



# Senate

General Assembly

**File No. 275**

January Session, 2017

Senate Bill No. 943

*Senate, March 28, 2017*

The Committee on Environment reported through SEN. KENNEDY of the 12th Dist. and SEN. MINER of the 30th Dist., Chairpersons of the Committee on the part of the Senate, that the bill ought to pass.

***AN ACT CONCERNING THE INSTALLATION OF CERTAIN SOLAR FACILITIES ON PRODUCTIVE FARMLANDS.***

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

1 Section 1. Subsection (e) of section 16a-3j of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective July*  
3 *1, 2017*):

4 (e) The Commissioner of Energy and Environmental Protection, in  
5 consultation with the procurement manager identified in subsection (l)  
6 of section 16-2, the Office of Consumer Counsel and the Attorney  
7 General, shall evaluate project proposals received under any  
8 solicitation issued pursuant to subsection (b), (c) or (d) of this section,  
9 based on factors including, but not limited to, (1) improvements to the  
10 reliability of the electric system, including during winter peak  
11 demand; (2) whether the benefits of the proposal outweigh the costs to  
12 ratepayers; (3) fuel diversity; (4) the extent to which the proposal  
13 contributes to meeting the requirements to reduce greenhouse gas

14 emissions and improve air quality in accordance with sections 16-245a,  
15 22a-174, and 22a-200a; (5) whether the proposal is in the best interest of  
16 ratepayers; and (6) whether the proposal is aligned with the policy  
17 goals outlined in the Integrated Resources Plan, pursuant to section  
18 16a-3a, and the Comprehensive Energy Strategy, pursuant to section  
19 16a-3d, including, but not limited to, environmental impacts. For  
20 purposes of such evaluation, "environmental impacts" shall include,  
21 but not be limited to, impacts to forest land and prime farmland, as  
22 defined by the United States Department of Agriculture. In conducting  
23 such evaluation, the commissioner may also consider the extent to  
24 which project proposals provide economic benefits for the state. In  
25 evaluating project proposals received under any solicitation issued  
26 pursuant to subsection (b), (c) or (d) of this section, the commissioner  
27 shall compare the costs and benefits of such proposals relative to the  
28 expected or actual costs and benefits of other resources eligible to  
29 respond to the other procurements authorized pursuant to this section.

30 Sec. 2. Subsection (a) of section 16-50k of the general statutes is  
31 repealed and the following is substituted in lieu thereof (*Effective July*  
32 *1, 2017*):

33 (a) Except as provided in subsection (b) of section 16-50z, no person  
34 shall exercise any right of eminent domain in contemplation of,  
35 commence the preparation of the site for, commence the construction  
36 or supplying of a facility, or commence any modification of a facility,  
37 that may, as determined by the council, have a substantial adverse  
38 environmental effect in the state without having first obtained a  
39 certificate of environmental compatibility and public need, hereinafter  
40 referred to as a "certificate", issued with respect to such facility or  
41 modification by the council. Certificates shall not be required for (1)  
42 fuel cells built within the state with a generating capacity of two  
43 hundred fifty kilowatts or less, or (2) fuel cells built out of state with a  
44 generating capacity of ten kilowatts or less. Any facility with respect to  
45 which a certificate is required shall thereafter be built, maintained and  
46 operated in conformity with such certificate and any terms, limitations  
47 or conditions contained therein. Notwithstanding the provisions of this

48 chapter or title 16a, the council shall, in the exercise of its jurisdiction  
49 over the siting of generating facilities, approve by declaratory ruling  
50 (A) the construction of a facility solely for the purpose of generating  
51 electricity, other than an electric generating facility that uses nuclear  
52 materials or coal as fuel, at a site where an electric generating facility  
53 operated prior to July 1, 2004, and (B) the construction or location of  
54 any fuel cell, unless the council finds a substantial adverse  
55 environmental effect, or of any customer-side distributed resources  
56 project or facility or grid-side distributed resources project or facility  
57 with a capacity of not more than sixty-five megawatts, as long as such  
58 project meets air and water quality standards of the Department of  
59 Energy and Environmental Protection and as long as such project is  
60 not a solar photovoltaic facility with a capacity of two or more  
61 megawatts to be located on prime farmland, as defined by the United  
62 States Department of Agriculture or on forest land. There shall be a  
63 rebuttable presumption that the construction or location of a solar  
64 photovoltaic facility with a capacity of two or more megawatts to be  
65 located on prime farmland, as defined by the United States  
66 Department of Agriculture, or on forest land is not environmentally  
67 compatible. Such presumption may be rebutted by evidence that such  
68 facility will not materially affect the status of such land as prime  
69 farmland or forest land, as applicable, and if such applicant, upon the  
70 council's granting of such certificate, posts a bond for the  
71 decommissioning of such facility at the end of its useful life. Nothing  
72 in this subsection shall be construed to affect any agricultural virtual  
73 net metering facility as authorized pursuant to section 16-244u.

