



General Assembly

January Session, 2013

***Raised Bill No. 888***

LCO No. 3166



Referred to Committee on ENERGY AND TECHNOLOGY

Introduced by:  
(ET)

***AN ACT CONCERNING WIRELESS BROADBAND.***

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 Section 16-50p of the general statutes is repealed and the  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, 2013*):

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 subsection (a) of section 16-50i  
19 and an application concerning a facility described in subdivision (3) of  
20 said subsection (a), provided the council may extend such period by  
21 not more than one hundred eighty days with the consent of the  
22 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  
25 subsection (a) of section 16-50i] of subsection (a) of section 16-50i or  
26 one hundred fifty days after the filing of an application for a facility  
27 described in subdivision (6) of said subsection (a), provided the council  
28 may extend such period by not more than one hundred eighty days  
29 with the consent of the applicant.

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

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

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

44 (C) Why the adverse effects or conflicts referred to in subparagraph

45 (B) of this subdivision are not sufficient reason to deny the application;

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

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

74 (F) In the case of an application that was heard under a consolidated  
75 hearing process with other applications that were common to a request  
76 for proposal, that the facility proposed in the subject application

77 represents the most appropriate alternative among such applications  
78 based on the findings and determinations pursuant to this subsection;

79 (G) In the case of a facility described in subdivision (6) of subsection  
80 (a) of section 16-50i that is (i) proposed to be installed on land under  
81 agricultural restriction, as provided in section 22-26cc, that the facility  
82 will not result in a material decrease of acreage and productivity of the  
83 arable land, or (ii) proposed to be installed on land near a building  
84 containing a school, as defined in section 10-154a, or a commercial  
85 child day care center, as described in subdivision (1) of subsection (a)  
86 of section 19a-77, that the facility will not be less than two hundred  
87 fifty feet from such school or commercial child day care center unless  
88 the location is acceptable to the chief elected official of the municipality  
89 or the council finds that the facility will not have a substantial adverse  
90 effect on the aesthetics or scenic quality of the neighborhood in which  
91 such school or commercial child day care center is located, provided  
92 the council shall not render any decision pursuant to this  
93 subparagraph that is inconsistent with federal law or regulations; and

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

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

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

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

142 certificate. Following its investigation, the council may initiate a  
143 certificate review proceeding, which shall include a hearing, to  
144 determine whether the holder of a certificate for such a facility is in  
145 compliance with the certificate. In such proceeding, the council shall  
146 render a decision and may issue orders it deems necessary to compel  
147 compliance with the certificate, which may include, but not be limited  
148 to, revocation of the certificate. Such orders may be enforced in  
149 accordance with the provisions of section 16-50u.

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

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

163 (3) For purposes of this section, a public benefit exists when a  
164 facility is necessary for the reliability of the electric power supply of  
165 the state or for the development of a competitive market for electricity  
166 and a public need exists when a facility is necessary for the reliability  
167 of the electric power supply of the state.

168 (4) Any application for an electric transmission line with a capacity  
169 of three hundred forty-five kilovolts or more that is filed on or after  
170 May 1, 2003, and proposes the underground burial of such line in all  
171 residential areas and overhead installation of such line in industrial  
172 and open space areas shall have a rebuttable presumption of meeting a

173 public benefit for such facility if the facility is substantially  
174 underground and meeting a public need for such facility if the facility  
175 is substantially above ground. Such presumption may be overcome by  
176 evidence submitted by a party or intervenor to the satisfaction of the  
177 council.

178 (d) If the council determines that the location of all or a part of the  
179 proposed facility should be modified, it may condition the certificate  
180 upon such modification, provided the municipalities affected by the  
181 modification and the residents of such municipalities shall have had  
182 notice of the application pursuant to subsection (b) of section 16-50l.

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

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

195 (g) In deciding whether to issue a certificate, the council shall in no  
196 way be limited by the applicant already having acquired land or an  
197 interest therein for the purpose of constructing the facility that is the  
198 subject of its application.

