



House of Representatives

General Assembly

File No. 198

January Session, 2007

Substitute House Bill No. 7223

House of Representatives, March 29, 2007

The Committee on Commerce reported through REP. BERGER of the 73rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING BUSINESS AND ENERGY INDEPENDENCE DISTRICTS.

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

1 Section 1. (NEW) (*Effective October 1, 2007*) As used in sections 2 to
2 16, inclusive, of this act:

3 (1) "Business and energy independence district distributed
4 resources" means one or more of the following owned, leased, or
5 financed by a Business and Energy Independence District Board: (A)
6 Customer-side distributed resources, as defined in section 16-1 of the
7 general statutes; (B) grid-side distributed resources, as defined in said
8 section 16-1; (C) combined heat and power systems, as defined in said
9 section 16-1; and (D) Class III sources, as defined in said section 16-1;

10 (2) "Project" means the acquisition, purchase, construction,
11 reconstruction, improvement or extension of one or more of energy
12 improvement district distributed resources.

13 Sec. 2. (NEW) (*Effective October 1, 2007*) (a) Any municipality may,
14 by vote of its legislative body, establish one or more business and
15 energy independence districts within such municipality. The affairs of
16 any such district shall be administered by a Business and Energy
17 Independence District Board. The members of any such board shall be
18 appointed by the chief elected official of the municipality and shall
19 serve for such term as the legislative body may prescribe and until
20 their successors are appointed and have qualified. Vacancies shall be
21 filed by the chief elected official for the unexpired portion of the term.
22 The members of each such board shall serve without compensation,
23 except for necessary expenses.

24 (b) After a vote by a municipality to establish one or more business
25 and energy independence districts, the chief elected official of the
26 municipality shall notify each property owner of record by mail of said
27 action. An owner may record on the land records in the municipality
28 its decision to participate in the business and energy independence
29 district and the provisions of sections 2 to 16, inclusive, of this act. Any
30 owner of record, including any new owner of record, may rescind said
31 decision at any time.

32 Sec. 3. (NEW) (*Effective October 1, 2007*) (a) A Business and Energy
33 Independence District Board shall fund business and energy
34 independence district distributed resources in its district and shall
35 prepare a comprehensive plan for the development and financing of
36 such resources, except on state or federally owned properties, with a
37 view to the increased efficiency, reliability of the electric distribution
38 system and the furtherance of commerce and industry in the business
39 and energy independence district. The board may lease or acquire
40 office space and equip the same with suitable furniture and supplies
41 for the performance of work of the board, and may employ such
42 personnel as may be necessary for such performance. The board also
43 shall have power to:

44 (1) Sue and be sued;

45 (2) Have a seal and alter the same;

46 (3) Confer with any body or official having to do with electric power
47 distribution facilities within and without the district, and hold public
48 hearings as to such facilities;

49 (4) Confer with electric distribution companies with reference to the
50 development of electric distribution facilities in such district and the
51 coordination of the same;

52 (5) Determine the location, type, size and construction of business
53 and energy independence district distributed resources, subject to the
54 approval of any department, commission or official of the United
55 States, the state or the municipality where federal, state or municipal
56 statute or regulation requires it;

57 (6) Make surveys, maps and plans for, and estimates of the cost of,
58 the development and operation of requisite business and energy
59 independence district distributed resources and for the coordination of
60 such facilities with existing agencies, both public and private, with the
61 view of increasing the efficiency of the electric distribution system in
62 the district and in the furtherance of commerce and industry in the
63 district;

64 (7) Make contracts and leases, loans and execute all instruments
65 necessary or convenient to carry out their duties under the provision of
66 this section, including the lending of proceeds of bonds issued in
67 accordance with subdivision (9) of this section, to owners, lessees or
68 occupants of facilities in the business and energy independence
69 district;

70 (8) Fix fees, rates, rentals or other charges for the purpose of all
71 business and energy independence district distributed resources
72 owned by the Business and Energy Independence District Board and
73 collect such fees, rates, rentals and other charges for such facilities
74 owned by the board, which fees, rates, rentals or other charges shall be
75 sufficient to comply with all covenants and agreements with the
76 holders of any bonds issued pursuant to section 4 of this act;

77 (9) Operate and maintain all business and energy independence
78 district distributed resources owned or leased by the board and use the
79 revenues from such resources for the corporate purposes of the board
80 in accordance with any covenants or agreements contained in the
81 proceedings authorizing the issuance of bonds pursuant to section 4 of
82 this act;

83 (10) Accept gifts, grants, loans or contributions from the United
84 States, the state or any agency or instrumentality of either of them, or a
85 person or corporation, by conveyance, bequest or otherwise, and
86 expend the proceeds for any purpose of the board and, as necessary,
87 contract with the United States, the state or any agency or
88 instrumentality of either of them, to accept gifts, grants, loans or
89 contributions on such terms and conditions as may be provided by the
90 law authorizing the same;

91 (11) Maintain staff to promote and develop the movement of
92 commerce through the business and energy independence district; and

93 (12) Use the officers, employees, facilities and equipment of the
94 municipality, with the consent of the municipality, and pay a proper
95 portion of the compensation or cost.

