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PA 12-165—sHB 5271

Energy and Technology Committee

Judiciary Committee

Planning and Development Committee

AN ACT CONCERNING THE SITING COUNCIL

SUMMARY: This act requires telecommunications tower developers to consult with municipalities that may be affected by the location of a tower at least 90, rather than 60, days before applying to the Connecticut Siting Council for a certificate approving the location. It also expands the scope of this consultation.

It prohibits the council from approving a telecommunications tower's installation within 250 feet of a school or commercial child day care center unless (1) the municipality's chief elected official approves the location or (2) the council finds that it will not have a substantial adverse effect on the aesthetics or scenic quality of the school or day care center's neighborhood. The act specifies that the council's decision must be consistent with federal law and regulations when applying these criteria.

The act (1) expands the factors the council must consider when approving cable TV or telecommunications towers and equipment and (2) allows the council to request the attorney general to bring a civil suit under certain circumstances.

It also (1) adds neighborhood concerns, including public safety, to the factors the council must consider when reviewing power plant applications; (2) allows the council to consider regional location preferences from municipalities neighboring the municipality subject to a siting certification; and (3) modifies how municipalities are reimbursed from the municipal participation account for participating in council proceedings.

EFFECTIVE DATE: July 1, 2012, except for the provisions on pre-application consultations and the municipal participation account, which are effective upon passage.

MUNICIPAL CONSULTATION ON CELL TOWERS

With limited exceptions, existing law requires the developer of any facility under the Siting Council's jurisdiction to consult with potentially affected municipalities at least 60 days before filing its application with the council. These consultations must include any municipality where the developer proposes to locate the facility, or an alternative site, and any adjoining municipalities within 2,500 feet of it. The consultation must include good faith efforts to meet with the municipality's chief elected official. The developer must provide the official with any technical reports concerning the site selection process and the public need for, and environmental effects of, the facility. The municipality can hold hearings and meetings and, within 60 days of its initial consultation, issue its recommendations to the developer. Within 15 days after submitting its application to the council, the developer must give the council the materials it provided to the municipality and a summary of the consultations, including the municipality's recommendations.

In addition to these requirements and procedures, the act requires developers proposing telecommunications towers to consult with affected municipalities at least 90 days before filing an application with the council. The consultation must include good faith efforts to meet with a municipality's chief elected official, or his or her designee. The technical reports provided to the municipality must also be given to the municipality's planning and zoning commissions, and inland wetland agency. The reports must include:

1. a map showing the area of need;
2. the location of existing surrounding towers;
3. a description of the site selection process, including a detailed description of the proposed site, alternate sites being considered, and sites that were considered and rejected;
4. the location of schools near the proposed site, an analysis of the aesthetic impact of the tower on the schools, and a discussion of measures to be taken to lessen these impacts; and
5. the proposed facility's potential environmental effects.

The act requires the affected municipalities to provide the telecommunications tower developer with alternative sites to consider within 30 days of the initial consultation. The developer must include its evaluation of these alternatives in its application to the council and can present any of the alternatives to the council for formal consideration.

The act allows a municipality to hold a public information meeting on the proposed tower within 60 days of the initial consultation. If the municipality holds a meeting, the act makes the developer responsible for (1) notifying anyone on record as an owner of property next to a proposed or alternate site and (2) publishing a notice of the meeting in a newspaper of general circulation in the municipality at least 15 days before it.

CABLE TV AND TELECOMMUNICATION TOWER APPROVAL

The act expands the factors the council must consider when granting a certificate for cable TV or telecommunication towers by requiring it to consider the (1) manufacturer's recommended safety standards for any of the facility's equipment, machinery, or technology and (2) latest design options meant to minimize the facility's aesthetic and environmental impact.

Unless a cable TV or telecommunications tower's proposed location is required due to public safety concerns, existing law allows the council to deny a certificate for such a tower if it finds that the tower would substantially affect the location's scenic quality. The act expands this authority to include instances where the tower would substantially affect the surrounding neighborhood's scenic quality, as long as public safety concerns do not require the tower to be in its proposed location.

