



PA 19-163—HB 7152

Energy and Technology Committee

AN ACT ACCELERATING THE DEPLOYMENT OF 5G WIRELESS FACILITIES

SUMMARY: This act establishes a seven-member Council on 5G Technology and tasks it with (1) reviewing requests from wireless carriers and other permitted entities to place personal wireless service facilities (e.g., cell towers) and small wireless (i.e., “small cell”) facilities on certain state-owned real property and (2) determining which state-owned properties may be made available for these facilities.

Among other things, the council must (1) adopt guidelines for safely placing the facilities and protecting open space land and (2) perform due diligence in reviewing the requests. If the council approves a request, it must submit the approved request to the applicable state agency, which then must execute a telecommunications license agreement (which the act requires to be developed) with the approved carrier or entity.

The act exempts from the council’s jurisdiction properties owned by the Department of Energy and Environmental Protection (DEEP) and certain properties owned by the Department of Transportation (DOT). It establishes separate processes for wireless carriers and permitted entities to request using these properties to site their wireless facilities.

The act requires the Office of Policy and Management (OPM) and certain other state agencies to jointly develop licensing agreements, forms, and fee structures for placing wireless facilities on state-owned property. The act also specifies that it does not supersede existing rules and requirements requiring the review and approval of permits for proposed personal wireless service facilities under the Public Utilities Regulatory Authority’s (PURA) and the Connecticut Siting Council’s jurisdiction.

Lastly, the act requires OPM, in consultation with PURA and certain other state agencies, to work with municipalities and wireless industry representatives to encourage establishing a streamlined process for siting small wireless facilities on municipal property. OPM must submit its recommendations for establishing this process to the Energy and Technology Committee by January 30, 2020.

EFFECTIVE DATE: July 1, 2019

COUNCIL ON 5G TECHNOLOGY

Definitions

Under the act:

1. “permitted entities” are communication infrastructure providers, including

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- persons authorized to provide communication service in the state, that (a) build or install personal wireless service facilities and small wireless facilities and (b) are not wireless carriers;
2. “personal wireless service facilities,” are facilities that provide personal wireless services (e.g., cell phone service);
 3. “small wireless service facilities” are those that meet certain height and size requirements defined in federal regulations (see BACKGROUND);
 4. “state real properties” are any improved or unimproved real property owned by a state agency, except DEEP property, DOT public right-of-way property, and improved or unimproved real property owned by the legislative or judicial branches;
 5. “DEEP property” is any improved or unimproved real property owned by DEEP or subject to an interest in such property owned by DEEP; and
 6. “DOT public right-of-way property” is any improved or unimproved real property owned by DOT that is not a railroad, excess property, or associated structures.

Membership

The act establishes the Council on 5G Technology, which consists of the following seven members, or their designees:

1. an employee from the governor’s office, designated by the governor;
2. the OPM secretary;
3. the commissioners of the Department of Administrative Services (DAS), DOT, and DEEP; and
4. the presidents of UConn and the Connecticut State Colleges and Universities.

Wireless Carrier Requests to use State Property

The act allows wireless carriers or permitted entities to request to use state real properties to place, construct, maintain, and operate personal wireless service facilities and small wireless facilities by submitting a request on a form jointly developed by OPM, DEEP, DAS, and DOT (see below). It requires the council to accept and review these requests.

Council Guidelines. The act requires the council to adopt guidelines for its operations and the determinations it makes on wireless carrier requests. The guidelines on determinations must at least include provisions on (1) safely placing personal wireless service facilities and small wireless facilities, (2) protecting open space land when reviewing for use of state real properties, and (3) extending the time for the council’s determinations. The act exempts the adoption of the guidelines from the Uniform Administrative Procedure Act’s requirements.

Master Plans. If a wireless carrier or permitted entity submits a request to the council to use state real property and anticipates making another request in the next two calendar years, the act requires it to submit its master plan or an equivalent plan for personal wireless service facilities and small wireless

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facilities. It must do so when it submits its first request to the council and then every two years. In general, a carrier's master plan, among other things, inventories its existing wireless facilities and identifies sites for future facilities.

The act allows the council to use the submitted master plans or their equivalents to administer the act's provisions. It deems the plans to be trade secrets exempt from public disclosure under the state's Freedom of Information Act and requires the council to mark them as such.

Council Review and Determinations on Requests

The council must accept and review comments from any state agency affected by a wireless carrier's request and any interested person. Under the act, an "interested person" is an individual, business, or other legal or commercial entity that owns land in the state that (1) abuts state real property and (2) is within a certain distance, determined by the council in its guidelines, from the proposed personal wireless service facility or small wireless facility under review by the council.

In evaluating a request, the council must perform due diligence for the portion of each state real property involved in the request. This includes considering and assessing public health and safety effects, state bonding implications, and environmental concerns. DEEP must submit comments about environmental concerns for requests to use state real properties to place personal wireless service facilities.

After reviewing comments and conducting due diligence, the council must determine, in accordance with any Federal Communications Commission (FCC) regulations or orders, whether a state real property may be used by wireless carriers or permitted entities to place, construct, maintain, and operate personal wireless service facilities or small wireless facilities. In making the determination, the council must give preference to requests that include collocating personal wireless service facilities or small wireless facilities with other wireless carriers or permitted entities. The council must make its determinations by a majority vote and within 90 days after a request, unless it determines that an extension is necessary under its guidelines.

