



Senate

General Assembly

File No. 291

February Session, 2018

Substitute Senate Bill No. 350

Senate, April 5, 2018

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 substitute bill ought to pass.

AN ACT REQUIRING THE POSTING OF A DECOMMISSIONING BOND FOR CERTAIN SOLAR PROJECTS.

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

1 Section 1. Subsection (a) of section 16-50k of the 2018 supplement to
2 the general statutes is repealed and the following is substituted in lieu
3 thereof (*Effective October 1, 2018*):

4 (a) Except as provided in subsection (b) of section 16-50z, no person
5 shall exercise any right of eminent domain in contemplation of,
6 commence the preparation of the site for, commence the construction
7 or supplying of a facility, or commence any modification of a facility,
8 that may, as determined by the council, have a substantial adverse
9 environmental effect in the state without having first obtained a
10 certificate of environmental compatibility and public need, hereinafter
11 referred to as a "certificate", issued with respect to such facility or
12 modification by the council. Certificates shall not be required for (1)
13 fuel cells built within the state with a generating capacity of two

14 hundred fifty kilowatts or less, or (2) fuel cells built out of state with a
15 generating capacity of ten kilowatts or less. Any facility with respect to
16 which a certificate is required shall thereafter be built, maintained and
17 operated in conformity with such certificate and any terms, limitations
18 or conditions contained therein. Notwithstanding the provisions of this
19 chapter or title 16a, the council shall, in the exercise of its jurisdiction
20 over the siting of generating facilities, approve by declaratory ruling
21 (A) the construction of a facility solely for the purpose of generating
22 electricity, other than an electric generating facility that uses nuclear
23 materials or coal as fuel, at a site where an electric generating facility
24 operated prior to July 1, 2004, and (B) the construction or location of
25 any fuel cell, unless the council finds a substantial adverse
26 environmental effect, or of any customer-side distributed resources
27 project or facility or grid-side distributed resources project or facility
28 with a capacity of not more than sixty-five megawatts, as long as: (i)
29 Such project meets air and water quality standards of the Department
30 of Energy and Environmental Protection, (ii) the council does not find
31 a substantial adverse environmental effect, and (iii) for a solar
32 photovoltaic facility with a capacity of two or more megawatts, to be
33 located on prime farmland or forestland, excluding any such facility
34 that was selected by the Department of Energy and Environmental
35 Protection in any solicitation issued prior to July 1, 2017, pursuant to
36 section 16a-3f, 16a-3g or 16a-3j, the Department of Agriculture
37 represents, in writing, to the council that such project will not
38 materially affect the status of such land as prime farmland or the
39 Department of Energy and Environmental Protection represents, in
40 writing, to the council that such project will not materially affect the
41 status of such land as core forest. In conducting an evaluation of a
42 project for purposes of subparagraph (B)(iii) of this subsection, the
43 Departments of Agriculture and Energy and Environmental Protection
44 may consult with the United States Department of Agriculture and soil
45 and water conservation districts. If the council approves a facility
46 described in subparagraph (B)(iii) of this subsection, the council shall
47 require the posting of a decommissioning bond by the person seeking
48 such certificate in an amount sufficient to restore such prime farmland

49 to a productive agricultural condition or to restore such land as core
50 forest, as applicable.

51 Sec. 2. (*Effective from passage*) The Commissioner of Agriculture shall
52 convene a working group to develop a recommendation for the
53 standard to be applied by the Departments of Energy and
54 Environmental Protection and Agriculture in evaluating the effect of
55 solar photovoltaic facilities pursuant to subparagraph (B)(iii) of
56 subsection (a) of section 16-50k of the general statutes. Such
57 deliberation shall include, but not be limited to, a consideration of
58 whether such standard shall be that such project will not materially
59 affect the status of such land as prime farmland or core forest or
60 whether such standard shall be that such project will not permanently
61 affect the status of such land as prime farmland or core forest. Such
62 working group shall consist of the Commissioner of Agriculture, or the
63 commissioner's designee, a representative of the solar industry, a
64 representative of the Connecticut Farm Bureau, the Commissioner of
65 Energy and Environmental Protection, or the commissioner's designee,
66 and a representative of the Connecticut Agricultural Experiment
67 Station who shall have expertise in soil restoration. The Commissioner
68 of Agriculture shall submit such recommendation to the joint standing
69 committee of the General Assembly having cognizance of matters
70 relating to the environment not later than January 1, 2019.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2018</i>	16-50k(a)
Sec. 2	<i>from passage</i>	New section

