
OLR Bill Analysis

sHB 5507

AN ACT CONCERNING STATE AGENCY AND COURT PROCEEDINGS RELATING TO ELECTRIC TRANSMISSION LINES.

SUMMARY

This bill makes changes to laws affecting the Siting Council and its process for granting a certificate of environmental compatibility and public need (a “certificate”). Among other things, it:

1. makes certain transmission lines “affecting facilities” under the state’s environmental justice law, thus subjecting them to the law’s requirements (§ 1);
2. increases, from \$25,000 to \$75,000, the municipal participation fee certain certificate applicants must pay when filing their applications (§ 3);
3. increases, from \$25,000 to \$75,000, the maximum amount a municipality may receive from the municipal participation account to defray expenses related to certificate proceedings (§ 2);
4. adds to the information applicants for transmission lines must provide with their certificate application to include certain information on property appraisals, electric load, and system performance (§ 3);
5. expands municipal consultation requirements for certificate applicants (§ 3);
6. requires the council to consider certain neighborhood concerns before granting a certificate for a transmission line project (§ 4);
7. allows (a) intervenors in council proceedings to appeal a decision

- to Superior Court and (b) the court to award a municipality reasonable attorneys' fees and costs if it prevails in its appeal (§ 5);
8. requires the council to consult with and solicit comments from the Office of Consumer Council (OCC) before starting a hearing for a certificate application (§ 6); and
 9. requires the council to request a municipality's location preferences or siting criteria for transmission line projects and requires municipalities to provide this information within 30 days after the request (§ 7).

EFFECTIVE DATE: July 1, 2024

SITING IN ENVIRONMENTAL JUSTICE COMMUNITIES

The bill makes transmission lines of at least 69 kilovolts in capacity "affecting facilities" under the state's environmental justice law, which generally requires applicants seeking to construct, expand, or site certain facilities in environmental justice communities to engage in a public participation process (see BACKGROUND). Existing law, unchanged by the bill, exempts from these requirements any facility that received a Siting Council certificate on or before January 1, 2000.

MUNICIPAL PARTICIPATION ACCOUNT PAYMENTS

By law, certain facilities must pay a municipal participation fee when filing their application for a certificate from the council. This requirement applies to applications for electric transmission lines, fuel transmission facilities, electric generation or storage facilities, and certain electric substations or switchyards. The bill increases this fee from \$25,000 to \$75,000.

Under existing law, these fees are deposited into the General Fund's municipal participation account. Municipalities may apply for reimbursement from the account to defray expenses incurred from participating as a party to a certificate proceeding. The bill increases the maximum amount a municipality may receive from the account from \$25,000 to \$75,000. Existing law prohibits municipalities from receiving

any more from the account than the funds they spent.

TRANSMISSION LINE APPLICATION REQUIREMENTS

Land Acquisitions and Easements

By law, a certificate application for a transmission line project must include, among other things, a schedule showing the proposed program of right-of-way or property acquisition, construction, completion, and operation. The bill additionally requires the application to include any appraisal on fair compensation provided to a real property owner in connection with entering a right-of-way, including easements or land acquisition, completed by an independent appraiser on the applicant's behalf. It requires applicants to use due diligence to seek permission to gain access to any property the applicant does not own, lease, or otherwise have access to, as shown by the following materials submitted with the application:

1. certified mail, return receipt requested letters, sent to the property owners of record and
2. an affidavit stating that the applicant was not given access to the property and, without permission to access the property, the applicant made visual inspections to document existing conditions from public rights-of-way, existing utility rights-of-way, or other nearby accessible properties.

Electric Load and System Performance

The bill requires certificate applications for transmission line projects to include the following information:

1. actual loads for existing transmission lines in the project's proposed location for the previous 10 years;
2. the proposed transmission line's projected load for the 10-year period after the application date;
3. performance of the electric circuits at issue over the previous 10 years, including service outages or disruptions, their causes, and the length of time to restore service; and

4. planning studies conducted by ISO-New England or the applicant about the proposed project.

By law, companies generating, transmitting, or distributing electricity must annually report a 10-year load and resources forecast to the council (CGS § 16-50r). The bill requires certificate applications for transmission projects to also include this report.

MUNICIPAL CONSULTATION REQUIREMENTS

Under current law, applicants must consult with certain municipalities 60 days before filing an application with the council and, at the consultation, give the municipality's chief elected official any technical reports on the proposed facility's public need, site selection process, or environmental effects.

The bill pushes this consultation back to 90 days before filing an application and also requires the applicant to consult the municipality's legislative body and each state legislator whose district includes a proposed or alternative facility location. This consultation must include good faith efforts to meet with these officials. The bill allows the chief elected official to designate someone for the consult.

