**PA 24-144**—sHB 5507
*Judiciary Committee*

# AN ACT CONCERNING CERTAIN PROCEEDINGS RELATING TO ELECTRIC TRANSMISSION LINES AND THE MEMBERSHIP AND PROCESSES OF THE CONNECTICUT SITING COUNCIL

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**SUMMARY:** This act makes changes to the Public Utility Environmental Standards Act (PUESA), which is the law that governs the Siting Council's authority and procedures, as described in the section-by-section analysis below.
EFFECTIVE DATE: October 1, 2024, except a provision requiring the Department of Energy and Environmental Protection (DEEP) to study the council is effective upon passage.

## § 1 — CERTIFICATE MODIFICATIONS

*Categorizes changes or alterations that require eminent domain or expand existing easements as "modifications" that require a certificate if the Siting Council determines they will have a substantial adverse environmental effect*

By law, developers of facilities subject to the Siting Council's jurisdiction must obtain or amend a certificate of environmental compatibility and public need ("a certificate") before modifying a facility that may have a substantial adverse environmental effect, as determined by the council (CGS § 16-50k(a)). A modification is a significant change or alteration in the facility's general physical characteristics. Under the act, this includes any change or alteration that expands an existing easement or requires the exercise of any right of eminent domain.

## § 2 — SITING COUNCIL MEMBERSHIP AND CONSULTATIONS

*Modifies and expands restrictions on member affiliations with utilities and facilities; requires the council to hire the employees it needs to perform its duties; adds the OCC to the agencies the council must consult with before holding a certificate hearing*

### *Membership*

Under existing law, the council typically has nine members: the DEEP

commissioner and the Public Utilities Regulatory Authority (PURA) chairperson (or their designees); one selected by the House speaker and another selected by the Senate president pro tempore; and five members of the public appointed by the governor, at least two of which must have experience in ecology.

Under prior law, only one of the five members appointed by the governor could have a past or present affiliation with (1) a utility or governmental regulatory agency or (2) any person who owns, operates, controls, or contracts with a facility regulated by the council. The act instead requires these five appointees to have no financial interest in, not be employed in or by, and not be professionally affiliated with any (1) utility or (2) facility under the council's jurisdiction. The act additionally prohibits these members from having a professional affiliation with utilities or these facilities for three years before their appointment to the council.

The act specifies that these public appointments are also subject to a separate law that establishes requirements for appointing public members to Executive Branch boards and commissions. Among other things, the law requires that public members constitute at least one third of the board or commission's members and makes appointments coterminous with the governor's term.

The act explicitly requires the council to hire the employees it needs to carry out its purposes and requires that council employees, in the aggregate, have sufficient expertise in engineering and financial analysis to do so.

*Consulted Agencies*

By law, before starting a hearing on applications for certificates or certificate amendments, the council must consult with and solicit comments from various state agencies (e.g., DEEP, PURA, and the Department of Economic and Community Development). The act adds to these agencies the Office of Consumer Counsel (OCC). By doing so, the act makes the OCC's comments part of the record of the proceeding and prohibits the OCC from entering into any contract or agreement with any party to a council proceeding or hearing that would require the office to withhold or retract comments or withdraw or refrain from participating in proceedings and hearings.

## §§ 3 & 10 — APPLICATION REQUIREMENTS

*Adds requirements to transmission line certificate applications; requires notice for changes to certain solar facilities; expands municipal consultations; increases payment to and from the municipal participation account*

*Transmission Line Applications*

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. For proposed transmission lines or modifications, the act 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. Under the act, due diligence is shown by submitting the following materials with the application:

1. letters sent to the property owners of record by certified mail, return receipt requested, 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.

