



Save the Sound[®]

Action for our region's environment.

**Testimony of Save the Sound
Before the Environment Committee**

In support of, with modifications to, House Bill No. 6551
AN ACT CONCERNING ENVIRONMENTAL AIR QUALITY

Submitted by Christopher P. Kelly, Esq.
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Save the Sound is a nonprofit organization representing over 4,200 member households and 10,000 activists statewide. Our mission is to protect and improve the land, air, and water of Connecticut and the entire Long Island Sound region. We use legal and scientific expertise and bring citizens together to achieve results that benefit our environment for current and future generations.

Dear Co-Chairs Cohen and Gresko, Vice-Chairs Slap and Palm, Ranking Members Miner and Harding, and members of the Environment Committee:

Save the Sound supports passage of HB 6551, which would promote more equitable environmental protection in disadvantaged communities across Connecticut. Section 1 of the bill establishes an environmental equity working group within the Department of Energy and Environmental Protection to identify disadvantaged communities for targeted greenhouse gas and air pollutant reduction. Section 2 amends Section 22a-20a of the Connecticut General Statutes, a section known as Connecticut's environmental justice law, to empower DEEP and the Siting Council to reject permit applications for certain facilities that would unnecessarily pollute vulnerable communities.

The provisions contained in this bill are entirely necessary for our state to create a healthy and fair environment. Since 1993, DEEP has maintained an Environmental Equity policy which recognizes the inequitable impact of pollution and encourages community participation in the planning of certain potentially-polluting facilities.¹ Despite the efforts of the Department and the passage of Connecticut's environmental justice law in 2008, certain communities in both urban and rural parts of the state continue to disproportionately suffer environmental burdens, leading to alarming rates of health conditions, like asthma, and economic depression.² The communities hosting these polluting facilities may not even be serviced by those same facilities, assuming the polluting effects on behalf of surrounding towns and neighborhoods.³

¹ "The policy of this Department is that no segment of the population should, because of its racial or economic makeup, bear a disproportionate share of the risks and consequences of environmental pollution or be denied equal access to environmental benefits." DEEP, Environmental Equity Policy, [found here](#).

² Black and Hispanic minors are five and-a-half and four and-a-half times more likely, respectively, to go to the emergency room due to asthma than white minors. <https://www.cthealth.org/wp-content/uploads/2020/01/Health-disparities-in-Connecticut.pdf>

³ <https://www.nhregister.com/news/article/New-Haven-Mayor-environmental-advocates-to-urge-15802505.php>

Meanwhile, these same communities are expected to make progress towards decarbonizing and adapting to climate change. Despite the clear climate and clean energy goals that we have adopted as law, we continue to permit new, pollution-spewing fossil fuel plants in our local communities – adding to the burden imposed by our already existing plants. As we seek to strengthen the laws designed to protect our most vulnerable citizens from pollution, it is critical that the state’s progress towards meeting its greenhouse gas reduction and clean energy goals is not simultaneously hindered or undone by the individual decisions of state agencies.

Rather than moving us closer to our goals, such actions merely add to the urgency and difficulty of the choices we will face in the future.

Therefore, Save the Sound supports the language of HB 6551, and asks the Committee for additional language which will enshrine in law the tools of accountability and transparency necessary to remedy our environmental disparities. The amendments are described below:

Establish Clear Accountability for Greenhouse Gas Reduction

1. Add language holding state agencies accountable for their decision-making with respect to meeting Connecticut's greenhouse gas reduction obligations under the Global Warming Solutions Act.
2. Provide for citizen enforcement of the Global Warming Solutions Act through a citizen suit provision.

We must ensure that all arms of the government are supporting our climate and clean energy goals to achieve a healthy and prosperous future for all. And when government agencies fail to do so, citizens should be able to hold them accountable.

As noted in the Final Report of the Mitigation Strategies Working Group of the Governor’s Council on Climate Change:

While Connecticut appears to be on track to meet its 2020 GHG reduction target, much steeper emission reductions will be needed to keep us on track to reach our 2030 and 2050 targets. To ensure that we continue to make the necessary progress, the state must have a disciplined and consistent approach to prioritizing mitigation policies and evaluating the climate impact of proposed actions. . . .

National and subnational actors are adopting increasingly comprehensive approaches to ensure that they remain on track to fulfill their GHG emissions-reduction obligations. While adoption of comprehensive GHG reduction and reporting requirements is critical to addressing needed emissions reductions, governments are recognizing that comprehensive compliance frameworks also are essential to ensure that discrete actions by agencies do not inadvertently cause states to diverge from the path toward to their formal reduction targets.⁴

⁴ Final Report, Progress on Mitigation Strategies Working Group, Governor’s Council on Climate Change at 14 (November 2020)

In light of these concerns and trends, the Mitigation Strategies Working Group recommended statutory requirements substantially similar to those proposed in this testimony.⁵

Delay Implementation of Section 2 Until DEEP Has Developed the Necessary Tools

3. Add language clarifying that Section 2 will go into effect at a specific future date, allowing DEEP time to prepare for its implementation.

Section 2 of HB 6551 makes an important change to permitting processes by requiring DEEP and the Siting Council to consider the cumulative impact of polluting facilities on certain communities in comparison to the environmental conditions in less disadvantaged communities. It also requires denying a permit for a facility when there are less harmful alternatives to the application available.

