

Connecticut Public Acts

2002

Act Number: 121
Bill Number: 5708
Senate Pages: 2453, 2487-2489
House Pages: 5012-5019

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Committee: Environment: 1143-1147, 1165-1166, 1167-1172,
1200-1202, 1204-1205, 1214-1215, 1216-1219,
1224-1225, 1228-1232, 1242-1243, 1410-1435,
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CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
2002

VOL. 45
PART 8
2445-2776

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002453

Senate

Tuesday, May 7, 2002

Without objection, so ordered.

SEN. JEPSEN:

I move Calendar 463, HB5708 to the Consent
Calendar.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

The other two items should be passed temporarily as
all other items not marked.

Page 11, excuse me, Page 12, Calendar 85, SB185 I
move recommittal.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

Page 12, Calendar 95, SB373, I move recommittal.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

Page 12, Calendar 122, should be marked Go.

Page 13, SB417, should be marked Go. And I would
ask that this item be taken up second.

Page 13, Calendar 148, SB186, I move recommittal.

THE CHAIR:

Motion is to recommit this item. Without objection,
so ordered.

Senate

Tuesday, May 7, 2002

And then from Page 11, Calendar 460. This item was previously passed temporarily, and I would move this item, Calendar 460, HB5715 to the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

If the Clerk would call the Consent Calendar at this time.

THE CHAIR:

Mr. Clerk, would you first announce a roll call vote on the Consent Calendar.

THE CLERK:

An immediate roll call has been ordered in the Senate on the Consent Calendar . Will all Senators please return to the chamber. An immediate roll call has been ordered in the Senate on the Consent Calendar. Will all Senators please return to the chamber.

Madam President, the first Consent Calendar begins on Calendar Page 5, Calendar 401, Substitute for HB5653.

Calendar 403, Substitute for HB5154.

Calendar Page 8, Calendar 439, Substitute for HB5527.

Calendar 441, Substitute for HB5735.

Calendar 444, Substitute for HB5153.

Calendar Page 9, Calendar 451, Substitute for

HB5627.

Calendar Page 11, Calendar 460, Substitute for

HB5715.

Calendar 461, Substitute for HB5748.

Calendar 463, Substitute for HB5708.

Calendar Page 16, Calendar 92, Substitute for

SB231.

Calendar Page 17, Calendar 233, Substitute for

SB334.

Calendar 389, Substitute for HB5166.

Madam President, that completes those items previously placed on the first Consent Calendar.

THE CHAIR:

Thank you, sir. Would you once again announce a roll call vote on the Consent Calendar. The machine will be opened.

THE CLERK:

The Senate is now voting by roll call on the Consent Calendar. Will all Senators please return to the Chamber. The Senate is now voting by roll on the Consent Calendar. Will all Senators please return to the Chamber.

THE CHAIR:

Have all members voted? If all members have voted the machine will be locked. Clerk, please announce the

tally. For the members voting, that is the Consent Calendar.

THE CLERK:

Motion is on adoption of Consent Calendar No. 1.

Total Number Voting	36
Those voting Yea	36
Those voting Nay	0
Those absent and not voting	0

THE CHAIR:

Consent Calendar is adopted.

THE CLERK:

Turning to the Calendar. Calendar Page 5, Calendar 421, File No. 379 and 607, Substitute for HB5425, AN ACT CONCERNING BULLYING BEHAVIOR IN SCHOOLS AND CONCERNING THE PLEDGE OF ALLEGIANCE. As amended by House Amendment Schedules B, C, and D. Favorable report of the Committees on Children, Education, and Appropriations. Clerk is in possession of Senate Amendments.

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

Thank you, Madam President. I move adoption of the Joint Committee's favorable report and passage of the bill in concurrence with the House.

THE CHAIR:

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GEN. ASSEMBLY
HOUSE

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House of Representatives

Monday, May 6, 2002

The House of Representatives is voting by roll call. Members to the Chamber.

The House is voting by roll call. Members to the Chamber, please.

DEPUTY SPEAKER CURREY:

Have all members voted? Have all members voted? Please check the board and be sure your vote is properly cast. If all members have voted, the machine will be locked. The Clerk will take a tally.

The Clerk will please announce the tally.

CLERK:

H.B. 5088 as amended by House "A" and "B".

Total Number Voting	147
Necessary for Passage	74
Those voting Yea	120
Those voting nay	27
Those absent and not voting	4

DEPUTY SPEAKER CURREY:

The bill as amended passes.

Will the Clerk please call Calendar 182.

CLERK:

On Page 23, Calendar 182, Substitute for H.B. 5708
 AN ACT CONCERNING REVISIONS TO THE CONNECTICUT
 ENVIRONMENTAL POLICY ACT. Favorable Report of the
 Committee on Transportation.

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House of Representatives

Monday, May 6, 2002

DEPUTY SPEAKER CURREY:

Representative Stratton of the 17th.

REP. STRATTON: (17TH)

Thank you, Madam Speaker. I move acceptance of the Joint Committee's Favorable Report and passage of the bill.

DEPUTY SPEAKER CURREY:

The question before us is on acceptance and passage. Please proceed, Madam.

REP. STRATTON: (17TH)

Thank you, Madam Speaker. I think when I first arrived in the Connecticut General Assembly I barely knew what CEPA was and as a result, many high profile projects in the state over recent years when this has been perceived as being an impediment rather than an important part of conducting those projects that it became the subject of much debate.

The bill or the amendment that we will be discussing today really seeks to make this process both more efficient and more effective.

To that end, the Clerk has an amendment, LC05125 and if he would call and I be allowed to summarize.

DEPUTY SPEAKER CURREY:

Will the Clerk please call LC05125 designated House "A".

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House of Representatives

Monday, May 6, 2002

CLERK:

LC05125, House "A" offered by Representative
Stratton, Nystrom, et al.

DEPUTY SPEAKER CURREY:

Representative Stratton.

REP. STRATTON: (17TH)

Thank you, Madam Speaker. This amendment, as I said, seeks to make CEPA work efficiently, effectively and very thoroughly. Fundamentally, the Connecticut Environmental Policy Act is an act for planning purposes and it is to that end that these changes are made.

We will be, through this amendment, establishing a thorough really scoping process for any project that rises through a state agency's environmental condition determination screening, thereby triggering an environmental impact evaluation by that agency.

Prior to undertaking that environmental impact evaluation, the agency shall begin an early scoping process. That process will gather information, put it together and either the agency itself will determine that there should be a public scoping meeting or any group of 25 individuals may petition for such a public scoping meeting.

Notice of that process would occur in a new environmental monitor, basically, an electronic

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communication by the Council on Environmental Quality, making note that there is a public comment period and telling the public how they could petition to assure that there was a public scoping meeting if the agency itself had not called it.

At that public scoping meeting, which would be early in the stage, the agency would provide a description of the proposed or needed action by the state agency, the criteria that it would need for a site for such potential alternative site, what the resources and environmental limitations of those sites might be and specific alternatives that it would like to gather information on.

At that public scoping meeting or through the comment process itself, other agencies would comment on that providing the Department information on how they think that project might affect such site or what alternatives might be available and other actions that an agency might take to mitigate the impact of such.

At the conclusion of that, the sponsoring agency would go forward, much as it always has. But I think one of the concerns of many has been that the CEPA process has, sometimes out of frustration, ending up bogging a process down or it at least perceives to do that and hence they have sought exemption from it.

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It is my sincere hope that with this legislation we will no longer see any agency be tempted into the process of wanting to exempt a state project from what we require everyone else to do.

So I strongly urge adoption of this amendment. It is the first step in a process that I think will continue as we go forward to look at some of the other parts of enforcing CEPA, particularly mitigation efforts and we will continue to work on them over the interim.

But I think this goes a long way to really establishing a comprehensive planning process with the informed involvement of the public when they can really can be of use and benefit to these projects and I urge adoption of the amendment.

DEPUTY SPEAKER CURREY:

The question before us is on adoption of the amendment. Would you care to comment? Would you care to comment on the amendment before us? Representative Prelli of the 63rd.

REP. PRELLI: (63RD)

Thank you, Madam Speaker. Madam Speaker, I rise in support of this amendment. I was talking to the good Chairman of the Environment Committee last week after she had redrawn this and all the work that went into it and said, it's amazing the number of environment bills

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I'm supporting this year, so I want to thank her and the group that worked on this because I do think this makes tremendous steps forward to make the CEPA process work.

I think the scoping is going to be one of the major advantages to the environmental studies that we have in this state. I think with the scoping, we will have an early determination on whether that property should be used for the project or not and not have to wait now until after you buy the project, after you buy the property, after you've done six months or eight months work of pre-work on it to way that it now does not meet the EIE report.

And I think this is a tremendous step forward and we should all support it and I urge you all to adopt this amendment and then pass the bill.

Thank you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Thank you, Sir. Representative Sawyer of the 55th. I'm sorry, someone must have pushed your button.

Would you care to comment further on the amendment before us? Would you care to comment further on the amendment before us? If not, I'll try your minds. All those in favor please signify by saying "aye".

REPRESENTATIVES:

Aye.

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DEPUTY SPEAKER CURREY:

All opposed, "nay"? The amendment is adopted.

Would you care to comment further on the bill before us as amended? Would you care to comment further on the bill before us as amended.

If not, staff and guests to the well of the House.

The machine will be opened.

CLERK:

The House of Representatives is voting by roll call. Members to the Chamber.

The House is voting by roll call. Members to the Chamber.

DEPUTY SPEAKER CURREY:

Have all members voted? Have all members voted? Please check the board and be sure your vote is properly cast. Representative Raczka. Thank you. If all members have voted, the machine will be locked. The Clerk will take a tally.

The Clerk will announce the tally.

CLERK:

H.B. 5708 as amended by House "A".

Total Number Voting	145
Necessary for Passage	73
Those voting Yea	145
Those voting nay	0

pat

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House of Representatives

Monday, May 6, 2002

Those absent and not voting 6

DEPUTY SPEAKER CURREY:

The bill as amended passes. Will the Clerk please call Calendar 304.

CLERK:

On Page 27, Calendar 304, Substitute for H.B. 5748
AN ACT CONCERNING THE COURT SUPPORT SERVICES DIVISION as amended by House "A". Favorable Report of the Committee on Government Administration and Elections.

DEPUTY SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. I move acceptance of the Joint Committee's Favorable Report and passage of the bill.

DEPUTY SPEAKER CURREY:

The question before us is on acceptance and passage. Please proceed, Sir.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. This bill was previously before the House. It was referred to the GAE Committee in light of an exemption which was contained in the amended bill to the Freedom of Information statutes.

After deliberations in the GAE Committee and discussions between both the judicial branch and the

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STANDING
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Sections 3 and 4 of the Bill are designed to allow DEP to more expeditiously use our bond funds to investigate and remediate contaminated sites. These are the sites generally known as brownfields and are dealt with under our Urban Sites Remediation Program.

Where we work -- the Department of Economic and Community Development to identify and fund, as necessary, those sites for which responsible parties are either not forthcoming or have not yet been identified.

And, again, these sections are designed to allow us to begin the work, while we continue to pursue responsible parties for their participation in the clean up of sites.

The next item that I would like to just, again, highlight and everything else is in the written testimony, is H.B. 5708. AN ACT CONCERNING REVISIONS TO THE CONNECTICUT ENVIRONMENTAL POLICY ACT.

And here, I know, we are -- we are but one Agency when all the other State Agencies have, in fact, been working together under the sure hand of the Office of Policy and Management to review CEPA.

I -- you know, we are slightly -- in a slightly different position than our fellow agencies because we serve three roles. And, use CEPA for three different purposes.

We are sometimes project proponents subject to CEPA. We are the Environmental Agency of the State responsible for assuring that projects, whether or not they are subject to CEPA, maintain the quality of life that our citizens' desire and are entitled to.

And, we are officially obligated to review CEPA documents of other State Agencies. This is a good start.

We had a conversation last year in -- in this venue

that identified many of the issues that -- arise from the implementation of a 30-year old Bill in an age where -- life has changed.

Our notions of environmental protection have changed. Environmental regulatory programs have grown-up around the CEPA core, if you will. And, our comments on -- on this Bill would just identify that there are, in fact, other things that can be done, but that this is, in fact, a good start.

The early scoping notion would bring to light environmental issues that need to be addressed. And, the -- kind of the front-end and the back-end and the mitigation assurances are, in fact, things that would strengthen the utility of CEPA as a planning and environmental protection tool.

I'm going to defer the rest of the comments on CEPA to my sister Agencies. But, again look forward to working with the Committee on this Bill, as well as others, to ensure that we get the best package possible, to protect the environment.

And I'll stop there and leave time for questions and other speakers.

REP. STRATTON: Thank you very much, Commissioner. Question -- and I see that you brought Dick Barlow with you. And this question probably will be answered by him, but let me address it to you, at any rate.

I'm wondering, if you could give us some information on what processes are currently in place, or could be permitted in terms of collection of retail products containing mercury, if a combination of manufacturer take-back stores that sell such products being able to collect them in the store, etc.

How you envision that process going forward and where we stand currently today with regard to different mercury containing products?

DEP. CMSR. STAHL: As you accurately identify, I have brought with me Dick Barlow, who is the Chief of

our Waste Management Bureau, and has really taken the lead with the -- in the regional efforts among the other states in New England in honing a model for mercury legislation in the region.

So I'm gonna let Dick respond to that question and we'll take it from there.

DICK BARLOW: Good afternoon. My name is Dick Barlow. As the Deputy Commissioner said I'm the Bureau Chief of Waste Management in the Department of Environmental Protection.

With respect to collection systems, at this point in time, we've done some piloting using existing household hazardous waste collection days. We did some of those events last year, where those facilities were allowed to collect consumer electronics for ultimately going back for reclaim and recycle.

