



Senate

General Assembly

File No. 464

January Session, 2011

Substitute Senate Bill No. 1176

Senate, April 7, 2011

The Committee on Energy and Technology reported through SEN. FONFARA of the 1st Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING ELECTRIC RATE RELIEF.

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

- 1 Section 1. (NEW) (*Effective July 1, 2011*) (a) As used in this section:
- 2 (1) "Person" has the same meaning as provided in section 12-1 of the
3 general statutes;
- 4 (2) "Electric generation services" has the same meaning as provided
5 in section 16-1 of the general statutes;
- 6 (3) "Electric generation facility" means electric generation facility, as
7 the term is used in section 12-94d of the general statutes;
- 8 (4) "Regional bulk power grid" means regional bulk power grid, as
9 the term is used in section 16a-7b of the general statutes;
- 10 (5) "Alternative energy system" has the same meaning as provided
11 in subdivision (21) of subsection (a) of section 12-213 of the general

12 statutes;

13 (6) "Fuel cells" has the same meaning as provided in subdivision
14 (113) of section 12-412 of the general statutes;

15 (7) "Commissioner" means the Commissioner of Revenue Services;

16 (8) "Department" means the Department of Revenue Services; and

17 (9) "Person subject to tax" means a person providing electric
18 generation services and uploading electricity generated at such
19 person's electric generation facility in this state to the regional bulk
20 power grid.

21 (b) (1) For each calendar quarter commencing on or after July 1,
22 2011, there is hereby imposed a tax on each person subject to tax,
23 which tax shall be one-half of one mill for oil-fueled generation, two
24 cents on nuclear generation, and one-half of one cent on coal-fired
25 generation, multiplied by the net kilowatt hours of electricity
26 generated by such person at such person's electric generation facility in
27 this state and uploaded to the regional bulk power grid, provided the
28 tax imposed by this subsection on coal-fired generation shall only be
29 imposed on the net kilowatt hours of electricity generated by such
30 electric generation facility in this state and uploaded to the regional
31 bulk power grid during the months of January, February, June, July
32 and August.

33 (2) Each person subject to tax shall, on or before the last day of
34 January, April, July and October of each year, render to the
35 commissioner a return, on forms prescribed or furnished by the
36 commissioner, reporting the kilowatt hours of electricity generated by
37 such person at such person's electric generation facility in this state
38 and uploaded to the regional bulk power grid during the calendar
39 quarter ending on the last day of the preceding month and reporting
40 such other information as the commissioner deems necessary for the
41 proper administration of this section. The tax imposed under this
42 section shall be due and payable on the due date of such return. Each

43 person subject to tax shall be required to file such return electronically
44 with the department and to make payment of such tax by electronic
45 funds transfer in the manner provided by chapter 228g of the general
46 statutes, irrespective of whether the person subject to tax would have
47 otherwise been required to file such return electronically or to make
48 such tax payment by electronic funds transfer under the provisions of
49 chapter 228g of the general statutes.

50 (c) Whenever the tax imposed under this section is not paid when
51 due, a penalty of ten per cent of the amount due and unpaid or fifty
52 dollars, whichever is greater, shall be imposed and interest at the rate
53 of one per cent per month or fraction thereof shall accrue on such tax
54 from the due date of such tax until the date of payment.

55 (d) The provisions of section 12-548 of the general statutes, sections
56 12-550 to 12-554, inclusive, of the general statutes and section 12-555a
57 of the general statutes shall apply to the provisions of this section in
58 the same manner and with the same force and effect as if the language
59 of said sections had been incorporated in full into this section and had
60 expressly referred to the tax imposed under this section, except to the
61 extent that any provision is inconsistent with a provision in this
62 section.

63 (e) The tax imposed by this section shall not apply to any net
64 kilowatt hours of electricity generated at an electric generation facility
65 in this state exclusively through the use of fuel cells, natural gas or an
66 alternative energy system.

67 (f) At the end of each fiscal year commencing with the fiscal year
68 ending June 30, 2012, the Comptroller is authorized to record as
69 revenue for such fiscal year the amount of tax imposed under the
70 provisions of this section on electricity generated prior to the end of
71 such fiscal year and which tax is received by the Commissioner of
72 Revenue Services not later than five business days after the last day of
73 July immediately following the end of such fiscal year.

74 (g) Revenues collected from the tax imposed pursuant to this section

75 shall be credited to the resources of the General Fund and directed as
76 follows: (1) Until such time as the economic recovery revenue bonds
77 issued pursuant to sections 16-245e to 16-245k, inclusive, of the general
78 statutes, as amended by this act, and section 16-245m of the general
79 statutes are defeased or paid in full, such revenues shall be directed to
80 the costs of providing, recovering, financing or refinancing the
81 economic recovery transfer, as defined in section 16-245e of the general
82 statutes, as amended by this act, including the costs of issuing,
83 servicing and retiring the economic recovery revenue bonds; (2) after
84 such bonds are defeased, used to provide ratepayer relief; and (3) used
85 to provide funding for clean and renewable energy projects.

