



Senate

General Assembly

File No. 301

January Session, 2001

Substitute Senate Bill No. 869

Senate, April 17, 2001

The Committee on Planning and Development reported through SEN. DAILY of the 33rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING LOCAL PARTICIPATION IN THE SITING OF CELLULAR TOWERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (a) of section 16-50i of the general statutes is
2 repealed and the following is substituted in lieu thereof:

3 (a) "Facility" means: (1) An electric transmission line of a design
4 capacity of sixty-nine kilovolts or more, including associated
5 equipment but not including a transmission line tap, as defined in
6 subsection (e) of this section; (2) a fuel transmission facility, except a
7 gas transmission line having a design capability of less than two
8 hundred pounds per square inch gauge pressure; (3) any electric
9 generating or storage facility using any fuel, including nuclear
10 materials, including associated equipment for furnishing electricity but
11 not including an emergency generating device, as defined in
12 subsection (f) of this section, or a facility (i) owned and operated by a

13 private power producer, as defined in section 16-243b, (ii) which is a
14 qualifying small power production facility or a qualifying
15 cogeneration facility under the Public Utility Regulatory Policies Act of
16 1978, as amended, or a facility determined by the council to be
17 primarily for a producer's own use, and (iii) which has, in the case of a
18 facility utilizing renewable energy sources, a generating capacity of
19 one megawatt of electricity or less and, in the case of a facility utilizing
20 cogeneration technology, a generating capacity of twenty-five
21 megawatts of electricity or less; (4) any electric substation or
22 switchyard designed to change or regulate the voltage of electricity at
23 sixty-nine kilovolts or more or to connect two or more electric circuits
24 at such voltage, which substation or switchyard may have a substantial
25 adverse environmental effect, as determined by the council established
26 under section 16-50j, and other facilities which may have a substantial
27 adverse environmental effect as the council may, by regulation,
28 prescribe; (5) such community antenna television towers and head-end
29 structures, including associated equipment, which may have a
30 substantial adverse environmental effect, as said council shall, by
31 regulation, prescribe; and (6) such telecommunication towers,
32 including associated telecommunications equipment, owned or
33 operated by the state, a public service company or a certified
34 telecommunications provider or used in a cellular system, as defined
35 in the Code of Federal Regulations Title 47, Part 22, as amended, or
36 used in personal communications services, as defined in the Code of
37 Federal Regulations Title 47, Part 24, as amended, which may have a
38 substantial adverse environmental effect, as said council shall, by
39 regulation, prescribe.

40 Sec. 2. Subsection (a) of section 16-50k of the general statutes is
41 repealed and the following is substituted in lieu thereof:

42 (a) Except as provided in subsection (b) of section 16-50z, no person
43 shall exercise any right of eminent domain in contemplation of,
44 commence the preparation of the site for, or commence the

45 construction or supplying of a facility, or any modification of a facility,
46 that may, as determined by the council, have a substantial adverse
47 environmental effect, in the state without having first obtained a
48 certificate of environmental compatibility and public need, hereinafter
49 referred to as a "certificate", issued with respect to such facility or
50 modification by the council, except fuel cells with a generating
51 capacity of ten kilowatts or less which shall not require such certificate.
52 Any facility with respect to which a certificate is required shall
53 thereafter be built, maintained and operated in conformity with such
54 certificate and any terms, limitations or conditions contained therein.
55 Notwithstanding the provisions of this subsection, the council shall, (1)
56 in the exercise of its jurisdiction over the siting of generating facilities,
57 approve by declaratory ruling [(1)] (A) the construction of a facility
58 solely for the purpose of generating electricity other than an electric
59 generating facility that uses nuclear materials or coal as fuel, at a site
60 where an electric generating facility operated prior to July 1, 1998, and
61 [(2)] (B) the construction or location of any fuel cell, unless the council
62 finds a substantial adverse environmental effect, or (2) in the exercise
63 of its jurisdiction over the siting of a telecommunications tower, as
64 specified in subdivision (6) of subsection (a) of section 16-50i, as
65 amended by this act, declare the pending certification proceeding moot
66 and approve by declaratory ruling the construction of such a tower
67 when such tower has been approved or has been found to be in
68 compliance with municipal regulations or a telecommunications plan
69 of development by the site municipality, unless the council finds that
70 the relevant pending proceeding is necessary because there is evidence
71 that such tower may be unnecessary or may cause a substantial
72 adverse environmental effect.

