Senate

File No. 879

General Assembly

January Session, 2013

(Reprint of File No. 120)

Substitute Senate Bill No. 1138
As Amended by Senate Amendment
Schedules "A" and "C" and
House Amendment Schedule "A"

Approved by the Legislative Commissioner
May 30, 2013

AN ACT CONCERNING CONNECTICUT'S CLEAN ENERGY GOALS.

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

Section 1. Subdivision (26) of subsection (a) of section 16-1 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(26) "Class I renewable energy source" means (A) **[**energy**]** electricity derived from (i) solar power, (ii) wind power, (iii) a fuel cell, **[**methane gas from landfills,**]** (iv) geothermal, (v) landfill methane gas, anaerobic digestion or other biogas derived from biological sources, (vi) thermal electric direct energy conversion from a certified Class I renewable energy source, (vii) ocean thermal power, (viii) wave or tidal power, (ix) low emission advanced renewable energy conversion technologies, (x) a run-of-the-river hydropower facility **[**provided such facility**]** that began operation after July 1, 2003, and has a generating capacity of not more than **[**five megawatts, does not cause an appreciable change in the river flow, and began operation after July 1, 2003**]** thirty

megawatts, provided a facility that applies for certification under this clause after January 1, 2013, shall not be based on a new dam or a dam identified by the commissioner as a candidate for removal, and shall meet applicable state and federal requirements, including applicable site-specific standards for water quality and fish passage, or (xi) a **[**sustainable biomass facility with**]** biomass facility that uses sustainable biomass fuel and has an average emission rate of equal to or less than .075 pounds of nitrogen oxides per million BTU of heat input for the previous calendar quarter, except that energy derived from a **[**sustainable**]** biomass facility with a capacity of less than five hundred kilowatts that began construction before July 1, 2003, may be considered a Class I renewable energy source, or (B) any electrical generation, including distributed generation, generated from a Class I renewable energy source, provided, on and after January 1, 2014, any megawatt hours of electricity from a renewable energy source described under this subparagraph that are claimed or counted by a load-serving entity, province or state toward compliance with renewable portfolio standards or renewable energy policy goals in another province or state, other than the state of Connecticut, shall not be eligible for compliance with the renewable portfolio standards established pursuant to section 16-245a, as amended by this act;

Sec. 2. Subdivision (44) of subsection (a) of section 16-1 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(44) "Class III source" means the electricity output from combined heat and power systems with an operating efficiency level of no less than fifty per cent that are part of customer-side distributed resources developed at commercial and industrial facilities in this state on or after January 1, 2006, a waste heat recovery system installed on or after April 1, 2007, that produces electrical or thermal energy by capturing preexisting waste heat or pressure from industrial or commercial processes, or the electricity savings created in this state from conservation and load management programs begun on or after January 1, 2006, provided on and after January 1, 2014, no such

programs supported by ratepayers, including programs overseen by the Energy Conservation Management Board or third-party programs pursuant to section 16-245m, shall be considered a Class III source, except that any demand-side management project awarded a contract pursuant to section 16-243m shall remain eligible as a Class III source for the term of such contract;

Sec. 3. Subdivision (45) of subsection (a) of section 16-1 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(45) "Sustainable biomass fuel" means biomass that is cultivated and harvested in a sustainable manner. "Sustainable biomass fuel" does not mean construction and demolition waste, as defined in section 22a-208x, finished biomass products from sawmills, paper mills or stud mills, organic refuse fuel derived separately from municipal solid waste, or biomass from old growth timber stands, except where (A) such biomass is used in a biomass gasification plant that received funding prior to May 1, 2006, from the Clean Energy Fund established pursuant to section 16-245n, or (B) the energy derived from such biomass is subject to a long-term power purchase contract pursuant to subdivision (2) of subsection (j) of section 16-244c entered into prior to May 1, 2006; **[**, (C) such biomass is used in a renewable energy facility that is certified as a Class I renewable energy source by the authority until such time as the authority certifies that any biomass gasification plant, as defined in subparagraph (A) of this subdivision, is operational and accepting such biomass, in an amount not to exceed one hundred forty thousand tons annually, is used in a renewable energy facility that was certified as a Class I renewable energy source by the authority prior to December 31, 2007, and uses biomass, including construction and demolition waste as defined in section 22a-208x, from a Connecticut-sited transfer station and volume-reduction facility that generated biomass during calendar year 2007 that was used during calendar year 2007 to generate Class I renewable energy certificates, or (D) in the event there is no facility as described in subparagraph (A) or (C) of this subdivision accepting such biomass, in

an amount not to exceed one hundred forty thousand tons annually, is used in one or more other renewable energy facilities certified either as a Class I or Class II renewable energy source by the authority, provided such facilities use biomass, including construction and demolition waste as defined in said section 22a-208x, from a Connecticut-sited transfer station and volume-reduction facility that generated biomass during calendar year 2007 that was used during calendar year 2007 to generate Class I renewable energy certificates. Notwithstanding the provisions of subparagraphs (C) and (D) of this subdivision, the amount of biomass specified in said subparagraphs shall not apply to a biomass gasification plant, as defined in subparagraph (A) of this subdivision;**]**