We envision that the new general permit that we're putting in place for household hazardous collection days could be implemented to allow that to occur in an even easier frequency than it -- it is now.

Certainly, the regional permitted facilities we have in South Central and New Haven, the one in Manchester, Willington. Those facilities could, very easily, be adopted to -- to collect those materials.

So, the infrastructure from the standpoint of some of the regional municipal organizations exists there.

We certainly are willing to look at partnering and think that a -- a major role has to be taken place by the facilities that are actually selling the products.

Whether or not, there's an up-front charge placed on the purchase to cover the -- that or whether it's going to be done through some other mechanism, something we're open to but, there certainly is -- is enough capability there to do it.

The infrastructure exists. It's just a question of how you're going to fund and manage it, I think that's the primary issue.

REP. STRATTON: I understand the funding part of that. I guess my concern has been sort of the ease part of it.

If we're really talking about consumers bringing back products that have mercury in them, and I know we went through this with batteries and -- and a whole bunch of other things, that the regulatory scheme that allows the collection and storage of those in some kind of feasible way, seems a critical part of that.

And, I know other states are struggling with this too, but -- do you envision, maybe let me say it this way -- a situation where, whatever the retailer is that's selling the electronics, would be able to cost effectively meet the regulatory requirements that the Department envisions for this. So that I, as Joe Q consumer come in to buy a new computer or whatever else that is and it would be easy for that retailer to take back, hold those for collection for some period of time that was economically feasible for them?

DICK BARLOW: We -- we think -- can easily put that kind of a structure in place with the existing authorities we have.

It just is a question, in many cases of commonsense in how the materials are stored. We probably want to have some criteria in terms of how much could be aggregated at one location before it had to be moved off site, for example.

But, I don't think that's an onerous task for us to come up with something.

REP. STRATTON: The other one on mercury, just while I hear it -- know that obviously we had the benefit of public hearing on this last year.

Does the Department have any problem with -- in terms of the phase-out, there are medical products,

etc. that mercury really is an essential component of, at this time, and as far as any information I've received, that we don't really (INAUDIBLE - MICROPHONE NOT ON), non-elemental mercury but presence of mercury in many pharmaceutical items, is that an issue as far as your concerned?

DICK BARLOW: I think certainly there are some uses, that we're aware of, that could be taken care of in some crafting of the final wording.

Though we have seen some -- some rather strange attempts lately in terms of the medical community and mercury.

One case recently came up, where a physician received a care package from a pharmaceutical company, apprised me that all the pharmaceuticals were past date and off spec. And then, just to make sure they took care of -- proper care of them, they threw a couple of mercury thermometers in the care package for them.

He was a little bit chagrin to see that. So, I think we have some education we need to do in the -- the medical community, so.

SEN. WILLIAMS: Thank you. Commissioner Stahl. Some written testimony that you submitted, that you did not refer to, concerning Senate Bill 374, AN ACT CONCERNING THE OFFICE OF THE ENVIRONMENTAL ADVOCATE.

The Department has raised some concerns about that Bill. Such that you feel that -- that there are other Agencies that may do some of the same responsibilities as other organizations that are out there.

I would just merely point out that -- that many of these same criticisms were actually -- or comments or concerns were raised when we were talking about creating an Office of the Child Advocate.

Obviously there are many private children's advocacy groups, public and private partnerships. Certainly, there have been many Blue Ribbon Task

Other questions? Thank you very much.

DEP. CMSR. STAHL: Thank you.

SEN. WILLIAMS: Karl Wagener to be followed by Brian Mattiello.

KARL WAGENER: Good afternoon. My name is Karl Wagener. I'm the Executive Director of the State Council on Environmental Quality.

The Council asked me to comment on two Bills today. First is 5708, AN ACT CONCERNING REVISIONS TO THE CONNECTICUT ENVIRONMENTAL POLICY ACT.

Thirty years of experience have showed us that CEPA does need some work. As Undersecretary Mattiello of OPM will testify, various State Agencies have been working together. Today's Bill is largely the product of a lot of non-profit organizations and they should be commended for the thorough approach they took to CEPA.

In general, CEQ is supportive of those provisions, which would make more information available to the public and provide more opportunities to participate.

However, we will leave the details to the other Agencies. But, there are two points in that Bill that are in our written testimony, that we would like to see changed.

The first pertains to the environmental monitor. And, this -- under this year's Bill, the monitor is envisioned to be a -- a purely electronic publication that would notify the public or enable the public to be notified of opportunities to participate in -- in scoping and comments on environmental impact evaluations.

And, the only problem -- we studied this proposal and the Council concluded that we can do this with an available Appropriations.

However, the -- the Bill also requires us to notify

every municipality, I believe twice a month, and that's no problem either. However, actually maintaining an up-to-date, always current, emailing list of all towns actually would be a burden that we probably can't handle with existing staffing.

So, we would request that you would amend that to say we shall send these notifications out to everyone who requests to be on such a list.

And, secondly, the -- the Bill adds in section 4 some references to findings of no significant impact. And, right now, in the existing law, there's only one brief reference to such findings or FONSI's as they're called.

And, generally, FONSI's are created and allowed by the regulations under this law. And, we've been working hard to try to create a consensus that we should -- to get rid of FONSI's all together.

So, we would recommend that instead of adding references to FONSI's in this Bill, that you delete the existing reference and then in the future, ideally, they could be removed from the regulations and voila no more FONSI's.

When -- the Council would be out from under one of its particular banes.

Secondly, the Council asked me to remark on R.B. 374. AN ACT CONCERNING THE OFFICE OF ENVIRONMENTAL ADVOCATE. And, the opinions of the nine individual Council members cover a wide spectrum on this Bill. But as a whole -- as a Council, they thought it would not be appropriate to offer an opinion on those aspects of the Bill that did not affect CEQ directly.

And, under this Bill, this proposed Advocate would have several responsibilities that have no relation to CEQ's responsibilities. These include the authority to initiate formal legal action under section 2, to subpoena witnesses under section 3, exempt records from FOI under section 4, and have the hold harmless provisions of section 5. And, on these sections, the Council has -- has no specific

comments, at this time.

There are sections that could, if adopted in their current form, either overlap or -- or be confused with existing CEQ responsibilities.

And, these include -- there's sections that concern review of existing DEP programs and budgets. Receive and investigate citizen complaints and analyze national and state trends. And, these are either functions that the Council performs now or is -- or is authorized to perform, or could perform more frequently given available appropriations. Or -- I should say adequate appropriations.

And, I just want to say the Council would look forward to working with this Committee, now or as the session progresses, so that the Advocate's responsibilities would not overlap or be confused with those of the CEQ.

And, I'd be happy to answer any questions you have, either now or as the session progresses.

SEN. WILLIAMS: Thank you, Mr. Wagener. Are there questions? Thank you very much. Brian Mattiello.

BRIAN MATTIELLO: Senator -- Williams, Senator Stratton, members of the Environment Committee. For the record, my name is Brian Mattiello.

I am Undersecretary at the Office Policy and Management and I'm here to testify on 5708, it's concerning the CEPA law of the State of Connecticut.

First, I'd like to thank Committee members for their leadership on this issue. I did appear before you last year. I know there's a continuing interest from members here.

A thank you, also, goes out to some of the folks in the room here. Some of whom I've interacted with and others who couldn't make it today that had a real passion for our CEPA law and an interest in seeking some changes.

We join with them and join with you, in the same

spirit that the Bill appears before you today in having put together a State Agency Workgroup that was referenced by Deputy Commissioner Stahl and Karl Wagener.

And, it's a very sincere effort, on our part to secure the state's prospective on -- on -- on CEPA. But, I want to ensure members that we're interested in this process as it evolves to get to the next ring of folks, once we've secured our perspective on this and what changes are necessary -- to -- to make sure that the legislators are involved in the process. Senator Roraback has certainly expressed an interest.

And, to the number of organizations that have been sharing information with you and with us. And, in fact, this Workgroup -- this Agency Workgroup has engaged, on two occasions, with some of those organizations. And there are some myriads of agreement that we ought to hone in on and capitalize on as -- as we move forward.

Commissioner Rocque has described this as CEPA -- as not a ill-conceived law but one that needs to be modernized and I -- I certainly agree with that. And that's the premise that I think we've been working from.

Just to give you a little -- a little flavor of the content of our discussions. We have been focusing on -- certainly the role of the FONSI in our CEPA law.

Secondly, the scoping. We certainly have -- focusing on that. Both from the Agency's -- you know, having the Agency's -- if there's more -- multiple Agencies involved in a particular project, making sure that they are on the same sheet of music, before a project moves forward, as well as engaging the public.

Also, distinction between pure public projects and those that are public-private, has been a focus of some discussion with the Work Group.

I would describe this process, by the way, as

something that will be completed in a matter of months not years. And, I wanted to make sure Committee members were understanding this is not a -- a stalling tactic on our part.

But, it is -- there's -- there's a number of mechanics to this law and a number of stakeholders that need to be engaged and it does take time. We -- we -- we've been guided by, if you want to do it right or do you want to do it right away? Changes -- and we think doing it right is some -- is -- is -- is certainly the preference.

With that, I wanted to just highlight two -- I guess, technical comments that we've made in our testimony and then turn it over for questions.

Deputy Commissioner Stahl called it a good beginning. I -- I certainly support that description or characterization of the Bill. It does hit some of the right areas.

I guess an overarching concern that we have, I'm gonna capture in two specific comments, is that we want to be careful not to press for too much detail early on in this process. CEPA is essentially a planning -- a planning document that would be -- or the EIE in FONSI document.

And certainly with scoping, it is about gathering information, not necessarily reacting to information. And, so, I want to make sure that we don't put enough strain on our CEPA law or -- or certainly depart from the spirit of the Act too far.

This is just a general concern that I have as -- as -- as we reviewed the -- the legislation.

Projects are very complex and they unfold over time and we describe CEPA as -- beginning of your trip. Where you want to make sure, you know, that you've got all the items in your suitcase before you make that trip. But, it's certainly a -- an early on in the process.

The two specific comments, then, that I have are

one with the public scoping process. This raises the fundamental concern, because if I were asked, you know, describe CEPA, it's a balancing of social economic environmental interests of the State.

I think, what doesn't get played out enough, it's also about building public confidence in projects. You're spending taxpayer money on them, you're -- you're -- you're building something that's going to have an impact again socially and economically.

And there's -- there's a public interest that needs to be kept in mind, an understanding that you want to give to people, as the state makes it's investments.

But, concerned with the public -- mandatory scoping that's in here, is that we -- we want to raise expectations regarding the level of details that can be available at that stage. And that there would be something that the public can, in fact, react to.

The unintended consequences, as we see it, would be committing Agencies to a course of action too early in the process. Too soon in the process that -- we may get imperfect decision making at that stage.

That is not to say, however, that when we looked at the mandatory scoping that we think there's some balance that can be struck there. Between making sure that you have -- good information to offer, and making sure that public input -- it's still a nut we have to crack.

But we think that some judgments can be made, along the way, about what -- at what point in the scoping process we can go forward and -- and meaningfully try to gather public input.

Second, then is with the mitigation. And, I guess, first we're struggling a little bit with what extent -- to what extent this is a problem. And, we have to, as we go forward, members of the legislature, certainly as Agencies, organizations - - the concentration of resources here. That what are the priorities as we go forward and the changes

in CEPA law?

We don't want to overburden this law or the process. And I think we need -- we need to gain a better understanding of -- to what extent mitigation plans are -- are not being implemented.

There's a number of components that are -- are contemplated in this legislation, certainly follow-up which is in one of the sections. Talking about follow-up after mitigations plans have -- that certainly -- that may make some sense.

But, there's a number of practical reasons, which we've outlined in our testimony, that the contracting, that the -- being able to outline in an EIE document all -- the mitigation prior to the permitting process, prior to methods and strategies really having been hammered out by all involved -- the contractors.

I think is -- something we need to pay more attention too, so, with that -- be glad to -- answer any questions that members may have.

REP. STRATTON: Thank you very much, Brian. Just a quick follow-up on the mitigation thing.

I understand some of the complexities that you were talking about, but, do you see any problem with the concept that, as we go out and contract for these projects, -- that a part of that cost up front should be assuring that whatever mitigation is a part of approval of that plan, should be included in it?

Whether it's a separate contract or not, that's the way this language would make it seem. But, I think the concern is that often, you know, we end up assuming that something is going to go ahead. Mitigation is going to a part of it and somehow it just doesn't get included and that's where this come from -- comes from.

BRIAN MATTIELLO: Yes. I think that, you know, it's right now, kind of handshake, some winking that are occurring, some letters may go back and forth, but, I -- I think, we -- we want to spend some time on

this. It's -- it's -- we don't want to do is build so much detail in the process so early on that we end up delaying this, which -- which -- isn't -- CEPA supposed to be getting people engaged early in the process and -- so that's -- that's our concern.

If we can balance that, we're happy to see, you know, what more we need to be doing to ensure that mitigation plans that are agreed to by parties are, in fact, implemented.

SEN. WILLIAMS: Are there other questions?

BRIAN MATTIELLO: Thank you very much.

SEN. WILLIAMS: Senator Crisco here? Is Senator Capiello and Representative Carson here? You're making it just under the wire for our Agency heads and Legislators.

SEN. CAPIELLO: Good afternoon, Senator Williams, Representative Stratton, Senator McKinney and the rest of the Committee.

We are here to testify on H.B. 5664. AN ACT CONCERNING THE RESOURCES FOR CANDLEWOOD LAKE.

And, what we'd like to do, if we could, is have Patrick Callahan from the Candlewood Lake Authority come and testify with us, if that's okay? And the other members, if you wanted to come.

