

Legislative History for Connecticut Act

PA 15-186

SB568

| | | |
|----------------|------------------|-----------|
| House | 7360-7365 | 5 |
| Senate | 1722-1724 | 3 |
| Energy & Tech. | 352-363, 575-581 | 19 |
| | | 27 |

Transcripts from the Joint Standing Committee Public
Hearing(s) and/or Senate and House of Representatives
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**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2015**

**VOL.58
PART 22
7297 - 7630**

/pt
HOUSE OF REPRESENTATIVES

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June 2, 2015

would like everybody here to give him another round of
applause. Thank you very much.

[applause]

DEPUTY SPEAKER MILLER:

Welcome. Will the Clerk please call Calendar No.
609.

CLERK:

On Page 32, House Calendar 609 Favorable Report
of the Joint Standing Committee on Planning and
Development, Substitute Senate Bill 568 AN ACT
CONCERNING PUBLIC INFORMATION MEETINGS REGARDING
TELECOMMUNICATION TOWERS.

DEPUTY SPEAKER MILLER:

Representative Reed.

REP. REED (102nd):

Good evening, Madam Speaker. I move for
acceptance of the Joint Committee's Favorable Report
and passage of the bill in concurrence with the
Senate.

DEPUTY SPEAKER MILLER:

The question before the Chamber is on acceptance
of the Joint Committee's Favorable Report and passage

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of the bill in concurrence with the Senate. You may proceed, madam.

REP. REED (102nd):

Thank you, Madam Speaker. As often happens, this bill has resulted from a real-life situation involving a Connecticut Siting Council decision to approve a cell tower that was to be concealed in an existing barn silo, in a structure that had already had been built.

And so the Connecticut Siting Council felt that a public hearing was not necessary in order to tell the neighbors about what was about to happen in their neighborhood.

Again, many of the people became concerned and they asked to have a public hearing. They wanted more information. There evidently had been one public hearing but very few people knew about it.

So when they asked for another public hearing they were told that it was all over and if they wanted one it would cost their neighborhood association \$15,000.

Not surprisingly, that did not go over very well and we decided to pass a bill to rectify that flaw in the situation. So we have created a bill that

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corrects the flaw.

It also requires that telecommunications tower developers pay all of the administrative expenses associated with public information meetings that are held by municipalities that would be potentially affected by the location of the cell tower and we're totally responding to the concern of citizens, and I urge my colleagues to pass this bill. Thank you, Madam Speaker.

DEPUTY SPEAKER MILLER:

Thank you, madam. Will you remark further on this bill? Will you remark further on this bill? Representative Ackert.

REP. ACKERT (8th):

Thank you, Madam Speaker, and actually just a comment. As the good Chair brought up, this is a result of a situation that unfortunately took place.

What the Siting Councils do is, when they go into a community to pick a location, they pick multiple locations and they vet them out and see how they best fit the community.

If at some point along the way they, maybe the neighborhood thinks that they've chosen another location that they feel as though they're not going to

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have disturbance in their community and that may change.

So this was a piece of legislation as the good Chair mentioned that reacted to that, and it's not just that one community. This affects obviously a state law, so your community may be at some point affected positively by this because it's a cost savings for a municipality now that might not have to go through and pay for their own public informational meeting.

So I urge my colleagues to support this, would support your neighbors and your municipality. Thank you, Madam Speaker.

DEPUTY SPEAKER MILLER:

Thank you, sir. Will you remark further on this bill? Will you remark further on this bill?

If not, would staff and guests please come to the Well of the House. Would the members please take your seats. The machine will be opened.

CLERK:

[bell ringing] The House of Representatives is voting by roll. The House of Representatives is voting by roll. Will members please report to the Chamber immediately.

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[pause]

DEPUTY SPEAKER MILLER:

Have all members voted? Have all members voted?

[pause]

DEPUTY SPEAKER MILLER:

Have all members voted? Have all members voted?

Will members please check the board to determine if
your vote is properly cast.

If all members have voted, the machine will be
locked and the Clerk will take a tally. The Clerk
will please announce the tally.

CLERK:

Senate Bill 6, excuse me, 568 in concurrence with
the Senate

| | |
|-----------------------|-----|
| Total Number Voting | 145 |
| Necessary for Passage | 73 |
| Those voting Yea | 143 |
| Those voting Nay | 2 |
| Absent and not voting | 6 |

DEPUTY SPEAKER MILLER:

The bill passes in concurrence with the Senate.

[gavel] Would the Clerk please call Calendar No. 616.

CLERK:

On Page 33, House Calendar 616, a Favorable Report of the Joint Standing Committee on Insurance and Real Estate, Senate Bill 907 AN ACT CONCERNING CHANGES TO THE INSURANCE STATUTES.

DEPUTY SPEAKER MILLER:

Representative Megna.

REP. MEGNA (97th):

Thank you, Madam Speaker. Madam Speaker, I move acceptance of the Joint Committee's Favorable Report and passage of the bill in concurrence with the Senate.

