



House of Representatives

File No. 705

General Assembly

February Session, 2004 (Reprint of File No. 583)

Substitute House Bill No. 5416
As Amended by House
Amendment Schedules "A" and "C"

Approved by the Legislative Commissioner
May 1, 2004

**AN ACT CONCERNING USE OF ELECTRIC RATE REDUCTION
BONDS FOR GENERAL FUND PURPOSES AND THE GROSS
EARNINGS TAX ON THE SALE OF NATURAL GAS.**

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

1 Section 1. Section 16-245f of the general statutes, as amended by
2 section 46 of public act 03-6 of the June 30 special session and section 3
3 of public act 03-1 of the September 8 special session, is repealed and
4 the following is substituted in lieu thereof (*Effective from passage*):

5 An electric company or electric distribution company shall submit
6 to the department an application for a financing order with respect to
7 any proposal to sustain funding of conservation and load management
8 and renewable energy investment programs by substituting
9 disbursements to the General Fund from proceeds of rate reduction
10 bonds for such disbursements from the Energy Conservation and Load
11 Management Fund established by section 16-245m, as amended, and
12 from the Renewable Energy Investment Fund established by section
13 16-245n, as amended, and may submit to the department an
14 application for a financing order [and] with respect to the following

15 stranded costs: (1) The cost of mitigation efforts, as calculated pursuant
16 to subsection (c) of section 16-245e, as amended; (2) generation-related
17 regulatory assets, as calculated pursuant to subsection (e) of section 16-
18 245e, as amended; and (3) those long-term contract costs that have
19 been reduced to a fixed present value through the buyout, buydown,
20 or renegotiation of such contracts, as calculated pursuant to subsection
21 (f) of section 16-245e, as amended. No stranded costs shall be funded
22 with the proceeds of rate reduction bonds unless (A) the electric
23 company or electric distribution company proves to the satisfaction of
24 the department that the savings attributable to such funding will be
25 directly passed on to customers through lower rates, and (B) the
26 department determines such funding will not result in giving the
27 electric distribution company or any generation entities or affiliates an
28 unfair competitive advantage. The department shall hold a hearing for
29 each such electric distribution company to determine the amount of
30 disbursements to the General Fund from proceeds of rate reduction
31 bonds that may be substituted for such disbursements from the Energy
32 Conservation and Load Management Fund established by section 16-
33 245m, as amended, and from the Renewable Energy Investment Fund
34 established by section 16-245n, as amended, and thereby constitute
35 transition property and the portion of stranded costs that may be
36 included in such funding and thereby constitute transition property.
37 Any hearing shall be conducted as a contested case in accordance with
38 chapter 54, except that any hearing with respect to a financing order or
39 other order to sustain funding for conservation and load management
40 and renewable energy investment programs by substituting the
41 disbursement to the General Fund from the Energy Conservation and
42 Load Management Fund established by section 16-245m, as amended,
43 and from the Renewable Energy Investment Fund established by
44 section 16-245n, as amended, shall not be a contested case, as defined
45 in section 4-166. The department shall not include any rate reduction
46 bonds as debt of an electric distribution company in determining the
47 capital structure of the company in a rate-making proceeding, for
48 calculating the company's return on equity or in any manner that
49 would impact the electric distribution company for rate-making

50 purposes, and shall not approve such rate reduction bonds that
51 include covenants that have provisions prohibiting any change to their
52 appointment of an administrator of the Energy Conservation and Load
53 Management Fund. [or the authorization of continuation of
54 disbursements pursuant to section 20 of public act 03-2*.] Nothing in
55 this subsection shall be deemed to affect the terms of subsection (b) of
56 section 16-245m, as amended.

