Senate

General Assembly

File No. 613

January Session, 2011

Substitute Senate Bill No. 1157

Senate, April 21, 2011

The Committee on Finance, Revenue and Bonding reported through SEN. DAILY of the 33rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE RESTORATION OF THE ENERGY CONSERVATION AND LOAD MANAGEMENT FUND.

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

Section 1. (*Effective from passage*) (a) For purposes of the cumulative monthly financial statement prepared by the Comptroller pursuant to section 3-115 of the general statutes, and issued in May, 2011, said statement shall be prepared without taking into account any reduction to the economic recovery transfer directed by sections 16-245e of the general statutes, as amended by this act, 16-245f of the general statutes, as amended by this act, 16-245j of the general statutes, as amended by this act, and 16-245m of the general statutes, as amended by this act, and said statement shall specify that any General Fund surplus projected in said statement was determined without taking into account such reduction to the economic recovery transfer.

(b) The Comptroller shall include in said statement the revised amount of the economic recovery transfer to be paid from the proceeds of the economic recovery revenue bonds after any estimated surplus in such statement has been used to reduce such economic recovery transfer.

Sec. 2. Subdivisions (19) and (20) of subsection (a) of section 16-245e of the general statutes are repealed and the following is substituted in lieu thereof (*Effective from passage*):

(19) "Economic recovery transfer" means the disbursement to the General Fund of nine hundred fifty-six million dollars from proceeds of the issuance of the economic recovery revenue bonds, which disbursement shall be reduced as provided in section 139 of public act 10-179 and, notwithstanding the provisions of section 4-30b, shall be reduced further by an amount equal to the estimated General Fund surplus as of June 30, 2011, as reflected in the Comptroller's May cumulative monthly financial statement, issued pursuant to section 3-115 and in accordance with section 1 of this act; and

(20) "Economic recovery revenue bonds" means rate reduction bonds issued to fund the economic recovery transfer, the costs of issuance, credit enhancements, operating expenses and such other costs as the finance authority deems necessary or advisable, and which shall be payable from competitive transition assessment charges that replace the competitive transition assessment charges funding stranded costs. **[**and that are offset in part by decreases to the charges funding the Energy Conservation and Load Management Fund, as provided in subdivision (3) of subsection (a) of section 16-245m.**]**

Sec. 3. Subsection (b) of section 16-245f of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) Prior to September 1, 2010, each electric distribution company shall submit to the department an application for a financing order with respect to funding the economic recovery transfer through the issuance of economic recovery revenue bonds. The department shall hold a hearing for each such electric distribution company to determine the amount necessary to fund the economic recovery transfer, the payment of economic recovery revenue bonds, costs of issuance, credit enhancements and operating expenses for the economic recovery revenue bonds. Such amount as determined by the department shall constitute transition property. The department shall allocate the responsibility for the funding of the economic recovery transfer and the expenses of the economic recovery revenue bonds equitably between the electric distribution companies. Such allocation may provide that the respective charges payable by the customers of each electric distribution company may commence on different dates and that such rates may vary over the period the economic recovery revenue bonds and the related operating expenses are being paid, provided (1) such charges are equitably allocated to the customers of each electric distribution company, and (2) the department determines that, over such period, and taking into account the timing of charges, the charges on a kilowatt hour basis assessed to the customers of the respective electric distribution companies have substantially the same present value after consultation with the finance authority as to the discount rate to be used in determining such present value. Any hearing with respect to a financing order in respect to the economic recovery transfer and the issuance of economic recovery revenue bonds shall not be a contested case, as defined in section 4-166. The department shall issue a financing order in respect to the economic recovery revenue bonds for each electric distribution company on or before October 1, 2010. In such financing order, the department shall determine the competitive transition assessment in respect of the economic recovery revenue bonds, which shall not be assessed prior to June 30, 2011, unless the department sets an earlier date in the financing order. **[**A**]** If there are decreases to the charges as provided in subdivision (3) of subsection (a) of section 16-245m, as amended by this act, a component of the competitive transition assessment in respect of the economic recovery revenue bonds shall be equal to the decreases to the charges provided in subdivision (3) of subsection (a) of section 16-245m, as amended by this act, funding the Energy Conservation and Load Management Fund. The portion of the competitive transition assessment in respect to the economic recovery revenue bonds equal to such decreases shall be assessed and collected from the date such charges are reduced pursuant to the financing order. The department may provide in such financing order that money from other sources, including proceeds of charges assessed customers of municipal electric companies, transferred to the trustee under the indenture and intended to be used to pay debt service on the bonds shall be taken into account in making adjustments to the competitive transition assessment pursuant to subdivision (2) of subsection (b) of section 16-245i if such payment is not made from General Fund revenues and would not adversely affect the tax status or credit rating of economic recovery revenue bonds.