Attorney General Civil Suits

The act allows the council to request that the attorney general bring a civil action in cases regarding a proposed cable TV or telecommunications tower, if the council determines that a party or intervenor intentionally omitted or misrepresented a material fact during a council proceeding, or upon a motion of a party or intervenor. The council must decide to make the request by a majority vote. In the action, the attorney general can seek any legal or equitable relief the Superior Court considers appropriate,

including injunctive relief or a civil penalty of up to \$10,000 and reasonable attorneys fees and related costs.

MUNICIPAL PARTICIPATION ACCOUNT

By law, applicants initiating a certification proceeding with the council, except applicants for a cable TV or telecommunications tower, must pay a \$25,000 municipal participation fee, which is deposited into the Municipal Participation Account to reimburse municipalities for their costs of participating in council proceedings. Prior law required the treasurer to make these payments within 60 days after the council receives a certificate application. The act instead requires a municipality to apply for reimbursement within 60 days after the certificate proceeding ends. If reimbursements are less than the participation fee, any money left over from the fee must be refunded to the applicant after all municipalities are paid, rather than at the end of the proceeding.

The act also eliminates a requirement that a municipality refund any money it received from the account exceeding the costs it incurred. Under existing law, unchanged by the act, a municipality cannot receive more from the fund than its costs.

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Public Act No. 12-165

AN ACT CONCERNING THE SITING COUNCIL.

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

Section 1. Section 16-50p of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2012*):

(a) (1) In a certification proceeding, the council shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions, limitations or modifications of the construction or operation of the facility as the council may deem appropriate.

(2) The council's decision shall be rendered in accordance with the following:

(A) Not later than twelve months after the deadline for filing an application following the request for proposal process for a facility described in subdivision (1) or (2) of subsection (a) of section 16-50i or subdivision (4) of said subsection (a) if the application was incorporated in an application concerning a facility described in subdivision (1) of said subsection (a);

(B) Not later than one hundred eighty days after the deadline for filing an application following the request for proposal process for a

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facility described in subdivision (4) of [said] subsection (a) [.] of section 16-50i and an application concerning a facility described in subdivision (3) of said subsection (a), provided the council may extend such [time periods may be extended by the council] period by not more than one hundred eighty days with the consent of the applicant; and

(C) Not later than one hundred eighty days after the filing of an application for a facility described in subdivision (5) or (6) of [said] subsection (a) of section 16-50i, provided the council may extend such [time] period [may be extended by the council] by not more than one hundred eighty days with the consent of the applicant.

(3) The council shall file, with its order, an opinion stating in full its reasons for the decision. The council shall not grant a certificate, either as proposed or as modified by the council, unless it shall find and determine:

(A) Except as provided in subsection (c) of this section, a public need for the facility and the basis of the need;

(B) The nature of the probable environmental impact of the facility alone and cumulatively with other existing facilities, including a specification of every significant adverse effect, including, but not limited to, electromagnetic fields that, whether alone or cumulatively with other effects, impact on, and conflict with the policies of the state concerning [.] the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity and fish, aquaculture and wildlife;

(C) Why the adverse effects or conflicts referred to in subparagraph (B) of this subdivision are not sufficient reason to deny the application;

(D) In the case of an electric transmission line, (i) what part, if any, of the facility shall be located overhead, (ii) that the facility conforms to a long-range plan for expansion of the electric power grid of the