We -- we are here to testify, simply -- you've got both of our testimonies. We're here to talk about the issues and resources available to Candlewood Lake for enforcement. The size of the boat issues. We've got issues regarding fishing tournaments. A whole host of issues that we need to deal with.

And, we'd like the DEP to be able to address because, even though we understand that the Lake is a -- is a public Lake, it's a State facility.

There's concerns of many residents on Candlewood Lake and those who live around the Lake who -- who have come to us. We've had public officials come to us and if we could have Patrick Callahan speak

Education Fund.

By way of identification, I'm also a member of the Council on Environmental Quality appointed by Governor Rowland, a past Chairman of the Environmental Law Section of the Connecticut Bar Association. And, in short, I have been a laborer in the venue of environmental law since the first Earth Day in 1970. And, I've seen it all, believe me.

Following last year's preliminary efforts in the legislature to take a look at CEPA, which got its start at the same time that I did in this field, and probably like me needs a little updating, the League of Conservation Voters has decided to act as a facilitator for a broad Coalition of conservation and environmental organizations that are interested in CEPA.

And, the list identifying the identifications is part of the submitted materials and it's there for your investigation.

The Coalition also called the Working Group has been acting in a way to develop some goals and some means to achieve them.

The goals for CEPA basically are better decision-making by the Agencies, more information for the public, and more opportunity for public participation.

I'm delighted to tell you that Raised Bill 5708 accomplishes all of those goals. And, I will assure you that there is very widespread support in the conservation community for the text of the Raised Bill.

Some members of the Coalition will be following me this afternoon to talk about certain specific sections and they will have some suggestions on how some of that language might, in our view, be improved. But, believe me when I say, that the language in the Bill is very -- very good and certainly deserves the support of this Committee.

The speakers who will be following me, who are part of this Working Group who will have specific suggestions, are Dana Young from the Connecticut Fund for the Environment, Carolyn Hughes from the Audubon Connecticut, Richard Sherman, my former colleague on CEQ who was with the Citizens for a Sensible Six, Sandy Breslin from CFE and Tom O'Dell from the Conservation and Inland Wetlands Commissioners.

This is a good Bill. Unfortunately, the enemy of the good is sometimes the perfect. Some speakers have talked about doing something right versus doing it right away. This is a Bill, if enacted, as we would like to see it enacted, will achieve substantial incremental progress.

And, I'm very well aware of the fact that the way you make -- a loaf of bread around here is a slice at a time. This is some very good slices. The Bill could be enacted substantially as is. It will make some wonderful improvements and we strongly urge your support.

I'd be happy to respond to any questions or turn it over to the other members of our Working Group.

REP. STRATTON: Thank you very much, Tom. And, let me say, while you're sitting there, I'd just like to express our appreciation as a Committee to that Working Group for the incredible amount of work that you have all put into this over the last year. Really, almost two years now.

Just to follow your analogy -- this loaf of bread for one moment further. And -- and I don't want a specific answer to this. But, whether you think there is a need, or we should continue to look at whether somehow the combination of different kinds of projects that come under the purview of CEPA, should make us look at the need for or is there a need for a different slice of bread to deal with public-private partnerships as opposed to projects that are completely State projects?

TOM HARRISON: Insofar as these public-private partnerships are concerned, I think the Bill, that

is embodied by ~~5708~~, will very, very well meet the needs of that relatively small body of public-private partnerships.

The burden is always on the State Agencies in any case. We think some of the changes that appear in 5708, ought to alleviate the concerns of the private sector for those instances when there will be public-private partnerships. So, I think it does a good job.

REP. STRATTON: Thank you. Thank you very much. Are there other questions? If not, we'll let the rest of your team come up.

TOM HARRISON: Thank you.

REP. STRATTON: Carolyn Hughes followed by Dana Young.

CAROLYN HUGHES: Hi, Senator Williams, Representative Stratton, other members of the Committee. I'm Carolyn Hughes with Audubon Connecticut. And, I am a member or -- or our organization is a member of the Coalition that Tom Harrison described.

SB 374

And, what really brought -- this group of environmental organizations together is the fact that over the last several years there's been an increasing trend -- trend of the legislature to exempt projects from our two major environmental laws. The Environmental Policy and the Environmental Protection Act.

And, in my testimony, I provide a list of seven projects that we're aware of that have been exempted in the last couple of years. And, in a conversation that I had with Senator Cook, she mentioned a possible eighth, which was the Pfizer project on the Thames River in New London. And, we're looking into that one.

Most of these exemptions have taken place over the past two to three years. And, it represents, in our minds, a very disturbing trend. And, one that seems to be accelerating.

It is our perception that a lot of these exemptions

Environment.

Connecticut Fund for the Environment strongly supports Bill 5708, AN ACT CONCERNING REVISIONS TO THE ENVIRONMENTAL POLICY ACT.

Connecticut Fund for the Environment is a membership based non-profit organization that uses science law and public education to protect Connecticut's natural resources.

We are part of the Working Group of organizations committed to improving the Policy Act by making it more predictable and effective.

When the Policy Act was passed back in 1971, the legislature's intent was clearly reflected in the first section of the Act which states, Human activity must be guided by and in harmony with the systems of relationships among the elements of nature.

Harmony is the key concept here. The legislature intended the Policy Act process to achieve a harmony between state-funded projects and their environments. Much like -- much like the way natural systems are in harmony with each other.

Indeed, Connecticut citizens, who -- that have come to expect that state-funded projects will not unnecessarily disrupt Connecticut's natural resources.

The revisions in this Bill accomplish the task. They foster a harmonious system of analysis appropriate for 21st Century projects by changing the Act in four main ways.

They enact a new early scoping process, an improved notice system, an improved environmental impact evaluation analysis, and better enforcement of mitigation compliance.

Returning to number one, a new early scoping process. A statutory scoping process will ensure that potential problems are identified and addressed early on, so that the applicant will have a clearer sense of the issues to be addressed in

the subsequent environmental analysis. Early scoping will provide a timely opportunity for public comment and agency input. Indeed, consistent early scoping of projects will effectively front-load the process, thereby serving to avoid unnecessarily -- unnecessary delay and reduce costs.

The second area of improvement in the Bill is a more effective notice system. A semi-monthly online publication created by the Council on Environmental Quality could replace the Connecticut Law Journal notice that currently exists.

The third area of change is in regard to the environmental impact evaluation requirements. The revisions require the environmental impact evaluations to provide more detail and -- about project purpose and need and in order to better inform the alternative selection process by the Agency, alternatives are categorized in terms of whether they avoid, minimize or mitigate for environmental impact.

The fourth and final area of improvement, is with regard to enforcement. According to these revisions, one Agency, the Office of Policy and Management, is charged with enforcing compliance -- if I could just sum up very quickly?

I would just add that there are several other changes, which may need to be made to the Policy Act process. We believe those could be done with regulations and Agency guidelines.

And -- finally, I would like to add that we also support Bill 374, the ENVIRONMENTAL ADVOCATE BILL. We believe it's a visionary concept, there are some minor suggestions we would make, which we've submitted in our written testimony.

REP. STRATTON: Thank you very much, Dana. And, let me specifically thank you, for the incredible amount of work you put into this.

I would be interested in your comments about two things. One that certainly has been a subject of

REP. STRATTON: Simple answer is no.

KARL RULING: What's that?

REP. STRATTON: The simple answer is no. And, if somehow the language needs to be clarified to make that clear to you --

KARL RULING: Indeed it does -- indeed it does --

REP. STRATTON: On the second part, I'm -- I think the part that more directly effects the issue you're talking about is really the phase requirements.

KARL RULING: Absolutely -- absolutely, yea. The phase-out requirement really would kill entertainment lighting. It would also have effects too, not just -- I've focused in -- I tried to focus on my three minutes on essentially touring productions, but that would have a big effect on sporting arenas and stuff, where they use -- they use metal halide light.

The only alternative would be incandescent but that means an entire revamping of the lighting system and a quadrupling of the power requirements.

REP. STRATTON: Further questions? Thank you very much. Tom O'Dell followed by Katchen Coley.

TOM O'DELL: Good afternoon, Senator Williams and Representative Stratton, members of the Committee. My name is Tom O'Dell. I'm here as President of the Connecticut Association of Conservation and Inland Wetlands Commissions, Inc. Better known as CACIWC.

CACIWC strongly supports the revisions to the Connecticut Environmental Policy proposed R.B. 5708. The Policy Act is -- an essential component in Connecticut's provisions to protect our natural resources.

The Policy Act compliments Connecticut's Environmental Protection Act and the State required Municipal Environmental Regulations, such as Inland Wetlands and said -- and sediment erosion control.

It provides an essential public participation process for assessing and commenting on potential environmental impacts of proposed state funded projects.

The proposed revisions in 5708, strengthen the Policy Act by requiring State Agencies to conduct an early public review or scoping process. This revision enhances the predictability and effectiveness of the Act, and shift the negotiation to the beginning of the review process before a substantial investment has been made.

The early scoping process gives municipalities and the public a chance to provide the applicant or agency with site information and comments on the nature and extent of any environmental impacts of the proposed action.

The revision provides for 45 day period following notice of early public scoping process. This 45 day comment period is essential for municipal land use agencies that generally meet every 30 days and require an extra 15 days to ensure meeting dates fall within that -- period.

Municipal land use agencies and the public (INAUDIBLE -- MICROPHONE NOT ON) -- and expect Connecticut's environmental laws to be implemented and enforced. However, in recent years the Policy Act has not provided the degree of protection that was intended.

The revisions proposed, in Bill 5708 were developed to foster implementation and enforcement by clearly articulating the provisions and the process of the Act.

The Connecticut Association of Conservation and Inland Wetlands Commissions endorses these revisions and really appreciates the Environment Committee's continued support to improve the Policy Act. We'd be happy to answer any questions.

REP. STRATTON: Are there questions? We thank you very much. Katchen Coley followed by Ellen Lukens.

KATCHEN COLEY: Representative Stratton and hearty remaining members of the Committee. I'm a member of the Middletown Conservation Commission and Chair of the --

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(GAP IN TESTIMONY -- CHANGED TO TAPE 2B)

-- beautiful lower Connecticut River. And I'm here to tell you a sad story of what can happen to a town's treasured natural resource when the principals of the Connecticut Policy Act are misused and in attempt to actually bypass the Act is made.

And I hope this cautionary tale will help you prevent it from happening in other parts of the state. And, I hope that when you -- consider this Bill, I'm very sorry to see that the exemption or attempted exemption of our Maromas area is still in the Bill and I hope that that will come out.

The southern end of Middletown is what is known as Maromas that's an old Indian name for a large unfragmented forest stretching along the western bank of the Connecticut River down to the border of Higganum and Haddam.

The lower Connecticut is almost unique in our country because it was saved from industrial development by the fortuitous location of a sandbar at the mouth of the River. So, it is still today, and area of steep rocky outcroppings, extensive wetlands, vernal pools, endangered fish and many animals.

A popular hiking and bicycle area, it hosts a stretch of the Connecticut Blue Trail system. An important destination for migratory birds, it has also become a hunting ground for eagles in the winter. Seven -- over seventy this winter. They come down from Canada when the water is frozen and they need a large territory to hunt in order to sustain themselves. Part of the land indeed has been operated by Northeast Utilities under a management plan of the DEP as a wildlife area.

For all of these reasons our section of the River has been designated by three national and

international organizations. As a resource of special importance by the U.N. as one of the world's 33 Ramsar Sites, by Congress as the Silvio Conte Wildlife Reserve and by the Nature Conservancy as one of the last ten great places.

So, what's happening to it? Well, an \$8 million sewer was proposed -- was that my clock? -- well, the sewer when it was proposed for this, it was supposed to have CEPA hearings. No alternative was offered and this Bill requires an alternative.

And, eventually when it looked, I think as though the hearings might be in favor of the sewer being modified or not going through, an amendment was passed in the last legislature attached to a totally unrelated Bill to -- try to protect it.

So, anything you do to strengthen CEPA. so this does not happen elsewhere, is very, very important. Thank you.

REP. STRATTON: I agree with you wholeheartedly which is why the Bill is before us. Let me just make it clear to you that the only reason that is mentioned in this Bill is because we are changing language in that section. It has nothing to do with maromas. That is existing law.

KATCHEN COLEY: I understand that. But, I hope you keep maromas in the back of your heads.

REP. STRATTON: It's in the front of my head. But, any rate. Are there other questions? Thank you. Ellen Lukens followed by J.R. Scappini and Peter Tatalis.

ELLEN LUKENS: Good afternoon. I'm Ellen Lukens. I'm also from Middletown. I'm also on the Conservation Commission but I'm not speaking for the Commission, I'm speaking for myself.

I'm speaking on -- on the comments -- these are comments on the R.B. 5708. I agree with all that the person before me said. But this is my testimony.

Outraged, upset, demoralized, angry, saddened and helpless, these adjectives best describe the range of emotions of the Middletown environmental community when we heard last June that the I-3 Zone industrial zoned 1,400 acres of Maromas in southern Middletown had been exempted from the EIE as mandated by the CEPA guidelines.

This was accomplished by a rider to the Budget Bill, in the last week of the legislature -- of the legislative session last year.

CEPA regulations must be amended so that this type of exemption be prohibited and the -- legislation exempting the Maromas I-3 zone should be reversed.

An environmental -- it was an outrage -- an environmental review of the proposed sewer line to service a portion of the Maromas area of Middletown was mandated by CEPA. If any project needed a thorough EIE, this sewer project is one of them.

The issues involving the I-3 zone in Maromas, which the sewer line would service, are important and complicated. Many citizens, state agencies, and environmental organizations made comments to -- on the draft EIE and worked long and hard in hopes of -- achieving the best possible land use decisions regarding this area.

