



House of Representatives

File No. 861

General Assembly

January Session, 2011 **(Reprint of File No. 481)**

Substitute House Bill No. 6250
As Amended by House
Amendment Schedule "A"

Approved by the Legislative Commissioner
May 31, 2011

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 Section 16-50p of the general statutes is repealed and the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, 2011*):

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) [,] of section
19 16-50i and an application concerning a facility described in subdivision
20 (3) of said subsection (a), provided the council may extend such [time
21 periods may be extended by the council] period by not more than one
22 hundred 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) of section 16-50i, provided the council may extend such
26 [time] period [may be extended by the council] by not more than one
27 hundred 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 that is (i) proposed to be installed on land under

80 agricultural restriction, as provided in section 22-26cc, that the facility
81 will not result in a material decrease of acreage and productivity of the
82 arable land, or (ii) proposed to be installed on land near a building
83 containing a school, as defined in section 10-154a, a commercial child
84 day care center, as described in subdivision (1) of subsection (a) of
85 section 19a-77, that the facility will not be less than two hundred fifty
86 feet from such school or commercial child day care center unless the
87 location is acceptable to the chief elected official of the municipality or
88 the council finds that the facility will not have a substantial adverse
89 effect on the aesthetics or scenic quality of the neighborhood in which
90 such school or commercial child day care center is located; and

91 (H) That, for a facility described in subdivision (5) or (6) of
92 subsection (a) of section 16-50i, it has considered the manufacturer's
93 recommended safety standards for any equipment, machinery or
94 technology.

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

114 latest facility design options intended to minimize aesthetic and
115 environmental impacts. The council may deny an application for a
116 certificate if it determines that (i) shared use under the provisions of
117 subparagraph (A) of this subdivision is feasible, (ii) the applicant
118 would not cooperate relative to the future shared use of the proposed
119 facility, or (iii) the proposed facility would substantially affect the
120 scenic quality of its location or surrounding neighborhood and no
121 public safety concerns require that the proposed facility be constructed
122 in such a location.

123 (2) When issuing a certificate for a facility described in subdivision
124 (5) or (6) of subsection (a) of section 16-50i, the council may impose
125 such reasonable conditions as it deems necessary to promote
126 immediate and future shared use of such facilities and avoid the
127 unnecessary proliferation of such facilities in the state. The council
128 shall, prior to issuing a certificate, provide notice of the proposed
129 facility to the municipality in which the facility is to be located. Upon
130 motion of the council, written request by a public or private entity
131 [which] that provides telecommunications or community antenna
132 television service to the public or upon written request by an interested
133 party, the council may conduct a preliminary investigation to
134 determine whether the holder of a certificate for such a facility is in
135 compliance with the certificate. Following its investigation, the council
136 may initiate a certificate review proceeding, which shall include a
137 hearing, to determine whether the holder of a certificate for such a
138 facility is in compliance with the certificate. In such proceeding, the
139 council shall render a decision and may issue orders [which] it deems
140 necessary to compel compliance with the certificate, which [orders]
141 may include, but not be limited to, revocation of the certificate. Such
142 orders may be enforced in accordance with the provisions of section
143 16-50u.

144 (c) (1) The council shall not grant a certificate for a facility described
145 in subdivision [(3)] (5) or (6) of subsection (a) of section 16-50i, either as
146 proposed or as modified by the council, unless it finds and determines
147 a public benefit for the facility and considers neighborhood concerns

148 with respect to the factors set forth in subdivision (3) of subsection (a)
149 of section 16-50p, including public safety.

150 (2) The council shall not grant a certificate for a facility described in
151 subdivision (1) of subsection (a) of section 16-50i, ~~[which]~~ that is
152 substantially underground or underwater except where such ~~[facilities~~
153 ~~interconnect]~~ facility interconnects with existing overhead facilities,
154 either as proposed or as modified by the council, unless it finds and
155 determines a public benefit for ~~[the facility, in the case of such facility~~
156 ~~that is]~~ a facility substantially underground [, and] or a public need for
157 ~~[such facility, in the case of such facility that is]~~ a facility substantially
158 underwater.

