



Senate

General Assembly

File No. 657

February Session, 2018

Substitute Senate Bill No. 350

Senate, April 30, 2018

The Committee on Appropriations reported through SEN. OSTEN of the 19th Dist. and SEN. FORMICA of the 20th 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2 the general statutes is repealed and the following is substituted in lieu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) (1) Except as provided in subsection (b) of section 16-50z, no
5 person 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 (A) fuel cells built within the state with a generating capacity of two

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

49 certificate in an amount sufficient to restore such prime farmland to a
 50 productive agricultural condition or to restore such land as core forest,
 51 as applicable. The provisions of this subdivision shall not apply to
 52 prime farmland or core forest owned by the state or any municipality.

53 Sec. 2. (*Effective from passage*) The Commissioner of Agriculture shall
 54 convene a working group to develop a recommendation for the
 55 standard to be applied by the Departments of Energy and
 56 Environmental Protection and Agriculture in evaluating the effect of
 57 solar photovoltaic facilities pursuant to subparagraph (B)(iii) of
 58 subdivision (2) of subsection (a) of section 16-50k of the general
 59 statutes, as amended by this act. Such deliberation shall include, but
 60 not be limited to, a consideration of whether such standard shall be
 61 that such project will not materially affect the status of such land as
 62 prime farmland or core forest or whether such standard shall be that
 63 such project will not permanently affect the status of such land as
 64 prime farmland or core forest. Such working group shall consist of the
 65 Commissioner of Agriculture, or the commissioner's designee, a
 66 representative of the solar industry, a representative of the Connecticut
 67 Farm Bureau, the Commissioner of Energy and Environmental
 68 Protection, or the commissioner's designee, and a representative of the
 69 Connecticut Agricultural Experiment Station who shall have expertise
 70 in soil restoration. The Commissioner of Agriculture shall submit such
 71 recommendation to the joint standing committee of the General
 72 Assembly having cognizance of matters relating to the environment
 73 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

APP *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:** None**Explanation**

The bill requires anyone seeking approval for certain solar photovoltaic facilities through the Connecticut Siting Council to require the posting of a decommissioning bond.

There is no fiscal impact, as the bill does not apply to farmland or forests owned by the state or municipalities.

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

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

This bill generally requires anyone who receives Connecticut Siting Council approval for a solar photovoltaic facility (i.e., solar panels) 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. It exempts from the bond requirement projects on prime farmland or core forest owned by the state or a municipality.

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 also 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 it to the Environment Committee by January 1, 2019.

EFFECTIVE DATE: October 1, 2018, except that the working group provision takes effect upon passage.

WORKING GROUP

The bill requires the working group to consider whether the standard for evaluating a project's impact must be either that it will not (1) materially affect the land's status as prime farmland or core forest or (2) permanently affect its status.

Under the bill, the working group members include:

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).

Legislative History

The Senate referred the bill (File 291) to the Appropriations

Committee, which reported a substitute that (1) exempts from the decommissioning bond requirements projects on municipally- or state-owned prime farmland or core forest and (2) makes technical changes.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 29 Nay 1 (03/22/2018)

Appropriations Committee

Joint Favorable Substitute

Yea 46 Nay 6 (04/18/2018)