



General Assembly

**Substitute Bill No. 5407**

*February Session, 2002*

**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2 repealed and the following is substituted in lieu thereof (*Effective July*  
3 *1, 2002*):

4 (a) "Facility" means: (1) An electric transmission line of a design  
5 capacity of sixty-nine kilovolts or more, including associated  
6 equipment but not including a transmission line tap, as defined in  
7 subsection (e) of this section; (2) a fuel transmission facility, except a  
8 gas transmission line having a design capability of less than two  
9 hundred pounds per square inch gauge pressure; (3) any electric  
10 generating or storage facility using any fuel, including nuclear  
11 materials, including associated equipment for furnishing electricity but  
12 not including an emergency generating device, as defined in  
13 subsection (f) of this section, or a facility (i) owned and operated by a  
14 private power producer, as defined in section 16-243b, (ii) which is a  
15 qualifying small power production facility or a qualifying  
16 cogeneration facility under the Public Utility Regulatory Policies Act of  
17 1978, as amended, or a facility determined by the council to be  
18 primarily for a producer's own use, and (iii) which has, in the case of a  
19 facility utilizing renewable energy sources, a generating capacity of  
20 one megawatt of electricity or less and, in the case of a facility utilizing

21 cogeneration technology, a generating capacity of twenty-five  
22 megawatts of electricity or less; (4) any electric substation or  
23 switchyard designed to change or regulate the voltage of electricity at  
24 sixty-nine kilovolts or more or to connect two or more electric circuits  
25 at such voltage, which substation or switchyard may have a substantial  
26 adverse environmental effect, as determined by the council established  
27 under section 16-50j, and other facilities which may have a substantial  
28 adverse environmental effect as the council may, by regulation,  
29 prescribe; (5) such community antenna television towers and head-end  
30 structures, including associated equipment, which may have a  
31 substantial adverse environmental effect, as said council shall, by  
32 regulation, prescribe; and (6) such telecommunication towers,  
33 including associated telecommunications equipment, owned or  
34 operated by the state, a public service company or a certified  
35 telecommunications provider or used in a cellular system, as defined  
36 in the Code of Federal Regulations Title 47, Part 22, as amended, or  
37 used in personal communications services, as defined in the Code of  
38 Federal Regulations Title 47, Part 24, as amended, which may have a  
39 substantial adverse environmental effect, as said council shall, by  
40 regulation, prescribe.

41 Sec. 2. Subsection (a) of section 16-50k of the general statutes, as  
42 amended by section 7 of public act 01-49, is repealed and the following  
43 is substituted in lieu thereof (*Effective July 1, 2002*):

44 (a) Except as provided in subsection (b) of section 16-50z, no person  
45 shall exercise any right of eminent domain in contemplation of,  
46 commence the preparation of the site for, or commence the  
47 construction or supplying of a facility, or commence any modification  
48 of a facility, that may, as determined by the council, have a substantial  
49 adverse environmental effect in the state without having first obtained  
50 a certificate of environmental compatibility and public need,  
51 hereinafter referred to as a "certificate", issued with respect to such  
52 facility or modification by the council, except fuel cells with a  
53 generating capacity of ten kilowatts or less which shall not require  
54 such certificate. Any facility with respect to which a certificate is

55 required shall thereafter be built, maintained and operated in  
56 conformity with such certificate and any terms, limitations or  
57 conditions contained therein. Notwithstanding the provisions of this  
58 subsection, the council shall, (1) in the exercise of its jurisdiction over  
59 the siting of generating facilities, approve by declaratory ruling [(1)]  
60 (A) the construction of a facility solely for the purpose of generating  
61 electricity, other than an electric generating facility that uses nuclear  
62 materials or coal as fuel, at a site where an electric generating facility  
63 operated prior to July 1, 1998, and [(2)] (B) the construction or location  
64 of any fuel cell, unless the council finds a substantial adverse  
65 environmental effect, or (2) in the exercise of its jurisdiction over the  
66 siting of a telecommunications tower, as specified in subdivision (6) of  
67 subsection (a) of section 16-50i, as amended by this act, declare the  
68 pending certification proceeding moot and approve by declaratory  
69 ruling the construction of such a tower when such tower has been  
70 approved or has been found to be in compliance with municipal  
71 regulations or a telecommunications plan of development by the site  
72 municipality, unless the council finds that the relevant pending  
73 proceeding is necessary because there is evidence that such tower may  
74 be unnecessary or may cause a substantial adverse environmental  
75 effect.

