



House of Representatives

General Assembly

File No. 433

January Session, 2007

Substitute House Bill No. 7276

House of Representatives, April 10, 2007

The Committee on Environment reported through REP. ROY, R. of the 119th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING REVISIONS TO THE SOLID WASTE MANAGEMENT SERVICES ACT.

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

1 Section 1. Section 22a-263 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 The directors of the authority shall meet at least monthly at the call
4 of the chairman and may meet more frequently if necessary and
5 desirable. It shall maintain at all times minutes of its meetings
6 including its considerations, deliberations, decisions and resolutions,
7 which minutes shall be considered public records. It shall maintain all
8 necessary records and data with respect to its operations and shall
9 report [quarterly] annually to the Governor and [annually to] the
10 General Assembly [] upon its operations. Such reports shall include,
11 but not be limited to, a listing of the number and type of waste
12 management service contracts entered into with local government
13 units and persons, and the charges therefor; a listing of the contracts
14 entered into for the services of private industry in the operation of

15 systems and facilities; a map showing the location of all facilities
16 owned or leased by the authority; a schedule of the amounts of waste
17 received and processed in such facilities; a listing of the outstanding
18 issues of notes and bonds of the authority and the payment status
19 thereof; a budget showing the administrative expenses of the
20 authority; a report of revenues of the authority from all sources and of
21 the redistribution of any surplus revenues. The authority shall be
22 subject to audit by the state Auditors of Public Accounts in accordance
23 with normal audit practices prescribed for departments, boards,
24 commissions and other agencies of the state.

25 Sec. 2. Subsection (a) of section 22a-266 of the general statutes is
26 repealed and the following is substituted in lieu thereof (*Effective*
27 *October 1, 2007*):

28 (a) To accomplish the purposes of this chapter, the authority shall
29 have power to:

30 (1) Own, manage and use real property or any interest therein;

31 (2) Determine the location and character of any project to be
32 developed under the provisions of this chapter, subject to applicable
33 statutes and regulations and the requirements of the state-wide solid
34 waste management plan;

35 (3) Purchase, receive by gift or otherwise, lease, exchange, or
36 otherwise acquire and construct, reconstruct, improve, maintain, equip
37 and furnish such waste management projects as are called for by the
38 state solid waste management plan;

39 (4) Sell or lease to any person, all or any portion of a waste
40 management project, for such consideration and upon such terms as
41 the authority may determine to be reasonable;

42 (5) Mortgage or otherwise encumber all or any portion of a project
43 whenever, in the opinion of the authority, such action is deemed to be
44 in furtherance of the purposes of this chapter;

45 (6) Grant options to purchase, or to renew a lease for, any authority
46 waste management project on such terms as the authority may
47 determine to be reasonable;

48 (7) Acquire, by purchase, gift, or transfer [, or by condemnation for
49 public purposes,] and manage and operate, hold and dispose of real
50 property and, subject to agreements with lessors or lessees, develop or
51 alter such property by making improvements and betterments with the
52 purpose of enhancing the value and usefulness of such property;

53 (8) Make plans, surveys, studies and investigations necessary or
54 desirable, in conformity with the state plan and with due consideration
55 for local or regional plans, to carry out authority functions with respect
56 to the acquisition, use and development of real property and the
57 design and construction of systems and facilities;

58 (9) Make short and long range plans, consistent with the provisions
59 of the state solid waste management plan, for the processing and
60 transportation of solid wastes and recovered resources by authority-
61 owned facilities;

62 (10) Design or provide for the design of solid waste management
63 facilities including design for the alteration, reconstruction,
64 improvement, enlargement or extension of existing facilities;

65 (11) Construct, erect, build, acquire, alter, reconstruct, improve,
66 enlarge or extend waste management projects including provision for
67 the inspection and supervision thereof and the engineering,
68 architectural, legal, fiscal and economic investigations and studies,
69 surveys, designs, plans, working drawings, specifications, procedures
70 and any other actions incidental thereto;

71 (12) Own, operate and maintain waste management projects and
72 make provision for their management and for the manufacturing,
73 processing and transportation operations necessary to derive
74 recovered resources from solid waste, and contracting for the sale of
75 such;

76 (13) Enter upon lands and waters, as may be necessary, to make
77 surveys, soundings, borings and examinations in order to accomplish
78 the purposes of this chapter;

79 (14) Contract with municipal and regional authorities and state
80 agencies to provide waste management services in accordance with the
81 provisions of section 22a-275 and to plan, design, construct, manage,
82 operate and maintain solid waste disposal and processing facilities on
83 their behalf;