73 Sec. 3. Subsection (e) of section 16-50l of the general statutes is
74 repealed and the following is substituted in lieu thereof:

75 (e) At least sixty days prior to the filing of any application with the
76 council, the applicant shall consult with the municipality in which the

77 facility may be located and with any other municipality required to be
78 served with a copy of the application under subdivision (1) of
79 subsection (b) of this section concerning the proposed and alternative
80 sites of the facility. Such consultation with the municipality shall
81 include, but not be limited to good faith efforts to meet with the chief
82 elected official of the municipality. At the time of the consultation, the
83 applicant shall provide the chief elected official and the chairpersons of
84 the zoning commission, planning commission, planning and zoning
85 commission, conservation commission or inland wetland agency of
86 each municipality in which any portion of a facility is to be located
87 with any other technical reports concerning the public need, the site
88 selection process and the environmental effects of the proposed
89 facility. The municipality may conduct public hearings and meetings
90 as it deems necessary for it to advise the applicant of its
91 recommendations concerning the proposed facility. Within sixty days
92 of the initial consultation, the municipality [shall] may develop a
93 written record and issue its recommendations to the applicant. No
94 later than fifteen days after submitting the application to the council,
95 the applicant shall provide to the council all materials provided to the
96 municipality and a summary of the consultations with the
97 municipality including all recommendations issued by the
98 municipality.

99 Sec. 4. Subsection (d) of section 16-50m of the general statutes is
100 repealed and the following is substituted in lieu thereof:

101 (d) Hearings, including general hearings on issues which may be
102 common to more than one application, may be held before [a majority
103 of the] three or more members of the council.

104 Sec. 5. Subsection (a) of section 16-50n of the general statutes is
105 repealed and the following is substituted in lieu thereof:

106 (a) The parties to a certification or amendment proceeding or to a
107 declaratory ruling proceeding shall include: (1) The applicant,

108 certificate holder, or petitioner; (2) each person entitled to receive a
109 copy of the application or resolution under section 16-50l, if such
110 person has filed with the council a notice of intent to be a party; (3) any
111 domestic or qualified nonprofit corporation or association formed in
112 whole or in part to promote conservation or natural beauty, to protect
113 the environment, personal health or biological values, to preserve
114 historical sites, to promote consumer interests, to represent commercial
115 and industrial groups or to promote the orderly development of the
116 areas in which the facility is to be located, if it has filed with the
117 council a notice of intent to be a party; [and] (4) the zoning
118 commission, planning commission, planning and zoning commission,
119 conservation commission or inland wetland agency of each
120 municipality in which any portion of a facility is to be located, unless
121 such local bodies decline to participate as parties to the proceeding;
122 and (5) such other persons as the council may at any time deem
123 appropriate.

124 Sec. 6. Subsection (d) of section 16-50x of the general statutes is
125 repealed and the following is substituted in lieu thereof:

126 (d) Any town, city or borough zoning commission and inland
127 wetland agency may regulate and restrict the proposed location of a
128 facility, as defined in subdivisions (3), [and] (4) and (6) of subsection
129 (a) of section 16-50i, as amended by this act. The application to such a
130 local body shall be the same application filed with the council. The
131 applicant shall file the application with such a local body at the same
132 time the applicant files it with the council. Such local bodies may apply
133 standards developed by town ordinances, regulations or a plan of
134 development created in accordance with section 8-35a, and make all
135 orders necessary to the exercise of such power to regulate and restrict,
136 which orders shall be in writing and recorded in the records of their
137 respective communities, and written notice of any order shall be given
138 to each party affected thereby. Such a local body shall make any such
139 order (1) not more than sixty-five days after an application has been

140 filed with the council for the siting of a facility described in
141 subdivision (3) of subsection (a) of section 16-50i, or (2) not more than
142 thirty days after an application has been filed with the council for the
143 siting of a facility described in subdivision (4) of subsection (a) of
144 section 16-50i. Each such order shall be subject to the right of appeal
145 within thirty days after the giving of such notice by any municipality
146 required to be served with a copy of the application under subdivision
147 (1) of subsection (b) of section 16-50l or by any party aggrieved to the
148 council, which shall have jurisdiction, in the course of any proceeding
149 on an application for a certificate or otherwise, to affirm, modify or
150 revoke such order or make any order in substitution thereof by a vote
151 of six members of the council. In the case of a facility described in
152 subdivision (6) of subsection (a) of section 16-50i, each such order shall
153 be subject to the right of appeal within thirty days after the giving of
154 such notice by any municipality required to be served with a copy of
155 the application under subdivision (1) of subsection (b) of section 16-50l
156 or by any party aggrieved to the council, which shall have jurisdiction,
157 in the course of any proceeding on an application for a certificate or
158 otherwise, to affirm, modify or revoke such order or make any order in
159 substitution thereof by a vote of seven members of the council.

