



General Assembly

Substitute Bill No. 5213

February Session, 2010

* _____HB05213ET_____032410_____*

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 Section 16-50p of the general statutes is repealed and the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 or
13 subdivision (4) of said subsection (a) if the application was
14 incorporated in an application concerning a facility described in
15 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; and

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

87 (b) (1) Prior to granting an applicant's certificate for a facility
88 described in subdivision (5) or (6) of subsection (a) of section 16-50i, as
89 amended by this act, the council shall examine, in addition to its
90 consideration of subdivisions (1) to ~~[(5)]~~ (3), inclusive, of subsection (a)
91 of this section: (A) The feasibility of requiring an applicant to share an
92 existing facility, as defined in subsection (b) of section 16-50aa, within
93 a technically derived search area of the site of the proposed facility,
94 provided such shared use is technically, legally, environmentally and
95 economically feasible and meets public safety concerns, (B) whether
96 such facility, if constructed, may be shared with any public or private
97 entity [which] that provides telecommunications or community
98 antenna television service to the public, provided such shared use is
99 technically, legally, environmentally and economically feasible at fair
100 market rates, meets public safety concerns, and the parties' interests
101 have been considered, [and] (C) whether the proposed facility would
102 be located in an area of the state which the council, in consultation
103 with the Department of Environmental Protection and any affected
104 municipalities, finds to be a relatively undisturbed area that possesses
105 scenic quality of local, regional or state-wide significance, and (D) the
106 latest technological options designed to minimize aesthetic and
107 environmental impacts. The council may deny an application for a
108 certificate if it determines that (i) shared use under the provisions of
109 subparagraph (A) of this subdivision is feasible, (ii) the applicant
110 would not cooperate relative to the future shared use of the proposed
111 facility, or (iii) the proposed facility would substantially affect the
112 scenic quality of its location and no public safety concerns require that
113 the proposed facility be constructed in such a location.

114 (2) When issuing a certificate for a facility described in subdivision
115 (5) or (6) of subsection (a) of section 16-50i, as amended by this act, the

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

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

140 (2) The council shall not grant a certificate for a facility described in
141 subdivision (1) of subsection (a) of section 16-50i, [which] as amended
142 by this act, that is substantially underground or underwater except
143 where such [facilities interconnect] facility interconnects with existing
144 overhead facilities, either as proposed or as modified by the council,
145 unless it finds and determines a public benefit for [the facility, in the
146 case of such facility that is] a facility substantially underground [, and]
147 or a public need for [such facility, in the case of such facility that is] a
148 facility substantially underwater.

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

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

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

172 (e) In an amendment proceeding, the council shall render a decision
173 [within] not later than ninety days of the filing of the application or
174 adoption of the resolution initiating the proceeding. The council shall
175 file an opinion with its order stating its reasons for the decision. The
176 council's decision shall include the findings and determinations
177 enumerated in subsection (a) of this section which are relevant to the
178 proposed amendment.

179 (f) [A] The council shall serve a copy of the order and opinion issued
180 therewith [shall be served] upon each party and publish a notice of the

181 issuance of the order and opinion [shall be published] in such
182 newspapers as will serve substantially to inform the public of the
183 issuance of such order and opinion. The name and address of each
184 party shall be set forth in the order.

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

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

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

207 (i) If, upon a motion of a party or intervenor or on its own motion,
208 the council determines that any party has intentionally omitted or
209 misrepresented a material fact in its application or petition for
210 declaratory ruling, the council may, by majority vote, request the
211 Attorney General to bring a civil action. In any such action, the
212 Attorney General may seek any legal or equitable relief the Superior

213 Court deems appropriate, including, but not limited to, injunctive
214 relief or a civil penalty of not more than ten thousand dollars and
215 reasonable attorney fees and related costs.

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

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

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

227 As used in this chapter:

228 (a) "Facility" means: (1) An electric transmission line of a design
229 capacity of sixty-nine kilovolts or more, including associated
230 equipment but not including a transmission line tap, as defined in
231 subsection (e) of this section; (2) a fuel transmission facility, except a
232 gas transmission line having a design capability of less than two
233 hundred pounds per square inch gauge pressure or having a design
234 capacity of less than twenty per cent of its specified minimum yield
235 strength; (3) any electric generating or storage facility using any fuel,
236 including nuclear materials, including associated equipment for
237 furnishing electricity but not including an emergency generating
238 device, as defined in subsection (f) of this section or a facility (i) owned
239 and operated by a private power producer, as defined in section
240 16-243b, (ii) which is a qualifying small power production facility or a
241 qualifying cogeneration facility under the Public Utility Regulatory
242 Policies Act of 1978, as amended, or a facility determined by the
243 council to be primarily for a producer's own use, and (iii) which has, in
244 the case of a facility utilizing renewable energy sources, a generating

