

**PA13-186**

SB0814

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**CONNECTICUT  
GENERAL ASSEMBLY  
HOUSE**

**PROCEEDINGS  
2013**

**VOL.56  
PART 27  
9050 – 9390**

I am delighted to welcome today to the Chamber Connor Lyman, who is a member of the Class of 2013 from Simsbury High School. He'll be giving the keynote address at the high school graduation in a few weeks, will be going to George Washington University. He's one of the best and brightest of Simsbury. He'll be interning with me this summer and I ask you to give him a warm welcome to the Chamber. Thank you, Madam Speaker.

(APPLAUSE.)

DEPUTY SPEAKER ORANGE:

Thank you, sir and good luck. Are there any further announcements or introductions? Announcements or introductions?

If not, we will return to the Call of the Calendar, and will the Clerk please call Calendar Number 650.

THE CLERK:

Yes, good afternoon, Madam Speaker, on Page 32 of today's Calendar, House Calendar 650, Favorable Report of the Joint Standing Committee on Judiciary, Substitute Senate Bill 814 AN ACT CONCERNING INTERVENTION IN PERMIT PROCEEDINGS PURSUANT TO THE ENVIRONMENTAL PROTECTION ACT OF 1971.

pat/gbr  
HOUSE OF REPRESENTATIVES

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DEPUTY SPEAKER ORANGE:

Representative Dan Fox of the 148th.

REP. FOX (148th):

Good afternoon, Madam Speaker. Madam Speaker, I move for acceptance of the Joint Committee's Favorable Report and passage of the bill.

DEPUTY SPEAKER ORANGE:

Good afternoon, and the question is acceptance of the Joint Committee's Favorable Report and passage of the bill. Representative Fox.

REP. FOX (148th):

Yes, thank you, Madam Speaker. Madam Speaker, the bill sets conditions on verified pleadings by parties seeking to intervene in a proceeding on or judicial review of conduct that could harm the state's natural resources.

Madam Speaker, the Clerk has an amendment, LCO 6748. I ask the Clerk to call the amendment and I be granted leave of the Chamber to summarize.

DEPUTY SPEAKER ORANGE:

Will the Clerk please call LCO Number 6748, 6748, which is Senate Amendment "A".

THE CLERK:

Senate Amendment "A", LCO 6748 introduced by  
Senator Cassano et al.

DEPUTY SPEAKER ORANGE:

The Representative seeks leave of the Chamber to summarize. Is there objection? Objection? Hearing none, Representative Fox.

REP. FOX (148th):

Thank you, Madam Speaker. Madam Speaker, the Amendment before the Chamber today is a strike-all Amendment. The Amendment requires that a verified pleading in a proceeding under 22a-19 must do two things.

First, the Amendment requires, the petition must contain specific factual allegations setting forth the nature of the alleged unreasonable pollution, impairment or destruction.

And secondly, there must be facts in the verified pleading that are sufficient so that the reviewing authority such as the board or commission can determine whether the alleged environmental harm is within their jurisdiction.

Madam Speaker, as the environmental intervention process has evolved over the past 40 plus years, it has at times, unfortunately, become a means by which

an individual or a party can stop or significantly slow down economic or housing development by filling what turns out to be an unsubstantiated intervention petition, claiming that a project has or likely will have an unreasonably or, and unreasonably pollute, impair or destroy the state's natural resources.

The intent behind this legislation, Madam Speaker is to assist in preventing intervention proceedings that have no basis in the legitimate environmental issue and this legislation does nothing, does nothing to prevent legitimate claims.

The legislation before us received the unanimous support of the Senate and I move adoption.

DEPUTY SPEAKER ORANGE:

The question before the Chamber is on adoption of Senate Amendment "A". Will you remark further? Will you remark further on Senate Amendment "A"? Representative Shaban of the 135th. You have the Floor, sir.

REP. SHABAN (135th):

Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

You're welcome.

REP. SHABAN (135th):

I rise in support of the bill. I think the proponent just spelled it out nicely. There was some back and forth on this in the Environment Committee over the last couple of years and it does exactly what the Representative said. It prevents frivolous suits while allowing viable and meritorious suits going forward.

The verification requirement is a simple procedure that's done in law all the time. It just makes you spell out exactly the who, what, where, when and how of your suit, makes sure that the court or the plaintiff actually had standing to actually be there and it's not being used as a vehicle to vex development.

So I rise in support of the Amendment. Thank you.

DEPUTY SPEAKER ORANGE:

Thank you, sir. Will you care to remark further on the Amendment before us? Representative Aman of the 14th.

REP. AMAN (14th):

Thank you, Madam Speaker. Yes, it's unusual. If you look at the Amendment that's brought forward, it's a Senate Amendment and it has both the Chairman and

the Ranking Members of both the Environment Committee and the Planning and Development Committee on the Amendment, and I think in my time here I can't remember that happening before.

But this is definitely a concept that we have been working on for several years, trying to get the wording correct so that we didn't have unintended consequences on it.

It addresses the problem of an abuse of the environmental statutes. There is nobody that I know of that thinks it is wrong for somebody like the Audubon Society or some of the other major environmental groups to come in and intervene within an application.

Unfortunately, what's happened over the years is, competitors of a business have looked at it and said, oh, good. If we file as an intervener, it's going to delay things for a long time, be very expensive and very little cost to us to really do it, because all we do is start the ball rolling, and this is to address that particular problem.

So I urge my colleagues to support it. It's been worked on by many people and I believe it will satisfy

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all sides of this particular issue. Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Thank you, sir. Will you care to remark further on the Amendment before us? Will you care to remark further on Senate Amendment Schedule "A"? Will you care to remark?

If not, let me try your minds. All those in favor please signify by saying Aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER ORANGE:

All those opposed, Nay. The Ayes have it. The Amendment is adopted.

Would you care to remark further on the bill as amended? Would you care to remark further on the bill as amended? Would you care to remark further on the bill as amended?

If not, staff and guests please come to the Well of the House. Members take your seats. The machine will be opened.

THE CLERK:

The House of Representatives is voting by Roll.  
The House of Representatives is voting by Roll.

Will Members please return to the Chamber immediately.

DEPUTY SPEAKER ORANGE:

Have all Members voted? Have all Members voted. If all the Members have voted, please check the board to determine if your vote has been properly cast.

If so, the machine will be locked and the Clerk will take a tally, please. And will the Clerk please announce the tally.

THE CLERK:

In concurrence with the Senate, Substitute Senate Bill 814 as amended by Senate "A".

Total Number Voting	144
Necessary for Passage	73
Those voting Yea	134
Those voting Nay	10
Those absent and not voting	6

DEPUTY SPEAKER ORANGE:

The bill as amended passes in concurrence with the Senate.

Are there any announcements or introductions?

Are there any announcements or introductions?

Representative Michelle Cook.

REP. COOK (65th):

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THE CHAIR:

Seeing no objection, no objection, so ordered.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, if the Clerk would next call Calendar Page 49, Calendar 293, Senate Bill 814.

THE CHAIR:

Mr. Clerk.

THE CLERK:

On Page 49, Calendar 293, Substitute for Senate Bill Number 814, AN ACT CONCERNING INTERVENTION IN PERMIT PROCEEDINGS PURSUANT TO THE ENVIRONMENTAL PROTECTION ACT OF 1971, Favorable Report of the Committee on Planning and Development.

THE CHAIR:

Senator Cassano.

SENATOR CASSANO:

Yes, thank you, Madam Chair, and I'd like to waive the reading and move to adopt Senate Bill 814.

THE CHAIR:

The motion is on adoption and passage. Will you remark, sir?

SENATOR CASSANO:

Yes, this is basically a one-page bill but probably a significant a bill as we usually get. The original bill was written in 1971 and some refer to it as the bible of the environmental community. But over the last 40 years it's been abused and there are some

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technical changes made here that in court proceedings people now need to identify either themselves, or if they suspect that there is some hindrance to a project or -- or road job or something like that, they have to identify it specifically as to what it is and in -- in limited time periods.

The bill has been worked on for two years and I think probably the best thing is some people don't realize how well you can work together in this building. This bill is a good example of working together. Around the table at several meetings were four or five different environmental groups, homeowners, the shopping mall owners, the builders and so on to work together to bring about this particular bill.

It's been really a pleasure to -- to be a part of the process. It is endorsed by the Chairs of P&D and the Environmental Committee, the Vice-Chairs of both committees and the Ranking Members of both committees and so I move for adoption of the bill.

THE CHAIR:

The motion is on adoption. Will you -- will you remark further? Will you remark further?

Seeing none, Senator Cassano.

SENATOR CASSANO:

I would ask that it be placed on the Consent Calendar.

THE CHAIR:

Seeing no -- I don't think -- Senator (inaudible).

SENATOR LOONEY:

Madam President, may we just stand at ease for just a moment.

THE CHAIR:

Okay, the Senate will stand at ease.

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(Chamber at ease.)

THE CHAIR:

Senator Cassano.

SENATOR CASSANO:

In my enthusiasm for all of those who signed on to the bill, that's actually an Amendment.

THE CHAIR:

Okay.

SENATOR CASSANO:

6748 I think it is.

THE CHAIR:

Mr. Clerk, will you please call LCO 6748.

SENATOR CASSANO:

Is that correct?

THE CLERK:

LCO Number 6748, Senate Amendment Schedule "A",  
offered by Senator Cassano, et al.

THE CHAIR:

Senator Cassano.

SENATOR CASSANO:

Thank you. I would move adoption of the Amendment.

THE CHAIR:

Motion is on adoption. Will you remark, sir?

SENATOR CASSANO:

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This Amendment I -- I will repeat is basically the -- the Chairs, the Vice-Chairs and the Ranking Members of both Environment and Planning and Development supporting this particular bill. If the bill is passed, it then must move to Judiciary.

THE CHAIR:

Okay.

All in favor -- will you remark on the Amendment?  
Will you remark on the Amendment?

Seeing none, all -- I'll try your minds. All in favor of the Amendment please say aye.

VOICES:

Aye.

THE CHAIR:

Opposed? The Amendment passes.

SENATOR CASSANO:

Thank you, I'm learning.

THE CHAIR:

At this time Senator -- Senator Looney, do you want to refer this to Judiciary?

SENATOR LOONEY:

Yes, Madam President, thank you, would move that the bill, as amended, be referred to the Judiciary Committee.

THE CHAIR:

So ordered, sir.

SENATOR LOONEY:

Thank you, Madam President.

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Senator Bartolomeo.

SENATOR BARTOLOMEO:

Thank you, Mr. President.

If there is no objection, I ask that we put this on the Consent Calendar.

THE CHAIR:

Seeing and hearing no objection, so ordered.

Senator Looney.

SENATOR LOONEY:

Thank you, Mr. President.

Mr. President, if we might move now to mark a couple of other additional items I think that may have been pass temporarily earlier or perhaps not -- not marked. Again would mark as -- as go Calendar Page 40, Calendar 293, Senate Bill 814 and Calendar Page 41, Calendar 359, Senate Bill 1099.

And would call the first -- if the Clerk would call Calendar Page 40, Calendar 293, Senate Bill 814.

THE CHAIR:

Mr. Clerk.

THE CLERK:

On Page 40, Calendar 293, Substitute for Senate Bill Number 814, AN ACT CONCERNING INTERVENTION IN PERMIT PROCEEDINGS PURSUANT TO THE ENVIRONMENTAL PROTECTION ACT OF 1971. It's amended by Senate Amendment Schedule "A", Favorable Report of the Committee on Planning and Development and there is an amendment.

THE CHAIR:

Senator Cassano.

SENATOR CASSANO:

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Thank you, Mr. President.

I move adoption of the bill as amended and waive its reading.

THE CHAIR:

On acceptance and passage, will you remark, sir?

SENATOR CASSANO:

Yes we had this bill before us last week and we did have an amendment and I'll refresh your memory. The amendment very simply was an effort to show support for this particular bill by having the Chairs, the Vice-Chairs and the Ranking Members of both the Environment Committee and the Planning and Development Committee as supporters of this particular bill.

This is a process that has been going on for almost three years. It is an amendment to a bill that was drafted which is sometimes referred to as the Bible of the Environmental Community. We called it the CEPA bill in 1971, AN ACT CONCERNING INTERVENTION AND PERMIT PROCEEDINGS PURSUANT TO THE ENVIRONMENTAL PROTECTION ACT OF 1971.

Under the bill the verified pleading must first of all contain specific allegations setting forth the nature of the alleged unreasonable pollution, impairment or destruction and state the material facts upon which the invent -- intervention is based in sufficient detail to allow the reviewing authority to determine, based on a pleading, whether the invent -- intervention implicates an issue within its jurisdiction.

If you are familiar at all with any project within your region or your neighborhood, you have found that there have been many abuses of this where people will indicate they think there may be something, they may not have to identify themselves. Literally projects can take years to be completed.

This was a strike-all amendment and -- and it directly deals with the project itself and I might say that it

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was probably a first for us in a lot of ways in that we had committee meetings over a year and a half that involved four to six different environmental groups, the home builders, the trial lawyers, I can go on and on with the people that are involved in this, and DEEP as we put this bill together.

So we are very excited first of all to be able to do that with a coalition like that and I believe I think Senator Meyer might want to -- have commented on this so I would defer to Senator Meyer.

THE CHAIR:

Senator Meyer, will you accept the yield?

SENATOR MEYER:

I certainly accept the yield.

I really take my hat off to Senator Cassano, through you, Mr. President, for his effort to bring about a compromise that would be acceptable, not just to the concept of planning, but also with respect to the concept of the environment because we've reached a -- we've reached a compromise here in which, after lots of give and take over many, many weeks, we -- we found something that satisfied the planning and development community and satisfied the environment community and in doing that we've reached a successful result.

So thank you very much, Senator Cassano.

THE CHAIR:

Thank you, Senator Meyer.

Senator Cassano, you still have the floor, sir.

SENATOR CASSANO:

I move adoption of the bill.

THE CHAIR:

Thank you.

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Will you remark further on the bill as amended? Will  
you remark further on the bill as amended?

SENATOR CASSANO:

Seeing none, Mr. President, I would ask that it be  
placed on the Consent Calendar.

THE CHAIR:

Seeing and hearing no objection, so ordered.

SENATOR CASSANO:

Thank you.

THE CHAIR:

Senator Looney.

SENATOR LOONEY:

Thank you, Mr. President.

Mr. President, if the Clerk would next call Calendar  
Page 41, Calendar 359, Senate Bill 1099.

THE CHAIR:

Mr. Clerk.

THE CLERK:

On Page 41, Calendar 359, Senate Bill Number 1099, AN  
ACT CONCERNING SCHOOL SAFETY. It's amended by Senate  
"A", a Favorable Report of the Committee on Education.

THE CHAIR:

Senator Stillman.

SENATOR STILLMAN:

Thank you, Mr. President.

I move the Joint Committee's Favorable Report and  
passage of the bill.

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Mr. Clerk.

THE CLERK:

On Page 2, Calendar 49, Senate Bill 523; Page 15,  
Calendar 489, Senate Bill Number 871.

On Page 35, Calendar 44, Senate Bill Number 809; on  
Page 36, Calendar 152, Senate Bill 465.

On Page 37, Calendar 177, Senate Bill 972 and on Page  
40, Calendar 293, Senate Bill 814.