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

89 (19) "Economic recovery transfer" means the disbursement to the
90 General Fund of up to nine hundred fifty-six million dollars from
91 proceeds of the issuance of the economic recovery revenue bonds; and

92 (20) "Economic recovery revenue bonds" means rate reduction
93 bonds issued to fund the economic recovery transfer, the costs of
94 issuance, credit enhancements, operating expenses and such other
95 costs as the finance authority deems necessary or advisable, and which
96 shall be payable first from the revenues collected pursuant to the tax
97 imposed by section 1 of this act, and then to the extent necessary, from
98 competitive transition assessment charges that replace the competitive
99 transition assessment charges funding stranded costs and that are
100 offset in part by decreases to the charges funding the Energy
101 Conservation and Load Management Fund, as provided in subdivision
102 (3) of subsection (a) of section 16-245m.

103 Sec. 3. Subsection (b) of section 16-245f of the general statutes is
104 repealed and the following is substituted in lieu thereof (*Effective July*
105 *1, 2011*):

106 (b) Prior to September 1, 2010, each electric distribution company

107 shall submit to the department an application for a financing order
108 with respect to funding the economic recovery transfer through the
109 issuance of economic recovery revenue bonds. The department shall
110 hold a hearing for each such electric distribution company to
111 determine the amount necessary to fund the economic recovery
112 transfer, the payment of economic recovery revenue bonds, costs of
113 issuance, credit enhancements and operating expenses for the
114 economic recovery revenue bonds. Such amount as determined by the
115 department shall constitute transition property. The department shall
116 allocate the responsibility for the funding of the economic recovery
117 transfer and the expenses of the economic recovery revenue bonds
118 equitably between the electric distribution companies. Such allocation
119 may provide that the respective charges payable by the customers of
120 each electric distribution company may commence on different dates
121 and that such rates may vary over the period the economic recovery
122 revenue bonds and the related operating expenses are being paid,
123 provided (1) such charges are equitably allocated to the customers of
124 each electric distribution company, and (2) the department determines
125 that, over such period, and taking into account the timing of charges,
126 the charges on a kilowatt hour basis assessed to the customers of the
127 respective electric distribution companies have substantially the same
128 present value after consultation with the finance authority as to the
129 discount rate to be used in determining such present value. Any
130 hearing with respect to a financing order in respect to the economic
131 recovery transfer and the issuance of economic recovery revenue
132 bonds shall not be a contested case, as defined in section 4-166. The
133 department shall issue a financing order in respect to the economic
134 recovery revenue bonds for each electric distribution company on or
135 before October 1, 2010. In such financing order, the department shall
136 determine the competitive transition assessment in respect of the
137 economic recovery revenue bonds, which shall not be assessed prior to
138 June 30, 2011, unless the department sets an earlier date in the
139 financing order. A component of the competitive transition assessment
140 in respect of the economic recovery revenue bonds shall be equal to the
141 decreases to the charges provided in subdivision (3) of subsection (a)

142 of section 16-245m funding the Energy Conservation and Load
143 Management Fund. The portion of the competitive transition
144 assessment in respect to the economic recovery revenue bonds equal to
145 such decreases shall be assessed and collected from the date such
146 charges are reduced pursuant to the financing order. The department
147 may provide in such financing order that money from other sources,
148 including revenues from the tax assessed pursuant to section 1 of this
149 act and proceeds of charges assessed customers of municipal electric
150 companies, transferred to the trustee under the indenture and
151 intended to be used to pay debt service on the bonds shall be taken
152 into account in making adjustments to the competitive transition
153 assessment pursuant to subdivision (2) of subsection (b) of section 16-
154 245i if such payment is not made from General Fund revenues and
155 would not adversely affect the tax status or credit rating of economic
156 recovery revenue bonds.

