



Senate

General Assembly

File No. 660

January Session, 2001

Substitute Senate Bill No. 1178

Senate, May 8, 2001

The Committee on Finance, Revenue and Bonding reported through SEN. LOONEY of the 11th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING PROPERTY TAX EXEMPTIONS FOR MANUFACTURING MACHINERY AND EQUIPMENT, A MORATORIUM ON CHANGING ASSESSMENT METHODS FOR CERTAIN UTILITY PROPERTY AND FIXING OF ASSESSMENTS FOR ELECTRIC GENERATING FACILITIES.

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

1 Section 1. Subdivision (70) of section 12-81 of the general statutes is
2 repealed and the following is substituted in lieu thereof:

3 (70) New machinery and equipment used directly in the
4 manufacturing of goods or products and acquired through purchase
5 by any business organization or any affiliate of such business
6 organization as part of a technological upgrading of the manufacturing
7 process at a location in a distressed municipality, targeted investment
8 community, as defined in section 32-222, or enterprise zone designated
9 pursuant to section 32-70, and for which an eligibility certificate has
10 been issued by the Department of Economic and Community

11 Development, which business organization (A) is engaged in the
12 manufacturing, processing or assembling of raw materials, parts or
13 manufactured products, (B) has been in continuous operation in the
14 state for a period not less than five years prior to claiming the
15 exemption provided in this subdivision, (C) had gross receipts in an
16 amount less than twenty million dollars in the year prior to claiming
17 the exemption provided in this subdivision, including receipts of any
18 affiliates of the business organization, and (D) has incurred costs in
19 acquiring such machinery and equipment not less than the greater of
20 (i) two hundred thousand dollars or (ii) two hundred per cent of the
21 business organization's and affiliate's average expenditure for the
22 acquisition of machinery and equipment used directly in the
23 manufacturing of goods or products at the location in the distressed
24 municipality, targeted investment community or enterprise zone
25 designated pursuant to section 32-70 during the three years prior to
26 claiming the exemption provided in this subdivision, as follows: To the
27 extent of fifty per cent of its valuation for purposes of assessment in
28 each of the five full assessment years following the assessment year in
29 which such machinery and equipment is acquired. Any person who
30 desires to claim the exemption provided in this subdivision shall file
31 annually with the assessor or board of assessors in the distressed
32 municipality, targeted investment community or enterprise zone
33 designated pursuant to section 32-70 in which the business
34 organization is located, on or before the first day of November, written
35 application claiming such exemption on a form prescribed by the
36 Secretary of the Office of Policy and Management. Failure to file such
37 application in this manner and form within the time limit prescribed
38 shall constitute a waiver of the right to such exemption for such
39 assessment year, unless an extension of time is allowed pursuant to
40 section 12-81k, and upon payment of the required fee for late filing. No
41 person shall be eligible to receive the exemption provided in this
42 subdivision if such exemption is sought for machinery and equipment
43 located in a manufacturing facility as defined in subsection (d) of

44 section 32-9p, currently receiving assistance under subdivisions (59)
45 and (60) of section 12-81, and no person shall receive such exemption
46 for eligible machinery or equipment at each location in a distressed
47 municipality, targeted investment community or enterprise zone
48 designated pursuant to section 32-70 more than once in any continuous
49 five-year period. The state and the municipality and district shall hold
50 a security interest, as defined in subdivision (37) of section 42a-1-201,
51 in any machinery or equipment which is exempt from taxation
52 pursuant to this subsection, in an amount equal to the tax revenue
53 reimbursed or lost, as the case may be, which shall be subordinate to
54 any purchase money security interest, as defined in section 42a-9-107.
55 Such security interest shall be enforceable against the taxpayer for a
56 period of five years after the last assessment year in which such
57 exemption was received in any case in which the business organization
58 ceases all business operations or moves its business operations entirely
59 out of this state. The assessor of the town in which manufacturing
60 operations of a business organization that has received the exemption
61 under this subdivision is located shall provide written notification to
62 said secretary of the cessation of such operations or the move of such
63 operations entirely out of the state. Such notification may be made at
64 any time after the October first of the last assessment year in which
65 such exemption is received and before the September thirtieth that is
66 five years after the conclusion of said assessment year. Upon receiving
67 such a notification, the secretary shall promptly file a notice of lien
68 upon personal property, under part 4 of article 9 of title 42a, to
69 recapture the amount of tax revenue reimbursed. Such notice of lien,
70 once perfected, shall have priority over all previously perfected liens
71 and security interests and other encumbrances of record under the
72 Connecticut Uniform Commercial Code. If more than one agency of
73 the state perfects such a notice of lien on the same day, the priority of
74 such liens shall be determined by the time of day such liens were
75 perfected, and if perfected at the same time, the lien for the highest
76 amount shall take precedence. In addition to the other remedies