Page 41, Calendar 359, Senate Bill 1099 and Calendar  
377, Senate Bill 889.

On Page 43, Calendar 400, Senate Bill 1137 and on Page  
45, Calendar 488, Senate Bill 1153.

THE CHAIR:

Thank you.

Please announce that the machine is open on the first  
Consent Calendar.

THE CLERK:

Immediate roll call has been ordered in the Senate.  
Senators please return to the Chamber. Immediate roll  
call on today's Consent Calendar ordered in the  
Senate.

THE CHAIR:

Have all members voted? If all members have voted,  
please check the board to make sure your vote is  
accurately recorded. If all members have voted, the  
machine will be closed and the Clerk will announce the  
tally.

THE CLERK:

Today's Consent Calendar.

Total Voting

36

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Voting Yea	36
Voting Nay	0
Absent, not voting	0

THE CHAIR:

Consent Calendar 1 passes.

Senator Looney.

SENATOR LOONEY:

Thank you, Mr. President.

Mr. President, before moving to the item which will be marked for the order of the evening, I believe the Clerk is in possession of Senate Agenda Number 2 for today's session.

THE CHAIR:

Mr. Clerk.

THE CLERK:

The Clerk is in possession of Senate Agenda Number 2. It's dated Thursday, May 23, 2013. Copies have been made. They are on Senators' desks.

THE CHAIR:

Senator Looney.

SENATOR LOONEY:

Thank you, Mr. President.

Mr. President, I move all items on Senate Agenda Number 2 dated Thursday, May 23, 2013 to be acted upon as indicated and that the Agenda be incorporated by reference into the Senate Journal and the Senate Transcript.

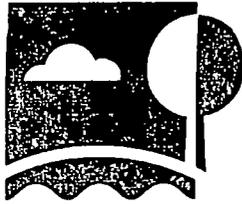
THE CHAIR:

So ordered.

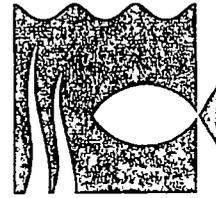
**JOINT  
STANDING  
COMMITTEE  
HEARINGS**

**LABOR AND  
PUBLIC EMPLOYEES  
PART 3  
715 - 1077**

**2013**



**Connecticut Fund  
for the Environment**



**Save the Sound**

**Testimony of Connecticut Fund for the Environment  
Before the Committee on Planning and Development**

*In opposition of SB 814, AN ACT CONCERNING INTERVENTION IN PERMIT  
PROCEEDINGS PURSUANT TO THE ENVIRONMENTAL PROTECTION ACT OF 1971.*

Submitted by  
Roger Reynolds, Senior Attorney and  
Lauren Savidge, Legal Fellow  
February 20, 2013

*Connecticut Fund for the Environment works to protect and improve the land, air and water of Connecticut. We use legal and scientific expertise and bring people together to achieve results that benefit our environment for current and future generations.*

Dear Senator Cassano, Representative Rojas, and members of the Committee on Planning and Development,

Connecticut Fund for the Environment submits this testimony in opposition of SB 814, An Act Concerning Intervention in Permit Proceedings Pursuant to the Environmental Protection Act of 1971. If passed, this legislation would require legal entities that fund environmental interventions to disclose their identity when funding an intervention in an administrative, licensing or other proceeding involving a business competitor.

Open space and clean water and air are essential to the quality of life that is so important to Connecticut's health and well-being. Indeed, it is universally agreed that it is this quality of life that is one of Connecticut's key economic and competitive advantages. The Connecticut Environmental Protection Act of 1971 (hereinafter "CEPA") has been essential to clean our state water and air and preserve open space because it allows citizen suits to oppose unreasonable pollution and environmental degradation. It is this citizen suit provision that, along with the Clean Water Act and Clean Air Act, has been responsible for the great progress on environmental issues we have seen in the last 40 years. Nobody wants to return to a day when decisions by the government and land use agencies were not subject to challenge by the public that would be impacted by them.

This legislation targets environmental intervenors and affords them disparate treatment that would potentially have a chilling effect on those raising environmental objections. Applicants, developers and other litigants are not subject to any of these requirements, despite the fact that there is no evidence that abuses by environmental intervenors are more rampant than abuses by developers. Indeed, it is common practice for developers to bring frivolous appeals of land use decisions, using the prospect of extended and costly legal proceedings for the town to extract a more favorable settlement than they received in the public proceeding. This bill would do

nothing to prevent this problem. While most requirements against vexatious litigation apply to all parties and subject matters equally, this law would single environmental intervenors out without parallel measures for applicants or developers that abuse the process.

We believe the best way to deter abuse of the process is to have an explicit penalty for bringing vexatious and baseless litigation against any competitor for competitive reasons or against individuals to intimidate them from exercising their first amendment rights. This should apply to all litigation, not just environmental. We believe such a solution would address real problems in an even handed manner rather than limiting environmental rights. We are happy to propose language if this is of interest to the committee and the backers of this bill.

Indeed, our organization was forced to defend such a frivolous suit by a multi-national company with unlimited resources. The lawsuit was found to be baseless. Despite this, we had to spend substantial time and effort just responding to the claims and litigating. Citizen groups are generally concerned individuals trying to protect the environment and health in their neighborhoods. These individuals cannot afford to defend costly and vexatious lawsuits brought by well financed developers. These frivolous lawsuits have the impact of silencing their first amendment rights for fear of retaliatory litigation. Indeed, many citizens have told us that they did not intervene because of fear of such retaliation and the potentially bankrupting consequences.

The proposed amendments would not improve upon the existing regime for deterring unfair business competition through vexatious lawsuits. Even though the legislation limits the scope of a "business competitor" subject to this requirement, it still dissuades sincere environmental concerns and puts unique burdens on environmental intervenors. We are happy to continue this discussion.

Thank you for your time and consideration.

Sincerely,

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February 20, 2013

To: Senator Steve Cassano, Co-Chairman  
 Representative Jason Rojas, Co-Chairman, and  
 Members of the Planning and Development Committee

From: Wayne Cobleigh, Connecticut State Director,  
 International Council of Shopping Centers (ICSC)

Subject: Proposed Senate Bill No. 814 An Act Concerning Intervention in  
 Permit Proceedings Pursuant to the Environmental Protection Act of 1971

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My experience with statute 22a-19 is extensive and my perspective for requesting your full support in advancing SB 343 is unique. I am in my third year as a volunteer State Director for ICSC in Connecticut. I work for an environmental consultant firm that would benefit financially if environmental interventions without legitimate claims and evidence of unreasonable pollution were allowed to continue without the advancement of this bill. Despite the court standard of requiring an intervention petition to state specific factual allegations of the environmental harm opined in the Nizardo State Supreme Court case from 2002, interveners benefit financially and, in extending the delay of a permit when they put the burden on the permit applicant to retain an environmental consultant to opine and address the intervenor's concerns about unreasonable pollution of the environment to a land use commission or a court. An environmental consultant for the permit applicant is an additional expense when required to address the facts of an alleged claim for environmental harm, especially when claims are not based in fact, sound science or substantial evidence.



Page 2 of 2

S.B. 343 – Testimony of Wayne Cobleigh, Connecticut State Director

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**Regulating the funding of environmental intervention campaigns will not get at the main problem, which is the use of the courts and litigation process to delay permit processing and approval by mere speculation that the public’s trust in the environment is threatened without producing legitimate proof, sound science, facts or substantial evidence by the one claiming the harm.**

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**After 40 years of 22a-19, there is a more legitimate and responsible way for a citizen to intervene and result in genuine environmental protection. Please codify the Nizardo case of 2002 and set reasonable schedules for intervenors to act in good faith and that honor the municipal and land use commissions’ volunteered time and community activism.** I have enclosed proposed revisions for your consideration. Thank you for considering my comments.

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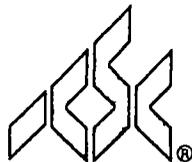
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February 20, 2013

To: Senator Steve Cassano, Co-Chairman  
 Representative Jason Rojas, Co-Chairman, and  
 Members of the Planning and Development Committee

From: Wayne Cobleigh, Connecticut State Director,  
 International Council of Shopping Centers (ICSC)

Subject: Proposed Senate Bill No. 814 An Act Concerning Intervention in  
 Permit Proceedings Pursuant to the Environmental Protection Act of 1971

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**JOINT  
STANDING  
COMMITTEE  
HEARINGS**

**PLANNING AND  
DEVELOPMENT  
PART 2  
337 - 680**

**2013**

1 February 20, 2013  
jmf/gbr PLANNING AND DEVELOPMENT 10:00 A.M.  
COMMITTEE

CHAIRMEN: Senator Cassano  
Representative Rojas

VICE CHAIRMEN: Senator Osten  
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MEMBERS PRESENT:  
SENATORS: Fasano

REPRESENTATIVES: Aman, Candelora, Davis,  
Diminico, Flexer, Gentile,  
Grogins, Kokoruda, Reed, Ritter,  
Sear, Simanski, Smith, Vicino

SENATOR CASSANO: Call to order public hearing agenda, Wednesday, February 20, 2013. Before I do that, we have -- I want to celebrate the 29th birthday of Representative Gentile. Congratulations. She'll remember that. We have ten items on public hearing. People can, of course, as -- they have signed up to speak on any of the items.

I do want to make a comment on a particular item, item ten, Number 814, AN ACT CONCERNING INTERVENTION IN PERMIT PROCEEDINGS PURSUANT TO THE ENVIRONMENTAL PROTECTION ACT OF 1971. As you know, we have multiple deadlines here. And to keep this bill alive, we have submitted the bill as it was proposed last year. This bill itself will go nowhere. It is very simply a hold.

Yesterday we had a very good discussion. We had several people at the table, people from the builders association, from the law association, from three or four of the environmental groups. And what the purpose of the -- the changes are are really legal changes in transparency. It has nothing to do with any environmental issues such as trees, swamp, air,

## COMMITTEE

anything like that, it is the technical part. And the access -- access for both environmental groups or builders, a fair access system and that's what we're trying to do. So this bill will come back.

If you're speaking today, don't be concerned about the wording of the bill. You could be more helpful by talking about what you think could be better in the bill, and that's what we're trying to do. So again the bill is there very simply because we -- by law we have to by certain dates have bills forward when they can't go forward, so we have put that on knowing that it will be dramatically changed.

Several of us, 10:00 Transportation is meeting somewhere, and so I'm Transportation, so you'll see some of us going back and forth. We've actually been missing a couple of meetings because we've been going so intense with some of these that we got to kind of watch the clock. So I apologize if you see members get up and leave and come back. But again that's part of the process of having so much done in a short period of time.

So for members who have multiple meetings at this time, I think three or four are going on, feel free to go to those meetings, come back. As far as the committee meeting, that is open until 2:00 on the early meeting.

The first person on the agenda, Brenda Kupchick, Representative from Fairfield. Brenda, are you here? Oh, great. Welcome.

Followed by MaryAnn Handley and Representative Kim Rose.

REP. KUPCHICK: Thank you very much for the opportunity to testify on this bill. I'm a co-

HB6311

to a municipality to adopt an ordinance that would follow this, correct?

CHARLOTTE HITCHCOCK: Right. It's totally -- does not require anything, it just gives them the ability to decide similar with the 490 act as I understand it. They can decide if they would like to have this benefit and then they can decide how much of an abatement they would like to have as well.

REP. SEAR: Thank you.

REP. ROJAS: Are there any other questions? Thank you for your testimony.

Bill Ethier followed by Anita Mielert followed by Wayne Cobleigh.

WILLIAM ETHIER: Thank you, Representative Rojas, Senator Cassano, members of the Planning and Development Committee. For the record again, it's a pleasure to be back with you, my name is Bill Ethier, I'm the CEO of the Home Builders and Remodelers Association of Connecticut. We have about 900 members, firms across the state that employ tens of thousands of people. And my members build between 70 and 80 percent of all new housing in the state each and every year.

I'd like to turn your attention back to Senate Bill 814 that the Senate Chair spoke of in his initial remarks, and that is the environmental intervention act, 22a-19. We support 814 as a vehicle, not the language itself as the Senator said, but as a vehicle to adopt reasonable process reforms of -- of that act. And I want to emphasize to you that last year we had a different bill. We never came to an agreement with the other stakeholders, so what we did in response to those discussions is we developed a

## COMMITTEE

proposal that we've attached to our testimony, and that's what we're -- we're promoting this year.

Now in my testimony I've given you some background information on 22a-19, what it was intended to do, what it is intended to do. But in our experience and in the experience of others who you -- who are here to testify behind me, we believe there's been too much misuse of the act for nonenvironmental means by competitors who wish to stop a competitor development going in, by folks who just don't like any development and they -- they misuse the act for no legitimate environmental means. So we believe economic development and housing development has been lost because of it.

In addition, just the problems with the misuse of 22a-19 has created a lot of lost opportunities. I know of developers who have just walked away from even proposing a project, so it never even gets to a commission because of the potential misuse of the act. Now in my testimony on the second page I've outlined section by section a summary of what our proposal does.

I do want to emphasize also that, just to pick out one, Subsection (a)(2) of our proposal codifies the Nizaro case which is a case from the State Supreme Court in 2002 that basically put some requirements on interventions. We need that -- that case codified in the statutes to really shine a light on its requirements because there has still been misuses of the act since the adoption of the Nizaro case. So we think if it's in statute, it will - it will help the case.

And I went back yesterday, last night, and read the Nizaro case again. The language that is

## COMMITTEE

Section (a)(2) is directly out the case, so it does not go beyond the Nizardo case. So I know my time is coming to a close, I'll just say that our proposal will still allow legitimate environmental claims for any intervener to come in and raise legitimate environmental claims. It does not do anything to -- to stop that. We believe though that our reforms will create reasonable process reforms that will create some clarity, some certainty for the economic develop and housing development process. And we urge you to consider that -- what we've attached as substitute language. Be happy to answer any questions.

REP. ROJAS: Thank you for your testimony.

Senator Fasano.

SENATOR FASANO: Bill, thank you for your testimony. Essentially I think 22a-19 was well intended for what the purpose was. It was for certain environmental concerns to be raised for those who felt they weren't being addressed and to be part of the process as a party. My time is up.

REP. ROJAS: That's it, you're done, next.

WILLIAM ETHIER: I'll be happy to answer your question.

SENATOR FASANO: So it is raised to be a party to the process, so they could ask the questions, get the information, and protect the environmental concerns. I think where it sort of morphed, if you would, which is I think is the essence of your testimony, is that it's morphed into a sword to delay which eventually kills the development without even knowing what the true facts are to the time that you get to the hearing at the trial court level, which is what the other Supreme Court case kind of says

we need to do differently.

So it's sort of saying look, if there are environmental concerns, they need to be addressed and people have a right to voice that. But we should know exactly what you're talking about in specific language, not nebulous it raises environmental concern. I live in, you know, Litchfield, the property is in New Haven.

But under 22a, I have a right to appeal the process and I'm going to do it, and -- because this is an environmental challenge. Without knowing what the allegations are until the very end, sometimes they peter out at the end particular if the market dies and the development comes unaffordable to develop, they've kind of won. Is that, in essence, what you're trying to say?

