

Environment Committee JOINT FAVORABLE REPORT

Bill No.: SB-350

AN ACT REQUIRING THE POSTING OF A DECOMMISSIONING BOND FOR

Title: CERTAIN SOLAR PROJECTS.

Vote Date: 3/22/2018

Vote Action: Joint Favorable Substitute

PH Date: 3/16/2018

File No.: 163

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SPONSORS OF BILL:

Environment Committee

Sen. Ted Kennedy, 12th Dist.

REASONS FOR BILL:

This bill seeks to assist farmers with the restoration of their farmland in instances where such farmland was once used as a solar photovoltaic facility (solar farms). Concerns, shared with the Environment Committee, arises when solar companies wish to not renew their lease, are unable to renew such lease, or are no longer in business. In these cases, farmers may be left with shouldering the costs of removing solar equipment, and with land restoration. The bill requires the posting of a decommissioning bond, in the amount sufficient to restore prime farmland to a productive agricultural condition, by the person seeking the development.

Substitute Language LCO No. 3051:

Substitute language adds an additional section, instructing the Commissioner of the Connecticut Department of Agriculture (DoAg) to convene a working group to develop a recommendation for the standard which may be applied by the Connecticut Department of Energy and Environmental Protection (DEEP) and DoAg in evaluating the effects of solar photovoltaic facilities on core forest and prime farmland. Concerns, requests, and comments have been shared with the Environment Committee in regards to changing the term “materially affect” (as currently used in section 16-50k of the general statutes) to “permanently affect” as recommended by many advocates in the solar industry. Section 16-50k requires DEEP (for applications on core forest) or DoAg (for applications on prime farmland) to represent to the Connecticut Siting Council in writing that a solar facility application on core forest or prime farmland will not materially affect the lands status.

RESPONSE FROM ADMINISTRATION/AGENCY:

Robin Stein, Chairman, Connecticut Siting Council (CSC): Opposes the bill. CSC already requires developers to submit a Project Decommissioning Plan. These existing decommissioning plan requirements include financial assurance to ensure sufficient funds are available to decommission the facility and to restore the site as near as possible to its original condition at the end of the project's useful life, rather than to restore the site to a condition that is undefined and possibly undesirable and/or objectionable to the title owner of the real property. Additionally, the bill does not define "productive agricultural condition" and without a mechanism for property owner consent or to opt out, the bill interferes with private property rights.

NATURE AND SOURCES OF SUPPORT:

Chelsea Gazillo, Project Director, Working Lands Alliance: While some solar developers may agree to pay for the decommissioning of a solar arrays, this bill ensures that land owners are not left with acres of defunct solar equipment on their land years after their productive use. The bill appropriately puts the onus of decommissioning on the developer, not the farmer or land owner. The bill insures that farmland taken out of agricultural use for solar energy production is not lost forever but made suitable again for agriculture in the future.

Eric Hammerling, Executive Director, Connecticut Forest & Park Association: The Connecticut Forest & Park Association supports the bill; however, recommends "core forests," which are contemplated alongside prime agricultural lands for similar protection in other sections of the bill, also carry the requirement of a decommissioning bond to remediate a site after it is significantly disturbed.

NATURE AND SOURCES OF OPPOSITION:

Francis Pullaro, Executive Director, RENEW Northeast, Inc.: For cost-effective attainment of Connecticut's environmental, renewable energy and economic development goals, a solar energy project should not face more burdensome and costlier decommissioning requirements than comparably sized projects to be fueled by natural gas or oil. However, if the committee continues to pursue a decommissioning bond requirement, RENEW Northeast Inc. recommends the bill be amended to reduce the cost of new renewable energy development in the following manner: (1) the developer should have the flexibility to select the form of financial security whether performance bond, surety bond, letter of credit, parental guaranty or any other form of financial assurance acceptable to the Connecticut Siting Council, (2) the amount of the financial security should equal the cost of decommissioning the solar arrays offset by the salvage value of the solar panels and components, and (3) financial security for decommissioning should not be required if the landowner exercises an option to buy-out and continue to use the original or replacement equipment to generate electricity or otherwise use the land for purposes not requiring restoration of the soil to its status prior to solar development.

Renewable Energy and Efficiency Business Association, Inc. (REEBA): The bill is unnecessary as the Siting Council currently has the authority to require a decommissioning bond as it sees fit; therefore, the issue should be resolved through negotiations between the land owner and the solar developer. Additionally, REEBA recommends a strike all amendment to the bill that would make the following changes to Public Act 17-218 (section 16-50k of the general statutes): (1) change “materially” to “permanently” as the standard for determining impact on prime farmland and core forest, (2) require the Connecticut Department of Energy and Environmental Protection (DEEP) and the Department of Agriculture (DoAg) to affirmatively notify the Connecticut Siting Council (CSC) if a solar array would permanently impact prime farmland and core forest, (3) place a time limit on the notification process in which the CSC should be notified by DEEP and DoAg, and (4) allow the CSC to consider a mitigation plan when evaluating applications for solar projects.

David Sutherland, Director of Government Relations, The Nature Conservancy: Requiring solar facilities to post a bond to restore the land to productive agriculture would constitute a more stringent requirement than that placed on other types of power plants, and on commercial and residential developments. It would therefore violate the Nature Conservancy’s principle that the state should not make it more difficult to site solar projects on a tract of land than it is to site a fossil fuel power plant, a housing development, or a strip mall.

Reported by: Steve Smith / Ussawin R. Bumpen Date: 4/2/2018