



## ENERGY IMPROVEMENT DISTRICTS

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### QUESTION

Can a municipality using [chapter 132](#) of the statutes (CGS § [8-186](#) et seq.) designate a nonprofit corporation as its energy resource developer? What other options are available to achieve this goal?

The Office of Legislative Research is not authorized to provide legal opinions and this report should not be considered one.

### SUMMARY

[Chapter 132](#) allows municipalities to establish development agencies, which can be nonprofit development corporations, to undertake a broad range of economic development activities. It appears that the chapter could be interpreted to allow a municipality to designate a nonprofit corporation to be its energy resource developer, although the word "energy" does not appear in this chapter. The chapter could be amended to specifically allow development agencies to (1) undertake energy developments as one of their business purposes and (2) designate nonprofit corporations to develop energy facilities.

Another alternative would be for the municipality to establish an energy improvement district under CGS § [32-80a](#) et seq., whose role is to develop and finance specified types of energy projects. The law allows the district to enter into contracts and buy or lease energy facilities. It appears that a district could contract with a nonprofit corporation to develop facilities under these provisions.

Other alternatives under which a municipality could work with a nonprofit corporation to develop energy resources include taking advantage of the (1) microgrid grant and loan program, (2) law that permits municipalities to participate in virtual net metering, or (3) electric efficiency partners program.

## CHAPTER 132

CGS § [8-188](#) allows a municipality to establish a development agency, which can be a nonprofit development corporation. The agency may initiate a development project by preparing a plan that meets the criteria specified in CGS § [8-189](#), including making a finding that the land and buildings in the project area will be used principally for industrial or business purposes. Under the law, “development project” means a project conducted by a municipality to assemble, improve, and dispose of land or buildings, or both to be used principally for industrial or business purposes. “Business purpose” includes any commercial, financial, or retail enterprise and includes any property that produces income. Thus, it appears that a nonprofit development corporation acting as a development agency could improve property by developing an income-generating energy facility.

The development agency can acquire property by several means, including by eminent domain under specified circumstances. It can issue bonds backed by the revenues generated by the project.

Since municipalities have the power to enter into contracts pursuant to CGS § [7-148](#), it also appears that a municipality could contract with a nonprofit corporation in connection with the exercise of its powers under [chapter 132](#).

## OTHER OPTIONS

### ***Energy Improvement Districts***

Under CGS § [32-80a](#) et seq., any municipality may, by vote of its legislative body, establish an energy improvement district that may include the entire municipality. The district must be administered by a board whose members are appointed by the municipality’s chief elected official. After the district is established, the municipality’s chief elected official must notify by mail each property owner in the district, who may record on the municipality’s land records his or her decision to participate in the district.

The board must fund distributed resources in the district consistent with a comprehensive plan the board has prepared to develop and finance these resources. These include a variety of renewable resources, cogeneration systems, and microgrids. The latter are groups of interconnected electricity users and generators that can operate as either a part of the larger grid or independent of it, in “island mode.”

The board may, among other things:

1. determine the location, type, size, and construction of distributed resources, subject to the approval of relevant federal, state, and local agencies;
2. operate and maintain distributed resources it owns or leases;
3. hire staff;
4. set the rates of the resources; and
5. enter into contracts and leases, make loans, and execute instruments necessary to carry out its duties.

On the other hand, the district cannot act as an electric company or a municipal electric utility. It cannot distribute power on electric lines or sell power outside of the district. Nor can the district acquire property by eminent domain.

The board, with the approval of the municipality's legislative body, may issue revenue bonds to pay the costs of acquiring, purchasing, constructing, or improving distributed resources projects; acquiring land and equipment for a project; or any other authorized purpose. The bonds may also be secured by a pledge of any grant or contribution from a participating municipality, state or federal agency, or private party.

It appears that, under existing law, a district could contract with a nonprofit corporation to develop the distributed resources, which the district would then buy or lease. To date, Ansonia, Bridgeport, Stamford, and Wethersfield have established districts, although it does not appear that any of the districts have developed energy facilities to date.