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

202 (i) For a facility described in subdivision (1) of subsection (a) of

203 section 16-50i, with a capacity of not less than three hundred forty-five  
204 kilovolts, the presumption shall be that a proposal to place the  
205 overhead portions, if any, of such facility adjacent to residential areas,  
206 private or public schools, licensed child day care facilities, licensed  
207 youth camps or public playgrounds is inconsistent with the purposes  
208 of this chapter. An applicant may rebut this presumption by  
209 demonstrating to the council that burying the facility will be  
210 technologically infeasible. In determining such infeasibility, the council  
211 shall consider the effect of burying the facility on the reliability of the  
212 electric transmission system of the state and whether the cost of any  
213 contemplated technology or design configuration may result in an  
214 unreasonable economic burden on the ratepayers of the state.

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

226 Sec. 2. Subsection (f) of section 25-32 of the general statutes is  
227 repealed and the following is substituted in lieu thereof (*Effective July*  
228 *1, 2013*):

229 (f) Nothing in this section shall prevent the lease or change in use of  
230 water company land to allow for (1) recreational purposes that do not  
231 require intense development or improvements, [for] (2) water supply  
232 purposes, [for] (3) leases of existing structures, or [for] (4) radio towers,  
233 [or] telecommunications antennas on existing structures or  
234 telecommunications towers, ancillary equipment or related access

235 drives and utilities. For purposes of subdivision (1) of this subsection,  
236 intense development includes golf courses, driving ranges, tennis  
237 courts, ballfields, swimming pools and uses by motorized vehicles,  
238 provided trails or pathways for pedestrians, motorized wheelchairs or  
239 nonmotorized vehicles shall not be considered intense development.

240 Sec. 3. (NEW) (*Effective July 1, 2013*) (a) On or after November 1,  
241 2013, each state department or agency shall make available, on a fair,  
242 reasonable and nondiscriminatory basis, any building, property, right-  
243 of-way or easement owned or controlled by such department or  
244 agency for the placement of a new wireless facility, including any  
245 tower, antenna or related equipment, that is dependent, in whole or in  
246 part, upon the utilization of federal spectrum rights for the  
247 transmission or reception of personal wireless services, as defined in 47  
248 USC 332(c)(7), as amended from time to time. Not later than  
249 November 1, 2013, the Governor or his designee shall: (1) Develop at  
250 least one master wireless facility contract that shall govern the  
251 placement of such wireless facility on a building, property, right-of-  
252 way or easement owned or controlled by the state; (2) in developing  
253 such wireless facility master contract or contracts, standardize the  
254 process, timeframe and treatment of the placement of such wireless  
255 facility on a building or property owned or controlled by the state, and  
256 incorporate any other key placement issues the Governor or his  
257 designee considers appropriate; and (3) develop at least one common  
258 application form for such wireless facility master contract or contracts  
259 for use by all departments or agencies and applicants.

260 (b) There shall be a presumption that any such application for such  
261 wireless facility master contract submitted to the department or agency  
262 shall be granted, unless (1) the use, maintenance or operation of such  
263 wireless facility directly conflicts with such department's or agency's  
264 current or planned use for such building, property, right-of-way or  
265 easement, or (2) the Governor or his designee decides a wireless  
266 facility on a specific state building or other property warrants  
267 nonstandard treatment for purposes of a wireless facility contract.

268 (c) The state may charge a reasonable fee for use of such building,  
269 property, right-of-way or easement.

270 (d) No provision of this section shall limit the jurisdiction of the  
271 Connecticut Siting Council pursuant to chapter 277a of the general  
272 statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2013</i>	16-50p
Sec. 2	<i>July 1, 2013</i>	25-32(f)
Sec. 3	<i>July 1, 2013</i>	New section

**Statement of Purpose:**

To require the Connecticut Siting Council to make a determination of an application for the construction of a telecommunications tower within one hundred fifty days, to add telecommunications towers to the list of structures allowed in a watershed, and to require the state to develop a process to make state land and property available for lease for wireless facilities if not contrary to state use of such land or property.

*[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.]*