57 Sec. 2. Subsection (a) of section 16-245h of the general statutes, as
58 amended by section 5 of public act 03-1 of the September 8 special
59 session, is repealed and the following is substituted in lieu thereof
60 (*Effective from passage*):

61 (a) The competitive transition assessment described in
62 subparagraph (A) of subdivision (2) of subsection (a) of section 16-
63 245e, as amended, shall constitute transition property when, and to the
64 extent that, a financing order authorizing such portion of the
65 competitive transition assessment has become effective in accordance
66 with sections 16-245e to 16-245k, inclusive, as amended, and the
67 transition property shall thereafter continuously exist as property for
68 all purposes with all of the rights and privileges of sections 16-245e to
69 16-245k, inclusive, as amended, for the period and to the extent
70 provided in the financing order, but in any event until the rate
71 reduction bonds are paid in full, including all principal, interest,
72 premium, costs, and arrearages on such bonds. Prior to its sale or other
73 transfer by the electric company or electric distribution company
74 pursuant to sections 16-245e to 16-245k, inclusive, as amended,
75 transition property, other than transition property [described in this
76 subsection] in respect of disbursements to the General Fund to sustain
77 funding of conservation and load management and renewable energy
78 investment programs, shall be a vested contract right of the electric
79 company or electric distribution company, notwithstanding any
80 contrary treatment thereof for accounting, tax, or other purpose.
81 Transition property in respect of disbursements to the General Fund to
82 sustain funding of conservation and load management and renewable
83 energy investment programs shall immediately upon its creation vest

84 solely in the financing entity. The electric company or electric
85 distribution company shall have no right, title or interest in transition
86 property in respect of disbursements to the General Fund to sustain
87 funding of conservation and load management and renewable energy
88 investment programs, and in respect of such transition property shall
89 be only a collection [action] agent on behalf of the financing entity.

90 Sec. 3. Subsection (e) of section 16-245j of the general statutes, as
91 amended by section 6 of public act 03-1 of the September 8 special
92 session, is repealed and the following is substituted in lieu thereof
93 (*Effective from passage*):

94 (e) When the state is the authorized financing entity: [, the
95 Treasurer:] (1) [May] The Treasurer may enter into a trust indenture
96 for the benefit of holders of the rate reduction bonds with a corporate
97 trustee, which may be any trust company or commercial bank
98 qualified to do business within or without the state; such trust
99 indenture shall be consistent with the financing order and may contain
100 such other provisions as may be appropriate including those
101 regulating the investment of funds and the remedies of bondholders;
102 (2) the Treasurer may make representations and agreements for the
103 benefit of the holders of rate reduction bonds to make secondary
104 market disclosures; (3) the Treasurer may enter into interest rate swap
105 agreements and other agreements for the purpose of moderating
106 interest rate risk on rate reduction bonds as permitted elsewhere
107 within sections 16-245e to 16-245k, inclusive, as amended, provided
108 the obligations under such agreements are payable from the transition
109 property; (4) the Treasurer may enter into such other agreements and
110 instruments to secure the rate reduction bonds as provided in sections
111 16-245f to 16-245k, inclusive, as amended; and (5) the Treasurer may
112 take such other actions as necessary or appropriate for the issuance
113 and distribution of the rate reduction bonds pursuant to the financing
114 order and the Treasurer and the Secretary of the Office of Policy and
115 Management may make representations and agreements for the
116 benefit of the holders of the rate reduction bonds which are necessary
117 or appropriate to ensure exclusion of the interest payable on the rate

118 reduction bonds from gross income under the Internal Revenue Code
119 of 1986, or any subsequent corresponding internal revenue code of the
120 United States, as from time to time amended.

121 Sec. 4. Subsection (b) of section 16-245k of the general statutes, as
122 amended by section 19 of public act 03-62 and section 7 of public act
123 03-1 of the September 8 special session, is repealed and the following is
124 substituted in lieu thereof (*Effective from passage*):

125 (b) A valid and enforceable security interest in transition property is
126 perfected when it has attached and when a financing statement has
127 been filed in accordance with part 5 of article 9 of title 42a naming the
128 pledgor of the transition property as "debtor" and identifying the
129 transition property. In such case, the financing statement shall be filed
130 as if the debtor were located in this state. Any description of the
131 transition property shall be sufficient if it refers to the financing order
132 creating the transition property. A copy of the financing statement
133 shall be filed with the department by the electric company or electric
134 distribution company or the financing entity that is the pledgor or
135 transferor of the transition property, and the department may require
136 the electric company or electric distribution company or the financing
137 entity to make other filings with respect to the security interest in
138 accordance with procedures it may establish, provided that the filings
139 shall not affect the perfection of the security interest.

