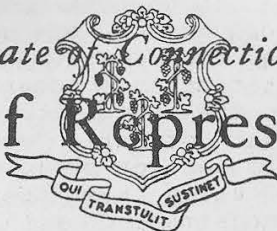


*State of Connecticut*  
**House of Representatives**



House of Representatives, March 8, 1971. The Committee on Environment reported through Rep. Ciampi of the 89th District, Chairman of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING A RIGHT OF ACTION FOR DECLARATORY AND EQUITABLE RELIEF FOR THE PROTECTION OF THE AIR, WATER AND OTHER NATURAL RESOURCES OF CONNECTICUT.

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

1 Section 1. This act shall be known and may  
2 be cited as "The Environmental Protection Act of  
3 1971."

4 Sec. 2. It is hereby found and declared that  
5 there is a public trust in the air, water and  
6 other natural resources of the state of  
7 Connecticut and that each person is entitled to  
8 the protection, preservation and enhancement of  
9 the same. It is further found and declared that  
10 it is in the public interest to provide all  
11 persons with an adequate remedy to protect the  
12 air, water and other natural resources from  
13 unreasonable pollution, impairment or destruction.

14 Sec. 3. The attorney general, any political  
15 subdivision of the state, any instrumentality or  
16 agency of the state or of a political subdivision  
17 thereof, any person, partnership, corporation,  
18 association, organization or other legal entity  
19 may maintain an action in the superior court for  
20 the county wherein the defendant is located,

21 resides or conducts business, except that where  
22 the state is the defendant, such action shall be  
23 brought in Hartford county, for declaratory and  
24 equitable relief against the state, any political  
25 subdivision thereof, any instrumentality or agency  
26 of the state or of a political subdivision  
27 thereof, any person, partnership, corporation,  
28 association, organization or other legal entity,  
29 acting alone, or in combination with others, for  
30 the protection of the public trust in the air,  
31 water and other natural resources of the state  
32 from unreasonable pollution, impairment or  
33 destruction.

34 Sec. 4. (a) When the plaintiff in any such  
35 action has made a prima facie showing that the  
36 conduct of the defendant, acting alone, or in  
37 combination with others, has, or is reasonably  
38 likely unreasonably to pollute, impair or destroy  
39 the public trust in the air, water or other  
40 natural resources of the state, the defendant may  
41 rebut the prima facie showing by the submission of  
42 evidence to the contrary. The defendant may also  
43 prove, by way of an affirmative defense, that,  
44 considering all relevant surrounding circumstances  
45 and factors, there is no feasible and prudent  
46 alternative to the defendant's conduct and that  
47 such conduct is consistent with the promotion of  
48 the public health, safety and welfare in light of  
49 the state's paramount concern for the protection  
50 of its natural resources from unreasonable  
51 pollution, impairment or destruction. Except as  
52 to the aforesaid affirmative defense, nothing in  
53 this section shall be construed to affect the  
54 principles of burden of proof and weight of the  
55 evidence generally applicable in civil actions.

56 (b) The court before which such action is  
57 brought may appoint a master or referee, who shall  
58 be a disinterested person and technically  
59 qualified, to take testimony and make a report to  
60 the court in the action. The costs of such  
61 appointment may be apportioned to the parties if  
62 the interests of justice require.

63 Sec. 5. (a) The court may grant temporary  
64 and permanent equitable relief, or may impose such  
65 conditions on the defendant as are required to  
66 protect the public trust in the air, water and  
67 other natural resources of the state from  
68 unreasonable pollution, impairment or destruction.

69 (b) If administrative, licensing or other  
70 such proceedings are required or available to  
71 determine the legality of the defendant's conduct,  
72 the court in its discretion may remand the parties  
73 to such proceedings. In so remanding the parties  
74 the court may grant temporary equitable relief  
75 where necessary for the protection of the public  
76 trust in the air, water and other natural  
77 resources of the state from unreasonable  
78 pollution, impairment or destruction and the court  
79 shall retain jurisdiction of the action pending  
80 completion of administrative action for the  
81 purpose of determining whether adequate  
82 consideration by the agency has been given to the  
83 protection of the public trust in the air, water  
84 or other natural resources of the state from  
85 unreasonable pollution, impairment or destruction  
86 and whether the agency's decision is supported by  
87 competent material and substantial evidence on the  
88 whole record.

89 (c) If the agency's consideration has not  
90 been adequate, and notwithstanding that the  
91 agency's decision is supported by competent  
92 material and substantial evidence on the whole  
93 record, the court shall adjudicate the impact of  
94 the defendant's conduct on the public trust in the  
95 air, water or other natural resources of the state  
96 in accordance with this act.

97 (d) Where, as to any administrative,  
98 licensing or other proceeding, judicial review  
99 thereof is available, the court originally taking  
100 jurisdiction shall maintain jurisdiction for  
101 purposes of judicial review.

102 Sec. 6. (a) In any administrative,  
103 licensing or other proceeding, and in any judicial  
104 review thereof made available by law, the attorney  
105 general, any political subdivision of the state,  
106 any instrumentality or agency of the state or of  
107 a political subdivision thereof, any person,  
108 partnership, corporation, association,  
109 organization or other legal entity may intervene  
110 as a party on the filing of a verified pleading  
111 asserting that the proceeding or action for  
112 judicial review involves conduct which has, or  
113 which is reasonably likely to have, the effect of  
114 unreasonably polluting, impairing or destroying  
115 the public trust in the air, water or other  
116 natural resources of the state.

