



House of Representatives

File No. 662

General Assembly

February Session, 2010 **(Reprint of File No. 446)**

Substitute House Bill No. 5213
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
April 28, 2010

AN ACT CONCERNING THE SITING COUNCIL.

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

1 Section 1. Section 16-50p of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2010*):

3 (a) (1) In a certification proceeding, the council shall render a
4 decision upon the record either granting or denying the application as
5 filed, or granting it upon such terms, conditions, limitations or
6 modifications of the construction or operation of the facility as the
7 council may deem appropriate.

8 (2) The council's decision shall be rendered in accordance with the
9 following:

10 (A) Not later than twelve months after the deadline for filing an
11 application following the request for proposal process for a facility
12 described in subdivision (1) or (2) of subsection (a) of section 16-50i, as
13 amended by this act, or subdivision (4) of said subsection (a) if the
14 application was incorporated in an application concerning a facility

15 described in subdivision (1) of said subsection (a);

16 (B) Not later than one hundred eighty days after the deadline for
17 filing an application following the request for proposal process for a
18 facility described in subdivision (4) of said subsection (a) [] and an
19 application concerning a facility described in subdivision (3) of said
20 subsection (a), provided the council may extend such [time periods
21 may be extended by the council] period by not more than one hundred
22 eighty days with the consent of the applicant; and

23 (C) Not later than one hundred eighty days after the filing of an
24 application for a facility described in subdivision (5) or (6) of said
25 subsection (a), provided the council may extend such [time] period
26 [may be extended by the council] by not more than one hundred
27 eighty days with the consent of the applicant.

28 (3) The council shall file, with its order, an opinion stating in full its
29 reasons for the decision. The council shall not grant a certificate, either
30 as proposed or as modified by the council, unless it shall find and
31 determine:

32 (A) Except as provided in subsection (c) of this section, a public
33 need for the facility and the basis of the need;

34 (B) The nature of the probable environmental impact of the facility
35 alone and cumulatively with other existing facilities, including a
36 specification of every significant adverse effect, including, but not
37 limited to, electromagnetic fields that, whether alone or cumulatively
38 with other effects, impact on, and conflict with the policies of the state
39 concerning [] the natural environment, ecological balance, public
40 health and safety, scenic, historic and recreational values, forests and
41 parks, air and water purity and fish, aquaculture and wildlife;

42 (C) Why the adverse effects or conflicts referred to in subparagraph
43 (B) of this subdivision are not sufficient reason to deny the application;

44 (D) In the case of an electric transmission line, (i) what part, if any,

45 of the facility shall be located overhead, (ii) that the facility conforms to
46 a long-range plan for expansion of the electric power grid of the
47 electric systems serving the state and interconnected utility systems
48 and will serve the interests of electric system economy and reliability,
49 and (iii) that the overhead portions, if any, of the facility are cost
50 effective and the most appropriate alternative based on a life-cycle cost
51 analysis of the facility and underground alternatives to such facility,
52 are consistent with the purposes of this chapter, with such regulations
53 or standards as the council may adopt pursuant to section 16-50t,
54 including, but not limited to, the council's best management practices
55 for electric and magnetic fields for electric transmission lines and with
56 the Federal Power Commission "Guidelines for the Protection of
57 Natural Historic Scenic and Recreational Values in the Design and
58 Location of Rights-of-Way and Transmission Facilities" or any
59 successor guidelines and any other applicable federal guidelines and
60 are to be contained within an area that provides a buffer zone that
61 protects the public health and safety, as determined by the council. In
62 establishing such buffer zone, the council shall [take into
63 consideration] consider, among other things, residential areas, private
64 or public schools, licensed child day care facilities, licensed youth
65 camps or public playgrounds adjacent to the proposed route of the
66 overhead portions and the level of the voltage of the overhead portions
67 and any existing overhead transmission lines on the proposed route.
68 At a minimum, the existing right-of-way shall serve as the buffer zone;

69 (E) In the case of an electric or fuel transmission line, that the
70 location of the line will not pose an undue hazard to persons or
71 property along the area traversed by the line;