Approvals and License Agreements

Under the act, once the council approves a request, it must submit the approved request to the (1) UConn president, for requests to use UConn-owned state real properties; (2) transportation commissioner, for requests to use DOT-owned state real properties (DOT-owned public rights-of-way follow a separate process, described below); or (3) DAS commissioner, for requests to use any other state real properties.

Not later than 30 days after receiving the council-approved request, the president or commissioner, as applicable, must use the telecommunications license agreement forms and fee structure developed by OPM, DEEP, DAS, and DOT (see below) to execute a license agreement with the approved wireless

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carrier or permitted entity. The agreement must be approved by the OPM secretary and attorney general, and the respective president or commissioner must administer the license agreement.

DEEP-OWNED PROPERTIES

The act allows a wireless carrier or permitted entity to request to use DEEP property to place, construct, maintain, and operate small wireless facilities. Their requests must be made to the DEEP commissioner using the common form developed by OPM, DEEP, DAS, and DOT.

The act requires DEEP to develop a policy for placing, constructing, maintaining, and operating small wireless facilities on the department's property. It exempts the policy's development from the Uniform Administrative Procedure Act's requirements. Any request to use DEEP property must comply with the policy and be reviewed by DEEP in accordance with the policy within 90 days unless the department determines that an extension is needed.

If DEEP approves a request, the act requires the commissioner to use the telecommunications license agreement forms and fee structure developed by OPM, DEEP, DAS, and DOT (see below) to execute a license agreement with the approved wireless carrier or permitted entity within 30 days after the approval. The agreement must also be approved by the OPM secretary and attorney general. The commissioner must administer any license agreement executed in this way.

The act specifies that its provision on DEEP-owned properties does not require DEEP to make its property available for siting personal wireless service facilities.

DOT HIGHWAYS AND PUBLIC RIGHTS-OF-WAY

The act also allows a wireless carrier or permitted entity to request to use DOT public right-of-way property to place, construct, maintain, and operate small wireless facilities. It requires the department to make highways and DOT public rights-of-way available for placing, constructing, maintaining, and operating small wireless facilities in accordance with applicable FCC regulations, rulings, or orders.

The act requires that any such request be administered by DOT and consistent with, to the extent applicable, (1) the department's policy about installing new utility facilities on state or interstate highways, (2) the American Association of State Highway and Transportation Officials' Policy on Accommodation of Utilities on Freeway Rights-of-Way, and (3) any regulations or policies adopted by the Federal Highway Administration.

The act specifies that its provisions on DOT highways and public rights-of-way do not require the department to make structures over the traveled portion of a limited access state highway available for placing, constructing, maintaining, or operating small wireless facilities.

OTHER STATE-OWNED PROPERTIES

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The act specifies that it does not prohibit a wireless carrier or permitted entity from requesting to install personal wireless service facilities or small wireless facilities on any state-owned property that is not covered by the act. The request must be made to the state agency that owns the property, and the agency must grant or reject the request within 90 days after receiving it.

LICENSING AGREEMENTS, FORMS, AND FEES

The act requires OPM, DEEP, DAS, and DOT to jointly develop the following by November 1, 2019:

1. one or more telecommunication license agreements to govern the placement of (a) personal wireless service facilities and small wireless facilities on state real properties, buildings, structures, or any other state-owned property and (b) small wireless facilities on highways and DOT public right-of way property;
2. a common form or set of forms for wireless carrier requests to the council, DEEP, and DOT; and
3. a fee structure for wireless carrier requests to the council, DEEP, and DOT.

Under the act, any of the telecommunications license agreements developed as described above must be approved by the attorney general before they can be used.

SITING ON MUNICIPAL PROPERTY

The act requires OPM, in consultation with PURA, the Office of Consumer Counsel, the State Broadband Office, and the Connecticut Siting Council, to work with municipalities and representatives from the wireless industry to encourage establishing a streamlined process for siting small wireless facilities on municipal property. The process must be in accordance with any applicable FCC rules, regulations, or orders.

Under the act, “municipal property” is any (1) property owned by a municipality; (2) municipal public rights-of-way; and (3) municipally owned buildings, structures, and easements. It does not include a public service company’s (i.e., state-regulated utility company’s) real and personal property.

The act requires OPM, by January 30, 2020, to make recommendations to the Energy and Technology Committee about establishing a streamlined process for siting small wireless facilities on municipal property.

BACKGROUND

Small Wireless Facilities

Under federal regulations, small wireless service facilities are facilities that meet each of the following conditions:

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1. are mounted on structures that are up to 50 feet tall, including their antennas, or that are no more than 10% taller than other adjacent structures, or (b) do not extend existing structures on which they are mounted to a height of more than 50 feet or 10%, whichever is greater;
2. do not have any associated antenna that exceeds three cubic feet in volume, excluding antenna equipment;
3. do not have any wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, that exceeds 28 cubic feet in volume;
4. do not require antenna structure registration;
5. are not located on tribal lands; and
6. do not expose humans to radiofrequency radiation that exceeds applicable federal standards (C.F.R. § 1.6002).