



STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC WORKS



Raeanne V. Curtis
Commissioner

**TESTIMONY OF DEPARTMENT OF PUBLIC WORKS BEFORE
THE GOVERNMENT ADMINISTRATION AND ELECTIONS
COMMITTEE**

MARCH 23, 2009

**Senate Bill 1153 AN ACT CONCERNING THE CAPITOL AREA DISTRICT
HEATING AND COOLING SYSTEM**

Summary

The legislation permits the Commissioner of Public Works, on behalf of the State of Connecticut, to purchase from the TEN Companies the district heating and cooling system known as the Capitol Area System ("CAS") that provides heating and cooling services to state facilities within the Capital District.

TEN Companies, Inc. owns and operates the CAS, consisting of a set of mains, pipes and other conduits in and on the streets, highways and public grounds of the City of Hartford, Connecticut that deliver steam, hot water, and chilled water for the purpose of heating and cooling certain State-owned buildings, as well as certain privately-owned buildings. The State-owned buildings served by the CAS are 18-20 Trinity Street, 30 Trinity Street (Secretary of State Building), 75 Elm Street (Appellate Court Building), 10 Clinton Street (DPH Health Laboratory), 300 Capitol Avenue (Legislative Office Building), 231 Capitol Avenue (State Library and Supreme Court Building), 360 Broad Street (State Armory), 25 Sigourney Street, and 410-474 Capitol Avenue (Capitol Avenue Complex). The privately-owned buildings on the CAS are located at 166 Capitol Avenue (The Bushnell), 28-32 Laurel Street (United Way Building), 24 Park Place (The Park Place Towers) and 21 Oak Street (CEA Building).

History

District heating and cooling systems provide heating and/or cooling services to multiple buildings simultaneously. A district system has two major components: (a) thermal plants which supply the district system with steam or hot water for heating and chilled water for cooling; and (b) a distribution system of pipes and associated pumps which carry the steam or hot water, and chilled water, to the buildings connected to the district system. Buildings connected to a district system are typically designed without provision for stand-alone heating and cooling facilities, and therefore do not typically include such stand-alone facilities.

In order to develop and operate district systems in the City of Hartford, the Hartford Steam Company, TEN Companies, Inc. predecessor, petitioned the Legislature of the State of Connecticut, and obtained the passage of a Special Act, An Act Incorporating the Hartford Steam Company, 1961 Conn. Spec. Acts 7. Under this Special Act as later amended by 1997 Conn. Spec. Acts 97-01, the Hartford Steam Company and its parent, a subsidiary or an affiliate was granted the right to use public streets for the purpose of providing heating and cooling services through district systems within the City of Hartford.

Hartford Steam Company developed two district systems in Hartford. One of these systems is referred to as the Downtown Loop. It has been in existence since 1962, and was designed to provide heating and cooling retail service to a wide range of buildings and customers in the central portion of the City of Hartford. The other district system is the Capitol Area System or the CAS. It became operational in 1986, and is geographically distinct from the Downtown Loop, serving buildings in the area of Capitol Avenue in the western portion of the City of Hartford. These two systems are presently owned and operated by TEN Companies, Inc.

On or about October 7, 1987, the State and TEN Companies, Inc. predecessor, Affiliated Resources Corporation, a successor to the Hartford Steam Company, executed an agreement for district heating and cooling services for 10 Clinton Street, 79 Elm Street, 18-20 Trinity Street, 30 Trinity Street, 360 Broad Street, 231 Capitol Avenue, and 75 Elm Street. The agreement also covered 410-474 Capitol Avenue. This agreement contained an expiration date of May 1, 2008. The State executed an agreement for heating and cooling services concerning the Legislative Office Building on February 24, 1986, which would expire on December 31, 2012. On July 25, 1986, the State assumed an agreement for such services to be provided at 25 Sigourney Street.

In February, 2007, the State initiated an action in the Superior Court of the State of Connecticut, Judicial District of Hartford at Hartford, seeking reimbursement of alleged overcharges by TEN Companies, Inc. In December of 2007, the State also filed an action for a temporary injunction to prevent the termination of services that would occur in May, 2008 under the agreement for the multiple buildings. TEN Companies, Inc. fully contested both cases. Legislation was filed to have thermal energy transportation be a regulated utility service.