DEPUTY SPEAKER MILLER:

The question before the Chamber is on acceptance of the Joint Committee's Favorable Report and passage of the bill in concurrence with the Senate.

Representative Megna, you have the floor, sir.

REP. MEGNA (97th):

Thank you very much, Madam Speaker. Madam Speaker, this is a six-section bill that comes to us from the Department of Insurance. It's got a couple of different odds and ends in it. It's fairly

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violence. And I encourage my colleagues to support the amendment and the bill.

THE CHAIR:

Thank you. Will you remark further on the amendment?
Will you remark further on the amendment? If not, I'll try your minds. All those in favor of Senate "A," please say aye.

SENATORS:

Aye.

THE CHAIR:

Opposed? Senate "A" passes. Will you remark further on the bill? Senator Bartolomeo.

SENATOR BARTOLOMEO:

Yes, thank you, Madam President. As I said, the amendment has become the bill. I wanna thank my ranking member for his support of this. And if there is no objection, would we put - be able to put this to the Consent Calendar?

THE CHAIR:

Seeing no objection, so ordered, ma'am. Senator Duff. Are you standing? Thank you. No. Sit down. Mr. Clerk will you continue on with the Calendar.

CLERK:

On Page 43, Calendar 341, Substitute for Senate Bill No. 568, AN ACT CONCERNING PUBLIC INFORMATION MEETINGS REGARDING TELECOMMUNICATION TOWERS, Favorable Report of the Committee on Energy and Technology.

THE CHAIR:

Good evening, Senator Doyle.

SENATOR DOYLE:

Good evening, Madam President. I move acceptance of

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the Joint Committee's Favorable Report and passage of the bill.

THE CHAIR:

The motion's on acceptance and passage. Will you remark, sir?

SENATOR DOYLE:

Yes, thank you, Madam President. This bill deals with the costs associated with the siting of cell towers in our towns. And what it basically does is, it's a - the main focus of it - it details - the final copy - we're talking about telecommunication tower.

But basically the real issue is when they're getting sited in our municipalities that the municipalities have the opportunity to request a hearing - a public hearing in the district so that you can have a comment from the local community. What this bill does is if the town asks for a public hearing in their town, the applicant shall pay for the cost - the administrative costs of the town. So it's actually a benefit to the municipalities to minimize some expenses to the community. I urge the Chamber to approve this bill. Thank you, Madam President.

THE CHAIR:

Will you remark further? Senator Formica.

SENATOR FORMICA:

Thank you, Madam President. I rise in support of this bill as it is a benefit to the municipalities, and it moves the process forward. Should the municipality decide to do so, it will be relieved of its cost. So I urge adoption. Thank you.

THE CHAIR:

Thank you. Will you remark further? Senator Bartolomeo.

SENATOR BARTOLOMEO:

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Yes, thank you, Madam President. I rise to support this bill, and I would like to thank the Chairs of the Energy and Technology Committee for this. I had proposed a bill originally and testified because two of the towns within my district have had a very, very difficult time with the Siting Council and the siting of cell towers; one - even the residents formed and signed a petition to ask for a public hearing and were told that it could cost them as much as \$15,000. So I am very appreciative to the Co-chairs for taking on this issue, and I will be supporting it.

THE CHAIR:

Thank you. Will you remark further on the bill? Will you remark further on the bill? If not, Mr. Clerk, will you please call for a roll call vote and the machine will be opened.

CLERK:

Immediate roll call has been ordered in the Senate.
Immediate roll call ordered in the Senate.

[pause]

THE CHAIR:

If all members have voted, if all members have voted, the machine will be closed. Mr. Clerk, will you call the tally.

CLERK:

Senate Bill 568

| | |
|-----------------------|----|
| Total Number Voting | 36 |
| Necessary for Passage | 19 |
| Those voting Yea | 36 |
| Those voting Nay | 0 |
| Absent/not voting | 0 |

THE CHAIR:

The bill passes. [gavel] Mr. Clerk.

**JOINT
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SENATOR DOYLE: But Chris Fisher is one and Ken Baldwin's two. All right. So you can present together.

KEN BALDWIN: All right.

SENATOR DOYLE: All right. Thank you.

KEN BALDWIN: Thank you. (Inaudible).

CHRIS FISHER: Good afternoon, Chairmen and members of the committee. I'm Attorney Chris Fisher with the firm of Cuddy & Feder. I represent AT&T and routinely appear in front of the Siting Council with respect to the regulatory proceedings related to wireless facilities.

Attorney Baldwin and I are here to present testimony in opposition to Senate Bill 568. The bill as we understand has two principal parts. One would require public hearings for all filings made by wireless carriers with the Connecticut Siting Council. The second part would require the evaluation of three alternative sites in any certificate proceeding before the Siting Council.