77 provided in this subdivision, the Attorney General, upon request of
78 the secretary, may bring a civil action in a court of competent
79 jurisdiction to recover the amount of tax revenue reimbursed by the
80 state from any person who received an exemption under this
81 subdivision.

82 Sec. 2. Subparagraph (B) of subdivision (72) of section 12-81 of the
83 general statutes is repealed and the following is substituted in lieu
84 thereof:

85 (B) Any person who on October first in any year holds title to
86 machinery and equipment for which [he] such person desires to claim
87 the exemption provided in this subdivision shall file with the assessor
88 or board of assessors in the municipality in which the machinery or
89 equipment is located, on or before the first day of November in such
90 year, a list of such machinery or equipment together with written
91 application claiming such exemption on a form prescribed by the
92 Secretary of the Office of Policy and Management. Such application
93 shall include the taxpayer identification number assigned to the
94 claimant by the Commissioner of Revenue Services and the federal
95 employer identification number assigned to the claimant by the
96 Secretary of the Treasury. If title to such equipment is held by a person
97 other than the person claiming the exemption, the claimant shall
98 include on [his] such person's application information as to the portion
99 of the total acquisition cost incurred by [him] such person, and on or
100 before the first day of November in such year, the person holding title
101 to such machinery and equipment shall file a list of such machinery
102 with the assessor of the municipality in which the manufacturing
103 facility of the claimant is located. Such person shall include on the list
104 information as to the portion of the total acquisition cost incurred by
105 [him] such person. Commercial or financial information in any
106 application or list filed under this section shall not be open for public
107 inspection, provided such information is given in confidence and is not
108 available to the public from any other source. The provisions of this

109 subdivision regarding the filing of lists and information shall not
110 supersede the requirements to file tax lists under sections 12-42, 12-43,
111 12-57a and 12-59. In substantiation of such claim, the claimant and the
112 person holding title to machinery and equipment for which exemption
113 is claimed shall present to the assessor or board of assessors such
114 supporting documentation as said secretary may require, including,
115 but not limited to, invoices, bills of sale, contracts for lease and bills of
116 lading. Failure to file such application in this manner and form within
117 the time limit prescribed shall constitute a waiver of the right to such
118 exemption for such assessment year, unless an extension of time is
119 allowed pursuant to section 12-81k. If title to exempt machinery is
120 conveyed subsequent to October first in any assessment year,
121 entitlement to such exemption shall terminate for the next assessment
122 year and there shall be no pro rata application of the exemption unless
123 such machinery or equipment continues to be leased by the
124 manufacturer who claimed and was approved for the exemption in the
125 previous assessment year. Machinery or equipment shall not be
126 eligible for exemption upon transfer from a seller to a related business
127 [organization related to or affiliated with the seller] or from a lessor to
128 a lessee except to the extent it would have been eligible for exemption
129 by the seller or the lessor, as the case may be. For the purposes of this
130 subdivision, "related business" means: (i) A corporation, limited
131 liability company, partnership, association or trust controlled by the
132 taxpayer; (ii) an individual, corporation, limited liability company,
133 partnership, association or trust that is in control of the taxpayer; (iii) a
134 corporation, limited liability company, partnership, association or trust
135 controlled by an individual, corporation, limited liability company,
136 partnership, association or trust that is in control of the taxpayer; or
137 (iv) a member of the same controlled group as the taxpayer. For
138 purposes of this subdivision, "control", with respect to a corporation,
139 means ownership, directly or indirectly, of stock possessing fifty per
140 cent or more of the total combined voting power of all classes of the
141 stock of such corporation entitled to vote. "Control", with respect to a

142 trust, means ownership, directly or indirectly, of fifty per cent or more
143 of the beneficial interest in the principal or income of such trust. The
144 ownership of stock in a corporation, of a capital or profits interest in a
145 partnership or association or of a beneficial interest in a trust shall be
146 determined in accordance with the rules for constructive ownership of
147 stock provided in Section 267(c) of the Internal Revenue Code of 1986,
148 or any subsequent corresponding internal revenue code of the United
149 States, as from time to time amended, other than paragraph (3) of said
150 Section 267(c).