157 Sec. 4. Subsection (b) of section 16-245h of the general statutes is
158 repealed and the following is substituted in lieu thereof (*Effective July*
159 *1, 2011*):

160 (b) Any surplus competitive transition assessment described in
161 subparagraph (A) of subdivision (2) of subsection (a) of section 16-245e
162 in excess of the amounts necessary to pay principal, premium, if any,
163 interest and expenses of the issuance of the rate reduction bonds
164 issued prior to January 1, 2002, after such bonds have been defeased or
165 paid in full, shall be remitted to the finance authority who shall apply
166 such charges to the payment of economic recovery revenue bonds and
167 cause such charges to be credited against the payment obligation in
168 respect to the economic recovery revenue bonds of the customers
169 making such excess payments. If the economic recovery revenue bonds
170 are not issued, the finance authority shall transfer such excess charges
171 to the General Fund. Any surplus competitive transition assessment
172 described in subparagraph (A) of subdivision (2) of subsection (a) of
173 section 16-245e in excess of the amounts necessary to pay principal,
174 premium, if any, interest and expenses of the issuance of the rate
175 reduction bonds issued on or after May 1, 2010, shall be remitted to the

176 financing entity and [may] shall be used to benefit customers. No
 177 funds shall be remitted, applied or used in accordance with the terms
 178 of this subsection if such remittance, application or use would result in
 179 a recharacterization of the tax, accounting, and other intended
 180 characteristics of the financing, including, but not limited to, the
 181 following:

182 (1) Avoiding the recognition of debt on the electric company's or the
 183 electric distribution company's balance sheet for financial accounting
 184 and regulatory purposes;

185 (2) Treating the rate reduction bonds as debt of the electric company
 186 or electric distribution company or its affiliates for federal income tax
 187 purposes;

188 (3) Treating the transfer of the transition property by the electric
 189 company or electric distribution company as a true sale for bankruptcy
 190 purposes; or

191 (4) Avoiding any adverse impact of the financing on the credit
 192 rating of the rate reduction bonds or the electric company or electric
 193 distribution company.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2011</i>	New section
Sec. 2	<i>from passage</i>	16-245e(a)(19) and (20)
Sec. 3	<i>July 1, 2011</i>	16-245f(b)
Sec. 4	<i>July 1, 2011</i>	16-245h(b)

ET *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 \$
Department of Revenue Services	GF - Net Revenue Gain	334.3 million	338.4 million
Department of Revenue Services	GF - Cost	75,000	None

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 12 \$	FY 13 \$
Various Municipalities	See Below	See Below	See Below

Explanation

The bill establishes a tax on nuclear, oil-fueled, and coal-fired electric generation, and makes changes to the method by which securitization bonds used to fund the FY 11 budget are paid off. This results in a net revenue gain of \$334.3 million in FY 12 and \$338.4 million FY 13, and a cost of \$75,000 in FY 12.

Output Tax Revenue Estimate

The electric generation tax results in a gross revenue gain of \$342.6 million annually from the two cents per kilowatt-hour (kwh) tax on nuclear generation (\$335.0 million), the 0.5 cents per kwh tax on coal-fired generation (\$7.4 million), and the 0.05 cents per kwh tax on oil-fueled generation (\$201,500).¹ This is partially offset by an estimated \$4.2 million revenue loss from the Corporation Business Tax resulting from a reduction in the net income of Connecticut electric generation facilities.

¹ The revenue gain from coal-fired generation pertains only to the months of January, February, June, July, and August.

The bill also results in a one-time cost to the Department of Revenue Services (DRS) of \$75,000 associated with implementing a new tax type in the Taxpayer Service Center and Integrated Tax Administration System.

Output Tax Revenue Stream Utilization

Proceeds from the new tax on electric power generators would initially be used to retire the Economic Rate Reduction Bonds (ERRBs) authorized by PA 10-179 to balance the FY 11 General Fund budget.² It is anticipated that revenue from the new tax could retire the ERRBs debt, including the principal, interest and issuance costs, by the close of FY 14. Beginning in FY 15 and continuing thereafter, approximately \$340 million in revenue would be generated each year and used for ratepayer relief and the funding of clean and renewable energy projects, in accordance with the bill.

Property Tax Impact

The output tax is expected to reduce the net income of electric generation companies affected by the bill. To the extent this occurs, the valuations of the generation facilities may be decreased. This would result in a reduction to certain municipalities' grand lists.

Ratepayer Impact

Any impact of the tax on ratepayers, including the state and municipalities as ratepayers, would likely occur after FY 13 as that is the expiration of the current sales contracts of the electric generating plants.

The Out Years

The annualized ongoing revenue impact identified above would continue into the future.

² In order to balance the FY 11 budget, \$646.6 million was borrowed against future revenue from charges on the electric bills of CL&P and UI customers.

Beginning in FY 14, the bill would result in a cost to the state and municipalities if the tax is passed onto ratepayers.

Sources: United States Energy Information Administration

OLR Bill Analysis**sSB 1176*****AN ACT CONCERNING ELECTRIC RATE RELIEF.*****SUMMARY:**

This bill subjects certain electric generators to a tax on the power they generate in the state, starting July 1, 2011. Power produced by natural gas plants, fuel cells, and alternative energy systems, such as solar and wind systems, is exempt from the tax. The tax rate is 0.05 cents per kilowatt-hour (kwh) for oil-fueled generation, 2 cents per kwh for nuclear generation, and 0.5 cents per kwh for coal-fired generation. The tax on coal facilities applies only to power generated in January, February, June, July, and August. The bill states that it applies to electric generation facilities, as that term is used in CGS § 12-94d, but that section does not define the term.