Attorney Baldwin is going to address part two. I'm going to address part one, and we're obviously here to answer any questions that you may have. With respect to the public hearing requirement that's in Senate Bill 568, there are four principal reasons that our clients oppose the bill.

The first is that the requirement is largely redundant with existing state law that requires public hearings for certificate proceedings. That particular statute is the statute that governs the Siting Council, The Public Utility Environmental Standards Act.

The second principal reason for our opposition to the bill is that it would take away public discretion -- excuse me -- discretion from the Siting Council itself on those few instances that involve review of petitions in -- for declaratory rulings. That discretion is typically reserved to administrative agencies in the State of Connecticut under the Uniform Administrative Procedures Act.

The third principal reason, there is a federal law that was adopted in 2012, and there actually are FCC regulations that were recently published in January of this year. There are a whole host of modifications to existing power sites, colocation by carriers, change-out of antennas, addition of generators, things of that nature, that federal law actually mandates approvals for in a non-discretionary way. The Siting Council itself is considering its own proceedings in order to address this important new federal law.

And -- and the fourth reason, in the Council's own report to the governor in the last fiscal year, there are approximately 700 regulatory filings that the agency administered over the course of the year. It's just not practical to believe that the Siting Council could hold 700 hearings in a given year on applications that it receives from our industry.

To give you a sense of the nature of those applications, rough math, 85 percent are routine changes to existing power sites that are administratively approved. They're not subject to discretion of the council.

KEN BALDWIN: With respect to the alternatives portion of the bill, Senator, I think in

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practice, it is also unnecessary and redundant. These siting decisions obviously are difficult ones. They are often controversial. The -- the better alternatives, often proposed by neighbors or municipalities, are often those that are in somebody else's neighborhood, so we'll simply be riling up another group of neighbors to a significant extent.

But in practice, the council already reviews and considers numerous alternatives, far more than three, under the current provisions of the statute. The -- the applications on a regular basis incorporate into their application and their pre-application process, a significant site-search process which will include multiple sites that were considered and either proposed or rejected as a part of the siting process.

As a part of the municipal-input process that the legislature set forth a couple years ago, this 90-day period, municipalities are encouraged to propose alternative locations for consideration by the carriers.

And lastly, as a part of the municipal input process, we usually hold neighborhood meetings and the neighbors are encouraged to -- to propose additional alternative locations, which they often do. All of these alternatives are then presented to the Siting Council for their consideration.

Those alternative sites number anywhere from 5 to, in some cases, 35 alternatives that are presented to the Siting Council in some form or another. Happy to answer any questions the committee may have.

SENATOR DOYLE: Good afternoon. Attorney Fisher, I just had a general question before everyone

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else. I can't find your -- did you present written testimony?

CHRIS FISHER: Attorney Baldwin and I assisted with written testimony that was presented by CTIA.

SENATOR DOYLE: Okay. All right, that's fine. Is it -- you mentioned -- and I -- maybe I misunderstood, but the -- your inference was on Senate Bill 568, that it did not comport with federal law. Was that your testimony?

CHRIS FISHER: Yes.

SENATOR DOYLE: Because we had our OLR staff research it before the bill was raised for public hearing. It was our opinion given to us that this bill did comport with federal law, so we have a disagreement there.

CHRIS FISHER: That may be the case. I -- in terms of the federal law that I'm referencing, it's specifically Section 6409(a) of what's generally referred to as "The Spectrum Act". The citation is 47 USC 1455, I believe.

SENATOR DOYLE: Want to repeat that for me again?
47 --

CHRIS FISHER: 47 --

A VOICE: USC.

CHRIS FISHER: USC 1455.

A VOICE: (Inaudible).

SENATOR DOYLE: 1455.

CHRIS FISHER: And the -- I don't have in front of me the FCC regulations, but they were just

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published in January of this year in the federal register. It was a proceeding by the FCC that it in fact interprets that law and has very detailed rules that are nationwide that are applicable to all siting and zoning agencies across the country for modifications of tower sites.

SENATOR DOYLE: All right. Well, if you want to do me a favor and if -- if you -- you know, after you leave today, if you want to do a quick summary and get us some paperwork that justifies your position that it does not comport with federal law, we -- I'd appreciate that.

CHRIS FISHER: What -- we'd certainly be happy to do that.

SENATOR DOYLE: Great. Thank you. Chairman?
(Inaudible).

REP. REED: Thank you, Senator. Mr. Baldwin, it's good to see you again.

KEN BALDWIN: Same here.

REP. REED: And actually, the OLR request, we both requested because you were very helpful with our pre-application process going from 60 day to -- to 90 days and having more municipal involvement, and so we ask for clarification.

And apparently, this is dealing specifically with a modification and not a new cell tower, taking an existing cell tower and adding a raise and making it taller and wider and all that kind of thing. Are you saying also that within the current laws and including federal law, that that's already covered?

