these vehicles based on whether they are intended to be permanently affixed to the vehicle.

Under the act, non-permanent modifications and attachments are considered personal property, which taxpayers must list on their annual personal property declarations. (Presumably, attachments and modifications that are intended to be permanently affixed are valued as part of the motor vehicle, not as personal property.)

Personal Property Declarations (§ 4)

Prior law required (1) OPM to annually, starting by October 1, 2024, define a schedule of motor vehicle plate classes to be treated as non-vehicle personal property and (2) taxpayers to list those vehicles on a personal property declaration. In addition to eliminating the OPM-established schedule of plate classes, the act restores a provision in the underlying law specifying that registered motor vehicles are not to be listed on a personal property declaration. (As described above, the act also requires the assessor to determine whether to value a commercial motor vehicle with modifications or attachments as personal property listed on a personal property declaration.)

Supplemental Motor Vehicle Tax Bills and Credits (§§ 8-10)

Late Additions to the Grand List. Under prior law, when an assessor received notice from the DMV commissioner about a taxable vehicle that was not already on the town's taxable grand list, he or she was required to assess the vehicle and add it to the town's grand list for the immediately preceding assessment date (i.e., the prior October 1). Under the act, beginning October 1, 2024, the assessor must instead add the vehicle to the town's taxable grand list.

Supplemental Tax Bill Due Dates. By law, until October 1, 2024, tax bills for vehicles (including replacement vehicles and temporarily registered commercial vehicles) registered after the start of the assessment year (October 1) are due the following January 1 in a supplemental tax bill, and interest on delinquent payments begins accruing February 1. Prior law created a second supplemental tax bill due date (July 1) and, in doing so, generally advanced the payment date for vehicles registered after October 1 but before April 1. This prior law was set to go into effect October 1, 2024.

The act eliminates these statutory due dates and instead makes supplemental bills payable not later than the first day of the month after they become due. (Presumably, this means municipalities will set supplemental tax bills' due dates

and interest will begin accruing the first day of the next month.)

Where Supplemental Motor Vehicle Tax Is Paid. Under prior law, supplemental motor vehicle tax bills for vehicles registered after the start of the assessment year (other than replacement vehicles) were due to the municipality in which the vehicle was last registered in the assessment year immediately preceding the day on which the tax was payable. The act instead makes these supplemental tax bills due to the municipality where the vehicle was first registered during the assessment year. (By law, unchanged by the act, supplemental motor vehicle tax bills are prorated for the number of months left in the assessment year.)

By law, and under the act, supplemental tax bills on replacement vehicles are due to the municipality that billed the original, replaced vehicle.

Deadline to Request Credit. The act reestablishes prior law's deadline for a taxpayer to claim a credit against their property taxes for a vehicle that was sold, totaled, stolen, or registered by the taxpayer in another state upon moving. So, under the act, the deadline remains the December 31 following the first full assessment year after the assessment year in which the event (e.g., sale or theft) occurred.

Background — Changes to Motor Vehicle Assessment Laws in 2023 and 2024

PA 22-118, §§ 497-509, beginning October 1, 2023, (1) required assessors to value vehicles using their MSRPs, subject to depreciation (rather than using a guide OPM annually selects); (2) required DMV to give municipalities a supplemental list of vehicles it registered on a monthly, rather than annual, basis; and (3) modified the timeline for supplemental bills. However, PA 23-304, §§ 209-219, delayed these changes by one year, until the 2024 assessment year.

§ 13 — MOTOR VEHICLE MILL RATE

Requires municipalities and districts that impose a motor vehicle mill rate that differs from the mill rate for other taxable property to impose the lower rate on motor vehicles; explicitly authorizes them to set the motor vehicle mill rate as low as zero mills; requires OPM to send specified notices to municipal CEOs about the municipality's option to reduce its mill rate

The act (1) requires municipalities and districts that set different mill rates for motor vehicles and other taxable property to impose a lower rate on motor vehicles than they impose on the other property and (2) explicitly authorizes them to set the motor vehicle mill rate as low as zero mills. The law, unchanged by the act, caps the motor vehicle mill rate at 32.46 mills.