Sec. 4. Subdivision (4) of subsection (c) of section 16-245j of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(4) (A) The proceeds of any rate reduction bonds, other than economic recovery revenue bonds, shall be used for the purposes approved by the department in the financing order, including, but not limited to, disbursements to the General Fund in substitution for such disbursements from the Energy Conservation and Load Management Fund established by section 16-245m and from the Renewable Energy Investment Fund established by section 16-245n, the costs of refinancing or retiring of debt of the electric company or electric distribution company, and associated federal and state tax liabilities; provided such proceeds shall not be applied to purchase generation assets or to purchase or redeem stock or to pay dividends to shareholders or operating expenses other than taxes resulting from the receipt of such proceeds.

(B) The proceeds of any economic recovery revenue bonds shall be used for the purposes approved by the department in the financing order, including, but not limited to, funding the economic recovery transfer, provided such proceeds shall not be applied to purchase generation assets or to purchase or redeem stock or to pay dividends to shareholders or operating expenses other than taxes resulting from the receipt of such proceeds.

(C) The finance authority is authorized, without any further proceeding before the department, to structure the terms of the economic recovery revenue bonds by applying the provisions of the financing order for the economic recovery revenue bonds and the provisions of sections 16-245e to 16-245m, inclusive, as amended by this act.

Sec. 5. Subsection (d) of section 16-245j of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(d) Any rate reduction bonds issued or sold pursuant to or in reliance on and in accordance with any financing order issued by the department pursuant to sections 16-245e to 16-245k, inclusive, as amended by this act, shall be valid and binding and the transition property from which such bonds are payable shall be enforceable in accordance with their terms, notwithstanding such financing order is later vacated, modified, or otherwise held to be wholly or partly invalid, unless operation of such financing order has been enjoined, stayed, or suspended by the department or a court of competent jurisdiction prior to such issuance.

Sec. 6. Subsection (a) of section 16-245m of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) (1) On and after January 1, 2000, the Department of Public Utility Control shall assess or cause to be assessed a charge of three mills per kilowatt hour of electricity sold to each end use customer of an electric distribution company to be used to implement the program as provided in this section for conservation and load management programs but not for the amortization of costs incurred prior to July 1, 1997, for such conservation and load management programs.

(2) Notwithstanding the provisions of this section, receipts from such charge shall be disbursed to the resources of the General Fund during the period from July 1, 2003, to June 30, 2005, unless the department shall, on or before October 30, 2003, issue a financing order for each affected electric distribution company in accordance with sections 16-245e to 16-245k, inclusive, <u>as amended by this act,</u> to sustain funding of conservation and load management programs by substituting an equivalent amount, as determined by the department in such financing order, of proceeds of rate reduction bonds for disbursement to the resources of the General Fund during the period from July 1, 2003, to June 30, 2005. The department may authorize in such financing order the issuance of rate reduction bonds that substitute for disbursement to the General Fund for receipts of both the charge under this subsection and under subsection (b) of section 16-245n and also may, in its discretion, authorize the issuance of rate reduction bonds under this subsection and subsection (b) of section 16-245n that relate to more than one electric distribution company. The department shall, in such financing order or other appropriate order, offset any increase in the competitive transition assessment necessary to pay principal, premium, if any, interest and expenses of the issuance of such rate reduction bonds by making an equivalent reduction to the charge imposed under this subsection, provided any failure to offset all or any portion of such increase in the competitive transition assessment shall not affect the need to implement the full amount of such increase as required by this subsection and by sections 16-245e to 16-245k, inclusive<u>, as amended by this act</u>. Such financing order shall also provide if the rate reduction bonds are not issued, any unrecovered funds expended and committed by the electric distribution companies for conservation and load management programs, provided such expenditures were approved by the department after August 20, 2003, and prior to the date of determination that the rate reduction bonds cannot be issued, shall be recovered by the companies from their respective competitive transition assessment or systems benefits charge but such expenditures shall not exceed four million dollars per month. All receipts from the

remaining charge imposed under this subsection, after reduction of such charge to offset the increase in the competitive transition assessment as provided in this subsection, shall be disbursed to the Energy Conservation and Load Management Fund commencing as of July 1, 2003. Any increase in the competitive transition assessment or decrease in the conservation and load management component of an electric distribution company's rates resulting from the issuance of or obligations under rate reduction bonds shall be included as rate adjustments on customer bills.