Sec. 4. Subsection (a) of section 16-1 of the general statutes is amended by adding subdivision (53) as follows (*Effective from passage*):

(NEW) (53) "Large-scale hydropower" means any hydropower facility that (A) began operation on or after January 1, 2003, (B) is located in the New England Power Pool Generation Information System geographic eligibility area in accordance with Rule 2.3 of said system or an area abutting the northern boundary of the New England Power Pool Generation Information System geographic eligibility area that is not interconnected with any other control area that is not a part of the New England Power Pool Generation Information System geographic eligibility area, (C) delivers power into such geographic eligibility area, and (D) has a generating capacity of more than thirty megawatts.

Sec. 5. Section 16-245a of the general statutes is amended by adding subsection (h) as follows (*Effective from passage*):

(NEW) (h) On or before January 1, 2014, the Commissioner of Energy and Environmental Protection shall, in developing or modifying an Integrated Resources Plan in accordance with sections 16a-3a and 16a-3e, establish a schedule to commence on January 1, 2015, for assigning a gradually reduced renewable energy credit value

to all biomass or landfill methane gas facilities that qualify as a Class I renewable energy source pursuant to section 16-1, as amended by this act, provided this subsection shall not apply to anaerobic digestion or other biogas facilities, and further provided any reduced renewable energy credit value established pursuant to this section shall not apply to any biomass or landfill methane gas facility that has entered into a power purchase agreement (1) with an electric supplier or electric distribution company in the state of Connecticut on or before the effective date of this section, or (2) executed in accordance with section 6 or 8 of this act. The Commissioner of Energy and Environmental Protection may review the schedule established pursuant to this subsection in preparation of each subsequent Integrated Resources Plan developed pursuant to section 16a-3a and make any necessary changes thereto to ensure that the rate of reductions in renewable energy credit value for biomass or landfill methane gas facilities is appropriate given the availability of other Class I renewable energy sources.

Sec. 6. (NEW) (*Effective from passage*) On or after January 1, 2013, the Commissioner of Energy and Environmental Protection, in consultation with the procurement manager identified in subsection (l) of section 16-2 of the general statutes, the Office of Consumer Counsel and the Attorney General, may, in coordination with other states in the region of the regional independent system operator, as defined in section 16-1 of the general statutes, as amended by this act, or on the commissioner's own, solicit proposals, in one solicitation or multiple solicitations, from providers of Class I renewable energy sources, as defined in section 16-1 of the general statutes, as amended by this act, constructed on or after January 1, 2013. If the commissioner finds such proposals to be in the interest of ratepayers including, but not limited to, the delivered price of such sources, and consistent with the requirements to reduce greenhouse gas emissions in accordance with section 22a-200a of the general statutes, and in accordance with the policy goals outlined in the Comprehensive Energy Strategy, adopted pursuant to section 16a-3d of the general statutes, the commissioner

may select proposals from such resources to meet up to four per cent of the load distributed by the state's electric distribution companies. The commissioner may direct the electric distribution companies to enter into power purchase agreements for energy, capacity and environmental attributes, or any combination thereof, for periods of not more than twenty years. Certificates issued by the New England Power Pool Generation Information System for any Class I renewable energy sources procured under this section shall be sold in the New England Power Pool Generation Information System renewable energy credit market to be used by any electric supplier or electric distribution company to meet the requirements of section 16-245a of the general statutes, as amended by this act. Any such agreement shall be subject to review and approval by the Public Utilities Regulatory Authority, which review shall commence upon the filing of the signed power purchase agreement with the authority. The authority shall issue a decision on such agreement not later than thirty days after such filing. In the event the authority does not issue a decision within thirty days after such agreement is filed with the authority, the agreement shall be deemed approved. The net costs of any such agreement shall be recovered through a fully reconciling component of electric rates for all customers of electric distribution companies. Such costs may include reasonable costs incurred by electric distribution companies pursuant to this section.

Sec. 7. (NEW) (*Effective from passage*) On or after July 1, 2013, the Commissioner of Energy and Environmental Protection, in consultation with the procurement manager identified in subsection (l) of section 16-2 of the general statutes, the Office of Consumer Counsel and the Attorney General, may, in coordination with other states in the region of the regional independent system operator, as defined in section 16-1 of the general statutes, as amended by this act, or on the commissioner's own, solicit proposals, in one solicitation or multiple solicitations, from providers of Class I renewable energy sources, as defined in section 16-1 of the general statutes, as amended by this act, or verifiable large-scale hydropower, as defined in section 16-1 of the