The act also requires the OPM secretary to annually notify each municipality's chief executive officer (CEO) that:

1. the municipality has the option to reduce its motor vehicle mill rate to less than 32.46 mills, even as low as zero mills, and
2. its motor vehicle mill rate may be different than its rate for other taxable property, so long as it is lower.

The OPM secretary must also notify each municipal CEO, before the municipality implements a revaluation, that the municipality has the option to consider and evaluate reducing its motor vehicle mill rate in the same fiscal year in

which it implements the revaluation.
EFFECTIVE DATE: July 1, 2025

§§ 14-29 — INNOVATION BANKS

Replaces a type of Connecticut-organized bank ("uninsured bank") with a substantially similar type under a different name ("innovation bank")

The act replaces all references to "uninsured banks" in the state's banking laws with "innovation banks." In doing so, it makes the requirements and conditions that applied to uninsured banks under prior law apply to innovation banks instead.

The act defines "innovation bank" similarly to "uninsured bank" (i.e., a Connecticut-chartered or -organized bank and trust company, savings bank, or savings and loan association that does not accept retail deposits). However, while, by definition, prior law did not require "uninsured banks" to have Federal Deposit Insurance Corporation (FDIC) insurance for their deposits, the act instead expressly allows "innovation banks" to accept nonretail deposits that are eligible for FDIC insurance.

Separate from its definition, the act also authorizes each innovation bank to receive nonretail deposits (including from a corporation owning the majority of the bank's shares) and to secure deposit insurance for them, including from the FDIC.

By law, "retail deposits" are deposits by anyone other than accredited investors as defined in federal securities regulations. Generally, "accredited investors" include, among other entities and individuals, certain banks, securities brokers or dealers, insurance companies, investment companies, business development companies, qualifying retirement and employee benefit plans, trusts with assets over $5 million, and people with an individual income over $200,000 in each of the past two years or $300,000 jointly with a spouse (17 C.F.R. § 230.501(a)).

Lastly, the act makes several technical and conforming changes.
EFFECTIVE DATE: July 1, 2024

§ 30 — INTEREST ON CERTAIN TAX UNDERPAYMENTS

Exempts taxpayers from paying interest on underpayments of corporation business, pass-through entity, and personal income taxes if the underpayment was due to an amended return filing necessitated by IRS guidance on the federal employee retention credit

The act exempts taxpayers from paying interest on underpayments of corporation business, pass-through entity, and personal income taxes if the underpayment was due to an amended return filing required by Internal Revenue Service (IRS) guidance on the federal employee retention credit. It requires the Department of Revenue Services (DRS) to treat any interest already paid on these underpayments as an overpayment and refund it to taxpayers without interest.

The federal employee retention credit is a refundable credit against employment taxes designed for eligible businesses that continued paying employees during the COVID-19 pandemic. Eligible employers were allowed to claim the credit on an original or amended employment tax return for qualified wages paid between

March 13, 2020, and December 31, 2021.
EFFECTIVE DATE: Upon passage

§ 31 — GENERAL INSURANCE ASSESSMENT

Changes the basis for calculating the annual general assessment that domestic insurers and HMOs pay the Insurance Department

By law, domestic insurers and HMOs pay an annual assessment to the Insurance Department to cover the expenses of the Insurance Department, Office of the Healthcare Advocate, and Office of Health Strategy, among other things.

The act changes the basis for calculating this annual assessment. Under prior law, the assessment was generally calculated based on the amount the insurers and HMOs paid in Connecticut insurance premiums taxes for the prior calendar year. For certain local domestic insurers, it was based on the amount before applying the insurance premiums tax credit allowed for these insurers. The act instead bases the assessment on the total amount of Connecticut insurance premiums taxes the insurers and HMOs reported to DRS two years prior before applying any allowable or available tax credits.