WILLIAM ETHIER: That's a good summary, I think. And I would certainly agree. I'm the first one to tell my members that 22a-19 serves a legitimate environmental purpose. It was always intent to do -- intended to do that and still does. It was adopted over 40 years ago before most environmental laws were -- other environmental laws were created. And I know this sounds -- probably sounds hollow to the opponents that we have from the environmental community, but I would not allow my members in my association to hurt the environmental harm that that act is intended to prevent.

With my own environmental background, I think some of you know that my background is as a wildlife biologist before I became a lawyer. I'm a very strong environmental advocate. But it should not be an excuse to allow misuse of the act for causing those types of delays. And I think our proposal strikes that balance of

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creating some good process reforms but allowing legitimate environmental arguments and claims to be addressed by -- through an intervention.

And it really was adopted back then, 40 plus years ago, to make sure that a local body, a planning zoning commission, actually wetland commissions didn't exist then but now, or a state agency appropriately deals with environmental issues that are before that -- that body. Sometimes agencies and commissions make mistakes when they don't handle an issue appropriately. Sometimes the applicant is not handling things appropriately. That's the purpose of an environmental intervention is to make sure that the parties that are there deals with an issue appropriately.

SENATOR FASANO: And your intent is not to dilute that public purpose.

WILLIAM ETHIER: Right.

SENATOR FASANO: It's to identify more precisely and make sure it's used for that particular purpose and not more than the purpose. So actually we're not diluting the import of the purpose -- public policy aspect of it, we just want to keep it from being misused in the manner that it's being done.

WILLIAM ETHIER: Exactly. And some of our -- the changes that we're proposing, for example, in (a)(3) is that all that language in (a)(3) of our proposal is really to -- is a timeline issue, is when does the intervention, if you're going to bring one, occur? And all that says is if -- if the agency has a statutory timeframe within which to make a decision as does planning and zoning and the wetlands, there's a -- there's a statutory timeframe when public hearings have to be held, when they have

## COMMITTEE

to be closed, when a decision has to be made, is to bring the intervention within enough time so that the -- the local board has time to deal with it.

Don't come in on the very last night when by statute you have to make a decision that night and all of a sudden these new issues are raised. That just causes havoc for municipalities, for the local boards, as well as the applicant. So that's all that does. So it really, we think, reasonable process reforms and allowing legitimate environmental claims to be brought in when they need to be.

SENATOR FASANO: As current law stands for 22a-19, public -- is the public hearing in an application, public hearing closes, planning and zoning makes a decision, a neighbor appeals for nonenvironmental reasons, just abutting neighbor makes an appeal --

WILLIAM ETHIER: Aggrieved parties can --

SENATOR FASANO: -- aggrieved party status under statute. Somebody could then file a 22a-19 with respect to that appeal, is that an accurate statement or not?

WILLIAM ETHIER: They can file a 22a-19 prior to and up to the time a decision is made. I believe -

SENATOR FASANO: What decision is that, court or local board?

WILLIAM ETHIER: No, local board like the planning and zoning, whatever the local board is. I believe if you -- you haven't shown up and you disagree with the result of the decision that was made, you are allowed to take an appeal to court through 22a-16 all right. That's part of

## COMMITTEE

the same act but it's a separate statute that allows you to go directly to court with a initial action. But that's going into civil court and it's more expensive and all that, I understand that. But there is a process to address environmental issues that you think a wrong decision was made. But this -- what we're proposing doesn't affect at all 22a-16.

SENATOR FASANO: Okay. Thank you. Thank you for your testimony.

REP. ROJAS: Are there any other questions? Thank you for your testimony.

WILLIAM ETHIER: Thank you.

REP. ROJAS: Anita Mielert followed by Kevin Solli followed by Eric Brown.

ANITA MIELERT: Thank you, Representative Rojas and Senator Cassano. I am here in support of Bill 817, ESTABLISHING A PROPERTY TAX PROGRAM TO ENCOURAGE THE PRESERVATION OF BARNS And I am here in opposition -- opposition of proposed Bill 831 for fees to establish historic districts. My name is Anita Mielert, I am a former selectman, first selectman in Simsbury, and a long-time volunteer for historic preservation in the state. I officially represent Connecticut Preservation Action, which is an advocacy organization with members like the Connecticut Trust and the Connecticut Main Street Program, et cetera.

CPA is delighted to -- to support a proposal to help preserve historic barns in our state. This measure fits as a logical compliment to open space and farmland preservation policies. What sense does it make to save landscapes without the essential infrastructure that made them, the historic farmhouse, the barns, stone

## COMMITTEE

place. The largest ticket item request -- required in the process of establishing the historic district is placing of a legal ad in a newspaper. If the Legislature could replace that requirement with something less onerous, no one would have to suffer the cost. Thank you.

REP. ROJAS: Thank you for your testimony.

Are there any questions for the witness? No?  
Seeing none, thank you for your testimony.

ANITA MIELERT: Thank you.

REP. ROJAS: Kevin Solli followed by Eric Brown followed by Wayne Cobleigh.

KEVIN SOLLI: Thank you, Chairman Rojas and members of the Committee. My name is Kevin Solli, I'm a licensed professional engineer in the State of Connecticut. I'm a small business owner I also serve as the Government Relations chairman for the International Council of Shopping Centers, and I am on the board of the Connecticut Partnership for Balanced Growth -- or I'm an officer, excuse me.

I'm here today speaking in favor of Senate Bill 814. First I just want to say that we don't see this bill as an affront or against any responsible interventions that are filed through the current statute, 22a-19. What we want to do, and as Bill Ethier previously testified, is we want to stop the abuses of that statute. Over the past -- over the past 11 years of my career, I've helped design and construct and develop over two million square feet of shopping center space throughout the State of Connecticut.

And I take great pride in these projects

because it represents hundreds of millions of dollars of investment into the state, into its communities and creating places that people like to go and shop and enjoy and experience. And all of the developers and retailers that I've worked with, they've always viewed a project by saying they want to create a project that limits the potential impact to the environment. And they spend thousands of dollars doing comprehensive studies of wetlands and -- and endangered species, and they compare comprehensive applications that address all these issues.

Typically on the local level both in the wetlands commissions and planning and zoning commissions, they will hire peer review professionals, their own town engineers will review applications, and they will work through the process to ensure that an application does, in fact, protect the environment and doesn't impact the environment. And what has happened is people have been able to abuse the current statute and file an intervention petition which will stop a project or it will cause delays.

And what happens is it costs thousands of dollars, it potentially costs jobs because developers and -- and people who are trying to develop responsibly aren't able to protect themselves from these petitions. And as -- as Bill testified, the Nizardo case that went through the State Supreme Court, it clearly requires that intervention petitions are required to provide evidence.

And by not codifying that law, people are still able to file these petitions without providing a shred of evidence which gets them into the process and they can -- and it brings it through the court system and it causes delays, and it's -- the abuse -- the abuse just has to

## COMMITTEE

stop because it really does put Connecticut at a disadvantage from other states where, you know, the process is more clear and it doesn't have this same, you know, opponents aren't able to use this same type of weapon in stopping a project.

And a lot of the times it does happen from competitive interests and it doesn't have the environments, you know, best interest in mind. And we just want to stop people -- have people stop using the environment and take that in vain almost and say, well, I'm going to stop your project and I'm going to use this as a -- as a way to do so when there aren't real -- there aren't real concerns and that.

REP. ROJAS: Thank you for your testimony.

Are there any questions for the witness?  
Seeing none, thank you for your testimony.

KEVIN SOLLI: Thank you.

ERIC BROWN: Representative, Senator, I hope I got the order right?

REP. ROJAS: You did.

ERIC BROWN: Okay. Thank you. Good morning. My name is Eric Brown, I'm an Attorney with the Connecticut Business and Industry Association and represent the organization on energy and environmental matters. And I'm here to testify also in support of Senate Bill 814. And I guess the perspective I want to share is our organization is always being asked what can Connecticut do to improve its reputation as a place to do business? And this is one area where we have an opportunity to do that.

Again it's been said before, CBIA also is

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firmly committed to the intentions of the Environmental Protection Act, which is based on recognition that we're all stewards of the environment, we all need to have a right, and we have a responsibility to bring concerns about the environment to the attention of decision makers when it -- when it's called for. This bill, as has been said, does not in any way infringe on those rights or responsibilities. In fact, it's designed to make the process more efficient and to create greater certainty with respect economic development projects.

So it's correcting the current uncertainty and efficiency that's important not only for environmental reasons but for economic development reasons as well. As has been said, the current system under CEPA is -- is misused to delay and scuttle important economic development projects in certain cases. Perhaps even more importantly though it adds to the list of negatives. When a developer is looking to invest and they're comparing different states to invest in, CEPA is just one more uncertainty and inefficiency that they have to weight. And often times, you know, it contributes to them turning and looking to other states.

So because of those reasons and because we think this is a good bill that doesn't infringe, and again I am referring to the proposed substitute language, let me clarify that, we think that language contributes to greater efficiency and clarity that helps both environmental and economic development interests, and we urge your support for the bill. Thank you very much and if there's any questions I can answer, please let me know.

REP. ROJAS: Are there any questions?

Senator Fasano.

SENATOR FASANO: Eric, thanks for your testimony. The question I have is just first a broad question, the -- how much of an effect do you believe, based upon your experience with CBIA, does the duration of a zoning process from start to finish, how much of a negative effect does that have on businesses coming to Connecticut, in your view?

ERIC BROWN: Well, I -- I think it depends a little bit, but clearly the longer it is, the more problematic it is. But specifically with respect to CEPA, the uncertainty of how long it is, you know, there's going to be a bill in Energy tomorrow I guess that talks about, you know, 150 days to do this, 180 days to do that. Whether it's 30 days or 180 days, at least there's some certainty about what to expect if you come to Connecticut. With CEPA you don't know. It can be filed any time in the permitting process, it can be filed during an appeal process, and there's no statute of limitations on it at all.

So one can argue you can file it pretty much at any time even after the approvals have been given and even when construction begins. So it's that kind of uncertainty when a -- when a counsel to a developer has to sit down and say, well, you need to be aware of this law and what the potentials are. They step back and they go holy cow. So it is important and particularly when it's an uncertain timeline like in CEPA.

SENATOR FASANO: When you talk about CEPA, you talk about the federal CEPA?

ERIC BROWN: No, I'm talking about the state Environmental Protection Act, 22a-19.

SENATOR FASANO: So when you say there's no appeal time in which a -- explain to me why you feel there's no appeal time in which a adverse person could raise an issue.

ERIC BROWN: No, I'm sorry if I misspoke. What -- what I meant to say is there's -- there's no limit on when they can inject themselves into the process whether it's during the permit time or if there's an appeal. As I think Bill testified to, when they haven't part of it since then, they can join in at that point, they can file an independent lawsuit. The degree of uncertainty and -- and clarity is -- is astonishing really so that's what causes the problem.

SENATOR FASANO: So when -- has there been occasions where developers of whatever wanted to come to Connecticut, they reached out to your organization and one of the concerns that they raised at this meeting with you was zoning, you know, hey, we could go in, making up a state, South Carolina, zoning sort of in place, we know the process is X number of days. In Connecticut there's really no timeline, therefore, we're not leaning to come to Connecticut. Have those experiences been shared with you?

ERIC BROWN: Yes, shared with us directly in more conceptual terms. But, you know, our membership includes a lot of folks who work with developers and project managers and site locators. And so in our -- we have councils like our Environmental Policy Council where we interact directly with them. And they tell us specific stories of, in this case, when -- when they have to run through the list of things you need to do to come to Connecticut, permits or whatever it is, this one they always dread

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getting to, it's always down towards the bottom of the list, and, oh, by the way, we've got to let you know that there is this possibility that, you know, someone could come in at the last minute or down the road and file one of these things and create problems. And I have heard from people that make those kind of -- have those kind of meetings say, you know, the look of disbelief on the other side can be -- can be significant. So it clearly does have an effect, yeah.

SENATOR FASANO: Thank you for your testimony. I appreciate it.

ERIC BROWN: Thank you, Senator.

SENATOR CASSANO: Quick follow up, when we're talking about delays, you're not talking days, you're talking in some case years?

ERIC BROWN: Absolutely years.

SENATOR CASSANO: Years.

ERIC BROWN: And every day is money. So it probably doesn't go years very long -- very often because there aren't many that can afford --

SENATOR CASSANO: They pull out.

ERIC BROWN: -- to hold out for years and go through what's required, but it certainly has happened, yeah.

SENATOR CASSANO: Thank you.

REP. ROJAS: Are there any other questions? If not, thank you for your testimony.

ERIC BROWN: Thank you.

REP. ROJAS: Wayne Cobleigh followed by Richard Hayes followed by Roger Reynolds.

WAYNE COBLEIGH: Good morning, Senator Cassano, Representative Rojas. I'm Wayne Cogleigh. I'm a volunteer leader and State Director of the International Council of Shopping Senators -- Centers in Connecticut. And we have 600 members and I'm here today because a lot of our members and our government relations group have asked me to come forward as somebody who is in the environmental consulting practice, I'm not a shopping center developer, but that sees a lot of this environmental intervention in our profession.

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And actually I'm in support of this proposed bill. I've given you a copy of the language that I would like to see because I think the critical issue here is schedule, you've heard about uncertainty, if you give somebody an open-ended schedule, they cannot put a cost of time or risk that their project will ever see the light of day. So anything the Legislature can do to make people responsible for owning up to process and a schedule for a permit that's predictable is going to help this state.

Listening to the testimony about dogs and barns, I learned a few things this morning. And what I would say is 22a-19 when that statute was passed in 1971, it was a thoroughbred, it was a good breed. If it was a dog, it would be that dog you want to own. It had all the right intentions. And like we heard about the Pit Bull, what happened was some bad owners of that law looked at the loopholes and abused it. And when that breed, the Pit Bull gets abused, you've see the reputation damage to that dog. Well, the damage to the reputation on this bill is to Connecticut.

Connecticut has to compete with New England states, New York, and really globally. And when you tell people who are interested in investing their capital in Connecticut that -- that we have a permit process that is completely unpredictable and open-ended, they walk away. Now they might give it a try, but if they get tested by somebody who really has no grounds for environmental harm, that are just fabricating ideas, and not putting forward any proof, and just forcing that applicant to go and hire a company like mine to go and oppose that testimony, and try to put the facts on the case, and then wait for it to go to court, and then wait for the appeals, and then wait for it to go to the State Supreme Court.

How many investors want to spend eight years bringing a real estate project to Connecticut, you have to ask yourself. This was a good intended law, environmental protection in 1971 when very few laws were on the books. I was pretty young in 1971, I got into the environmental industry in 1982. Even then there were very few laws. But now it's 2013, there are more environmental regulations on the books than one attorney could possibly master. And so you have all of this stacked on to the permitting process to regulate, to create the lines of what is good conduct. And then somebody says I want to step outside the line and throw this wild card at you.

This is the time now for Connecticut to get it right, it's not 1971 anymore. We're in the 21st Century, we have the Internet, we have good research, we understand what environmental risk and harm really is. We need a bill that comes forward with dates and times and facts so that people who really want to protect the environment do it the right way, that they're

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reasonable, that they're logical, that they provide their proof so that people who are volunteering to listen to these applications, who aren't even getting paid to listen to these applications, aren't put through months and months of delay. It's a matter of respect that the environmental intervener should take the same due process that the applicant has to do to show that they've created a land use application that's worthy of approval. I'll end my testimony there and take questions.