The act requires certificate applications for transmission line projects or modifications to additionally include the following information:

1. a description of estimated initial and life-cycle costs for the facility or modification, and each feasible and practical alternative;
2. an estimate of the regionalized and localized costs for the facility or modification, and each feasible and practical alternative, in accordance with ISO-New England's procedure for pool-supported pool transmission facilities cost review, or a successor procedure;
3. an analysis of the benefits associated with any cost difference between the estimated total and local costs;
4. a detailed analysis of any nontransmission alternatives to the proposed facility or modification;
5. actual loads for existing transmission lines in the project's proposed location for the previous 10 years;
6. the proposed transmission line's projected load for the 10-year period after the application date;
7. 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
8. 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 loads and resources forecast to the council (CGS § 16-50r). The act requires certificate applications for transmission projects and modifications to also include this report.

Under the act, if the applicant intends to submit one or more additional applications for certain additional transmission facilities within five years after the initial application, then the applicant must indicate any foreseeable intention in the initial application and provide any information on the additional facilities that the council requires. This applies to additional transmission facilities that will be either physically connected to the facility included in the initial application or located within five miles of it.

*Notice Requirements for Solar Facilities*

The act requires certificate applicants for solar facilities to provide notice by

certified or registered mail about each proposed site configuration change that the council determines is a material change and that occurs after the application is filed but before the certificate is granted. The applicant must give this notice to each recorded property owner for properties abutting the facility's proposed primary or alternative sites.

*Municipal Consultations*

Existing law requires applicants to consult with certain municipalities 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 act additionally requires the applicant to consult the municipality's legislative body and each state legislator whose district includes a proposed or alternative facility location and provide the same technical reports. The act allows the chief elected official to designate someone for the consult.

Existing law requires the applicant to give the council a summary of its consultations with a municipality within 15 days after submitting an application, including any recommendations the municipality issues. Under the act, this summary must also include any meetings with any of the consulted officials.

For transmission line applications, the act pushes this consultation back from 60 to 90 days before filing an application. It also requires applicants for these projects to give the consulted officials a report that includes a summary of the status of any negotiation with real property owners on any right-of-way access, easements, or land acquisition, excluding any confidential or proprietary information.

*Municipal Participation Account Payments (§§ 3 & 10)*

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 act increases the fee from $25,000 to (1) $80,000 for applicants with proposed facilities in more than one municipality and (2) $40,000 for all other applicants.

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 act increases the maximum amount a municipality may receive from the account from $25,000 to $40,000. Existing law prohibits municipalities from receiving any more from the account than the funds they spent.

## § 4 — INTERVENORS IN COUNCIL PROCEEDINGS ON TRANSMISSION LINES

*Requires the council to grant intervenor status to abutting property owners in certificate proceedings for transmission lines*

By law, the council may permit any person to participate as an intervenor in a certificate or amendment proceeding or a declaratory ruling proceeding, under the Uniform Administrative Procedure Act's (UAPA) provisions on intervenor status for contested proceedings. For certificate proceedings on transmission line facility applications, the act also requires the council to grant intervenor status to anyone who (1) owns property that abuts the proposed facility or a right-of-way where the proposed facility will be and (2) submits a written petition to the council.

## § 5 — DETERMINANT FACTORS IN SITING COUNCIL DECISIONS

*Requires the council to (1) provide certain information before granting a certificate, (2) make certain determinations before approving transmission line projects, and (3) evaluate proposed solar facility noise levels; prohibits the council from approving certain solar facilities in close proximity to other large solar facilities*

The law requires the Siting Council to make certain determinations and findings before approving a certificate, such as that the facility's adverse effects are not sufficient reason to deny the application and, for most facilities, that there is a public need for the facility.

The act additionally requires the council to provide certain information before granting a certificate, either as proposed or with conditions or modifications required by the council. Specifically, the council must provide (1) summaries and written responses to the comments submitted by consulted agencies (see above) and (2) a written response to each intervenor's position. The act requires the council to specifically address any environmental justice concerns raised in these comments or positions.