The act correspondingly requires the DRS commissioner to report these tax amounts in the statement he must give the insurance commissioner annually by June 30. It also makes related technical and conforming changes.
EFFECTIVE DATE: October 1, 2025

§§ 32 & 33 — SCHOOL CONSTRUCTION PROJECT MANAGERS

Prohibits construction managers on school construction projects from bidding on project subcontracts

The act reinstates a provision prohibiting construction managers on school construction projects from bidding on elements of the project (i.e., subcontracts) they are managing. PA 24-151 had removed the prohibition and the act repeals that provision of PA 24-151. The act leaves intact other changes to school construction law made by PA 24-151.
EFFECTIVE DATE: July 1, 2024, except the repealer section is effective upon passage.

§§ 34-42 — SOUTH CENTRAL CONNECTICUT REGIONAL WATER AUTHORITY (RWA) AND CREATION OF AQUARION WATER AUTHORITY

Amends RWA's charter to contemplate the acquisition of Aquarion Water Company or its subsidiaries, including giving RWA specific authority to borrow or bond for this purpose; upon such acquisition, creates a state-chartered regional water authority and generally gives the new Aquarion Water Authority the same powers and structure as RWA, including giving both authorities the same governing board

The act establishes provisions that, under specified circumstances, create a new

regional water authority, Aquarion Water Authority (AWA), serving the Aquarion Regional Water District. The act contemplates the creation of the new water authority after RWA or AWA acquires Aquarion Water Company or one or more of its subsidiaries ("the company"). (Currently, the company is a subsidiary of Eversource serving customers in Connecticut, Massachusetts, and New Hampshire.) Under existing law, unchanged by the act, the company's acquisition requires Public Utilities Regulatory Authority (PURA) approval. The act makes the charter it establishes for AWA part of RWA's charter.

Identically to RWA, which the legislature chartered in 1977 to serve the New Haven area, the act states that the purpose of creating AWA is to assure the adequate provision of water and disposal of wastewater at a reasonable cost in the region and to promote conservation and compatible recreational use of the land held by the authority. Under the act, AWA is overseen by a representative policy board and governing board, as is the case for RWA.

If RWA or AWA acquire the company, the act expands RWA's governing board to include members living in AWA's jurisdiction. The same governing board oversees both RWA and AWA. The act also makes RWA's chief executive officer the same as AWA's. The act gives AWA nearly identical powers and responsibilities to RWA, including the power to purchase and condemn property, operate water supply and wastewater systems, and issue bonds. Like RWA, AWA is subject to regulation by the state departments of public health (DPH) and energy and environmental protection (DEEP), but it is not regulated by PURA.

The act specifies that its provisions on RWA and AWA sunset on December 31, 2027, unless PURA approves RWA's or AWA's acquisition and operation of Aquarion Water Company, or its subsidiaries, by that date.

EFFECTIVE DATE: Upon passage

Aquarion Regional Water District's Membership

Under the act, the district consists of: Beacon Falls, Bethel, Bridgeport, Brookfield, Burlington, Canaan, Cornwall, Danbury, Darien, East Derby, East Granby, East Hampton, Easton, Fairfield, Farmington, Goshen, Granby, Greenwich, Groton, Harwinton, Kent, Lebanon, Litchfield, Mansfield, Marlborough, Middlebury, Monroe, New Canaan, New Fairfield, New Hartford, New Milford, Newtown, Norfolk, North Canaan, Norwalk, Norwich, Oxford, Plainville, Redding, Ridgefield, Salisbury, Seymour, Shelton, Sherman, Simsbury, Southbury, Southington, Stamford, Stonington, Stratford, Suffield, Torrington, Trumbull, Washington, Weston, Westport, Wilton, Wolcott, and Woodbury.

If the authority does not own property or serve customers in any of these municipalities, then the town or city is excluded from the district.

AWA's Representative Policy Board

As is the case under existing law for RWA, the act establishes a substantially similar representative policy board for the authority. It consists of (1) an elector of each member municipality, appointed by the respective chief elected official and

approved by the legislative body, and (2) one elector appointed by the governor. The act specifies their initial staggered terms; their compensation is the same as members of RWA's policy board ($250 per day for each day of service, adjusted periodically for inflation, with the chairperson receiving 50% more than other members). Like RWA, the votes of the municipally-appointed members of the board are weighted by the number of customers and amount of authority-owned land in the municipality.