96 (b) Nothing in the provisions of sections 2 to 16, inclusive, of this act
97 shall be construed to authorize a Business and Energy Independence
98 District to:

99 (1) Be an electric distribution company, as defined in section 16-1 of
100 the general statutes, or provide electric distribution or electric
101 transmission services, as defined in said section 16-1, or own or
102 operate assets to provide such services;

103 (2) Be a municipal electric utility, as defined in section 7-233 of the
104 general statutes, or provide the services of a municipal electric utility;

105 (3) Sell electricity to persons or entities in its municipality outside of
106 the Business and Energy Independence District;

107 (4) Undertake any authority or jurisdiction granted by the general
108 statutes to the Connecticut Siting Council, the Department of Public
109 Utility Control, or any other state agency, or to undertake any actions
110 under the jurisdiction of any federal agency; or

111 (5) Acquire property by eminent domain.

112 Sec. 4. (NEW) (*Effective October 1, 2007*) (a) A Business and Energy
113 Independence District Board may, from time to time, issue bonds
114 subject to the approval of the legislative body in the municipality in
115 which the business and energy independence district is located, for the
116 purpose of paying all or any part of the cost of acquiring, purchasing,
117 constructing, reconstructing, improving or extending any business and
118 energy independence district distributed resources project and
119 acquiring necessary land and equipment thereof, or for any other
120 authorized purpose of the board. The board may issue such types of
121 bonds as it may determine, including, but not limited to, bonds
122 payable as to principal and interest: (1) From its revenues generally; (2)
123 exclusively from the income and revenues of a particular project; or (3)
124 exclusively from the income and revenues of certain designated
125 projects, whether or not they are financed in whole or in part from the
126 proceeds of such bonds. Any such bonds may be additionally secured
127 by a pledge of any grant or contribution from a participating
128 municipality, the state or any political subdivision, agency or
129 instrumentality thereof, any federal agency or any private corporation,
130 copartnership, association or individual, or a pledge of any income or
131 revenues of the board, or a mortgage on any project or other property
132 of the board, provided such pledge shall not create any liability on the
133 entity making such grant or contribution beyond the amount of such
134 grant or contribution. Whenever and for so long as any board has
135 issued and has outstanding bonds, the board shall fix, charge and
136 collect rates, rents, fees and other charges in accordance with section 6
137 of this act. Neither the members of the board nor any person executing
138 the bonds shall be liable personally on the bonds by reason of the
139 issuance thereof. The bonds and other obligations shall so state on the
140 face, shall not be a debt of the state or any political subdivision thereof,

141 except when the board or a participating municipality which, in
142 accordance with section 13 of this act, has guaranteed payment of
143 principal and of interest on the same, and no person other than the
144 board or such a public body shall be liable thereon, nor shall such
145 bonds or obligations be payable out of any funds or properties other
146 than those of the board or such a participating municipality. Such
147 bonds shall not constitute an indebtedness within the meaning of any
148 statutory limitation on the indebtedness of any participating
149 municipality. Bonds of the board are declared to be issued for an
150 essential public and governmental purpose. In anticipation of the sale
151 of such revenue bonds the board may issue negotiable bond
152 anticipation notes and may renew the same from time to time, but the
153 maximum maturity of any such note, including renewals thereof, shall
154 not exceed five years from the date of issue of the original note. Such
155 notes shall be paid from any revenues of the board available therefor
156 and not otherwise pledged, or from the proceeds of sale of the revenue
157 bonds of the Business and Energy Independence District Board in
158 anticipation of which they were issued. The notes shall be issued in the
159 same manner as the revenue bonds. Such notes and the resolution or
160 resolutions authorizing the same may contain any provisions,
161 conditions or limitations which a bond resolution of the board may
162 contain.

163 (b) A Business and Energy Independence District Board may issue
164 bonds as serial bonds or as term bonds, or both. Bonds shall be
165 authorized by resolution of the members of the authority and shall
166 bear such date or dates, mature at such time or times, not exceeding
167 twenty years from their respective dates, bear interest at such rate or
168 rates, or have provisions for the manner of determining such rate or
169 rates, payable at such time or times, be in such denominations, be in
170 such form, either coupon or registered, carry such registration
171 privileges, be executed in such manner, be payable in lawful money of
172 the United States of America at such place or places, and be subject to
173 such terms of redemption, as such resolution or resolutions may
174 provide. The revenue bonds or notes may be sold at public or private
175 sale for such price or prices as the Business and Energy Independence

176 District Board shall determine. Pending preparation of the definitive
177 bonds, the Business and Energy Independence District Board may
178 issue interim receipts or certificates which shall be exchanged for such
179 definitive bonds.