Then the exemption occurred. We felt betrayed by our State Representatives who introduced the legislation to exempt the I-3 zone and by the legislature, which allowed its passage.

Following this exemption, local efforts to obtain at least an environmental review team report on the land came to naught. We were effectively silenced.

Because of all the economic pressure, especially on cities and towns that are financially stressed, like Middletown, and increased industrial tax base is considered extremely important.

Any perceived constraints on development often, and understandably, are resisted by town governments. Middletown is no exception. So, if the Chamber of

Commerce, and the town political leaders and the State Representatives want development, it all has to be -- and it all has to be accomplished quickly. The environment doesn't stand a chance unless strong regulations and guidelines are in place.

In this situation a thorough EIE ordered by the state was needed in order that not just economically driven land use decisions be made and the preservation of environmentally sensitive and scenic areas be identified by an independent third -- party.

I just will skip. Maromas is approximately 4,000 acres of almost unfragmented forest including this I-3 zone. It's been referred to as Middletown's "Rain Forest", Middletown's "Last Great Place" or more regionally a Middlesex County treasure.

Please pass -- okay by allowing this exemption you let us down. We were David fighting for the environment versus Goliath. But a third party took David out before we even had a chance.

Please pass legislation to require the CEPA guidelines to be followed for the proposed sewer project in Middletown. And, also, please strengthen the guidelines in order to prevent exemptions such as this one cited from reoccurring. Thank you.

REP. STRATTON: Thank you very much for your testimony. Are there any questions? Thank you for coming up today. J. R. Scappini and Peter Tatalis followed by Derek Guest.

J.R. SCAPPINI: Committee Chairs Stratton and Williams, members of the Committee. Good afternoon.

My name is J.R. Scappini and with me is Mr. Peter Tatalis. We are both professional recyclers here in Connecticut.

Thank you for giving us the opportunity to comment on H.R. 5540 and 5539 on behalf of our companies Hugo Neu Schnitzer East and Mattatuck Industrial Scrap Metal and our trade association The Institute

followed by Eric Brown.

EARL PHILLIPS: Hello, thank you and good afternoon. I'm here to testify just briefly on R.B. 5708 at least I think that's still the current number. It's the ACT CONCERNING REVISIONS TO THE CONNECTICUT ENVIRONMENTAL POLICY ACT.

And, I'm testifying strictly in my sole capacity as an Environmental Attorney, and one who has represented a number of folks who have worked through the CEPA process. Particularly, as it relates to public and private partnerships, which I hope and believe will continue to be important to the state of Connecticut.

I'm testifying, I guess, in opposition to the ACT CONCERNING REVISIONS TO THE CONNECTICUT ENVIRONMENTAL POLICY ACT, as, not because I don't think it's a good effort, but because I believe it's an incomplete effort.

As I -- as I look through language and the -- the -- particularly the portion that deals with early scoping. It does seem to add a good process but it -- it's a 45 day window at the front-end of what is already a lengthy process for many projects.

It also adds an element of uncertainty at the end of that 45 days to the extent that good comments come in, meaningful comments come in as a result of the early scoping and the project is in some ways significantly modified or modified. What happens? Does one go back to the beginning of the 45 day process? Does one continue on from there?

I can tell you from first hand experience that CEPA does create difficulties for those looking to do public-private projects in the State of Connecticut as contrast with other states. And I don't think this -- as at least currently drafted is the solution to those problems.

Thank you.

SEN. WILLIAMS: Thank you. Are there questions? Thanks for your testimony.

EARL PHILLIPS: Again, just for the record, I have consulted with a number of significant employers and companies around the State in advance of giving my comments just to make sure their in-house counsel felt and believed the same as I do. Thank you.

SEN. WILLIAMS: Thank you. Eric Brown.

ERIC BROWN: Good afternoon, Senator Williams, Happy Anniversary. Distinguished members of the Committee.

My name is Eric Brown. I'm with CBIA and a director of CBIA's Environmental Policies Council. I'm here just to very briefly testify on four Bills before you.

The first of those is ~~5708~~ the CEPA Bill. I'd like to echo many of Earl's comments. We -- we are going on record as opposing the Bill but, again, for reasons of incompleteness.

We don't particularly have a problem with the pre-screening per se, we're hopeful that -- that will provide and answer some questions early in the process. But we don't think, you know, a Bill that everybody agrees needs fixing, should be fixed just by adding more stuff to the process early on.

We think that adding steps to the front-end that hopefully give more certainty should be balanced by greater certainty on -- on the back-end, if you will.

We feel there's -- there's a need to find some way to define a set of objective criteria, where if those criteria for a given project survive the pre-screening process, then there should be certainty to those involved in the -- project that the process will end and it will.

The current system that has basically an open-ended opportunity to obstruct progress on the project should -- should be addressed given the front-end changes.

should be held in Hartford. The regulation hearing, ought to be held in Hartford if a regulation hearing is going to be held.

There is no way that I can travel to Candlewood based upon something that is published in a New Fairfield paper. I'm not gonna know about it. Nor -- nor any of the Bass fishermen in the eastern part of the State.

So, if you take a look at that substitute, we'd appreciate it.

Secondly, this is absolutely needed, we need a repeal of a 93' finance Bill which was done by Senator Maloney at the time. And, what this does is prohibits any maintenance on Latin's Cove boat launching ramp. This is absolutely unheard of.

Ten -- almost ten years now, we've had no maintenance on the ramp. And this is a State boat launch ramp that provides access to the Bass Federation, Bass fishermen and tourists.

One other -- a couple of other things. The towns do get money from the Boating Registration Fund. We think it's somewhere about \$80,000 to \$100,000 for all the towns involved. It would be nice if they, like the shoreline towns, put that money into boating, boating safety and boating enforcement activity.

And, finally, we think that when all the parties get together, as we have, we can work out a compromise. The only thing we can't solve is the problem of enforcement.

SEN. WILLIAMS: Thank you. Are there questions? Thanks very much. Sandy Breslin then Richard Sherman and Lois Hagar.

SANDY BRESLIN: Senator Williams, members of the Committee. Thank you for the opportunity to speak today.

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I'm actually pinch hitting for Margaret Miner, the Executive Director of the Rivers Alliance, who is a

member of the CEPA Working Group and is home ill, unable to join us today. So, I'm just going to read a short section of the written testimony that has been submitted on her behalf.

Both the Board and staff at Rivers Alliance have been distressed by the tendency in recent years to postpone application of CEPA until late in the planning process. The tendency to find that huge projects have no significant environmental impact, and the tendency to hand out legislative exemptions to CEPA and other essential environmental protection laws.

The emphasis on early scoping in R.R. 5708 is good policy statewide. And as important in small upland towns as in populous areas.

Many small towns such as Margaret's home, Roxbury, are not attuned to State developments. If the State does not make an effort to set up two-way communication early in the planning process, the results can be extremely costly.

A prime example is the effort to build a new courthouse in Litchfield, which is badly needed. A decade ago a site and plan had to be abandoned because the site had not been properly vetted. Now, again, the state has purchased a site for the courthouse without proper scoping and public involvement. Again, it appears that the site, which is in a wet woodlands area, will have to be abandoned.

While studying the CEPA statute, I heard several objections that early scoping would be expensive. On the contrary, given this example, an approved CEPA will be a cost-saving step to assure that needed projects can go forward on appropriate sites.

In the CEPA working group, we looked at various efficiencies that can be brought to the process, including, a public comment period of less than 45 days.

From a small town perspective, that 45 days is

absolutely essential. Some town halls are no open full-time and many Commissions and Boards are run by volunteers, who may ordinarily contribute two or three days a month.

Once notice arrives in town, it may take a week to get into the right hands and another week to muster an official reaction.

Many small towns and local environmental groups do not have the professional experts on staff to react to a complex proposal. These towns and groups need time to vote or otherwise decide to retain a consultant to find the right experts and to frame a response. The 45 day deadline is tight.

Rivers Alliance once again thanks the Committee for the work on this issue and offers its help in any way that they can in forwarding the process of improving this legislation. And, I thank you for hearing.

SEN. WILLIAMS: Thank you very much. Are there questions? Thank you. Richard Sherman then Lois Hagar then Gian Carlcasa.

RICHARD SHERMAN: Senator Williams, members of the Environment Committee. My name is Richard Sherman. I'm representing Citizens for a Sensible Six and I would like to offer my support in that capacity for the Environmental Advocate Bill, S.B. 374.

But, I am here primarily to testify in support of H.B. 5708. It is to my satisfaction that I heard the Assistant Commissioner of DEP and the representative from OPM offer at least qualified support for House Bill 5708.

Where I would take issue with them is the characterization of the Bill as a good start. It is far more than a good start. It is a comprehensive and effective evolution of the most important environmental law in the State of Connecticut.

And, if it is implemented and signed by the Governor, the way in which -- the concerns of the

regulated community and the environmental community are satisfied will be dramatically improved.

Specifically, the reforms to the EIE process. Specifically, the need for more accurate description of project purpose and need, and how it relates to alternate site analysis. The improved noticing. The enforcement improvements and last, but certainly not least, the improved scoping process.

Scoping, of course, is one of the most underutilized and unappreciated parts of CEPA and it has, ironically, the greatest potential for improving the whole CEPA process from both the regulated community point of view and from the environment community point of view.

The specific improvements to CEPA including the early requirement that initiate the environmental review process. The idea that the -- the public noticing of the 45 day comment period, that includes a mandatory scoping meeting.

The minimum set of criteria that applicants must be considered, and the requirement that the applicants considered substantive comments or issues raised regarding actions and site or alternative actions and sites, will go a long way into making the EIE or the EA or even the FONSI a more effective document that will basically -- will -- the results will be expected by many members of the -- the stakeholders of the community.

I would like to take issue with the comments of OPM regarding the -- and some of the others regarding the fact that the mandatory meeting and the scoping process will require too much information to be brought up early.

I think that is, in this characterization of what scoping is about, primarily scoping is a process in which problem seeking is the primary motivation.

This is consistent with good architectural and planning practices. It is the important question that needs to be answered not the amassing of

irrelevant information. In fact, the present situation has too much irrelevant information attached to it.

I thank the Committee for its work and I urge that this Bill be supported. Thank you very much.

SEN. WILLIAMS: Thank you, Richard. Are there questions? Thank you for your testimony. Lois Hagar then Gian Carlcasa and Mike Sargent.

LOIS HAGAR: Good afternoon, Senator Williams and members of the Committee. I want to thank you for letting me be here today to talk about a subject that I've worked on for the last six years.

Before retiring from the Department of Environmental Protection in May of 2000, I spent four years on this issue and helped to draft what is before you as R.B. 5539. And, I think sometimes we get lost in the details of a Bill like this.

So, I just want to read you something that I read today from the Massachusetts Medical Association that kind of brings us back to why we're here. They were testifying at a similar hearing on a similar Bill that's been raised in Massachusetts.

They say studies have shown that even very low doses of mercury result in impaired childhood neurobehavioral functioning including problems with attention, verbal learning, vocabulary, and neuromotor function.

We require seatbelts and -- and carseats for children. We require immunizations before they go to -- to school. And, I see no reason why we shouldn't be addressing this problem to try to deal with what would otherwise be substantial personal and societal costs.

I've also heard that there's some misunderstanding about the provisions of the Bill. It's far less absolute than what has been represented by some people here today. I think there are four central provisions to the Bill, which if supported and passed will make a huge difference.

Storrs -- our experience with CEQ has been very, very good. They've been very responsive. But, they're limited in what they can do. And, this is, I think, one of the advantages of the Environmental Advocate position.

One of the things that rose from our experience with CEQ was the discovery that no State Agency was designated with authority to enforce the law regarding violations of CEPA.

The Environmental Advocate Bill in hand with CEPA changes would help rectify that oversight. It would also enhance much of what CEQ or DEP does without unnecessarily duplicating what they do.

One concern that you might -- that might need to be clarified has to do with the FOI provisions in there. One thing that I've heard is that -- there's some concern that documents that are FOI'd by the Environmental Advocate would disappear from public view. That's not my reading but there is that concern. So, you might want to take a look at that and make sure that that's clear.

Finally, I think the Environmental Advocate position would help relieve some of the workload that we in Storrs have placed on CEQ.

Citizens for Responsible Growth also supports the provisions of Bill 5708. Particularly, the early scoping provisions. There's been a lot of controversy of UCONN projects as -- as many of us know.

One of the more recent projects was a proposal for student housing. We're getting ready to enter the EIE phase of that. UCONN voluntarily used the early scoping provisions during that project. As a result of that, and of the concerns -- the outrage expressed by citizens at that early scoping meeting, one of the three proposed sites was removed.

So, I think the -- the early scoping -- it's worked in Storrs, it's really one of the first times that CEPA has really, really worked in Storrs.

That's my testimony for today and I thank you very much for this opportunity, once again.

SEN. WILLIAMS: Thank you, Mr. Severson. Are there questions? Thanks very much. Melinda Miller then Kim DeFeo and Joyce Kathan.

MELINDA MILLERS: I'm here today to give some face to -- to your mercury issues. About 11 months ago, after nine-years of misdiagnosed medical problems and the destruction of my life, I was diagnosed with mercury toxicity.

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It's cost me \$7,000 of IV Kelation therapy to get myself back on track. During the nine years that I was misdiagnosed, I suffered from severe cognitive dysfunction, from a fatigue that was overwhelming.

I went through a battery of tests that included invasive procedures and dangerous procedures like spinal taps. And, at the bottom line, it was all due to chronic mercury toxicity.

So, what you're dealing with isn't really about industry and it's not really about even financial concerns that business has. At the bottom line, it's about people and it's about having your life destroyed.