84 (15) Design and construct improvements or alterations on properties
85 which it owns or which it operates by contract on behalf of municipal
86 or regional authorities, including the restoration of terminated dumps
87 and landfills to beneficial public or private use;

88 (16) Contract for services in the performance of architectural and
89 engineering design, the supervision of design and construction, system
90 management and facility management; for such professional or
91 technical services as are specified in subdivision (3) of section 22a-265;
92 and for such other professional or technical services as may require
93 either prequalification of a contractor or the submission by any
94 individual, firm or consortium or association of individuals or firms of
95 a proposal in response to an official request for proposal or similar
96 written communication of the authority that is issued or made
97 pursuant to the contracting procedures adopted under section 22a-
98 268a, whenever such services are, in the discretion of the authority,
99 deemed necessary, desirable or convenient in carrying out the
100 purposes of the authority;

101 (17) Contract for the construction of solid waste facilities with
102 private persons or firms, or consortia of such persons or firms,
103 pursuant to applicable provisions of this chapter, the requirements of
104 applicable regulations, the contracting procedures adopted under
105 section 22a-268a and the state plan and in accordance with such
106 specifications, terms and conditions as the authority may deem
107 necessary or advisable;

108 (18) Assist in the development of industries and commercial
109 enterprises and the planning, design, construction, financing,
110 management, ownership, operation and maintenance of systems,
111 facilities and technology within the state based upon or related to
112 resources recovery, recycling, reuse, treatment, processing or disposal
113 of solid waste provided any net revenue to the authority from
114 activities, contracts, products or processes undertaken pursuant to this
115 subdivision shall be distributed so as to reduce the costs of other
116 authority services to the users thereof on a pro rata basis proportionate
117 to costs paid by such users;

118 (19) Act as an electric supplier or an electric aggregator pursuant to
119 public act 98-28* provided any net revenue to the authority from
120 activities, contracts, products or processes undertaken pursuant to this
121 subdivision, after payment of principal and interest on bonds and
122 repayment of any loans or notes of the authority, shall be distributed
123 so as to reduce the costs of other authority services to the users thereof
124 on a pro rata basis proportionate to costs paid by such users. In acting
125 as an electric supplier or an electric aggregator pursuant to any license
126 granted by the Department of Public Utility Control, the authority may
127 enter into contracts for the purchase and sale of electricity and electric
128 generation services, provided such contracts are solely for the
129 purposes of ensuring the provision of safe and reliable electric service
130 and protecting the position of the authority with respect to capacity
131 and price; and

132 (20) Acquire real or personal property by condemnation for public
133 purposes, limited to the condemnation of any resources recovery
134 facility constructed with publicly supported bonds and any and all real
135 or personal property appurtenant to or used in connection with such
136 facility, including: (A) All improvements and fixtures on such
137 property, (B) private property, and (C) every estate, legal or equitable
138 interest and right, and inchoate interest in such facility, including
139 options to purchase, franchises, easements, rights-of-way and any
140 other rights or interests which the authority deems necessary for its
141 obligations and purposes under this chapter.

142 Sec. 3. Section 22a-260 of the general statutes is repealed and the
143 following is substituted in lieu thereof (*Effective October 1, 2007*):

144 The following terms, as used in this chapter, [and] chapter 103b and
145 section 4 of this act, shall have the indicated meanings unless the
146 context in which they are used demands a different meaning and
147 intent:

148 (1) "Authority" means the Connecticut Resources Recovery
149 Authority created and established pursuant to this chapter or any
150 board, body, commission, department, officer, agency or other
151 successor thereto;

152 (2) "State solid waste management plan" means the administrative
153 and financial plan developed by the Commissioner of Environmental
154 Protection for solid waste disposal and resources recovery, pursuant to
155 section 22a-211;

156 (3) "Resources recovery" means the processing of solid wastes to
157 reclaim energy therefrom;

158 (4) "Recycling" means the processing of solid waste to reclaim
159 material therefrom;

160 (5) "Person" means any individual, firm, partnership, association,
161 limited liability company or corporation, public or private, organized
162 or existing under the laws of the state or any other state, including
163 federal corporations, but excluding municipalities, special districts
164 having taxing powers or other political subdivisions of the state;

165 (6) "Waste management services" means actions taken to effectuate
166 the receipt, storage, transportation and processing for resources
167 recovery, recycling, reuse of recovered materials, or disposal of solid
168 wastes, including the sale of products, materials or energy on behalf of
169 the state, a region, a municipality or a person by the authority or by
170 any person or persons acting under contract with the authority,
171 pursuant to the provisions of this chapter;