The parties engaged in numerous lengthy and prolonged negotiations to resolve the past and present issues, as well as presenting the best situation for the future. The Commissioner of Public Works, the Secretary of the Office of Policy and Management, the Attorney General, and certain legislators participated, or were aware of, these negotiations. As a result, the State and TEN Companies, Inc. did reach a settlement, incorporated in the Memorandum of Understanding dated May 7, 2008, wherein TEN Companies, Inc. agreed to sell, and the State agreed to purchase, the CAS at the amount of the debt owed in connection with the CAS.

Legislation

The legislation approves the Asset Purchase Agreement dated November 4, 2008, and authorizes the Commissioner to close on the transaction.

The legislation provides the necessary authority and powers for the Commissioner and the Department of Public Works to operate, maintain and improve the CAS. This includes purchasing from a plant located in the city of Hartford heated or chilled water to supply the CAS, lay and maintain mains, pipes or other conduits, erect fixtures necessary or convenient in public rights of way to carrying steam, heated or chilled water or other medium from such plants to the service location and returned.

The legislation allows the Commissioner to perform all obligations of the State relating to or arising from any agreement between the State and TEN Companies, Inc. Including acting on behalf of the Joint Committee on Legislative Management, the Judicial Department and any state agency that either entered into an agreement with TEN Companies, Inc. to receive steam and chilled water or occupies a building that receives such services from TEN Companies, Inc.

The bill allows the Commissioner to enter into contracts for energy products and services for the operation, maintenance of and repair and improvements to the CAS, to provide energy products and services through the CAS to State owned buildings and to sell energy products and services through the CAS to the owners and tenants of privately owned buildings.

The legislation allows the Commissioner to occupy and use rights of way necessary to own, maintain, repair, improve and operate the CAS in and on the streets of Hartford, on all property owned by the state and on property where the system is located, and to serve public and private end-use customer including the laying and maintain of mains, pipes or other conduits and to erect other fixtures to carry energy products.

The legislation allows the Commissioner to grant and acquire easements with respect to land in connection with the operation of the CAS and to enter into lease for space or a facility necessary to operate the CAS.

The bill allows for the establishment of the "Public Works Heating and Cooling Energy Revolving Account". The account shall be used to deposit all receipts from the sale of energy products and services to state agencies and to owners or tenants of privately owned buildings. The account shall then be used for the payment of expenses related to the operation, maintenance, repair and improvements to the CAS.

The Commissioner, with the approval of the Secretary of the Office of Policy and Management, will develop a method to calculate the rates and expenses that will be invoiced to the appropriate state agencies and private customers. The invoices may include costs related to acquiring the system including legal and consultant services, costs of energy product or services, costs of operating, maintaining and repairing the system,

costs of service providers and equipment, and DPW personnel costs related to the CAS. The funds collected from the state agencies and owner of the privately owned buildings on the CAS shall be deposited into the Public Works Heating and Cooling Energy Revolving Account.

The bill authorizes the issuance of bonds in the amount of \$10,600,000. The purchase price for the CAS is \$10,600,000 with a \$5,000,000 credit the State is receiving from TEN Companies, Inc. which reflects a mutually agreed upon settlement of litigation. Furthermore, the bill authorizes the issuance of \$1,000,000 for the transactional costs related to the acquisition of the CAS, including closing costs, certain initial construction costs and initial equipment costs for funding for the Public Works Heating and Cooling Energy Revolving Account. Finally, the bill authorizes the issuance of bonds in the amount of \$5,000,000 for the future purchase of additional or replacement equipment, making improvements to the CAS, and for extending the CAS to other buildings.

System Condition and Appraisal

Public Works engaged the firm SourceOne Inc. to conduct an assessment of the condition of the CAS systems and to provide an appraisal of the system. They concluded that the system is in good condition and overall has been well maintained over the past twenty years. They did identify some deficiencies which should be corrected. None of these issues impact of value of the system. Some of the items are required due to the segregation of the CAS chilled water system from the downtown chilled water system. A detailed description of this analysis can be found in the report produced by SourceOne entitled "State of Connecticut Capitol Area System Chilled and Hot Water Systems".