REP. ROJAS: Thank you.

Are there any questions for the witness?

Senator Fasano.

SENATOR FASANO: I'm going to sort of ask you the same question that I asked Mr. Brown because I think I saw you nodding your head back there before. But in your experience with shopping centers, my words not yours, has this had a hindrance for those who were looking to open up something in Connecticut and develop?

WAYNE COBLEIGH: I'll give you a specific example. A shopping center wanted to be sited in Connecticut, they picked a site. They then applied to the town. They did everything proper in their application. People came from outside of the town and inside of the town and suggested that perhaps a very rare endangered spadefooted toad had been seen on this property, they allege. Okay. That -- that one allegation cost the client significant money and at least two years. The store still isn't built in Connecticut.

Some of these applications that our companies been working on have been going on for six to seven years. A lot of the projects never even

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make it to that go decision because of some of these issues. And, you know, they hire us to put experts out there that can identify this toad and can say whether it's endangered or not, and that's real money that they have to spend.

I -- I also had dinner at ICSC in Chicago with the vice president of Wal-Mart. I asked her, you know, what -- what's Connecticut like compared to other states? She said, well, California is probably worst. I have a store in California that right now has been going on for eight years and they're litigating over the height of the curb. The curb height, that's what they're litigating over. So it can get worse, all right.

But I think my point is it's a very regulated activity to go and permit real estate development in this -- in the state. There's planning, there's zoning, there's wetlands, there's environmental protection, there's state laws, there's federal laws. We don't have a shortage of laws. This law was intended to make sure that the people entrusted with protecting the environment follow those laws. It was not passed so that people could just take you to court and delay you for six or seven years. It's unintended consequences.

In my testimony I have a Wall Street Journal article from 2010. There's a professional service company that goes out and pretends they're community activists. They were found out when all of these developments stopped because of the economy. They're going out, being paid by competitors, to go and pretend there's environmental issues to slow down permit applications. That's what happens when a law has loopholes in it.

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We need to tighten up this law so that it does what we really want it to do which is allow responsible environmental interventions to go forward and have their day in court, if necessary. And I was one of these environmental -- environmental interveners. I know how to do it correctly and how to make sure that, you know, if you have a fact to substantiate, you put it on the record. That's what we want. We just want the level playing field that anybody who wants to try to oppose a project just has to play by the same rules as the person trying to develop the project.

SENATOR FASANO: When Bill Ethier was talking about 22a-16 I just wanted to grab it and refresh my recollection. What 22a-16 allows basically anybody and everybody to, after the fact, bring a declaratory action with equitable relief making claims environmental. One might argue, well, even if you correct 22a-19, you have 22a-16 which can be used for the same argument, frivolous reasons.

But when you do a declaratory action there is a practice book section that requires you to be specific, affidavits, bonds, et cetera, which is really what we're asking -- or what you're asking for 22a-19, which is if there's an environmental concern that you have, identify it, raise it, and affirm to it, not just be general.

So it's sort of taking the 22a-16 requirements, if you would, from the practice book, bringing it over to 22a-19, and that will essentially kind of solve the project. I mean it's going to be massaged a little better than what I'm saying, but that's the point of where you try to go.

WAYNE COBLEIGH: Yeah. The other thing you might

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not understand in Connecticut is you're leaving these decisions up to the local volunteer land use commissions. Very few permits actually go to the Connecticut DEEP or EPA. But the DEEP and EPA do have this same process to make sure that if somebody feels one of the environmental protection laws that DEEP is enforcing is not being enforced properly, they set up a procedure. And they say give us your grievance, you have a certain amount of time to produce evidence, we'll listen to you, we'll listen to both sides, and we'll deliberate and make a judgment.

I think that's what we're trying to say is environmental protection, when you're talking about litigating somebody and taking them to court and causing them to, you know, incur expenses beyond what they've already incurred just to put an application in, that's a serious matter. It shouldn't be done frivolously. It shouldn't be able to just be done flippantly without any evidence.

And we kind of let this loophole be out there and you've seen the results that people will take advantage of a weakness in the law whether it's a competitor or whether it's a well-meaning environmental advocate who really perceives that there is some risk here that I need to protect the public from. But they're not actually proving anything, they're just using this law to stop what they perceive as something bad.

And I think that's what we really want this law to do is to get people who don't have the risk understood correctly, to let that be vetted by these volunteer commissions so that they can see do you -- do you really have some harm here or not? Tell us what the harm is. If we can see the harm, you're in, you're going to be a

party to this thing, and we'll listen to you. But if you can't produce any harm, you know, you should move on, you shouldn't be going to court, you should be stopping.

And if they still want to go to court, let them go to the 22a-16 process, get it vetted by a regulatory official. If they still want to go after that, they can. But I think, you know, any judge is going to look at this track record and say you don't have evidence, you don't deserve to be in court. Settle or get out of my court. And that -- that would tell businesses in the state who want to come here that this state is reasonable, that we're not giving you this open-ended uncertainty if you want to develop a project here. You know, we're going to compete.

SENATOR FASANO: Thank you, Mr. Chairman. I'm trying to just move through on the process here. When it goes before the wetlands commission at an intervener status comes about with nondescript, sooner or later the inland wetlands commission have to make a decision.

WAYNE COBLEIGH: Correct.

SENATOR FASANO: So and I can't see that going on for (inaudible).

WAYNE COBLEIGH: Right.

SENATOR FASANO: So all I see is this -- is they're expediting the manner -- how it goes to land use officials for the town. Then it takes under 22a-16 if the inland wetlands --

WAYNE COBLEIGH: If that intervener didn't like the decision.

SENATOR FASANO: -- and they want to appeal the

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decision to go. So how much time are we really saving by adopting this? Not that I'm opposed to it, I mean I just can't see it --

WAYNE COBLEIGH: Wetlands is unique because we do have a state regulatory agency that oversees the wetlands law, it's a federal law, and then they impose it on the local land use commission to enforce.

SENATOR FASANO: Right.

WAYNE COBLEIGH: So there's this redundancy built into wetlands. But if you -- if you say an endangered species or if you say some air pollution because the shopping center is going to create traffic and I think you might be violating the Clean Air Act, that's all -- all they have to do is allege, they don't have to provide any evidence. That's what's been causing the delay. And then they go right into the court system, they don't go to 22a-16.

REP. DIMINICO: But does it still stay within the auspices of the inland wetlands?

WAYNE COBLEIGH: Yes, because the --

REP. DIMINICO: And so you're saying to provide facts or, I shouldn't say facts, but data that makes it impossible to make a decision?

WAYNE COBLEIGH: It just delays the inevitable decision by a judge who was probably not educated on these matters -- parties --

REP. DIMINICO: But that was my original question. I know after the inland wetlands commission makes the decision and the intervener wants to apply -- or appeal, then it goes before the judge. And I -- as I understand it, it's a different statute with a different protocol

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that should be more expeditious.

WAYNE COBLEIGH: Right. There's one process to intervene to try to affect the decision by the land use commission.

REP. DIMINICO: Correct.

WAYNE COBLEIGH: So if -- when I -- when I was an environmental intervener, I said I think there's an unsafe cleanup of soil on this tobacco field. I think it's unsafe for the public. I presented that evidence to my land use commission and they agreed with me. They said we don't think this developer has proposed a cleanup method that's safe either. They agreed with me. But the developer then appeals that decision and takes it to court.

I as an intervener have to go to court with them. Now most interveners may not even get to the point where they've actually affected a decision. They've produced evidence that's actually helped the land use commission make their decision. Most of the time interveners will only allege that there's environmental harm and not give any specifics. And that's what we're trying to --

REP. DIMINICO: So it -- this really appeals strictly to land -- to local land use.

WAYNE COBLEIGH: Right. Because the local land use has a certain schedule to decide approval or denial, approval with prejudice, a denial. And they need evidence because if somebody takes them to court, the only thing you can produce in that court to justify why you approved a permit or denied it is the evidence that was put forward in that land use application. And that's all the courts will let you use to brief them on why you were done wrong or why this

appeal should be overturned.

REP. DIMINICO: And basically what you're saying that was so ambiguous --

WAYNE COBLEIGH: Right. If your -- if your goal as an intervener is not really to get the judge to agree with you, your goal as an intervener is really just to litigate for the extent of a schedule so that by the time the judge actually is ready to set a scheduled date in the court, it's a year out. Now that tenant that was going to be the -- the anchor tenant for the land development goes, you know, I don't want to be in Connecticut now. I'm going over to Tennessee.

You know, we did a project in New Haven where Nordstrom was the anchor tenant to the Long Wharf Galleria Mall. And they said we can't stay for another couple of years of litigation. We're moving on. As soon as they pulled out, the mall developer said we have to pull out. And they had already spent \$2 million in hard costs to get ready to build the shopping center. So it was an environmental intervention that caused that whole project to unravel. That's where we have the Ikea store now.

But, you know, this was a project that the state saw our economic development value in, CDA had -- had done a tax incremental financing study showing the mall would create positive cash flow for the state. But the environmental intervention law took it down. It wasn't because they got proven and were correct, it was just the threat of taking them to court for a couple years.

REP. DIMINICO: So -- so the real issue is not so much the timeline, although that is an issue,

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the issue is -- is the fact that the intervener is so nondescript --

WAYNE COBLEIGH: Right.

REP. DIMINICO: -- and that's really --

WAYNE COBLEIGH: The municipality feels uneasy voting on their matter because they don't know if they're right or wrong.

REP. DIMINICO: Right.

WAYNE COBLEIGH: So they try to come up with a decision that, you know, is based on the evidence from the developer. And what the intervener costs the developer is they have to go hire a firm like mine to counter all of these what ifs. You know, what about this, what about that? Well, then the consultant has to go out and look for the frog or they have to go look for the moth, you know, they have to go. And months looking for these sensitive species that may or may not even be present.

So it becomes, you know, a delay game. And that's -- and that's what we're trying to stop. You know, when a bad project is proposed and it's clearly not in the environmental interest of the state, I think the land use commissions can see that. They know when there's a bad, you project, for the environment. So we don't need another layer saying, well, I think you got it wrong, we're -- we think it's even worse than you suspect.

You know, and that's the thing, environmental risks, some people get it wrong. They perceive a much greater risk than what was truly there. And they're passionate about it and they might have all the right reasons for doing it, but at the end of the day you have to produce evidence

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and say who is going to die from this, where is the damage to the environment, show us.

That's what we're asking this process to be, more descriptive, more evidence. If you have evidence, you deserve to go to court, right, you have evidence. If you don't produce any evidence, what are you doing, you're just trying to delay. So that's -- that's the issue, it really, if we could stop people from just causing delay, we've done a good thing.

REP. DIMINICO: Very good, thank you.

REP. REED: Thank you, Mr. Chairman. I think that Ikea store is one of the most successful in the nation now, I just thought I would mention that. I'm -- I'm really interested in what you have to say. And I've seen this used, this provision used actually by small people, small guys who got together and felt that this enabled them to have standing in a process not necessarily to delay for delay sake, but to have some impact on how the development proceeds.

For instance, in our town we were able to create a park in an area by the developer coming to the table because the -- the various interveners felt that they -- they had some level of standing, and -- and they came up with a compromise that worked for everybody. And I'm just wondering if that goes away if we eliminate this?

WAYNE COBLEIGH: What's -- what's very strange about this law is there is no discussion of standing at all. You could be from California and you could fly out to Connecticut and say I'd like to intervene on this. If you built a nuclear power plant today, they would say you have to be within 50 miles of this nuclear

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power plant to come in and intervene under NEPA, okay, the national law. So they set a perimeter. They say, you know, radiation, worst case scenario, 50 miles.

But this law has nothing so anybody in the universe can come in and say I understand there's a proposal here and I think it might be causing environmental damage. I'd love to see a standing requirement in the law that says, you know, perhaps you're a citizen of that community or you're, you know, at least of the State of Connecticut and -- and you want to affect the environmental improvement of a project. There's nothing wrong with that.

Everybody in a land use commission is allowed to get up to the microphone and have their three minutes of I think this is a good idea, or I think this is a bad idea, I'd like to see the developer do this, I'd like to see the developer change where they have open space. That's an open public process, right, as long as there's a public hearing. So if people are using this law to make sure there's a public hearing, you know, they need to have an environmental issue to attach to it to be able to use 22a-19.

And most projects have some environmental impact of digging into the ground, there's a river nearby, there's, you know, perhaps a wetland. But you really do have to be able to say I can see there's some environmental issue and I just want to make sure as a citizen that it's enforced properly. If it's storm water quality, they got their storm water permit and their engineer is enforcing the permit. I mean there's nothing wrong with that. I think that's a good thing, an activist in a community that says I want to make sure my town is doing the right thing. That's not stopped by any of

the reform we're proposing.

What we're trying to stop is the people who don't really have the community's interest, they have their own self interest in mind and they just want to stop something, you know. And what can I use to stop it? Oh, I could use this law that allows me some more time. I can throw, you know, time delays into a -- a process that could potentially make somebody have a second thought about taking this project on. And that's not what it was intended to do, it was intended to protect the environment.

REP. REED: Just one quick follow up, so you seem to be saying that there are, I mean what really concerns you are sort of outside forces who may be, in fact, competitors who come in with some kind of bogus objection?

WAYNE COBLEIGH: Right, frivolous, bogus, factitious, you can use all these legal terms. But the reality is, if you never even put forward evidence, that kind of would tell me, if I was on a land uses commission, why don't they produce some evidence of this harm, what are they doing?.

REP. REED: And just in the sense of order of magnitude, if we were looking at a pie chart, so what percentage of the utilization of this you think you can ascribe to those kinds of outside forces or inappropriate forces?

WAYNE COBLEIGH: Well, if we look at the Wall Street Journal article, it's in my testimony too, Saint Consulting Group conducted 1,500 campaigns in 44 states, 500 have involved trying to block a development. That's a -- that's across the country. Now you put it in the context of Connecticut, I'm sure the Saint Consulting Group was in Connecticut. I don't

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know how many because they're clandestine by nature. And then they cloak themselves with attorneys that do their bidding for them.

So we -- you can't necessarily see the -- the abuse. But you, you know, I think you'll hear testimony from some of the developers in ICSC who have seen people who really had no intention of settling, no intention of being right or wrong, they just intend to litigate and that's all they've intended to do from day one. They want to stop a project and they're using this law as a means to do that. So we want to stop that.

REP. REED: Thank you for your testimony. Thank you, Mr. Chairman.

SENATOR CASSANO: Any questions?

Just a couple of quick words following up. These people generally are not using their own dollars, they're being funded by others, is that correct?

WAYNE COBLEIGH: Correct. The Saint Consulting Group used to get money from the unions who would be fighting Wal-Mart because Wal-Mart is a nonunion retailer. So there's all kinds of, you know, grocery store wars going on and things like that.

SENATOR CASSANO: Yeah, and it's the person up front who is just up front. Thank you.

