



House of Representatives

General Assembly

File No. 55

February Session, 2012

Substitute House Bill No. 5271

House of Representatives, March 20, 2012

The Committee on Energy and Technology reported through REP. NARDELLO of the 89th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

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 Section 16-50p of the general statutes is repealed and the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, 2012*):

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, or a commercial
84 child day care center, as described in subdivision (1) of subsection (a)
85 of section 19a-77, that the facility will not be less than two hundred
86 fifty feet from such school or commercial child day care center unless
87 the location is acceptable to the chief elected official of the municipality
88 or 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, provided
91 the council shall not render any decision pursuant to this
92 subparagraph that is inconsistent with federal law or regulations; and

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

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

112 be located in an area of the state which the council, in consultation
113 with the Department of Energy and Environmental Protection and any
114 affected municipalities, finds to be a relatively undisturbed area that
115 possesses scenic quality of local, regional or state-wide significance,
116 and (D) the latest facility design options intended to minimize
117 aesthetic and environmental impacts. The council may deny an
118 application for a certificate if it determines that (i) shared use under the
119 provisions of subparagraph (A) of this subdivision is feasible, (ii) the
120 applicant would not cooperate relative to the future shared use of the
121 proposed facility, or (iii) the proposed facility would substantially
122 affect the scenic quality of its location or surrounding neighborhood
123 and no public safety concerns require that the proposed facility be
124 constructed in such a location.

125 (2) When issuing a certificate for a facility described in subdivision
126 (5) or (6) of subsection (a) of section 16-50i, the council may impose
127 such reasonable conditions as it deems necessary to promote
128 immediate and future shared use of such facilities and avoid the
129 unnecessary proliferation of such facilities in the state. The council
130 shall, prior to issuing a certificate, provide notice of the proposed
131 facility to the municipality in which the facility is to be located. Upon
132 motion of the council, written request by a public or private entity
133 [which] that provides telecommunications or community antenna
134 television service to the public or upon written request by an interested
135 party, the council may conduct a preliminary investigation to
136 determine whether the holder of a certificate for such a facility is in
137 compliance with the certificate. Following its investigation, the council
138 may initiate a certificate review proceeding, which shall include a
139 hearing, to determine whether the holder of a certificate for such a
140 facility is in compliance with the certificate. In such proceeding, the
141 council shall render a decision and may issue orders [which] it deems
142 necessary to compel compliance with the certificate, which [orders]
143 may include, but not be limited to, revocation of the certificate. Such
144 orders may be enforced in accordance with the provisions of section
145 16-50u.

146 (c) (1) The council shall not grant a certificate for a facility described
147 in subdivision (3) of subsection (a) of section 16-50i, either as proposed
148 or as modified by the council, unless it finds and determines a public
149 benefit for the facility and considers neighborhood concerns with
150 respect to the factors set forth in subdivision (3) of subsection (a) of this
151 section, including public safety.

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

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

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

177 (d) If the council determines that the location of all or a part of the
178 proposed facility should be modified, it may condition the certificate

179 upon such modification, provided the municipalities [, and persons
180 residing or located in such municipalities,] affected by the modification
181 and the residents of such municipalities shall have had notice of the
182 application [as provided in] pursuant to subsection (b) of section 16-
183 50/, as amended by this act.

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

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

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

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

205 (i) For a facility described in subdivision (1) of subsection (a) of
206 section 16-50i, with a capacity of not less than three hundred forty-five
207 kilovolts, [or greater, there] the presumption shall be [a presumption]
208 that a proposal to place the overhead portions, if any, of such facility
209 adjacent to residential areas, private or public schools, licensed child
210 day care facilities, licensed youth camps or public playgrounds is

211 inconsistent with the purposes of this chapter. An applicant may rebut
212 this presumption by demonstrating to the council that [it] burying the
213 facility will be technologically infeasible. [to bury the facility.] In
214 determining such infeasibility, the council shall consider the effect of
215 burying the facility on the reliability of the electric transmission system
216 of the state and whether the cost of any contemplated technology or
217 design configuration may result in an unreasonable economic burden
218 on the ratepayers of the state.

