



General Assembly

January Session, 2011

**Raised Bill No. 6250**

LCO No. 2648

\*02648\_\_\_\_\_ET\_\*

Referred to Committee on Energy and Technology

Introduced by:  
(ET)

***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 Section 16-50p of the general statutes is repealed and the  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, 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, a day care center, as  
84 defined in section 19a-79a, a place of worship, or a private residence  
85 that the facility will not be less than seven hundred fifty feet from such  
86 school, day care center, place of worship, or residence unless the  
87 council finds that there are no technically, legally, environmentally and  
88 economically feasible alternative sites within the municipality that are  
89 more than seven hundred fifty feet from such school, day care center,  
90 place of worship, or residence; and

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

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

111 scenic quality of local, regional or state-wide significance, and (D) the  
112 latest technological options designed to minimize aesthetic and  
113 environmental impacts. The council may deny an application for a  
114 certificate if it determines that (i) shared use under the provisions of  
115 subparagraph (A) of this subdivision is feasible, (ii) the applicant  
116 would not cooperate relative to the future shared use of the proposed  
117 facility, or (iii) the proposed facility would substantially affect the  
118 scenic quality of its location and no public safety concerns require that  
119 the proposed facility be constructed in such a location.

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

141 (c) (1) The council shall not grant a certificate for a facility described  
142 in subdivision (3) of subsection (a) of section 16-50i, as amended by  
143 this act, either as proposed or as modified by the council, unless it

144 finds and determines a public benefit for the facility and considers  
145 public safety issues and, as practicable, neighborhood concerns.

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

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

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

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

176 application [as provided in] pursuant to subsection (b) of section 16-  
177 50l.

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

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

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

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

199 [(i) (h) For a facility described in subdivision (1) of subsection (a) of  
200 section 16-50i, as amended by this act, with a capacity of not less than  
201 three hundred forty-five kilovolts, [or greater, there] the presumption  
202 shall be [a presumption] that a proposal to place the overhead  
203 portions, if any, of such facility adjacent to residential areas, private or  
204 public schools, licensed child day care facilities, licensed youth camps  
205 or public playgrounds is inconsistent with the purposes of this chapter.  
206 An applicant may rebut this presumption by demonstrating to the

207 council that [it] burying the facility will be technologically infeasible,  
208 [to bury the facility.] In determining such infeasibility, the council shall  
209 consider the effect of burying the facility on the reliability of the  
210 electric transmission system of the state and whether the cost of any  
211 contemplated technology or design configuration may result in an  
212 unreasonable economic burden on the ratepayers of the state.

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

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

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

231 Sec. 3. Section 16-50i of the general statutes is repealed and the  
232 following is substituted in lieu thereof (*Effective July 1, 2011*):

233 As used in this chapter:

234 (a) "Facility" means: (1) An electric transmission line of a design  
235 capacity of sixty-nine kilovolts or more, including associated  
236 equipment but not including a transmission line tap, as defined in

237 subsection (e) of this section; (2) a fuel transmission facility, except a  
238 gas transmission line having a design capability of less than two  
239 hundred pounds per square inch gauge pressure or having a design  
240 capacity of less than twenty per cent of its specified minimum yield  
241 strength; (3) any electric generating or storage facility using any fuel,  
242 including nuclear materials, including associated equipment for  
243 furnishing electricity and a fuel cell with a generating capacity of one  
244 megawatt or higher or that operates at natural gas pressures in excess  
245 of one hundred fifty pounds per square inch, but not including an  
246 emergency generating device, as defined in subsection (f) of this  
247 section or a facility (i) owned and operated by a private power  
248 producer, as defined in section 16-243b, (ii) which is a qualifying small  
249 power production facility or a qualifying cogeneration facility under  
250 the Public Utility Regulatory Policies Act of 1978, as amended, or a  
251 facility determined by the council to be primarily for a producer's own  
252 use, and (iii) which has, in the case of a facility utilizing renewable  
253 energy sources, a generating capacity of one megawatt of electricity or  
254 less and, in the case of a facility utilizing cogeneration technology, a  
255 generating capacity of twenty-five megawatts of electricity or less; (4)  
256 any electric substation or switchyard designed to change or regulate  
257 the voltage of electricity at sixty-nine kilovolts or more or to connect  
258 two or more electric circuits at such voltage, which substation or  
259 switchyard may have a substantial adverse environmental effect, as  
260 determined by the council established under section 16-50j, and other  
261 facilities which may have a substantial adverse environmental effect as  
262 the council may, by regulation, prescribe; (5) such community antenna  
263 television towers and head-end structures, including associated  
264 equipment, which may have a substantial adverse environmental  
265 effect, as said council shall, by regulation, prescribe; (6) such  
266 telecommunication towers, including associated telecommunications  
267 equipment, owned or operated by the state, a public service company  
268 or a certified telecommunications provider or used in a cellular system,  
269 as defined in the Code of Federal Regulations Title 47, Part 22, as  
270 amended, which may have a substantial adverse environmental effect,