(3) <u>(A)</u> In the financing order authorizing the economic recovery revenue bonds, or other appropriate order, the department shall reduce the charge assessed by subdivision (1) of this subsection by thirty-five per cent. Such reduction shall become effective on April 4, 2012, or such earlier date set by the department in the financing order. An amount equivalent to such reduction shall constitute a portion of the competitive transition assessment in respect of the economic recovery revenue bonds, provided any failure to offset all or any portion of such competitive transition assessment shall not affect the requirement to implement the full amount of such competitive transition assessment, as required by sections 16-245e to 16-245k, inclusive. All receipts from the remaining charge, after reduction of such charge as provided in this subsection, shall be disbursed to the Energy Conservation and Load Management Fund. The competitive transition assessment in respect to the economic recovery revenue bonds or the decrease in the conservation and load management component of an electric distribution company's rates resulting from the issuance of or obligations under the economic recovery revenue bonds shall be included as rate adjustments on customer bills.

<u>(B) Notwithstanding the provisions of subparagraph (A) of this subdivision, there shall be no reduction in the charge assessed by subdivision (1) of this subsection if the economic recovery transfer is reduced by one hundred sixty-six million six hundred thousand dollars, or more, because the amount of the estimated General Fund surplus contained in the cumulative monthly statement prepared by</u>

the Comptroller pursuant to section 3-115 and section 1 of this act is equal to or exceeds said amount. If the economic recovery transfer is reduced by less than one hundred sixty-six million six hundred thousand dollars because the amount of the estimated General Fund surplus contained in said statement is less than said amount, the amount of the reduction to the charge assessed in subdivision (1) of this subsection shall be the same percentage of thirty-five per cent as the reduction of the economic recovery transfer described in subdivision (19) of subsection (a) of section 16-245e, as amended by this act, is to one hundred sixty-six million six hundred thousand dollars, as calculated by the finance authority.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*from passage*	New section
Sec. 2	*from passage*	16-245e(a)(19) and (20)
Sec. 3	*from passage*	16-245f(b)
Sec. 4	*from passage*	16-245j(c)(4)
Sec. 5	*from passage*	16-245j(d)
Sec. 6	*from passage*	16-245m(a)

FIN *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 12 $	FY 13 $
Treasurer, Debt Serv.	GF - Precludes Savings	Appx 3 Million	Appx 3 Million

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill would preclude General Fund savings, in the approximate amount of $3 million in FY 12 and FY 13, by using anticipated FY 11 surplus funds to reduce borrowing against revenue from charges on electric ratepayers' bills instead of retiring certain General Fund debt.

Background

Public Act 10-179 provides for the issuance of Economic Recovery Revenue bonds[1], which will securitize a revenue stream derived from the Energy Conservation and Load Management (ECLM) Fund and the Competitive Transition Assessments charges. The bill reduces the $210 million in bonds issued against the revenue stream from the ECLM Fund.

The estimate used to determine the amount of surplus applied under the bill would be the State Comptroller's Monthly Letter to the Governor dated May 2, 2011. As of April 1, 2011, the Comptroller's Monthly Letter indicated a net General Fund surplus of $101.9 million

[1] The General Fund FY 11 budget was balanced in part through the planned borrowing of $646.1 million against future revenues from charges on ratepayers' bills. The ECLM part of this total is $210 million; the balance is borrowed against revenues from the Competitive Transition Assessment charge.

($116.4 million less $14.5 million which must be transferred to the Other Post-Employment Benefits trust fund in accordance with the 2009 SEBAC Agreement).

Current law requires General Fund surplus to be used first to retire Economic Recovery Notes[2] (ERNs). Debt service for ERNs is paid from the General Fund. Since the bill would divert surplus funds from the retirement of ERNs debt to a reduction in the amount borrowed against revenue from electric utility ratepayers, the bill would increase the total General Fund cost of borrowing over the remaining five year term of the ERNs. Absent the bill, it is anticipated that there would be $3 million in interest cost savings in each of FY 12 and FY 13 as a result of the early retirement of approximately $100 million in ERNs. In addition, there would be an estimated $100 million savings in principal.