Initially, RWA's policy board serves as AWA's, until AWA's is appointed, which cannot be before PURA approves RWA's or AWA's acquisition of the company.

Duties. Identically as for RWA, the AWA policy board must decide whether to approve, after a hearing, various major authority actions, including setting rates and charges (see below), acquiring some or all of another water or wastewater system, most capital projects that cost more than $3.5 million, or noncore business investments of more than $1.5 million (these thresholds are adjusted for inflation every three years, with board approval). It also decides whether to approve bond issues.

Like RWA, the board must have standing committees on land use and management, finance, and consumer affairs. The act also specifies public notice requirements for hearings (e.g., on land sales) conducted by the policy board.

Appeals. If the governing board (see below) or others are aggrieved by the policy board's decision (e.g., its rates, siting plans, or sale of property), they have the same recourse options and under the same procedures as those aggrieved by RWA's policy board. This means, under certain circumstances, they can appeal the decision to Hartford Superior Court (in the case of RWA, filings are made in New Haven Superior Court). (Neither RWA nor AWA are subject to the Uniform Administrative Procedure Act.)

AWA's Governing Board

Under the act, AWA is governed by 11 individuals, five of whom are district residents appointed by the AWA policy board and six of whom are the members appointed to RWA's governing board by RWA's policy board. This governing board constitutes the authority. Board members receive the same compensation as policy board members if the latter board approves it. No one can be a member of both the policy and governing boards. But the act requires the boards of AWA and RWA to be identical.

Initially, when AWA's creation is first triggered, RWA's governing board serves as AWA's, until its AWA district members are appointed. The first chair and vice-chair, for two-year terms, are the same as RWA's, but subsequent chairs and vice-chairs are elected by the board's membership, as is the case for RWA under existing law.

(As discussed below, the act makes conforming changes to RWA's charter to align RWA's board with AWA's, although it appears they may have different chairpersons after the initial AWA chair's term.)

General Powers

With limited exceptions, AWA's powers are identical to RWA's. These include the powers to:

1. acquire real and personal property by purchase or condemnation (but it cannot acquire property by condemnation to use for noncore businesses);
2. construct, develop, and operate water supply and wastewater systems and set the rates and charges for these systems (see below);
3. borrow money and issue bonds;
4. acquire real property for conservation and recreational purposes if these uses will not harm water quality;
5. partake in noncore business activities, such as sustainable manufacturing support or certain energy projects; and
6. employ staff (subject to the laws on municipal employee collective bargaining) and enter into agreements with its employees' representatives on participating in any applicable state or municipal employee retirement plan.

As is the case for RWA, the governing board sets rates and charges, subject to approval by the representative policy board, and the act specifies ratemaking principles. Unpaid rates and charges are a lien against the owner of the affected property, and these liens take precedence over all other liens or encumbrances except taxes.

The act specifically authorizes both RWA and AWA to borrow or bond to acquire Aquarion Water Company or any of its subsidiaries.

Acquiring a Water System Outside the District. The act makes it a "noncore business" activity for AWA (or RWA) to acquire Aquarion Water Company or its subsidiaries. For both AWA and RWA, noncore business expenses exceeding $1.5 million require policy board approval.

For RWA and AWA, noncore business activities are generally limited by a provision specifying that at the time of an investment in a noncore business, the authority's investment, less returns of or on the investments, cannot exceed the greater of (1) 5% of the authority's net utility plant devoted to its water and wastewater utility businesses or (2) a higher amount approved by the policy board. (But the act creates an exception for RWA, see below.)

Responsibilities

As the law requires for RWA, the act generally requires the authority, if it acquires a private water company operating within its district, to retain certain employees and provide them with similar benefits and seniority.