general statutes, as amended by this act. If the commissioner finds such proposals to be in the interest of ratepayers, including, but not limited to, the delivered price of such sources, and consistent with the requirements to reduce greenhouse gas emissions in accordance with section 22a-200a of the general statutes, and in accordance with the policy goals outlined in the Comprehensive Energy Strategy, adopted pursuant to section 16a-3d of the general statutes, and section 129 of public act 11-80, including, but not limited to, base load capacity, peak load shaving and promotion of wind, solar and other renewable and low carbon energy technologies, the commissioner may select proposals from such resources to meet up to five per cent of the load distributed by the state's electric distribution companies. The commissioner may on behalf of all customers of electric distribution companies, direct the electric distribution companies to enter into power purchase agreements for energy, capacity and any environmental attributes, or any combination thereof, for periods of not more than (1) fifteen years, if any such agreement is with a provider of verifiable large-scale hydropower, or (2) twenty years, if any such agreement is with a provider of a Class I renewable energy source. Certificates issued by the New England Power Pool Generation Information System for any Class I renewable energy sources procured under this section shall be sold in the New England Power Pool Generation Information System renewable energy credit market to be used by any electric supplier or electric distribution company to meet the requirements of section 16-245a of the general statutes, as amended by this act. Any such agreement shall be subject to review and approval by the Public Utilities Regulatory Authority, which review shall (A) include a public hearing, and (B) be completed not later than sixty days after the date on which such agreement is filed with the authority. The net costs of any such agreement shall be recovered through a fully reconciling component of electric rates for all customers of electric distribution companies. Such costs may include the reasonable costs incurred by the electric distribution companies pursuant to this section.

Sec. 8. (NEW) (*Effective from passage*) On or after October 1, 2013, the Commissioner of Energy and Environmental Protection, in consultation with the procurement manager identified in subsection (l) of section 16-2 of the general statutes, the Office of the Consumer Counsel and the Attorney General, may solicit proposals, in one solicitation or multiple solicitations, from providers of run-of-the-river hydropower, landfill methane gas or biomass, provided such source meets the definition of a Class I renewable energy source pursuant to section 16-1 of the general statutes, as amended by this act. In making any selection of such proposals, the commissioner shall consider factors, including, but not limited to (1) whether the proposal is in the interest of ratepayers, including, but not limited to, the delivered price of such sources, (2) the emissions profile of a relevant facility, (3) any investments made by a relevant facility to improve the emissions profile of such facility, (4) the length of time a relevant facility has received renewable energy credits, (5) any positive impacts on the state's economic development, (6) whether the proposal is consistent with requirements to reduce greenhouse gas emissions in accordance with section 22a-200a of the general statutes, and (7) whether the proposal is consistent with the policy goals outlined in the Comprehensive Energy Strategy adopted pursuant to section 16a-3d of the general statutes. The commissioner may select proposals from such resources to meet up to four per cent of the load distributed by the state's electric distribution companies. The commissioner may direct the electric distribution companies to enter into power purchase agreements for energy, capacity and environmental attributes, or any combination thereof, for periods of not more than ten years on behalf of all customers of the state's electric distribution companies. Certificates issued by the New England Power Pool Generation Information System for any Class I renewable energy sources procured under this section shall be sold in the New England Power Pool Generation Information System renewable energy credit market to be used by any electric supplier or electric distribution company to meet the requirements of section 16-245a of the general statutes, as amended by this act. Any such agreement shall be subject to review and

approval by the Public Utilities Regulatory Authority, which review shall be completed not later than sixty days after the date on which such agreement is filed with the authority. The net costs of any such agreement shall be recovered through a fully reconciling component of electric rates for all customers of electric distribution companies. Such costs may include the reasonable costs incurred by the electric distribution companies pursuant to this section.

Sec. 9. (NEW) (*Effective from passage*) (a) During the calendar year commencing January 1, 2014, and continuing each calendar year thereafter, if alternative compliance payments pursuant to subsection (j) of section 16-244c of the general statutes, as amended by this act, or subsection (k) of section 16-245 of the general statutes, as amended by this act, are made for failure to meet the renewable portfolio standards, there shall be a presumption for the calendar year the alternative compliance payments are made that there is an insufficient supply of Class I renewable energy sources, as defined in section 16-1 of the general statutes, as amended by this act, for electric suppliers or electric distribution companies to comply with the requirements of section 16-245a of the general statutes, as amended by this act.

(b) In the event there is a presumption of insufficient supply of Class I renewable energy sources pursuant to subsection (a) of this section for the calendar year the alternative compliance payments are made, the Commissioner of Energy and Environmental Protection may determine whether such payments resulted from a material shortage of Class I renewable energy sources. In making this determination, the commissioner shall consider whether such payments resulted from intentional or negligent action by an electric supplier or electric distribution company not to purchase renewable energy credits available in the New England Power Pool Generation Information System market.

(c) In the event there is such a presumption pursuant to subsection (a) of this section and the commissioner finds that the alternative compliance payments were due to a material shortage of Class I

renewable energy sources pursuant to subsection (b) of this section, the commissioner shall determine the adequacy, or potential adequacy, of Class I renewable energy sources to meet the succeeding years' renewable portfolio standard. In making this determination, the commissioner may consider (1) future cost and availability of certificates issued by the New England Power Pool Generation Information System based on the status of projects under development in the region, (2) future requirements of certificates issued by the New England Power Pool Generation Information System in other states, and (3) the projected compliance costs of Class I renewable energy sources.

