



# Senate

General Assembly

**File No. 159**

January Session, 2011

Substitute Senate Bill No. 833

*Senate, March 23, 2011*

The Committee on Environment reported through SEN. MEYER of the 12th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING THE APPROVAL AND SITING OF CERTAIN TELECOMMUNICATIONS TOWER APPLICATIONS.***

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

1 Section 1. Section 16-50x of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2011*):

3 (a) Notwithstanding any other provision of the general statutes,  
4 except as provided in section 16-243 and this section, the council shall  
5 have exclusive jurisdiction over the location and type of facilities and  
6 over the location and type of modifications of facilities subject to the  
7 provisions of subsection (d) of this section. When evaluating an  
8 application for a [telecommunication] telecommunications tower  
9 within a particular municipality, the council shall consider any  
10 location preferences or criteria (1) provided to the council pursuant to  
11 section 16-50gg, or (2) that may exist in the zoning regulations of said  
12 municipality as of the submission date of the application to the council.  
13 When evaluating an application for a telecommunications tower to be  
14 sited not more than two hundred fifty yards from a residential

15 dwelling, place of worship, school or day care center, the council shall  
16 not approve or certify such application unless: (A) Such applicant has  
17 the approval of the planning and zoning commission of the  
18 municipality where such telecommunications tower is proposed to be  
19 located, or (B) the municipality where such telecommunications tower  
20 is proposed to be located, by vote of its legislative body, yielded the  
21 approval authority described in subparagraph (A) of this subsection to  
22 the council for such application. In ruling on applications for  
23 certificates or petitions for a declaratory ruling for facilities and on  
24 requests for shared use of facilities, the council shall give such  
25 consideration to other state laws and municipal regulations as it shall  
26 deem appropriate. Whenever the council certifies a facility pursuant to  
27 this chapter, such certification shall satisfy and be in lieu of all  
28 certifications, approvals and other requirements of state and municipal  
29 agencies in regard to any questions of public need, convenience and  
30 necessity for such facility.

31 (b) Whenever the council has certified a facility pursuant to this  
32 chapter, any person joining in the application for such certification  
33 shall be empowered to exercise its powers of eminent domain, granted  
34 by the general statutes or any special act, to acquire property for such  
35 facility for the benefit of all persons receiving such certificates.

36 (c) Whenever the council has certified a facility pursuant to this  
37 chapter and the applicant for such certificate thereafter initiates  
38 condemnation proceedings to acquire property for such facility, and it  
39 shall appear to the court or judge before whom such proceedings are  
40 pending that the public interest will be prejudiced by delay, said court  
41 or judge may direct that said applicant be permitted to enter  
42 immediately upon the property to be taken and devote it temporarily  
43 to the public use specified in the application instituting such  
44 proceeding upon the deposit with said court of a sum to be fixed by  
45 said court or judge, upon notice to the parties of not less than ten days,  
46 and such sum when fixed and paid shall be applied to the payment of  
47 any assessment of damages which may be made, with interest thereon  
48 from the date of such entry upon said property, and the remainder, if

49 any, returned to said applicant. If such application is dismissed, no  
50 assessment of damages is made, or the proceedings are abandoned by  
51 said applicant, said court or judge shall direct that the money so  
52 deposited, so far as it may be necessary, shall be applied to the  
53 payment of any damages that the owner of said property or other  
54 parties in interest may have sustained by such entry upon and use of  
55 such property, including reasonable attorneys', engineers' and  
56 appraisers' fees and other reasonable expenses incurred by such owner  
57 or other parties in interest in connection with such proceedings, and  
58 the costs and expenses of such proceedings. Such damages shall be  
59 ascertained by said court or judge or a committee to be appointed for  
60 that purpose, and if the sum so deposited shall be insufficient to pay  
61 such damages and all costs and expenses so assessed, judgment shall  
62 be entered against said applicant for the deficiency to be enforced and  
63 collected in the same manner as a judgment in the Superior Court, and  
64 the possession of such property shall be restored to the owner or  
65 owners thereof.