72 (F) In the case of an application that was heard under a consolidated
73 hearing process with other applications that were common to a request
74 for proposal, that the facility proposed in the subject application
75 represents the most appropriate alternative among such applications
76 based on the findings and determinations pursuant to this subsection;
77 [and]

78 (G) In the case of a facility described in subdivision (6) of subsection
79 (a) of section 16-50i, as amended by this act, that is (i) proposed to be
80 installed on land under agricultural restriction, as provided in section
81 22-26cc, that the facility will not result in a material decrease of acreage
82 and productivity of the arable land, or (ii) proposed to be installed on
83 land near a school, as defined in section 10-154a, that the facility will
84 not be less than seven hundred fifty feet from such school, unless the
85 council finds that there are no technically, legally, environmentally and
86 economically feasible alternative sites within the municipality that are
87 more than seven hundred fifty feet from such school; and

88 (H) That it has considered the manufacturer's recommended safety
89 standards for any equipment, machinery or technology.

90 (b) (1) Prior to granting an applicant's certificate for a facility
91 described in subdivision (5) or (6) of subsection (a) of section 16-50i, as
92 amended by this act, the council shall examine, in addition to its
93 consideration of subdivisions (1) to ~~[(5)] (3)~~, inclusive, of subsection (a)
94 of this section: (A) The feasibility of requiring an applicant to share an
95 existing facility, as defined in subsection (b) of section 16-50aa, within
96 a technically derived search area of the site of the proposed facility,
97 provided such shared use is technically, legally, environmentally and
98 economically feasible and meets public safety concerns, (B) whether
99 such facility, if constructed, may be shared with any public or private
100 entity [which] that provides telecommunications or community
101 antenna television service to the public, provided such shared use is
102 technically, legally, environmentally and economically feasible at fair
103 market rates, meets public safety concerns, and the parties' interests
104 have been considered, [and] (C) whether the proposed facility would
105 be located in an area of the state which the council, in consultation
106 with the Department of Environmental Protection and any affected
107 municipalities, finds to be a relatively undisturbed area that possesses
108 scenic quality of local, regional or state-wide significance, and (D) the
109 latest technological options designed to minimize aesthetic and
110 environmental impacts. The council may deny an application for a
111 certificate if it determines that (i) shared use under the provisions of

112 subparagraph (A) of this subdivision is feasible, (ii) the applicant
113 would not cooperate relative to the future shared use of the proposed
114 facility, or (iii) the proposed facility would substantially affect the
115 scenic quality of its location and no public safety concerns require that
116 the proposed facility be constructed in such a location.

117 (2) When issuing a certificate for a facility described in subdivision
118 (5) or (6) of subsection (a) of section 16-50i, as amended by this act, the
119 council may impose such reasonable conditions as it deems necessary
120 to promote immediate and future shared use of such facilities and
121 avoid the unnecessary proliferation of such facilities in the state. The
122 council shall, prior to issuing a certificate, provide notice of the
123 proposed facility to the municipality in which the facility is to be
124 located. Upon motion of the council, written request by a public or
125 private entity [which] that provides telecommunications or community
126 antenna television service to the public or upon written request by an
127 interested party, the council may conduct a preliminary investigation
128 to determine whether the holder of a certificate for such a facility is in
129 compliance with the certificate. Following its investigation, the council
130 may initiate a certificate review proceeding, which shall include a
131 hearing, to determine whether the holder of a certificate for such a
132 facility is in compliance with the certificate. In such proceeding, the
133 council shall render a decision and may issue orders [which] it deems
134 necessary to compel compliance with the certificate, which [orders]
135 may include, but not be limited to, revocation of the certificate. Such
136 orders may be enforced in accordance with the provisions of section
137 16-50u.

138 (c) (1) The council shall not grant a certificate for a facility described
139 in subdivision (3) of subsection (a) of section 16-50i, as amended by
140 this act, either as proposed or as modified by the council, unless it
141 finds and determines a public benefit for the facility and considers
142 public safety issues and, as practicable, neighborhood concerns.