(d) In the event there is such a presumption pursuant to subsection (a) of this section and the commissioner finds a material shortage of Class I renewable energy sources pursuant to subsection (b) of this section, and in addition to determining the adequacy pursuant to subsection (c) of this section, the commissioner shall, in consultation with the procurement manager identified in subsection (l) of section 16-2 of the general statutes, the Office of Consumer Counsel and the Attorney General, solicit proposals from providers of Class I renewable energy sources, as defined in section 16-1 of the general statutes, as amended by this act, operational as of the date that such solicitation is issued. If the commissioner, in consultation with the procurement manager identified in subsection (l) of section 16-2 of the general statutes, finds such proposals to be in the interest of ratepayers including, but not limited to, the delivered price of such sources, and consistent with the requirements to reduce greenhouse gas emissions in accordance with section 22a-200a of the general statutes, and in accordance with the policy goals outlined in the Comprehensive Energy Strategy, adopted pursuant to section 16a-3d of the general statutes, the commissioner, in consultation with the procurement manager identified in subsection (l) of section 16-2 of the general statutes, may select proposals from such sources to meet up to the amount necessary to ensure an adequate incremental supply of Class I renewable energy sources to rectify any projected shortage of Class I

renewable energy supply identified pursuant to subsection (c) of this section. The commissioner shall direct the electric distribution companies to enter into power purchase agreements for energy, capacity and environmental attributes, or any combination thereof, from such selected proposals for periods of not more than ten years. Certificates issued by the New England Power Pool Generation Information System for any Class I renewable energy sources procured under this section shall be sold in the New England Power Pool Generation Information System renewable energy credit market to be used by any electric supplier or electric distribution company to meet the requirements of section 16-245a of the general statutes, as amended by this act. Any such agreement shall be subject to review and approval by the Public Utilities Regulatory Authority, which review shall commence upon the filing of the signed power purchase agreement with the authority. The authority shall issue a decision on such agreement not later than thirty days after such filing. In the event the authority does not issue a decision within thirty days after such agreement is filed with the authority, the agreement shall be deemed approved. The net costs of any such agreement shall be recovered through a fully reconciling component of electric rates for all customers of electric distribution companies. Such costs may include reasonable costs incurred by electric distribution companies pursuant to this section.

(e) Notwithstanding subsection (b) of section 16-245a of the general statutes, as amended by this act, in the event that (1) for any calendar year commencing on or after January 1, 2014, there is such a presumption pursuant to subsection (a) of this section, (2) the commissioner finds material shortage of Class I renewable energy sources pursuant to subsection (b) of this section, (3) there is a determination of inadequacy pursuant to subsection (c) of this section, and (4) any contracts for Class I renewable energy sources approved by the Public Utilities Regulatory Authority pursuant to subsection (d) of this section yield an amount of Class I renewable energy sources that is insufficient to rectify any projected shortage pursuant to

subsection (c) of this section, then commencing on or after January 1, 2016, the commissioner may allow not more than one percentage point of the Class I renewable portfolio standards established pursuant to section 16-245a of the general statutes, as amended by this act, effective for the succeeding and subsequent calendar years to be satisfied by large-scale hydropower procured pursuant to section 7 of this act. The requirements applicable to electric suppliers and electric distribution companies pursuant to section 16-245a of the general statutes, as amended by this act, shall consequently be reduced by not more than one percentage point in proportion to the commissioner's action, provided (A) the commissioner shall not allow a total of more than five percentage points of the Class I renewable portfolio standard to be met by large-scale hydropower by December 31, 2020, and (B) no such large-scale hydropower shall be eligible to trade in the New England Power Pool Generation Information System renewable energy credit market.

Sec. 10. Subdivision (1) of subsection (j) of section 16-244c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(j) (1) Notwithstanding the provisions of subsection (d) of this section regarding an alternative transitional standard offer option or an alternative standard service option, an electric distribution company providing transitional standard offer service, standard service, supplier of last resort service or back-up electric generation service in accordance with this section shall contract with its wholesale suppliers to comply with the renewable portfolio standards. The Public Utilities Regulatory Authority shall annually conduct **[**a contested case, in accordance with the provisions of chapter 54,**]** an uncontested proceeding in order to determine whether the electric distribution company's wholesale suppliers met the renewable portfolio standards during the preceding year. On or before December 31, 2013, the authority shall issue a decision on any such proceeding for calendar years up to and including 2012, for which a decision has not already been issued. Not later than December 31, 2014, and

annually thereafter, the authority shall, following such proceeding, issue a decision as to whether the electric distribution company's wholesale suppliers met the renewable portfolio standards during the preceding year. An electric distribution company shall include a provision in its contract with each wholesale supplier that requires the wholesale supplier to pay the electric distribution company an amount of five and one-half cents per kilowatt hour if the wholesale supplier fails to comply with the renewable portfolio standards during the subject annual period. The electric distribution company shall promptly transfer any payment received from the wholesale supplier for the failure to meet the renewable portfolio standards to the Clean Energy Fund for the development of Class I renewable energy sources, **[**. Any payment made pursuant to this section shall not be considered revenue or income to the electric distribution company.**]** provided, on and after the effective date of this section, any such payment shall be refunded to ratepayers by using such payment to offset the costs to all customers of electric distribution companies of the costs of contracts entered into pursuant to sections 16-244r and 16-244t. Any excess amount remaining from such payment shall be applied to reduce the costs of contracts entered into pursuant to subdivision (2) of this subsection, and if any excess amount remains, such amount shall be applied to reduce costs collected through nonbypassable, federally-mandated congestion charges, as defined in section 16-1, as amended by this act.

