

**Ohio Senate
General Government & Agency Review Finance Subcommittee
Interested Party Testimony
House Bill 49**

**Josh Knights, The Nature Conservancy in Ohio
May 23, 2017**

Chairman Jordan, Vice Chair O'Brien and members of the General Government and Agency Review subcommittee: I am Josh Knights, the State Director for The Nature Conservancy in Ohio. We appreciate the opportunity to testify as an interested party on HB 49, the FY2018-19 biennial operating budget as passed by the Ohio House of Representatives.

The Nature Conservancy is a non-partisan, science-based organization that seeks to conserve the lands and waters on which all life depends. We work collaboratively with businesses, farmers, sportsmen groups, government and local communities to develop pragmatic, market-based solutions to conservation challenges, including air pollution. More than 65,000 Ohioans are Nature Conservancy supporters.

Amendment to Windfarm Setback Law

Earlier this month, we sent a letter to Senate President Obhof requesting that the current restrictive setback for new wind development be relaxed as part of his interest in rolling back two dozen regulations that are barrier to business (see attached). The previous setback included a requirement that a wind turbine be 1,125 feet back from a habitable, residential structure. It was changed in 2014 to be 1,125 feet back from the property line. Not only is the current setback excessive, it is unnecessary. The Ohio Power Siting Board already has the authority to require greater setbacks on a case-by-case basis. The impact, however, is not in dispute. As you have heard in previous testimony, no new wind farms have been sited in Ohio since this law changed in 2014. This regulation is a significant barrier to business, reducing investments in Ohio and forfeiting jobs and tax revenues to other states with more reasonable setback requirements.

Funding for Water Quality Programs

HB 49 is a critical opportunity to continue the leadership by the Governor and the General Assembly on improving our water quality in Ohio. Our state has committed to reducing the level of phosphorus in Lake Erie by 40 percent by 2025 with an interim goal of 20 percent by 2020. Adequate funding for state programs that contribute to these outcomes are vital to local economies that rely on our freshwater assets. The outdoor recreation industry in Ohio -- largely dependent on lakes, rivers and streams -- contributes more than \$43 billion dollars and 196,000 direct jobs to the state's economy. We recognize the financial realities our state faces; however, we cannot afford to divert money from programs that invest in our quality of life and generate economic growth.

- **Healthy Lake Erie Program Fund.** HB 49 as introduced included a 20 percent decrease for FY2018 compared to FY2017. The House made an additional cut of 1.5 percent. The fund has been used strategically in watersheds with high levels of phosphorus to implement practices that prevent excessive nutrient loading. As we continue to work on the root causes of the harmful algae blooms in Lake Erie and other bodies of water to avert another Toledo drinking water crisis, maintaining funding for this program is prudent. We ask that funding for FY2018 be increased to the FY2017 level.
- **State Match for Soil & Water Conservation Districts.** The Soil & Water Conservation Districts across the state are on the frontline in the battle against excessive nutrient loading. They disseminate information and serve as a critical connection to farmers in all 88 counties. For these reasons, we strongly support the request made by the Ohio Federation of Soil & Water Conservation Districts to return to a 1:1 match for state funding as provided for in statute. We cannot afford to underfund these “boots on the ground” partners who are working collaboratively with local farmers to improve water quality and soil health.
- **Heidelberg University Water Quality Lab.** There is a business adage that you cannot manage what you cannot measure. For decades, Heidelberg University has provided reliable and consistent monitoring of phosphorus levels in the major tributaries to Lake Erie. We support continued funding for this monitoring in the Ohio Department of Agriculture’s budget. We request a modest increase over the proposed level of \$250,000 to \$275,000 for each year of the biennium. Heidelberg’s research has greatly assisted scientists and policymakers in defining the scope of our water quality challenge in Lake Erie.
- **Lake Erie Commission.** We fully support the as-introduced funding levels requested for FY2018-19 for the Lake Erie Commission (\$568,000 for the first year and \$571,000 for the second) as well as proposed changes to its mission and responsibilities. The commission will focus on the twin policy challenges of excessive nutrient loading and the beneficial use of dredge material. It will also play more of a coordinating role with local, state and federal partners on programs and policies related to Lake Erie. These changes align with the so-called “Blue Accounting” initiative supported by the Council of Great Lakes Governors, International Joint Commission, and The Nature Conservancy.
- **Ohio Sea Grant.** Ohio Sea Grant is part of a federal-state investment that supports the health and economic resilience of our nation’s coastal communities, including the Great Lakes. Of the federal appropriation, 95 percent is distributed to coastal states to solve local challenges such as harmful algae blooms. Sea Grant plays a pivotal role as a credible source of research and information on water quality issues in Ohio. The President’s “skinny budget” for FY2018 has proposed eliminating this appropriation. The Nature Conservancy is engaging the Ohio congressional delegation to restore this federal appropriation and it is important that Ohio continue our state investment in the program. We respectfully ask the General Assembly to provide the as-introduced amount of \$299,250 for each year for Ohio Sea Grant given the continued water quality challenges our state faces.

- **Ohio EPA Laboratory Funding Cuts.** We support Ohio EPA Director Craig Butler's request during his testimony to reinstate funding levels and spending authority for the non-GRF programs at the agency, specifically those that support laboratory testing for drinking and surface waters. The testing is critical to detect lead and toxins from harmful algal blooms in our water systems. Given the recent report by NOAA indicating that Lake Erie may be facing a higher bloom probability in 2017 than last year, we support the ability of the agency to use existing funding in the most expeditious manner. Public health and safety are at stake.