180 (c) Any resolution or resolutions authorizing any revenue bonds or
181 any issue of revenue bonds may contain provisions, which shall be
182 part of the contract with the holders of the revenue bonds to be
183 authorized, as to: (1) Pledging all or any part of the revenues of a
184 project or any revenue-producing contract or contracts made by the
185 Business and Energy Independence District Board with any individual,
186 partnership, corporation or association or other body, public or
187 private, to secure the payment of the revenue bonds or of any
188 particular issue of revenue bonds, subject to such agreements with
189 bondholders as may then exist; (2) the rentals, fees and other charges
190 to be charged, and the amounts to be raised in each year thereby, and
191 the use and disposition of the revenues; (3) the setting aside of reserves
192 or sinking funds or other funds or accounts as the board may establish
193 and the regulation and disposition thereof, including requirements
194 that any such funds and accounts be held separate from or not be
195 commingled with other funds of the board; (4) limitations on the right
196 of the board or its agent to restrict and regulate the use of the project;
197 (5) limitations on the purpose to which the proceeds of sale of any
198 issue of revenue bonds then or thereafter to be issued may be applied
199 and pledging such proceeds to secure the payment of the revenue
200 bonds or any issue of the revenue bonds; (6) limitations on the
201 issuance of additional bonds, the terms upon which additional bonds
202 may be issued and secured, the refunding of outstanding bonds; (7) the
203 procedure, if any, by which the terms of any contract with
204 bondholders may be amended or abrogated, the amount of bonds the
205 holders of which must consent thereto, and the manner in which such
206 consent may be given; (8) limitations on the amount of moneys derived
207 from the project to be expended for operating, administrative or other
208 expenses of the board; (9) defining the acts or omissions to act that
209 shall constitute a default in the duties of the board to holders of its
210 obligations and providing the rights and remedies of such holders in

211 the event of a default; (10) the mortgaging of a project and the site
212 thereof for the purpose of securing the bondholder; and (11) provisions
213 for the execution of reimbursement agreements or similar agreements
214 in connection with credit facilities, including, but not limited to, letters
215 of credit or policies of bond insurance, remarketing agreements and
216 agreements for the purpose of moderating interest rate fluctuations.

217 (d) If any member whose signature or a facsimile of whose
218 signature appears on any bonds or coupons ceases to be such member
219 before delivery of such bonds, such signature or such facsimile shall
220 nevertheless be valid and sufficient for all purposes the same as if he
221 had remained in office until such delivery. Notwithstanding the
222 provisions of sections 2 to 16, inclusive, of this act, or any recitals in
223 any bonds issued under the provisions of this section, all such bonds
224 shall be deemed to be negotiable instruments under the provisions of
225 the general statutes.

226 (e) Unless otherwise provided by the ordinance creating the
227 Business and Energy Independence District Board, bonds may be
228 issued under the provisions of this section, without obtaining the
229 consent of the state or of any political subdivision thereof, and without
230 any other proceedings or the happening of other conditions or things
231 than those proceedings, conditions or things which are specifically
232 required by sections 1 to 16, inclusive, of this act.

233 (f) A Business and Energy Independence District Board may, out of
234 any funds available to it, purchase its bonds or notes. The Business and
235 Energy Independence District Board may hold, pledge, cancel or resell
236 such bonds, subject to and in accordance with agreements with
237 bondholders.

238 (g) A Business and Energy Independence District Board shall cause
239 a copy of any bond resolutions adopted by it to be filed for public
240 inspection in its office and in the office of the clerk of each
241 participating municipality and may thereupon cause to be published at
242 least once, in a newspaper published or circulating in each
243 participating municipality, a notice stating the fact and date of such

244 adoption and the places where such bond resolution has been so filed
245 for public inspection and the date of the first publication of such notice
246 and also stating that any action or proceeding of any kind or nature in
247 any court questioning the validity or proper authorization of bonds
248 provided for by the bond resolution, or the validity of any covenants,
249 agreements or contracts provided for by the bond resolution, shall be
250 commenced not later than twenty days after the first publication of
251 such notice. If any such notice is published and if no action or
252 proceeding question the validity or proper authorization of bonds
253 provided for by the bond resolution referred to in such notice, or the
254 validity of any covenants, agreements, contracts provided for by the
255 bond resolution is commenced or instituted not later than twenty days
256 after the first publication of said notice, then all residents and
257 taxpayers and owners of property in each participating municipality
258 and all other persons shall be forever barred and foreclosed from
259 instituting or commencing any action or proceeding in any court, or
260 from pleading any defense to any action or proceeding, questioning
261 the validity or proper authorization of such bonds, or the validity of
262 such covenants, agreements or contracts, and said bonds, covenants,
263 agreements and contracts shall be conclusively deemed to be valid and
264 binding obligations in accordance with their terms and tenor.

265 (h) Notwithstanding any provision of the general statutes, (1) the
266 state shall not have any liability or responsibility with regard to any
267 obligation issued by the board, and (2) no political subdivision of the
268 state shall have any liability or responsibility with regard to any
269 obligation issued by the board except as expressly provided by
270 sections 2 to 16, inclusive, of this act.