Sec. 11. Subsection (k) of section 16-245 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(k) Any licensee who fails to comply with a license condition or who violates any provision of this section, except for the renewable portfolio standards contained in subsection (g) of this section, shall be subject to civil penalties by the Public Utilities Regulatory Authority in accordance with section 16-41, or the suspension or revocation of such license or a prohibition on accepting new customers following a hearing that is conducted as a contested case in accordance with

chapter 54. Notwithstanding the provisions of subsection (d) of section 16-244c regarding an alternative transitional standard offer option or an alternative standard service option, the authority shall require a payment by a licensee that fails to comply with the renewable portfolio standards in accordance with subdivision (4) of subsection (g) of this section in the amount of five and one-half cents per kilowatt hour. On or before December 31, 2013, the authority shall issue a decision, following an uncontested proceeding, on whether any licensee has failed to comply with the renewable portfolio standards for calendar years up to and including 2012, for which a decision has not already been issued. On and after the effective date of this section, the Public Utilities Regulatory Authority shall annually conduct an uncontested proceeding in order to determine whether any licensee has failed to comply with the renewable portfolio standards during the preceding year. Not later than December 31, 2014, and annually thereafter, the authority shall, following such proceeding, issue a decision as to whether the licensee has failed to comply with the renewable portfolio standards during the preceding year. The authority shall allocate such payment to the Clean Energy Fund for the development of Class I renewable energy sources, provided, on and after the effective date of this section, any such payment shall be refunded to ratepayers by using such payment to offset the costs to all customers of electric distribution companies of the costs of contracts entered into pursuant to sections 16-244r and 16-244t. Any excess amount remaining from such payment shall be applied to reduce the costs of contracts entered into pursuant to subdivision (2) of subsection (j) of section 16-244c, and if any excess amount remains, such amount shall be applied to reduce costs collected through nonbypassable, federally-mandated congestion charges, as defined in section 16-1, as amended by this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*from passage*	16-1(a)(26)
Sec. 2	*from passage*	16-1(a)(44)
Sec. 3	*from passage*	16-1(a)(45)

Sec. 4	*from passage*	16-1(a)
Sec. 5	*from passage*	16-245a
Sec. 6	*from passage*	New section
Sec. 7	*from passage*	New section
Sec. 8	*from passage*	New section
Sec. 9	*from passage*	New section
Sec. 10	*from passage*	16-244c(j)(1)
Sec. 11	*from passage*	16-245(k)

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 14 $	FY 15 $
All	Various - Savings	See Below	See Below

Municipal Impact:

Municipalities	Effect	FY 14 $	FY 15 $
All Municipalities	Savings	See Below	See Below

Explanation

The bill modifies the renewable portfolio standard (RPS) that electric utilities and suppliers must achieve. These modifications include expanded types of hydropower and biogas resources that count as Class I resources as well as create a new class that includes certain large-scale hydropower resources. It is anticipated that expanding the resources that count as a Class I resource and creating a new class would result in a savings to ratepayers, including the state and municipalities.

The bill also allows the commissioner of the Department of Energy and Environmental Protection (DEEP) to solicit proposals and enter into long-term agreements with certain renewable energy source providers for energy, capacity, and environmental attributes. These agreements are subject to the Public Utility Review Authority (PURA) review and approval which includes a public hearing. It is anticipated that this will result in a short term savings to the state as it is expected that the rates would be less than the current market value. The costs associated with a PURA review and public hearings are anticipated to

be minimal. These costs are required to be recovered through a reconciling component on electric rates, including the state and municipalities.

The bill also changes how certain compliance payments and civil penalties are handled.[1] Under current law, these payments are used for the development of Class I renewable energy sources. The bill requires these payments to be used to offset ratepayer's costs for certain contracts prior to being used for the development of Class I renewable energy sources. This provision will result in reduced costs to ratepayers, including the state and municipalities.

Senate "A" modifies when small scale hydropower count as a Class I resource, allows large scale hydropower to count towards the RPS only under specified circumstances, and allows alternative compliance payment revenues to be used to reduce electric rates. These provisions have a minimal fiscal impact.

Senate "C" requires PURA to hold public hearings when reviewing the long-term agreements entered into by DEEP and requires the review to be completed within 60 days after the agreement is filed with PURA. Senate "C" has a minimal fiscal.

House "A" strikes the underlying bill as amended and its associated fiscal impact, thus becoming the bill. The House "A" fiscal impact is described above.