143 (2) The council shall not grant a certificate for a facility described in
144 subdivision (1) of subsection (a) of section 16-50i, [which] as amended

145 by this act, that is substantially underground or underwater except
146 where such [facilities interconnect] facility interconnects with existing
147 overhead facilities, either as proposed or as modified by the council,
148 unless it finds and determines a public benefit for [the facility, in the
149 case of such facility that is] a facility substantially underground [, and]
150 or a public need for [such facility, in the case of such facility that is] a
151 facility substantially underwater.

152 (3) For purposes of [subparagraph (A) of] this [subdivision] section,
153 a public benefit exists [if such] when a facility is necessary for the
154 reliability of the electric power supply of the state or for the
155 development of a competitive market for electricity and a public need
156 exists [if such] when a facility is necessary for the reliability of the
157 electric power supply of the state.

158 (4) Any application for an electric transmission line with a capacity
159 of three hundred forty-five kilovolts or more that is filed on or after
160 May 1, 2003, [and] that proposes the underground burial of such line
161 in all residential areas and overhead installation of such line in
162 industrial and open space areas [affected by such proposal] shall have
163 a rebuttable presumption of meeting a public benefit for such facility if
164 the facility is substantially underground [,] and meeting a public need
165 for such facility if the facility is substantially above ground. Such
166 presumption may be overcome by evidence submitted by a party or
167 intervenor to the satisfaction of the council.

168 (d) If the council determines that the location of all or a part of the
169 proposed facility should be modified, it may condition the certificate
170 upon such modification, provided the municipalities [, and persons
171 residing or located in such municipalities,] affected by the modification
172 and the residents of such municipalities shall have had notice of the
173 application [as provided in] pursuant to subsection (b) of section 16-
174 50l.

175 (e) In an amendment proceeding, the council shall render a decision
176 [within] not later than ninety days of the filing of the application or

177 adoption of the resolution initiating the proceeding. The council shall
178 file an opinion with its order stating its reasons for the decision. The
179 council's decision shall include the findings and determinations
180 enumerated in subsection (a) of this section which are relevant to the
181 proposed amendment.

182 (f) [A] The council shall serve a copy of the order and opinion issued
183 therewith [shall be served] upon each party and publish a notice of the
184 issuance of the order and opinion [shall be published] in such
185 newspapers as will serve substantially to inform the public of the
186 issuance of such order and opinion. The name and address of each
187 party shall be set forth in the order.

188 (g) In [making its decision as to] deciding whether [or not] to issue a
189 certificate, the council shall in no way be limited by [the fact that] the
190 applicant [may] already [have] having acquired land or an interest
191 therein for the purpose of constructing the facility [which] that is the
192 subject of its application.

193 [(h) For purposes of this section, a public need exists for an energy
194 facility if such facility is necessary for the reliability of the electric
195 power supply of the state.]

196 [(i)] (h) For a facility described in subdivision (1) of subsection (a) of
197 section 16-50i, as amended by this act, with a capacity of not less than
198 three hundred forty-five kilovolts, [or greater, there] the presumption
199 shall be [a presumption] that a proposal to place the overhead
200 portions, if any, of such facility adjacent to residential areas, private or
201 public schools, licensed child day care facilities, licensed youth camps
202 or public playgrounds is inconsistent with the purposes of this chapter.
203 An applicant may rebut this presumption by demonstrating to the
204 council that [it] burying the facility will be technologically infeasible,
205 [to bury the facility.] In determining such infeasibility, the council shall
206 consider the effect of burying the facility on the reliability of the
207 electric transmission system of the state and whether the cost of any
208 contemplated technology or design configuration may result in an

209 unreasonable economic burden on the ratepayers of the state.

210 (i) If, upon a motion of a party, intervenor or the council determines
211 in the course of a council proceeding that any party has intentionally
212 omitted or misrepresented a material fact, the council may, by majority
213 vote, request the Attorney General to bring a civil action. In any such
214 action, the Attorney General may seek any legal or equitable relief the
215 Superior Court deems appropriate, including, but not limited to,
216 injunctive relief or a civil penalty of not more than ten thousand
217 dollars and reasonable attorney fees and related costs.