159 (3) For purposes of ~~[subparagraph (A) of this subdivision]~~ this
160 section, a public benefit exists ~~[if such]~~ when a facility is necessary for
161 the reliability of the electric power supply of the state or for the
162 development of a competitive market for electricity and a public need
163 exists ~~[if such]~~ when a facility is necessary for the reliability of the
164 electric power supply of the state.

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

175 (d) If the council determines that the location of all or a part of the
176 proposed facility should be modified, it may condition the certificate
177 upon such modification, provided the municipalities [, and persons
178 residing or located in such municipalities,] affected by the modification
179 and the residents of such municipalities shall have had notice of the

180 application [as provided in] pursuant to subsection (b) of section 16-
181 50l.

182 (e) In an amendment proceeding, the council shall render a decision
183 [within] not later than ninety days [of] after the filing of the application
184 or adoption of the resolution initiating the proceeding. The council
185 shall file an opinion with its order stating its reasons for the decision.
186 The council's decision shall include the findings and determinations
187 enumerated in subsection (a) of this section which are relevant to the
188 proposed amendment.

189 (f) [A] The council shall serve a copy of the order and opinion issued
190 therewith [shall be served] upon each party and publish a notice of the
191 issuance of the order and opinion [shall be published] in such
192 newspapers as will serve substantially to inform the public of the
193 issuance of such order and opinion. The name and address of each
194 party shall be set forth in the order.

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

200 (h) For purposes of this section, a public need exists for an energy
201 facility if such facility is necessary for the reliability of the electric
202 power supply of the state.

203 (i) For a facility described in subdivision (1) of subsection (a) of
204 section 16-50i, with a capacity of not less than three hundred forty-five
205 kilovolts, [or greater, there] the presumption shall be [a presumption]
206 that a proposal to place the overhead portions, if any, of such facility
207 adjacent to residential areas, private or public schools, licensed child
208 day care facilities, licensed youth camps or public playgrounds is
209 inconsistent with the purposes of this chapter. An applicant may rebut
210 this presumption by demonstrating to the council that [it] burying the
211 facility will be technologically infeasible. [to bury the facility.] In

212 determining such infeasibility, the council shall consider the effect of
213 burying the facility on the reliability of the electric transmission system
214 of the state and whether the cost of any contemplated technology or
215 design configuration may result in an unreasonable economic burden
216 on the ratepayers of the state.

217 (j) Upon a motion of a party or intervenor or a council
218 determination that any party or intervenor relating to a facility
219 described in subdivision (5) or (6) of subsection (a) of section 16-50i has
220 intentionally omitted or misrepresented a material fact in the course of
221 a council proceeding, the council may, by majority vote, request the
222 Attorney General to bring a civil action. In any such action, the
223 Attorney General may seek any legal or equitable relief the Superior
224 Court deems appropriate, including, but not limited to, injunctive
225 relief or a civil penalty of not more than ten thousand dollars and
226 reasonable attorney fees and related costs.

227 Sec. 2. Section 16-50gg of the general statutes is repealed and the
228 following is substituted in lieu thereof (*Effective July 1, 2011*):

229 When notifying a municipality pursuant to section 16-50l, as
230 amended by this act, of an application for a telecommunications tower
231 in said municipality, the Connecticut Siting Council shall request that
232 the municipality provide to said council, within thirty days, any
233 location preferences or criteria for the siting of said
234 telecommunications tower. The council may consider regional location
235 preferences from neighboring municipalities.

236 Sec. 3. Subsection (b) of section 16-50bb of the general statutes is
237 repealed and the following is substituted in lieu thereof (*Effective from*
238 *passage*):

239 (b) Payments from the account shall be made upon authorization by
240 the State Treasurer. An application for reimbursement shall be
241 submitted not later than sixty days after [receipt of an application for a
242 proposed facility] the conclusion of a certification proceeding, except
243 for a facility described in subdivisions (5) and (6) of subsection (a) of

244 section 16-50i, to each municipality entitled to receive a copy of such
245 application under section 16-50l, as amended by this act, in order to
246 defray expenses incurred by such municipalities in participating as a
247 party to a certification proceeding, except for a proceeding on an
248 application for a facility described in subdivision (5) or (6) of
249 subsection (a) of section 16-50i. Any moneys remaining [at the end of
250 such proceeding] after payments to municipalities in accordance with
251 this section shall be refunded to the applicant in even amounts. Where
252 more than one municipality seeks moneys from such account, the
253 council shall evenly distribute such moneys among the municipalities.
254 No municipality may receive moneys from the account in excess of
255 twenty-five thousand dollars. No municipality may receive moneys
256 from the account in excess of the dollar amount such municipality has
257 expended from its own municipal funds. [A municipality that has
258 received moneys from the account in excess of the costs it incurred in
259 participating in the certification proceeding, as determined by the
260 council, shall refund such excess moneys to the account upon the
261 conclusion of such proceeding.]