The Out Years

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

[1] To-date in FY 13, the Clean Energy Fund has received $215,000 in compliance payments for 2009 noncompliance of electric companies and $2,000 in civil penalties from competitive suppliers.

OLR Bill Analysis

sSB 1138 (as amended by House "A" and Senate "A" and "C")*

AN ACT CONCERNING CONNECTICUT'S CLEAN ENERGY GOALS.

SUMMARY:

This bill modifies the state's renewable portfolio standard (RPS), which requires electric companies and competitive suppliers to get part of their power from renewable resources. Among other things, it:

1. expands the types of resources that count as Class I resources used to meet part of the RPS and

2. requires that the value of renewable energy credits (RECs) associated with certain biomass facilities be reduced. (Suppliers and companies use RECs to meet their RPS obligations.)

The bill also allows the Department of Energy and Environmental Protection (DEEP) commissioner to (1) solicit proposals from class I and large-scale hydropower generators and (2) direct the electric companies to enter into agreements with them, subject to review and approval by the Public Utilities Regulatory Authority (PURA). It allows large scale hydropower to count towards the RPS under certain conditions.

The bill requires that PURA determine whether a supplier or company has met its RPS obligations in an uncontested, rather than contested, proceeding. It requires PURA, by December 31, 2013, to issue a decision on those proceedings for calendar years through 2012 that have not already been issued. It requires that subsequent determinations be made by December 31, 2014 and annually thereafter.

By law, if a supplier or company does not meet its RPS obligations, it must make an alternative compliance payment (ACP). Under current law, ACP revenues must go to the Clean Energy Finance and Investment Authority to develop new Class I resources. The bill instead requires that these revenues be used to reduce electric rates.

*Senate Amendment "A" among other things:

1. requires that the value of RECs associated with certain biomass facilities be reduced, rather than establishing additional emission criteria for these facilities;

2. maintains the current RPS targets, rather than increasing the targets and establishing a new type of resources, including large scale hydropower, eligible for the RPS;

3. modifies when small scale hydropower counts as a Class I resource;

4. adds the request for proposals for specified Class I resources;

5. allows large scale hydropower to count towards the RPS only under specified circumstances; and

6. requires ACP revenues to be used to reduce electric rates.

*Senate Amendment "C" requires PURA to hold a hearing in reviewing the results of one of the three requests for proposals.

*House Amendment "A" (1) reduces, from 20 to 15 years, the maximum term of contracts with large scale hydropower facilities; (2) limits the amount of power that can be purchased under the RFP from such facilities and Class I resources to 5% of the state's electric demand; (3) requires an additional RFP before any power purchased from large scale hydropower facilities can count against the RPS; (4) limits the RFP for designated Class I resources to 4% of the state's electric demand but eliminates a 10-year maximum contract term; (5) expands the factors that DEEP must consider as part of this RFP; (6)

requires PURA to determine whether a company or supplier has met its RPS obligation in an uncontested proceeding and requires it to issue a decision by December 31, 2013 on any outstanding determinations; and (7) makes minor related changes.

EFFECTIVE DATE: Upon passage

§§ 1-3, 5 — WHAT COUNTS AS A RENEWABLE RESOURCE

Under the RPS, electric companies and suppliers must obtain part of their power from (1) Class I resources, such as wind and solar power; (2) either Class I or Class II resources (e.g., power from resource recovery facilities); and (3) Class III resources (e.g., power from cogeneration facilities or savings from certain energy conservation programs). They meet their obligations by buying RECs on the regional market, which can be sold separately from the power generated by these resources, and rights to the facilities' generating capacity. (Capacity rights are analogous to an attorney's retainer, while power rates are analogous to his or her hourly rate.)

§ 1 — Hydropower

The bill expands the scope of Class I resources with regard to hydropower facilities. To be eligible under current law, a facility must be run-of-river and have a capacity of up to 5 megawatts (MW) and may not cause an appreciable change in the river flow. The bill increases this limit to 30 MW and eliminates the requirement that the facility not cause an appreciable change in the river flow. However, for all facilities that apply for certification as Class I resources after January 1, 2013, the facility may not be on a (1) new dam or (2) dam the commissioner has identified as a candidate for removal. In addition, such facilities must meet applicable state and federal requirements, including applicable site-specific standards for water quality and fish passage.

§§ 3, 5 — Biomass

RECs for Biomass Facilities. The bill requires the DEEP commissioner, by January 1, 2014, to establish a schedule gradually

reducing REC values for biomass or landfill methane gas facilities that qualify as Class I resources, other than anaerobic digestion or other biogas facilities. He must do this in developing or modifying the integrated resources plan. The commissioner may review the schedule in preparing each subsequent integrated resources plan and make any necessary changes to it to ensure that the rate of reductions is appropriate given the availability of other Class I resources. The schedule takes effect on January 1, 2015.

The reduction does not apply to any biomass or landfill methane gas facility that has entered into a power purchase agreement (1) with an electric supplier or electric company in the state by the bill's passage date or (2) that is executed under the request for proposals described below.