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

230 Sec. 2. Section 16-50gg of the general statutes is repealed and the
231 following is substituted in lieu thereof (*Effective July 1, 2012*):

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

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

242 (b) Payments from the account shall be made upon authorization by

243 the State Treasurer. An application for reimbursement shall be
244 submitted not later than sixty days after [receipt of an application for a
245 proposed facility] the conclusion of a certification proceeding, except
246 for a facility described in subdivisions (5) and (6) of subsection (a) of
247 section 16-50i, [to] by each municipality entitled to receive a copy of
248 such application under section 16-50l, as amended by this act, in order
249 to defray expenses incurred by such municipalities in participating as a
250 party to a certification proceeding, except for a proceeding on an
251 application for a facility described in subdivision (5) or (6) of
252 subsection (a) of section 16-50i. Any moneys remaining [at the end of
253 such proceeding] after payments to municipalities in accordance with
254 this section shall be refunded to the applicant in even amounts. Where
255 more than one municipality seeks moneys from such account, the
256 council shall evenly distribute such moneys among the municipalities.
257 No municipality may receive moneys from the account in excess of
258 twenty-five thousand dollars. No municipality may receive moneys
259 from the account in excess of the dollar amount such municipality has
260 expended from its own municipal funds. [A municipality that has
261 received moneys from the account in excess of the costs it incurred in
262 participating in the certification proceeding, as determined by the
263 council, shall refund such excess moneys to the account upon the
264 conclusion of such proceeding.]

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

267 (NEW) (g) (1) For a facility described in subdivision (6) of
268 subsection (a) of section 16-50i, at least ninety days before filing an
269 application with the council, the applicant shall consult with the
270 municipality in which the facility is proposed to be located and with
271 any other municipality required to be served with a copy of the
272 application under subdivision (1) of subsection (b) of this section.
273 Consultation with such municipality shall include, but not be limited
274 to, good-faith efforts to meet with the chief elected official of the
275 municipality or such official's designee. At the time of the consultation,
276 the applicant shall provide the municipality with any technical reports

277 concerning the need for the facility, including a map indicating the
 278 area of need, the location of existing surrounding facilities, a detailed
 279 description of the proposed and any alternate sites under
 280 consideration, a listing of other sites or areas considered and rejected,
 281 the location of all schools near the proposed facility, an analysis of the
 282 potential aesthetic impacts of the facility on said schools, as well as a
 283 discussion of efforts or measures to be taken to mitigate such aesthetic
 284 impacts, a description of the site selection process undertaken by the
 285 prospective applicant and the potential environmental effects of the
 286 proposed facility. The applicant shall also provide copies of such
 287 technical reports to such municipality's planning commission, zoning
 288 commission or combined planning and zoning commission and inland
 289 wetland agency.

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

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2012</i>	16-50p

Sec. 2	<i>July 1, 2012</i>	16-50gg
Sec. 3	<i>from passage</i>	16-50bb(b)
Sec. 4	<i>from passage</i>	16-50l

ET *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:

Agency Affected	Fund-Effect	FY 13 \$	FY 14 \$
Siting Council, CT	SCF - Potential Cost	Less than \$1,000 per case	Less than \$1,000 per case

Note: SCF=Siting Council Fund

Municipal Impact: None

Explanation

The bill allows the CT Siting Council to request the Attorney General to bring civil action to certain individuals. To the extent that civil action is requested, the council would incur costs anticipated to be less than \$1,000 per case associated with marshal services and printing costs. Other provisions of the bill are technical and have no fiscal impact on the state or municipalities.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of civil action cases.

OLR BILL ANALYSIS

sHB 5271

AN ACT CONCERNING THE SITING COUNCIL.

SUMMARY:

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

It prohibits the council from approving a telecommunications tower's installation within 250 feet of a school or commercial child day care center unless (1) the municipality's chief elected official approves the location or (2) the council finds that it will not have a substantial adverse effect on the aesthetics or scenic quality of the school or day care center's neighborhood. The bill specifies that the council's decision must be consistent with federal law and regulations when applying these criteria.

The bill (1) expands the factors the council must consider when approving cable TV or telecommunications towers and equipment and (2) allows the council to request the attorney general to bring a civil suit under certain circumstances.

The bill also (1) adds neighborhood concerns, including public safety, to the factors the council must consider when reviewing power plant applications; (2) allows the council to consider regional location preferences from municipalities neighboring the municipality subject to a siting certification; and (2) modifies how municipalities are reimbursed from the Municipal Participation Account for participating in council proceedings.