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KEN BALDWIN: I -- I'm -- I'm not -- in that context, Representative Reed, I'm not sure how the alternatives analysis would go, frankly, practically speaking. If you've got an existing site or an existing structure that you would like to use, oftentimes those are viewed more favorably by the Siting Council and by neighbors if there's an existing water tower or farm silo that might be utilized, even if it means extending or modifying that silo.

Those are oftentimes the better alternatives than having to build a new tower. So in -- in that context, I'm not sure how the alternatives analysis would necessarily go. It -- it may be that the alternatives analysis that I was referring to associated more with new facilities might not apply, but again, when you're dealing with an existing structure, that same alternatives analysis might not be necessary.

REP. REED: Okay, and I think that's what we really need to find out, is -- because I think this deals with a very particular, unique situation and I think the committee would like to hear a lot more about it. And are either one of you familiar with this particular situation that apparently generated this request for legislation?

A VOICE: (Inaudible).

A VOICE: Yeah.

CHRIS FISHER: I -- I believe I do have some background information. I wasn't the attorney of record, but my office supported a petition that was filed at the council, and I believe it may in fact have been part of the genesis of this bill, if you would.

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REP. REED: Do you have any information you can share with us?

CHRIS FISHER: Yes.

REP. REED: I mean, I think it's Senator Bartolomeo's request involving a lot of her constituents, and I'm hoping that we can hear from her at some point because I think it would be very helpful to know specifically what we're talking about.

CHRIS FISHER: Certainly. So to give some background, at the Siting Council, in many instances Attorney Baldwin and my clients will file exempt modifications or tower-sharing requests. These are administrative filings that are routinely processed by the Council. They do not require, under Council rules, hearings.

The Council also, as you know, processes certificate applications, which are typically reserved for what we would generally refer to as a -- a "brand new tower site", "a typical MARP", or a "(inaudible) tower".

Somewhere in between, the Council processes petitions, and in the last fiscal year, I think there were about 35 petitions that they processed, and these are for the energy facilities and wireless facilities. Petitions typically involve something that falls between a regulatory exemption and a certificate.

Examples would be in the wireless industry, expansions of a tower-site compound, rooftop power installations, sometimes, and in the case of Meriden, there was a proposal by AT&T to replace an old, falling-down silo and actually

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make it into a concealed wireless facility site so it -- it is, in fact, a silo.

And in that particular case, a petition was presented to the Siting Council. The question that is asked in any petition of the council is whether or not the proposal has the potential for significant adverse environmental effects under the enabling legislation that's set forth in Section 1650(p) of the Connecticut General Statutes.

And in that particular instance, the Council evaluated it and determined that it did not, in fact, present any significant adverse effects that would warrant a certificate proceeding. The question of whether or not to hold a public hearing, is it something that's in the discretion of the Council?

For that particular proceeding, the Council decided not to hold a public hearing. In many cases, and in fact, I would say -- and I'm just trying to think off the top of my head in the past year -- many cases on petitions to Council will decide to hold a public hearing.

A VOICE: (Inaudible).

CHRIS FISHER: In fact, we had a public hearing for a rooftop tower facility not long ago. In other cases, the Council will evaluate the specifics of any given proposal in a petition and they'll conclude that a hearing won't fundamentally provide them with additional information that's necessary for them to decide what's in front of them as their statutory charge, which is limited to the environmental effects of what's proposed.

So ultimately, it's in their discretion. That

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particular instance just happened to be one instance where the Council elected not to hold a public hearing.

REP. REED: Thank you very much.

SENATOR DOYLE: Thank you. Representative Steinberg.

REP. STEINBERG: Thank you, Mister Chair. You make mention of AT&T's commitment to work with the community to address issues even prior to public hearings. I think we've seen some changes in the industry where third-party tower builders are getting into the business which don't necessarily have the same sort of relationship or the same desire to establish the relationship.

Their goal is to build the tower and then to get the telecommunications companies to come on board. Do you foresee that's a bit of a problem going forward?

KEN BALDWIN: I -- I don't, primarily because the tower companies can't go it alone. They -- they need to prove if -- if they're building a new tower, they need to prove to the Siting Council there's a need for that facility. They -- they can't do that without a carrier, so they need to partner with AT&T, Verizon Wireless, T-Mobile, one of the major carriers, in order to support their claim for a need for that particular facility, and they often do.

And -- and I can tell you from my experience, and I think it's probably true from AT&T's experience, but with Verizon Wireless, when Verizon Wireless is the carrier of choice for that particular tower, they tend to drive the bus, and Verizon Wireless cares very vehemently

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about the -- the neighborhood concerns, about the municipal concerns. That's a big part of our process when we go through this -- this tower-siting process.

We're not always the most popular people in town, for sure, but we do our best to make sure everyone knows what's going on.

CHRIS FISHER: And just to echo Attorney Baldwin's comment in that regard, I agree, and the one -- one comment I would have is that essentially, the introduction of tower companies into the process is largely a function of capital, and to ensure that -- because it's real estate, much like an office building with tenants.