### *Transmission Line Decisions*

Existing law establishes separate requirements for transmission line certificate decisions, including that the council determine what portion of the facility will be located overhead and whether the facility conforms to a long-range expansion plan for the electric power grid, among other things. Starting October 1, 2025, the act additionally requires the council to consider neighborhood concerns (e.g., public safety and the proposed facility's impact on the municipal tax base) and determine the following before approving a certificate:

1. the estimated initial and life-cycle costs for the facility or modification, and any feasible and practical project alternatives;
2. the estimated regionalized and localized costs for the facility or modification and for any feasible and practical alternative; and
3. that any estimated localized costs for the facility or modification are reasonable compared to the benefits.

Siting Council regulations authorize the council to require certificate holders to submit a Development and Management (D&M) plan before starting construction. For certificate holders with transmission line projects, the act requires a D&M plan submitted to the council on and after October 1, 2025, to include the estimated (1) cost for the facility or modification based on the design in the D&M plan and

current cost information and (2) regionalized and localized costs using this estimate. Under the act, if either of these estimates exceeds 110% of the estimated initial life-cycle or localized costs determined by the council before issuing the certificate (see above), the certificate holder must include in the D&M plan a detailed analysis of the difference in cost estimates and provide any additional information the council or any proceeding intervenors request.

*Solar Facility Decisions*

Under the act, before approving a certificate for a solar facility, the council must evaluate the proposed facility's noise levels using scientifically accepted noise assessment methods. The act prohibits the council from approving a certificate for a solar facility if the (1) facility will not comply with noise regulations established under state law or (2) distance between any of the facility's inverters or transformers and the property line is less than 200 feet. (Existing law, unchanged by the act, requires the council to approve certain distributed resources projects by declaratory ruling. Presumably, these projects would not be subject to requirements the act adds to certificate proceedings.)

*Background — Facilities Approved by Declaratory Ruling*

Existing law requires the Siting Council to approve the following types of projects by declaratory ruling, rather than through the certificate process:

1. an electric generation facility, other than one fueled by coal or nuclear materials, at a site where an electric generating facility operated before July 1, 2004;
2. a fuel cell, unless the council finds a substantial adverse environmental effect; and
3. a customer-side distributed resources project or facility or a grid-side distributed resources project or facility with a capacity up to 65 megawatts (MW), as long as the project meets air and water quality standards, the council finds no substantial adverse environmental effect, and, if applicable, the project complies with certain requirements for siting on prime farmland or core forest (CGS § 16-50k).

A customer-side distributed resource is a generating unit of up to 65 MW on a retail end user's premises within the transmission and distribution system (e.g., fuel cells, solar facilities, and small wind turbines) or a retail end user's reduction in demand for electricity through conservation and load management (CGS § 16-1(a)(34)).

A grid-side distributed resource is a generating unit of up to 65 MW that is connected to the transmission or distribution system, including units primarily used to generate electricity to meet peak demand (CGS § 16-1(a)(37)).

## § 6 — COURT AWARDS TO MUNICIPALITIES

*Starting October 1, 2025, allows the court to award reasonable attorney's fees and costs to a municipality that prevails in its appeal and prohibits utilities from recovering these amounts under certain circumstances*

Existing law allows parties in council proceedings for certificates or certificate amendments to appeal a council decision to Superior Court under the UAPA. Starting October 1, 2025, the act allows the court to award reasonable attorney's fees and costs to a municipality that prevails in its appeal. The act prohibits public service companies (e.g., utilities) from recovering these fees and costs through rates if the court finds that the (1) company acted imprudently in the application process or petition and (2) imprudence was the primary reason the municipality prevailed.

## § 7 — UTILITY EXPENDITURES

*Requires, rather than allows, the council to consider certain factors on utility expenditures for research and advertising in all proceedings*

Starting October 1, 2025, the act requires the council to give appropriate consideration in all proceedings to the following factors:

1. the amount spent by a utility for research on generation and transmission of energy and its environmental effects;
2. the amount spent by a utility to promote the use of the energy it furnishes (e.g., advertising); and
3. the relationship between these expenditures.