I was rated as having high to superior cognitive functioning prior to my illness. In 1998, after six -- at that point six years of degenerating illness, a battery of neuropsych tests labeled me as profoundly impaired.

I lost my job because of it. I lost a lot of money because of it. I lost my very identity. I was someone who was defined. My identity was two things, energy and cognitive functioning. And the two things that I lost because of mercury toxicity was energy and cognitive functions.

I literally did not have an identity that I could understand anymore. It was terrifying. The cognitive dysfunction that I suffered entailed a number of different items but I can tell you that,

**JOINT
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HEARINGS**

ENVIRONMENT

PART 5

1381-1638

2002

STATE OF CONNECTICUT

COUNCIL ON ENVIRONMENTAL QUALITY



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TESTIMONY

DATE: March 11, 2002

TO: Committee on the Environment
Connecticut General Assembly

FROM: Karl Wagener
Executive Director

BILL: Raised Bill 5708, AAC Revisions to the Connecticut Environmental Policy Act

I wish to offer a few comments on behalf of the Council on Environmental Quality regarding Raised Bill 5708. About this time last year, the Council completed a draft report on possible revisions to the Connecticut Environmental Policy Act (CEPA). At that time, virtually all of the other agencies as well as several non-governmental organizations said they would like to work with us. We held off publication of our report until we could conclude our cooperative work with the other parties. If there were going to be many points of agreement, there was no sense in the CEQ going off on its own course.

As Undersecretary Mattiello of OPM testified today, the agencies have been working together. However, the work of revising a 30-year old statute takes time, and the agencies have not concluded their recommendations. Whatever happens with this bill, I hope there will be an opportunity to make additional changes to CEPA in the future.

In general, the Council is supportive of provisions that make more information available to the public and provide more opportunities to participate. I think the concept of mandatory scoping will prove to be non-controversial, though the specifics might not. I will restrict my testimony to two provisions that affect the CEQ directly, and leave discussion of the other specifics to those agencies which must comply with the Act.

1. **Environmental Monitor.** The bill directs the Council to publish something called the Environmental Monitor twice a month. Last year's bill would have created a paper newsletter with subscriptions, which the Council could not manage on its budget. However, this year's vastly-improved bill envisions an entirely electronic publication. Information about scoping opportunities and

public comment periods would be sent to the Council by other agencies, and posted to a web page. After studying this proposal, we have concluded that we can produce this Environmental Monitor within current appropriations. However, there is one small change that needs to be made: Section 1 says that our Council must maintain an e-mail list, which we are pleased to do for all those who request to be on the list. However, it also says that we must notify all municipalities by e-mail. There is almost no cost associated with actually performing the e-mailings, but this provision would require us to continuously maintain an up-to-date list of all municipalities' e-mail addresses; as addresses change, we would be responsible for somehow keeping tabs. We do not have the resources to do this. We would request that you amend the language to read that we shall send the notices by e-mail to any municipality that requests to be on the list. We would periodically inform municipalities and others about their opportunities to get on the list. As a final note on this point, the Council is keenly aware that not everyone has access to the internet; however, postings on the internet are more accessible than notices in the Connecticut Law Journal.

2. **FONSI**s. Section 4 adds references to Findings of No Significant Impact, or FONSI. Under current law, there is only one brief reference to FONSI. FONSI are defined and allowed by the CEPA regulations. Under those regulations, OPM must consult the CEQ whenever there is a dispute regarding a FONSI. FONSI and their disputes create large problems far out of proportion to their true importance. The CEQ has been working hard to develop a consensus that we can eliminate FONSI altogether. We recommend that instead of adding references to FONSI, all current references to FONSI be deleted. They still will exist in the regulations, but when we are all ready to get rid of them, we would need only to remove them from the regulations, and *voila*: no more FONSI.

The Council looks forward to working with you and all parties to improve and update CEPA. I will be happy to answer any questions you might have.



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TESTIMONY OF CAROLYN HUGHES, DEPUTY DIRECTOR AUDUBON CONNECTICUT

ENVIRONMENT COMMITTEE PUBLIC HEARING MARCH 11, 2002

Audubon Connecticut, an operating unit of the National Audubon Society, with over 16,000 members in the state, works to protect birds, other wildlife and their habitats through education, research, conservation and legislative advocacy.

R.B. 5708 AN ACT CONCERNING REVISIONS TO THE CONNECTICUT ENVIRONMENTAL POLICY ACT

Audubon Connecticut *strongly supports* R.B. 5708 which would strengthen the Environmental Policy Act. Audubon is an active member of the CEPA Working Group, a coalition of 17 national, state and local environmental organizations working to halt exemptions from our state's two key environmental laws. Over the past several years, major state projects have been exempted from key provisions of the Environmental *Protection* and Environmental *Policy* Acts, including:

- Long Lane School in Middletown (under construction)
- Patriots Stadium at Adrien's Landing in Hartford (project defunct)
- Stadium 2 at Adrien's Landing in Hartford (project defunct)
- UConn Stadium at Rentschler Field in East Hartford (under construction)
- CRISP project in the Maromas area of Middletown
- Cigna Wilde Building in Bloomfield, and
- UConn 2000 in Storrs.

This tendency of the legislature to circumvent the state's major environmental laws appears to be increasing, and represents a disturbing trend. Audubon and our Coalition partners seek to halt this trend. Both the Policy and Protection Acts play critical roles in safeguarding the Connecticut Environment.

Over the past several years, it appears as if exemptions from the Protection Act are routinely being pursued due to frustrations with the procedures and timeframes laid out in the Policy Act. There are real procedural and timing issues that can be resolved with respect to the *Policy* Act. The legislature should give its attention to fixing the real problem and resolving these issues rather than continuing to grant wholesale exemptions from the Policy and Protection Acts.

Importance of the Policy Act: The Policy Act requires environmental evaluation of proposed state-funded projects. It is a planning tool, intended to provide a process for the evaluation of a number of potential sites to determine the best site for both the environment and the facility. The process is intended to provide for an early review of any environmental impacts of proposed projects and identification of ways to avoid or mitigate those impacts. Over the years, the steps envisioned by the act's authors have tended to be short-circuited by agencies, who frequently use the Act to explain and document the impact of siting decisions already made and not as a planning tool, as was intended.

A Question of Timing: Under the Policy Act, the Environmental Assessment for the UConn stadium project identified the Rentschler Field site as an important habitat for grassland birds, triggering development of a full EIE and mitigation plan. In this sense, the Policy Act worked as it was supposed to, highlighting a major environmental issue associated with a proposed project. However, *site selection had occurred, a significant amount of the project planning had been completed, and a significant financial commitment made to the East Hartford site before the Environmental Assessment identified the presence of grassland birds.* These factors combined to make it difficult, if not impossible, to move the stadium to an alternate site once the presence of ten state-listed threatened and endangered birds became known.

Key Changes to the Policy Act: Raised Bill 5708 addresses a number of areas where the Policy Act needs updating:

1. **Project Scoping:** Under the current law, some agencies voluntarily engage in a project scoping process, notifying various state agencies about a potential project and seeking input on issues that should be addressed as the project moves forward. However, this process is strictly voluntary. Environmental interests would be better served if project scoping were mandatory. Early scoping can also help minimize surprises for the sponsoring agency by identifying major environmental issues very early in the project design phase. Section 1(c) of the proposed bill addresses the issue of project scoping.
2. **Environmental Impact Evaluations (EIE's):** EIE's should be conducted very early in the project planning process, and certainly before final site selection has occurred, allowing for early identification of siting issues and meaningful consideration of alternative sites. Section 1(c) and (d) of the proposed bill addresses this issue.
3. **Enforcement:** In Section 7(b) of the proposed bill, OPM and DEP are given clear authority to ensure that approved mitigation actions are actually carried out. This is a critical issue in the case of mitigation plans for the UConn stadium, because the fate of ten state-listed threatened and endangered birds is at stake, and some of the species found at Rentschler Field breed at only one other known location in the state.

On behalf of our members, we strongly support the efforts of this Committee to resolve the procedural and timing issues that currently limit the effectiveness of the Policy Act. By resolving these issues, we should be able to reverse the tendency for project sponsors to seek wholesale exemptions from Protection Act.

Thank you for the opportunity to testify today on this important issue.



STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION



Public Hearing – March 11, 2002
Environment Committee

Testimony Submitted by Commissioner Arthur J. Rocque, Jr.
Department of Environment Protection

Raised ~~Senate~~ Bill No. 5708
An Act Concerning Revisions to the Connecticut Environmental Policy Act

The Department of Environmental Protection (DEP) appreciates the opportunity to present testimony on Raised Bill 5708.

The Department of Environmental Protection agrees that the nearly thirty year old Connecticut Environmental Policy Act (CEPA), needed a considered review and warrants adjustment. To that end, DEP has actively participated in OPM's efforts to evaluate CEPA from the perspective of state agencies. Furthermore, DEP appreciates the efforts of the NGO community to develop a consensus view of their concerns. We believe that HB 5708 is a good beginning to address the concerns of this diverse group of stakeholders and can lead to state sponsored development that carefully evaluates and limits its impact on the environment.

DEP supports more open and better-informed public involvement during the planning for and evaluation of a project, which should lead to a better process; ultimately resulting in state sponsored projects consistent with the environmental policies of Connecticut. While we agree that early public scoping is critical to the process, the requirement to hold a public meeting on every project may add unnecessary process in some cases. We believe that the need for formal public meetings should be commensurate with the scope of the proposed project and left to the discretion of the sponsoring agency. Other means readily exist for the public to provide comment or to request greater involvement.

We have some concerns with inconsistency in the use of terms that might make it unclear when scoping is necessary. This confusion lies in the mixing of the terms *environmental assessment*, *environmental impact evaluation*, and *finding of no significant impact*. It is our understanding that what is envisioned is to require mandatory public scoping at the early stages of a sponsoring agency's decision-making to help frame the degree and extent of the projects evaluation. We would be happy to work with the committee and other stakeholders to clear up these inconsistencies.

Finally, we agree with your efforts to provide a mechanism to assure compliance with decisions that outline mitigation requirements and believe that making this compliance a part of the sponsoring agency's overall project implementation critical to ensuring follow up. Here again however, we

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think the proposed language can be clarified to provide the appropriate assurances along with agency flexibility for making such assurances. Thank you for the opportunity to comment, the Department looks forward to continued work with the Environment Committee on ensuring that CEPA continues as a valuable statewide environmental planning tool. We would be happy to assist the committee in any way possible to further these ideas.

If you should require any additional information, please contact Tom Tyler, the DEP legislative liaison, at 424-3001.

Comments on Raised Bill 5708
LCU No. 2394

(7)

An Act Concerning Revisions to the Connecticut Environmental Policy Act

From: Ellen Lukens
46 Pine Street
Middletown CT 06457

Outraged, upset, demoralized, angry, saddened, helpless, these adjectives best describe the range of emotions of the Middletown environmental community when we heard last June that the I-3 Zone (Industrially zoned 1,400 acres of Maromas) in southern Middletown had been exempted from the EIE as mandated by CEPA guidelines. This was accomplished by a rider added to the budget bill in the last week of the legislative session last year.

CEPA regulations must be amended so that this type of exemption be prohibited and the legislation exempting the Maromas I3 Zone should be reversed.

An environmental review of a proposed sewer line to service a portion of the Maromas area of Middletown was mandated by CEPA. If any project needed a thorough EIE, this sewer project is one of them. The issues involving the I-3 Zone in Maromas which the sewer line would service are important and complicated. Many citizens, state agencies, and environmental organizations made comments on the Draft EIE and worked long and hard in hopes of achieving the best possible land use decisions regarding this area. Then the exemption occurred. We felt betrayed by our State Representatives who introduced the legislation to exempt the I-3 Zone and by the Legislature which allowed its passage.

Following this exemption, local efforts to obtain at least an Environmental Review Team report on the land came to naught. We were effectively silenced.

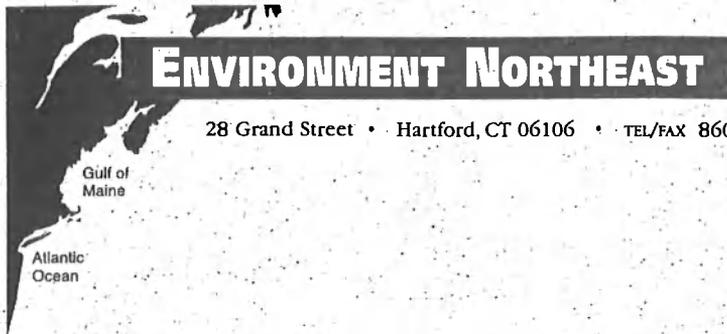
Because of all the economic pressures, especially on cities and towns that are financially stressed, like Middletown, an increased industrial tax base is considered extremely important. Any perceived constraints on development often and understandably are resisted by town governments. Middletown is no exception. So if the Chamber of Commerce, the town political leaders, and the State Representatives want development, and it all has to be accomplished quickly, the environment doesn't stand a chance unless strong regulations and guidelines are in place. In this situation, a thorough EIE ordered by the state was needed in order that not just economically driven land use decisions be made and that the preservation of environmentally sensitive and scenic areas be identified by an independent third party.

We need strong legislation that allows for public comment and evaluation whenever large ecologically valuable tracts are involved, and certainly when state money is being spent. Our state tax monies are paying for this sewer line. Shouldn't my voice and others be heard as well as those who stand to gain financially or otherwise from such an endeavor?

The Maromas area of Middletown, approximately 4,000 acres of almost unfragmented forest, includes this I-3 Zone. Some have referred to it as Middletown's "Rain Forest", Middletown's "Last Great Place", or more regionally, "A Middlesex County treasure on the banks of the Connecticut River." By allowing this exemption you let us down. We were David fighting for the environment versus Goliath. But a third party took David out before he had a chance.