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electric systems serving the state and interconnected utility systems and will serve the interests of electric system economy and reliability, and (iii) that the overhead portions, if any, of the facility are cost effective and the most appropriate alternative based on a life-cycle cost analysis of the facility and underground alternatives to such facility, are consistent with the purposes of this chapter, with such regulations or standards as the council may adopt pursuant to section 16-50t, including, but not limited to, the council's best management practices for electric and magnetic fields for electric transmission lines and with the Federal Power Commission "Guidelines for the Protection of Natural Historic Scenic and Recreational Values in the Design and Location of Rights-of-Way and Transmission Facilities" or any successor guidelines and any other applicable federal guidelines and are to be contained within an area that provides a buffer zone that protects the public health and safety, as determined by the council. In establishing such buffer zone, the council shall [take into consideration] consider, among other things, residential areas, private or public schools, licensed child day care facilities, licensed youth camps or public playgrounds adjacent to the proposed route of the overhead portions and the level of the voltage of the overhead portions and any existing overhead transmission lines on the proposed route. At a minimum, the existing right-of-way shall serve as the buffer zone;

(E) In the case of an electric or fuel transmission line, that the location of the line will not pose an undue hazard to persons or property along the area traversed by the line;

(F) In the case of an application that was heard under a consolidated hearing process with other applications that were common to a request for proposal, that the facility proposed in the subject application represents the most appropriate alternative among such applications based on the findings and determinations pursuant to this subsection; [and]

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(G) In the case of a facility described in subdivision (6) of subsection (a) of section 16-50i that is (i) proposed to be installed on land under agricultural restriction, as provided in section 22-26cc, that the facility will not result in a material decrease of acreage and productivity of the arable land, or (ii) proposed to be installed on land near a building containing a school, as defined in section 10-154a, or a commercial child day care center, as described in subdivision (1) of subsection (a) of section 19a-77, that the facility will not be less than two hundred fifty feet from such school or commercial child day care center unless the location is acceptable to the chief elected official of the municipality or the council finds that the facility will not have a substantial adverse effect on the aesthetics or scenic quality of the neighborhood in which such school or commercial child day care center is located, provided the council shall not render any decision pursuant to this subparagraph that is inconsistent with federal law or regulations; and

(H) That, for a facility described in subdivision (5) or (6) of subsection (a) of section 16-50i, the council has considered the manufacturer's recommended safety standards for any equipment, machinery or technology for the facility.

(b) (1) Prior to granting an applicant's certificate for a facility described in subdivision (5) or (6) of subsection (a) of section 16-50i, the council shall examine, in addition to its consideration of subdivisions (1) to [(5)] (3), inclusive, of subsection (a) of this section: (A) The feasibility of requiring an applicant to share an existing facility, as defined in subsection (b) of section 16-50aa, within a technically derived search area of the site of the proposed facility, provided such shared use is technically, legally, environmentally and economically feasible and meets public safety concerns, (B) whether such facility, if constructed, may be shared with any public or private entity [which] that provides telecommunications or community antenna television service to the public, provided such shared use is

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technically, legally, environmentally and economically feasible at fair market rates, meets public safety concerns, and the parties' interests have been considered, [and] (C) whether the proposed facility would be located in an area of the state which the council, in consultation with the Department of Energy and Environmental Protection and any affected municipalities, finds to be a relatively undisturbed area that possesses scenic quality of local, regional or state-wide significance, and (D) the latest facility design options intended to minimize aesthetic and environmental impacts. The council may deny an application for a certificate if it determines that (i) shared use under the provisions of subparagraph (A) of this subdivision is feasible, (ii) the applicant would not cooperate relative to the future shared use of the proposed facility, or (iii) the proposed facility would substantially affect the scenic quality of its location or surrounding neighborhood and no public safety concerns require that the proposed facility be constructed in such a location.

(2) When issuing a certificate for a facility described in subdivision (5) or (6) of subsection (a) of section 16-50i, the council may impose such reasonable conditions as it deems necessary to promote immediate and future shared use of such facilities and avoid the unnecessary proliferation of such facilities in the state. The council shall, prior to issuing a certificate, provide notice of the proposed facility to the municipality in which the facility is to be located. Upon motion of the council, written request by a public or private entity [which] that provides telecommunications or community antenna television service to the public or upon written request by an interested party, the council may conduct a preliminary investigation to determine whether the holder of a certificate for such a facility is in compliance with the certificate. Following its investigation, the council may initiate a certificate review proceeding, which shall include a hearing, to determine whether the holder of a certificate for such a facility is in compliance with the certificate. In such proceeding, the

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council shall render a decision and may issue orders [which] it deems necessary to compel compliance with the certificate, which [orders] may include, but not be limited to, revocation of the certificate. Such orders may be enforced in accordance with the provisions of section 16-50u.