140 Sec. 5. Subdivision (2) of subsection (c) of section 12-264 of the
141 general statutes is repealed and the following is substituted in lieu
142 thereof (*Effective from passage*):

143 (2) For purposes of this subsection, gross earnings from providing
144 electric transmission services or electric distribution services shall
145 include (A) all income classified as income from providing electric
146 transmission services or electric distribution services by the
147 Department of Public Utility Control in the uniform system of accounts
148 prescribed by said department and (B) the competitive transition
149 assessment collected pursuant to section 16-245g, as amended, other

150 than any component of such assessment that constitutes transition
151 property as to which an electric distribution company has no right,
152 title or interest pursuant to subsection (a) of section 16-245h, as
153 amended by this act, the systems benefits charge collected pursuant to
154 section 16-245l, as amended, and the assessments charged under
155 sections 16-245m, as amended, and 16-245n, as amended. Such gross
156 earnings shall not include income from providing electric transmission
157 services or electric distribution services to a company described in
158 subsection (c) of section 12-265, as amended by this act.

159 Sec. 6. Subsection (a) of section 12-264 of the general statutes is
160 repealed and the following is substituted in lieu thereof (*Effective May*
161 *1, 2003*):

162 (a) Each (1) Connecticut municipality or department or agency
163 thereof, or Connecticut district, manufacturing, selling or distributing
164 gas or electricity to be used for light, heat or power, in this chapter and
165 in chapter 212a called a "municipal utility", (2) company the principal
166 business of which is manufacturing, selling or distributing gas or
167 steam to be used for light, heat or power, including each foreign
168 municipal electric utility, as defined in section 12-59, and given
169 authority to engage in business in this state pursuant to the provisions
170 of section 16-246c, and (3) company required to register pursuant to
171 section 16-258a, as amended, shall pay a quarterly tax upon gross
172 earnings from such operations in this state. Gross earnings from such
173 operations under subdivisions (1) and (2) of this subsection shall
174 include (A) all income classified as operating revenues by the
175 Department of Public Utility Control in the uniform systems of
176 accounts prescribed by said department for operations within the
177 taxable quarter and, with respect to each such company, (B) all income
178 classified in said uniform systems of accounts as income from
179 merchandising, jobbing and contract work, (C) income from nonutility
180 operations, (D) revenues from lease of physical property not devoted
181 to utility operation, and (E) receipts from the sale of residuals and
182 other by-products obtained in connection with the production of gas,
183 electricity or steam. Gross earnings from such operations under

184 subdivision (3) of this subsection shall be gross income from the sales
185 of natural gas, provided gross income shall not include income from
186 the sale of natural gas to an existing combined cycle facility comprised
187 of three gas turbines providing electric generation services, as defined
188 in section 16-1, with a total capacity of 775 megawatts, for use in the
189 production of electricity. Gross earnings of a gas company, as defined
190 in section 16-1, as amended, shall not include income earned in a
191 taxable quarter commencing prior to June 30, 2004, from the sale of
192 natural gas or propane as a fuel for a motor vehicle. No deductions
193 shall be allowed from such gross earnings for any commission, rebate
194 or other payment, except a refund resulting from an error or
195 overcharge and those specifically mentioned in section 12-265, as
196 amended by this act. Gross earnings of a company as described in
197 subdivision (2) of this subsection shall not include income earned in
198 any taxable quarter commencing on or after July 1, 2000, from the sale
199 of steam.