76 Sec. 3. Subsection (e) of section 16-50l of the general statutes is  
77 repealed and the following is substituted in lieu thereof (*Effective July*  
78 *1, 2002*):

79 (e) At least sixty days prior to the filing of any application with the  
80 council, the applicant shall consult with the municipality in which the  
81 facility may be located and with any other municipality required to be  
82 served with a copy of the application under subdivision (1) of  
83 subsection (b) of this section concerning the proposed and alternative  
84 sites of the facility. Such consultation with the municipality shall  
85 include, but not be limited to good faith efforts to meet with the chief  
86 elected official of the municipality. At the time of the consultation, the  
87 applicant shall provide the chief elected official and the chairpersons of  
88 the zoning commission, planning commission, planning and zoning

89 commission, conservation commission or inland wetland agency of  
90 each municipality in which any portion of a facility is to be located  
91 with any other technical reports concerning the public need, the site  
92 selection process and the environmental effects of the proposed  
93 facility. The municipality may conduct public hearings and meetings  
94 as it deems necessary for it to advise the applicant of its  
95 recommendations concerning the proposed facility. Within sixty days  
96 of the initial consultation, the municipality [shall] may develop a  
97 written record and issue its recommendations to the applicant. No  
98 later than fifteen days after submitting the application to the council,  
99 the applicant shall provide to the council all materials provided to the  
100 municipality and a summary of the consultations with the  
101 municipality including all recommendations issued by the  
102 municipality.

103 Sec. 4. Subsection (a) of section 16-50n of the general statutes is  
104 repealed and the following is substituted in lieu thereof (*Effective July*  
105 *1, 2002*):

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, as amended  
110 by this act, if such person has filed with the council a notice of intent to  
111 be a party; (3) any domestic or qualified nonprofit corporation or  
112 association formed in whole or in part to promote conservation or  
113 natural beauty, to protect the environment, personal health or  
114 biological values, to preserve historical sites, to promote consumer  
115 interests, to represent commercial and industrial groups or to promote  
116 the orderly development of the areas in which the facility is to be  
117 located, if it has filed with the council a notice of intent to be a party;  
118 [and] (4) the zoning commission, planning commission, planning and  
119 zoning commission, conservation commission or inland wetland  
120 agency of each municipality in which any portion of a facility is to be  
121 located, unless such local bodies decline to participate as parties to the  
122 proceeding; and (5) such other persons as the council may at any time

123 deem appropriate.

124 Sec. 5. Subsection (d) of section 16-50x of the general statutes is  
125 repealed and the following is substituted in lieu thereof (*Effective July*  
126 *1, 2002*):

127 (d) Any town, city or borough zoning commission and inland  
128 wetland agency may regulate and restrict the proposed location of a  
129 facility, as defined in subdivisions (3), [and] (4) and (6) of subsection  
130 (a) of section 16-50i, as amended by this act. The application to such a  
131 local body shall be the same application filed with the council. The  
132 applicant shall file the application with such a local body at the same  
133 time the applicant files it with the council. Such local bodies may apply  
134 standards developed by town ordinances, regulations or a plan of  
135 development created in accordance with section 8-35a, and make all  
136 orders necessary to the exercise of such power to regulate and restrict,  
137 which orders shall be in writing and recorded in the records of their  
138 respective communities, and written notice of any order shall be given  
139 to each party affected thereby. Such a local body shall make any such  
140 order (1) not more than sixty-five days after an application has been  
141 filed with the council for the siting of a facility described in  
142 subdivision (3) of subsection (a) of section 16-50i, as amended by this  
143 act, or (2) not more than thirty days after an application has been filed  
144 with the council for the siting of a facility described in subdivision (4)  
145 or (6) of subsection (a) of section 16-50i, as amended by this act. Each  
146 such order shall be subject to the right of appeal within thirty days  
147 after the giving of such notice by any municipality required to be  
148 served with a copy of the application under subdivision (1) of  
149 subsection (b) of section 16-50l or by any party aggrieved to the  
150 council, which shall have jurisdiction, in the course of any proceeding  
151 on an application for a certificate or otherwise, to affirm, modify or  
152 revoke such order or make any order in substitution thereof by a vote  
153 of six members of the council. In the case of a facility described in  
154 subdivision (6) of subsection (a) of section 16-50i, as amended by this  
155 act, each such order shall be subject to the right of appeal within thirty  
156 days after the giving of such notice by any municipality required to be

157 served with a copy of the application under subdivision (1) of  
158 subsection (b) of section 16-50l or by any party aggrieved to the  
159 council, which shall have jurisdiction, in the course of any proceeding  
160 on an application for a certificate or otherwise, to affirm, modify or  
161 revoke such order or make any order in substitution thereof by a  
162 majority vote of not less than seven members of the council.