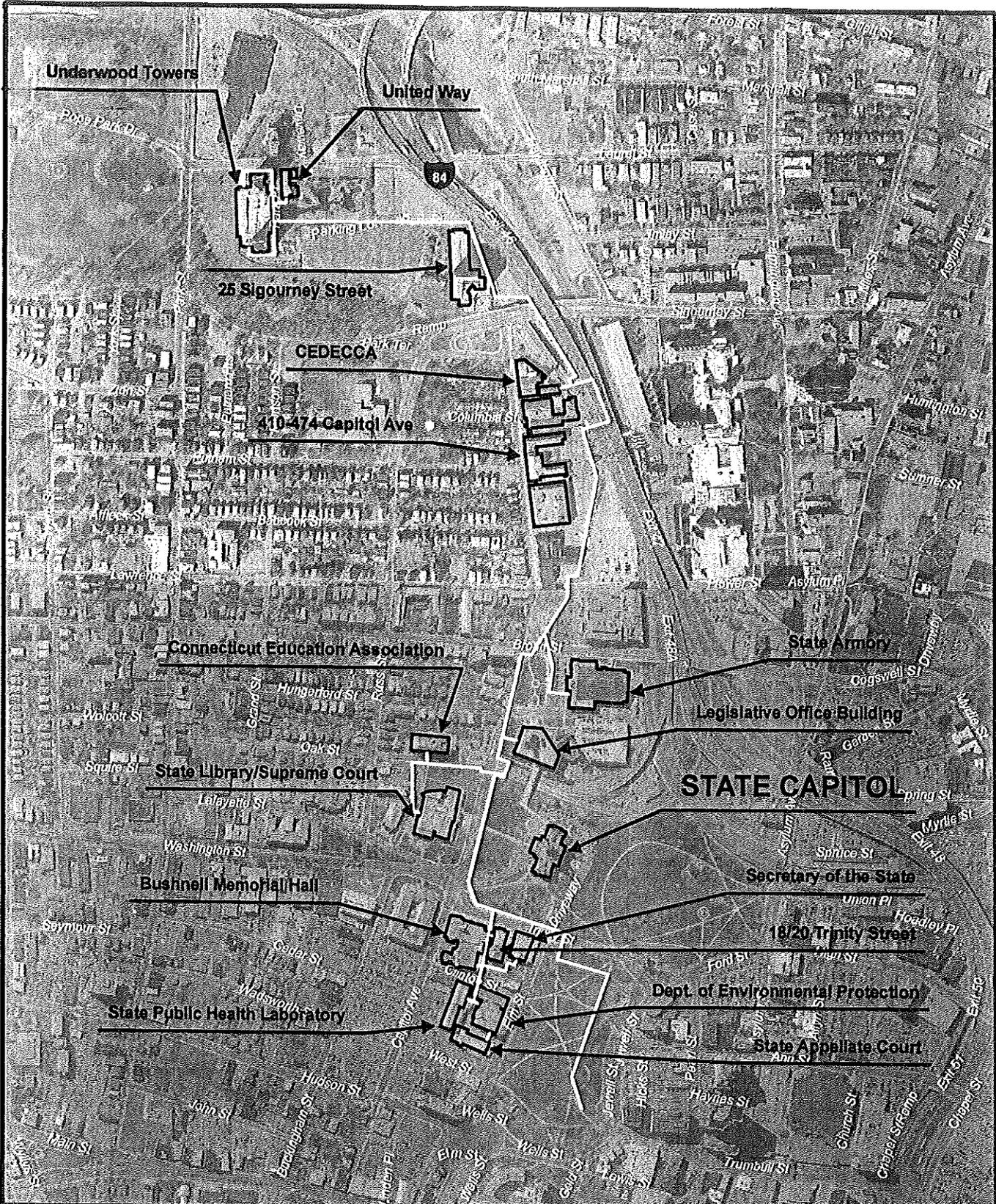
The appraised value of the system is \$14,083,984. This valuation is based the current, depreciated value of the physical assets of the system. The initial cost to construct the CAS in the late 1980's was approximately \$18M. The appraisal does not consider the value of the business entity. The State's alternate to the CAS would be to install heating and cooling plants in each of the buildings currently serviced by the CAS. Assuming that this was feasible in all buildings, SourceOne has estimated the construction of these plants will cost \$15,500,000.