262 Sec. 4. Section 16-50l of the general statutes is amended by adding
263 subsection (g) as follows (*Effective from passage*):

264 (NEW) (g) (1) For a facility described in subdivision (6) of
265 subsection (a) of section 16-50i, at least ninety days before the filing of
266 an application with the council, the applicant shall consult with the
267 municipality in which the facility may be located and with any other
268 municipality required to be served with a copy of the application
269 under subdivision (1) of subsection (b) of this section. Consultation
270 with the municipality where the facility is proposed to be located shall
271 include, but not be limited to, good-faith efforts to meet with the chief
272 elected official of the municipality or such official's designee. At the
273 time of the consultation, the applicant shall provide the municipality
274 with any technical reports concerning the need for the facility,
275 including a map indicating the area of need, the location of existing
276 surrounding facilities, a detailed description of the proposed and any
277 alternate sites under consideration, a listing of other sites or areas

278 considered and rejected, the location of all schools near the proposed
 279 facility, an analysis of the potential aesthetic impacts of the facility on
 280 said schools, as well as a discussion of efforts or measures to be taken
 281 to mitigate such aesthetic impacts, a description of the site selection
 282 process undertaken by the prospective applicant and the potential
 283 environmental effects of the proposed facility. Copies of such technical
 284 reports shall also be provided to such municipality's planning
 285 commission, zoning commission or combined planning and zoning
 286 commission and inland wetland agency.

287 (2) Not later than sixty days after the initial municipal consultation
 288 meeting, the municipality, in cooperation with the applicant, may
 289 conduct a public information meeting. If the municipality decides to
 290 hold a public information meeting, the applicant shall be responsible
 291 for sending notice of such meeting to each person appearing of record
 292 as an owner of property which abuts the proposed or alternate facility
 293 locations and for publishing notice of such meeting in a newspaper of
 294 general circulation in the municipality at least fifteen days before the
 295 date of the public information meeting.

296 (3) The municipality shall present the applicant with proposed
 297 alternative sites, which may include municipal parcels, for its
 298 consideration not later than thirty days after the initial consultation
 299 meeting. The applicant shall evaluate these alternate sites presented as
 300 part of the municipal consultation process and include the results of its
 301 evaluations in its application to the council. The applicant may present
 302 any such alternatives to the council in its application for formal
 303 consideration.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2011</i>	16-50p
Sec. 2	<i>July 1, 2011</i>	16-50gg
Sec. 3	<i>from passage</i>	16-50bb(b)
Sec. 4	<i>from passage</i>	16-50l

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: None

Municipal Impact: None

Explanation

The bill, which makes changes regarding telecommunication tower applications and Siting Council certificate approvals, has no associated fiscal impact to the state or municipalities.

House "A" makes clarifications that do not result in a fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 6250 (as amended by House "A")******AN ACT CONCERNING THE SITING COUNCIL.*****SUMMARY:**

This bill changes the standard of review for power plants and telecommunications towers seeking a certificate from the Siting Council.

The bill requires that telecommunications tower developers begin consulting with potentially affected municipalities 90, rather than 60, days before applying for a Siting Council certificate. It also expands the scope of this consultation.

It limits the circumstances in which the council can approve a tower proposed for installation near a school or commercial day care center. Under the bill, the council cannot approve a proposed tower located within 250 feet of these facilities unless (1) the location is acceptable to the municipality's chief elected official or (2) the council finds that the tower will not have a substantial adverse effect on the aesthetics or scenic quality of the neighborhood where they are located.

This bill expands the factors the Siting Council must consider in granting a certificate for a telecommunications tower by requiring it to consider the manufacturer's recommended safety standards for any equipment, machinery, or technology. It requires the council to examine the latest facility design options intended to minimize aesthetic and environmental impacts. The bill also requires the council to consider neighborhood concerns regarding the factors it must already take into account, including public safety.