151 Sec. 3. Subparagraph (C) of subdivision (72) of section 12-81 of the
152 general statutes is repealed and the following is substituted in lieu
153 thereof:

154 (C) Any person claiming the exemption provided under this
155 subdivision for machinery or equipment shall not be eligible to claim
156 the exemption provided under subdivision (60) of this section or
157 subdivision (70) of this section for the same machinery or equipment.
158 The state and the municipality and district shall hold a security
159 interest, as defined in subdivision (37) of section 42a-1-201, in any
160 machinery or equipment which is exempt from taxation pursuant to
161 this subdivision, in an amount equal to the tax revenue reimbursed or
162 lost, as the case may be, which shall be subordinate to any purchase
163 money security interest, as defined in section 42a-9-107. Such security
164 interest shall be enforceable against the claimant for a period of five
165 years after the last assessment year in which such exemption was
166 received in any case in which said [manufacturer] person ceases all
167 manufacturing or biotechnology operations or moves [its] such
168 manufacturing or biotechnology operations entirely out of this state.
169 The assessor of the town in which a manufacturing operation of a
170 person that has received the exemption under this subdivision is
171 located shall provide written notification to said secretary of the
172 cessation of such operations or the move of such operations entirely
173 out of the state. Such notification may be made at any time after the

174 October first of the last assessment year in which such exemption is
175 received and before the September thirtieth that is five years after the
176 conclusion of said assessment year. Upon receiving such a notification,
177 the secretary shall promptly file a notice of lien upon personal
178 property, under part 4 of article 9 of title 42a, to recapture the amount
179 of tax revenue reimbursed. Such notice of lien, once perfected, shall
180 have priority over all previously perfected liens and security interests
181 and other encumbrances of record under the Connecticut Uniform
182 Commercial Code. If more than one agency of the state perfects such a
183 notice of lien on the same day, the priority of such liens shall be
184 determined by the time of day such liens were perfected, and if
185 perfected at the same time, the lien for the highest amount shall take
186 precedence. In addition to the other remedies provided in this
187 subdivision, the Attorney General, upon request of the secretary, may
188 bring a civil action in a court of competent jurisdiction to recover the
189 amount of tax revenue reimbursed by the state from any person who
190 received an exemption under this subdivision. The following shall not
191 be eligible for the exemption provided under this subdivision: (i) A
192 public service company, as defined in section 16-1; and (ii) any
193 provider, directly or indirectly, of electricity, oil, water or gas.

194 Sec. 4. (NEW) (a) No municipality shall increase the assessed value
195 of the personal property of any public service company, as defined in
196 section 16-1 of the general statutes, on the grand lists of October 1,
197 2001, or October 1, 2002, because of a change in the method or
198 standard of assessment of such property.

199 (b) Notwithstanding the provisions of subsection (a) of this section,
200 a municipality may increase the assessed value of public service
201 company personal property (1) upon the approval by the Department
202 of Public Utility Control of a petition alleging extraordinary
203 circumstances and hardship filed with said department, or (2) by order
204 of the superior court.

205 (c) In considering any petition filed pursuant to subsection (b) of
206 this section, the Department of Public Utility Control shall conduct a
207 contested case pursuant to the provisions of chapter 54 of the general
208 statutes. The department shall have sole discretion in determining
209 extraordinary circumstances and hardship, and shall state its findings
210 thereon in any decision rendered upon such petition.

