



Senate

General Assembly

File No. 64

January Session, 2013

Substitute Senate Bill No. 888

Senate, March 20, 2013

The Committee on Energy and Technology reported through SEN. DUFF of the 25th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING WIRELESS BROADBAND.

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

1 Section 1. Subsections (a) and (b) of section 16-50p of the general
2 statutes are repealed and the following is substituted in lieu thereof
3 (*Effective July 1, 2013*):

4 (a) (1) In a certification proceeding, the council shall render a
5 decision upon the record either granting or denying the application as
6 filed, or granting it upon such terms, conditions, limitations or
7 modifications of the construction or operation of the facility as the
8 council may deem appropriate.

9 (2) The council's decision shall be rendered in accordance with the
10 following:

11 (A) Not later than twelve months after the deadline for filing an
12 application following the request for proposal process for a facility
13 described in subdivision (1) or (2) of subsection (a) of section 16-50i or

14 subdivision (4) of said subsection (a) if the application was
15 incorporated in an application concerning a facility described in
16 subdivision (1) of said subsection (a);

17 (B) Not later than one hundred eighty days after the deadline for
18 filing an application following the request for proposal process for a
19 facility described in subdivision (4) of subsection (a) of section 16-50i
20 and an application concerning a facility described in subdivision (3) of
21 said subsection (a), provided the council may extend such period by
22 not more than one hundred eighty days with the consent of the
23 applicant; and

24 (C) Not later than one hundred eighty days after the filing of an
25 application for a facility described in subdivision (5) or (6) of
26 subsection (a) of section 16-50i, provided the council may extend such
27 period by not more than one hundred eighty days with the consent of
28 the applicant.

29 (3) The council shall file, with its order, an opinion stating in full its
30 reasons for the decision. The council shall not grant a certificate, either
31 as proposed or as modified by the council, unless it shall find and
32 determine:

33 (A) Except as provided in subsection (b) or (c) of this section, a
34 public need for the facility and the basis of the need;

35 (B) The nature of the probable environmental impact of the facility
36 alone and cumulatively with other existing facilities, including a
37 specification of every significant adverse effect, including, but not
38 limited to, electromagnetic fields that, whether alone or cumulatively
39 with other effects, impact on, and conflict with the policies of the state
40 concerning the natural environment, ecological balance, public health
41 and safety, scenic, historic and recreational values, forests and parks,
42 air and water purity and fish, aquaculture and wildlife;

43 (C) Why the adverse effects or conflicts referred to in subparagraph
44 (B) of this subdivision are not sufficient reason to deny the application;

45 (D) In the case of an electric transmission line, (i) what part, if any,
46 of the facility shall be located overhead, (ii) that the facility conforms to
47 a long-range plan for expansion of the electric power grid of the
48 electric systems serving the state and interconnected utility systems
49 and will serve the interests of electric system economy and reliability,
50 and (iii) that the overhead portions, if any, of the facility are cost
51 effective and the most appropriate alternative based on a life-cycle cost
52 analysis of the facility and underground alternatives to such facility,
53 are consistent with the purposes of this chapter, with such regulations
54 or standards as the council may adopt pursuant to section 16-50t,
55 including, but not limited to, the council's best management practices
56 for electric and magnetic fields for electric transmission lines and with
57 the Federal Power Commission "Guidelines for the Protection of
58 Natural Historic Scenic and Recreational Values in the Design and
59 Location of Rights-of-Way and Transmission Facilities" or any
60 successor guidelines and any other applicable federal guidelines and
61 are to be contained within an area that provides a buffer zone that
62 protects the public health and safety, as determined by the council. In
63 establishing such buffer zone, the council shall consider, among other
64 things, residential areas, private or public schools, licensed child day
65 care facilities, licensed youth camps or public playgrounds adjacent to
66 the proposed route of the overhead portions and the level of the
67 voltage of the overhead portions and any existing overhead
68 transmission lines on the proposed route. At a minimum, the existing
69 right-of-way shall serve as the buffer zone;

70 (E) In the case of an electric or fuel transmission line, that the
71 location of the line will not pose an undue hazard to persons or
72 property along the area traversed by the line;

73 (F) In the case of an application that was heard under a consolidated
74 hearing process with other applications that were common to a request
75 for proposal, that the facility proposed in the subject application
76 represents the most appropriate alternative among such applications
77 based on the findings and determinations pursuant to this subsection;

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 (3), inclusive, of subsection (a) of this section: (A)
101 The feasibility of requiring an applicant to share an existing facility, as
102 defined in subsection (b) of section 16-50aa, within a technically
103 derived search area of the site of the proposed facility, provided such
104 shared use is technically, legally, environmentally and economically
105 feasible and meets public safety concerns, (B) whether such facility, if
106 constructed, may be shared with any public or private entity that
107 provides telecommunications or community antenna television service
108 to the public, provided such shared use is technically, legally,
109 environmentally and economically feasible at fair market rates, meets
110 public safety concerns, and the parties' interests have been considered,
111 (C) whether the proposed facility would be located in an area of the