WAYNE COBLEIGH: And what I said in my testimony is, you know, putting transparency on the funding source, it's like a political campaign. You said I paid in this money to this presidential campaign, but that's your First Amendment right to free speech and there's nothing illegal about it. All it would be is transparent. It

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would be, well, why is Northeast Utilities giving \$10,000 to stop a grocery store, you know, that doesn't make sense, what's going on. So it's not going to stop the problem. The problem has to be stopped at the schedule. You really have to say own up to a schedule, please, and provide evidence in a timely manner, respect the volunteers who are reviewing these applications, and give them what they need to make a decision.

SENATOR CASSANO: Thank you.

WAYNE COBLEIGH: Thank you.

SENATOR CASSANO: And again for those that have been at other meetings and have arrived late, this bill is in effect a hold. There is a draft being worked on with the business community, the developers, the environmental community and so on which will come back to the Committee. So that many of these things, in fact, I know are part of that discussion and we'll have another chance at this.

Next Richard Hayes, Roger Reynolds, and then Ronald Thomas, followed by Gordon Willard.

Rich, welcome.

RICHARD HAYES: Senator Cassano, thank you. Members of the Planning and Development Committee, thank you this morning for having me. I'm here to testify on bill -- Senate Bill Number 814 as it relates to 22a-19. I was here a year ago, plus or minus, testifying on a similar bill. Obviously it's going to -- it's morphed and it's changed a little bit in the past year. We're hopeful that we're going to get better results this year than we did last. At the same time I wanted to share with you a year ago when I was here, I had a project that I

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utilized as a -- an example of when this bill -  
- when this statute is really abused and it  
goes really totally wrong.

The good news is that I got a final decision on that project. It took nine years. So it was tied up in court, on May 29, 2012, I got a final decision. The bad news is, of course, that the tenant disappeared. And when the tenant left, 220 permanent jobs left with the tenant, 300 plus construction jobs left with the tenant, \$3.5 million annually to the State of Connecticut left with the tenant in both property tax and sales tax for that project.

And it's -- and in this climate when things are so difficult because of the current economic pressures and we're looking for every job that we can find in this state, this is a true travesty. It's unfortunate because in that nine-year period the majority of the time that I can, you know, testify to here today, now very straightforwardly was spent in court. And there are two components to the court case that I want to share with you because they go to some of the questions that were asked earlier by Senator Fasano and Representative Reed as well as Representative Diminico.

This case was touched by 13 judges. And unfortunately the 13 judges had to make decisions on 283 items that were submitted to the courtroom over that 11 year period. Now of the 283 items, those were objections and motions and a lot of legal mumbo-jumbo that I don't truly care to understand. But the fact of the matter is that every time, this was all done without a single shred of evidence. And the only reason I got a decision in the end was because the court, on 5/29/12, had come to the conclusion that there was no evidence because they kept asking the -- the appellant to

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provide evidence, and he wouldn't provide any evidence.

And finally the judges got so frustrated that they had no other decision to make but to -- but to -- was that really three minutes, but -- but to rule in -- in our favor. And I was grateful for that. But the loss was far more extreme than what any of us want to admit to today. And it's basically because of this abuse. Quickly, I've been involved in four of these in the last ten years.

Representative Reed asked has it gotten worse or how is it -- how do you -- what percentage of the pie. I can't tell you the percentage of the pie, I can tell you I won three of the four. It's costing an enormous amount of money to defend these. And in every single one of them there wasn't a single legitimate ounce of evidence, and that's the thing that's so frustrating to me. The fact is that when I look at what has transpired with this particular statute, I don't think we had these abuses 25, 35, 40 years ago when it was first put in place. It was put in place in '71 before we had the DEP or DEEP today.

And the fact of the matter is that, you know, for the first 20 years I would submit to you that it was really used for legitimate purposes. In the last 22 or 3 years I think that we've seen a lot of cases where that isn't -- that isn't the -- the case at all. They're -- they're using it for abusive purposes. So I'll stop my testimony knowing that I didn't get anywhere near through half of it.

But anyway, I've got some, just for the record, I do have some information here that I'm going to submit to you. It's my last year's testimony, although I don't know how applicable

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RICHARD HAYES: And -- and that's my fault and I apologize.

SENATOR FASANO: No problem. So we just -- I was going to ask you some questions about your testimony giving you -- but the Fuller book that you talk about is the bible that's used by lawyers. For those who may not know, in the practice book there's just a volume (inaudible) Fuller for zoning issues. And he has devoted a section on this 22a-19, and I think it's important for us to take a look at it.

Getting back to what we started off with Bill about when he was up, it is not the intention to -- to water down people's rights to protect the environment. It's more of an issue of identifying what the issue is that needs to be discussed to make sure it is factually presented and there as evidence so we can deal with it one way or the other. The concern I believe you're raising is where these cases go on. And in your case, I know of a particular friend who went on for 11 years for a subdivision, and it ended up being tossed out because of lack of evidence but no evidence being presented I think is the exact quote.

But the point of it is is that the issue is if there are environmental concerns, they need to be dealt with and the environment needs to be protected. But we need to know what those are -- we need to know what those are at the front end so it can be dealt with, not sort of hide the issue for delay purposes. That's really what we're talking about.

RICHARD HAYES: That's essentially, Senator, you're absolutely correct. I mean that's, you know, there are certain folks out there that do this for purposes other than desirable ones, I guess. Their intentions are less than

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it is, as well as there's a practice book that's -- people from -- that are in my business and lawyers that work for developers depend upon or rely on, and it's written by a judge by Fuller. And it's all about land use law and it's put out by West.

And I copied the 22 pages in that book for you folks because I think it might be beneficial for you to understand the different elements to what transpires for 22a-19. And I took the liberty to highlight a couple sections that are important to me so that you won't be able to miss them. And then in addition to that, I got the backup supporting cases for -- that Senator Fasano a minute ago went over and got the state statute book.

In the state statute book they give you the definition of what 22a-19 is and then they give you the supporting law court. There's 379 cases currently that support that law. Out of the 379 cases, what I want you to understand is there are many more cases that were decided relevant to 22a-19, however, these are the ones that made law. So it's the supporting law for the case -- for the statute, excuse me. My testimony here should -- I -- I would remiss if I didn't say that if it takes 379 cases and it over 22 pages out of this practice book to, you know, quantify what goes on with this particular statute, geez, I think we've got a problem, folks and I think we've got to find a solution for it. So thank you for your time and your patience today and I'll certainly answer anybody's question that may have one.

SENATOR CASSANO: Senator Fasano.

SENATOR FASANO: Thank you. We will make copies of your testimony, we just didn't get it in time.

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desirable, I think that's the better way of putting it.

I happened to be in a mediation this past -- it was this past year -- early spring of last year, excuse me, with a judge who was pretty well respected in my opinion. I think -- I'm -- I think he's a thoughtful guy, I don't always agree with him, but he certainly has a pretty good handle on land use. And he was questioning this lawyer that was on the other side of this case and it was a 22a-19 case, and he was really badgering him. And I was truly enjoying it. And the fact of the matter was that he got the guy to finally admit that the reason he was doing this and continuing on was because he wanted to get his fees.

And I darn near fell off my chair. I said his fees. So what I didn't know at the time and subsequently found out is that in this statute, 22a-19, an appellant lawyer -- if a lawyer for the appellant can actually recover his fees if he's successful in proving his case. However, that isn't the same for the defendant over here sitting in this chair. He doesn't get that right. I have to go through a vexatious litigation process which is far more strenuous and much more difficult to prove than this conventional -- than this particular task that he has. So that was one issue that I -- I wanted to bring out.

And the second issue to your point, Senator, is also incorporated into this statute which, you know, I learned through this nine year process is under normal circumstances if you're in a courthouse on any other type of litigation other than the 22a-19 and you want to appeal the judge's decision, you don't like the judge's decision, you say, geez, Your Honor, that's nice, I'm glad you gave me that

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decision, but I don't agree with it and I'm going to go up to the Appellate Court.

Well, you don't just walk into the Appellate Court and say I want you to hear this case, you have to petition the Appellate Court. And in the petition you have to lay out your facts as to why you think that they should take this issue up and why it's important to case law. And they can either determine that the judge that heard you in the lower court did a great job and you're on your own, you're off and running, we're not going to hear this, or they can say, yes, we'll take that up and we'll -- we'll certainly listen to you.

In 22a-19 that's not how it works. If the appellant doesn't believe that he got a fair shake out of the Superior Court judge, he's got an automatic right to appeal to the Appellate Court. And the Appellate Court can't say no, they have to take it. And that's why -- that's one of the reasons why we get tied up for such lengths of periods in time because the reality of it is if they didn't have that automatic right of appeal, chances are the Appellate Court wouldn't be taking these cases up and, you know, you'd be saving a couple of years time. So that's a big huge flaw in this law that needs to be addressed, in my opinion. And I'm hoping that this year we'll be able to find a solution for that as well.

SENATOR CASSANO: Thank you.

Anyone else? See you then, Rich. Thanks for the materials and (inaudible) appreciate it.

RICHARD HAYES: Thank you very much for your time this morning.

SENATOR CASSANO: Roger Reynolds. Roger, Roger

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Reynolds. Are you hear for Roger? You've changed, Roger. That's not the guy I met with yesterday.

LAUREN SAVIDGE: I will be filling in for Roger Reynolds this morning. Thank you, Senator Cassano and Representatives of the Committee. My name is Lauren Savidge and I am a Legal Fellow with Connecticut Fund for the Environment. In addition to our written testimony we submitted, we submit this testimony in opposition of Senate Bill 814 concerning interventions and permit proceedings.

If passed, this legislation would require funders of environmental interventions to disclose certain information in the proceedings. Open space and clean water and air are essential to the quality of life in our state. And part of this high quality of life in our state contributes to key economic advantages that we have. The Connecticut Environmental Protection Act has been responsible for great progress on environmental issues over the past 40 years.

We understand that there is concern for -- about vexatious environmental lawsuits brought against developers and that there is a desire to encourage economic growth in our state, but this legislation specifically targets environmental interveners and provides them disparate treatment that would potentially have a chilling effect on environmental issues and serious environmental causes.

Developers and other applicants are not subject to any of these disclosure requirements. Developers themselves have brought vexatious, frivolous land use appeals to delay the proceedings in hopes of achieving a more

## COMMITTEE

favorable settlement from the town. This bill would do nothing to prevent those kinds of vexatious lawsuits.

We believe that the best way to deter the abusive process is to have an explicit penalty for bringing about any vexatious or baseless litigation against any competitor for competitive reasons or to -- in an attempt to intimidate individuals from presenting their First Amendment rights. And this should apply to all litigation and not just environmental proceedings. We are happy to propose language along these lines if the Committee would like.

The proposed amendments would not improve upon the existing regime for deterring unfair business competition through vexatious lawsuits. And even though the legislation limits the scope of a business competitor, or attempts to, it still dissuades sincere environmental concerns and puts unique burdens on environmental interveners that are not placed upon other applicants or developers. We are happy to continue this discussion and thank you for your time and consideration.

SENATOR CASSANO: Senator Fasano.

SENATOR FASANO: I just had a couple of questions. Thank you for your testimony, I'll be looking forward to some language. But you start off by saying that there was some -- you would be forced to disclose certain facts that were unnecessary or you shouldn't have to disclose. If there's an application and you have an environmental concern, why wouldn't you say, hey, I object to this application because and list the environmental concerns specifically from the get-go. Why would you not want to do that?

LAUREN SAVIDGE: I apologize if I tried to insinuate that it's unnecessary. I was merely trying to say that this legislation would target environmental interveners to provide more information than would be required for other applicants or other developers.

SENATOR FASANO: So not to interrupt you, but I guess I was interrupting you, but when you say we're asking for information, when someone aggrieves a zoning application, they have two ways of aggrieving, statutorily and they just say I statutorily aggrieve, that is I'm within so much distance of the property. Statutorily, you go to court, you show your deed, there you are, you're aggrieved, you're in, and you get to say why you think it's bad, and you list the reasons in the complaint why you think it's bad.

If it's another type of grievance you have to list particularly why that application, zoning approval affects you individually as opposed to other people if you're outside the statutory grievance and you have to specifically list it. I think what the folks here are saying is that if you have an environmental concern, all we're asking is to, with specificity, identify those environmental concerns so we know they're real. And if they're real, then we can debate them and maybe we're wrong, maybe we're right, maybe we change the application to take care of your concerns.

What they're asking though is saying those who with -- less well-intentioned for delay say you're affecting me environmentally, you're hurting the environment, period, end of sentence, and then you have to wait until potentially trial time to find out what those facts are. Why would you be adverse to identifying those reasons now?

LAUREN SAVIDGE: We -- we are adverse to the requirements in the legislation that would require environmental interveners to disclose their funders. So this is the additional information that -- that we are opposed to.

SENATOR FASANO: Forgetting about the funders, how about just sticking with the environmental harm with specificity, identifying that environmental harm at the time that the application for intervener status is made. Would you have an objection to that portion?

LAUREN SAVIDGE: I do not believe so.

SENATOR FASANO: Okay. And I'm not putting you on the spot, why don't you think about. I think, you know, the funding issue, I think we can have some conversations about because I don't think any plaintiff is required to identify funding sources, as I understand the law, but I certainly would be subject to change if someone knows differently. But to identify with specificity the actual environmental issues, and nobody wants to dilute the environmental concerns people have, they just want to know what they are so they know what they're facing to make sure they're real and not falsehoods.

And if they're real, well then you know what, we have to protect them, we have to deal with them. If they're falsehoods, we need to move on. And I think with -- without pigeonholing you into something, is that something we could talk about?

LAUREN SAVIDGE: That is absolutely something we could talk about further. I would again have to refer to Roger Reynolds before I can --

SENATOR FASANO: I'm not -- but I would be looking

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to talk to -- I think there's common ground here, I really do. I think that your concerns are sincere and I think there's some common ground and I just don't want to see two ships pass each other without having the conversation on what's common which is the environment. And I thank you for your testimony. Thank you.

SENATOR CASSANO: Thank you.

I sat in a meeting yesterday with -- Roger was there, and I know we are discussing these things for those that are listening. We are looking at all of the different options. This building over the last ten years has gone through what we're calling a period of transparency basically. People in the State of Connecticut want to know what's going on and want open government. Part of the request that they've been bringing this bill forward was to bring about that same kind of transparency.

If somebody comes in and says there are dinosaurs that used to live in this project -- where you want to build this project, and so on, and it will take ten years to prove that there was no dinosaurs. So they're saying give me some evidence and that's what we're asking for. And if we can't be transparent up front, if we can't show some evidence of an existence of dinosaurs within a legitimate period of time, we should be able to go on. Current law, we can't. Those are the kinds of transparency issues we're talking about.

It is still the goal of the developer, of the community and everything else to keep and maintain the quality of life that we have, the environmental quality of life which is substantial in Connecticut. As we found out in the storm two years ago, we are one of the most -- three greenest states in the United States

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and that's part of the environmental quality that we appreciate. But we're talking about a process here that involves human beings and involves fallacies and problems.

And so that's I think the key to what we're looking for in those changes. And I'll emphasize again not environmental quality, but the process itself. Nobody, nobody should have to go through what Mr. Hayes has gone through for nine years, and spend the kind of money to try to get a project which disappeared over something that was invisible or was never there. And there are too many examples of that in Connecticut.

And so that's why the bill is before us and we will work with you and Roger on that because it's important -- it's important to jobs, it's important to the environment. It's a bill that was written 40 years ago, 50 years ago. Any bill that's 50 years old probably could use a little refreshing, and we're hoping that that's what we do here.