200 Sec. 7. Subsection (c) of section 12-265 of the general statutes is
201 repealed and the following is substituted in lieu thereof (*Effective from*
202 *passage*):

203 (c) (1) The rate of tax on the sale, furnishing or distribution of
204 electricity or natural gas for use directly by a company engaged in a
205 manufacturing production process, in accordance with the Standard
206 Industrial Classification Manual, United States Office of Management
207 and Budget, 1987 edition, classifications 2000 to 3999, inclusive, or
208 Sector 31, 32 or 33 in the North American Industrial Classification
209 System United States Manual, United States Office of Management and
210 Budget, 1997 edition, shall be four per cent with respect to calendar
211 quarters commencing on or after January 1, 1994, and prior to January
212 1, 1995, three per cent with respect to calendar quarters commencing
213 on or after January 1, 1995, and prior to January 1, 1996, and two per
214 cent with respect to calendar quarters commencing on or after January
215 1, 1996, and prior to January 1, 1997. The sale, furnishing or
216 distribution of electricity or natural gas for use by a company as
217 provided in this subsection shall not be subject to the provisions of this

218 chapter with respect to calendar quarters commencing on or after
 219 January 1, 1997. Not later than thirty days after May 19, 1993, and
 220 thirty days after the effective date of each rate decrease provided for in
 221 this section, each electric and gas public service company, as defined in
 222 section 16-1, as amended, which does not have a proposed rate
 223 amendment under section 16-19 pending before the Department of
 224 Public Utility Control at such time, shall request the department to
 225 reopen the proceeding under section 16-19 on the company's most
 226 recent rate amendment, solely for the purpose of decreasing the
 227 company's rates to reflect the decreases required under this section.
 228 The department shall immediately reopen such proceedings, solely for
 229 such purpose.

230 (2) For purposes of this subsection, the sale, furnishing or
 231 distribution of natural gas for use as fuel in the operation of a
 232 cogeneration facility providing electricity or steam to a company
 233 engaged in a manufacturing production process described in
 234 subdivision (1) of this subsection shall be deemed to be a sale,
 235 furnishing or distribution of natural gas for use directly by such
 236 company in such process where such cogeneration facility is located
 237 entirely on the premises owned or controlled by such company,
 238 whether or not the cogeneration facility is owned or operated by such
 239 company.

This act shall take effect as follows:	
Section 1	<i>from passage</i>
Sec. 2	<i>from passage</i>
Sec. 3	<i>from passage</i>
Sec. 4	<i>from passage</i>
Sec. 5	<i>from passage</i>
Sec. 6	<i>May 1, 2003</i>
Sec. 7	<i>from passage</i>

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:

Agency Affected	Fund-Effect	FY 05 \$	FY 06 \$
Revenue Serv., Dept.	GF - Revenue Loss	1.65 million	1.65 million
Revenue Serv., Dept.	GF - Revenue Loss	See Below	4 to 6 million
Revenue Serv., Dept.	GF - Revenue Loss	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill as amended does the following:

1. It exempts from the Public Service Companies Gross Earnings Tax, that portion of Connecticut Light & Power's (CL&P) and Northeast Utilities' (NU) gross earnings used to pay debt service on energy securitization bonds. This will result in an estimated revenue loss to the General Fund of \$1.65 million per fiscal year, from FY 05 to FY 11. The estimate is based on the issuance of \$220 million (\$194 million in principal, \$21 million for the reserve fund and \$5 million for issuance costs) over a 7-year period at an interest rate of 3.5%.

During the 2003 session, the General Assembly approved the securitization of a total of \$194 million from: (1) the Energy Conservation and Load Management Fund (\$144 million), and (2) the Clean Energy Fund (\$50 million.) Debt service for the bonds will be financed over a 7-year period from the surcharge currently paid by CL&P and NU customers. The bill exempts from the Public Service Companies Gross Earnings Tax that

portion of CL&P's and NU's gross earnings that are used to support the bonds.

The other provisions have no fiscal impact because they clarify and make technical changes to the language that authorizes the issuance of the energy securitization bonds.

2. It provides an exemption from the Public Service Companies Tax for natural gas sold to electric generation facilities comprised of 3 gas turbines with a total capacity of 775 megawatts. The exemption applies to all gas sold to such facilities regardless of the way it is delivered. The provision is effective 5/1/03.