218 Sec. 2. Section 16-50gg of the general statutes is repealed and the
219 following is substituted in lieu thereof (*Effective July 1, 2010*):

220 When notifying a municipality pursuant to section 16-50l, as
221 amended by this act, of an application for a telecommunications tower
222 in said municipality, the Connecticut Siting Council shall request that
223 the municipality provide to said council, within thirty days, any
224 location preferences or criteria for the siting of said
225 telecommunications tower. The council may consider regional location
226 preferences from neighboring municipalities.

227 Sec. 3. Section 16-50i of the general statutes is repealed and the
228 following is substituted in lieu thereof (*Effective July 1, 2010*):

229 As used in this chapter:

230 (a) "Facility" means: (1) An electric transmission line of a design
231 capacity of sixty-nine kilovolts or more, including associated
232 equipment but not including a transmission line tap, as defined in
233 subsection (e) of this section; (2) a fuel transmission facility, except a
234 gas transmission line having a design capability of less than two
235 hundred pounds per square inch gauge pressure or having a design
236 capacity of less than twenty per cent of its specified minimum yield
237 strength; (3) any electric generating or storage facility using any fuel,
238 including nuclear materials, including associated equipment for
239 furnishing electricity and a fuel cell with a generating capacity of one

240 megawatt or higher or that operates at natural gas pressures in excess
241 of one hundred fifty pounds per square inch, but not including an
242 emergency generating device, as defined in subsection (f) of this
243 section or a facility (i) owned and operated by a private power
244 producer, as defined in section 16-243b, (ii) which is a qualifying small
245 power production facility or a qualifying cogeneration facility under
246 the Public Utility Regulatory Policies Act of 1978, as amended, or a
247 facility determined by the council to be primarily for a producer's own
248 use, and (iii) which has, in the case of a facility utilizing renewable
249 energy sources, a generating capacity of one megawatt of electricity or
250 less and, in the case of a facility utilizing cogeneration technology, a
251 generating capacity of twenty-five megawatts of electricity or less; (4)
252 any electric substation or switchyard designed to change or regulate
253 the voltage of electricity at sixty-nine kilovolts or more or to connect
254 two or more electric circuits at such voltage, which substation or
255 switchyard may have a substantial adverse environmental effect, as
256 determined by the council established under section 16-50j, and other
257 facilities which may have a substantial adverse environmental effect as
258 the council may, by regulation, prescribe; (5) such community antenna
259 television towers and head-end structures, including associated
260 equipment, which may have a substantial adverse environmental
261 effect, as said council shall, by regulation, prescribe; (6) such
262 telecommunication towers, including associated telecommunications
263 equipment, owned or operated by the state, a public service company
264 or a certified telecommunications provider or used in a cellular system,
265 as defined in the Code of Federal Regulations Title 47, Part 22, as
266 amended, which may have a substantial adverse environmental effect,
267 as said council shall, by regulation, prescribe; and (7) any component
268 of a proposal submitted pursuant to the request for proposal process;

269 (b) "Municipality" means a city, town or borough of the state and
270 "municipal" has a correlative meaning;

271 (c) "Person" means any individual, corporation, limited liability
272 company, joint venture, public benefit corporation, political
273 subdivision, governmental agency or authority, municipality,

274 partnership, association, trust or estate and any other entity, public or
275 private, however organized;

276 (d) "Modification" means a significant change or alteration in the
277 general physical characteristics of a facility;

278 (e) "Transmission line tap" means an electrical transmission line not
279 requested by an applicant to be treated as a facility that has the
280 primary function, as determined by the council, of interconnecting a
281 private power producing or cogeneration facility to the electrical
282 power grid serving the state, and does not have a substantial adverse
283 environmental effect, as determined by the council based on a review
284 of the line's proposed purpose, the line's proposed length, the number
285 and type of support structures, the number of manholes required for
286 the proposed line, the necessity of entering a right-of-way including
287 any easements or land acquisition for any construction or maintenance
288 on the proposed line, and any other environmental, health or public
289 safety factor considered relevant by the council;

290 (f) "Emergency generating device" means an electric generating
291 device with a generating capacity of five megawatts or less, installed
292 primarily for the purpose of producing emergency backup electrical
293 power for not more than five hundred hours per year, and that (1)
294 does not have a substantial adverse environmental effect, as
295 determined by the council, or (2) is owned and operated by an entity
296 other than an electric, electric distribution or gas company or (3) is
297 under construction or in operation prior to May 2, 1989; and

298 (g) "Request for proposal process" or "request for proposal" means
299 the process set forth in section 16a-7c.