112 state which the council, in consultation with the Department of Energy
113 and Environmental Protection and any affected municipalities, finds to
114 be a relatively undisturbed area that possesses scenic quality of local,
115 regional or state-wide significance, and (D) the latest facility design
116 options intended to minimize aesthetic and environmental impacts.
117 The council may deny an application for a certificate if it determines
118 that (i) shared use under the provisions of subparagraph (A) of this
119 subdivision is feasible, (ii) the applicant would not cooperate relative
120 to the future shared use of the proposed facility, [or] (iii) the proposed
121 facility would substantially affect the scenic quality of its location or
122 surrounding neighborhood and no public safety concerns require that
123 the proposed facility be constructed in such a location, or (iv) no public
124 safety concerns require that a proposed facility owned or operated by
125 the state be constructed in that location. In evaluating the public need
126 for a cellular facility described in subdivision (6) of subsection (a) of
127 section 16-50i, there shall be a presumption of public need for personal
128 wireless services and the council shall be limited to consideration of a
129 specific need for any proposed facility to be used to provide such
130 services to the public.

131 (2) When issuing a certificate for a facility described in subdivision
132 (5) or (6) of subsection (a) of section 16-50i, the council may impose
133 such reasonable conditions as it deems necessary to promote
134 immediate and future shared use of such facilities and avoid the
135 unnecessary proliferation of such facilities in the state. The council
136 shall, prior to issuing a certificate, provide notice of the proposed
137 facility to the municipality in which the facility is to be located. Upon
138 motion of the council, written request by a public or private entity that
139 provides telecommunications or community antenna television service
140 to the public or upon written request by an interested party, the
141 council may conduct a preliminary investigation to determine whether
142 the holder of a certificate for such a facility is in compliance with the
143 certificate. Following its investigation, the council may initiate a
144 certificate review proceeding, which shall include a hearing, to
145 determine whether the holder of a certificate for such a facility is in
146 compliance with the certificate. In such proceeding, the council shall

147 render a decision and may issue orders it deems necessary to compel
 148 compliance with the certificate, which may include, but not be limited
 149 to, revocation of the certificate. Such orders may be enforced in
 150 accordance with the provisions of section 16-50u.

151 Sec. 2. Subsection (f) of section 25-32 of the general statutes is
 152 repealed and the following is substituted in lieu thereof (*Effective July*
 153 *1, 2013*):

154 (f) Nothing in this section shall prevent the lease or change in use of
 155 water company land to allow for (1) recreational purposes that do not
 156 require intense development or improvements, [for] (2) water supply
 157 purposes, [for] (3) leases of existing structures, or [for] (4) radio towers,
 158 [or] telecommunications antennas on existing structures or
 159 telecommunications towers, ancillary equipment or related access
 160 drives and utilities. For purposes of subdivision (1) of this subsection,
 161 intense development includes golf courses, driving ranges, tennis
 162 courts, ballfields, swimming pools and uses by motorized vehicles,
 163 provided trails or pathways for pedestrians, motorized wheelchairs or
 164 nonmotorized vehicles shall not be considered intense development.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2013	16-50p(a) and (b)
Sec. 2	July 1, 2013	25-32(f)

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: None

Municipal Impact:

Municipalities	Effect	FY 14 \$	FY 15 \$
Various Municipalities	Potential Revenue Gain	See Below	See Below

Explanation

The bill makes several changes to how the Siting Council evaluates certain applications for telecommunication towers. These provisions have no fiscal impact on the state. To the extent to which a municipality participates in the siting of telecommunication towers and related facilities on municipal watershed lands, there may be an increase in revenue to the municipality.

The Out Years

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

OLR Bill Analysis**sSB 888*****AN ACT CONCERNING WIRELESS BROADBAND.*****SUMMARY:**

This bill (1) modifies how the Siting Council evaluates applications to build or modify cell phone towers, (2) establishes a new condition when the council may deny an application to build or modify certain cell phone or cable TV towers, and (3) facilitates the siting of telecommunication towers and related facilities on certain watershed lands.

EFFECTIVE DATE: July 1, 2013

TOWER APPLICATIONS

By law, a Siting Council certificate is required to build or modify a variety of energy and telecommunications facilities. Generally, the council can grant a certificate only if it finds that there is a public need for the facility and that this need outweighs the environmental harm the facility may cause.

The bill establishes a presumption, in the case of cell phone tower certificate applications, that there is a public need for personal wireless (e.g., cell phone) services. It limits the council's consideration of need to the specific need for the proposed tower to provide these services.

CERTIFICATE DENIALS

By law, the council can deny an application for a cell phone or cable TV tower for several reasons. The bill additionally allows the council, in the case of a proposed tower owned or operated by the state, to deny an application if no public safety concerns require that it be constructed in the proposed location.

TOWERS IN WATERSHED LANDS

By law, (1) a private or public water utility needs a Department of Public Health (DPH) permit to lease or otherwise dispose of or change the use of any of its watershed lands and (2) there are restrictions on the circumstances under which DPH can issue these permits. The bill provides that these restrictions do not preclude a lease or change in use of such land to allow for telecommunications towers, ancillary equipment, or related access drives and utilities. This provision already applies with regard to telecommunications antennas on existing structures and radio towers.

COMMITTEE ACTION

Energy and Technology Committee

Joint Favorable Substitute

Yea 23 Nay 0 (03/07/2013)