In addition to the technical reports mentioned above, the bill requires applicants to provide a public engagement plan at the consultation that includes the project's (1) effects on community services and infrastructure and (2) impact on proposed development and the municipal tax base. For transmission line project applications, the bill requires the applicant to also provide a report summarizing the status of any negotiation with real property owners on total compensation amounts to be paid to secure any required right-of-way access, easements, or land acquisition.

COUNCIL DETERMINATIONS FOR CERTIFICATE APPROVAL

Existing law identifies the factors the council must consider and the findings it must make before approving a certificate. For all facilities, this generally includes a finding that there is a public need for the facility and that its environmental impacts are not sufficient reason to deny the

application, among other things. For transmission line projects, this also includes finding that the facility conforms to a long-range plan for electric power grid expansion and that the project serves the interest of electric system economy and reliability. The council must also consider which portions of the facility will be located overhead and determine that these portions are cost effective and the most appropriate alternative. It must find that the line's location will not pose an undue hazard to people or property along the area the line traverses.

The bill prohibits the council from approving a certificate for a transmission line, as proposed by the applicant or modified by the council, unless it considers neighborhood concerns with the factors and findings described above, including public safety and the proposed facility's anticipated contribution to the municipality's tax base.

JUDICIAL REVIEW

Current law allows parties in council proceedings for certificates or certificate amendments to appeal a council decision to Superior Court under the Uniform Administrative Procedure Act. The bill (1) extends this right to intervenors in council proceedings and (2) allows the court to award reasonable attorneys' fees and costs to a municipality that prevails in its appeal.

Parties to proceedings include the applicant, anyone required to receive notice of the proceeding, and certain nonprofit organizations, among others. By law, the council may allow other people to participate as intervenors if they submit a petition showing that their participation is in the interest of justice and will not impair the proceeding's orderly conduct. But it may also limit an intervenor's participation to specific issues and define or restrict an intervenor's rights to inspect and copy records, introduce evidence, or cross examine other parties (CGS §§ 60-50n(b) & 4-177a).

OCC CONSULTATION BEFORE HEARING

Current law requires the council to (1) schedule a public hearing on a certificate application at least 30 days but no more than 150 days after it receives the application and (2) consult with and solicit comments

from certain agencies before the hearing (e.g., the Department of Energy and Environmental Protection and the Department of Public Health). The bill adds the OCC to the list of agencies the council must consult and solicit comments from before starting the hearing.

MUNICIPAL LOCATION PREFERENCES FOR TRANSMISSION PROJECTS

Current law requires the council to request that municipalities provide any location preferences or criteria for proposed telecommunication tower projects within 30 days after receiving notice of the project. The bill extends this requirement to proposed transmission lines. It requires municipalities to provide their location preferences or criteria within 30 days after the council's request. The bill similarly extends to proposed transmission lines a provision that allows the council to consider regional location preferences from neighboring municipalities.

BACKGROUND

Environmental Justice Law

By law, an "environmental justice community" is (1) any U.S. census block group, as determined by the most recent census, for which at least 30% of the population consists of low-income people who are not institutionalized and have an income below 200% of the federal poverty level or (2) a distressed municipality.

Among other things, the law requires certificate applicants for affecting facilities in environmental justice communities to:

1. file and receive approval for a meaningful public participation plan before filing their certificate application;
2. make a reasonable and good faith effort to give the public clear, accurate, and complete information about the affecting facility proposal at an informal public meeting;
3. consult with the chief elected officials of the towns in which the proposed facility will be located or expanded to evaluate the need for a community environmental benefit agreement; and

4. enter into a community environmental benefit agreement if the facility will be in a municipality that already has at least five affecting facilities.

The law allows the Siting Council to deny a certificate application for a proposed affecting facility if it finds that approving it would, together with other environmental or public health stressors affecting the environmental justice community involved, produce adverse cumulative stressors that are higher than those experienced by other communities in the state, county, or other geographic area, as the council determines. Under certain conditions, it also allows the council to apply reasonable conditions on a new certificate for an affecting facility related to its construction and operation to protect the environment and public health (CGS § 22a-20a).

Related Bills

sSB 198 (File 184), favorably reported by the Environment Committee, adds to the Siting Council an elector from the municipality where a proposed facility would be located.

sHB 5361 (File 365), favorably reported by the Energy and Technology Committee, requires, among other things, the Siting Council to consider the testimony of the chief elected official of any municipality in which a proposed facility would be located.

HB 5453, favorably reported by the Government Administration and Elections Committee, makes various changes to the council's membership, requires applicants for proposed electric transmission facilities to include additional information with their applications, and expands the issues the council must consider when deciding whether to approve an application.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 35 Nay 1 (03/26/2024)