(c) (1) The council shall not grant a certificate for a facility described in subdivision (3) of subsection (a) of section 16-50i, either as proposed or as modified by the council, unless it finds and determines a public benefit for the facility and considers neighborhood concerns with respect to the factors set forth in subdivision (3) of subsection (a) of this section, including public safety.

(2) The council shall not grant a certificate for a facility described in subdivision (1) of subsection (a) of section 16-50i, [which] that is substantially underground or underwater except where such [facilities interconnect] facility interconnects with existing overhead facilities, either as proposed or as modified by the council, unless it finds and determines a public benefit for [the facility, in the case of such facility that is] a facility substantially underground [, and] or a public need for [such facility, in the case of such facility that is] a facility substantially underwater.

(3) For purposes of [subparagraph (A) of this subdivision] this section, a public benefit exists [if such] when a facility is necessary for the reliability of the electric power supply of the state or for the development of a competitive market for electricity and a public need exists [if such] when a facility is necessary for the reliability of the electric power supply of the state.

(4) Any application for an electric transmission line with a capacity of three hundred forty-five kilovolts or more that is filed on or after May 1, 2003, and [that] proposes the underground burial of such line in all residential areas and overhead installation of such line in

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industrial and open space areas [affected by such proposal] shall have a rebuttable presumption of meeting a public benefit for such facility if the facility is substantially underground [,] and meeting a public need for such facility if the facility is substantially above ground. Such presumption may be overcome by evidence submitted by a party or intervenor to the satisfaction of the council.

(d) If the council determines that the location of all or a part of the proposed facility should be modified, it may condition the certificate upon such modification, provided the municipalities [, and persons residing or located in such municipalities,] affected by the modification and the residents of such municipalities shall have had notice of the application [as provided in] pursuant to subsection (b) of section 16-50l, as amended by this act.

(e) In an amendment proceeding, the council shall render a decision [within] not later than ninety days [of] after the filing of the application or adoption of the resolution initiating the proceeding. The council shall file an opinion with its order stating its reasons for the decision. The council's decision shall include the findings and determinations enumerated in subsection (a) of this section which are relevant to the proposed amendment.

(f) [A] The council shall serve a copy of the order and opinion issued therewith [shall be served] upon each party and publish a notice of the issuance of the order and opinion [shall be published] in such newspapers as will serve substantially to inform the public of the issuance of such order and opinion. The name and address of each party shall be set forth in the order.

(g) In [making its decision as to] deciding whether [or not] to issue a certificate, the council shall in no way be limited by [the fact that] the applicant [may] already [have] having acquired land or an interest therein for the purpose of constructing the facility [which] that is the

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subject of its application.

(h) For purposes of this section, a public need exists for an energy facility if such facility is necessary for the reliability of the electric power supply of the state.

(i) For a facility described in subdivision (1) of subsection (a) of section 16-50i, with a capacity of not less than three hundred forty-five kilovolts, [or greater, there] the presumption shall be [a presumption] that a proposal to place the overhead portions, if any, of such facility adjacent to residential areas, private or public schools, licensed child day care facilities, licensed youth camps or public playgrounds is inconsistent with the purposes of this chapter. An applicant may rebut this presumption by demonstrating to the council that [it] burying the facility will be technologically infeasible, [to bury the facility.] In determining such infeasibility, the council shall consider the effect of burying the facility on the reliability of the electric transmission system of the state and whether the cost of any contemplated technology or design configuration may result in an unreasonable economic burden on the ratepayers of the state.