160 Sec. 7. (NEW) The Connecticut Siting Council shall maintain a
161 telecommunications tower database that includes the location, type
162 and height of all telecommunications towers in the state. Said database
163 shall be available for inspection by the public. The council shall supply
164 any information contained in the database to a municipality, upon
165 request. A municipality may develop, in consultation with the council,
166 a comprehensive telecommunications plan of development for towers
167 using said database and any other available resources including, but
168 not limited to, council resources. Such plan may include the mapping
169 of all existing telecommunications towers, radio frequency
170 propagation modeling of existing coverage, hypothetical coverage
171 from alternative sites and identification of sensitive areas for restrictive
172 use.

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Potential Minimal Cost

Affected Agencies: Connecticut Siting Council

Municipal Impact: None

Explanation

State Impact:

The bill subjects towers and related Personal Communication Services (PCS) equipment to the jurisdiction of the Connecticut Siting Council (CSC), and permits municipalities to adopt orders to “regulate and restrict” the location of cellular and PCS towers. Since the *Sprint Spectrum LP v. Connecticut Siting Council* decision, the CSC has been experiencing a workload increase, thus permitting the municipalities to adopt orders to “regulate and restrict” will partially offset the increased workload.

Additionally, the bill requires the CSC to maintain a database that includes certain information about cellular and personal communications services (PCS). Currently, the council maintains such a database when staff and necessary resources permit, however there have been delays in updating information due to a lack of resources. Requiring the council to maintain such a database will result in a workload increase and a reprioritization of resources, which may result in a minimal potential cost. Finally, the bill requires the council

to make information from the database available to municipalities upon request, which has no fiscal impact on the council.

Municipal Impact:

It is assumed that the Connecticut Siting Council will be responsible for gathering the information included in the database from the municipalities, thus there is no fiscal impact on the municipalities.

OLR Bill Analysis

sSB 869

AN ACT CONCERNING LOCAL PARTICIPATION IN THE SITING OF CELLULAR TOWERS.**SUMMARY:**

This bill explicitly subjects towers and related equipment used to provide Personal Communications Services (PCS) to the jurisdiction of the Connecticut Siting Council, rather than local land use agencies. Historically, the council exercised jurisdiction over cellular towers and the local agencies had jurisdiction over PCS towers. The bill effectively codifies the federal court decision in *Sprint Spectrum LP v. Connecticut Siting Council*, Case No. 3-98-CV-33 (AVC). The decision held that the statutory definition of cellular towers includes PCS, thereby shifting jurisdiction over PCS towers to the council. The attorney general has appealed this decision.

The bill allows municipalities to adopt orders to “regulate and restrict” the location of cellular and PCS towers and modifies their power to issue such orders with regard to electric power plants and substations. It allows the council to modify, revoke, or affirm such orders, as they apply to towers, only by the vote of seven of its nine members. It requires developers of towers and energy facilities subject to the council’s jurisdiction to provide technical reports to local land use agencies and makes it easier for these agencies to participate in the council’s proceedings.

The bill requires the council to maintain a tower database. It allows the council to approve the location of towers using an expedited process (a declaratory ruling) when the tower complies with local regulations.

The bill allows the council to hold hearings before three, rather than a majority, of its members. For most proceedings, the council has nine members.

EFFECTIVE DATE: October 1, 2001

JURISDICTION OVER PCS TOWERS

The bill explicitly gives the council jurisdiction over the location of towers and equipment used to provide PCS, which is a wireless technology related to cellular. (The *Sprint* decision, which is under appeal, has interpreted current state law to give jurisdiction over these towers to the council rather than local land use agencies.)

The criteria that the council uses in making its decisions differ substantially from those used by local land use agencies under zoning and inland wetland laws. The council determines whether the public need for a facility outweighs the environmental harm it may cause. Local land use agencies determine whether a particular land use or structure is allowed at a particular site, either by right or with a variance. There are many procedural differences in the way the council and the local agencies operate. Among other things, they have different notice and hearing requirements. Appeals of zoning decisions go to zoning boards of appeal; appeals of council decisions go immediately to Superior Court.

PARTICIPATION BY LOCAL LAND USE AGENCIES

By law, the council has jurisdiction over energy facilities such as power plants, distribution substations, and gas pipelines, as well as certain telecommunications towers. At least 60 days before filing an application for a council certificate, the prospective developer of any of these facilities must consult with the proposed host municipality and any other municipality entitled to notice of the application. (These include the municipalities containing the alternative sites of the facility and any municipality whose border is within 2,500 feet of the facility.)