74 Sec. 3. (NEW) (*Effective July 1, 2017*) (a) Not later than February 1,  
75 2018, the Commissioner of Energy and Environmental Protection, in  
76 consultation with the Commissioners of Administrative Services,  
77 Correction and Transportation, shall submit a report to the joint  
78 standing committee of the General Assembly having cognizance of  
79 matters relating to the environment, in accordance with the provisions  
80 of section 11-4a of the general statutes, that identifies state properties,  
81 including, but not limited to, highway corridors and correctional  
82 institutions, that are suitable for lease to private entities for the

83 construction or location of solar photovoltaic facilities with capacities  
84 of two or more megawatts.

85 (b) Not later than sixty days following submission of the report  
86 described in subsection (a) of this section, the Commissioners of  
87 Energy and Environmental Protection, Administrative Services,  
88 Correction and Transportation shall cause such report to be posted to  
89 the Internet web site of said departments, respectively. Following such  
90 posting, the Commissioner of Energy and Environmental Protection  
91 shall forward a copy of such report to the chairperson of the  
92 Connecticut Siting Council who shall cause a copy of such report to be  
93 posted to the Internet web site of the Connecticut Siting Council not  
94 later than thirty days following receipt of such report.

95 Sec. 4. (NEW) (*Effective July 1, 2017*) The Commissioner of Energy  
96 and Environmental Protection shall work in conjunction with the  
97 Connecticut Conference of Municipalities to identify closed landfills  
98 that are suitable for the lease to private entities for the construction or  
99 location of solar photovoltaic facilities with capacities of two or more  
100 megawatts. The commissioner may receive from any municipality  
101 notice indicating such municipality's interest in the construction or  
102 location of solar photovoltaic facilities with capacities of two or more  
103 megawatts upon any closed landfill located in such municipality.  
104 Upon receipt of such notice and following a reasonable evaluation of  
105 the suitability of such closed landfill for such construction or location,  
106 the commissioner may post such notice in the same location on the  
107 Internet web site of such department as the report posted pursuant to  
108 section 3 of this act.

109 Sec. 5. (NEW) (*Effective July 1, 2017*) Not later than July 1, 2019, the  
110 Commissioner of Energy and Environmental Protection, in  
111 consultation with the Commissioner of Economic and Community  
112 Development and the working group to examine the remediation and  
113 development of brownfields in this state, established pursuant to  
114 section 32-770 of the general statutes, shall establish a pilot program  
115 for the construction or location of solar photovoltaic facilities with

116 capacities of two or more megawatts upon brownfields in this state.  
117 Such pilot program shall consist of not fewer than three projects to be  
118 located on brownfields that do not: (1) Contain contaminated  
119 groundwater or volatile organic compounds that pose a potential  
120 threat to human health or safety, and (2) have commercial or industrial  
121 activities conducted upon such brownfields. Any such project may  
122 consist of brownfields that are not contiguous. The Commissioner of  
123 Energy and Environmental Protection shall determine the suitability  
124 for participation of any brownfield in such pilot program and,  
125 notwithstanding any provision of the general statutes, may undertake  
126 any action required to establish such pilot program, including, but not  
127 limited to, identifying applicants for the construction or location of  
128 solar photovoltaic facilities with capacities of two or more megawatts  
129 upon brownfields in this state that may wish to participate in such  
130 pilot program. The Commissioner of Economic and Community  
131 Development and the working group to examine the remediation and  
132 development of brownfields in this state, established pursuant to  
133 section 32-770 of the general statutes, shall provide the Commissioner  
134 of Energy and Environmental Protection with any information or  
135 assistance that said commissioner requests in furtherance of the  
136 establishment of such pilot program. Not later than one year following  
137 the establishment of such pilot program, the Commissioner of Energy  
138 and Environmental Protection shall submit a report to the joint  
139 standing committee of the General Assembly having cognizance of  
140 matters relating to the environment, in accordance with the provisions  
141 of section 11-4a of the general statutes, detailing the status of such pilot  
142 program and identifying any recommendations for legislation to  
143 further facilitate or expand such pilot program.