211 Sec. 5. Section 12-65b of the general statutes is repealed and the
212 following is substituted in lieu thereof:

213 (a) Any municipality may, by affirmative vote of its legislative body,
214 enter into a written agreement with any party owning or proposing to
215 acquire an interest in real property in such municipality, or with any
216 party owning or proposing to acquire an interest in air space in such
217 municipality, or with any party who is the lessee of, or who proposes
218 to be the lessee of, air space in such municipality in such a manner that
219 the air space leased or proposed to be leased shall be assessed to the
220 lessee pursuant to section 12-64, fixing the assessment of the real
221 property or air space which is the subject of the agreement, and all
222 improvements thereon or therein and to be constructed thereon or
223 therein, subject to the provisions of subsection (b) of this section, (1) for
224 a period of not more than seven years, provided the cost of such
225 improvements to be constructed is not less than three million dollars,
226 (2) for a period of not more than two years, provided the cost of such
227 improvements to be constructed is not less than five hundred
228 thousand dollars, (3) to the extent of fifty per cent of such increased
229 assessment, for a period of not more than three years, provided the
230 cost of such improvements to be constructed is not less than one
231 hundred thousand dollars, (4) to the extent of twenty per cent of such
232 increased assessment, for a period of not more than three years,
233 provided the cost of such improvements to be constructed is not less
234 than one hundred thousand dollars, (5) to the extent of thirty per cent
235 of such increased assessment, for a period of not more than three
236 years, provided the cost of such improvements to be constructed is not

237 less than five hundred thousand dollars, (6) to the extent of twenty per
238 cent of such increased assessment, for a period of not less than five
239 years but no more than seven years, provided the costs of such
240 improvements to be constructed is not less than three million dollars,
241 or (7) to the extent of thirty per cent of such increased assessment, for a
242 period of not more than seven years, provided the cost of such
243 improvements to be constructed is not less than five million dollars.

244 (b) The provisions of subsection (a) of this section shall only apply if
245 the improvements are for at least one of the following: (1) For office
246 use; (2) for retail use; (3) for permanent residential use; (4) for transient
247 residential use; (5) for manufacturing use; (6) for warehouse, storage or
248 distribution use; (7) for structured multilevel parking use necessary in
249 connection with a mass transit system; (8) for information technology;
250 (9) for recreation facilities; [or] (10) for transportation facilities; or (11)
251 for electric generating facilities.

252 Sec. 6. This act shall take effect from its passage, except that sections
253 1 to 3, inclusive, shall take effect July 1, 2001, and shall be applicable
254 with respect to property tax exemptions for the October 1, 2000,
255 assessment year and each subsequent assessment year.

FIN *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Potential Revenue Gain

Affected Agencies: Office of Policy and Management

Municipal Impact: See Explanation Below

Explanation

State Impact:

To the extent that OPM’s ability to recapture state reimbursements is enhanced by town assessors to notifying them whenever a business that has received a property tax exemption either ceases operation or moves out of the state, then the bill could result in more recoveries.

Municipal Impact:

The bill places a two-year moratorium on towns’ changing their assessment methods or standards to increase the value for utility personal property, which precludes potential increases in municipal grand lists for FY 03 and FY 04.

Since it is assumed a municipality would only enter into an agreement to fix assessments where it was in their long-term best interest, the impact of allowing municipalities to fix assessments for electric generators is expected to be positive.

OLR Bill Analysis

sSB 1178

AN ACT CONCERNING PROPERTY TAX EXEMPTIONS FOR MANUFACTURING MACHINERY AND EQUIPMENT, A MORATORIUM ON CHANGING ASSESSMENT METHODS FOR CERTAIN UTILITY PROPERTY AND FIXING OF ASSESSMENTS FOR ELECTRIC GENERATING FACILITIES.

SUMMARY:

This bill:

1. establishes a process for the state to recover its reimbursements for lost revenue from property tax exemptions on certain new and newly acquired machinery and equipment when the owner ceases operations or moves all operations out of the state;
2. defines a "related business" for purposes of determining if a business qualifies for a property tax exemption for newly acquired machinery and equipment transferred to it from another business;
3. imposes a two-year ban on towns' changing their assessment methods or standards to increase the value of utility personal property without the Department of Public Utility Control's (DPUC) approval or a court order; and
4. allows municipal legislative bodies to make agreements to fix property tax assessments for electric generating plants.

EFFECTIVE DATE: Upon passage, except for the provisions dealing with exemptions for machinery and equipment, which take effect July 1, 2001 and apply to exemptions for the October 1, 2000 assessment year and subsequent assessment years.