Like RWA, AWA also must develop land use standards and disposition policies, subject to approval by the policy board. As the law does for RWA, the act requires that the policies include standards for categorizing the suitability of its land for various uses and assessing the impact of land transfers on the environment. In deciding whether to approve certain transfers, the policy board must hold a hearing and consider specified factors the act outlines. The act generally provides a right of

first refusal to the host municipality and state before selling unimproved real property.

Like for RWA, the act exempts the authority from property taxes, but it requires AWA to make annual payments in lieu of taxes to the host municipality, equal to the amount that would be otherwise due on the property other than on improvements made by the authority. As is the case for RWA, the act specifies how property must be assessed and how the authority may appeal assessments.

Like RWA, AWA must also reimburse host municipalities for expenses incurred to provide municipal services to improvements on AWA property (other than water pipes).

As the law does for RWA, the act requires municipalities (or the applicable water company's governing board) to consent to AWA's sale of water to its customers if another franchised water company or municipal water supply system currently serves them. Similarly, AWA must receive local consent before it extends wastewater services into previously unserved areas.

Applicability of Other Laws and Oversight

As is the case for RWA, the act specifies that the charter it creates is the controlling authority for AWA, regardless of conflicting state laws or local ordinances, except its provisions generally do not exempt AWA from local zoning regulations. But certain facilities and structures must be allowed regardless of the zoning district.

While PURA does not have jurisdiction over AWA, it (like RWA) is subject to the jurisdiction of DPH (which regulates water quality and the adequacy of water supply) and DEEP (which regulates water diversions, among other things).

As existing law does for RWA, the act (1) requires the AWA policy board to arrange for an annual audit, which must be made public and shared with town clerks; and (2) specifically gives the attorney general power to examine its books, accounts, and records. The act also applies the same conflict of interest provisions to AWA that apply to RWA, including requiring board members and employees to disclose their financial interest in proposed contracts and orders and not participate in the deliberations or vote on the matter.

Conforming Changes to RWA's Charter

As it does for AWA, the act specifically authorizes RWA to borrow or bond to acquire Aquarion Water Company or any of its subsidiaries.

The act makes the acquisition of the company a noncore business activity, but it creates an exception in RWA's charter allowing it to acquire the company without regard to existing law's limitations on the ratio of its investments in core business to noncore businesses. Still, as under existing law, the authority cannot engage in noncore business activities that cost more than $1.5 million without the policy board's approval.

The act gives RWA's policy and governing boards authority to act on behalf of AWA until its boards are appointed. The act also prohibits AWA's boards from

being appointed until PURA approves RWA's or AWA's acquisition of the company. RWA must notify appointing authorities when this occurs.

The act increases the governing board's membership, if the company is acquired, from 7 to 11 members. Under the act, six of the members must reside in RWA's jurisdiction and five must reside in AWA's. Under the act, as described above, the membership of the AWA and RWA governing boards are identical. As existing law does, the act specifies how the members' terms are staggered and establishes quorum requirements.

Office of Consumer Affairs

Existing law requires the RWA policy board to establish an Office of Consumer Affairs to act as the advocate for customer interests, including matters of rates, water quality and supply, and wastewater service quality. The act requires the office to also advocate for AWA customers and gives it the same powers with respect to AWA, including the right to participate in regulatory and judicial proceedings involving AWA. Under prior law, RWA was solely responsible for all costs associated with the office. The act instead makes RWA and AWA jointly responsible.

§ 43 — SHPO PROJECT REVIEW

Codifies in statute procedures for SHPO reviews to determine a proposed project's impact on historic structures and landmarks; requires SHPO to make a determination within 30 days and develop a mitigation plan with the project proponent under certain circumstances; allows a project proponent to request that DECD review the proposed plan

This act codifies in statute and revises procedures relating to certain project reviews under the Connecticut Environmental Policy Act (CEPA) by the State Historic Preservation Officer (SHPO). 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 act requires SHPO to make an initial determination of a project's impact within 30 days after receiving the information that it deems reasonably necessary to do so. If SHPO determines that there will be impact on historic structures and landmarks, it must propose a feasible alternative or 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"). Under the act, SHPO must annually post all mitigation agreements executed during the prior fiscal year on the Department of Economic and Community Development's (DECD) website by January 1.