The exemption currently applies to one generating facility and would result in the following estimated General Fund revenue loss from the Public Service Companies Tax: (1) a one-time loss for the period from 5/1/03 to 6/30/04 of between \$4 million and \$6 million, and (2) an annual loss for FY 05 and subsequent fiscal years of between \$4 million and \$6 million.

3. It provides an exemption from the Public Service Companies Tax for natural gas sold for use as a fuel in the operation of a cogeneration facility providing electricity or steam to a company engaged in a manufacturing process, effective upon passage. The cogeneration facility must be located on the premises owned or controlled by the company whether or not the cogeneration facility is owned or operated by the company.

The provision will result in a revenue loss to the degree that natural gas is sold to manufacturing companies that have such cogeneration facilities located on their premises.

House "A" provides an exemption for natural gas sold to electric generation facilities comprised of 3 gas turbines with a total capacity of 775 megawatts. It will result in the revenue loss listed under Item #2 above.

House "C" provides an exemption for natural gas sold for use as a fuel in the operation of a cogeneration facility providing electricity or steam to a company engaged in a manufacturing process. The amount of the revenue loss cannot be determined at the present time.

OLR BILL ANALYSIS

sHB 5416 (as amended by House "A" and "C")*

AN ACT CONCERNING USE OF ELECTRIC RATE REDUCTION BONDS FOR GENERAL FUND PURPOSES**SUMMARY:**

This bill exempts certain electric company revenue subject to a temporary transfer to the General Fund from the utility company gross earnings tax. It makes minor changes to provisions authorizing the issuance of revenue bonds in connection with this transfer and in connection with the electric companies' stranded costs.

The bill exempts from the gross earnings tax money a gas company makes by selling gas to an existing combined cycle generating plant comprised of three gas turbines with a total capacity of 775 megawatts that is used to generate electricity. In a combined cycle plant, the heat created by burning fuel to produce electricity is recycled to produce more electricity.

By law, sales of gas and electricity for use in manufacturing are exempt from the tax. The bill specifies that sales of gas used to operate a cogeneration facility providing electricity or steam for use in manufacturing fall within this exemption if the cogeneration facility is located entirely on the manufacturer's premises. The exemption applies whether or not the cogeneration facility is owned or operated by the manufacturer.

*House Amendment "A" adds the provision on sales to a combined cycle plant.

*House Amendment "B" adds the provision on cogeneration facilities.

EFFECTIVE DATE: Upon passage

GROSS EARNINGS TAX

Legislation passed in 2003 temporarily transfers to the General Fund revenues from charges on electric bills that pay for conservation and renewable energy programs. It authorizes the issuance of bonds, backed by another charge on electric bills, to mitigate the reduction in funding for the programs. The bonds are issued through the state, but are not state obligations.

The revenue that backs these bonds is the property of the state rather than the electric company. The bill exempts this revenue from the utility company gross earnings tax.

RELATED PROVISIONS

The law authorizes the issuance of bonds to reduce the rate impact of the electric companies' stranded costs. These were costs the companies incurred, with the approval of the Department of Public Utility Control (DPUC), whose continued recovery through rates was jeopardized with the start of competition in the electric industry.

By law, both types of bonds are issued by a "financing entity," which can be the state (acting through the treasurer), a special purpose trust, or state-authorized entity. If the state issues the bonds, the Office of Policy and Management secretary may make representations and agreements for the benefit of the bondholders that are needed or appropriate to make sure that the interest on the bonds is exempt from federal income tax. The bill additionally allows the treasurer to make these representations and agreements.

By law, the issuance of the bonds is subject to DPUC approval. The bill allows the DPUC to require the financing entity to make filings with respect to the security interest in the revenue that backs the bonds. These filings cannot affect the perfection of the security interest.

COMMITTEE ACTION

Energy and Technology Committee

Joint Favorable Change of Reference
Yea 15 Nay 1

Finance, Revenue and Bonding Committee

Joint Favorable Substitute
Yea 45 Nay 0