271 Sec. 5. (NEW) (*Effective October 1, 2007*) A Business and Energy
272 Independence District Board may secure any bonds issued under the
273 provisions of section 4 of this act by a trust indenture by way of
274 conveyance, deed of trust or mortgage of any project or any other
275 property of the board, whether or not financed in whole or in part
276 from the proceeds of such bonds, or by a trust agreement by and
277 between the board and a corporate trustee, which may be any trust

278 company or bank having the powers of a trust company within or
279 without the state or by both such conveyance, deed of trust or
280 mortgage and indenture or trust agreement. Such trust indenture or
281 agreement may pledge or assign any or all fees, rents and other
282 charges to be received or proceeds of any contract or contracts
283 pledged, and may convey or mortgage any property of the board. Such
284 trust indenture or agreement may contain such provisions for
285 protecting and enforcing the right and remedies of the bondholders as
286 may be reasonable and proper and not in violation of law, including
287 provisions that have been specifically authorized to be included in any
288 resolution or resolutions of the board authorizing the issue of bonds.
289 Any bank or trust company incorporated under the laws of the state
290 may act as depository of the proceeds of such bonds or of revenues or
291 other moneys and may furnish such indemnifying bonds or pledge
292 such securities as may be required by the board. Such trust indenture
293 may set forth rights and remedies of the bondholders and of the
294 trustee, and may restrict the individual right of action by bondholders.
295 In addition to the foregoing, such trust indenture or agreement may
296 contain such other provisions as the board may deem reasonable and
297 proper for the security of the bondholders. All expenses incurred in
298 carrying out the provisions of such trust indenture or agreement may
299 be treated as part of the cost of a project.

300 Sec. 6. (*Effective October 1, 2007*) (a) A Business and Energy
301 Independence District Board may fix, revise, charge and collect rates,
302 rents, fees and charges for the use of and for the services furnished or
303 to be furnished by each project and to contract with any person,
304 partnership, association or corporation, or other body, public or
305 private, in respect thereof. Such rates, rents, fees and charges shall be
306 fixed and adjusted in respect of the aggregate of rates, rents, fees and
307 charges from such project so as to provide funds sufficient with other
308 revenues, if any, (1) to pay the cost of maintaining, repairing and
309 operating the project and each and every portion thereof, to the extent
310 that the payment of such cost has not otherwise been adequately
311 provided for, (2) to pay the principal of and the interest on outstanding
312 revenue bonds of the board issued in respect of such project as the

313 same shall become due and payable, and (3) to create and maintain
314 reserves required or provided for in any resolution authorizing, or
315 trust agreement securing, such revenue bonds of the board. Such rates,
316 rents, fees and charges shall not be subject to supervision or regulation
317 by any department, commission, board, body, bureau or agency of this
318 state other than the board. A sufficient amount of the revenues derived
319 in respect of a project, except such part of such revenues as may be
320 necessary to pay the cost of maintenance, repair and operation and to
321 provide reserves and for renewals, replacements, extensions,
322 enlargements and improvements as may be provided for in the
323 resolution authorizing the issuance of any revenue bonds of the board
324 or in the trust agreement securing the same, shall be set aside at such
325 regular intervals as may be provided in such resolution or trust
326 agreement in a sinking or other similar fund which is hereby pledged
327 to, and charged with, the payment of the principal of and the interest
328 on such revenue bonds as the same shall become due, and the
329 redemption price or the purchase price of bonds retired by call or
330 purchase as therein provided. Such pledge shall be valid and binding
331 from the time when the pledge is made; the rates, rents, fees and
332 charges and other revenues or other moneys so pledged and thereafter
333 received by the board shall immediately be subject to the lien of any
334 such pledge, without any physical delivery thereof or further act, and
335 the lien of any such pledge shall be valid and binding as against all
336 parties having claims of any kind in tort, contract or otherwise against
337 the board, irrespective of whether such parties have notice thereof.
338 Neither the resolution nor any trust indenture or agreement by which
339 a pledge is created need be filed or recorded except in the records of
340 the board. The use and disposition of moneys to the credit of such
341 sinking or other similar fund shall be subject to the provisions of the
342 resolution authorizing the issuance of such bonds or of such trust
343 agreement. Except as may otherwise be provided in such resolution or
344 such trust indenture or agreement, such sinking or other similar fund
345 shall be a fund for all revenue bonds issued to finance a project of such
346 board without distinction or priority of one over another.

347 (b) All moneys received by the board pursuant to sections 2 to 16,

348 inclusive, of this act, whether as proceeds from the sale of bonds or as
349 revenues, shall be deemed to be trust funds to be held and applied
350 solely as provided pursuant to this section.

351 Sec. 7. (*Effective October 1, 2007*) Any holder of bonds, notes,
352 certificates or other evidences of borrowing issued under the
353 provisions of section 4 of this act, or of any of the coupons
354 appertaining thereto, and the trustee under any trust indenture or
355 agreement, except to the extent the right may be restricted by such
356 trust indenture or agreement, may, either at law or in equity, by suit,
357 action, injunction, mandamus or other proceedings, protect and
358 enforce any and all rights under the provisions of the general statutes
359 or granted by sections 2 to 16, inclusive, of this act, or under such trust
360 indenture or agreement or the resolution authorizing the issuance of
361 such bonds, notes or certificates, and may enforce and compel the
362 performance of all duties required by said section or by such trust
363 indenture or agreement or solution to be performed by the Business
364 and Energy Independence District Board or by any officer or agent
365 thereof, including the fixing, charging and collection of fees, rents and
366 other charges.