300 Sec. 4. Subsection (a) of section 16-50k of the general statutes is
301 repealed and the following is substituted in lieu thereof (*Effective July*
302 *1, 2010*):

303 (a) Except as provided in subsection (b) of section 16-50z, no person
304 shall exercise any right of eminent domain in contemplation of,

305 commence the preparation of the site for, commence the construction
306 or supplying of a facility, or commence any modification of a facility,
307 that may, as determined by the council, have a substantial adverse
308 environmental effect in the state without having first obtained a
309 certificate of environmental compatibility and public need, hereinafter
310 referred to as a "certificate", issued with respect to such facility or
311 modification by the council. Certificates shall not be required for (1)
312 fuel cells built within the state with a generating capacity of two
313 hundred fifty kilowatts or less, or (2) fuel cells built out of state with a
314 generating capacity of ten kilowatts or less, provided any such fuel cell
315 as described in subdivision (1) or (2) of this section is not rated at one
316 megawatt or higher or does not operate at natural gas pressures in
317 excess of one hundred fifty pounds per square inch. The council shall,
318 upon request, hold a public hearing pursuant to section 16-50m for any
319 application for a certificate or declaratory ruling for any fuel cell. Any
320 facility with respect to which a certificate is required shall thereafter be
321 built, maintained and operated in conformity with such certificate and
322 any terms, limitations or conditions contained therein.
323 Notwithstanding the provisions of this chapter or title 16a, the council
324 shall, in the exercise of its jurisdiction over the siting of generating
325 facilities, approve by declaratory ruling (A) the construction of a
326 facility solely for the purpose of generating electricity, other than an
327 electric generating facility that uses nuclear materials or coal as fuel, at
328 a site where an electric generating facility operated prior to July 1,
329 2004, (B) the construction or location of any fuel cell, unless the council
330 finds a substantial adverse environmental effect, or of any customer-
331 side distributed resources project or facility or grid-side distributed
332 resources project or facility with a capacity of not more than sixty-five
333 megawatts, as long as such project meets air and water quality
334 standards of the Department of Environmental Protection, and (C) the
335 siting of temporary generation solicited by the Department of Public
336 Utility Control pursuant to section 16-19ss.

337 Sec. 5. Subsection (e) of section 16-50l of the general statutes is
338 repealed and the following is substituted in lieu thereof (*Effective from*

339 *passage*):

340 (e) Except as provided in subsection (e) of section 16a-7c, at least
341 sixty days prior to the filing of an application with the council, the
342 applicant shall consult with the municipality in which the facility may
343 be located and with any other municipality required to be served with
344 a copy of the application under subdivision (1) of subsection (b) of this
345 section concerning the proposed and alternative sites of the facility,
346 including a map indicating the area of need. For a facility described in
347 subdivisions (1) to (4), inclusive, of subsection (a) of section 16-50i, as
348 amended by this act, the applicant shall submit to the Connecticut
349 Energy Advisory Board the same information that it provides to a
350 municipality pursuant to this subsection on the same day of the
351 consultation with the municipality. Such consultation with the
352 municipality shall include, but not be limited to good faith efforts to
353 meet with the chief elected official of the municipality. At the time of
354 the consultation, the applicant shall provide the chief elected official
355 with any technical reports concerning the public need, the site
356 selection process and the environmental effects of the proposed
357 facility. The municipality may conduct public hearings and meetings
358 as it deems necessary for it to advise the applicant of its
359 recommendations concerning the proposed facility. Within sixty days
360 of the initial consultation, the municipality shall issue its
361 recommendations to the applicant. Such recommendations may
362 include an alternative site selection. No later than fifteen days after
363 submitting an application to the council, the applicant shall provide to
364 the council all materials provided to the municipality and a summary
365 of the consultations with the municipality including all
366 recommendations issued by the municipality, including any proposed
367 alternative site selection. If the municipality proposes an alternative
368 site selection, the siting council shall consider such proposal in
369 conjunction with the application as part of its regular approval
370 process.