172 (7) "Solid waste" means unwanted or discarded solid, liquid,
173 semisolid or contained gaseous material, including but not limited to,
174 demolition debris, material burned or otherwise processed at a
175 resources recovery facility or incinerator, material processed at a
176 recycling facility and sludges or other residue from a water pollution
177 abatement facility, water supply treatment plant or air pollution
178 control facility;

179 (8) "Solid waste facility" means any solid waste disposal area,
180 volume reduction plant, transfer station, wood burning facility, or
181 biomedical waste treatment facility;

182 (9) "Solid waste disposal area" means any location, including a
183 landfill or other land disposal site, used for the disposal of more than
184 ten cubic yards of solid waste;

185 (10) "Volume reduction plant" means any location or structure,
186 whether located on land or water, where more than two thousand
187 pounds per hour of solid waste generated elsewhere may be reduced
188 in volume, including but not limited to, resources recovery facilities
189 and other incinerators, recycling facilities, pulverizers, compactors,
190 shredders, balers and composting facilities;

191 (11) "Resources recovery facility" means a facility utilizing processes
192 aimed at reclaiming the material or energy values from solid wastes;

193 (12) "Transfer station" means any location or structure, whether
194 located on land or water, where more than ten cubic yards of solid
195 waste, generated elsewhere, may be stored for transfer or transferred
196 from transportation units and placed in other transportation units for
197 movement to another location, whether or not such waste is stored at
198 the location prior to transfer;

199 (13) "Recycling facility" or "recycling center" means land and
200 appurtenances thereon and structures where recycling is conducted,
201 including but not limited to, an intermediate processing center as
202 defined in this section;

203 (14) "Solid waste planning region" means those municipalities or
204 parts thereof within or forming an area defined in the state solid waste
205 management plan;

206 (15) "Municipality" means any town, city or borough within the
207 state;

208 (16) "Municipal authority" means the local governing body having
209 legal jurisdiction over solid waste management within its corporate
210 limits which shall be, in the case of any municipality which adopts a
211 charter provision or ordinance pursuant to section 7-273aa, the
212 municipal resource recovery authority;

213 (17) "Region" means two or more municipalities which have joined
214 together by creating a district or signing an interlocal agreement or
215 signing a mutual contract for a definite period of time concerning solid
216 waste management within such municipalities;

217 (18) "Regional authority" means the administrative body delegated
218 the responsibility for solid waste management in a region;

219 (19) "Bonds" means bonds of the authority issued pursuant to the
220 provisions of this chapter and the authorizing resolutions of said
221 authority;

222 (20) "Notes" means notes of the authority issued pursuant to this
223 chapter and the resolutions of the authority, either in anticipation of
224 and pending the issuance of bonds by said authority or otherwise;

225 (21) "Revenues" means moneys or income received by the authority
226 in whatever form, including but not limited to fees, charges, lease
227 payments, interest payments on investments, payments due and
228 owing on account of any instrument, contract or agreement between
229 the authority and any municipality, region, state agency or person,
230 gifts, grants, bestowals or any other moneys or payments to which the
231 authority is entitled under the provisions of this chapter or any other
232 law, or of any agreement, contract or indenture of the authority;

233 (22) "Waste management project" means any solid waste disposal
234 and resources recovery area, plant, works, system, facility or
235 component of a facility, equipment, machinery or other element of a
236 facility which the authority is authorized to plan, design, finance,
237 construct, manage, operate or maintain under the provisions of this
238 chapter, including real estate and improvements thereto and the
239 extension or provision of utilities and other appurtenant facilities
240 deemed necessary by the authority for the operation of a project or
241 portion of a project, including all property rights, easements and
242 interests required;

243 (23) "Solid waste management system" means that portion of the
244 overall state solid waste management plan specifically designed to
245 deal with the provision of waste management services and to effect
246 resources recovery and recycling by means of a network of waste
247 management projects and resources recovery facilities developed,
248 established and operated by the authority by contract or otherwise, but
249 not embracing or including any regulatory or enforcement activities of
250 the Department of Environmental Protection in accordance with
251 applicable provisions of the general statutes and as may be referred to
252 in the state solid waste management plan as developed and
253 promulgated by the Commissioner of Environmental Protection;

254 (24) "Costs" means the cost or fair market value, as determined by
255 the authority, of construction, lands, property rights, utility extensions,
256 disposal facilities, access roads, easements, franchises, financing
257 charges, interest, engineering and legal services, plans, specifications,
258 surveys, cost estimates, studies, transportation and other expenses
259 necessary or incidental to the design, development, construction,
260 financing, management and operation and maintenance of a waste
261 management project, and such other costs or expenses of the authority,
262 including administrative and operating costs, research and
263 development, and operating capital, including fees, charges, loans,
264 insurances, and the expense of purchasing real and personal property,
265 including waste management projects;

266 (25) "Intermediate processing facility" means a facility where glass,
267 metals, paper products, batteries, household hazardous waste,
268 fertilizers and other items are removed from the waste stream for
269 recycling or reuse.