367 Sec. 8. (NEW) (*Effective October 1, 2007*) A Business and Energy
368 Independence District Board, in the exercise of its powers granted
369 pursuant to sections 2 to 16, inclusive, of this act, shall be for the
370 benefit of the inhabitants of the state, for the increase of their
371 commerce and for the promotion of their safety, health, welfare,
372 convenience and prosperity, and as the operation and maintenance of
373 any project which the board is authorized to undertake constitute the
374 performance of an essential governmental function, no board shall be
375 required to pay any taxes or assessments upon any project acquired
376 and constructed by it under the provisions of said sections. The bonds,
377 notes, certificates or other evidences of debt issued under the
378 provisions of section 4 of this act, their transfer and the income
379 therefrom, including any profit made on the sale thereof, shall at all
380 times be free and exempt from taxation by the state and by any
381 political subdivision thereof.

382 Sec. 9. (NEW) (*Effective October 1, 2007*) Bonds issued by a Business
383 and Energy Independence District Board, pursuant to section 4 of this
384 act, shall be securities in which all public officers and public bodies of
385 the state and its political subdivisions, all insurance companies, trust
386 companies, banking associations, investment companies and
387 executors, administrators, trustees and other fiduciaries may properly
388 and legally invest funds, including capital in their control or belonging
389 to them. Such bonds shall be securities that may properly and legally
390 be deposited with and received by any state or municipal officer or any
391 agency or political subdivision of the state for any purpose for which
392 the deposit of bonds or obligations is now or may hereafter be
393 authorized by law.

394 Sec. 10. (NEW) (*Effective October 1, 2007*) A municipality may, by
395 ordinance, and any other governmental unit shall, without any
396 referendum or public or competitive bidding, and any person may sell,
397 lease, lend, grant or convey to a Business and Energy Independence
398 District Board, or to permit a board to use, maintain or operate as part
399 of any distributed resource facility, any real or personal property that
400 may be necessary or useful and convenient for the purposes of the
401 board and accepted by the board. Any such sale, lease, loan, grant,
402 conveyance or permit may be made or given with or without
403 consideration and for a specified or an unlimited period of time and
404 under any agreement and on any terms and conditions that may be
405 approved by such municipality, governmental unit or person and that
406 may be agreed to by the board in conformity with its contract with the
407 holders of any bonds. Subject to any such contracts with the holders of
408 bonds, the board may enter into and perform any and all agreements
409 with respect to property so purchased, leased, borrowed, received or
410 accepted by it, including agreements for the assumption of principal or
411 interest or both of indebtedness of such municipality, governmental
412 unit or person or of any mortgage or lien existing with respect to such
413 property or for the operation and maintenance of such property as part
414 of any business and energy independence district distributed resources
415 facility.

416 Sec. 11. (NEW) (*Effective October 1, 2007*) A municipality,
417 governmental unit or person may enter into and perform any lease or
418 other agreement with any Business and Energy Independence District
419 Board for the lease or other agreement with any municipality,
420 governmental unit or person of all or any part of any business and
421 energy independence district distributed resource facility or facilities.
422 Any such lease or other agreement may provide for the payment to the
423 board by such municipality, governmental unit or person, annually or
424 otherwise, of such sum or sums of money, computed at fixed amount
425 or by any formula or in any other manner, as may be so fixed or
426 computed. Any such lease or other agreement may be made and
427 entered into for a term beginning currently or at some future or
428 contingent date and with or without consideration and for a specified
429 or unlimited time and on any terms and conditions which may be
430 approved by such municipality, governmental unit or person and
431 which may be agreed to by the board in conformity with its contract
432 with the holders of any bonds, and shall be valid and binding on such
433 municipality, governmental unit or person whether or not an
434 appropriation is made thereby prior to authorization or execution of
435 such lease or other agreement. Such municipality, governmental unit
436 or person shall do all acts and things necessary, convenient or
437 desirable to carry out and perform any such lease or other agreement
438 entered into by it and to provide for the payment or discharge of any
439 obligation thereunder in the same manner as other obligations of such
440 municipality, governmental unit or person.

441 Sec. 12. (NEW) (*Effective October 1, 2007*) For the purpose of aiding a
442 Business and Energy Independence District Board, a municipality, by
443 ordinance or by resolution of its legislative body, shall have power
444 from time to time and for such period and upon such terms, with or
445 without consideration, as may be provided by such resolution or
446 ordinance and accepted by the board, (1) to appropriate moneys for
447 the purposes of the board, and to loan or donate such money to the
448 board in such installments and upon such terms as may be agreed
449 upon with the board, (2) to covenant and agree with the board to pay
450 to or on the order of the board annually or at shorter intervals as a

451 subsidy for the promotion of its purposes not more than such sums of
452 money as may be stated in such resolution or ordinance or computed
453 in accordance therewith, (3) upon authorization by it in accordance
454 with law of the performance of any act or thing which it is empowered
455 by law to authorize and perform and after appropriation of the
456 moneys, if any, necessary for such performance, to covenant and agree
457 with the board to do and perform such act or thing and as to the time,
458 manner and other details of its doing and performance, and (4) to
459 appropriate money for all or any part of the cost of acquisition or
460 construction of such facility, and, in accordance with the limitations
461 and any exceptions thereto and in accordance with procedure
462 prescribed by law, to incur indebtedness, borrow money and issue its
463 negotiable bonds for the purpose of financing such distributed
464 resource facility and appropriation, and to pay the proceeds of such
465 bonds to the board.