Please pass legislation to require that CEPA guidelines be followed for the proposed sewer project in Middletown, and also strengthen the guidelines in order to prevent exemptions such as the one cited above from reoccurring.

Thank you.



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**Testimony of Environment Northeast
On Raised Bill 5708
Environment Committee
March 11, 2001**

**Daniel L. Soslaud
Karyl Lee Hall**

Environment Northeast (“ENE”) is a regional environmental advocacy and research organization with offices in Hartford and Rockport, Maine. ENE is pleased to testify today in favor of Raised Bill No. 5708, An Act Concerning Revisions to the Connecticut Environmental Policy Act.

RB 5708 establishes a procedure by which the issues and alternatives of a project subject to the Connecticut Environmental Policy Act (“CEPA” or the “Policy Act”) will be examined early in the development process with the participation of the public, the sponsoring agency and other reviewing agencies. The bill also establishes that the cumulative impact of a project shall be a mandatory part of all environmental impact evaluations. It assigns crucial enforcement authority to the Office of Policy and Management, working in cooperation with the Department of Environmental Protection. Finally, it directs the Council on Environmental Quality to publish the Environmental Monitor as a source for all notices required under the Policy Act.

Environment Northeast supports all provisions of Raised Bill 5708. We believe that the scoping provisions, the requirement concerning cumulative impact and the establishment of the Environmental Monitor are especially important for the following reasons:

- 1. Early Scoping will encourage resolution of potential conflict and reduce delay after the environmental impact evaluation.**

Early scoping has been recommended by federal agencies for many years as a way to reduce delays in the environmental review process. The National Council on Environmental Quality has recommended early scoping under the National Environmental Policy Act (“NEPA”), a model for Connecticut’s Policy Act, in order to insure that “real problems are identified early and properly studied.” *Memorandum for General Counsels, NEPA Liaisons and Participants in*

Scoping, Executive Office of the President, Council on Environmental Quality, April 30, 1981. The Federal Highway Administration has likewise long been an advocate of broad-based public involvement as a strategy for identifying social, economic and environmental concerns "as early as possible in the development of transportation and land use plans and programs." *Environmental Policy Statement; A Framework to Strengthen the Linkage Between Environmental and Highway Policy*, Federal Highway Administration, 1994.

We believe that front-loading the environmental analysis acts both to identify issues that might be overlooked and to screen out those that are of no concern and could consume valuable time and effort later in the process. An open approach encourages new opportunities for more efficient analysis. It does not create problems that do not exist; it flushes them out early and insures that they are identified and considered before the range of issues are delineated and the analysis has begun. An environmental impact evaluation ("EIE") based on this firm foundation will be viewed as much more reliable by the general public and will provide greater predictability for the project sponsors. As a result, well scoped EIE's are less likely to be subject to litigation at the end of the process where delay is most expensive.

2. Cumulative impact analysis is required by the recognition of multiple environmental stressors and the complex interaction between them.

For those state projects that must comply with NEPA as well as CEPA, analysis of cumulative impact is already required. The Council on Environmental Quality regulations mandate that agencies must assess direct, indirect and *cumulative* effects of the proposed action. (emphasis added) 40 CFR § 1508.8(a). Thus, for a likely majority of the instances, Raised Bill 5708 merely clarifies the existing rules.

In all cases, the cumulative impact requirement responds to the growing appreciation by regulators, scientists and environmentalists that risk, whether to the environment or to public health requires a broad consideration of endpoints, sources, pathways and exposures over a varied time frame. Since 1992, the FHWA has recognized the significance of more complex stressors by requiring the "collection and presentation of all information relevant to the project, including "systemic analyses of environmental, social and economic impacts of sponsored projects that include coverage of secondary and cumulative effects." *Secondary and Cumulative Impact Assessment in the Highway Project Development Process*, FHWA, 1992. As our small state becomes increasingly developed, we must be yet more mindful of the incremental impact of a proposed action when added to other past, present and reasonably foreseeable future actions.

3. The Environmental Monitor will insure that the general public is informed about proposed projects.

The Environment Monitor, as proposed in Raised Bill 5708 will be an easily accessible and reliable source of information on upcoming projects. Such assessibility should facilitate all aspects of project review, including the new scoping provisions, by providing one source of reliable information on all aspects of a CEPA project. It will also outline clearly the opportunities for

public participation. The clarity of the CEPA process will be enhanced by having a respected agency, the Council on Environmental Quality, oversee the publishing of the Monitor. Finally, the transparency of this process, as well as the early opportunities to contribute to it, can only reduce confusion and add legitimacy to an agency's environmental review.

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Connecticut Chapter of the American Planning Association

Legislative Chairman, Donald J. Poland, AICP – Phone: 860-292-8256 Fax: 623-4798 Mobile: 655-6897 (ewplanning@yahoo.com) www.ccapa.org

March 11, 2002

H.B. 5708: AN ACT CONCERNING THE CONNECTICUT ENVIRONMENTAL POLICY ACT

SUMMARY: The purpose of this act is to strengthen the Environmental Policy Act by requiring early public and state agency scoping of projects subject to CEPA review, improving public awareness and access to information regarding project reviews, and improving EIE requirements and mitigation plans. The act would also provide for an enforcement procedure.

ANALYSIS: Developed by the CEPA work group over the past two years, the CEPA amendments legislation has broad support in the environmental community and the proposal has been well-received by the Interagency Working Group on CEPA, composed of state agencies subject to or involved with CEPA reviews. The CEPA amendments are intended to improve and strengthen the procedures and public participation in CEPA reviews. Early scoping is intended to identify problems and alternatives before the EIE is drafted. Public awareness, through a new publication (Environmental Monitor) and scoping meetings will promote effective public and state agency input. New EIE requirements include details common to standard site plan applications, a proper statement of purpose and need, broader consideration of alternatives, evaluation of conformance with the state plan of conservation and development, and site plans for proposed mitigation. Enforcement provisions provide for compliance with mitigation requirements. The amendments constitute improvement to the planning process for major state projects and are consistent with accepted planning and environmental review principles.

FISCAL IMPACT: The CEPA work group expects any fiscal impact to be minor and is seeking OPM assistance to affirm this.

CCAPA POSITION: The Connecticut Chapter of the American Planning Association supports H.B. 5708.

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March 11, 2002

TO: Committee on the Environment
FROM: Katchen Coley, 191 Maple Shade Road, Middletown, CT, 06457
RE: Raised Bill 5708. An Act Concerning Revisions to the Connecticut Environmental Policy Act

I am a Member of the Middletown Conservation Commission and Chair of the Conservation Committee of Middletown Garden Club – but, more pertinently, I am a 46-year resident of this town situated on the banks of the beautiful lower Connecticut River. And I am here to tell you a sad story of what can happen to a town's treasured natural resource when the principles of the CT Policy Act are bypassed. I hope this cautionary tale will motivate you to strengthen CEPA and thus protect Maromas and other resources in our State.

The southern end of Middletown, known as "Maromas," is a largely unfragmented forest stretching along the western bank of the river to the border of the Higganum part of Haddam. The lower Connecticut is almost unique in our country because it was saved from heavy industrial development by the fortuitous location of a sandbar at its mouth. It is an area of steep rocky outcroppings, extensive wetlands, vernal pools, endangered fish and many animals. A popular hiking and bicycle area, it hosts a stretch of CT's Blue Trail System. An important destination for migratory birds, it has also become a hunting ground for an increasing number of eagles (over 70 this year) who winter on the Lower Connecticut. Indeed, land that the Northeast Utilities owns in the area has been managed by them as a DEP wildlife area. For all of these reasons it had been designated by three national and international organizations as a resource of special importance: by the U.N. as one of the world's 33 "Ramsar Sites," by Congress as the Silvio Conte Wildlife Reserve, and by the Nature Conservancy as one of its "Last Ten Great Places."

So what's happening to it? An \$8 million sewer was proposed to go from Middletown to one of the few industries in the area: Pratt and Whitney. It was claimed that their sewage treatment plant was outdated and that instead of upgrading it, they should be hooked up to a new sewer. As required by CEPA, the Office of Economic and Community Development undertook hearings to determine the environmental impact such a project would have on the natural resources. The project was being pushed by the City Hall. But in the course of these hearings, the realization emerged that this sewer pipe was to be twice as large as Pratt and Whitney needs. Alarm spread amongst DEP officials and conservationist organization and Many Middletown citizens that this large sewer pipe could lead to the development of an industrial "park" in what is currently an important natural area - "God's Park" some might call it.

The CEPA-required hearings closed and a report was written which was to be forwarded to the Office of Policy and Management. But the report was never issued. In the final days of the State budget hearings last June, a rat was attached to a totally unrelated budget bill by those who wished to see the sewer go through: it attempted to by-pass certain requirements of CEPA. In effect an \$8 million possible detriment to the environment could now be undertaken. But a lawsuit has now been launched against the two State agencies, OECD and OPM, and the City of Middletown. Although I'm unhappy that my tax dollars will be used by City Hall to defend its' actions, Maromas may be the biggest victim! This bill, however, can exclude Maromas from any exemption from CEPA requirements.

I urge you to take this opportunity to STRENGTHEN the CT Policy Act to keep this from happening in Maromas and elsewhere in our State.



Connecticut Association of Conservation and Inland Wetlands Commissions, Inc.

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**TESTIMONEY OF TOM ODELL
PRESIDENT**

**CONNECTICUT ASSOCIATION OF
CONSERVATION AND INLAND WETLANDS COMMISSIONS, INC.
(CACIWC)**

**ENVIRONMENT COMMITTEE HEARING
March 11, 2002**

CACIWC is a non-profit organization working to protect Connecticut's wetlands and watercourses and other natural resources through information and education of the 2000+ volunteers and staff that carry out the responsibilities of Connecticut's Conservation and Inland Wetlands Commissions. CACIWC, representing 170-member commissions state wide, works with municipalities and environmental groups to promote public support for sound management of Connecticut's natural resources.

Raised Bill No. 5708

An Act Concerning Revisions to the Connecticut Environmental Policy Act

Representative Stratton, Senator Williams and Members of the Committee thank you for the opportunity to testify in favor of this very important Bill.

The Connecticut Association of Conservation and Inland Wetlands, Inc. strongly supports the revisions to the Connecticut Environmental Policy Act proposed in Raised Bill No. 5708.

The Policy Act is an essential component in Connecticut's provisions to protect our natural resources. The Policy Act compliments Connecticut's Environmental Protection Act and state required municipal environmental land use regulations (for example inland wetlands and erosion and sedimentation regulations) by providing an essential public participation process for assessing and commenting on potential environmental impacts of proposed state funded projects.

The proposed revisions in Bill 5708 strengthen the Policy Act by requiring state agencies to conduct an early public review or scoping process. This revision enhances predictability and effectiveness of the Act and shifts "negotiation" to the beginning of the review process before a substantial investment has been made.

The early "scoping" process gives municipalities and the public a chance to provide the applicant/agency with site information and comments on the nature and extent of any environmental impacts of a proposed action. The revision provides a 45-day comment

period following notice of the early public scoping process. This 45-day comment period is essential for municipal land use agencies that generally meet every 30 days and require that extra 15 days to ensure meeting dates fall within the comment period.

Municipal land use agencies and the public depend and expect Connecticut's environmental laws to be implemented and enforced. However, in recent years the Policy Act has not provided the degree of protection that was intended. The revisions proposed in Bill 5708 were developed to foster implementation and enforcement by clearly articulating the provisions and the process of the Act. The Connecticut Association of Conservation and Inland Wetlands Commissions endorses these revisions and appreciates the Environment Committee's continued support to improve the Policy Act.

We would be happy to answer your questions.



Connecticut Audubon Environmental Affairs

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5708

TESTIMONY BEFORE THE ENVIRONMENT COMMITTEE ON HB-~~5308~~
AAC REVISIONS TO THE CONNECTICUT ENVIRONMENTAL POLICY ACT
March 11, 2002

My name is Betty McLaughlin and I am the Environmental Affairs Director for the Connecticut Audubon Society. We are an independent, statewide non-profit membership organization dedicated to providing excellence in environmental education, encouraging the conservation of the state's natural resources, and advocating for enlightened leadership on ecological matters. We have approximately 10,000 members.

Connecticut Audubon has worked in conjunction with other environmental organizations and interested parties to examine the workability of the CEPA legislation, and to revisit some of the areas where improvement could be made. One of the key areas where improvement must be sought is in the area of early information and notice to the public when the state embarks on state-funded projects that will likely have a impact on the environment. Our citizenry has the right to expect that the state will not unduly harm or destroy our limited and valuable natural resources, nor waste our financial ones. It is important to note that the revisions proposed in this legislation streamline and open the process, making it more effective, but they will not increase financial strain on state agencies. The revisions call for a different order of doing things, but not an additional workload burden. There should be no additional fiscal impacts to sponsoring agencies to derail this proposal.

The proposed legislation before you improves CEPA in four significant ways: a new early scoping process; an improved notice system; an improved environmental impact evaluation document; and better enforcement of mitigation compliance.

The early scoping process envisioned by this proposal will identify potential problems early on, so that the applicant can address these concerns in the subsequent environmental analysis. Early scoping will provide a timely opportunity for public comment and agency input, avoid unnecessary delays, and reduce costs.

The bill calls for a more effective notice system, taking advantage of the technological opportunities afforded by the internet, and recognizing that more and more people turn to the web for timely information. A semi-monthly online publication created by the Council on Environmental Quality improves the Connecticut Law Journal-only notice that currently exists.

The revisions require Environmental Impact Evaluations to provide more detail about project purpose and need. Additionally, alternatives are categorized in terms of whether they avoid, minimize, or mitigate for environmental impact.