371 Sec. 6. Subsection (b) of section 16-50bb of the general statutes is
372 repealed and the following is substituted in lieu thereof (*Effective from*

373 *passage*):

374 (b) Payments from the account shall be made upon authorization by
 375 the State Treasurer. An application for reimbursement shall be
 376 submitted not later than sixty days after [receipt of an application for a
 377 proposed facility] the conclusion of a certification proceeding, except
 378 for a facility described in subdivisions (5) and (6) of subsection (a) of
 379 section 16-50i, as amended by this act, to each municipality entitled to
 380 receive a copy of such application under section 16-50l, as amended by
 381 this act, in order to defray expenses incurred by such municipalities in
 382 participating as a party to a certification proceeding, except for a
 383 proceeding on an application for a facility described in subdivision (5)
 384 or (6) of subsection (a) of section 16-50i, as amended by this act. Any
 385 moneys remaining at the end of such proceeding shall be refunded to
 386 the applicant in even amounts. Where more than one municipality
 387 seeks moneys from such account, the council shall evenly distribute
 388 such moneys among the municipalities. No municipality may receive
 389 moneys from the account in excess of twenty-five thousand dollars. No
 390 municipality may receive moneys from the account in excess of the
 391 dollar amount such municipality has expended from its own
 392 municipal funds. A municipality that has received moneys from the
 393 account in excess of the costs it incurred in participating in the
 394 certification proceeding, as determined by the council, shall refund
 395 such excess moneys to the account upon the conclusion of such
 396 proceeding.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2010</i>	16-50p
Sec. 2	<i>July 1, 2010</i>	16-50gg
Sec. 3	<i>July 1, 2010</i>	16-50i
Sec. 4	<i>July 1, 2010</i>	16-50k(a)
Sec. 5	<i>from passage</i>	16-50l(e)
Sec. 6	<i>from passage</i>	16-50bb(b)

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 11 \$	FY 12 \$
Siting Council, CT	CC&PUCF - Potential Revenue Gain	Minimal	Minimal
Siting Council, CT	CC&PUCF - Potential Cost	Minimal	Minimal

Note: CC&PUCF=Consumer Counsel and Public Utility Control Fund

Municipal Impact: None

Explanation

The bill allows the Siting Council to impose sanctions, including civil penalties of up to \$10,000, for any telecommunications and energy facility applications they deem to be intentionally inaccurate. It is uncertain at this time how many applications would be affected by this provision.

The bill also requires all large fuel cell facilities to obtain a certificate from the Connecticut Siting Council, rather than obtain permission through a declaratory ruling. As there are additional administrative costs associated with a certificate proceeding, the amendment is expected to result in a minimal cost of less than \$5,000 per certificate proceeding to the Siting Council.

House "A" (LCO 4346) clarifies language regarding the citing for fuel cell facility locations and clarifies the requirements concerning certifications and public hearings. There are minimal administrative costs associated with the amendment.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sHB 5213 (as amended by House "A")******AN ACT CONCERNING THE SITING COUNCIL.*****SUMMARY:**

The law requires entities to obtain a Siting Council certificate to build various telecommunications and energy facilities. The council approves these facilities by granting a certificate or, in some cases, using an expedited process called a declaratory ruling. This bill requires the council to consider the manufacturer's recommended safety standards for any equipment, machinery, or technology when granting certificates. It establishes sanctions for intentionally making inaccurate statements in any council proceeding.

By law, a developer of a facility must consult with the prospective host municipality or municipalities before filing a certificate application with the council. The bill requires the applicant to provide the municipalities with a map indicating the area of need for the proposed facility. By law, within 60 days of the consultation, the municipality must issue its recommendations to the developer. The bill specifies that these can include an alternative site. By law, the developer must file the recommendations with its application. The bill requires that the filing include any proposed alternative sites. If the municipality proposes an alternative site, the bill requires the council to consider this proposal as part of its regular approval process.