270 Sec. 4. (NEW) (*Effective October 1, 2007*) (a) Notwithstanding the
271 provisions of section 22a-276 of the general statutes, not later than
272 thirty days before instituting condemnation proceedings to obtain a
273 resources recovery facility, the authority shall notify all parties with an
274 interest in said facility of the authority's intention to condemn said
275 facility. Said notice shall detail the properties and interests that the
276 authority seeks to condemn, and shall inquire whether the interested
277 parties intend to sell such properties and interests in the resources
278 recovery facility that the authority has identified as being necessary for
279 fulfilling its obligations under this chapter.

280 (b) All parties notified in accordance with subsection (a) of this
281 section shall answer such notice, in writing, not later than thirty days
282 after the receipt of the notice. If the parties are agreeable to selling their
283 interest in the facility, their answer shall contain the asking price and
284 terms of sale and such price or terms may be the subject of further
285 negotiation among the parties and the authority. If the parties refuse to
286 sell such facility, or fail to reply to the authority not later than thirty
287 days after receipt of the notice, the parties shall forfeit their right to
288 have their interest purchased and the authority may condemn the
289 facility at the reasonable value determined in accordance with
290 subsection (c) of this section.

291 (c) If the authority and the interested party or parties fail to agree
292 upon a price for the parties' interest in the facility, either the authority
293 or such party may petition the Department of Public Utility Control for
294 a determination of a fair price for such interest. The Department of
295 Public Utility Control shall determine the price by estimating the cost
296 of the replacement of the subject interest and making adjustments for
297 depreciation, the value of the underlying land and total
298 entrepreneurial profit.

299 (d) Not later than ninety days after the final determination of the
 300 price to be paid for the interest in the facility, the authority shall make
 301 a final determination whether or not to purchase the interest at said
 302 price. The authority may vote to issue such bonds and notes as may be
 303 necessary and expedient for the purpose of defraying the cost of
 304 purchasing the interest. If the authority issues such bonds or notes, the
 305 authority shall pay the money so raised to the previous interest holder
 306 immediately upon receipt.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	22a-263
Sec. 2	<i>October 1, 2007</i>	22a-266(a)
Sec. 3	<i>October 1, 2007</i>	22a-260
Sec. 4	<i>October 1, 2007</i>	New section

ENV *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:

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Connecticut Resources Recovery Authority (CRRRA)	See Below	See Below	See Below

Municipal Impact:

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

Explanation

The bill limits CRRRA’s ability to condemn real property to any resource recovery facility built with publicly supported bonds. It is assumed that CRRRA would purchase such a facility with bonds issued by the Authority. CRRRA has the ability to issue two types of bonds: (1) bonds secured by service agreements with participating municipalities and revenues from the sale of energy generated by its waste-to-energy facilities and (2) bonds secured by a state-backed Special Capital Reserve Fund (SCRF)¹. It is unclear from the bill what type of bonds CRRRA would use to purchase the resource recovery facility. There would be no impact to the state if the Authority used bonds backed by service agreements and energy sales. However, if the Authority used SCRF-backed bonds, it would create a contingent liability for the General Fund. The liability would only be realized in the event the

¹ A Special Capital Reserve Fund (SCRF) pays the debt service on bonds if the borrower is unable to pay all or part of the scheduled payments. When the SCRF has been drawn down in part or completely, a draw on the General Fund is authorized and the reserve is fully restored. The draw on the General Fund is deemed to be appropriated and is not subject to the constitutional or statutory appropriations cap. If draws on a SCRF continue, the annual draws on the General Fund required to refill it also continue.

Authority was unable to make debt service payments. If the state were required to appropriate funds for this purpose, there would be a negative effect on the state's cash flow and a loss of short-term interest on the appropriated funds.

CRRA is authorized by statute to issue up to \$725 million in SCRF-backed bonds. As of 12/16/05, a total of \$129.8 million of these bonds were outstanding.