Financial Analysis

SourceOne provided a financial analysis of the proposed Energy Services Agreement (ESA) with CDECCA. This analysis compared the terms of the proposed contract with projected cost of a new contract with TEN and the State building and operating its own thermal plan to serve the CAS. This analysis found that the proposed CDECCA ESA was a cost effective solution at an estimated annual State cost of \$4,367,997. This was in comparison to the annual cost of a new TEN contract at \$5,285,917 and the annual cost of a new State owned energy plant at \$4,795,016. These annual operating costs included all variable energy costs, operating and fixed demand costs, as well as finance costs for the purchase of the CAS and, in the case of the new plant scenario, the cost of capital to build the plant.

Attached you will find a map of the CAS as well as substitute language which is technical in nature.

The Department of Public Works, if requested, is available to meet to discuss the information contained in this testimony. Please contact Doug Moore, DPW Chief of Staff, at (860) 713-5800 with any further questions.

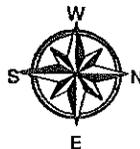
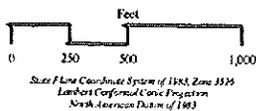


For planning purposes only; not survey accurate.

TEN Pipeline

Sources: DPW, City of Hartford for Buildings,
2004 DOT Aerial

Printed in color.
Prepared by: RAC
Date: 01-30-09



The Energy Network

Capital Avenue Area
Hartford, CT

AN ACT CONCERNING THE CAPITOL AREA DISTRICT HEATING AND COOLING SYSTEM.

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

Section 1. (NEW) (*Effective from passage*) (a) The Commissioner of Public Works, on behalf of the state, may purchase from TEN Companies, Inc., in accordance with the Asset Purchase Agreement dated November 4, 2008, by and among the state, acting by and through the Commissioner of Public Works, and TEN Companies, Inc., which Asset Purchase Agreement is hereby ratified and approved, the district heating and cooling system that provides heating and cooling service to state facilities within the Capitol District and to other other non-State facilities as listed in the Asset Purchase Agreement dated November 4, 2008, and which is known as the Capitol Area System, including, but not limited to, all assets and property relative to or necessary for the operation of said system as set forth in the Asset Purchase Agreement dated November 4, 2008. The commissioner may assume all vendor contracts, customer contracts, supplier agreements, and third-party contracts with regard to said system. The commissioner may undertake any obligation and enter into any agreement to accomplish any transaction that is necessary to carry out the provisions of this section or said Asset Purchase Agreement, including, but not limited to, the grant or acceptance of any release set forth in said Asset Purchase Agreement.

(b) To the extent any provision in an agreement executed or assumed by the commissioner pursuant to subsection (a) of this section may be interpreted as waiving the sovereign immunity of the state, including, without limitation, indemnification provisions, such provision is effective and enforceable against the state solely in accordance with its specific terms. Nothing in this subsection shall be construed as a waiver of the sovereign immunity of the state in any other context.

(c) In order to operate the Capitol Area System, the commissioner may: (1) Furnish, from plants located in the city of Hartford, heat or air conditioning, or both, by means of steam, heated or chilled water or other medium; (2) lay and maintain mains, pipes or other conduits; (3) erect such other fixtures as are, or may be, necessary or convenient in and on the streets, highways and public grounds of said city, for the purpose of

carrying steam, heated or chilled water or other medium from such plants to the location to be served and returning the same; and (4) lease to one or more corporations formed or specially chartered for the purpose of furnishing heat or air conditioning, or both, one or more of such plants or distribution systems owned by it and constructed or adapted for either or both such purposes.

(d) Notwithstanding any provision of the general statutes, the commissioner may perform all obligations of the state relating to or arising from any agreement between the state and TEN Companies, Inc., including, but not limited to, acting on behalf of the Joint Committee on Legislative Management, the Judicial Department, and any state agency that owns, operates or occupies a building that receives services from TEN Companies, Inc. on the Capitol Area System.