66 (d) Any town, city or borough zoning commission and inland  
67 wetland agency may regulate and restrict the proposed location of a  
68 facility, as defined in subdivisions (3) and (4) of subsection (a) of  
69 section 16-50i. Such local bodies may make all orders necessary to the  
70 exercise of such power to regulate and restrict, which orders shall be in  
71 writing and recorded in the records of their respective communities,  
72 and written notice of any order shall be given to each party affected  
73 thereby. Such a local body shall make any such order (1) not more than  
74 sixty-five days after an application has been filed with the council for  
75 the siting of a facility described in subdivision (3) of subsection (a) of  
76 section 16-50i, or (2) not more than thirty days after an application has  
77 been filed with the council for the siting of a facility described in  
78 subdivision (4) of subsection (a) of section 16-50i. Each such order shall  
79 be subject to the right of appeal within thirty days after the giving of  
80 such notice by any municipality required to be served with a copy of  
81 the application under subdivision (1) of subsection (b) of section 16-50i  
82 or by any party aggrieved to the council, which shall have jurisdiction,  
83 in the course of any proceeding on an application for a certificate or

84 otherwise, to affirm, modify or revoke such order or make any order in  
85 substitution thereof by a vote of six members of the council.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2011</i>	16-50x

**ENV**      *Joint Favorable Subst.*

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:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 12 \$</b>	<b>FY 13 \$</b>
Department of Environmental Protection	GF - Potential Revenue Gain	Minimal	Minimal

Note: GF=General Fund

#### **Municipal Impact:**

<b>Municipalities</b>	<b>Effect</b>	<b>FY 12 \$</b>	<b>FY 13 \$</b>
Various Municipalities	Potential Revenue Gain	Minimal	Minimal
Various Municipalities	Potential Cost	See Below	See Below

#### **Explanation**

The bill would prohibit the Connecticut Siting Council (the "Council") from approving or certifying certain telecommunications tower applications without either (1) approval of a planning and zoning commission, or (2) a vote of the municipality's legislative body to yield the approval authority to the Council.

A municipality choosing to have applications submitted for planning and zoning commission review would receive revenues from the collection of locally established planning and zoning application fees. The Department of Environmental Protection would also collect a \$58 land use application fee from each applicant.<sup>1</sup> These municipalities may also incur costs in certain instances, to the extent

<sup>1</sup> Pursuant to Section 22a-22j CGS, an additional \$60 fee is paid by applicants seeking approval from planning and zoning, wetlands and coastal management agencies. \$2 of such fee is retained at the local level for administrative costs, with the remaining \$58 remitted to the DEP for deposit into the General Fund. \$875,503 was collected in FY 10.

that they retain outside professional services to assist in evaluating proposals or to respond to legal challenges.

If the latter option is chosen, a municipality having a town meeting form of government (over 90 in Connecticut) would incur costs of \$1,200 - \$2,000 to call a town meeting, assuming that the voting process cannot be accommodated on routinely scheduled election dates.<sup>2</sup> It is anticipated that consolidated towns and cities could hold votes within normally budgeted resources.

### ***The Out Years***

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

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<sup>2</sup> Pursuant to Section 1-1(m) CGS, the words "legislative body", shall mean the town meeting when applied to unconsolidated towns.

**OLR Bill Analysis****sSB 833*****AN ACT CONCERNING THE APPROVAL AND SITING OF CERTAIN TELECOMMUNICATIONS TOWER APPLICATIONS.*****SUMMARY:**

Under current law, the Connecticut Siting Council has exclusive jurisdiction over certain telecommunication tower siting and, when evaluating applications, it must consider location preferences or criteria provided by the municipality or in existing zoning regulations.

This bill prohibits the council from approving or certifying an application to erect a telecommunications tower 250 yards or less from a residential dwelling, place of worship, school, or day care center unless (1) the planning and zoning commission of the municipality where the tower will be sited approves or (2) the municipality's legislative body votes to yield its approval authority for the application to the council.

EFFECTIVE DATE: October 1, 2011

**BACKGROUND*****Related Federal Law***

State and local agencies must comply with the 1996 federal Telecommunications Act in regulating personal wireless services facilities (those used to provide cellular and related services). Among other things, agencies may not:

1. "zone out" such facilities (i.e., adopt regulations that have the effect of barring telecommunications facilities),
2. unreasonably discriminate among providers of functionally equivalent services, or

3. regulate a facility on the basis of its radiofrequency emissions if the emissions are within Federal Communications Commission limits.

**COMMITTEE ACTION**

Environment Committee

Joint Favorable Substitute

Yea 20 Nay 7 (03/09/2011)