Prior law authorized, but did not require, the council to give appropriate consideration in all proceedings to these factors.

## § 8 — VIOLATIONS, ENFORCEMENT, AND PENALTIES

*Requires the council, rather than the courts, to assess civil penalties and establishes a notice and hearing procedure*

Prior law required (1) the council to take reasonable steps to ensure that each facility granted a certificate is constructed, maintained, and operated in compliance with that certificate and any other standards set under PUESA and (2) certificate holders to pay expenses related to verifying compliance. The act instead requires the council to enforce PUESA and compliance with any certificate it issues. It requires certificate holders to comply with certificates, any condition on their certificates, and PUESA.

### *Civil Penalties*

Prior law allowed the courts to assess civil penalties of at least $1,000 per day for each day of construction or operation in material violation of PUESA. The act instead gives the council this authority. Under the act, if the council finds that any person has failed to secure or comply with a certificate, or comply with a certificate condition or any other requirement under PUESA, the council must order the person to pay fines, restitution, or both. By law, civil proceedings to enforce PUESA may

also be brought by the attorney general in Superior Court and remedies and penalties are cumulative and in addition to any other penalties and remedies available at law or in equity.

Prior law authorized the council to require the certificate holder to pay expenses related to compliance verification or meeting other standards. The act eliminates this provision.

*Notice and Hearings*

The act establishes notice requirements for these violations and civil penalties. Under the act, if the council has reason to believe a violation has occurred, it must notify the alleged violator by certified mail, return receipt requested, or by personal service. The notice must include the following information:

1. a reference to any applicable section of energy law, council regulation or certificate, or any certificate condition or requirement;
2. a short and plain statement of the matter asserted or charged;
3. a statement of the prescribed civil penalty for the violation; and
4. a statement of the person's right to a hearing.

The act gives the alleged violator 20 days after receiving the notice to apply to the council for a hearing. If, after a hearing, the council finds a violation has occurred, it may issue a final order assessing a civil penalty as described above. If the alleged violator does not request a hearing, or withdraws the request, the council's notice becomes the council's final order and matters asserted in the notice are deemed admitted. This occurs either when the 20-day period expires or when the hearing request is withdrawn, whichever is later, unless the notice is modified by a consent order before it becomes final, in which case the consent order is the final order.

The law requires the council to conduct hearings for violations as contested cases under the UAPA, which, among other things, allows parties to appeal final orders to Superior Court. But the act prohibits challenges to a council's final order assessing a civil penalty if the issue could have been raised by an appeal of an earlier council order.

*Penalties*

The act makes any civil penalty due (1) upon receipt of a final order, in cases where the council assessed the penalty after a hearing; (2) on the first day after the 20-day period to request a hearing expires, if no hearing is requested; or (3) on the first day after a hearing request is withdrawn.

Under the act, civil penalties are enforced in the same way as Superior Court judgments. The council must deliver final orders to violators by personal service or by certified mail, return receipt requested. After entering a final order, the council may file a transcript without the payment of costs in the clerk's office of the Superior Court in the district where the person resides, has a business, or owns real property, or where any real property that is subject to the proceedings is located. If the person is not a state resident, the council may do so in the Hartford judicial

district. The act requires the clerk to docket the council's order in the same way and with the same effect as a Superior Court judgment. Upon docketing, the order may be enforced as a court judgment.

Prior law authorized courts to grant restraining orders and temporary and permanent injunctive relief as needed to ensure compliance with PUESA and with Siting Council certificates. The act instead specifically authorizes the Superior Court where the transcript is filed to do so and specifies that this may include requiring modifications to the facility's layout or installing noise-dampening materials or equipment to comply with noise level restrictions required under a certificate.