The Out Years

State Impact:

Agency Affected	Fund-Effect	FY 14 $	FY 15 $	FY 16 $
Treasurer, Debt Serv.	GF - Precludes Savings	Appx 3 Million	Appx 3 Million	100 Million

Note: GF=General Fund

Municipal Impact: None

[2] In order to finance the FY 09 deficit, $947.6 million in state debt was issued with a term of seven years.

OLR Bill Analysis

sSB 1157

AN ACT CONCERNING THE RESTORATION OF THE ENERGY CONSERVATION AND LOAD MANAGEMENT FUND.

SUMMARY:

This bill requires any estimated FY 11 General Fund surplus to be applied to offset a scheduled diversion of revenue from energy conservation programs to back economic recovery revenue bonds (ERRBs) authorized in 2010 to provide revenue to the General Fund. By law, the energy programs are funded by a conservation charge on electric bills. Revenue from the charge goes to the Energy Conservation and Load Management Fund.

Current law already requires any unappropriated FY 10 General Fund surplus to be used to reduce the amount of ERRBs issued. The bill requires that amount to be further reduced by the estimated General Fund surplus for FY 11 shown in the comptroller's May 2011 statement. If the estimated surplus is at least $166.6 million, the conservation charge diversion must be entirely offset. If it is less, the diversion must be proportionately reduced.

The bill also:

1. repeals a provision making the ERRBs partially payable from conservation charge revenue;

2. allows the financing authority (the state treasurer) to structure ERRB terms according to the Department of Public Utility Control's (DPUC) financing order for the bonds, the law, and the bill's provisions, without further DPUC proceedings (see COMMENT);

3. specifies that the bondholders' right to the "transition property"

(i.e., the right to receive the revenue from the charges backing the bonds) is enforceable even if a court modifies, vacates or invalidates the financing order; and

4. makes technical and conforming changes.

EFFECTIVE DATE: Upon passage

ECONOMIC RECOVERY TRANSFER AND REVENUE BONDS

In 2010, the General Assembly authorized the state to issue ERRBs to provide $956 million in revenue for transfer to the state General Fund (the "economic recovery transfer") and to pay the bond financing costs. Under current law, the bonds are payable from revenue generated by (1) extending a per-kilowatt-hour surcharge (the competitive transition assessment or CTA) on electric bills beyond the dates at which it would otherwise have expired and (2) diverting 35% of the revenue from a conservation charge that would otherwise go to the Energy Conservation and Load Management Fund. The fund subsidizes the costs of energy conservation and energy efficiency measures.

The bill requires the amount of the projected FY 11 General Fund surplus, as indicated in the comptroller's May 2011 statement, to be applied to reduce the economic recovery transfer and, thus, the total amount of ERRB proceeds needed to fund it. The resulting savings must be used to offset some or all of the 35% revenue diversion from the conservation charge.

Under the bill, if the projected surplus is at least $166.6 million, the conservation charge diversion must be entirely offset. If the projected surplus is less than that target, the 35% contribution from the conservation charge must be reduced by the same ratio as the projected surplus amount is to $166.6 million. The financing authority must calculate the ratio.

In addition, if the estimated FY 11 surplus exceeds $166.6 million, it could, depending on the excess, reduce the required ERRBs enough to shorten the duration of the CTA.

COMPTROLLER'S MAY 2011 FINANCIAL STATEMENT

By law, the comptroller must issue a cumulative monthly statement of the financial position of the state General Fund that includes estimates of revenue and expenditures to the end of the current fiscal year. The bill requires the comptroller's May 2011 statement to show (1) the General Fund's position without taking into account any reduction in the economic recovery transfer, (2) that any FY 11 General Fund surplus projection the statement includes is made without taking such a reduction into account, and (3) the revised economic recovery transfer amount to be paid from ERRB proceeds after applying any estimated surplus.

COMMENT

Law Regarding DPUC Financing Order

By law, as a condition of the state issuing the ERRBs, the DPUC was required to issue a financing order. It issued the order on September 29, 2010. Among other things, the order required the 35% reduction in conservation charge beginning April 1, 2012.

The bill does not amend an existing law that (1) makes the financing order irrevocable; (2) bars the DPUC from rescinding, altering, or amending the order with regard to the amount of the economic recovery transfer; and (3) specifies that any financing order in respect to the ERRBs becomes effective on issuance (CGS § 16-245i). The relationship between existing law and the bill is unclear.

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable Substitute
Yea 49 Nay 0 (04/18/2011)