144       Sec. 6. (*Effective July 1, 2017*) Not later than February 1, 2018, the  
145 Commissioner of Energy and Environmental Protection shall submit a  
146 report to the joint standing committee of the General Assembly having  
147 cognizance of matters relating to the environment, in accordance with  
148 the provisions of section 11-4a of the general statutes, that identifies  
149 types of properties in the state, other than prime farmlands and forest  
150 lands, that are suitable for the construction or location of solar

151 photovoltaic facilities with capacities of two or more megawatts. Such  
152 report shall include, but not be limited to, an analysis of whether: (1)  
153 Right-of-ways occupied by overhead transmission facilities, as  
154 described in section 16-50hh of the general statutes, may serve as such  
155 a suitable situs in areas of such right-of-ways that are not subject to  
156 restoration or revegetation orders described in section 16-50hh of the  
157 general statutes, and (2) abandoned or underutilized parking facilities  
158 in the state may serve as such a suitable situs.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2017</i>	16a-3j(e)
Sec. 2	<i>July 1, 2017</i>	16-50k(a)
Sec. 3	<i>July 1, 2017</i>	New section
Sec. 4	<i>July 1, 2017</i>	New section
Sec. 5	<i>July 1, 2017</i>	New section
Sec. 6	<i>July 1, 2017</i>	New section

**ENV**      *Joint Favorable*

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:*** None***Explanation***

The bill restricts the construction of solar facilities on certain lands by removing a requirement that the Siting Council approve certain facilities and creating a rebuttable presumption that that are not environmentally compatible. Modifying the criteria for construction of certain solar facilities does not result in a fiscal impact to DEEP.

The bill also requires DEEP to create a pilot program to build or locate solar facilities on brownfields. There is no fiscal impact to DEEP to establish a pilot program.

Lastly, the bill requires DEEP to submit certain reports to the Environment Committee. It also requires DEEP to post information regarding landfills on its website. These requirements have no fiscal impact as DEEP has the expertise and capacity to perform these tasks.

***The Out Years******State Impact:*** None***Municipal Impact:*** None

**OLR Bill Analysis****SB 943*****AN ACT CONCERNING THE INSTALLATION OF CERTAIN SOLAR FACILITIES ON PRODUCTIVE FARMLANDS.*****SUMMARY**

This bill generally restricts the construction of solar photovoltaic facilities (solar facilities) of two or more megawatts on forest land or prime farmland by removing a requirement that the Connecticut Siting Council approve such facilities and creating a rebuttable presumption that they are not environmentally compatible.

Existing law allows the Department of Energy and Environmental Protection (DEEP), subject to various requirements and limitations, to solicit proposals for (1) demand response measures and smaller renewable energy sources, (2) larger renewable energy sources and hydropower, and (3) natural gas resources. Existing law requires the DEEP commissioner to consider various factors when evaluating these proposals, including whether its benefits outweigh its costs and its environmental impacts. The bill specifies that a proposal's environmental impacts include its impacts to forest land and prime farmland. (In practice DEEP has already solicited and selected proposals for parts of this procurement.)

It requires the commissioner to create a pilot program to build solar energy facilities of two or more megawatts on brownfields, and requires him and others to identify property, including such state property as highway corridors and prisons, suitable for constructing or siting such facilities. It requires him to accept expressions of interest from municipalities interested in building or locating such a solar facility on their closed landfills.

EFFECTIVE DATE: July 1, 2017



**SITING OF CERTAIN SOLAR ENERGY FACILITIES**

Although the law generally requires people building power generating facilities to obtain a certificate of environmental compatibility and public need (certificate) from the Connecticut Siting Council, it requires the council to approve, by declaratory ruling, the construction or location of certain generation facilities with a capacity of 65 megawatts or less that meet DEEP's air and water quality standards.