(e) The Commissioner of Public Works may (1) enter into contracts with third parties for the procurement of energy products and services or for the operation and maintenance of, and repairs and improvements to, the Capitol Area System; (2) provide energy products and services, as produced from said system or distributed by said system, to any buildings owned by, or leased to, the state or any instrumentality of the state; (3) sell energy products and services, as produced from said system or distributed by said system, to the owners or tenants of buildings not owned by the state; (4) occupy and use rights-of-way necessary to own, maintain, repair, improve and operate said system in and on the streets, highways and public grounds of the city of Hartford, on all property owned by the state and on property where the system is located, and to serve public and private end-use customers; (5) lay and maintain mains, pipes or other conduits, and erect such other fixtures as are, or may be, necessary or convenient in and on the streets, highways and public grounds of said city, for the purpose of carrying energy products to the location to be served and returning the same; and (6) enter into contracts with third parties for the procurement of other products and services, and provide or sell other products or services to the state or to the owners or tenants of buildings not owned by the state, that are being produced, provided or distributed through said system, or any part thereof, prior to, or as of, the effective date of this section.

(f) Notwithstanding any provision of the general statutes, the Commissioner of Public Works may: (1) Grant easements with respect to land owned by the state in connection with the operation of the Capitol Area System, subject to the approval of the agency having supervision of the care and control of such land and the State Properties Review

Board; (2) acquire easements with respect to land not owned by the state in connection with said system, subject to the approval of the State Properties Review Board; (3) enter into leases for any type of space or facility necessary to meet the needs of operating said system, subject to the approval of the State Properties Review Board; and (4) when the General Assembly is not in session, the commissioner may, subject to the provisions of section 4b-23 of the general statutes, purchase or acquire for the state any land, or interest therein, if such action is necessary for the operation of said system. No easement granted pursuant to subdivision (1) of this section shall be for the disposal or storage of radioactive or hazardous waste materials. The commissioner shall provide notice of any easement granted pursuant to subdivision (1) of this section to the chief elected official of the municipality and the members of the General Assembly representing the municipality, in which such land is located.

(g) The Commissioner of Public Works may establish and administer an account to be known as the Public Works Heating and Cooling Energy Revolving Account, which shall be used for: (1) The deposit of receipts from the sale of energy products and services to state agencies or to the owners or tenants of buildings not owned by the state, and (2) for the payment of expenses related to the operation, maintenance, repair and improvement of the Capitol Area System. The commissioner may expend funds necessary for all reasonable direct expenses related to said account.

(h) The Commissioner of Public Works, with the approval of the Secretary of the Office of Policy and Management as to the method used to calculate rates and the type of expenses included for repairs and maintenance, shall include the following in the expenses invoiced to, and collected from, each state agency and owner or tenant of the buildings on the Capitol Area System that are not owned by the state, to the extent not prohibited by contracts in effect as of November 4, 2008: (1) A pro-rata share of all costs of acquiring the system, including, but not limited to, all costs for legal and consultant services; (2) a pro-rata share of the cost of such energy products or services, whether produced by the state or purchased from third parties; (3) a pro-rata share of any and all costs of operating, maintaining and repairing said system, including, but not limited to, the cost of services provided by vendors and the cost of equipment; (4) a pro-rata share of an amount determined to be necessary for long-term capital improvements or replacement, which amount shall be specifically identified in the Public Works Heating and Cooling Energy Revolving Account, and allocated for long-term capital improvements or replacement; (5) a pro-rata share of the Department of Public Works'

personnel costs related to the operation, maintenance, repair and improvement of the Capitol Area System; and (6) a pro-rata share of the cost of other products or services incurred and permitted by this section. Not more than forty-five days after receipt of such proposal from the commissioner, the Secretary of the Office of Policy and Management shall approve or disapprove of the proposed method used to calculate rates and the type of expenses included. If the secretary fails to act on the proposal during this period, the commissioner's proposal shall be deemed to have been approved.

(i) Nothing in this section shall be construed to limit the use of the Capitol Area System by the state to its use or functional capacity as of the date of its purchase by the state.