Eligible Biomass Facilities. The bill narrows the types of facilities where certain types of biomass can be used to produce power that counts as a Class I resource. By law, certain types of biomass, such as construction and demolition waste and finished products from sawmills, generally do not count as sustainable biomass, and the power they produce does not count as a Class I resource. But, under current law, these types of biomass can be used in four types of facilities:

1. those that received funding from the Clean Energy Fund before May 1, 2006;

2. those that have long-term contracts with electric companies under the Project 150 program;

3. facilities that meet specified requirements, until the plants identified in category 1 go into operation; or

4. if no facilities in categories 1 or 3 are accepting such biomass, other facilities that meet different criteria.

The bill eliminates the second two exceptions, limiting the eligibility

to use biomass such as construction and demolition wood to facilities in the first two categories. By law, biomass facilities that do not meet the Class I criteria, but meet other criteria, are considered Class II resources.

§ 1 — Class I Provisions

The bill classifies as Class I resources (1) electricity from geothermal resources and (2) thermal electric direct energy conversion from a certified Class I resource. By law, methane gas from landfills is a Class I resource; the bill additionally includes other biogas derived from biological processes, such as anaerobic digestion.

Starting January 1, 2014, the bill makes electrical generation from Class I resources ineligible to count towards Connecticut RPS if a load-serving entity (e.g., an electric company), province, or state claims or counts it to comply with another state's RPS or renewable energy goals. Most of the states in the northeast have an RPS; Vermont has renewable energy goals.

§ 2 — Class III

The bill limits the types of resources that count as Class III. Under current law, these resources are the (1) energy produced by certain cogeneration or waste heat recovery facilities and (2) electric savings produced by conservation programs that began on or after January 1, 2006. Starting January 1, 2014, the bill restricts eligibility to those resources that have not received support from ratepayers. However, this provision does not apply to demand-side management (conservation) projects awarded a contract under an existing program, which continue to count as Class III resources for the term of the contract.

§§ 6-8 — REQUESTS FOR PROPOSALS

§ 6 — New Class I Facilities

Starting January 1, 2013, the bill allows the DEEP commissioner to solicit proposals from providers of Class I renewable energy sources built on or after January 1, 2013. He must do this in conjunction with

the (1) state official who procures power for the standard service that electric companies provide to customers who have not chosen competitive suppliers, (2) Office of Consumer Counsel (OCC), and (3) attorney general (AG). He may do this in coordination with other New England states.

If the commissioner finds the proposals are (1) in ratepayers' interest and (2) consistent with the policy goals outlined in the Comprehensive Energy Strategy and the state's goals to reduce greenhouse gas emissions, he may select proposals to serve up to 4% of power distributed by the electric companies. He may direct the electric companies to enter into agreements for up to 20 years with the providers. The agreements must be for energy, generating capacity, and environmental attributes (e.g., the RECs used to comply with the RPS), or any combination of them. The agreements are subject to PURA review and approval. A review must start when an agreement is filed with PURA. If PURA does not issue a decision within 30 days, the agreement is deemed approved.

The RECs that are bought under the agreements must be sold in the regional market to be used by suppliers and electric companies to meet their Connecticut RPS requirements.

The net costs of the agreements must be recovered through a fully reconciling component of electric rates for all of the electric companies' customers. These costs may include reasonable costs incurred by electric companies under this provision.

§ 7 — Class I and Large Scale Hydropower

The bill also allows the commissioner, starting July 1, 2013, in conjunction with the procurement official, OCC, and the AG, to solicit proposals from providers of Class I resources built before January 1, 2013 or large-scale hydropower. The bill defines the latter as any hydropower that:

1. began operation on or after January 1, 2003;

2. is in the area that is eligible to participate in the New England REC market (New Brunswick, New England, New York state, and Quebec) or an area abutting the northern boundary of this area that is not connected with any other control area (e.g., Labrador and Newfoundland);

3. delivers power into the New England REC market area; and

4. has a generating capacity of more than 30 megawatts.

To be eligible, hydropower must be "verifiable," which the bill does not define. The commissioner can conduct the solicitation in coordination with other New England states.

If the commissioner finds the proposals meet certain conditions, he may direct the electric companies, on behalf of all their customers, to enter into agreements for energy, capacity and environmental attributes, or any combination of them, for periods of no more than 20 years (15 years for large scale hydropower). The conditions are that the proposals be:

1. in ratepayers' interest,

2. consistent with the (a) policy goals outlined in the Comprehensive Energy Strategy and (b) state's goals to reduce greenhouse gas emissions, and

3. in accordance with the state's energy policy goals.

The latter include such things as peak load shaving and the promotion of wind, solar, and other renewable energy technologies. The commissioner may select proposals that meet these conditions to meet up to 5% of the load distributed by the electric companies.

PURA must (1) hold a public hearing and (2) review and approve any agreement within 60 days after receiving it.

The RECs that are bought under the agreements must be sold in the

regional market to be used by suppliers and electric companies to meet their Connecticut RPS requirements.