The bill exempts from the declaratory ruling process the siting, on forest land or prime farmland, of a solar facility with a capacity of two or more megawatts, thus requiring that it go through the certification process. It creates a rebuttable presumption that locating such a facility on such land is not environmentally compatible. The prohibition does not apply to agricultural virtual net metering facilities (see BACKGROUND).

Under the bill, the presumption may be rebutted (1) by evidence that the facility will not materially affect the land's status as forest land or prime farmland and (2) if the applicant, on receiving a certificate, posts bond for decommissioning the facility at the end of its useful life.

**POTENTIAL SITES FOR SOLAR FACILITIES WITH CAPACITIES OF TWO OR MORE MEGAWATTS**

The bill requires specified state officials to identify property, including state property, suitable for constructing solar facilities of two or more megawatts. These properties include highway and power line corridors, state prisons, and closed landfills.

***State Property***

The bill requires, by February 1, 2018, the DEEP commissioner, in consultation with the commissioners of administrative services, correction, and transportation, to report to the Environment Committee on state properties, including highway corridors and prisons, suitable for lease to private entities for constructing or siting solar facilities with a capacity of two megawatts or more. The

commissioners must post the report on their respective department websites no later than 60 days after submitting it, and the DEEP commissioner must send a copy to the Siting Council to post on its website no later than 30 days after the council receives it.

Also by February 1, 2018, the DEEP commissioner must report to the Environment Committee on other types of property in the state (except for forest land or prime farmland) suitable to build or site such solar facilities. This report must include an analysis of the suitability for such use of power line rights of way not subject to restoration or revegetation orders, and abandoned or underused parking facilities.

### ***Closed Landfills***

The bill requires the DEEP commissioner, in conjunction with the Connecticut Conference of Municipalities, to identify closed landfills suitable for lease to private entities for constructing or locating solar facilities of two or more megawatts. It authorizes the commissioner to receive notice from municipalities interested in siting such a facility on their closed landfills. On receiving such notice, and following a reasonable evaluation of the landfill's suitability, the commissioner may post the municipality's notice on DEEP's website.

### **BROWNFIELDS**

The bill requires the DEEP commissioner, in consultation with the economic and community development commissioner and the brownfields working group (see BACKGROUND), to create a pilot program to build or locate solar facilities of at least two megawatts on brownfields in the state. He must do this by July 1, 2019.

The program must include at least three such projects to be located on brownfields (1) that do not contain contaminated groundwater or volatile organic compounds that endanger human health or safety and (2) on which there is neither commercial nor industrial activity. A project may consist of brownfields that are not adjoining.

The DEEP commissioner must determine the suitability of brownfields for inclusion in the program and, regardless of any law to

the contrary, may take any action necessary to create the program, including identifying applicants who wish to participate. The DECD commissioner and working group must provide the DEEP commissioner with any information or help he requests. No later than one year after establishing the program, the DEEP commissioner must report to the Environment Committee on the status of the program and identify any recommended legislation to further facilitate or expand it.

## **BACKGROUND**

### ***Prime Farmland***

Prime farmland means soils defined by the U.S. Department of Agriculture as best suited to producing food, feed, forage, fiber and oilseed crops. In general, prime farmlands have an adequate and dependable water supply, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content, and few or no rocks (Soil Survey Manual, U.S. Department of Agriculture Handbook No. 18, October 1993).

### ***Brownfields Working Group***

By law, the working group examines the remediation and development of state brownfields, including permitting and liability issues, and annually reviews the progress of the Special Contaminated Property Remediation and Insurance Fund (CGS § 32-770).

### ***Agricultural Virtual Net Metering***

The law allows virtual net metering for municipal, state agency, and agricultural electric customers with net metering facilities (renewable or clean energy systems that meet certain requirements). In general, virtual net metering allows these customers to (1) receive a billing credit for excess power they generate (i.e., “run their meters backward”) and (2) share their excess credits with certain other designated electric accounts (i.e., also run other meters backward).

## **COMMITTEE ACTION**

Environment Committee

Joint Favorable

Yea 27 Nay 1 (03/10/2017)