163 Sec. 6. (NEW) (*Effective October 1, 2002*) The Connecticut Siting  
164 Council shall maintain a telecommunications tower database that  
165 includes the location, type and height of all telecommunications towers  
166 in the state. Said database shall be available for inspection by the  
167 public. The council shall supply any information contained in the  
168 database to a municipality, upon request. A municipality may develop,  
169 in consultation with the council, a comprehensive telecommunications  
170 plan of development for towers using said database and any other  
171 available resources including, but not limited to, council resources.

172 Sec. 7. Subsection (a) of section 16-50x of the general statutes is  
173 repealed and the following is substituted in lieu thereof (*Effective July*  
174 *1, 2002*):

175 (a) Notwithstanding any other provision of the general statutes to  
176 the contrary, except as provided in section 16-243, the council shall  
177 have exclusive jurisdiction over the location and type of facilities and  
178 over the location and type of modifications of facilities subject to the  
179 provisions of subsection (d) of this section. In ruling on applications  
180 for certificates for facilities and on requests for shared use of facilities,  
181 the council shall give such consideration to other state laws and  
182 municipal regulations as it shall deem appropriate. Whenever the  
183 council certifies or approves a use of a facility pursuant to this chapter,  
184 such certification or approval shall satisfy and be in lieu of all  
185 certifications, approvals and other requirements of state and municipal  
186 agencies. [in regard to any questions of public need, convenience and  
187 necessity for such facility.] Said applicant shall file such certificate or  
188 approval with the municipality in which such facility is located and  
189 pay such municipality all fees required by chapter 541 prior to the

190 construction of such facility.

191 Sec. 8. Subsection (c) of section 16-50aa of the general statutes is  
192 repealed and the following is substituted in lieu thereof (*Effective July*  
193 *1, 2002*):

194 (c) (1) A person, firm, corporation or public agency which transmits  
195 or receives signals in the electromagnetic spectrum for a commercial or  
196 public purpose pursuant to a Federal Communications Commission  
197 license may submit a request, on a form specified by the council, to the  
198 owner of a facility that the owner permit shared use of the facility. If  
199 such an owner agrees to the proposed shared use, the entity which  
200 would share the use of the facility shall comply with reasonable  
201 conditions established by the owner concerning the use of the facility.  
202 The council may arbitrate any issue between the owner of the facility  
203 and the requesting entity concerning the establishment of or  
204 compliance with any such conditions. An owner of a facility which  
205 agrees to shared use of the facility pursuant to this section may request  
206 in writing that the council approve the proposed shared use of the  
207 facility. If the council finds that the proposed shared use of the facility  
208 is technically, legally, environmentally and economically feasible and  
209 meets public safety concerns, the council shall issue an order  
210 approving such shared use. Within sixty days after receipt of said  
211 request, the council shall issue its order in writing.

212 (2) If an owner of a facility refuses permission for the proposed  
213 shared use, the requesting entity may bring the issue of the proposed  
214 shared use to the council. Upon written request by the requesting  
215 entity, the council shall initiate a feasibility proceeding to determine  
216 whether the proposed shared use is technically, legally,  
217 environmentally and economically feasible and meets public safety  
218 concerns. A feasibility proceeding shall include a hearing in  
219 accordance with the provisions of chapter 54, to be held (A) at a  
220 location determined by the council, and (B) not later than ninety days  
221 following the council's receipt of the written request for such a  
222 proceeding. The council shall provide the owner of the facility, the

223 entity requesting the feasibility proceeding and the municipality in  
224 which the facility is located with notice of the proceeding not later than  
225 thirty days preceding the hearing. In a feasibility proceeding, the  
226 council shall render a decision upon the record, not later than one  
227 hundred eighty days following the council's receipt of the written  
228 request for such a proceeding, stating whether the proposed shared  
229 use of the facility is technically, legally, environmentally and  
230 economically feasible and meets public safety concerns. The council  
231 shall include appropriate findings in its decision. If the council  
232 determines that the proposed shared use of the facility is technically,  
233 legally, environmentally and economically feasible and meets public  
234 safety concerns, the decision shall include an order requiring the  
235 owner of the facility to permit the proposed shared use upon such  
236 terms, conditions or limitations as the council determines appropriate.

This act shall take effect as follows:	
Section 1	<i>July 1, 2002</i>
Sec. 2	<i>July 1, 2002</i>
Sec. 3	<i>July 1, 2002</i>
Sec. 4	<i>July 1, 2002</i>
Sec. 5	<i>July 1, 2002</i>
Sec. 6	<i>October 1, 2002</i>
Sec. 7	<i>July 1, 2002</i>
Sec. 8	<i>July 1, 2002</i>

**ET**

**Joint Favorable Subst. C/R**

**PD**