These requirements are an important goal for environmental justice reform and are overdue in Connecticut. The language in this section substantially derived from the much-lauded environmental justice law passed by New Jersey in 2020 and which is seen as a model for other states to adopt.⁶ There is no reason why Connecticut cannot and should not adopt similar legislation as well, and it is important that we do so.

However, it is equally important that sufficient time is given for the law to be enacted and administered properly. The language in Section 2 requires that DEEP compile data and establish a method for comparing the relative environmental justice burdens of different communities. Developing this system may ultimately be a complex task, requiring that data be gathered on the neighborhood level and determining the relative burdens of various polluting facilities. DEEP will need time to prepare for Section 2 and this task will be made all the more difficult by the impending wave of retirements expected in 2022.

Therefore Save the Sound asks that the legislature still mandate the implementation of Section 2, but delay its implementation to allow time to prepare.

Make the Environmental Justice Law More Comprehensive

4. Expand the definition of "environmental justice community" to include racial and linguistic characteristics, in addition to economic characteristics.

5. Expand the definition of "affecting facility" to include transfer stations, recycling facilities, composting facilities, resource recovery facilities, and data centers.

While the environmental justice law has established important permitting processes to protect our most vulnerable communities, it must be amended to unequivocally address the needs of vulnerable communities. Existing definitions within the statute leave significant gaps that need to

⁵ See *id.*, at 15.

⁶ <https://www.politico.com/states/new-jersey/story/2020/08/27/new-jersey-legislature-sends-groundbreaking-environmental-justice-bill-to-governors-desk-1313030>

be filled by expanding the application of the law to more communities and more types of polluting facilities.

First, the definition of "environmental justice community" must be expanded. Currently, the statute only contemplates environmental justice communities as communities in economic distress and fails to consider the impact of racial or linguistic character. Environmental justice cannot be achieved if the law only recognizes economic barriers. Therefore we ask that the definition of "environmental justice community" be expanded to contemplate racial and linguistic characteristics of a community.

Second, the definition of "affecting facility" must also be expanded to address facilities with the potential to similarly harm communities as those already named in the statute, but which are not clearly included. It is neither efficient nor fair for some types of facilities to adhere to the process outlined in this statute while other types are potentially considered exempt and may proceed to pollute Connecticut's most vulnerable communities without public input. Facilities which should be explicitly covered by the statute include, but are not limited to: waste transfer stations, recycling facilities, composting facilities, resource recovery facilities, and data centers, particularly those powered by diesel and other fossil fuel generators.

Require Meaningful Public Participation and Dialogue

6. Strengthen the public notice and process requirements for public participation plans under Conn. Gen. Stat. Section 22a-20a.

7. Require community involvement in the negotiation of a community environmental benefit agreement.

Meaningful public participation is the core intention of the environmental justice law. The existing statute requires that the community members who must live with the externalities of the facility also have a voice in the permitting process. While Section 2 of HB 6551 reinforces the ability of DEEP to substantively review an affecting facility's permit application, it does not adequately provide the tools for the public to participate in this review.

House Bill 6551 should be amended to codify requirements for the public participation plan already required by the environmental justice law. DEEP works with applicants to develop adequate public participation plans to inform the community about a potential affecting facility. Yet, certain requirements should be uniform across all such proposals. First, applicants should be required to mail meeting notices to all residents within the vicinity of the project in the weeks before a public meeting held as part of the plan, to ensure that the notice provided to community members is timely and thoroughly disseminated. Second, public meetings should be required to be recorded and made publicly available following a meeting, for the purposes of informing community members who could not attend the meeting as well as maintaining a public record of the discussions held at the meeting. Third, applicants should also be required to provide translation services at the meeting for any languages which are primarily spoken by at least five percent of the community.

Community members must also have the opportunity to participate in the negotiation of community environmental benefit agreements, which are explicitly authorized by current statute. While the public has the opportunity to speak about a potential agreement in advance of negotiations, only the chief elected official or town manager is required to participate in negotiations, while the legislative body of the municipality approves the final agreement. In addition to the participation of the chief elected official or town manager of the municipality, a requisite number of community members, who are not municipal officials, should be members of a negotiating committee to prepare the terms of any such agreement. Any amendment of any terms in such an agreement must be approved by the negotiating committee.

Provide for Accountability and Enforcement of the Environmental Justice Law

8. Provide for citizen enforcement of the environmental justice law through a citizen suit provision.

The provisions contained in this bill and in the existing statutes can only be effective if the tools exist to enforce them. Any law which so heavily affects the public, requires participation by the public, and potentially harms the public, should also be subject to review and enforcement by the public.

While we have faith in the desire of state agencies to enforce the enacted provisions of the environmental justice law, there are not sufficient resources to ensure that every requirement is met. Therefore any citizen should be empowered to appeal the approval or issuance of a permit or certificate for failure to comply with the requirements of the environmental justice law. Furthermore, failure to comply with the law should constitute "unreasonable pollution" in accordance with Chapter 435.

Save the Sound urges the committee to support HB 6551 along with the above requested amendments. Connecticut is overdue to start paying more attention to the communities saddled with the greatest environmental harms. The committee now has the opportunity to present transformative legislation that will make an enormous difference in the lives of so many.

Thank you for the opportunity to provide the above testimony and for your time and consideration of these matters.

Respectfully submitted,

/s/ Christopher P. Kelly
Christopher P. Kelly, Esq.
Peter B. Cooper Legal Fellow
Save the Sound
900 Chapel Street, Suite 2202
New Haven, CT 06510
(203) 787-0646
ckelly@savethesound.org