PROPERTY TAX EXEMPTIONS FOR MACHINERY AND EQUIPMENT

Recovering State Reimbursements

By law, businesses in a distressed municipality or targeted investment community qualify for a state-reimbursed property tax exemption for new machinery and equipment acquired as part of a technological upgrade of a manufacturing process. The exemption equals 50% of the machinery and equipment's value and is good for five years. Businesses throughout the state also qualify for a state-reimbursed property tax exemption for new or newly acquired machinery and equipment. The exemption equals 100% of the machinery and equipment's value and is good for five years.

Under current law and the bill, the state has a security interest in the machinery and equipment equal to the reimbursed revenue. The security interest is enforceable against the business for five years after the last year in which it received an exemption, if it ceases operations or moves entirely out of state.

The bill requires the tax assessor of a town with exempt machinery and equipment to notify the Office of Policy and Management (OPM) secretary in writing whenever a business that received an exemption either ceases operations or moves entirely out of state. The assessor has five years after October 1 of the last assessment year in which the business received the exemption to file the notice. When the secretary receives the notice, he must file a lien against the business' personal property to recover the state reimbursement.

Under current law and the bill, the state's security interest in the exempt property is subordinate to any "purchase money security interest" retained by the seller to ensure payment or held by anyone who advanced money to enable the business to buy the machinery or equipment. The bill's lien takes precedence over all previous liens, security interests, and other encumbrances. If more than one state agency perfects liens against the same business on the same day, the time of day determines which lien takes precedence (although the bill does not specify whether it is the lien filed earlier or later in the day that controls). If the liens are perfected at the same time on the same day, the lien for the highest amount prevails.

In addition to the security interest and lien, the bill also allows the secretary to ask the attorney general to sue the business to recover the state reimbursement.

Related Businesses

By law, machinery and equipment are not eligible for the exemption for new and newly acquired machinery and equipment when they are transferred from one business to its affiliate or a related business. This bill defines "related business" for purposes of the exclusion as (1) a corporation, limited liability company (LLC), partnership, association, or trust the taxpayer controls; (2) such an entity, or an individual, that controls the taxpayer; (3) an entity controlled by an individual or entity the taxpayer controls; or (4) a member of the same controlled group as the taxpayer.

Under the bill, "control" means directly or indirectly owning at least 50% of the combined voting power of all classes of a corporation's voting stock or at least 50% of the beneficial interest in the principal or income of a trust. (The bill does not specify what level of ownership constitutes "control" of an LLC, partnership, or association.)

The bill applies certain federal criteria to determine who is the constructive owner of corporate stock, interests in a partnership or association, and beneficial interest in trust principal or income. Those criteria require (1) stock owned directly or indirectly by or for a corporation, partnership, estate, or trust to be considered as owned proportionately by or for its shareholders, partners, or beneficiaries and (2) stock owned directly or indirectly by or for an individual's family (whole or half siblings, spouse, ancestors, and lineal descendants) to be considered as owned by the individual (26 USCA 267(c)).

ASSESSMENTS ON UTILITY PERSONAL PROPERTY

The bill bars towns from changing assessment methods or standards to produce increases in the value of utility personal property on the October 1, 2001 or October 1, 2002 grand lists unless they get a Superior Court order or DPUC approval.

To obtain DPUC’s approval, a town must file a petition alleging extraordinary circumstances and hardship. The bill requires the DPUC to conduct a contested case hearing under the Uniform Administrative Procedure Act on the petition. Such proceedings have specific requirements concerning, among other things, notice, party and intervenor status, evidence, arguments, and form of decisions. The bill gives DPUC sole discretion to determine “extraordinary circumstances and hardship” and requires the department to state its findings on the issue in its decision.

FIXED ASSESSMENTS FOR ELECTRIC GENERATING PLANTS

The bill extends a municipal legislative body’s existing authority to make written agreements fixing assessments on certain types of real property to cover electric generating plants. Towns may already fix assessments for the following uses: (1) offices; (2) permanent or transient residences; (3) manufacturing; (4) warehouse, storage or distribution; (5) structured multilevel parking for mass transit systems; (6) information technology; or (7) recreation facilities.

BACKGROUND

Related Bill

sSB 1133 (File 317), reported favorably by the Planning and Development Committee, allows towns to fix assessments on the amount of taxes due on certain electric generating plants and their personal property for up to 25 years.

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable Substitute
Yea 38 Nay 7