Other comments?

Mr. Diminico.

REP. DIMINICO: Thank you, Mr. Chairman. You brought up the world penalty which kind of made my eyebrows stand up. I'd be very curious the scope of how large a penalty would be to really act as a deterrent when you're talking the amount of money involved to both parties actually. Have you given any thought to a dollar amount on a penalty or what type of penalty if not a dollar amount?

LAUREN SAVIDGE: We have not given thought to a specific dollar amount, but there are examples in statute (inaudible) that are effective to

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deter vexatious lawsuits that -- that punish a person for not bringing a case based on probable cause or whatever legal language you insert there. But they have been successful and we believe that that might be a better way to shape this legislation for it to be effective so that it doesn't single out just environmental interveners in a way that may deter serious environmental concerns, but would try to deter vexatious lawsuits in general.

REP. DIMINICO: I'd be curious what that would be in the end. Thank you.

SENATOR CASSANO: See -- by the way, members of this Committee usually do not have very good environmental report cards. I would hope that they would recognize, whoever may be keeping track of those report cards, that this is not the bill that's going to be considered, evaluate us on the bill that comes before the Committee. Thank you.

LAUREN SAVIDGE: Thank you.

RONALD THOMAS: Good afternoon, Senator Cassano, Representatives of the Planning and Development Committee. I'm Ron Thomas, Director of Public Policy and Advocacy for the Connecticut Conference of Municipalities, the statewide association of towns and cities. Our members represent 92 percent of the state's population. I'm happy to be here to talk about bills of concern to towns and cities. I'll focus on one bill in particular, one that we think has some great benefit to towns and cities and that is Senate Bill 815, CONCERNING THE CONSOLIDATION OF NONEDUCATIONAL SERVICES.

The bill would require the board of finance, the board of selectmen, to make recommendations and suggestions to -- regarding how boards of



# Rivers Alliance

of Connecticut

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TO: Sen. Steve Cassano and Rep. Jason Rojas, Chairmen,  
And the Members of the Planning and Development Committee  
FROM: Rivers Alliance of Connecticut  
**RE: Public Hearing**  
DATE: February 20, 2013

*Rivers Alliance of Connecticut is the statewide, non-profit coalition of river organizations, individuals, and businesses formed to protect and enhance Connecticut's waters by promoting sound water policies, uniting and strengthening the state's many river groups, and educating the public about the importance of water stewardship. Our 500 members include almost all of the state's river and watershed conservation groups, representing many thousand Connecticut residents.*

**Thank you for the opportunity to comment on S.B. 814, AAC INTERVENTION IN PERMIT PROCEEDINGS PURSUANT TO THE ENVIRONMENTAL PROTECTION ACT OF 1971.**

We understand that the present language does not reflect the language now being offered by the proponents of the bill. Nevertheless, the underlying premise of the various versions of this legislation, discussed last year and this year, is that intervenors under the Connecticut Environmental Protection Act (CEPA) are by and large opportunistic, self-serving persons who misuse GEPA to foil development, whether or not there is a risk of environmental damage. **But CEPA has served the state well for more than forty years. It offers ordinary citizens who value the state's water, air, forests, and fertile soils a chance to step forward to argue against unreasonable impairment of these resources.** Those of us who have had the interesting fortune to serve on land-use commissions, or to report on commission meetings and hearings, will acknowledge that, in the hundreds of hearings each year, various participants sometimes act badly. But intervenors by no means corner this market. The playing field is not tipped in their favor. We, at Rivers Alliance, want to be reasonable and to seek common ground, but we strongly object to limiting the longstanding rights of residents under CEPA. Look around. Are we really overprotecting the state's natural resources? Do we need to rein in those zealots who make a scene about protecting clean water, grasslands, and fresh air? Do we have too much of these things? No, we do not. We need CEPA to move forward with the effort to preserve these vital resources for the state's future.

Margaret Miner, Executive Director

**Raised Bill No. 814**  
**An Act Concerning Intervention in Permit Proceedings Pursuant to the Environmental Protection Act of 1971**

**Statement of Elizabeth C. Barton, Day Pitney LLP**  
**March 20, 2013**

My name is Elizabeth C. Barton and I am a partner with the law firm of Day Pitney LLP, resident in the firm's Hartford office. I have been practicing in the field of environmental law for over 30 years, working in the areas of environmental and land use consultation, permitting and litigation. Over the years, we have represented many developers, owners, lenders, and municipalities in connection with contemplated or proposed development projects in Connecticut. I have worked with federal, state and local authorities on innovative development projects, including Blue Back Square, a mixed use redevelopment in West Hartford, Connecticut, large restoration brownfield projects such as the Brass Mill Center in Waterbury, Connecticut, and smaller urban initiatives, such as the Learning Corridor in Hartford, Connecticut. Recently, I was pleased to be part of an informal group of environmental practitioners involved in the development of the so-called Section 17 or Brownfield Liability Relief Program passed by the Connecticut General Assembly during the 2011 legislative session and amended during the 2012 legislative session.

I am writing in support of Raised Bill No. 814 as a vehicle for the enactment of proposed revisions to Section 22a-19 of the Connecticut General Statutes. I support and would encourage the Committee's acceptance of the substitute language attached to the testimony of Bill Ethier, Chief Executive Officer of the Home Builders & Remodelers Association of Connecticut, Inc. A copy of that substitute language is attached to this statement.

Drawing on over 40 years of experience with the Connecticut Environmental Protection Act, including specifically Section 22a-19 governing intervention in environmental permitting proceedings, this bill and the proposed substitute language seek to refine and better define processes and procedures for intervention in these proceedings. The language addresses the timeliness of, and the requirements for, intervention in permitting proceedings. This substitute language does not either alter or diminish a prospective intervenor's right and ability to raise environmental matters within the scope of the permitting agency's authority. Subsection (a)(2) of the substitute language is consistent with the Connecticut Supreme Court's 2002 decision in Nizzardo vs. State Traffic Commission, making clear the information that an intervenor is required to provide in a verified pleading in order that the permitting agency can make an informed determination that the intervenor's claim is within the scope of its authority.

Subsections (a)(3) and (c)(1) and (2) look to assure that intervenors' claims under Section 22a-19 are raised and addressed in a predictable and timely manner. Like the permit applicant, the intervenor would be required to clearly and properly articulate what it wishes to place before the agency for consideration within statutory deadlines. The absence of procedures that apply to the filing of intervention petitions has resulted in inefficiencies as well as unnecessary and costly

delays in the processing of permit applications, and of appeals of permitting decisions, without attendant environmental benefit.

There are many examples of the misuse or abuse of Section 22a-19 and the inefficiencies and unnecessary costs referenced above. Of equal if not even greater concern, however, is the extent to which potential developments, including the jobs and taxes that come with such developments, do not even get to the permitting stage because, faced with the prospect of these inefficiencies, unnecessary costs and risk of delay, the prospective developer or property owner elects early on to not pursue a project in Connecticut.

I urge the Committee's support of Raised Bill No. 814. With the substitute language, this bill will provide reform and clarification that are long overdue, while preserving the opportunity for any person to constructively and timely advance environmental concerns.

Attachment: Substitute Language

**Proposed substitute language for SB 814**

New language is underlined; omitted language is in [brackets].

Sec. 22a-19 Administrative Proceedings.

1           (a)(1) In any administrative proceeding where a public hearing is required  
2 or held, and in any judicial review thereof made available by law, the Attorney  
3 General, any political subdivision of the state, any instrumentality or agency of  
4 the state or of a political subdivision thereof, any person, partnership,  
5 corporation, association, organization or other legal entity may intervene as a  
6 party on the filing of a verified pleading demonstrating [asserting] that the  
7 proceeding or action for judicial review involves conduct [which has, or which]  
8 that will, or that is reasonably likely to [have the effect of unreasonably polluting,  
9 impairing or destroying] unreasonably pollute, impair or destroy the public trust  
10 in the air, water or other natural resources of the state.

11  
12           (2) The verified pleading shall: (A) contain specific factual allegations  
13 setting forth the environmental issue that the intervenor intends to raise, and (B)  
14 state the material facts upon which the intervention is based in sufficient detail to  
15 allow the reviewing authority to determine from the face of the petition whether  
16 the intervention implicates an issue within the reviewing authority's jurisdiction.

17  
18           (3) In administrative proceedings to which statutory deadlines apply, the  
19 verified petition must be submitted within the requirements of the statutory  
20 deadlines applicable to accepting evidence or testimony, giving the agency  
21 involved adequate time to consider and rule on the petition. In court  
22 proceedings, verified petitions must be submitted within the deadlines that  
23 otherwise apply to pleadings in such proceedings. Petitions shall be rejected by  
24 administrative agencies or courts if not filed within the applicable time frames  
25 for such proceedings. Petitions rejected for untimely filing are not subject to  
26 appeal.

27  
28           (b) In any administrative, licensing or other proceeding, the agency  
29 shall consider the alleged unreasonable pollution impairment or destruction of  
30 the public trust in the air, water or other natural resources of the state and no  
31 conduct shall be authorized or approved which does, or is reasonably likely to,  
32 have such effect as long as, considering all relevant surrounding circumstances  
33 and factors, there is a feasible and prudent alternative consistent with the  
34 reasonable requirements of the public health, safety and welfare.

35  
36           (c)(1) The decision of an administrative agency may be appealed to  
37 Superior Court by intervenors whose petition to intervene in the underlying  
38 matter was granted by the agency.

39  
40           (2) In the case of an appeal to Superior Court from a decision of an  
41 administrative agency, a party may intervene in that appeal under authority of  
42 this section only if that party has successfully intervened in the administrative  
43 proceeding from which the appeal is taken.



**Farmington River Watershed Association, Inc.**  
749 Hopmeadow Street, Simsbury, CT 06070  
(860) 658-4442 Fax (860) 651-7519 www.frwa.org

February 20, 2013

TESTIMONY ON SB 814

Dear Senator Cassano, Representative Rojas, and members of the Committee on Planning and Development,

On behalf of the Farmington River Watershed Association, I am submitting this testimony to oppose SB814, An Act Concerning Intervention in Permit Proceedings Pursuant to the Environmental Protection Act of 1971.

If passed, this legislation would impose requirements that are specific to environmental intervenors, putting them at a disadvantage relative to other intervenors and thus quelling full public comment. The Act seems based on an assumption that there is a need to correct abuses of the CEPA process by those who oppose permits on environmental grounds. But abuse of the process with frivolous litigation is practiced by other types of intervenors. In targeting just one class of intervenors, the Act is unjust.

The Connecticut Environmental Protection Act of 1971 (CEPA) provides recourse to the public when they see the need to challenge decisions that allow unreasonable pollution and environmental degradation, and would harm the public interest or a public good. Overall CEPA has been an enormously positive influence in preserving the quality of life in Connecticut and in helping protect the cleanliness and safety of our air, water, and open space. While a solution may be needed to deal with frivolous opposition to permits via CEPA, targeting one group for special requirements is not legitimate. Any Act to address this problem must be applied even-handedly to all potential intervenors, or be revealed as a badly disguised attempt to disenfranchise a whole category of intervenors, regardless of whether they have ever engaged in an abusive or frivolous intervention. Furthermore, it specifically weakens the very type of intervenor that the CEPA process should empower: those who comment on the environmental impact of a permitted activity. The Farmington River Watershed Association has conducted itself fairly and responsibly whenever it has had intervenor status. We feel directly and unfairly targeted by this legislation. It would undermine our right and ability to participate as equals in public debate, on issues important to all citizens, and therefore we strongly oppose it.

Thank you for this opportunity to comment.

Respectfully,

A handwritten signature in cursive script that reads "Eileen Fielding".

Eileen Fielding  
Executive Director



***PLANNING & DEVELOPMENT COMMITTEE***

February 20, 2013

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CCM is Connecticut's statewide association of towns and cities and the voice of local government - your partners in governing Connecticut. Our members represent over 92% of Connecticut's population. We appreciate this opportunity to testify before this joint committee.

S.B. 814, "An Act Concerning Intervention in Permit Proceedings Pursuant to the Environmental Protection Act of 1971"

CCM supports this bill.

SB 814 is a sound and reasonable compromise that would reduce the amount of frivolous land use permit intervention cases, without infringing on the rights of interveners with legitimate environmental issues

SB 814 would ensure timely, yet careful consideration of land use permit applications.

CCM urges the Committee to favorably report SB 814.

Thank you.

★ ★ ★ ★ ★

If you have any questions, please contact Ron Thomas at [rthomas@ccm-ct.org](mailto:rthomas@ccm-ct.org) or (203) 498-3000.



TESTIMONY OF ERIC J. BROWN  
ASSOCIATE COUNSEL, DIRECTOR OF ENERGY & ENVIRONMENTAL POLICY  
CONNECTICUT BUSINESS & INDUSTRY ASSOCIATION  
before the  
PLANNING & DEVELOPMENT COMMITTEE  
February 20, 2013

Good morning. My name is Eric Brown and I serve as director of energy and environmental policy with the Connecticut Business & Industry Association ("CBIA"). On behalf of our 10,000 large and small member companies throughout Connecticut, we are pleased to provide comment in support of:

**Raised Senate Bill No. 814, An Act Concerning Intervention in Permit Proceedings Pursuant to the Environmental Protection Act of 1971.**

As the state strives to pull out of a long recession by growing the economy and creating jobs, lawmakers could help by reducing one of the greatest impediments to attracting economic investment--regulatory and legal uncertainty.

Specifically, CBIA supports reform an important, but sometimes abused law that allows anyone from literally anywhere to file for an injunction that will halt a development project over possible concerns with its impact on the environment.

The Connecticut Environmental Protection Act (CEPA) was enacted in recognition that each citizen, as a steward of the environment, should have the right to raise environmental concerns associated with development. These concerns can be raised to local boards or commissions and later be used to challenge their decisions in court.

While some environmental organizations, advocates and citizens have used CEPA appropriately, too often it has been abused by others as an anti-development tactic to significantly delay or stop development in its tracks while a lengthy and costly legal drama plays out.

Because the statute does not specify the evidence required and the timeframe within which CEPA claims must be filed, actions can be raised at any time (again, by anyone) – even after a project has been constructed.

This only harms Connecticut's ability to attract investments—forcing attorneys for those considering investing in projects here to tell their clients that they can't be certain that an individual or entity won't file a CEPA claim, triggering months or years of legal wrangling. This can be astonishingly bad news for potential investors, who could direct their attention (and investment dollars) to other states.

But lawmakers can take steps to help fix this problem while fully maintaining the integrity of CEPA and the ability of citizens or others to raise legitimate environmental concerns in a timely manner.

Requiring CEPA claims to have at least some basic evidence of a reasonable risk to the environment, and encouraging legitimate concerns to be brought to the attention of the appropriate authorities in a timely fashion, would greatly improve the efficiency and effectiveness of the process.

This would also help to lessen the perception that, in Connecticut, a developer can never really be sure these issues won't be raised in the future. And it would make CEPA consistent with the 2002 opinion of the Connecticut Supreme Court in Nizzardo vs. State Traffic Commission. In that case, the Court declared that a CEPA petition "must contain specific factual allegations setting forth the environmental issues" to be raised.