The net costs of the agreements must be recovered through a fully reconciling component of electric rates for all electric company customers. These costs may include the reasonable costs incurred by the electric companies under this provision.

§ 8 — Specified Class I Resources

The bill allows the DEEP commissioner, on or after October 1, 2013, to solicit proposals from providers of Class I run-of-the-river hydropower, landfill methane gas, or biomass resources for up to 10 years. He must do this in conjunction with the procurement official, OCC, and the AG.

If the commissioner finds the proposals meet certain conditions, he may direct the electric companies to enter into agreements for energy, capacity and environmental attributes, or any combination of them, to meet up to 4% of the load distributed by the electric companies. The commissioner, in reviewing proposals, must consider:

1. whether the proposal is in ratepayers' interest, including the delivered price for the energy and other products;
2. the facility's emissions profile and any investments made to improve its emissions profile;
3. the length of time a facility has received RECs;
4. any positive impacts on the state's economic development; and
5. if the proposal is consistent with the (a) policy goals in the Comprehensive Energy Strategy and (b) the state's goals to reduce greenhouse gas emissions.

PURA must review and approve any agreement within 60 days after receiving it.

The RECs that are bought under the agreements must be sold in the regional market to be used by suppliers and electric companies to meet their Connecticut RPS requirements. The net costs of the agreements must be recovered through a fully reconciling component of electric rates for all electric company customers. These costs may include the reasonable costs incurred by the electric companies under this provision.

§ 9 — ALLOWING LARGE SCALE HYDROPOWER TO COUNT TOWARDS THE RPS

By law, if an electric company or competitive supplier does not meet its RPS obligation, it must make an alternative compliance (ACP) of 5.5 cents for each kilowatt-hour of its shortfall.

Under the bill, if in 2014 or any subsequent calendar year, a company or supplier makes an ACP, there is a presumption for the calendar year in which the payments are made that there is an insufficient supply of Class I renewable energy sources to comply with the RPS. If this presumption applies, the DEEP commissioner may determine whether the payments resulted from a material shortage of Class I resources. In making this determination, he must consider whether the payments resulted from intentional or negligent action by a supplier or electric company to purchase RECs available in the market.

If the commissioner finds that the payments were due to a material shortage of Class I resources, he must determine the actual or potential adequacy of Class I resources to meet the RPS in the following year. In making this determination, he may consider the:

1. future cost and availability of REC certificates in the New England market based on the status of projects under development in the region,

2. future requirements of certificates issued in this market, and

3. projected compliance costs of Class I resources.

If (1) the presumption applies and (2) the commissioner finds a material shortage of Class I renewable energy sources, in addition to determining the future adequacy of such resources, he must solicit proposals from Class I providers that are operational when the solicitation is issued. He must do so in consultation with the procurement manager, OCC, and the A G.

If the commissioner, in consultation with the procurement manager, finds the proposals (including the delivered price) to be in ratepayers' interest and consistent with the state's greenhouse gas emissions reduction goals and the policy goals in the Comprehensive Energy Strategy, the commissioner, in consultation with the procurement manager, may select proposals to fill the identified shortage. The commissioner must direct the electric companies to enter into power purchase agreements for energy, capacity and environmental attributes, or any combination, from the selected proposals for periods of up to 10 years. The purchased Class I RECs must be sold in the regional REC market to be used by any supplier or electric company to meet its RPS obligations.

The agreements are subject to review and approval by PURA, which must begin when the signed agreements are filed with it. PURA must issue a decision on an agreement within 30 days of its filing, if it does not, the agreement is considered approved.

The net costs of the agreements must be recovered through a fully reconciling component of electric rates for all customers of electric companies. These costs may include reasonable costs incurred by electric companies.

If the presumption applies and the commissioner finds (1) a material shortage of Class I resources and (2) an inadequacy of future Class I resources, on or after January 1, 2016, he may allow up to one percentage point of the Class I RPS for following calendar years to be satisfied by large-scale hydropower procured under the bill. The RPS is thus reduced by not more than one percentage point in proportion to

the commissioner's action. But (1) the commissioner may not allow a total of more than five percentage points of the Class I RPS to be met by large-scale hydropower by December 31, 2020 and (2) the large-scale hydropower may not participate in the New England REC market. (This provision presumably applies only to the power sold in Connecticut.)

§§ 10, 11 — USE OF ACP REVENUES

Under current law, ACP revenues must go to the Clean Energy Finance and Investment Authority to develop new Class I resources. The bill instead requires that these revenues be used to offset existing ratepayer costs. Specifically, the bill requires, starting January 1, 2014, that these payments be first refunded to ratepayers by using them to offset the costs to all customers of electric companies of the costs of long-term contracts with zero- and low-emission renewable energy generators under two existing programs. Any remaining amount must be applied to reduce the costs of contracts under another existing program. If any amount remains, it must be applied to reduce costs collected through non-bypassable, federally mandated congestion charges on electric bills.

COMMITTEE ACTION

Energy and Technology Committee

Joint Favorable Substitute
Yea 16 Nay 8 (03/21/2013)