466 Sec. 13. (NEW) (*Effective October 1, 2007*) For the purpose of aiding a
467 Business and Energy Independence District Board in the planning,
468 undertaking, acquisition, construction or operation of any distributed
469 resource facility, a participating municipality may, pursuant to
470 resolution adopted by its legislative body in the manner provided for
471 adoption of a resolution authorizing bonds of such municipality and
472 with or without consideration and upon such terms and conditions as
473 may be agreed to by and between the municipality and the board,
474 unconditionally guarantee the punctual payment of the principal of
475 and interest on any bonds of the board and pledge the full faith and
476 credit of the municipality to the payment thereof. Any guarantee of
477 bonds of the board made pursuant to this section shall be evidenced by
478 endorsement thereof on such bonds, executed in the name of the
479 municipality and on its behalf by such officer thereof as may be
480 designated in the resolution authorizing such guaranty, and such
481 municipality shall thereupon and thereafter be obligated to pay the
482 principal of and interest on said bonds in the same manner and to the
483 same extent as in the case of bonds issued by it. As part of the
484 guarantee of the municipality for payment of principal and interest on
485 the bonds, the municipality may pledge to and agree with the owners

486 of bonds issued under this chapter and with those persons who may
487 enter into contracts with the municipality or the board or any
488 successor agency pursuant to the provisions of this chapter that it will
489 not limit or alter the rights thereby vested in the bond owners, the
490 board or any contracting party until such bonds, together with the
491 interest thereon, are fully met and discharged and such contracts are
492 fully performed on the part of the municipality or the board, provided
493 nothing in this subsection shall preclude such limitation or alteration if
494 and when adequate provisions shall be made by law for the protection
495 of the owners of such bonds of the municipality or the board or those
496 entering into such contracts with the municipality or the board. The
497 board is authorized to include this pledge and undertaking for the
498 municipality in such bonds or contracts. To the extent provided in
499 such agreement or agreements, the obligations of the municipality
500 thereunder shall be obligatory upon the municipality and the
501 inhabitants and property thereof, and thereafter the municipality shall
502 appropriate in each year during the term of such agreement, and there
503 shall be available on or before the date when the same are payable, an
504 amount of money that, together with other revenue available for such
505 purpose, shall be sufficient to pay such principal and interest
506 guaranteed by it and payable thereunder in that year, and there shall
507 be included in the tax levy for each such year in an amount that,
508 together with other revenues available for such purpose, shall be
509 sufficient to meet such appropriation. Any such agreement shall be
510 valid, binding and enforceable against the municipality if approved by
511 action of the legislative body of such municipality. Any such guaranty
512 of bonds of the board may be made, and any resolution authorizing
513 such guaranty may be adopted, notwithstanding any statutory debt or
514 other limitations, but the principal amount of bonds so guaranteed
515 shall, after their issuance, be included in the gross debt of such
516 municipality for the purpose of determining the indebtedness of such
517 municipality under subsection (b) of section 7-374 of the general
518 statutes. The principal amount of bonds so guaranteed and included in
519 gross debt shall be deducted and is declared to be and to constitute a
520 deduction from such gross debt under and for all the purposes of

521 subsection (b) of said section 7-374, (1) from and after the time of
522 issuance of said bonds until the end of the fiscal year beginning next
523 after the completion of acquisition and construction of the distributed
524 resource facility to be financed from the proceeds of such bonds, and
525 (2) during any subsequent fiscal year if the revenues of the board in the
526 preceding fiscal year are sufficient to pay its expenses of operation and
527 maintenance in such year and all amounts payable in such year on
528 account of the principal and interest on all such guaranteed bonds, all
529 bonds of the municipality issued as provided in this section and all
530 bonds of the Business and Energy Independence District Board issued
531 under section 4 of this act.

532 Sec. 14. (NEW) (*Effective October 1, 2007*) Any lease or other
533 agreement, and any instruments making or evidencing the same, may
534 be pledged or assigned by the board to secure its bonds and thereafter
535 may not be modified except as provided by the terms of such
536 instrument or by the terms of such pledge or assignment.

537 Sec. 15. (NEW) (*Effective October 1, 2007*) All property of a Business
538 and Energy Independence District Board shall be exempt from levy
539 and sale by virtue of an execution and no execution or other judicial
540 process shall issue against the same nor shall any judgment against the
541 board be a charge or lien upon its property, provided nothing in this
542 section shall apply to or limit the rights of the holder of any bonds to
543 pursue any remedy for the enforcement of any pledge or lien given by
544 the board on its facility revenues or other moneys.