## § 9 — EMINENT DOMAIN NOTICE AND PROCEDURES

*Requires notices of potential property condemnation at least 60 days before the intended condemnation date*

Existing law generally allows electric transmission companies to acquire real property through eminent domain (i.e., condemnation) to (1) relocate a transmission facility or right-of-way required by a public highway project or other governmental action; (2) acquire additional rights or title to property already subject to an easement or other rights for electric transmission lines; or (3) widen a portion, up to one mile long, of a transmission right-of-way for public safety or convenience.

Under prior law, when a utility company wanted to acquire residential real property by condemnation, and the property's owner disputed the company's need to acquire the property, the owner could bring the issue to the Siting Council within 30 days after being informed about the company's intention. But prior law did not set a timeframe for the company to notify the property owner.

The act requires the company to notify the property owner at least 60 days before the intended date of condemnation, regardless of any dispute, in an envelope with "NOTICE REGARDING POTENTIAL CONDEMNATION OF YOUR PROPERTY" written in at least 12-point bold type. As under prior law, the notice must be sent by certified mail and include a statement that the owner may bring the issue of the purpose for which the property is being acquired to the Siting Council.

Under the act, if the property owner disputes the company's need to acquire the property, the owner may bring the matter to the Siting Council within 30 days after the property owner receives the notice of potential condemnation.

## § 11 — MUNICIPAL LOCATION PREFERENCES FOR TRANSMISSION PROJECTS

*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*

Existing 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 about the project. The act 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 act similarly extends to proposed transmission lines a provision that allows the council to consider regional location preferences from neighboring municipalities.

## § 12 — DEEP REPORT ON THE SITING COUNCIL

*Requires DEEP to report on the Siting Council to various legislative committees by December 31, 2024, and authorizes the department to hire a consultant for the study*

The act requires DEEP to report on the Siting Council to the Energy and Technology, Environment, Government Administration and Elections, and Judiciary committees by December 31, 2024. The study must examine the council, focusing on its ability to balance the need for (1) the facilities the council oversees; (2) timely and thorough administration of the council's duties; and (3) environmental protection, public health, and safety. The act requires the study to evaluate and provide recommendations on the following topics:

1. the scope of the council's jurisdiction, its membership, and its powers, duties, roles, and responsibilities, as compared to other state agencies;
2. the council's structure's effectiveness, considering other structures based on best practices in other states, and any statutory or administrative changes needed to implement recommendations;
3. the process to issue a certificate or declaratory ruling, and how to better integrate new technologies into the process;
4. the council's oversight of completed projects;
5. criteria the council uses to evaluate applications;
6. the council's ability to adhere to statutory timeframes;
7. how the council evaluates an approved project's economic, conservation, and development impacts, including (a) its consistency with transit-oriented development and other state and municipal economic development objectives and (b) the degree to which a project forecloses the opportunity for economic development;
8. the efficacy of the council's processes for developing evidence and deliberating;
9. the council's relationship with municipalities and other governmental bodies;
10. policies, procedures, and processes for inclusive public engagement in council decision-making, including to increase transparency and encourage public participation, especially in environmental justice communities;
11. equitable practices and processes in council decision-making for considering community compensation;
12. how the council addresses common public concerns related to siting (e.g., noise, visual, and other community impacts); and
13. whether to give each member of the council an email address so that they may receive documents and other information directly.

To prepare the report, the act requires DEEP to consult with (1) the council; (2) the departments of agriculture, economic and community development, housing, public health, and transportation; (3) the Office of Policy and Management; (4) the

Council on Environmental Quality; (5) PURA; and (6) the OCC. The act authorizes DEEP to hire a consultant within existing resources to help prepare the report, but not a consultant who owns or operates a facility that is subject to the council's jurisdiction.

The act requires DEEP to post a draft of the report on its website by November 30, 2024, for the public to review before providing any comments. DEEP must also (1) provide a mechanism to receive public comment, (2) host at least one listening session to seek public comment after posting the draft but before submitting the final report, and (3) integrate the comments into the final report as the department deems appropriate.