117 (b) In any administrative, licensing or  
118 other proceeding, the agency shall consider the  
119 alleged unreasonable pollution, impairment or  
120 destruction of the public trust in the air, water  
121 or other natural resources of the state and no  
122 conduct shall be authorized or approved which  
123 does, or is reasonably likely to, have such effect  
124 so long as, considering all relevant surrounding  
125 circumstances and factors, there is a feasible and  
126 prudent alternative consistent with the reasonable  
127 requirements of the public health, safety and  
128 welfare.

129 Sec. 7. This act shall be supplementary to  
130 existing administrative and regulatory procedures  
131 provided by law and in any action maintained under  
132 this act, the court may remand the parties to such  
133 procedures. Nothing in this section shall prevent  
134 the granting of interim equitable relief where  
135 required and for so long as is necessary to  
136 protect the rights recognized herein. Any person  
137 entitled to maintain an action under this act may  
138 intervene as a party in all such procedures.  
139 Nothing herein shall prevent the maintenance of an  
140 action, as provided in this act, to protect the  
141 rights recognized herein, where existing  
142 administrative and regulatory procedures are found  
143 by the court to be inadequate for the protection  
144 of the rights. At the initiation of any person  
145 entitled to maintain an action under this act,  
146 such procedures shall be reviewable in a court of  
147 competent jurisdiction to the extent necessary to  
148 protect the rights recognized herein. In any  
149 judicial review the court shall be bound by the  
150 provisions, standards and procedures of this act  
151 and may order that additional evidence be taken  
152 with respect to the environmental issues involved.

1971

## STATE OF CONNECTICUT,

Bill No. 5037Page 1 of 5Introduced by WILLIAM R. RATCHFORD

Date .....

Ref. to Committee on The Environment

General Assembly,

January Session, A. D., 19 71

**AN ACT CONCERNING A RIGHT OF ACTION FOR DECLARATORY AND  
EQUITABLE RELIEF FOR THE PROTECTION OF THE AIR, WATER AND  
OTHER NATURAL RESOURCES OF CONNECTICUT**

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

Section 1. This act shall be known and may be cited as the "The Environmental Protection Act of 1971".

Section 2. It is hereby found and declared that there is a public trust in the air, water and other natural resources of the state of Connecticut and that each person is entitled to the protection, preservation and enhancement of same. It is further found and declared that it is in the public interest to provide all persons with an adequate remedy to protect the air, water and other natural resources from unreasonable pollution, impairment or destruction.

Section 3. The attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity may maintain an action in the appropriate superior court for declaratory and equitable relief against the state, any political subdivision thereof, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity for the protection

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SECTION

of the public trust in the air, water and other natural resources of the state from unreasonable pollution, impairment or destruction.

Section 4. (1) When the plaintiff in said action has made a prima facie showing that the conduct of the defendant has, or is reasonably likely to unreasonably pollute, impair or destroy the public trust in the air, water or other natural resources of the state, the defendant may rebut the prima facie showing by the submission of evidence to the contrary. The defendant may also prove, by way of an affirmative defense, that, considering all relevant surrounding circumstances and factors, there is no feasible and prudent alternative to defendant's conduct and that such conduct is consistent with the promotion of the public health, safety and welfare in light of the state's paramount concern for the protection of its natural resources from unreasonable pollution, impairment or destruction. Except as to the aforesaid affirmative defense, nothing in this section shall be construed to affect the principles of burden of proof and weight of the evidence generally applicable in civil actions.

(2) The court before which said action is brought may appoint a master or referee, who shall be a disinterested person and technically qualified, to take testimony and make a report to the court in the action. The costs of said appointment may be apportioned to the parties if the interests of justice require.

Section 5. (1) The court may grant temporary and permanent equitable relief, or may impose such conditions on the defendant as are required to protect the public trust in the air, water and other natural resources of the state from unreasonable pollution, impairment or destruction.

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(2) If administrative, licensing or other such proceedings are required or available to determine the legality of the defendant's conduct, the court in its discretion may remand the parties to such proceedings. In so remanding the parties the court may grant temporary equitable relief where necessary for the protection of the public trust in the air, water and other natural resources of the state from unreasonable pollution, impairment or destruction. In so remanding the parties the court shall retain jurisdiction of the action pending completion of administrative action for the purpose of determining whether adequate consideration by the agency has been given to the protection of the public trust in the air, water or other natural resources of the state from unreasonable pollution, impairment or destruction and whether the agency's decision is supported by competent material and substantial evidence on the whole record.

(3) If the agency's consideration has not been adequate, and notwithstanding that the agency's decision is supported by competent material and substantial evidence on the whole record, the court shall adjudicate the impact of the defendant's conduct on the public trust in the air, water or other natural resources of the state in accordance with this act.

(4) Where, as to any administrative, licensing or other proceeding, judicial review thereof is available, the court originally taking jurisdiction shall maintain jurisdiction for purposes of judicial review.

Section 6. (1) In any administrative, licensing or other proceeding, and in any judicial review thereof made available by law, the attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, associ-

ation, organization or other legal entity may intervene as a party on the filing of a verified pleading asserting that the proceeding or action for judicial review involves conduct which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state.

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

Section 7. This act shall be supplementary to existing administrative and regulatory procedures provided by law and in any action maintained under this act, the court may remand the parties to such procedures. Nothing in this section shall prevent the granting of interim equitable relief where required and for so long as is necessary to protect the rights recognized herein. Any person entitled to maintain an action under this act may intervene as a party in all such procedures. Nothing herein shall prevent the maintenance of an action, as provided in this act, to protect the rights recognized herein, where existing administrative and regulatory procedures are found by the court to be inadequate for the protection of the rights. At the initiation of any person entitled to maintain an action under this act, such procedures shall be reviewable in a court of competent jurisdiction to the



extent necessary to protect the rights recognized herein. In any judicial review the court shall be bound by the provisions, standards and procedures of this act and may order that additional evidence be taken with respect to the environmental issues involved.