CBIA urges the Planning & Development Committee, and the legislature, to take a step forward in making Connecticut a more attractive place to invest while preserving our citizens' important right to be active stewards of the environment. Please support modification of Connecticut's CEPA.



**Connecticut Fund  
for the Environment**



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**Testimony of Connecticut Fund for the Environment  
Before the Committee on Planning and Development**

***In opposition of SB 814, AN ACT CONCERNING INTERVENTION IN PERMIT  
PROCEEDINGS PURSUANT TO THE ENVIRONMENTAL PROTECTION ACT OF 1971.***

Submitted by  
Roger Reynolds, Senior Attorney and  
Lauren Savidge, Legal Fellow  
February 20, 2013

*Connecticut Fund for the Environment works to protect and improve the land, air and water of Connecticut. We use legal and scientific expertise and bring people together to achieve results that benefit our environment for current and future generations.*

Dear Senator Cassano, Representative Rojas, and members of the Committee on Planning and Development,

Connecticut Fund for the Environment submits this testimony in opposition of SB 814, An Act Concerning Intervention in Permit Proceedings Pursuant to the Environmental Protection Act of 1971. If passed, this legislation would require legal entities that fund environmental interventions to disclose their identity when funding an intervention in an administrative, licensing or other proceeding involving a business competitor.

Open space and clean water and air are essential to the quality of life that is so important to Connecticut's health and well-being. Indeed, it is universally agreed that it is this quality of life that is one of Connecticut's key economic and competitive advantages. The Connecticut Environmental Protection Act of 1971 (hereinafter "CEPA") has been essential to clean our state water and air and preserve open space because it allows citizen suits to oppose unreasonable pollution and environmental degradation. It is this citizen suit provision that, along with the Clean Water Act and Clean Air Act, has been responsible for the great progress on environmental issues we have seen in the last 40 years. Nobody wants to return to a day when decisions by the government and land use agencies were not subject to challenge by the public that would be impacted by them.

This legislation targets environmental intervenors and affords them disparate treatment that would potentially have a chilling effect on those raising environmental objections. Applicants, developers and other litigants are not subject to any of these requirements, despite the fact that there is no evidence that abuses by environmental intervenors are more rampant than abuses by developers. Indeed, it is common practice for developers to bring frivolous appeals of land use decisions, using the prospect of extended and costly legal proceedings for the town to extract a more favorable settlement than they received in the public proceeding. This bill would do

nothing to prevent this problem. While most requirements against vexatious litigation apply to all parties and subject matters equally, this law would single environmental intervenors out without parallel measures for applicants or developers that abuse the process.

We believe the best way to deter abuse of the process is to have an explicit penalty for bringing vexatious and baseless litigation against any competitor for competitive reasons or against individuals to intimidate them from exercising their first amendment rights. This should apply to all litigation, not just environmental. We believe such a solution would address real problems in an even handed manner rather than limiting environmental rights. We are happy to propose language if this is of interest to the committee and the backers of this bill.

Indeed, our organization was forced to defend such a frivolous suit by a multi-national company with unlimited resources. The lawsuit was found to be baseless. Despite this, we had to spend substantial time and effort just responding to the claims and litigating. Citizen groups are generally concerned individuals trying to protect the environment and health in their neighborhoods. These individuals cannot afford to defend costly and vexatious lawsuits brought by well financed developers. These frivolous lawsuits have the impact of silencing their first amendment rights for fear of retaliatory litigation. Indeed, many citizens have told us that they did not intervene because of fear of such retaliation and the potentially bankrupting consequences.

The proposed amendments would not improve upon the existing regime for deterring unfair business competition through vexatious lawsuits. Even though the legislation limits the scope of a "business competitor" subject to this requirement, it still dissuades sincere environmental concerns and puts unique burdens on environmental intervenors. We are happy to continue this discussion.

Thank you for your time and consideration.

Sincerely,

Roger Reynolds, Senior Attorney  
Lauren Savidge, Legal Fellow  
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- STEVEN B. TANGER, Tanger Factory Outlet Centers, Inc
- WILLIAM S. TAUBMAN, Taubman Centers, Inc
- REINE TREMBLAY, Tadmim Asia
- STEVEN G. VITTORIO, Prudential Real Estate Investors
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+1 202 626 1400 • Fax: +1 202 626 1418 • www.icsc.org

February 20, 2013

To: Senator Steve Cassano, Co-Chairman  
Representative Jason Rojas, Co-Chairman, and  
Members of the Planning and Development Committee

From: Wayne Cobleigh, Connecticut State Director,  
International Council of Shopping Centers (ICSC)

Subject: Proposed Senate Bill No. 814 An Act Concerning Intervention in Permit Proceedings Pursuant to the Environmental Protection Act of 1971

The ICSC was founded in 1957 as a professional trade association for the shopping center industry. We have nearly 600 members in Connecticut and almost 60,000 members in about 90 countries. ICSC members include shopping center owners, developers, managers, marketing specialists, investors, retailers and brokers, engineers, architects, contractors, academics, students, public officials and environmental/geotechnical engineering firms like my employer, GZA GeoEnvironmental, Inc. (GZA) with three offices and 60 employees in Connecticut. ICSC members are interested in land use permitting with: (1) a level playing field, (2) transparency, (3) certainty in what constitutes a complete application, and (4) sound governance. Permits without excessive delay are necessary to attract tenants and investment; and to design, construct, expand and renovate retail centers throughout the 169 municipalities in Connecticut.

My experience with statute 22a-19 is extensive and my perspective for requesting your full support in advancing SB 343 is unique. I am in my third year as a volunteer State Director for ICSC in Connecticut. I work for an environmental consultant firm that would benefit financially if environmental interventions without legitimate claims and evidence of unreasonable pollution were allowed to continue without the advancement of this bill. Despite the court standard of requiring an intervention petition to state specific factual allegations of the environmental harm opined in the Nizardo State Supreme Court case from 2002, interveners benefit financially and in extending the delay of a permit when they put the burden on the permit applicant to retain an environmental consultant to opine and address the intervenor's concerns about unreasonable pollution of the environment to a land use commission or a court. An environmental consultant for the permit applicant is an additional expense when required to address the facts of an alleged claim for environmental harm, especially when claims are not based in fact, sound science or substantial evidence.



Page 2 of 2

S.B. 343 – Testimony of Wayne Cobleigh, Connecticut State Director

As someone in the environmental consulting business in Connecticut since 1982, the volume of local, state and federal environmental statutes, laws, ordinances, guidelines and court decisions has increased incredibly over my career. Legal and environmental professionals now need to specialize because the environmental and land use regulations are so voluminous. Connecticut DEEP is focusing on transformation and Lean management methods now because our State needs to change outdated and ineffective regulations that stifle responsible growth of our economy. **We are not regulating in 1971 anymore. We strongly support reform of 22a-19 and transparent and responsible environmental interventions that meet the governance expected in the 21st century.**

Abuse of the land use permit process is not limited to interested citizens. The Wall Street Journal article author, Ann Zimmerman, made front page news on June 7, 2010 exposing the Saint Consulting Group as being funded by rival supermarket chains, even posing as citizen groups to stop rival chains from obtaining permits. **Zimmerman reviewed hundreds of pages of Saint documents and reported that Saint Consulting Group conducted about 1500 campaigns in 44 states, of which the owner Michael P. Saint indicated about 500 have involved trying to "block a development" and most of those have been clandestine.** Clearly secretly funded interventions are good business for The Saint Group but not for their opponents. Off the record lawyers have acknowledged to me or not denied that this practice happens in Connecticut. ICSC supports transparency for the environmental intervenor of funding sources that will help make such clandestine funders accountable when they fund an intervention as a method to delay or reduce market competition. Although we support item 2 of S.B. 814 to make secret funding more transparent, a business competitor can assert that intervention is legally protected speech under the First Amendment of the Constitution and complies with the Noerr-Pennington doctrine.

**Regulating the funding of environmental intervention campaigns will not get at the main problem, which is the use of the courts and litigation process to delay permit processing and approval by mere speculation that the public's trust in the environment is threatened without producing legitimate proof, sound science, facts or substantial evidence by the one claiming the harm.**

Abuse of 22a-19 as a threat to the economic development and job creation is even more damaging to our economy going forward as we address the high unemployment Connecticut has been experiencing since late 2008. Statistics may indicate very few interventions reach the courts as a percentage of land use permits, but many developers or tenants lose interests in properties when interventions are proposed. Many developers do not make it to the permit application; they end the project to find another opportunity, because delays are too costly for most projects to sustain.

**After 40 years of 22a-19, there is a more legitimate and responsible way for a citizen to intervene and result in genuine environmental protection. Please codify the Nizardo case of 2002 and set reasonable schedules for intervenors to act in good faith and that honor the municipal and land use commissions' volunteered time and community activism.** I have enclosed proposed revisions for your consideration. Thank you for considering my comments.

**Proposed substitute language for SB 814**

New language is underlined; omitted language is in [brackets].

Sec. 22a-19 Administrative Proceedings.

1 (a)(1) In any administrative proceeding where a public hearing is required  
2 or held, and in any judicial review thereof made available by law, the Attorney  
3 General, any political subdivision of the state, any instrumentality or agency of  
4 the state or of a political subdivision thereof, any person, partnership,  
5 corporation, association, organization or other legal entity may intervene as a  
6 party on the filing of a verified pleading demonstrating [asserting] that the  
7 proceeding or action for judicial review involves conduct [which has, or which]  
8 that will, or that is reasonably likely to [have the effect of unreasonably polluting,  
9 impairing or destroying] unreasonably pollute, impair or destroy the public trust in  
10 the air, water or other natural resources of the state.

11  
12 (2) The verified pleading shall: (A) contain specific factual allegations  
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18 (3) In administrative proceedings to which statutory deadlines apply, the  
19 verified petition must be submitted within the requirements of the statutory  
20 deadlines applicable to accepting evidence or testimony, giving the agency  
21 involved adequate time to consider and rule on the petition. In court  
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23 otherwise apply to pleadings in such proceedings. Petitions shall be rejected by  
24 administrative agencies or courts if not filed within the applicable time frames  
25 for such proceedings. Petitions rejected for untimely filing are not subject to  
26 appeal.

27  
28 (b) In any administrative, licensing or other proceeding, the agency  
29 shall consider the alleged unreasonable pollution impairment or destruction of  
30 the public trust in the air, water or other natural resources of the state and no  
31 conduct shall be authorized or approved which does, or is reasonably likely to,  
32 have such effect as long as, considering all relevant surrounding circumstances  
33 and factors, there is a feasible and prudent alternative consistent with the  
34 reasonable requirements of the public health, safety and welfare.

35  
36 (c)(1) The decision of an administrative agency may be appealed to  
37 Superior Court by intervenors whose petition to intervene in the underlying  
38 matter was granted by the agency.

39  
40 (2) In the case of an appeal to Superior Court from a decision of an  
41 administrative agency, a party may intervene in that appeal under authority of  
42 this section only if that party has successfully intervened in the administrative  
43 proceeding from which the appeal is taken.



# THE WALL STREET JOURNAL

MONDAY, JUNE 7, 2010 — VOL. CCLV NO. 131

★ ★ ★ \$2.00

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Spain plans to  
crisis, a U.S.  
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d by Cerberus,  
an \$3 billion. B3

Build America  
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respect of internal  
vice audits. C1

John Pritzker is  
k into the hotel  
buying a major  
boutique-hotel  
ie De Vivre. B3

ing in Funds  
e Up on Europe, C5

## What's Ahead—

**JUNE 7**  
Federal Reserve re-  
a on consumer  
April.

**JUNE 8**  
elections are held  
s.  
Kerviel, the ex-

Thousands of soccer fans  
stampeded outside a stadium  
in South Africa before a game,  
leaving 15 people injured. A15

Storms swept through the  
Midwest, killing at least seven  
people. A tornado in Ohio de-  
stroyed dozens of homes. A8

A car bomb outside a Bagh-  
dad police station killed five  
people, in the deadliest of sev-  
eral attacks in the Iraqi capital.

Thousand of Poles filled a  
Warsaw square for the beatifi-  
cation of a priest killed by the  
communist regime in 1984. A14

The Education Department  
was urged to curtail a college  
accrediting group's power. A8

central bank issues its  
"beige book" survey of re-  
gional economic conditions.

Portugal's Parliament  
votes on an austerity plan.

**THURSDAY, JUNE 10**

The Bank of England and  
the European Central Bank  
conclude policy meetings.

## Rival Chains Secretly Fund Opposition to Wal-Mart

By ANN ZIMMERMAN

MUNDELEIN, Ill.—Robert Brownson long believed that his proposed development here, with its 200,000-square-foot Wal-Mart Supercenter, was being held hostage by nearby homeowners.

He had seen them protesting at city hall, and they had filed a lawsuit to stop the project.

What he didn't know was that the locals were getting a lot of help. A grocery chain with nine stores in the area had lured Saint Consulting Group to secretly run the antidevelopment campaign. Saint is a specialist at fighting proposed Wal-Marts, and it uses tactics it describes as "black arts."

As Wal-Mart Stores Inc. has grown into the largest grocery seller in the U.S., similar battles have played out in hundreds of

cases, large super market chains including Super Valu Inc., Safeway Inc. and Ahold NV have retained Saint Consulting to block Wal-Mart, according to hundreds of pages of Saint documents reviewed by The Wall Street Journal and interviews with former employees.

Saint has jokingly called its staff the "Wal-Mart killers." P. Michael Saint, the company's founder, declines to discuss specific clients or campaigns. When read a partial list of the company's supermarket clients, he responds that "if those names are true, I would say I was proud that some of the largest, most sophisticated companies were so pleased with our success and discretion that they hired us over the years."

Supermarkets that have funded campaigns to stop Wal-

aged to stop some projects, they haven't put much of a dent in Wal-Mart's growth in the U.S., where it has more than 2,700 supercenters—large stores that sell groceries and general merchandise. Last year, 51% of Wal-Mart's \$258 billion in U.S. revenue came from grocery sales.

In many cases, the pitched battles have more than doubled the amount of time it takes Wal-Mart to open a store, says a person close to the company. And the fights generate negative publicity for the retailer.

A Wal-Mart spokesman declined to comment on activities Saint has undertaken on behalf of its competitors.

In Mundelein, a town of 35,000 about 20 miles northwest of Chicago, it was Super Valu, a national grocer based in Eden Prairie, Minn., that hired Saint to

cialists spent the weekend devising a fiscal plan after the country saw runs on both its currency and its debt Friday. Officials have backtracked on the default threats and pledged the country would cut spending instead.

Though most American investors still doubt the U.S. economy will sink into a double-dip recession, they increasingly fear that growth could slow without con-

Please turn to page A4

- To spend or to save ..... A2
- G-20 finance ministers near deal on bank reserves ..... A10
- Fed unlikely to raise rates ..... C1

### Stock Jitters

After declining earlier this year, stock-market volatility has spiked in recent weeks.

Chicago Board Options Exchange market volatility index, or VIX



# Rival Retail Chains Secretly Fund Opposition to Wal-Mart

Continued from Page One

Wal-Mart from competing with its nine Jewel-Osco supermarkets located within three to ten miles of the proposed shopping center, the documents indicate.