So for purposes of the industry as a whole, it's really a financial means in order to ensure that build-out that's needed in order to reliably serve the public continues, but from an overall engagement with the community, the carriers very much are controlling that process.

So to the extent they're partnering with tower companies to pursue specific sites, in my experience, as well, very much they're engaged, involved, and -- and in control.

REP. STEINBERG: That's good to hear. I -- it -- that doesn't totally jibe with my recent experience in my community, so I hope that is the trend. And I would -- I would just comment that with the proliferation of per-capita devices that seems to be going on these days, I think this'd be more and more pressure.

We talked a little bit about expansion of Wi-Fi and many other things. It -- it seems to

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me that there'll be even more pressure to add more and more towers and other nodes, and I think that the issue with the Siting Council is going to become more acute, so thank you for your testimony.

SENATOR DOYLE: Representative Ackert.

REP. ACKERT: Thank you. Thank you, gentlemen, for your testimony. Question, you mentioned 85 percent of the -- the work that might be -- that fall under this legislation would be just changes, correct? You said about whether adding a component to it?

CHRIS FISHER: Yes. That's based on a review of the Council's filing with the governor last year. About 600 of 700, roughly, filings that it received were the ministerial modifications of an existing tower site or energy facility.

REP. ACKERT: Do you know if the Siting Council takes into consideration, when they site something, that these changes are probably going to happen? Somebody else signs on to that tower, maybe it is a -- a -- maybe another component going to go be a little higher or another provider is going to be now listed on that, you know, another, you know, their own -- their own component that they need to put on is probably put under consideration at that time, if I'm not correct.

CHRIS FISHER: It -- you're absolutely correct. The statute, and in fact, in practice of the Council and both the wireless carriers when they present applications are to indicate at least to the best of their ability the structure's capability for collocation, design compounds, and towers for collocation. So the Council is taking largely a holistic view of

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what the tower site would ultimately become.

REP. ACKERT: That's what I thought. Thank you.
Appreciate it.

SENATOR DOYLE: Thank you.

Any further questions from the committee?

Seeing none, thank you very much, gentlemen.

KEN BALDWIN: Thank you.

CHRIS FISHER: Thank you.

SENATOR DOYLE: All right. We're going back to the
-- the government list. I'll try again.
Senator Kane, I believe Senator Kane is here.
Senator Kane is up. After that is -- we'll try
again, Representative Devlin, Representative
Rutigliano, Senator Hartley, and Senator
Crisco, Representative O'Neill. Senator Kane.

SENATOR KANE: Thank you, Mr. Chairman. Members of
the committee, my name is Rob Kane. I'm a
State Senator from the 32nd District, and I'm
here to testify on Senate Bill 730.

Rising electricity rates are impacting
homeowners all over Connecticut. Usually an
individual in Connecticut has the freedom to
find alternative sources of energy in order to
reduce both the price and environmental impact
of energy consumption. In many other states,
everyone has the freedom to take these
measures.

Currently, Connecticut is not one of those
states. In Connecticut, homeowner and
condominium associations can, and some do,
prevent the individuals living in the



Written Testimony of the Connecticut Siting Council

Submitted to the Energy and Technology Committee

**In Reference to Raised Bill No. 568
An Act Concerning Telecommunications Towers
February 19, 2015**

Good afternoon Senator Doyle, Representative Reed, ranking and distinguished members of the Energy and Technology Committee.

Thank you for the opportunity to provide testimony in connection with Raised Bill No. 568, An Act Concerning Telecommunications Towers. The Connecticut Siting Council (Council) is the state agency with jurisdiction over the construction, operation and maintenance of telecommunications towers in the state subject to Federal Communications Commission (FCC) limitations of state authority under the provisions of the federal Telecommunications Act of 1996. Regrettably, the Council has one of its two regular monthly meetings scheduled at the same time as your committee's public hearing; otherwise, we would be able to provide you with oral testimony.

First, this bill proposes to amend subsection (f) of Conn. Gen. Stat. §16-50l to require a public hearing for the siting of a *new* telecommunications facility (emphasis added). The Council notes that existing provisions of law already make that requirement. Specifically, the Public Utility Environmental Standards Act, Conn. Gen. Stat. §§16-50k and 16-50m, as well as sections of the Uniform Administrative Procedure Act require a public hearing for the siting and certification of new telecommunications facilities in the state.

This bill further proposes to amend subsection (f) of Conn. Gen. Stat. §16-50l to require a public hearing for a "proposed change, improvement or replacement of an *existing* facility" (emphasis added). For background, the Council's authority as to the types of changes it can review for telecommunications facilities has always been limited. Since the passage of the federal Telecommunications Act of 1996, state and federal case law has well established that the FCC preempts state and local review on matters within the exclusive jurisdiction of the FCC, including, but not limited to, public need, health effects and network operations; thus, state and local review of a proposed site is limited only to impacts that are environmental. Moreover, federal preemption is becoming more restrictive. Under new regulations adopted this year pursuant to an FCC Order, state and local agencies are required to approve certain proposed changes, improvements or replacements of existing facilities promptly—within 60 days—and without discretionary review. More specifically, the approvals mandated cover: a) modifications to existing wireless carrier equipment at a facility; b) co-location of additional equipment at an existing facility; and c) extensions of an existing tower height by 10% or 20 feet, whichever is greater. Considering both long-standing and recent restrictions on Council authority, a blanket requirement for a public hearing on unspecified changes, improvements, or replacements to existing telecommunications facilities would be in direct conflict with federal law.