245 capacity of one megawatt of electricity or less, in the case of a fuel cell,
246 a generating capacity of one megawatt or higher or that operates at
247 natural gas pressures in excess of one hundred fifty pounds per square
248 inch, and, in the case of a facility utilizing cogeneration technology, a
249 generating capacity of twenty-five megawatts of electricity or less; (4)
250 any electric substation or switchyard designed to change or regulate
251 the voltage of electricity at sixty-nine kilovolts or more or to connect
252 two or more electric circuits at such voltage, which substation or
253 switchyard may have a substantial adverse environmental effect, as
254 determined by the council established under section 16-50j, and other
255 facilities which may have a substantial adverse environmental effect as
256 the council may, by regulation, prescribe; (5) such community antenna
257 television towers and head-end structures, including associated
258 equipment, which may have a substantial adverse environmental
259 effect, as said council shall, by regulation, prescribe; (6) such
260 telecommunication towers, including associated telecommunications
261 equipment, owned or operated by the state, a public service company
262 or a certified telecommunications provider or used in a cellular system,
263 as defined in the Code of Federal Regulations Title 47, Part 22, as
264 amended, which may have a substantial adverse environmental effect,
265 as said council shall, by regulation, prescribe; and (7) any component
266 of a proposal submitted pursuant to the request for proposal process;

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

269 (c) "Person" means any individual, corporation, limited liability
270 company, joint venture, public benefit corporation, political
271 subdivision, governmental agency or authority, municipality,
272 partnership, association, trust or estate and any other entity, public or
273 private, however organized;

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

276 (e) "Transmission line tap" means an electrical transmission line not

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

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

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

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

301 (a) Except as provided in subsection (b) of section 16-50z, no person
302 shall exercise any right of eminent domain in contemplation of,
303 commence the preparation of the site for, commence the construction
304 or supplying of a facility, or commence any modification of a facility,
305 that may, as determined by the council, have a substantial adverse
306 environmental effect in the state without having first obtained a
307 certificate of environmental compatibility and public need, hereinafter
308 referred to as a "certificate", issued with respect to such facility or

309 modification by the council. Certificates shall not be required for (1)
310 fuel cells built within the state with a generating capacity of two
311 hundred fifty kilowatts or less, or (2) fuel cells built out of state with a
312 generating capacity of ten kilowatts or less, provided any such fuel cell
313 as described in subdivision (1) or (2) of this section is not rated at one
314 megawatt or higher or does not operate at natural gas pressures in
315 excess of one hundred fifty pounds per square inch. The council shall,
316 upon request, hold a public hearing pursuant to section 16-50m for any
317 application for a certificate or declaratory ruling for any fuel cell. Any
318 facility with respect to which a certificate is required shall thereafter be
319 built, maintained and operated in conformity with such certificate and
320 any terms, limitations or conditions contained therein.
321 Notwithstanding the provisions of this chapter or title 16a, the council
322 shall, in the exercise of its jurisdiction over the siting of generating
323 facilities, approve by declaratory ruling (A) the construction of a
324 facility solely for the purpose of generating electricity, other than an
325 electric generating facility that uses nuclear materials or coal as fuel, at
326 a site where an electric generating facility operated prior to July 1,
327 2004, (B) the construction or location of any fuel cell, unless the council
328 finds a substantial adverse environmental effect, or of any customer-
329 side distributed resources project or facility or grid-side distributed
330 resources project or facility with a capacity of not more than sixty-five
331 megawatts, as long as such project meets air and water quality
332 standards of the Department of Environmental Protection, and (C) the
333 siting of temporary generation solicited by the Department of Public
334 Utility Control pursuant to section 16-19ss.

335 Sec. 5. Subdivision (e) of section 16-50l of the general statutes is
336 repealed and the following is substituted in lieu thereof (*Effective from*
337 *passage*):

338 (e) Except as provided in subsection (e) of section 16a-7c, at least
339 sixty days prior to the filing of an application with the council, the
340 applicant shall consult with the municipality in which the facility may
341 be located and with any other municipality required to be served with
342 a copy of the application under subdivision (1) of subsection (b) of this

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

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| 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) |

Statement of Legislative Commissioners:

The requirements in section 1(b)(3) were moved into section 1(b)(1)(D) and the requirements in section 1(i) were moved into section 1(c)(1) and section 1(j) was renumbered as section 1(i) for internal consistency and rewritten for accuracy.

ET *Joint Favorable Subst.*