To the extent that there was a bond issuance and purchase by CRRA, there would be a potential fiscal impact on tipping fees of member towns of the CRRA facility project. The exact impact cannot be determined at this time.

The Out Years

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

OLR Bill Analysis

sHB 7276

AN ACT CONCERNING REVISIONS TO THE SOLID WASTE MANAGEMENT SERVICES ACT.

SUMMARY:

This bill (1) limits the Connecticut Resources Recovery Authority's (CRRA) ability to condemn real property to the condemnation of certain resources recovery facilities and (2) expands its condemnation powers to include condemnation of personal property connected to such facilities. It replaces CRRA's existing condemnation process with one that authorizes the Department of Public Utility Control (DPUC) to determine a fair price for real and personal property. It requires CRRA's board of directors to report annually, rather than quarterly, to the governor.

EFFECTIVE DATE: October 1, 2007, except for the reporting requirement, which takes effect upon passage.

CRRA'S CONDEMNATION POWERS

Existing law authorizes CRRA to condemn real property for public purposes. The bill restricts CRRA's ability to condemn real property for these purposes to the condemnation of any resources recovery facility built with publicly supported bonds. It grants CRRA the ability to condemn personal property for public purposes, but restricts this to personal property connected to the resources recovery facility, including (1) all improvements and fixtures; (2) private property; and (3) every estate, legal or equitable interest and right, and inchoate interest in the facility, including options to purchase, franchises, easements, rights-of-way, and any other rights or interests CRRA finds necessary to carry out its obligations and purposes.

Condemnation Process

Under existing law (CGS § 22a-276) CRRA may condemn real property only when it cannot otherwise obtain the property, and must issue a resolution to that effect. It must consult with the municipality where the property is located before beginning condemnation proceedings, and get its written consent in most cases. It must follow the same condemnation procedures as a redevelopment agency when the parties cannot agree upon price, except that it must bring all condemnation proceedings in the Hartford Judicial District. Property owners have the same right to appeal the amount of compensation as they have in condemnation proceedings brought by redevelopment agencies.

Under the bill, CRRA must notify all parties with an interest in the facility it seeks to condemn at least 30 days before beginning condemnation proceedings. The notice must list the properties and interests the authority seeks to condemn. CRRA must ask the interested parties if they intend to sell the properties and the interests in the resources recovery facility that CRRA believes it needs to carry out its obligations.

The notified parties must reply to CRRA in writing within 30 days after receiving this notice. If they agree to sell their interest in the facility, they must include in their response the asking price, terms of sale, and the price or terms subject to negotiation. If the parties refuse to sell or fail to reply within 30 days of receiving notice, they forfeit the right to sell their interest. CRRA may then condemn the facility for its reasonable value.

It is not clear whether the bill leaves in place existing law on CRRA condemnation procedure, including the appeal process.

Determination of Reasonable Value

If CRRA or the interested parties fail to agree on a price for the facility, either of them may ask DPUC to determine a fair price. DPUC must determine the price by estimating the cost of the replacement of

the subject interest, adjusting for depreciation, the value of the underlying land, and total entrepreneurial profit. Within 90 days after DPUC determines the price to be paid for the interest in the facility, CRRA must decide whether to purchase at that price. CRRA may vote to issue such bonds and notes needed and expedient to defray the purchase cost. If the authority issues the bonds or notes, it must pay the money it raises to the interest holder immediately on receiving it.

BACKGROUND

CRRA Purpose and Powers

The legislature created CRRA in 1973 as a quasi-public agency to implement the state's solid waste policy of resources recovery, reuse and recycling (CGS §§ 22a-257 through 285k). Its responsibilities include planning, design, financing, building, and operating resources recovery plants. It has the power to acquire land through condemnation to carry out its responsibilities (CGS § 22a-266(a) (7)).

CRRA operates four of six resources recovery facilities in the state – Bridgeport, Wallingford, Hartford (Mid-Connecticut Project), and Preston (Southeast Project). The bonds CRRA issued to finance the acquisition and construction of each of the four facilities will be retired between 2008 and 2015. As part of the original financing of the Bridgeport, Preston, and Wallingford projects, CRRA entered into agreements with the operator or a financial institution as the lessee, in which the lessee has the right to purchase the facility when the project lease expires.

RELATED BILL

sHB 6602 requires DPUC, in consultation with the Department of Environmental Protection, to study the efficacy of increasing the generating capacity of trash to energy facilities by at least 60 megawatts and the impact such an increase would have on electric rates.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 30 Nay 0 (03/23/2007)