Here, it is important to interject that, notwithstanding federal preemption, and pursuant to regulations adopted in 2012 to facilitate greater notice and public participation, the Council does require notice be provided to the host municipality and abutting property owners for proposed changes, improvements or replacement of an existing facility.¹

A second problem with requiring a public hearing for a “proposed change, improvement or replacement of an existing facility” is that it would be in direct conflict with the State Tower Sharing Policy. This policy, adopted with wide support by the legislature, prioritizes tower sharing over the construction of new towers, assuring expedited review. Under Conn. Gen. Stat. §16-50aa, “the General Assembly finds that the sharing of towers for fair consideration whenever technically, legally, environmentally and economically feasible, and whenever such sharing meets public safety concerns, will avoid the unnecessary proliferation of towers and is in the public interest.” The policy of tower sharing, also known as co-location, is specific in applying to towers owned or operated for a commercial or public purpose by a person, firm, corporation or public agency that uses such towers pursuant to a FCC license. Since the proposed bill is not similarly specific, it would apply to tower-sharing requests from non-wireless carriers and public entities including, but not limited to, emergency communications providers, municipalities and state agencies. In other words, it would apply to requests that the legislature has agreed have priority and should be expedited. Thus, a requirement for a public hearing regarding co-locations on existing tower facilities would be in direct conflict with the State Tower Sharing Policy.

Finally, the bill requires the Council to evaluate at least three alternative sites prior to granting an applicant’s Certificate of Environmental Compatibility and Public Need. As it happens, pursuant to Public Act 12-165, the legislature added subsection (f) of Conn. Gen. Stat. §16-50f to require that applicants provide the host municipality with a description of the proposed and any alternate sites under consideration and a listing of other sites or areas considered and rejected. Furthermore, that same subsection requires the host municipality to present an applicant with proposed alternative sites, which the applicant must evaluate and present to the Council in the application for formal consideration. Often, applicants submit several more than three alternative sites.

In summary, the Council finds this proposed legislation duplicates existing statutory requirements at some points, and otherwise opposes the passage of Raised Bill No. 568 to the extent that it is in direct conflict with federal law and the State Tower Sharing Policy.

Thank you again for the opportunity to provide testimony on this proposal. Should you have any questions or seek additional information, please feel free to contact me at 860-827-2951 or Melanie.bachman@ct.gov.

Melanie A. Bachman
Acting Executive Director/Staff Attorney
Connecticut Siting Council

¹ See Regulations of Connecticut State Agencies §16-50j-40 (2012) (“Prior to submitting a petition for a declaratory ruling to the Council, the petitioner shall, where applicable, provide notice to each person other than the petitioner appearing of record as an owner of property which abuts the proposed primary or alternative sites of the proposed facility. each person appearing of record as an owner of the property or properties on which the primary or alternative proposed facility is to be located and the appropriate municipal officials and government agencies.”)



Testimony
Betsy Gara, Executive Director
Connecticut Council of Small Towns
Before the Energy Committee
February 17, 2015

RE: Proposed SB-568, AN ACT CONCERNING TELECOMMUNICATION TOWERS

The Connecticut Council of Small Towns (COST) *supports* SB-568 which would provide greater opportunity for public comment and consideration of any concerns regarding the siting of any new telecommunication towers.

As the demand for wireless technologies grows, small towns and cities are increasingly faced with efforts to place telecommunications towers in areas that don't make sense for the town or its residents because of environmental, ecological or aesthetic concerns. Many towns have spent countless hours crafting zoning and land use regulations to control building and growth in their towns to protect neighborhoods, natural resources, historic districts, etc. and while the Siting Council may consider such local regulations, it has free rein to ignore them.

By requiring the Connecticut Siting Council to (1) convene a public hearing regarding the siting of a new facility or proposed change, improvement or replacement of an existing facility and (2) evaluate at least three alternative sites, SB-568 will ensure that communities have a voice in how the siting or improvements to facilities will impact residents and businesses. Moreover, it will ensure that the council considers other possible locations that may be better suited to the placement of a tower.

COST understands that the Federal Telecommunications Act has jurisdiction of this area, however, the Act does not limit the ability of towns to make decisions regarding the placement, construction or modification of personal wireless service facilities. In fact, Connecticut is unique in regulating the siting of cell phone towers at the state level, as pointed out in a report by the Office of Legislative Research (OLR 2008-R-201).