By law, an applicant for a certificate for an energy facility must pay a \$25,000 fee to partially reimburse the host municipality for its costs in the pre-application process. The fee goes into a General Fund account. Under current law, payments from the account must be made within 60 days after the council receives the application. The bill instead

requires that an application for reimbursement be made within 60 days after the certification proceeding ends.

The bill has several provisions that affect specific telecommunications and energy facilities. Among other things, it bars the council from granting a certificate for a cell phone tower that will be less than 750 feet from a school unless it determines that there are no feasible alternatives in the municipality. It requires certain large fuel cells to obtain a certificate rather than a declaratory ruling.

The bill also makes minor and technical changes.

*House Amendment "A" (1) resolves a conflict in the file copy as to whether large fuel cells require certificates, (2) allows the council to approve a cell tower within 750 feet of a school if there are no feasible alternatives in the municipality, (3) broadens the scope of sanctions for misrepresentation in council proceedings, and (4) adds the reimbursement provision.

EFFECTIVE DATE: July 1, 2010, except for the provision on municipal consultations, which is effective upon passage.

SANCTIONS FOR INACCURATE APPLICATIONS

Under the bill, if the council determines, upon a motion of a party or intervenor, that any party has intentionally omitted or misrepresented a material fact during a council proceeding, the council may request the attorney general to bring a civil action. The council must do this by majority vote. In this action, the attorney general may, in the court's discretion, recover any equitable or injunctive relief the court considers appropriate. This can include, among other things, a civil penalty of up to \$10,000 and reasonable attorney fees and related costs.

TELECOMMUNICATIONS FACILITIES

The bill requires the council, when issuing a certificate for cell phone towers and towers used by cable TV companies, to examine the latest technological options designed to minimize aesthetic and environmental impacts. By law, when a certificate application is filed

for these telecommunications towers the council must request that the host municipality provide its preferred locations or criteria for siting the tower. The bill additionally allows the council to consider regional location preferences from neighboring municipalities.

The bill bars the council from granting a certificate for a cell phone tower that will be less than 750 feet from a public or private school, unless the council finds that there are no technically, legally, environmentally, and economically feasible alternative sites within the municipality that are more than 750 feet from the school.

ENERGY FACILITIES

Under current law, certificates are not required for small fuel cells (a generation technology). The exemption applies to fuel cells that are built (1) in Connecticut with a capacity of 250 kilowatts (the power used by 200 typical homes) or less or (2) elsewhere with a capacity of 10 kilowatts (the power used by one hundred 100-watt light bulbs). The council must approve other fuel cells by declaratory ruling unless it finds that they will substantially harm the environment. The bill defines fuel cells that have a generating capacity of one megawatt (approximately enough to serve 750 homes) or more or that operate at natural pressure of 150 pounds per square inch as facilities that instead require certificates instead of a declaratory ruling.

The bill explicitly requires the council to consider, as practicable, neighborhood concerns, when issuing certificates for generation facilities. It reiterates the requirement that the council consider public safety in these cases.

By law, the council must hold a hearing in the proposed host municipality when considering an application for any certificate and hold part of the hearing in the evening. The bill extends these hearing requirements to any applications for a declaratory ruling for a fuel cell, upon request.

BACKGROUND

Related Federal Law

State and local agencies must comply with the federal Telecommunications Act of 1996 in regulating personal wireless services facilities (those used to provide cellular and related services). Among other things, agencies may not “zone out” such facilities. They may not unreasonably discriminate among providers of functionally equivalent services. Nor can they regulate a facility on the basis of its radiofrequency emissions if the emissions are within Federal Communications Commission limits.

Related Bill

sSB 462 (File 466), favorably reported by the Energy and Technology Committee, has a variety of provisions regarding power plant safety. Among other things, it expands the state agencies that can participate in Siting Council certificate proceedings; (2) allows the council to split a proceeding for a power plant into two parts, addressing plant construction and operation; and (3) bars the council from approving a gas-fired power plant unless it finds that it will not jeopardize nearby residents and property.

COMMITTEE ACTION

Energy and Technology Committee

Joint Favorable Substitute

Yea 21 Nay 0 (03/24/2010)