

**TESTIMONY OF MARK CIARFELLA  
VICE PRESIDENT, NEW TOWER DEVELOPMENT  
SBA COMMUNICATIONS CORPORATION  
BEFORE THE  
COMMITTEE ON ENERGY AND TECHNOLOGY  
FEBRUARY 23, 2010**

**H.B. No. 5213 (RAISED) AN ACT CONCERNING THE SITING  
COUNCIL.**

My name is Mark Ciarfella and I am the Vice President of New Tower Development with SBA Communications Corporation (SBA). SBA is a publicly-traded company and owns and maintains over 8,000 telecommunications facilities throughout the United States. SBA owns and maintains over 100 telecommunications facilities in the State of Connecticut and has filed numerous regulatory applications for certificates of environmental compatibility and public need with the Connecticut Siting Council. SBA pays real property taxes to municipalities in the State of Connecticut, has numerous employees who are residents in the State of Connecticut. In addition, SBA utilizes Connecticut contractors in the construction of its telecommunications facilities in Connecticut.

House Bill No. 5213 seeks to authorize the Connecticut Siting Council to impose civil fines and attorneys fees and costs against applicants to other participants in Siting Council proceedings after a finding that an applicant has misrepresented or omitted material facts.

**SBA IS OPPOSED TO THIS BILL FOR SEVERAL REASONS.**

**First**, this bill only applies to the Siting Council and not to other similarly-situated state agencies or to local land use agencies. To my knowledge, no similar authority has been vested in any of these other, similar adjudicatory bodies. This singling out of the Siting Council is entirely inappropriate.

**Second**, this bill permits the Siting Council to issue fines only against an applicant or petitioner and does not apply similarly to other participants in a Siting Council proceeding. This smacks of unfairness and may even rise to the level of a violation of Constitutional rights to due process afforded to an applicant. If such a bill is to move beyond this Committee, then it needs to be applied equally and fairly to any and all participants in a Siting Council proceeding.

**Third**, if a participant in a Siting Council proceeding believes that an applicant or a petitioner has made a misrepresentation or omission in an application to the Siting Council, the current Siting Council procedure permits that participant to fully participate in the proceeding and bring those issues to light and can urge the denial of the pending application. If the alleged misrepresentation or omission is of a serious nature, then the participant has the opportunity to pursue legal remedies in the appropriate venue—a court of law.

**Fourth**, before a hearing can commence on a pending Siting Council application, the applicant is required to verify all exhibits, including its application, as true and accurate to the best of the applicant's knowledge and the applicant's witnesses are sworn in under the penalty of perjury. If any participant in the proceeding believes that a witness is perjuring himself or herself, then that participant can pursue the legal remedies afforded for such perjury, again, in the appropriate venue—a court of law.

Simply put, this bill is simply unnecessary. The remedy sought in the proposal is already available to any participant, including an applicant, through a judicial proceeding.

**Finally**, I wish to offer for your consideration that, under the current statutory and regulatory regime, applicants to the Siting Council, such as SBA, must undergo an extensive, rigorous pre-application process before they are even permitted to file an application with the Siting Council. In addition, in comparison to other states, the Siting Council process requires an applicant to file an extensive amount of documentation to support its application, thereby giving the Siting Council an ample record on which to base its decision. The Siting Council then has ample opportunity to pursue the veracity of that documentation through its pre-hearing and hearing process.

SBA greatly appreciates the Committee on Energy and Technology's time and consideration and urges that this bill be denied. It is, at best, unnecessary and, at worse, unconstitutional.