ENV *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 19 \$	FY 20 \$
Various State Agencies	Various - Potential Cost	Potential Significant	Potential Significant

Note: Various=Various

Municipal Impact:

Municipalities	Effect	FY 19 \$	FY 20 \$
Various Municipalities	Potential Cost	Potential Significant	Potential Significant

Explanation

The bill requires anyone who receives Connecticut Siting Council approval for a solar photovoltaic facility of at least two megawatt capacity on prime farmland or core forest land, to post a decommissioning bond in an amount sufficient to restore farmland to a productive agricultural condition, or to restore the land as core forest.¹

To the extent state agencies or municipalities develop solar facilities on these sites, the bill could result in significant costs associated with posting decommissioning bonds for these projects.

For example, the costs for the Tobacco Valley Solar

¹ A decommissioning bond is a way to secure paying for removing an abandoned solar panel system and remediating the land.

Decommissioning Plan are \$2,250,000.²

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation and the cost of solar decommissioning bonds.

² Source: Tobacco Valley Solar Decommissioning Plan, June 2017, DWW Solar II, LLC

OLR Bill Analysis**sSB 350*****AN ACT REQUIRING THE POSTING OF A DECOMMISSIONING BOND FOR CERTAIN SOLAR PROJECTS.*****SUMMARY**

This bill requires anyone who receives Connecticut Siting Council approval for a solar photovoltaic facility with at least a two megawatt capacity on prime farmland or core forest to post a decommissioning bond (see BACKGROUND). A decommissioning bond is a way to secure payment for removing an abandoned solar panel system and remediating the land.

The bill requires the bond to be in an amount sufficient to restore the farmland to a productive agricultural condition or to restore the land as core forest, whichever applies.

Existing law, unchanged by the bill, requires the Department of Agriculture (DoAg) or the Department of Energy and Environmental Protection (DEEP) to, as part of the siting council's review process, inform the council in writing if a solar project will not materially affect the subject land's status as prime farmland or core forest.

The bill requires the DoAg commissioner to (1) convene a five-member working group to recommend a standard for DoAg and DEEP to use when evaluating the effects of these solar facilities on prime farmland or core forest and (2) report on it to the Environment Committee by January 1, 2019.

EFFECTIVE DATE: October 1, 2018, except the working group provision is effective upon passage.

WORKING GROUP

Under the bill, the working group must consider whether the

standard for evaluating a project's impact must be that it will not (1) materially affect the land's status as prime farmland or core forest or (2) permanently affect its status.

The bill requires the following five individuals to serve on the working group:

1. the DoAg and DEEP commissioners, or their designees;
2. a solar industry representative;
3. a representative of the Connecticut Farm Bureau; and
4. a representative of the Connecticut Agricultural Experiment Station with expertise in soil restoration.

BACKGROUND

Connecticut Siting Council

The Connecticut Siting Council is an independent body that regulates the siting of power facilities, transmission lines, and telecommunication facilities. Its decisions must follow guidelines set in law.

Prime Farmland & Core Forest Land

By law, "prime farmland" means soils defined by the U.S. Department of Agriculture as best suited to produce food, feed, forage, fiber, and oilseed crops. In general, these lands 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 (CGS § 16a-3k, citing to 7 C.F.R. § 657.5).

The law provides that "core forest" is unfragmented forest land that is at least 300 feet from the boundary between forest land and non-forest land, as determined by the DEEP commissioner (CGS § 16a-3k).

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 29 Nay 1 (03/22/2018)