545 Sec. 16. (NEW) (*Effective October 1, 2007*) A Business and Energy
546 Independence District Board and the municipality in which any
547 property of the board is located may enter into agreements with
548 respect to the payment by the board to such municipality of annual
549 sums of money in lieu of taxes on such property in such amount as
550 may be agreed upon between the board and the municipality. The
551 board may make, and the municipality may accept, such payments
552 and apply them in the manner in which taxes may be applied in such
553 municipality, provided no such annual payment with respect to any

554 parcel of such property shall exceed the amount of taxes paid thereon
 555 for the taxable year immediately prior to the time of its acquisition by
 556 the board.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2007</i>	New section
Sec. 2	<i>October 1, 2007</i>	New section
Sec. 3	<i>October 1, 2007</i>	New section
Sec. 4	<i>October 1, 2007</i>	New section
Sec. 5	<i>October 1, 2007</i>	New section
Sec. 6	<i>October 1, 2007</i>	New section
Sec. 7	<i>October 1, 2007</i>	New section
Sec. 8	<i>October 1, 2007</i>	New section
Sec. 9	<i>October 1, 2007</i>	New section
Sec. 10	<i>October 1, 2007</i>	New section
Sec. 11	<i>October 1, 2007</i>	New section
Sec. 12	<i>October 1, 2007</i>	New section
Sec. 13	<i>October 1, 2007</i>	New section
Sec. 14	<i>October 1, 2007</i>	New section
Sec. 15	<i>October 1, 2007</i>	New section
Sec. 16	<i>October 1, 2007</i>	New section

CE *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 chamber thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact:

Municipalities	Effect	FY 08 \$	FY 09 \$
Various Municipalities	See Below	See Below	See Below

Explanation

This bill allows municipalities to develop Business and Energy Independence Districts. Those municipalities that decide to develop these districts may experience adjustments in their current energy rates. The extent to which municipalities may experience these adjustments, if any, is unknown.

The bill also permits Business and Energy Independence District Boards to issue bonds. This has no state fiscal impact because the bill specifies that these bonds are not obligations of the state.

The bonding provisions create a liability for any municipality that chooses to guarantee such bonds. If the revenues intended to pay debt service on the bonds are insufficient to cover the liability, the guarantee requires that the municipality appropriate sufficient funds to cover the shortfall. This would require the municipality to either reduce funding for its own budget or increase revenue collected from taxes. The language specifies that the guaranteed bonds would not count toward a municipality's debt cap so municipalities choosing to provide a guarantee for these bonds will not be limited in their ability to issue bonds for other purposes.

Municipalities that choose to establish energy independence districts may experience a revenue loss, as the bill makes these districts

tax exempt from local taxes and assessments. The bill permits these districts to provide payments-in-lieu of taxes (PILOT) up to the amount that would have otherwise been taxable. It is uncertain whether these districts would choose to provide such a PILOT and at what funding level, thus it is unknown how much, if any, of the anticipated municipal revenue loss would be mitigated by a PILOT.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis

sHB 7223

AN ACT CONCERNING BUSINESS AND ENERGY INDEPENDENCE DISTRICTS.

SUMMARY:

This bill allows municipalities to establish “energy improvement districts” and prescribes how they can be formed. It specifies the powers of such districts and their boards, which include developing and operating small power plants and certain conservation programs. The district's board can issue revenue bonds, which are subject to standard provisions regarding the bond issuance, guarantees of revenues to back the bonds, trust indentures, and other bondholder rights. Districts are tax-exempt, but can make payments in lieu of property taxes (PILOT). The bill gives municipalities a wide range of powers to aid districts, including guaranteeing district bonds with a town’s full faith and credit and appropriating funds for district use.

EFFECTIVE DATE: October 1, 2007

FORMATION OF DISTRICT

The bill allows a municipality’s legislative body to establish a business and energy independence district within the municipality. After a vote, the municipality’s chief elected official must notify each property owner of record by mail of the district’s creation action. An owner may record on the municipal land records its decision to participate in the district and the bill’s provisions regarding districts. Any existing or new owner may rescind the decision at any time.

DISTRICT BOARD AND ITS DUTIES

The district’s affairs must be administered by a board, whose members are appointed by the chief elected official. Members must

serve for the term prescribed by legislative body and until their successors are appointed and have qualified. The chief elected official must fill any vacancies. The members must serve without compensation, other than necessary expenses.

The bill requires the board to fund distributed resources (e.g., small generated facilities) in the district. Among other things, these resources include power plants with a capacity of 65 megawatts or less (a megawatt is about the amount power consumed by 700 homes), combined heat and power (cogeneration) systems, and conservation programs in commercial and industrial facilities. The bill also requires the board to prepare a comprehensive plan for developing and financing these resources, except on state or federally owned properties, in order to increase commerce and industry in the district.

The district is exempt from all state and local taxes and assessments, and the income from its bonds is tax-exempt. However, its board can agree to make payments in lieu of property taxes to the municipality in which its property is located. The PILOT cannot exceed the amount of taxes that would apply if the property were taxable. The property is also exempt from levy and sale by execution, but this exemption does not affect the remedies available to holders of the district's bonds.

DISTRICT POWERS

General Powers

The bill allows the district board to:

1. lease or acquire office space and equipment;
2. employ staff;
3. use the municipality's officers, employees, facilities and equipment, with its consent, and pay a proper portion of the compensation or cost;
4. make contracts and leases, loans, including loans of proceeds of the district's bonds to owners, lessees, or occupants of facilities

in the district;

5. accept gifts, grants, loans or contributions from state and federal agencies or private parties and spend them for the board's purposes.