### ***Microgrid Program***

CGS § [16-243y](#) requires the Department of Energy and Environmental Protection (DEEP) to establish a microgrid grant and loan pilot program to support local distributed energy generation for critical facilities. For purposes of this program, eligible generation facilities are those with a capacity of up to 65 megawatts (MW) located on the premises of a retail electric customer. (This is the amount of generation needed to serve about 65,000 people.) Critical facilities include such things as police and fire stations, commercial areas of a municipality, a municipal center as identified by the municipality's chief elected official, or any other facility or area DEEP identifies as critical.

DEEP must develop and issue a request for proposals from municipalities, electric companies, energy improvement districts (described above), and private entities seeking to apply for this assistance. Any entity eligible to submit a proposal may collaborate with any other entities in submitting a proposal. Thus, it appears that a municipality could submit an application with a nonprofit energy developer.

The assistance provided under the program can only be used to help recipients with the cost of design, engineering services, and interconnection infrastructure for a microgrid. The Clean Energy Finance and Investment Authority can help provide financing for onsite power generation, thermal energy distribution infrastructure (e.g., steam lines), and end use facility improvements required to implement a cost-effective microgrid.

The program is in its third round. In the frequently asked questions [webpage](#) for the first round, DEEP noted that it would give preference to microgrids that combine critical commercial and municipal facilities. Further information on the program is available at [http://www.ct.gov/deep/cwp/view.asp?a=4405&Q=508780&deepNav\\_GID=2121](http://www.ct.gov/deep/cwp/view.asp?a=4405&Q=508780&deepNav_GID=2121).

### ***Virtual Net Metering***

Any electric company customer who owns a class I renewable resource (e.g., a photovoltaic system) receives a net metering credit on his or her electric bill when the resource produces more power than the customer uses in a billing period. In effect, the customer's meter runs backwards when the resource generates surplus power. The credit, which is tied to the electric company's retail rate, rolls over from month to month. At the end of each 12 months, if the customer still has a credit, he or she is paid for it at the company's wholesale rate.

CGS § [16-244u](#) makes municipalities and certain other customers eligible for virtual net metering, which allows them to share the billing credit among electric accounts. For example, a town could install a photovoltaic system on the roof of a school and share the billing credits the system produces with a fire station. This increases the likelihood that the customer will fully utilize its credits (paid at the retail rate) during a year, and therefore not have any remaining credits at the end of the year, for which it would be paid at the wholesale rate.

The law allows municipal customers to (1) participate in virtual net metering for class III resources, such as cogeneration, as well as class I resources and (2) lease the renewable resource or enter into a long-term contract for it.

By law, municipalities can share the billing credit with no more than five other municipal accounts and up to five additional non-state or municipal critical facilities connected to a microgrid.

The virtual net metering credit goes against the generation service charge component of electric bills (the cost of the power itself) and a declining percentage of the distribution and transmission charges. The percentage is 80% until July 1, 2014, 60% for July 2, 2014 through July 1, 2015, and 40% starting July 2, 2015.

A municipality could use a nonprofit corporation in a virtual net meter project in a number of ways, including using a nonprofit corporation to develop eligible energy resources and leasing them or selling the power they produce to the municipality.

### ***Electric Efficiency Partners Program***

This program, established under CGS § [16-243v](#), provides a mechanism for electric company customers (including municipalities) to work with entities that provide “enhanced demand-side management technologies” to obtain funding for these technologies. The technologies, which must be approved by the Public Utilities Regulatory Authority (PURA), include renewable on-site generation as well as energy conservation technologies. The entity can be a corporation (apparently including a nonprofit corporation) or any other type of person, other than an electric company.

Under the program, eligible persons can seek PURA approval and funding as a partner by showing adequate financial resources, managerial ability, and technical competence. The application must describe the services and PURA-approved technologies that the partner will buy or provide and the amount of funding it is seeking. Partners can receive funding only if chosen in a request for proposals conducted by PURA, subject to a cost-benefit test.

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