City officials say the effort stalled the development for three years and cost Mundelein millions in lost property and sales taxes.

Mr. Brownson, who has developed shopping centers in 15 states over 25 years, says he learned about Saint's involvement only recently when someone phoned him and spilled the news. "A huge national company conducts a dirty tricks campaign for its own goals, and a city and a developer become collateral damage," he complains.

Supervalu didn't return calls for comment. Mr. Saint declines to discuss the situation in Mundelein. In general, he says, "developers always say the world is coming to an end because the project that would have made them millions wasn't approved."

Mr. Saint, a former newspaper reporter and political press secretary, founded his firm 26 years ago. It specializes in using political-campaign tactics—petition drives, phone banks, websites—to build support for or against controversial projects, from oil refineries and shopping centers to quarries and landfills. Over the years, it has conducted about 1,500 campaigns in 44 states. Mr. Saint says about 500 have involved trying to block a development, and most of those have been clandestine.

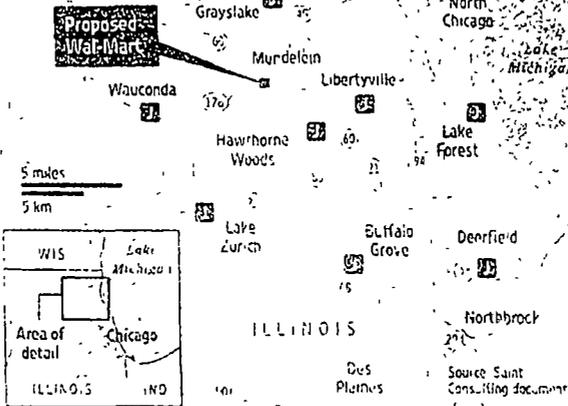
For the typical anti-Wal-Mart assignment, a Saint manager will drop into town using an assumed name to create or take control of local opposition, according to former Saint employees. They flood local politicians with calls, using multiple phones to make it appear that the calls are coming



P. Michael Saint, left, is founder of Saint Consulting Group, which specializes in using political-campaign tactics to build support for or against developments. Many of its efforts to block projects are clandestine. Developer Robert Brownson, right, at the site of a stalled Wal-Mart in Illinois.

## Competitive Threat

A grocery chain with nine Jewel-Osco supermarkets near a proposed Wal-Mart funded an effort to stop it.



ees, who have been followed, threatened and harassed by the opposition."

Safeway, a national chain based in Pleasanton, Calif., retained Saint to thwart Wal-Mart Supercenters in more than 30 towns in California, Oregon, Washington and Hawaii in recent years, according to a Saint project list and interviews with former employees. Former Saint employees say much of the work consisted of training Safeway's unionized workers to fight land-use battles, including how to speak at public hearings.

Former Saint workers say the union sometimes pays a portion of Saint's fees. "The work we've funded Saint to do to preserve our market share and our jobs is within our First Amendment rights," says Jill Cashen, spokeswoman for the United Food and Commercial Workers Union. Safeway declined to comment

month of Saint staff time, according to a preliminary budget.

Locally, there was strong opposition from a citizens group that wanted to preserve the proposed site as farmland and was concerned about traffic. Nevertheless, Wal-Mart received conditional approval.

Before construction began, with support from Saint, the opponents filed suit, claiming that when the land was rezoned for commercial use three years earlier, neighbors had not been properly notified.

One member of the citizens group, Kip Kelly, says a woman he assumed was from a labor group or anti-Wal-Mart coalition had offered to fund the effort. Former Saint employees say the woman was a Saint operative and that Giant was paying the group's legal bills through Saint. Tracy Cadzow, the lawyer who represented the group, says she

started, and I was told to stop paying the attorney," says a former Saint employee.

Town officials reapproved commercial zoning for the land, thus giving proper notification to homeowners, which rendered the lawsuit moot. Giant and its parent company, Ahold, did not return calls for comment. Asked about the situation, Mr. Saint said his company is an advocate for its clients but doesn't determine overall strategy. "If it's legal to perform a service, we'll do it," he said.

Mr. Saint says there is nothing illegal about a company trying to derail a competitor's project. Companies have legal protection under the First Amendment for using a government or legal process to thwart competition, even if they do so secretly, he says.

The protection is known as the Noerr-Penn action doctrine



Several former colleagues of the baseball-loving project manager say he frequently told the story, which is false, in connection with Wal-Mart projects.

Mr. Budwick says the project manager told him that the fight in Mundelein would be lengthy and expensive, but it would cost the residents nothing because he was involved in politics and had sympathetic donors willing to fund their campaign.

"I didn't know where the money was coming from, and didn't want to know," says John Aoraham, a landscape-company owner whose large home abutted the development site.

The project manager arranged for a lawyer, William Graft, who had experience fighting land-use battles, to represent neighbors who opposed the development, according to Saint documents. Although the public hearing on the development was packed with opponents, accord-

ing to city trustee Ed Sullivan,

the city's board of trustees approved the project in July 2007.

Mr. Graft filed suit on behalf of four local residents with properties adjacent to the proposed development, appealing the board's decision and claiming their rights had been violated.

He sent monthly bills ranging from \$20,000 to \$55,000 to the project manager, who forwarded them to Saint, according to copies of the bills viewed by the Journal. Mr. Graft confirms that Saint paid those bills.

The suit remained in court for two and a half years—until March 25 of this year, when a judge ruled in favor of the city, saying its decision to approve the development was not "capricious, irrational or arbitrary."

The development is still in limbo. The plaintiffs have asked the judge to reconsider his decision. The judge says Mr. Brown-



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+1 202 626 1400 • Fax: +1 202 626 1418 • www.icsc.org

Pg 4

February 20, 2013

To: Senator Steve Cassano, Co-Chairman  
Representative Jason Rojas, Co-Chairman, and  
Members of the Planning and Development Committee

From: Kevin Solli, Connecticut Government Affairs Chairman,  
International Council of Shopping Centers (ICSC)

Subject: Senate Bill No. 814 An Act Concerning Intervention in Permit Proceedings Pursuant to the Environmental Protection Act of 1971

**The International Council of Shopping Centers (ICSC) was founded in 1957 as a professional trade association for the shopping center industry.** We have nearly 600 members in Connecticut and almost 60,000 members in about 90 countries. ICSC members include shopping center owners, developers, managers, marketing specialists, investors, retailers and brokers, engineers, architects, contractors, academics, students, and public officials. As a professional engineer working in the Shopping Center industry, I consider it a privilege to have designed and created some of the downtown centers and shopping malls that hundreds of thousands of people enjoy every day.

**The Connecticut Environmental Protection Act of 1971 was created with the best intentions,** to ensure that projects that could cause irreparable harm to the environment would not be allowed to move forward. **However, over the past forty years, extensive federal, state and local regulations have been established which now serve in that same function.** While people can point to examples of how 22a-19 has been used to stop "ill-advised" developments, there are countless examples of how 22a-19 has been used as a way to kill projects for competitive interests, and thwart economic development and investment in the state.

Throughout the state, local Inland Wetland and Planning and Zoning Commissions are empowered to review applications, hire peer review professionals, and require that applicants provide enough evidence to demonstrate that their projects will not cause adverse impact to the environment. **These elected commissioners work tirelessly on these projects, reviewing evidence, consulting with municipal engineers, attorneys and planners, and are relied upon to make informed decisions.** When an intervention petition is filed without any evidence to support the alleged impact to the environment, it undermines the process and principals that are imperative to local governance. **It is reasonable to require intervention petitions to be accompanied by evidence to support the claim of an environmental impact,** and the Supreme Court case Nizzardo vs. the STC made this law. Codifying existing case law is imperative, as there have been countless hours and several million dollars wasted due to frivolous claims, even after Nizzardo became law. These petitions cause delays, kill projects, and put Connecticut at a competitive disadvantage when compared to surrounding states that do not have similar statutes.

The ICSC, its members, and I support Senate Bill 814 and reform of 22a-19. To be clear I am not opposed to responsible interventions, or protecting the environment. As an engineer I feel I have a duty to protect the environment, and create places that are harmonious with the surrounding community. **I am opposed to the continued abuse of this statute, and allowing petitioners to use the "environment" as an excuse to stop economic development and investment in this great state.** The bill in its current form contains a number of items which were carried over from last year, and I've attached some suggested revisions to this testimony. State Statute 22a-19 must be reformed, and the time for that reform is now. Thank you for your consideration.

Proposed substitute language for SB 814

New language is underlined; omitted language is in [brackets].

Sec. 22a-19 Administrative Proceedings.

1 (a)(1) In any administrative proceeding where a public hearing is required  
2 or held, and in any judicial review thereof made available by law, the Attorney  
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8 that will, or that is reasonably likely to [have the effect of unreasonably polluting,  
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10 in the air, water or other natural resources of the state.

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33 and factors, there is a feasible and prudent alternative consistent with the  
34 reasonable requirements of the public health, safety and welfare.

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36 (c)(1) The decision of an administrative agency may be appealed to  
37 Superior Court by intervenors whose petition to intervene in the underlying  
38 matter was granted by the agency.

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40 (2) In the case of an appeal to Superior Court from a decision of an  
41 administrative agency, a party may intervene in that appeal under authority of  
42 this section only if that party has successfully intervened in the administrative  
43 proceeding from which the appeal is taken.



**HOME BUILDERS & REMODELERS ASSOCIATION  
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*Your Home  
Is Our  
Business*

February 13, 2013

Pg 3

To: Senator Steve Cassano, Co-Chairman  
Representative Jason Rojas, Co-Chairman  
Members of the Planning and Development Committee

From: Bill Ethier, CAE, Chief Executive Officer

Re: **Proposed Bill 814, AAC Intervention in Permit Proceedings Pursuant to the Environmental Protection Act of 1971**

The HBRA of Connecticut is a professional trade association with about nine hundred (900) member firms statewide employing tens of thousands of CT's citizens. Our members, all small businesses, are residential and commercial builders, land developers, remodelers, general contractors, subcontractors, suppliers and those businesses and professionals that provide services to our diverse industry and to consumers. While our membership has declined over the course of our seven-year Great Recession from its high of 1,500 members, we build between 70% to 80% of all new homes and apartments in the state each year.

**We support SB 814 as a vehicle to adopt the attached substitute language. As drafted, SB 814 picks up one of last year's versions but in response to discussions held by stakeholders last year we offer the attached substitute language.**

Background: CT's environmental intervention statute, sec. 22a-19, was and is intended to ensure that government agencies and commissions that review development proposals also properly address environmental issues within the jurisdiction of the body. Under this forty-plus year old law, adopted before most other environmental laws and not amended since, any person or organization can intervene or step into an application or into an appeal of a decision on an application to raise environmental issues.

**However, too many times this otherwise good environmental statute has been misused by intervenors to merely delay the final outcome of an application. Delay is the deadliest form of denial – and opponents of new development know it.** Without showing any evidence to justify their environmental claim, an intervenor can delay for months, even years, the final outcome of a development application. These *abusive* intervenors, i.e., those who simply do not want development of any kind or a competitor aiming to harm the success of another developer or their client, hope the extra time and costs will wear down the applicant so that they will give up and abandon a project.

In addition, knowing 22a-19 exists and how it has been misused, many developers do not even start certain projects. These potential economic and housing development projects create countless untold lost opportunities for Connecticut.

**Section 22a-19 must be amended with reasonable reforms to ensure intervention claims raise only legitimate environmental issues that would otherwise go improperly addressed. The attached substitute language does several things:**

Testimony, Home Builders & Remodelers Association of Connecticut, Inc.  
SB 814, AAC Intervention in Permit Proceedings Pursuant to the Environmental Protection Act of 1971  
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- **Subsection (a)(1):** editorial clarification of existing law that is consistent with new subsection (a)(2);
- **Subsection (a)(2):** new section that codifies the Nizado State Supreme Court case from 2002, which requires an intervention petition to state specific factual allegations of the nature of alleged environmental harm, and the material facts upon which the intervention is based;
- **Subsection (a)(3):** creates a time within which intervention petitions must be filed to give the reviewing municipal or state agency time to deal with it; and
- **Subsections (c)(1) and (2):** these sections provide that, in order to have standing to appeal a decision by a local agency or commission, that entity/person appealing must have participated in the underlying process as an intervenor. This adds an element of certainty and efficiency to the appeals process and requires those parties who wish to appeal to become involved prior to approval at the local level. Specifically, (c)(1) allows an intervenor to appeal a decision; (c)(2) allows an intervenor to participate in an appeal brought by another party.

**Even with these proposed changes, necessary environmental protections will remain in place. The revised law will still provide those who wish to raise real environmental issues about proposed projects the ability to do so. However, the proposed changes provide clarity, certainty and efficiency to a process that can be bogged down by extraordinary delays that deter investment in economic, housing and job growth in Connecticut.**

**Please support the attached proposed substitute for SB 814 to put an end to the misuse of an otherwise good intentioned law.**

Thank you for considering our comments on this critically important legislation.

Attachment

**Proposed substitute language for SB 814**

New language is underlined; omitted language is in [brackets].

Sec. 22a-19 Administrative Proceedings.

1           (a)(1) In any administrative proceeding where a public hearing is required  
2 or held, and in any judicial review thereof made available by law, the Attorney  
3 General, any political subdivision of the state, any instrumentality or agency of  
4 the state or of a political subdivision thereof, any person, partnership,  
5 corporation, association, organization or other legal entity may intervene as a  
6 party on the filing of a verified pleading demonstrating [asserting] that the  
7 proceeding or action for judicial review involves conduct [which has, or which]  
8 that will, or that is reasonably likely to [have the effect of unreasonably polluting,  
9 impairing or destroying] unreasonably pollute, impair or destroy the public trust  
10 in the air, water or other natural resources of the state.

11  
12           (2) The verified pleading shall: (A) contain specific factual allegations  
13 setting forth the environmental issue that the intervenor intends to raise, and (B)  
14 state the material facts upon which the intervention is based in sufficient detail to  
15 allow the reviewing authority to determine from the face of the petition whether  
16 the intervention implicates an issue within the reviewing authority's jurisdiction.

17  
18           (3) In administrative proceedings to which statutory deadlines apply, the  
19 verified petition must be submitted within the requirements of the statutory  
20 deadlines applicable to accepting evidence or testimony, giving the agency  
21 involved adequate time to consider and rule on the petition. In court  
22 proceedings, verified petitions must be submitted within the deadlines that  
23 otherwise apply to pleadings in such proceedings. Petitions shall be rejected by  
24 administrative agencies or courts if not filed within the applicable time frames  
25 for such proceedings. Petitions rejected for untimely filing are not subject to  
26 appeal.

27  
28           (b) In any administrative, licensing or other proceeding, the agency  
29 shall consider the alleged unreasonable pollution impairment or destruction of  
30 the public trust in the air, water or other natural resources of the state and no  
31 conduct shall be authorized or approved which does, or is reasonably likely to,  
32 have such effect as long as, considering all relevant surrounding circumstances  
33 and factors, there is a feasible and prudent alternative consistent with the  
34 reasonable requirements of the public health, safety and welfare.

35  
36           (c)(1) The decision of an administrative agency may be appealed to  
37 Superior Court by intervenors whose petition to intervene in the underlying  
38 matter was granted by the agency.

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40           (2) In the case of an appeal to Superior Court from a decision of an  
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