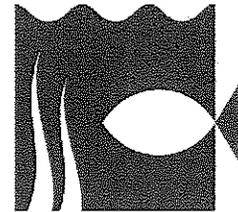


**Connecticut Fund  
for the Environment**



**Save the Sound®**  
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Connecticut Fund for the Environment

Energy & Technology Committee  
Public Hearing  
February 3, 2011

Submitted by: Charles J. Rothenberger, Staff Attorney

Regarding:

House Bill No. 6249, AN ACT ESTABLISHING A MORATORIUM ON THE SITING OF  
WIND PROJECTS UNTIL THE ADOPTION OF REGULATIONS

*Connecticut Fund for the Environment (“CFE”) is a non-profit environmental organization with over 6,500 members statewide. The mission of CFE is to protect and improve the land, air and water of Connecticut and Long Island Sound. For more than twenty-five years, CFE has used legal and scientific expertise to bring people together to achieve results that benefit our environment for current and future generations.*

Representative Nardello, Senator Fonfara and members of the Energy & Technology Committee, Connecticut Fund for the Environment offers this testimony on House Bill No. 6249, An Act Establishing A Moratorium On The Siting Of Wind Projects Until The Adoption Of Regulations.

CFE recognizes the benefits of having criteria to guide the siting of large wind turbine projects. However, we caution against allowing the process of developing such guidelines to delay the development and deployment of wind power within Connecticut.

Connecticut has formally recognized that the development and use of renewable energy resources is a critical part of its energy future and has provided the Connecticut Siting Council with jurisdiction over wind projects greater than one megawatt. Connecticut General Statutes Section 16a-35k states “that it is the policy of the state of Connecticut to . . . (3) develop and utilize renewable energy resources, such as solar and wind energy, to the maximum practicable extent; . . . .” Pursuant to Connecticut General Statutes Section 16-50i(a)(3), the Connecticut Siting Council (“Council”) has jurisdiction over “any electric generating or storage facility using

any fuel, including nuclear materials, including associated equipment for furnishing electricity, but not including . . . a facility (i) owned and operated by a “private power producer” . . . (ii) which is a qualifying small power production facility or a qualifying cogeneration facility . . . and (iii) which has, in the case of a facility utilizing renewable energy sources, a generating capacity of one megawatt or less . . . .” Under current law, applications for wind projects under the Council’s jurisdiction are subject to a declaratory ruling process. Connecticut General Statutes Section 16-50k (a). Pursuant to Section 16-50j-40 of the Regulations of Connecticut State Agencies, the Council may respond in one of five ways to a petition for a declaratory ruling. It may (1) issue the declaratory ruling; (2) order the matter set for further proceedings (including a public hearing); (3) agree to issue the ruling by a specified date; (4) initiate a regulation-making pursuant to the Connecticut Uniform Administrative Procedures Act; or (5) decide not to issue a ruling, stating the reason for its actions.

CFE respectfully suggests that providing statutory direction to the siting council to formally evaluate the potential impacts from specific projects with respect to (1) appropriate setbacks based on the project proposal; (2) flicker; (3) ice throw; (4) blade shear and (5) impact on natural resources may accomplish the goals of this bill without delaying the development of wind resources in the state or providing uncertainty to the renewable energy businesses. It is CFE’s understanding that, as a matter of course, many of these issues (although not all) are already evaluated during the Council’s review of project proposals. As precedent for this, we point the Committee to Conn. Gen. Stat. Sec. 16-50t (b), which provides just such direction to the Council to adopt standards for “best management practices” for electric and magnetic fields.

If the Committee feels that a statutory directive is inadequate and that regulations are necessary, CFE suggest that, rather than permit an open-ended process during which time the development of significant Class I renewable wind resources within the state would be stalled, establishing a deadline by which the Council must adopt regulations for the siting of wind projects larger than one megawatt would be a prudent course of action.

Connecticut General Statutes Sec. 4-168 establishes the timelines for agency adoption of regulations pursuant to a Public Act. Subsection (b) requires that notice of intent to adopt such regulations be published in the Connecticut Law Journal within five months of the effective date of the Public Act or by a time specified in the Public Act. The agency must then submit the

required regulations to the standing legislative regulation review committee within one hundred eighty days after publication of intent. Subsection (a) requires that the agency provide at least thirty days' notice of its intent to adopt regulations and provide the opportunity for a public hearing if requested by certain interested persons within 14 days of publication of the notice.

CFE recommends that this timeline be expedited to the most practical extent while still providing opportunity for public input. Accordingly, we suggest that the Siting Council be directed to adopt regulations no later than sixty days from the passage of the legislation.

Drafting regulations that will adequately address concerns related to noise, flicker and other issues should be relatively easy to draft and be able to quickly move through the regulation adoption process. An increasing number of jurisdictions around the country are looking at similar issues and have drafted guidance documents that can be used as a starting point for Connecticut's effort. For example, both the New Hampshire Office of Energy and Planning and the Massachusetts Department of Energy Resources (DOER) have issued guidance documents for local regulation of wind facilities and both offer similar guidance in dealing with flicker" in the model ordinances provided by their offices. Both ordinances require that wind facilities be sited in a manner that minimizes flicker, with NH establishing an aggregate performance threshold of less than 30 hours per year on abutting occupied buildings. Both model ordinances place the burden on the applicant to prove that shadow flicker will not have a significant adverse impact on neighboring or adjacent uses. CFE suggests that either state has the experience to provide a good model for Connecticut. Massachusetts has twenty times the number of wind projects operating or under development as Connecticut, and New Hampshire has over 300 MW of wind generation permitted and/or operating.

The regulation of wind projects less than one megawatt can probably be adequately handled at the municipal level by local planning and zoning regulations. CFE suggests that the relevant state agency could produce draft model zoning regulations for adoption at the local level as has been the approach in other states.

CFE endorses the proposal that all developers of wind projects commit to decommissioning the facility and provide a decommissioning plan for the facility.

With respect to the public hearing requirement, CFE agrees that this procedure could be strengthened. Current regulations provide for a public hearing pursuant to a requests for a declaratory ruling only if "the council deems a hearing necessary or helpful in determining any issue" concerning the request. Regulations of Connecticut State Agencies Section 16-50j-40 (b). CFE suggests augmenting that language by requiring a public hearing if requested in writing by 25 interested persons.

In conclusion, while CFE recognizes the benefits of having guidelines to govern the siting of large wind turbine projects we caution against allowing the process of developing such guidelines to indefinitely suspend the development of wind power within Connecticut and urge the Committee to proceed accordingly