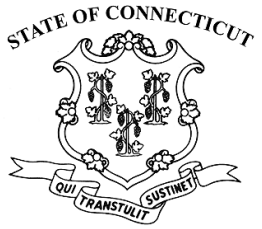

House Bill No. 5608

Public Act No. 23-163

AN ACT CONCERNING CERTAIN SOLAR PHOTOVOLTAIC FACILITIES LOCATED ON PRIME FARMLAND, FARMLAND OF STATE-WIDE IMPORTANCE OR CORE FOREST LANDS.

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

Section 1. Subsection (a) of section 16-50k of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

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

conditions contained therein. Notwithstanding the provisions of this chapter or title 16a, the council shall, in the exercise of its jurisdiction over the siting of generating facilities, approve by declaratory ruling (A) the construction of a facility solely for the purpose of generating electricity, other than an electric generating facility that uses nuclear materials or coal as fuel, at a site where an electric generating facility operated prior to July 1, 2004, and (B) the construction or location of any fuel cell, unless the council finds a substantial adverse environmental effect, or of any customer-side distributed resources project or facility or grid-side distributed resources project or facility with a capacity of not more than sixty-five megawatts, as long as: (i) Such project meets air and water quality standards of the Department of Energy and Environmental Protection, (ii) the council does not find a substantial adverse environmental effect, and (iii) for a solar photovoltaic facility with a capacity of two or more megawatts, to be located on prime farmland or forestland, excluding any such facility that was selected by the Department of Energy and Environmental Protection in any solicitation issued prior to July 1, 2017, pursuant to section 16a-3f, 16a-3g or 16a-3j, the Department of Agriculture represents, in writing, to the council that such project will not materially affect the status of such land as prime farmland or the Department of Energy and Environmental Protection represents, in writing, to the council that such project will not materially affect the status of such land as core forest. In conducting an evaluation of a project for purposes of subparagraph (B)(iii) of this **[**subsection**]** subdivision, the Departments of Agriculture and Energy and Environmental Protection may consult with the United States Department of Agriculture and soil and water conservation districts. In addition to all other requirements for the issuance of a certificate, the council shall not issue a certificate for a facility described in subparagraph (B)(iii) of this subdivision unless the applicant for such certificate furnishes a bond to cover all costs associated with the decommissioning of such facility and the restoration of such prime farmland, including, but not limited to, an inspection by a qualified soil

scientist or other agricultural soils professional to assess and assure that the soils of such prime farmland are restored and will be suitable for farming. Such an assessment shall include, but need not be limited to, consideration of topsoil and subsoil depths, soil compaction, alteration in surface and subsurface drainage, erosion and sedimentation control measures and soil fertility.

Approved June 29, 2023