SB-568 offers a balanced approach regarding the siting of telecommunications towers without undermining the role of the Connecticut Siting Council.

Thank you for the opportunity to comment.

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Expanding the Wireless Frontier

**Testimony of
Bethanne Cooley
Director, State Legislative Affairs
CTIA-The Wireless Association®
Opposition to Connecticut Senate Bill 568
February 19th, 2015**

Before the Connecticut Joint Energy and Technology Committee

Co-Chair Doyle, Co-Chair Reed, and members of the Committee, on behalf of CTIA-The Wireless Association®, the trade association for the wireless communications industry, I write to respectfully express our opposition regarding Senate Bill 568. Senate Bill 568 would require the Connecticut Siting Council “to (1) convene a public hearing regarding the siting of a new facility or proposed change, improvement or replacement of an existing facility” and also to “evaluate at least three alternative sites prior to granting an applicant's certificate of environmental compatibility and public need for a facility.” We believe Senate Bill 568 is unnecessary and redundant and will result in delays and administrative burdens at the Connecticut Siting Council. Furthermore, this legislation is also counter to the policy direction at the federal and state level and at the Connecticut Siting Council.

In Connecticut, in order for wireless carriers to construct new wireless facilities or update existing wireless facilities, there are three general processes a carrier may pursue:

- **New Wireless Tower Facility** – Under current Connecticut law, when there is demand and need to construct a new wireless tower facility, the wireless carrier can apply for a certificate of environmental compatibility and public need. Pursuant to Connecticut General Statutes Section 16-50m, the Connecticut Siting Council (“Council”) is required to hold a public hearing for these certificate applications. As such, the public hearing requirement in Senate Bill 568 duplicates existing Connecticut law and is unnecessary.
- **Low Impact Facilities** – Should a wireless carrier wish to install a new or expanded facility with a relatively low environmental impact, the carrier can file a petition for a declaratory ruling from the Council seeking a determination that the new or expanded “facility” would not have a substantial adverse environmental effect and, therefore, no certificate would be required. Similar to a full certificate proceeding as noted above, a petitioner is required to provide notice to neighboring property owners and municipal officials. In these cases, the Council has the discretion to schedule a public hearing if deemed necessary in evaluating the potential environmental effects

of the proposed facility. The public hearing requirement in Senate Bill 568 would eliminate this discretion, resulting in the imposition of a significant administrative burden to the Connecticut Siting Council and potential delays in consideration of the petition.¹

- **Modify Existing Facility** – A wireless carrier can also file a request to modify an existing facility in the form of an exempt modification or a tower-share application. The majority of these cases also constitute an “eligible facilities request” under Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012² and, more recently, the October 21, 2014 FCC Report and Order (FCC 14-153)³. Section 6409 and FCC Order 14-153 require that state and local governments “may not deny, and shall approve” these eligible facilities requests for tower and base station modifications and must occur within 60 days. Therefore, the public hearing requirement in Senate Bill 568 may be preempted by federal law for modifications to existing facilities that satisfy certain criteria and do not substantially change the physical dimensions of the tower or base station.

As outlined and described above, the provisions of Senate Bill 568 are unnecessary and would further create duplicative and redundant processes at the Connecticut Siting Council.

Secondly, the provision in Senate Bill 568 requiring the Council to evaluate at least three alternative sites is also problematic to the wireless industry. The three alternative site requirement in Senate Bill 568 is unnecessary and redundant as existing Connecticut law already provides for a robust process for considering alternative sites. As a matter of practice, applicants submit information for numerous alternative sites that were considered, evaluated, and in most cases, rejected by the applicant before an application is ever presented to the Council. Requiring, by statute, an arbitrary number of alternative sites for evaluation would only confuse and delay the current process for site selection at the Council.

As noted above, recent federal and state recognition of the importance of wireless infrastructure bears consideration by the Committee as well. In its National Broadband Plan, the Federal Communications

¹ See “The Digest of Administrative Reports to the Governor, Fiscal Year 2013-2014,” The Connecticut Siting Council, [http://www.ct.gov/csc/lib/csc/publications/2014anng\(final\).pdf](http://www.ct.gov/csc/lib/csc/publications/2014anng(final).pdf). The Council processed nearly 700 matters in 2013 and 2014. Senate Bill 568 would require a hearing for every one of these matters, undoubtedly resulting in a significant increase in the average amount of the Council’s time and expense spent on each matter.

² See Middle Class Tax Relief and Job Creation Act of 2012 § 6409(a) (A “state or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of the tower or base station”) (“Middle Class Tax Relief Act § 6409(a)”), available at: <http://docs.house.gov/billssthisweek/20120213/CRPT-112hrpt-HR3630.pdf>.

³ See FCC 14-153, <http://www.fcc.gov/document/wireless-infrastructure-report-and-order>, last accessed 2/16/2015.

