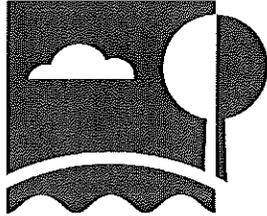
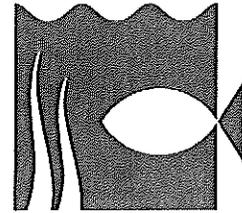


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**Connecticut Fund
for the Environment**



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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,

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