A final area of improvement in this proposal is the revision to charge the Office of Policy and Management with enforcing compliance to the Policy Act process, and in cooperation with the Department of Environmental Protection, OPM will also enforce compliance with mitigation plans where necessary.

These improvements will make a more workable evaluation process, and provide a more open public participation tool. We encourage the Committee to seriously consider this legislation, and to favorably report out this important proposal.

Testimony of Richard L. Sherman
Concerning
Raised HB No. 5708
An Act Concerning Revisions to the Connecticut Environmental Policy Act
March 11, 2002

Representative Stratton, Senator Williams, members of the committee, my name is Richard Sherman and I am here to testify in support of HB 5708, An Act Concerning Revisions to The Connecticut Environmental Policy Act.

I do so based on the experience of several decades activity in local and regional citizen/environmental groups such as Citizens for a Sensible Six, The Coalition to Save Horsebarn Hill, Mansfield Common Sense, the Naubesatuck Watershed Council and The Transit Alliance of Eastern Connecticut. I have also served on the Connecticut Council on Environmental Quality (CEQ) for four years and am presently an active member of the CEPA workgroup.

I will begin by commenting on the scoping process, address the proposed changes as contained in HB 5708 and then respond to some objections to these proposed changes.

Dana Young of the Connecticut Fund for the Environment in her verbal and written testimony before this committee has already painted a comprehensive and lucid picture of the proposed revisions in HB 5708. I would like to emphasize several points. One, the strength of the proposed changes most assuredly rests on specific revisions to scoping, public noticing, the EIE, and enforcement processes contained in HB 5708. These individual revisions thereby improve the cohesiveness and therefore the effectiveness of the entire statute. Secondly, the proposed changes to the scoping process, probably the most neglected and under-utilized part of CEPA, are the foundation upon which improvements to the efficiency of the noticing, EIE and enforcement processes rest.

The revised CEPA affords the public scoping process added visibility, comprehensiveness and clarity that it does not presently possess. Of particular significance in Sec.22a-1c are the requirements that scoping occur early, that it happen within a predictable time frame, that there be an actual scoping meeting, that agency comments at a minimum address certain specified issues, and that the sponsoring agency address any substantive issues raised pertaining to "a proposed action or site or alternative actions of sites" in the subsequent appropriate environmental evaluation.

These revisions complement nicely the proposed additions to Sec. 22a-1d(1) and (4), the requirements that a sponsoring agency include within an EIE a description of the purpose and need of a proposed action and "a list of all sites controlled by or reasonably available...that would meet the stated purpose of such facility."

They also complement good planning and architectural design practices.

By imparting direction and specificity to the early actions of the applicant and the reviewing agencies and by affording new opportunities for early public participation, HB5708 greatly increases the likelihood that important environmental impacts will be correctly identified; that consensus will be achieved concerning what those impacts are; that the subsequent environmental evaluation (be it EA, Fonsi or EIE) will be correctly focused; that project delaying or destroying issues will not be uncovered late in the game.

A number of objections to this improved scoping process have surfaced. One objection is based on the perception that sufficient pertinent information is difficult to generate so early in the review process. In other words too much is being asked too soon. In response it is to be emphasized that scoping is more oriented toward asking the right questions rather than providing answers to questions that may be inappropriate, irrelevant or premature. Scoping is a problem seeking and defining rather than problem solving exercise that begins with the general and evolves to the specific.

Another objection is to the mandatory scoping meeting. Scoping, this argument goes, is for the benefit of the applicant. So why impose a requirement not welcome by the party it is supposed to benefit? It is my experience that many environmental assessments and EIE's have dramatically failed to address critical environmental impacts. This is directly attributable to a history of shortchanging the scoping process. To prevent this recurrence a set of mandatory criteria that will insure the implementation of good environmental review strategies are needed. One of these criteria, the scoping meeting, allows interested parties to actually meet. The scoping meeting affords an opportunity for interaction not likely to occur in the existing scoping process. Such interaction will, among other things, increase the likelihood that a spirit of mutual cooperation will prevail over one of hostile confrontation.

And yet another objection concerns the purported public misconception of what scoping is about. The public, it is argued, expects to see more in the early stages than is likely to exist. Disorientated, the argument continues, the public will be at a loss as to how to participate and contribute. My experience is that the public is likely to understand scoping if legitimate attempts are made to explain it. It is also my experience that the public is delighted to be involved if its concerns are taken seriously.

In closing I will note that improvements to the public scoping process contained in HB 5708 make CEPA a more effective environmental statute. In so doing the concerns of both the environmental and regulated communities are addressed.

Thank you.



Connecticut Fund for the Environment

Testimony of the
CONNECTICUT FUND FOR THE ENVIRONMENT

Environment Committee

Raised Bill No. 5708

March 11, 2002

Connecticut Fund for the Environment strongly supports Bill No. 5708, "An Act Concerning Revisions to the Environmental Policy Act." Connecticut Fund for the Environment is a membership-based nonprofit environmental advocacy organization that uses law, science, and public education to protect Connecticut's natural resources. Connecticut Fund for the Environment has more than 3,000 members statewide.

Connecticut Fund for the Environment is part of the Working Group of organizations committed to improving the Policy Act by making it more predictable and effective. When the Policy Act was passed back in 1971 the legislature's intent was clearly reflected in the first section of the Act which states "human activity must be guided by and in harmony with the system of relationships among the elements of nature."¹ Harmony is the key concept here-- the legislature intended the Policy Act process to achieve a harmony between a state-funded project and its environment, much like the way in which natural systems are in harmony with each other. Indeed, Connecticut's citizens have come to expect that state-funded projects will not unnecessarily disrupt the life-sustaining environment we all enjoy.

The revisions in this bill accomplish the task—they foster a harmonious system of analysis appropriate for the 21st Century by changing the Act in four main areas: a new early scoping process; an improved notice system; an improved environmental impact evaluation document; and better enforcement of mitigation compliance.

Returning to number one, a new early scoping process. A statutory scoping process will ensure that potential problems are identified and addressed early on so that the applicant will have a clearer sense of the issues to be addressed in the subsequent

¹ Connecticut General Statutes § 22a-1.

environmental analysis. Early scoping will provide a timely opportunity for public comment and agency input. Indeed, consistent early scoping of projects will effectively "front-load" the process thereby serving to avoid unnecessary delay and reduce cost.

The second area of improvement in the bill is a more effective notice system. A semi-monthly on-line publication created by the Council on Environmental Quality could replace the Connecticut Law Journal notice that currently exists.

The third area of Policy Act change is in regard to the Environmental Impact Evaluation requirements. The revisions require Environmental Impact Evaluations to provide more detail about project purpose and need. And, in order to better inform the alternative selection process by the agency, alternatives are categorized in terms of whether they avoid, minimize, or mitigate for environmental impact.

The fourth and final area of improvement is with regard to enforcement. According to these revisions one agency, the Office of Policy and Management is charged with enforcing compliance to the Policy Act process. And OPM, in cooperation with the Department of Environmental Protection, also enforces compliance with mitigation plans, where necessary.

In addition to these four key areas of Policy Act changes, there are at least three other non-statutory improvements to the process that we feel need further attention. The Working Group believes these changes would best be addressed by regulations or agency guidelines. First, Environmental Classification Documents are extremely important as the true primary filter for assessing whether a proposed project will result in significant environmental impact. These Documents should be reviewed and amended for consistency and effectiveness. Second, there may be changes to the Finding of No Significant Impact analysis that could make the process more efficient and effective. Third, perhaps the agencies could write time-frame guidelines establishing an appropriate length of time for document preparation.

Finally, I am submitting a sheet of minor suggested changes to the bill along with my written testimony.

I would like to congratulate and thank the committee for an excellent piece of legislation.

Connecticut Fund for the Environment's
Minor Suggested Changes to Raised Bill No. 5708
March 11, 2002

Section 1. Section 22a-1b.

- We are not convinced that a definitions section is necessary because all of the words defined are self-explanatory. If it must be included then the definition of "sponsoring agency" should be changed to encompass other environmental review documents and not solely mention environmental impact evaluations. The definition we would suggest is: "*Sponsoring agency*" means the state agency, department or institution responsible for the preparation of environmental evaluations.
- In 22a-1b (c) (4) the word "subdivision" should be replaced with "subsection."
- In 22a-1b (c) (6) the words "environmental impact evaluation or environmental assessment" should be replaced with "environmental evaluations." We would suggest the following wording for this section in order to avoid using the official document names and thereby precluding other appropriate document references: "*(6) The sponsoring agency shall consider any comments received pursuant to this section or any information obtained during the public scoping meeting to select the proposed action to be addressed in its environmental evaluations and shall address in its environmental evaluations any substantive issues raised during the early public scoping process that pertain to a proposed action or site or alternative actions or sites.*" As a result of this change the definition of "environmental assessment" could be removed since the term is not used elsewhere in the statute.

Section 3. Section 22a-1d.

- In 22a-1d (a) the words "environmental impact" which were added in this bill should not be added and the statute should remain as it did prior to this revision.
- Also in 22a-1d (a) the two references to the Connecticut Law Journal should both be removed since the Environmental Monitor notice system will serve as a replacement for this form of notice. (It is our Working Group's distinct impression that the Connecticut Law Journal is not an effective notice site.)

Section 4. Section 22a-1e.

- The words "environmental impact evaluations and findings of no significant impact" which were added in this bill should not be added and the statute should remain as it did prior to this revision.

Section 7. (NEW)

- In the last sentence the words "such contracts" should be replaced with the words "*the implementation of the mitigation plan*".



STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION
 2800 BERLIN TURNPIKE, P.O. BOX 317546
 NEWINGTON, CONNECTICUT 06131-7546



Office of the
 Commissioner

An Equal Opportunity Employer

Public Hearing - March 11, 2002
Environment Committee

Testimony Submitted by James F. Byrnes, Jr.
Acting Commissioner
Department of Transportation

H.B. 5708 - An Act Concerning Revisions to the Connecticut Environmental Policy Act

The Department of Transportation (DOT) offers the following comments on H.B. 5708 - An Act Concerning Revisions to the Connecticut Environmental Policy Act.

DOT has been participating in a taskforce that is seeking to reach consensus among state agencies on recommendations for changes to the Connecticut Environmental Policy Act (CEPA). These changes would be intended to streamline the regulatory process and improve public participation. The interagency taskforce has made substantial progress in identifying possible changes to CEPA legislation and regulations. However, we do not expect to reach a consensus among the state agencies until later this year. Therefore, our recommendations would not be available for consideration by the General Assembly until the next legislative session.

The Department has two concerns with H.B. 5708, as written. First, DOT is concerned that proposed Section 22a-1b (d) contains language requiring the evaluation of alternatives in terms of whether they avoid, minimize, or mitigate environmental impacts that may not be practical. Decisions on alternatives usually balance the impact of a project on several different aspects of the environment. As such, avoidance of one type of impact might require impact to another resource. Evaluation of avoidance, minimization, and mitigation in strict terms would be impractical in most cases and meaningless in others.

Second, we are concerned with the proposal to include detailed mitigation plans in an EIE. Such plans cannot be developed until a point in the design process that occurs after a CEPA determination is made. We believe that mitigation should continue to be developed in detail until later in the permitting process.

For further information or questions, please contact Pam Sucato, Legislative Program Manager for the Department of Transportation, at (860) 594-3013.



STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC WORKS



T. R. Anson
Commissioner

ENVIRONMENT COMMITTEE
PUBLIC HEARING
Monday, March 11, 2002

WRITTEN TESTIMONY
SUBMITTED BY
T.R. ANSON, COMMISSIONER
DEPARTMENT OF PUBLIC WORKS

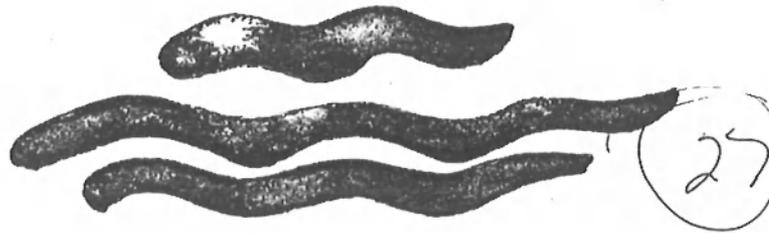
**Raised Bill H.B. No. 5708 AAC REVISIONS TO THE CONNECTICUT
ENVIRONMENTAL POLICY ACT**

The purpose of this testimony is to raise the concerns of the Department of Public Works (DPW) with provisions contained in Raised Bill H.B. 5708. DPW supports revisions to the CEPA process and has been involved with an interagency workgroup to revise the CEPA process, which was initiated by the Office of Policy and Management. DPW believes the steps taken by the workgroup have been very positive and are moving toward meaningful changes to the existing process. The interagency group needs additional time to complete its work. DPW concurs with the testimony, concerning this bill, presented today by the Office of Policy and Management.

DPW supports the concept of early scoping and currently invites input from the various reviewing agencies under OPM's scoping guidelines on most projects. However, the requirement of an early public scoping process, including a 45 day comment period and mandatory public meeting, will make the process more lengthy and costly, especially for the many smaller, less complex projects, subject to CEPA, which DPW oversees. The proposed process would also require higher levels of detail than is normally available in the early stages of a project, and add further cost burden to a project.

Raised Bill H.B. 5708 also incorporates a requirement for the sponsoring agency to contract for a mitigation plan, which would be enforced by OPM and DEP. Currently, mitigation measures and best management practices (BMPs) are usually incorporated into the project design and included in the construction of the project. And, therefore, a separately contracted mitigation plan is not necessary. Additionally, many CEPA mitigation issues are also subject to DEP permit requirements. The permit process enforces the CEPA requirements and sometimes adds mitigation requirements beyond those identified in the CEPA process.