The act allows the project proponent, if it declines to execute the proposed mitigation agreement, to request that the DECD commissioner review the plan and recommend revisions. (SHPO is within DECD.) Additionally, it allows the sponsoring agency to conduct public scoping in keeping 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, "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). The act similarly defines this term, except that it expressly excludes the following actions:

1. major federal actions under the National Environmental Policy Act,
2. undertakings under the National Historical Preservation Act, and
3. those affecting archaeological or sacred sites.

By law and under the act, "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). Archaeological sites are locations where material evidence exists that is at least 50 years old of past human life and culture in the state. Sacred sites are spaces of ritual or traditional significance to Native American culture and religion that are eligible for listing on the national or state registers of historic places.

Initial Determination

Under the act, a sponsoring agency may request that SHPO make an initial determination on whether a project proponent's proposed individual activities or sequence of planned activities could have an 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 act requires SHPO to make the initial determination within 30 days after receiving information it deems reasonably necessary to do so. SHPO must (1) consider all information the project proponent provides in making this determination and (2) provide a written determination to the proponent if it finds that there is no effect on historic structures and landmarks (or the environment will not be significantly affected because there is no impact on historic structures and landmarks). Under the act, SHPO's initial determination that there is no effect or impact is final.

Determination of Effect or Impact

Feasible Alternative. Under the act, when SHPO makes an initial determination that a proposed activity or activities will have an effect or impact on historic structures and landmarks, it must, if possible, propose a prudent or feasible alternative to avoid these impacts. It is required to do so in collaboration with the project proponent.

If SHPO and the project proponent agree on an alternative, SHPO must provide a written determination to the proponent that the alternative will have no effect on historic structures and landmarks (or that it is not within the category of actions that may significantly affect the environment because there is no impact on historic structures and landmarks). This determination is final.

Mitigation Plan. Under the act, if SHPO and the project proponent do not agree on an alternative, SHPO must provide the proponent with a written determination that the activity or activities will have an effect or impact on historic structures and landmarks, as discussed above. After SHPO makes this determination, it must propose a mitigation plan requiring the project proponent to mitigate the impact. It must do so in collaboration with the project proponent (and regardless of CEPA provisions on environmental impact evaluations (EIEs)).

In creating the mitigation plan, the act requires SHPO to consider the following*:*

1. all pertinent information about the activity or activities that may affect the plan (the project proponent must submit this to SHPO, to the extent possible); and
2. information DECD provides on the economic impact of the proposed activity or activities and mitigation plan (SHPO must consult with the DECD commissioner or his designee on this topic).

The act requires SHPO, within 45 days after receiving information from the proponent, to memorialize the mitigation plan in a proposed agreement that the project proponent may execute. When SHPO gives the mitigation agreement to the project proponent, it must also notify the proponent that it may request DECD to review the agreement (see below).

Under the act, if the project proponent executes the original agreement or a revised agreement (see below), then SHPO must also do so. Executing the original or revised agreement constitutes (1) a final determination by SHPO and (2) that SHPO is satisfied the effect on historic structures and landmarks will be mitigated based on the terms of the agreement.

DECD Review. The act allows the project proponent, if it declines to execute the mitigation agreement described above, to request the DECD commissioner to review the proposed agreement and recommend revisions. If the proponent chooses to make this request, it must do so within 15 days after SHPO provides it with the proposed mitigation agreement. The request must be as 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 agreement, which SHPO must incorporate into a revised mitigation agreement that the project proponent may then execute. If the commissioner does not recommend revisions, the proponent may elect to execute

the originally proposed agreement.

Public Scoping If Agreement Not Executed. The act requires a sponsoring agency to conduct an early public scoping under CEPA if no mitigation agreement is executed, despite SHPO proposing a mitigation plan as described above. 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 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 or EIE.

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.