For all of the affected facilities, the tax applies to the facility's net generation (i.e., it does not apply to the power generated at the facility that is used to operate it) delivered to the regional grid. The bill establishes provisions for administering the tax and penalties for nonpayment, and other things.

PA 10-179 authorized the state to issue securitization bonds backed by the competitive transition assessment (CTA) and part of the conservation charge on electric company bills to provide up to \$956 million for a transfer to the General Fund. Under the act, the bonding is tied to a financing order issued by Department of Public Utility Control (DPUC), which had to reduce the conservation charge by 35% as of April 4, 2012 or an earlier date set by DPUC in the order. An amount equal to this reduction would continue to be charged but used as part of the revenue that backs the bonds.

The bill requires that the new tax revenue be used first to pay off

these bonds (which have not yet been issued), before the CTA and conservation charges are used to do so. Once the bonds are paid off or defeased, the tax revenue must provide ratepayer relief (apparently for electric company customers) and funding for clean and renewable energy projects. The bill also makes related changes.

EFFECTIVE DATE: Upon passage for the requirement that the tax revenue be used to pay off the bonds, although the tax itself and the bill's other provisions are effective July 1, 2011.

ADMINISTRATIVE PROVISIONS OF GENERATOR TAX

Each person subject to the tax must, by the last day of January, April, July, and October of each year, give the Revenue Services (DRS) commissioner a return, on forms the commissioner prescribes or furnishes. The return must report the number of kilowatt hours the person generated at its electric generation facility that were delivered to the grid during the calendar quarter ending on the last day of the prior month. The taxpayer must report other information the commissioner deems necessary to administer these provisions.

Each person subject the tax to must file the return and pay the tax to DRS by electronic funds transfer, whether or not it must do so for other taxes under current law. The tax is payable on the return's due date. Unpaid taxes are subject to a penalty of 10% of the unpaid amount or \$50, whichever is greater. Delinquent taxes are subject to interest at 1% per month.

At the end of each fiscal year starting with FY 12, the comptroller may record as revenue for the fiscal year the amount of tax imposed on electricity generated before the end of the fiscal year that is received by the DRS commissioner no later than five business days after the last day of July immediately following the end of the fiscal year.

A number of administrative provisions that apply to the admissions, cabaret and dues tax and other taxes apply to the generation tax. Among other things, these include record-keeping requirements, procedures for claiming a refund, and appeal procedures. They also

include criminal penalties for willful violations of the law. These are:

1. a fine of up to \$1,000, imprisonment for up to one year, or both for willfully failing to keep records, file a return, or pay the tax; and
2. a fine of up to \$5,000, imprisonment for one to five years, or both for willfully filing a return or other document the taxpayer knows to be fraudulent or materially false.

USING GENERATOR TAX REVENUE TO FUND SECURITIZATION BONDS

PA 10-179 required the electric companies to submit applications for financing orders to DPUC with regard to the securitization bonds. DPUC had to determine the amount needed to be transferred to the General Fund (\$956 million minus the unallocated surplus in the FY 10 budget) and the costs associated with the bonding, such as issuance costs. DPUC had to allocate the responsibility for paying these costs between the electric companies. As noted above, under current law the bonds will be funded by the CTA charge and a reallocation of the conservation charge. DPUC issued the order on September 29, 2010, with an April 4, 2012 start date for the conservation charge revenue reallocation.

Current law allows DPUC to consider funding from other sources, including charges assessed on municipal utility customers in adjusting the CTA. The bill additionally allows DPUC to consider the revenues from the generator tax in making this adjustment.

By law (CGS § 16-245i(b)), unchanged by this bill, the financing order is irrevocable and DPUC cannot modify it. It is thus unclear how DPUC could modify the CTA and conservation charge funding for the bonds that had been already authorized by the financing order.

The bill requires, rather than allows, CTA revenue beyond that needed to pay the principal and interest on the bonds and related costs be used to benefit customers.

BACKGROUND***Related Court Case***

In *Markley v. DPUC*, Superior Court J.D. of New Britain at New Britain C.V. 10 50151232 S (December 21, 2010), the court rejected the plaintiff's claim that the DPUC's financing order exceed its authority and violated the Equal Protection Clause as it did not apply to municipal electric utility customers. It found that it did not have subject matter jurisdiction as Markley had not exhausted his administrative remedies. The case is on appeal before the state Supreme Court.

COMMITTEE ACTION

Energy and Technology Committee

Joint Favorable Substitute

Yea 12 Nay 9 (03/22/2011)