Commission ("FCC") acknowledges that wireless infrastructure is critical for broadband deployment. The FCC's National Broadband Plan states that wireless networks rely on site deployment, and that securing rights to infrastructure deployment "is often a difficult and time-consuming process that discourages private investment."⁴ To expedite this process, the FCC established a "shot clock" requiring local governments to make final decisions on proposed wireless facilities on existing structures within ninety (90) days and on new tower proposals within one hundred fifty (150) days of receipt of a complete application.⁵ In February 2012, Congress acknowledged the critical role of timely wireless facilities deployment by requiring streamlined local government approval for such facilities on existing structures.⁶

Connecticut, too, has acknowledged the importance of expediting wireless broadband deployment. The Connecticut Siting Council is currently considering a declaratory rulemaking seeking local implementation of, and compliance with, Section 6409(a) of the Middle Class Tax Relief and Spectrum Act of 2012 and the FCC's new deployment rules.⁷ CTIA is asking the Siting Council to ensure its proposed process is consistent with the provisions of the FCC's rules and Section 6409(a) of the Act; particularly, the 60-day time period for states and localities to review eligible facilities applications submitted under Section 6409(a). The policy espoused by Senate Bill 568 is not only counter to the direction at the federal and state-level, but also counter to Connecticut's own Siting Council.

The development of a sound wireless infrastructure in Connecticut is essential to enhancing public safety, deploying high speed broadband and generally facilitating an economy that relies on information technology. The Connecticut Siting Council's recent actions serves as an acknowledgment of the importance of the deployment of wireless infrastructure. For all the reasons stated herein, we strongly urge the Committee to reject this legislation.

⁴ *Connecting America: The National Broadband Plan* at 127 (March 17, 2010), available at: <http://www.broadband.gov/plan/>.

⁵ See Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance (Nov. 18, 2009), available at: <http://apps.fcc.gov/ecfs/document/view?id=7020393456>. More recently, a federal court affirmed the FCC's "shot clock," concluding that the 90-day and 150-day timeframes were lawful and noting evidence by CTIA and others supporting the FCC's conclusion that wireless service providers often face lengthy delays in the collocation and new wireless facility zoning applications. See *Arlington, TX vs. FCC*, No. 10-60039 (Jan. 23, 2012), available at: <http://image.exct.net/lib/fefd167774640c/m/1/Shot+Clock+Order+CA5+Jan++23+2012.pdf>.

⁶ See Middle Class Tax Relief and Job Creation Act of 2012 § 6409(a) (A "state or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of the tower or base station") ("Middle Class Tax Relief Act § 6409(a)"), available at: <http://docs.house.gov/billssthisweek/20120213/CRPT-112hrpt-HR3630.pdf>.

⁷ See Comments of CTIA-The Wireless Association @ Before the Connecticut Siting Council, Petition No. 1133, February 10, 2015, http://www.ct.gov/csc/lib/csc/pending_petitions/petition_1133/pe1133-20150210_ctiacomments.pdf, last accessed 2/16/2015.

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**Testimony in Support of Senate Bill 568
Energy and Technology Committee Public Hearing
February 19, 2015**

Senator Doyle, Representative Reed, and members of the Energy and Technology Committee, thank you for giving me the opportunity to testify on this important issue.

I am here today to speak in support of SB 568, An Act concerning Telecommunication Towers, a bill I introduced in response to concerns brought to me by a number of my constituents in Meriden and Cheshire. This bill is, in essence, about due diligence and good government. My proposal is that Connecticut's Siting Council be required to hold a public hearing on all cell tower construction. Additionally, this bill requires that multiple locations be considered for all cell tower projects.

In Meriden, sixty-nine residents signed a petition asking that they be granted a public hearing for the plans of a cell tower due to be erected in a residential area of Murdock Avenue. The plan was to have the tower disguised in an existing barn silo structure, leading the CT Siting Council to decide against holding a public hearing. While it is their prerogative to make this decision, it was very upsetting to local residents who feel their voices were silenced on an issue that affects their community. A public hearing, like the one we are participating in today, allows for all parties to present their opinions, allowing elected officials to make an informed and appropriate decision based on all available information. I believe this same privilege should be extended to concerned parties when deciding on the location of a new cell tower, regardless of whether it is a new structure or being placed within an existing one. Giving people the opportunity to have their voices heard will result in better outcomes, and allow residents to feel more comfortable with the decisions made about their community.

Requiring the consideration of multiple locations is another way of furthering this goal of transparency and best practices in Connecticut's Siting Councils. While it is currently standard policy to consider three or more locations, this full due diligence is not always carried out. A new cell tower was recently proposed in a residential area of Cheshire. It was reported to me that during the field review, only one site was thoroughly vetted.

Declining to hold public hearings and not giving full consideration to multiple sites does not promote informed decision making and erodes the public trust. Senate Bill 568 seeks to remedy these problems by bringing the same kind of transparency and good governance practices that we embrace here in the General Assembly.

I urge you to give favorable consideration to Senate bill 568. Thank you for the opportunity to present testimony this afternoon.