(j) Except as expressly required by the provisions of this section, the acquisition of the Capitol Area System by the Commissioner of Public Works, and any transaction related to such acquisition, shall not be subject to any other review, approval or authorization by any other state agency, board, department or instrumentality and shall not be subject to any otherwise applicable sales or conveyance tax or taxes.

Sec. 2. Section 3 of number 7 of the special acts of 1961, as amended by special act 97-1, is amended to read as follows (*Effective from passage*):

(a) Said corporation is authorized and empowered, either directly or through the agency of its parent, a subsidiary or an affiliate: To furnish, from plants located in the city of Hartford, heat or air conditioning, or both, by means of steam, heated or chilled water or other medium; to lay and maintain mains, pipes or other conduits, and to erect such other fixtures as are or may be necessary or convenient in and on the streets, highways and public grounds of said city, for the purpose of carrying steam, heated or chilled water or other medium from such plants to the location to be served and returning the same; and to lease to one or more corporations formed under the general law or specially chartered for the purpose of furnishing heat or air conditioning, or both, one or more of such plants or distribution systems, or both, owned by it and constructed or adapted for either or both of such purposes.

(b) Said corporation or its parent or successor may sell to the state the district heating and cooling system, known as the Capitol Area System, that provides heating and cooling energy products or services to buildings owned by the state and to privately owned buildings. Such sale shall include, but not be limited to, all assets and property

relative to or necessary for the operation of said system as set forth in the Asset Purchase Agreement dated November 4, 2008, relating to such sale.

Sec. 3. (*Effective from passage*) (a) For the purpose of the sale provided for in section 1 of this act, the purchase price for the Capitol Area System and the assets and property of TEN Companies, Inc., related to said system, as set forth in the Asset Purchase Agreement between TEN Companies, Inc., and the State of Connecticut dated November 4, 2008, shall be ten million six hundred thousand dollars, which purchase price includes a credit in the amount of five million dollars provided by TEN Companies, Inc., to the state in consideration of the settlement of litigation. The provisions of this subsection shall be deemed to constitute compliance, to the extent applicable, with the provisions of section 3-125a of the general statutes.

(b) The State Bond Commission may authorize the issuance of bonds of the state in one or more series and in a principal amount in the aggregate not exceeding ten million six hundred thousand dollars. The proceeds of the sale of said bonds shall be used for the purpose of acquiring the Capitol Area System, including all assets and property relative to or necessary for the operation of said system as set forth in the Asset Purchase Agreement dated November 4, 2008.

Sec. 4. (*Effective from passage*) The State Bond Commission shall have the power to authorize the issuance of bonds of the state in one or more series and in a principal amount in the aggregate not exceeding one million dollars for the transactional costs related to the purchase of the Capitol Area System, as provided in section 1 of this act, including, but not limited to, the state's insurance costs, the state's legal fees, reimbursement to TEN Companies, Inc. for prepaid property taxes, a reasonable amount for start-up funding for the Public Works Heating and Cooling Energy Revolving Account, as established in section 1 of this act, and for the cost of materials to cap the ends of the system loop purchase and installation of pipe necessary for the operation of the Capitol Area System, including but not limited to the cost of pipe and its installation as the interconnection between the supply and return lines of the Capitol Area System at or near the point of interconnection between the Capitol Area System and TEN Companies, Inc.'s other district energy system located in the downtown area of the city of Hartford.

Sec. 5. (NEW) (*Effective from passage*) The State Bond Commission shall have power to authorize the issuance of bonds of the state in one or more series and in a principal amount in the aggregate not exceeding five million dollars for the purchase and installation of additional equipment not part of the sale of the Capitol Area System provided for under section 1 of this act, or for assets or property necessary for the improvement or the operation of the Capitol Area System, or for providing services to state and nonstate owned buildings not connected to, or receiving services from, the system as of the effective date of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	Number 7 of the special acts of 1961, Sec. 3
Sec. 3	<i>from passage</i>	New section
Sec. 4	<i>from passage</i>	New section
Sec. 5	<i>from passage</i>	New section

Statement of Purpose:

To authorize the Commissioner of Public Works to purchase, operate and maintain the Capitol Area System which provides heating and cooling to certain state facilities and privately owned buildings in the city of Hartford.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]