Powers Regarding Energy Facilities

The bill allows the board to exercise a wide range of powers regarding distributed resources. It allows the board to:

1. determine the location, type, size, and construction of distributed resources in the district, subject to the approval municipal, state, and federal agencies as required by law,
2. make plans for developing and operating these resources and for coordinating its facilities with public and private agencies;
3. fix and collect fees and charges for the resources it owns; and
4. operate and maintain resources the board owns or leases and use their revenues for the board's corporate purposes.

The fees and charges must provide enough money to (1) pay the cost of maintaining, repairing, and operating the district's projects to the extent that this has not otherwise been adequately provided for, (2) pay the principal and interest due on outstanding revenue bonds for a project, and (3) create and maintain reserves required or provided for in any resolution authorizing, or trust agreement securing, the bonds.

Excluded Powers

The bill does not allow the district to:

1. act as an electric company, provide distribution or transmission services, or own or operate assets to provide such services;
2. act a municipal electric utility or provide the services of one;
3. sell electricity in the municipality outside of the district;

4. undertake any authority or jurisdiction granted by state law to the Connecticut Siting Council, the Department of Public Utility Control, or any other state agency, or undertake any actions under federal jurisdiction; or
5. acquire property by eminent domain.

DISTRICT BONDS

The bill allows the board, with the approval of the municipality's legislative body, to issue revenue bonds to pay the costs of acquiring, purchasing, constructing, reconstructing, improving or extending any district distributed resources project, acquiring land and equipment for the project, or for any other authorized board purpose. The bonds may also be secured by a pledge of any grant or contribution from a participating municipality, state or federal agency, or private party. But the pledge can not create any liability for the entity making the grant or contribution beyond the amount of the grant or contribution.

The bonds are not state obligations and must say so on their face. They are not municipal obligations, unless the municipality backs them with its taxing power as described below. The maximum bond term is 20 years. The board may secure the bonds with an indenture. The bill gives the bond holders and the trustees of the indenture various ways of enforcing their rights. The state, its subdivisions, and financial institutions can invest in the bonds.

MUNICIPAL POWERS REGARDING DISTRICTS

Sale and of Municipal Property

The bill allows a municipality, by ordinance and without a referendum or public or competitive bidding, to sell, lease, lend, grant or convey to the board any of its real or personal property that may be needed or useful for the board's purposes and that the board accepts. The municipality may also allow the board to use, maintain, or operate its property. Other people can do these things, and other political subdivisions of the state must do so. Any such transaction may be made (1) with or without consideration; (2) for a specified or an

unlimited period of time; and (3) under any agreement and on any terms and conditions that the municipality, governmental unit, or person approves and to which and the board agrees in conformity with its contract with bond holders. Subject to its contracts with the bonds, the board may enter into and perform any and all agreements with respect to such property, leased, borrowed, received or accepted by it, including agreements to assume the principal or interest, or both, of debt of the municipality, governmental unit, or person or of any mortgage or lien existing on such property or for the property's operation and maintenance as part of any district distributed resources facility.

Lease of District Property to a Municipality

The bill allows a municipality, governmental unit or person to enter into a lease or other agreement with a board for all or part of a district's facilities. The bill gives the parties broad discretion in entering such agreements.

Guaranteeing District Bonds

The bill allows a municipality, by resolution of its legislative body, to guarantee payment of the district's bonds in order to assist a board in planning, undertaking, acquiring, constructing or operating a district facility. The municipality can also pledge its full faith and credit (taxing power) as part of this guarantee.

As part of the guarantee, the municipality may also pledge to the bondholders and people who contract with the municipality or the board that the municipality will not limit in the bondholders, the board's or any contracting party's right until the bonds are paid off or the contracts fulfilled. The agreement is binding if approved by the municipality's legislative body.

The bond principal, once issued, counts towards the municipality's debt limit. But, this amount does not count under the debt limit (1) from the time the bonds are issued until the facility is completed and (2) in any subsequent end of the next fiscal year if the board's revenues

in the prior fiscal year were sufficient to pay its operating and maintenance expenses and the amounts due on all of the district's bonds.

Other Powers

The bill allows a municipality, by ordinance or resolution of its legislative body, to do the following to aid a board:

1. appropriate money for the board's purposes and lend or donate money to the board on terms it agrees to;
2. agree with the board to pay an annual or shorter term subsidy up to the amount authorized by resolution or ordinance;
3. engage in other activities to aid the board as authorized by law; and
4. appropriate money for all or part of the cost of acquiring or building a district facility, incur indebtedness, borrow money; and issue its bonds to finance such facilities and pay the bond proceeds to the board.

BACKGROUND

Related Bill

sHB 7098, An Act Concerning Connecticut's Energy Future, favorably reported by the Energy and Technology Committee, has nearly identical provisions.

COMMITTEE ACTION

Commerce Committee

Joint Favorable Substitute

Yea 20 Nay 0 (03/13/2007)