(j) Upon a motion of a party or intervenor or a council determination that any party or intervenor relating to a facility described in subdivision (5) or (6) of subsection (a) of section 16-50i has intentionally omitted or misrepresented a material fact in the course of a council proceeding, the council may, by majority vote, request the Attorney General to bring a civil action against such party or intervenor. In any such action, the Attorney General may seek any legal or equitable relief the Superior Court deems appropriate, including, but not limited to, injunctive relief or a civil penalty of not more than ten thousand dollars and reasonable attorney fees and related costs.

Sec. 2. Section 16-50gg of the general statutes is repealed and the

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following is substituted in lieu thereof (*Effective July 1, 2012*):

When notifying a municipality pursuant to section 16-50l, as amended by this act, of an application for a telecommunications tower in said municipality, the Connecticut Siting Council shall request that the municipality provide to said council, within thirty days, any location preferences or criteria for the siting of said telecommunications tower. The council may consider regional location preferences from neighboring municipalities.

Sec. 3. Subsection (b) of section 16-50bb of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) Payments from the account shall be made upon authorization by the State Treasurer. An application for reimbursement shall be submitted not later than sixty days after [receipt of an application for a proposed facility] the conclusion of a certification proceeding, except for a facility described in subdivisions (5) and (6) of subsection (a) of section 16-50i, [to] by each municipality entitled to receive a copy of such application under section 16-50l, as amended by this act, in order to defray expenses incurred by such municipalities in participating as a party to a certification proceeding, except for a proceeding on an application for a facility described in subdivision (5) or (6) of subsection (a) of section 16-50i. Any moneys remaining [at the end of such proceeding] after payments to municipalities in accordance with this section shall be refunded to the applicant in even amounts. Where more than one municipality seeks moneys from such account, the council shall evenly distribute such moneys among the municipalities. No municipality may receive moneys from the account in excess of twenty-five thousand dollars. No municipality may receive moneys from the account in excess of the dollar amount such municipality has expended from its own municipal funds. [A municipality that has received moneys from the account in excess of the costs it incurred in

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participating in the certification proceeding, as determined by the council, shall refund such excess moneys to the account upon the conclusion of such proceeding.]

Sec. 4. Section 16-50l of the general statutes is amended by adding subsection (g) as follows (*Effective from passage*):

(NEW) (g) (1) For a facility described in subdivision (6) of subsection (a) of section 16-50i, at least ninety days before filing an application with the council, the applicant shall consult with the municipality in which the facility is proposed to be located and with any other municipality required to be served with a copy of the application under subdivision (1) of subsection (b) of this section. Consultation with such municipality shall include, but not be limited to, good-faith efforts to meet with the chief elected official of the municipality or such official's designee. At the time of the consultation, the applicant shall provide the municipality with any technical reports concerning the need for the facility, including a map indicating the area of need, the location of existing surrounding facilities, a detailed description of the proposed and any alternate sites under consideration, a listing of other sites or areas considered and rejected, the location of all schools near the proposed facility, an analysis of the potential aesthetic impacts of the facility on said schools, as well as a discussion of efforts or measures to be taken to mitigate such aesthetic impacts, a description of the site selection process undertaken by the prospective applicant and the potential environmental effects of the proposed facility. The applicant shall also provide copies of such technical reports to such municipality's planning commission, zoning commission or combined planning and zoning commission and inland wetland agency.

(2) Not later than sixty days after the initial municipal consultation meeting, the municipality, in cooperation with the applicant, may hold a public information meeting. If the municipality decides to hold a

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public information meeting, the applicant shall be responsible for sending notice of such meeting to each person appearing of record as an owner of property which abuts the proposed or alternate facility locations and for publishing notice of such meeting in a newspaper of general circulation in the municipality at least fifteen days before the date of the public information meeting.

(3) The municipality shall present the applicant with proposed alternative sites, which may include municipal parcels, for its consideration not later than thirty days after the initial consultation meeting. The applicant shall evaluate these alternate sites presented as part of the municipal consultation process and include the results of its evaluations in its application to the council. The applicant may present any such alternatives to the council in its application for formal consideration.

Approved June 15, 2012