The bill requires the developer to provide technical reports about the proposal to the chairpersons of the zoning, planning, and conservation commissions and inland wetland agencies of any municipality in which any part of the facility may be located. The technical reports cover the public need for the facility, its environmental effects, and the site selection process. By law, the developer must already provide these reports to the chief elected municipal officials.

The bill allows, rather than requires, the municipality to issue recommendations to the developer. It allows the municipality to develop a written record.

The law entitles a wide range of entities, including local land use agencies, to participate as parties in council proceedings if they file notice of intent. The bill automatically makes these agencies parties unless they opt out.

RESTRICTION OF TOWER AND OTHER FACILITY LOCATIONS

The bill allows zoning commissions and inland wetland agencies to regulate and restrict the location of cellular and PCS towers. They already have this right with regard to electric power plants and substations.

The bill requires the developer of the tower or electric facility to file the same application with the local agencies as it files with the council, and at the same time. It allows the local bodies to apply the standards established by town ordinances, regulations, or the municipal plan of development. The bill does not specify a deadline for the local bodies to act with regard to tower proposals, although the law imposes deadlines for actions on electric facilities.

Under the bill, any party to the certification proceeding for a tower who is aggrieved by the local body's order, or any municipality entitled to notice of this proceeding, can appeal the order. The council, by vote of seven of its nine members, can affirm, modify, or revoke the local body's order or issue a substitute order. By law, a vote to affirm, modify, or revoke a local body's order regarding an electric facility requires six votes.

TOWER DATABASE

The bill requires the council to maintain a database, available for public inspection, that includes the location, type, and height of all towers in the state. The council must provide information in the database to a municipality upon request.

A municipality may, in consultation with the council, develop a comprehensive telecommunications plan of development for towers. It may use the database and other resources, including those of the council, in establishing the plan. The plan may include mapping of existing towers, maps describing the areas covered by specific radio frequencies, the areas that would be covered from specific sites, and identification of sensitive areas.

DECLARATORY RULINGS

Under the bill, if the council determines that a proposed tower has been approved by or complies with municipal regulations or a municipal telecommunications development plan, it can declare the certification proceeding moot and approve the application by declaratory ruling. The council cannot do this if it finds that the proceeding is needed because there is evidence that the tower is unnecessary or that it may cause substantial environmental harm.

BACKGROUND

Related Federal Law

The 1996 Telecommunications Act allows states and municipalities to regulate the siting of wireless facilities, subject to several restrictions (47 USC § 332(c)). (Wireless includes cellular, PCS, and several technologies not addressed by the bill.) Among other things, states and municipalities cannot “zone out” such facilities, and they unreasonably discriminate among wireless service providers. Appeals of state or local decisions on wireless facilities can be filed in state or federal court.

Related Court Decision

In *Sprint PCS v. Siting Council*, the federal court has held that the state law defining cellular facilities for purposes of the Siting Council’s jurisdiction includes PCS towers. The attorney general has appealed this decision. Sprint PCS also challenged the historic split in jurisdiction over cellular and PCS towers as violating a provision of the act that bars unreasonable discrimination in the treatment of wireless providers. The court has not yet ruled on this issue.

Related Bills

SB 1252 “An Act Concerning Municipal Jurisdiction over Telecommunications Towers for Personal Communications Services,” reported favorably by the Program Review and Investigations Committee ([file 112](#)), gives zoning commissions jurisdiction over PCS facilities, in effect reversing the court decision described above. It requires anyone seeking approval of a PCS tower to give the Siting Council notice and entitles the council to intervenor status in the zoning commission’s proceedings.

SB 1253, “An Act Concerning Siting Council Decisions and a Telecommunications Towers Database,” reported favorably by the Program Review and Investigations Committee ([file 113](#)), requires the Connecticut Siting Council to (1) include more information in its decisions on towers and (2) maintain a telecommunications towers database.

sHB 6178, “An Act Concerning Data Regarding Telecommunications Towers,” reported favorably by the Energy and Technology and Planning and Development committees, requires the chief elected official of each municipality to report to the Connecticut Siting Council annually on the location and height of each telecommunication tower in the municipality.

COMMITTEE ACTION

Energy and Technology Committee

Joint Favorable Change of Reference
Yea 13 Nay 3

Planning and Development Committee

Joint Favorable Report
Yea 17 Nay 0