Aquatic Invasive Species

In the last General Assembly, former Representative Dave Hall championed legislation, HB 396, to strengthen existing regulations regarding new aquatic invasive species entering Ohio and harmonize approaches within the Great Lakes states. In the past year, the Ohio Department of Natural Resources (ODNR) has made some important administrative changes that address most of the provisions in that bill. The final piece of HB 396 requires ODNR to develop a written risk assessment process for evaluating the threat of new organisms becoming an aquatic invasive species. This language has been approved by ODNR and was added to the House version of the budget. We respectfully ask for the Senate's support of the House language.

Total Maximum Daily Loads

HB 49 also includes language to respond to the Ohio Supreme Court decision from 2015 that requires a new total maximum daily load (TMDL) process. TMDLs establish the activities and strategies for improving the quality of Ohio's lakes and streams. Language in HB 49 seeks to address the court's findings by providing a process for additional input by all stakeholders. The Nature Conservancy supports the revised language OEPA has offered.

Clean Ohio Debt Service Line Item Reduction

We support the request by Ohio Public Works Commission Director Mike Miller to restore the reduction made by the House to debt service for the Clean Ohio Fund. The program funds greenspace conservation, farmland preservation and trails construction statewide through the issuance of general obligation bonds. It is a highly popular program that was reauthorized in 2008 with the support of nearly 70 percent of the electorate. Because the Clean Ohio Fund is a revolving fund, new bonds can be issued only after previous debt is retired. Decreasing the Clean Ohio debt service payments in HB 49 would mean that less funds would be available for future conservation and recreation.

Oil & Gas Provisions on Unitization and Royalty Payment

The Nature Conservancy has two nature preserves (Stillfork Swamp and Rothenbuhler Woods) in areas that may be subject to unitization. As an interested party in the process, we are concerned about modifications made by the House to HB 49 as introduced that would amend state oil & gas law.

- **Metro/County Park District Exemption.** The House added language to HB 49 that we understand would exempt State Parks and State Nature Preserves from the forced pooling or “unitization” provisions. We support those exemptions. We respectfully request that the exemption be further extended to park districts established under ORC Chapter 1545, such as metroparks and county park districts.
- **Notification Timeframe.** The House also modified language to expedite the unitization process by shortening (1) the notification period to landowners with unleased mineral rights and (2) administrative review time of ODNR. These changes pose real challenges to the administrative processes that are required with unitization. In addition, continued low gas prices do not suggest that a greater sense of urgency than what currently exists is necessary.
- **Royalty Payment & Profit Percentage Recovery.** New language regarding the payment of royalties to landowners who are forced into the pool could, in the words of ODNR Director Zehringer, mean those landowners wait 25 to 30 years to receive the royalties they are entitled to. At present, the law provides that a reasonable interest charge applied to unleased mineral owners cannot exceed 200 percent. The change would flip this to require that the charge be at least 200 percent. As a landowner that is potentially impacted by these changes, The Nature Conservancy supports the requests made by ODNR to keep the reasonable interest charge flexible and consistent with similar statutes such as the Mandatory Pooling statute.

Thank you again for this opportunity to testify as an interested party on HB 49 as passed by the House. I would be happy to try to answer any questions.

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May 15, 2017

The Honorable Larry Obhof
Ohio Senate
1 Capitol Square
Columbus, Ohio 43215

Dear President Obhof:

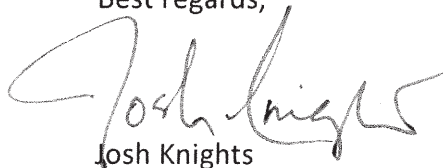
In March, you stated that one of your goals as President of the Ohio Senate is to remove or significantly reduce two dozen regulations that are a barrier to business in our state. We respectfully request that the current restrictive setback for new wind farms, passed in 2014, be one of the regulations that you seek to roll back. This regulation is a significant barrier to business, reducing investments in Ohio and forfeiting jobs and tax revenues to other states with more reasonable setback levels.

The current setback requires that a wind turbine be sited 1,125 feet from the tip of a turbine's blade to the nearest property line. It became law through an amendment to HB 483, the mid-biennium budget review bill, in 2014. Prior to the change, the 1,125-foot setback was measured from the nearest habitable, residential structure. (Both the previous and current setback also require the turbine be setback a distance of 1.1 times the height of the turbine, including the blade, from the property line.) Not only is the current setback excessive, it is unnecessary. The Ohio Power Siting Board has the authority to require greater setbacks on a case-by-case basis.

The more restrictive setback rules have had a chilling effect on investments in renewable energy development, putting business growth and economic opportunities at risk. John Stephenson, Amazon's manager for U.S. public policy, testified last year before the Ohio House Public Utilities Committee that the current setback rules "have significantly diminished the attractiveness to further investments in wind generation in Ohio." Since they took effect, there have not been any new large-scale wind farms proposed in Ohio.

We have included a policy paper on this significant barrier to business in Ohio. We would welcome the opportunity to discuss this matter further with you and your staff. Please feel free to contact Tracy Freeman, our director of government relations, or me at (614) 717-2770.

Best regards,



Josh Knights
Executive Director, Ohio