EFFECTIVE DATE: Upon passage for the pre-application

consultation and municipal participation account provisions, and July 1, 2012 for the remaining provisions.

MUNICIPAL CONSULTATION ON CELL TOWERS

With limited exceptions, current law requires the developer of any facility under the Siting Council's jurisdiction to consult with potentially affected municipalities at least 60 days before filing its application with the council (CGS § 16-50l(e)). These consultations must include any municipality where the developer proposes to locate the facility, or an alternative site, and any adjoining municipalities within 2,500 feet of it. The consultation must include good faith efforts to meet with the municipality's chief elected official. The developer must provide the official with any technical reports concerning the site selection process and the need for, and environmental effects of, the facility. The municipality can hold hearings and, within 60 days of its initial consultation, issue its recommendations to the developer. Within 15 days after submitting its application to the council, the developer must give the council the material it provided to the municipality and a summary of the consultations, including the municipality's recommendations.

In addition to these requirements and procedures, the bill requires developers proposing telecommunications towers to begin consulting with affected municipalities 90 days before filing an application with the council. It requires the technical reports provided to the municipality to also be given to the municipality's planning commission, zoning commission, or combined planning and zoning commission, and inland wetland agency. The reports must 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 site, alternate sites being considered, and sites that were considered and rejected;

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

The bill requires municipalities to provide telecommunications tower developers with alternative sites to consider within 30 days of the initial consultation. The developer must include its evaluation of these alternatives in its application to the council and can present any of them to the council for formal consideration.

The bill allows the municipality to hold public information meetings on the proposed facility within 60 days of the initial consultation. (As discussed above, current law also requires the municipality to issue recommendations to the developer within 60 days of the initial consultation.) If the municipality holds meetings, the bill makes the developer responsible for (1) notifying anyone on record as an owner of property next to a proposed or alternate site and (2) publishing a notice for the meeting in a general circulation newspaper at least 15 days before it.

CABLE TV AND TELECOMMUNICATION TOWER APPROVAL

The bill expands the factors the council must consider when granting a certificate for cable TV or telecommunication towers by requiring it to consider the (1) manufacturer's recommended safety standards for any of the facility's equipment, machinery, or technology and (2) latest design options meant to minimize the facility's aesthetic and environmental impact.

Unless a cable TV or telecommunications tower's proposed location is required due to public safety concerns, the law allows the council to deny a certificate for such a tower if it finds that it would substantially affect the location's scenic quality. The bill expands this authority to include instances where the tower would substantially affect the surrounding neighborhood's scenic quality, as long as public safety concerns do not require the tower to be in its proposed location.

The bill allows the council to request that the attorney general bring a civil action in cases regarding a proposed cable TV or telecommunications tower, if the council determines that a party or intervenor intentionally omitted or misrepresented a material fact during of a council proceeding, or upon a motion of a party or intervener. The council must decide to make the request by a majority vote. In the action, the attorney general can seek any legal or equitable relief the Superior Court considers appropriate, including injunctive relief or a civil penalty up to \$10,000 with reasonable attorneys fees and related costs.

MUNICIPAL PARTICIPATION ACCOUNT

By law, applicants initiating a certification proceeding with the Siting Council, except applicants for a cable TV or telecommunications tower, must pay a municipal participation fee, which is deposited into the Municipal Participation Account to reimburse municipalities for their costs of participating in Siting Council proceedings. Current law requires the treasurer to make these payments within 60 days after the council receives a certificate application. The bill instead requires a municipality to apply for reimbursement within 60 days after the certificate proceeding ends. If the reimbursement is less than the participation fee, any money left over from the fee must be refunded to the applicant after all municipalities are paid, rather than at the end of the proceeding, as under current law. The bill instead requires that this occur after the municipality is paid.

The bill also eliminates a requirement for a municipality to refund any money that it received from the account that exceeded the costs it incurred, although by moving the municipality's payment to the proceeding's end, the municipality will presumably know all of its expenses and should not have to estimate its reimbursement. Under existing law, unchanged by the bill, a municipality cannot receive more from the fund than its costs.

COMMITTEE ACTION

Energy and Technology Committee

Joint Favorable Substitute

Yea 21 Nay 0 (03/09/2012)