271 as said council shall, by regulation, prescribe; and (7) any component  
272 of a proposal submitted pursuant to the request for proposal process;

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

275 (c) "Person" means any individual, corporation, limited liability  
276 company, joint venture, public benefit corporation, political  
277 subdivision, governmental agency or authority, municipality,  
278 partnership, association, trust or estate and any other entity, public or  
279 private, however organized;

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

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

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

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

304 Sec. 4. Subsection (a) of section 16-50k of the general statutes is  
305 repealed and the following is substituted in lieu thereof (*Effective July*  
306 *1, 2011*):

307 (a) Except as provided in subsection (b) of section 16-50z, no person  
308 shall exercise any right of eminent domain in contemplation of,  
309 commence the preparation of the site for, commence the construction  
310 or supplying of a facility, or commence any modification of a facility,  
311 that may, as determined by the council, have a substantial adverse  
312 environmental effect in the state without having first obtained a  
313 certificate of environmental compatibility and public need, hereinafter  
314 referred to as a "certificate", issued with respect to such facility or  
315 modification by the council. Certificates shall not be required for (1)  
316 fuel cells built within the state with a generating capacity of two  
317 hundred fifty kilowatts or less, or (2) fuel cells built out of state with a  
318 generating capacity of ten kilowatts or less, provided any such fuel cell  
319 as described in subdivision (1) or (2) of this subsection does not have a  
320 generating capacity of one megawatt or higher or does not operate at  
321 natural gas pressures in excess of one hundred fifty pounds per square  
322 inch. The council shall, upon request, hold a public hearing pursuant  
323 to section 16-50m for any application for a certificate or declaratory  
324 ruling for any fuel cell. Any facility with respect to which a certificate  
325 is required shall thereafter be built, maintained and operated in  
326 conformity with such certificate and any terms, limitations or  
327 conditions contained therein. Notwithstanding the provisions of this  
328 chapter or title 16a, the council shall, in the exercise of its jurisdiction  
329 over the siting of generating facilities, approve by declaratory ruling  
330 (A) the construction of a facility solely for the purpose of generating  
331 electricity, other than an electric generating facility that uses nuclear  
332 materials or coal as fuel, at a site where an electric generating facility  
333 operated prior to July 1, 2004, (B) the construction or location of any  
334 fuel cell, unless the council finds a substantial adverse environmental

335 effect, or of any customer-side distributed resources project or facility  
336 or grid-side distributed resources project or facility with a capacity of  
337 not more than sixty-five megawatts, as long as such project meets air  
338 and water quality standards of the Department of Environmental  
339 Protection, and (C) the siting of temporary generation solicited by the  
340 Department of Public Utility Control pursuant to section 16-19ss.

341 Sec. 5. Subsection (e) of section 16-50l of the general statutes is  
342 repealed and the following is substituted in lieu thereof (*Effective from*  
343 *passage*):

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

368 the council all materials provided to the municipality and a summary  
369 of the consultations with the municipality including all  
370 recommendations issued by the municipality, including any proposed  
371 alternative site selection. If the municipality proposes an alternative  
372 site selection, the siting council shall consider such proposal in  
373 conjunction with the application as part of its regular approval  
374 process.

375 Sec. 6. Subsection (b) of section 16-50bb of the general statutes is  
376 repealed and the following is substituted in lieu thereof (*Effective from*  
377 *passage*):

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

401 proceeding.]

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>July 1, 2011</i>	16-50i
Sec. 4	<i>July 1, 2011</i>	16-50k(a)
Sec. 5	<i>from passage</i>	16-50l(e)
Sec. 6	<i>from passage</i>	16-50bb(b)

**Statement of Purpose:**

To make changes to the Connecticut Siting Council's procedures, including those related to the siting of certain facilities.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*