By law, the Siting Council can deny an application for a tower if it finds that it would substantially affect the scenic quality of its site and

that public safety concerns do not require that it be built there. The bill expands this authority to include cases where the tower would substantially affect the scenic quality of the surrounding neighborhood and public safety concerns do not require that it be built at the proposed site.

The law requires certificate applicants, other than applicants for telecommunications towers, to pay municipal participation fees of up to \$25,000 and requires the fees to be deposited in a nonlapsing "municipal participation account" in the General Fund. The bill modifies how this money is distributed to municipalities.

The bill allows the council to request, upon a motion of a party or intervenor in a case of a proposed tower or on its own determination in such cases that any party or intervenor has intentionally omitted or misrepresented a material fact in the course of a council proceeding, to request the attorney general to bring a civil action. The council must do so by a majority vote. In the action, the attorney general may seek any legal or equitable relief the Superior Court considers appropriate, including injunctive relief or a civil penalty of up to \$10,000 and reasonable attorney fees and related costs.

*House Amendment "A" (1) changes the standard of review, (2) modifies the factors the council must consider when approving power plants and telecommunications towers, (3) establishes criteria for siting towers near day care centers, and (4) limits several provisions of the bill to applications for certificates for telecommunications towers.

EFFECTIVE DATE: Upon passage for the pre-application consultation and municipal participation account provisions, and July 1, 2011 for the remaining provisions

STANDARD OF REVIEW

By law, various energy and telecommunications facilities generally require a Siting Council certificate to be built. Under current law, except for power plants, the council must find that there is a need for

the facility in order to grant it a certificate. In the case of power plants, the council must find that the plant would produce a public benefit. In practice, the public benefit standard is less rigorous than the public need standard.

The bill applies the public benefit standard, rather than the public need standard, to telecommunications towers. It requires power plants to meet the public need rather than public benefit standard.

PRE-APPLICATION CONSULTATION

Under current law, with limited exceptions, the developer of any facility under the council's jurisdiction must consult with potentially affected municipalities at least 60 days before filing its application with the council. Consultations must include any municipality where the developer proposes to locate the facility, or an alternative site for the facility, and any adjoining municipality with a boundary within 2,500 feet of the proposed facility. The consultation must at least include good faith efforts to meet with the municipality's chief elected official. The applicant must provide the official with any technical reports concerning the need for, and environmental effects of, the facility and the site selection process. The municipality can hold hearings, and within 60 days of its initial consultation, issue its recommendations to the council. Within 15 days after submitting its application, the applicant must give the council the materials it provided the municipality and a summary of the consultations, including the municipality's recommendations.

In the case of proposed telecommunications towers, the bill requires that the consultation begin at least 90 days before the developer files the application. It requires the technical reports the developer provides the municipality to include:

1. a map showing the area of need;
2. the location of existing surrounding facilities;
3. a description of the site selection process including a detailed

description of the proposed and alternate sites being considered and a list of other sites considered and rejected;

- 4. the location of schools near the proposed site, an analysis of the aesthetic impact of the tower on these schools, and a discussion of measures to be taken to mitigate these impacts; and
- 5. the proposed facility’s potential environmental effects.

The bill also requires that copies of the technical reports be provided to the municipality’s planning and zoning commissions and its inland wetland agency.

MUNICIPAL PARTICIPATION ACCOUNT

By law, payments from this account are made to municipalities that participate in Siting Council proceedings, upon authorization of the state treasurer. Under current law, the treasurer must make these payments within 60 days after the Siting Council receives a certificate application. The bill instead requires municipalities to apply for reimbursement within 60 days after the certificate proceeding ends. Under current law, any money left over from reimbursements must go back to the applicant at the end of the proceeding. The bill instead requires that this take place after the municipalities are paid. The bill eliminates a requirement that a municipality that received more money from the account than it incurred in participating in the certification proceeding, as determined by the Siting Council, refund the excess to the account.

COMMITTEE ACTION

Energy and Technology Committee

Joint Favorable Substitute
Yea 19 Nay 3 (03/22/2011)

Judiciary Committee

Joint Favorable
Yea 38 Nay 0 (04/28/2011)

Planning and Development Committee

Joint Favorable

Yea 21 Nay 0 (05/09/2011)