

OFFICE OF LEGISLATIVE RESEARCH  
PUBLIC ACT SUMMARY



**PA 11-107**—sHB 6250 (VETOED)  
*Energy and Technology Committee*  
*Judiciary Committee*  
*Planning and Development Committee*

**AN ACT CONCERNING THE SITING COUNCIL**

**SUMMARY:** This act changes the standard of review for power plants and telecommunications towers seeking a certificate from the Siting Council.

The act 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 act, 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 the school or day care center is located.

This act 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 act 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 act 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 act modifies how this money is distributed to municipalities.

The act 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

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appropriate, including injunctive relief or a civil penalty of up to \$10,000 and reasonable attorney fees and related costs.

EFFECTIVE DATE: July 1, 2011 except for the pre-application consultation and municipal participation account provisions, which are effective upon passage

### STANDARD OF REVIEW

By law, various energy and telecommunications facilities generally require a Siting Council certificate to be built. Under prior law, except for power plants, the council had to find that there is a need for the facility in order to grant it a certificate. In the case of power plants, the council had to find that the plant would produce a public benefit. In practice, the public benefit standard is less rigorous than the public need standard.

The act 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 prior law, with limited exceptions, the developer of any facility under the council's jurisdiction had to consult with potentially affected municipalities at least 60 days before filing its application with the council. By law, 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 act 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 act also requires that copies of the technical reports be provided to the municipality's planning and zoning commissions and its inland wetland agency.

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The municipality must present the applicant with proposed alternative sites, which may include municipal parcels, within 30 days after the initial consultation. The applicant must evaluate the alternative sites and include the results of its evaluation in its application to the council. The applicant can present any of these alternatives to the council for formal consideration in its application.

### 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 prior law, the treasurer had to make these payments within 60 days after the Siting Council received a certificate application. The act instead requires municipalities to apply for reimbursement within 60 days after the certificate proceeding ends. Under prior law, any money left over from reimbursements had to go back to the applicant at the end of the proceeding. The act instead requires that this take place after the municipalities are paid. The act 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.

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