The Department of Public Works respectfully requests that H.B. 5708 not move forward, so that, the interagency workgroup can complete its task.



Rivers Alliance
of Connecticut

**Testimony on Raised Bill 5708,
An Act Concerning Revisions to the Environmental Policy Act
Environment Committee
March 11, 2002**

Rivers Alliance of CT is a nonprofit, statewide watershed-conservation coalition. Our members are individuals, organizations and corporations concerned with the health and protection of our river environments. The combined membership of Rivers Alliance and our partner groups includes approximately 7,000 Connecticut voters. Our mission is to promote sound river conservation policies and to serve our members through practical assistance, advocacy, and education.

Dear Sen. Williams, Rep. Stratton, and Members of the Committee:

Rivers Alliance and its partner members the Housatonic Valley Association, the Farmington River Watershed Association, the Connecticut River Watershed Council, the Quinnipiac River Watershed Association, and the Pomperaug River Watershed Coalition thanks the Committee for introducing this bill. It includes much-needed improvements to the CT Environmental Policy Act (CEPA). As members of the CEPA working group, we thank you for responding to our suggestions for strengthening the Act.

Our river and watershed groups view CEPA and the Connecticut Environmental Protection Act as the foundation of protection for our water resources. Historically, the development of Connecticut has followed its shorelines and waterways, and still today major, state-funded projects frequently occur close to important water bodies. Therefore as a state-wide river-protection organization, we are concerned that the state take the lead in requiring that all state-funded projects be planned and designed to provide maximum protection for water and other public-trust resources. Both the board and staff at Rivers Alliance have been distressed by the tendency in recent years to postpone application of CEPA until late in the planning process; the tendency to find that huge projects have no significant environmental impact; and the tendency to hand out legislative exemptions to CEPA and other essential environmental-protection laws.

The emphasis on early scoping in RB 5708 (scoping prior to site selection) is good policy statewide, and as important in small upland towns as in populous areas. Many small towns, such as my home (Roxbury), are not attuned to state developments. If the state does not make an effort to set up two-way communication early in the planning process,

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TESTIMONY OF
ERIC J. BROWN
ASSOCIATE COUNSEL
CONNECTICUT BUSINESS & INDUSTRY ASSOCIATION
BEFORE THE ENVIRONMENT COMMITTEE
MARCH 11, 2002

Good afternoon. My name is Eric Brown and I serve as associate counsel with the Connecticut Business and Industry Association (CBIA) and director of CBIA's Environmental Policies Council. CBIA represents thousands of businesses across the state of Connecticut, ranging from large industrial corporations to small businesses with one or two employees. The vast majority of our members, about 90 percent, have fewer than 50 employees.

Attached please find testimony submitted to the Environment Committee in conjunction with the above referenced public hearing concerning the following bills:

- HB 5708: AN ACT CONCERNING REVISIONS TO THE CONNECTICUT ENVIRONMENTAL POLICY ACT – IN OPPOSITION
- HB 5539: AN ACT CONCERNING MERCURY EDUCATION AND REDUCTION – IN OPPOSITION
- HB 5540: AN ACT CONCERNING MERCURY PRODUCTS – IN SUPPORT WITH MODIFICATIONS
- SB 374: AN ACT CONCERNING THE OFFICE OF THE ENVIRONMENTAL ADVOCATE – IN OPPOSITION

**TESTIMONY OF CBIA CONCERNING:
HB 5708: AN ACT CONCERNING REVISIONS TO THE CONNECTICUT
ENVIRONMENTAL POLICY ACT (CEPA).**

IN OPPOSITION

CBIA opposes this bill in its current form as it proposes to streamline the cumbersome CEPA process solely by adding further steps to that process, in the form of a pre-screening review.

CBIA appreciate the work invested in the bill by this committee and a variety of environmental advocacy groups. We join in their concern that the existing CEPA is so dysfunctional as to force the General Assembly to occasionally important new economic development projects from CEPA in order to insure the projects ultimately come to fruition. It is, in our view, a very positive step that essentially all stakeholders with an interest in this issue agree that the current CEPA process is "broken."

While we have no firm objection to the concept of a pre-screening process for projects subject to CEPA, we do not believe that the addition of such a process will free CEPA from the shackles it currently suffers and generously attaches to projects coming under its jurisdiction.

If introducing pre-screening to CEPA benefits the process by exposing and resolving environmental concerns early on, then the bill should also address the core of the problem by providing for greater certainty that projects successfully completing pre-screening, will not later be subject to the virtually open-ended opportunity for intervention and delay that exists under the current law.

CBIA would be delighted to work with the committee and other interested stakeholders to craft revisions to CEPA that will be a win-win for all involved and that will genuinely improve this 30 year-old statute -- still important to Connecticut, but which is often no longer workable in our modern economy.

HB 5708**STATEWIDE ORGANIZATIONS JOIN TOGETHER TO UPHOLD
KEY ENVIRONMENTAL LAWS**

* * *

CEPA Working Group - American Planning Association, CT Chapter * Audubon CT * Citizens for a Sensible Six * CT Association of Conservation and Inland Wetlands Commissions * CT Audubon CT Forest and Park Association * CT Fund for the Environment * CT League of Conservation Voters CT River Watershed Council * Environment Northeast * Environment and Human Health * Grassroots Coalition * Rivers Alliance * *Supporting Organizations* - Audubon CT, Darien Chapter * Conservation Commission, Bolton * Citizens for Responsible Growth, Mansfield * Friends of Rowayton's Environment (FORE) * Garden Club of Middletown * Garden Club of New Haven * Housatonic Valley Association * Middlesex Clean Air Association * Sierra Club, CT Chapter *

2-11-02

For the past 30 years, two key laws – the Connecticut Environmental Policy Act and Connecticut Environmental Protection Act - have worked to protect our state's natural resources. Now these laws are under attack. Though state residents overwhelmingly support enforcing existing environmental laws, there has been a growing trend toward exemptions from one or both of these acts in recent years. In response, a concerned group of environmental and community organizations is proposing changes to make the Connecticut Environmental Policy Act or CEPA more predictable and effective. These improvements are aimed at addressing the concerns of applicants and reducing the pressure for exemptions from both acts so that Connecticut's environment can continue to enjoy the legal protections state residents have come to expect.

Guiding Principles of the CEPA Working Group

1. We oppose all statutory or regulatory exemptions to the provisions of the Connecticut Environmental Policy Act (CEPA) and the Connecticut Environmental Protection Act (Protection Act).
2. We support enforcement of CEPA and the Protection Act as they are presently written.
3. We will work to improve the provisions of CEPA by any appropriate means including legislative and regulatory reform.
4. We oppose any legislative changes to the statutory provisions of the Protection Act.

TESTIMONY
ENVIRONMENT COMMITTEE
RAISED BILL NO: 5708



March 11, 2002

An Act Concerning Revisions to the Connecticut Environmental Policy Act

Good afternoon Senator Williams, Representative Stratton, and members of the Environment Committee. My name is Brian Mattiello. I am the Under Secretary of the Policy Development and Planning Division of the Office of Policy and Management (OPM). I am here today to testify on Raised Bill 5708, which proposes significant revisions to the Connecticut Environmental Policy Act (CEPA).

For the same reasons that this bill appears before you today, over the past several months, a working group of eight state agencies (OPM, DEP, DECD, DOT, UConn, CEQ, State University System, DPW) have met several times to discuss CEPA and how it can be improved, or better stated, modernized. Subgroups of agency representatives, who have long been committed to the CEPA law, have been formed to address those areas that were perceived by the group to need additional study. With the additional time, this group hopes to address several points.

First, we wish to clarify the function of a Finding of No Significant Impact (FONSI) in the process. In the federal NEPA process, a FONSI is a statement that indicates there is no significant impact and that the agency intends to go forward with the action. In the state process, a FONSI is a study much like an EIE, with certain elements omitted (cost/benefit analysis, study of alternatives).

Second, we also hope to better address the issue of mandatory scoping. We recognize that it is addressed in the bill before us, but we see several flaws in the particular approach taken and this is discussed later in my testimony. Third, we hope to better define those projects that don't need to undergo CEPA at all. Under the current process, from time to time, we see documents on projects that really do not need to go through the process.

Finally, and perhaps most importantly, additional time will enable us to make our deliberative process more inclusive. We have already begun a dialogue with the CEPA working group, a consortium of environmental groups working on this issue. We met with representatives of that group on two occasions. Both times there was a healthy give and take of ideas regarding CEPA and a better understanding of one another's point of view. The meetings underscored the fact that there were substantial areas of agreement between the two groups. We would like to continue that dialogue, and broaden it to other interested parties (including members of this committee), to bring as many perspectives to the table as possible.

Having explained what we hope to accomplish with our process, I will now briefly identify perceived problems with Raised Bill No. 5708.

Sec. 1 (a)(5) Definition of an "Environmental assessment" – talks about a document approved by OPM pursuant to section 22a-1f, as amended. We can find no mention of an environmental assessment in the referenced section or anywhere else in the proposed bill. In the federal process, an environment assessment is a study to determine whether there is a significant environment impact. The use of this phrase needs to be clarified.

Sec. 1 (c)(1-6) develops the form and structure for a new mandatory public scoping process. While we agree with the concept of mandatory scoping, we do take issue with some of the points proposed, and remind committee members that scoping not only involves an element of public input, it must involve an early coordination among state agencies involved in a particular project.

More specifically about this section, we feel that keeping the public comment period open for 45 days following the filing of the public scoping notice is excessive, and unnecessarily delays the process. We wish to point out that the review period for an EIE, which is a quite substantial technical document, is 45 days. Scoping is really a discussion about planning concepts, which shouldn't take that much time. In the current scoping process that was developed by OPM and is being used by most agencies, it is suggested that a minimum of twenty (20) calendar days from the date of distribution of the notice be allowed for reviewers to respond.

The proposed legislation requires that an agency hold a public scoping meeting. Aside from the expense, it would seem wasteful to hold such a meeting for simple projects that may not warrant it. Also, scoping must necessarily be

done early in a project's development and the sponsoring agency may not have much detail to give to the public to react to. Mandating a meeting might raise the public's expectations regarding the level of detail available at that time because the environmental proceedings that most people are familiar with involve a significant level of design development.

The concept of a mandatory scoping meeting seems to run counter to the idea that scoping is primarily for the purpose of gathering information. If an agency is required to develop a significant amount of detail to present to the public at this stage, it must necessarily invest a considerable amount of resources into gathering that information, and therefore, into that particular project. This illustrates the tension that inherently exists in CEPA; developing enough information for the public to react to vs. sinking considerable resources in a given project or alternative before the public has a chance to comment. We think a mandatory scoping meeting would encourage agencies to commit to a course of action too soon in the process.

As for the timing of the scoping meeting relative to the public comment period, current guidelines indicate that any reviewer may request a meeting within five (5) working days of receiving the notice. If a scoping meeting is scheduled by request, the sponsoring agency must provide advance notice of the meeting to all reviewers. In either event, the meeting should be scheduled no sooner than five (5) working days after the date of the notice. The comment period should extend at least five (5) working days beyond the date of the scoping meeting.

Subdivision (5) defines the type of comments that commenting agencies shall make during the scoping process. In some cases, the information requested is extremely specific, requiring analysis beyond what may be appropriate during the scoping process. We do not see why the nature of state agency comments needs to be described in statute.

Sec. 1 (d) details what needs to be included in an EIE. One of the required items, subdivision (5), requires a detailed description of a mitigation plan. Since CEPA is a planning tool and does not require permit-level detail, a fully developed mitigation plan may not exist at that point. To require one could potentially cause the sponsoring agency to delay its CEPA analysis until the project is well along and such a plan is available. This, we feel, would run counter to the spirit of CEPA. Also, as design proceeds, the impacts may be designed out of the project, removing the need for mitigation.

Sec. 3 (a) continues to require that CEPA documents be noticed in the Connecticut Law Journal. We feel that this is duplicative of the environmental monitor to be put out by the CEQ and would be confusing with the two public notice clocks running concurrently. Either an environmental monitor or the Law Journal should be used for public notice, and in our experience, the Law Journal is not very effective in reaching the general public.

Sec. 4 (c) introduces the need for a Finding of No Significant Impact but does not define what that is. One of the things the agency working group is looking into is the elimination of FONSI's and using the EIE, properly scoped, as the single CEPA document.

Sec. 7 (a) mandates that sponsoring agencies that are contracting for the implementation of an action that may affect the environment must also contract for a mitigation plan. Further, OPM and DEP may review such contracts.

If the purpose of this section is to ensure that mitigation measures promised under CEPA actually take place, we believe that Sec. 7 (b) would take care of the issue. The imposition of a formal contract for mitigation appears unnecessarily restrictive and would seem to remove an agency's flexibility to eliminate impacts through the design process or change mitigation strategies. Also, at this point in time, we are not sure if we have an understanding of the scope of the problem that this section is trying to address.

As we indicate above, we think that Sec. 7 (b) would adequately address the issue of implementation of mitigation proposals. However, we do have issues with some of the language in this section. Sec. 7 (b) assigns OPM, in conjunction with DEP, responsibility for enforcing the mitigation plans developed during the CEPA process. It is not clear at this time what manpower commitment this mandate might entail. Depending on the nature of the enforcement, this could require multiple site visits over a significant period of time and require additional staffing with associated costs at both OPM and DEP. Will the enforcement of mitigation plans require an adjudicated process (with hearings, intervenors, etc.) and, if so, is OPM the appropriate agency to hold such hearings?

Thank you for the opportunity to comment on Raised Bill No. 5708.