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## OLR Bill Analysis

### sHB 6764

#### ***AN ACT CONCERNING A SOLAR UNIFORM CAPACITY TAX AND MODIFICATIONS TO THE STATE'S RENEWABLE ENERGY PROGRAMS.***

#### **SUMMARY**

This bill exempts certain solar facilities larger than 25 kilowatts (kW) in capacity from the property tax and establishes a “solar uniform capacity tax” for facility owners. The bill requires the Department of Revenue Services (DRS) commissioner to collect the tax and deposit half of received funds into the General Fund and half into a new Solar Uniform Capacity Tax Account that provides financial assistance to municipalities in proportion to their share of the state’s total solar capacity.

The bill also expands the Non-Residential Energy Solutions (NRES) program by expanding the yearly amount of capacity in megawatts (MW) available for zero-emissions projects from 100 to 200 MW (though the bill appears to keep a 160 MW aggregate annual cap for NRES and the Shared Clean Energy Facilities (SCEF) program). The bill makes other changes affecting the NRES and SCEF programs, including (1) allowing unused capacity under a program’s annual cap to be reallocated to other programs in certain cases and (2) changing the income eligibility for SCEF capacity set aside for low- and moderate-income customers (see BACKGROUND).

The bill requires the Department of Energy and Environmental Protection (DEEP) to submit two reports to the Energy and Technology Committee by February 1, 2024, related to land use and solar facilities with capacities of two or more megawatts.

Lastly, the bill makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2023, except DEEP's reporting requirements are effective July 1, 2023.

## **§§ 1 & 2 — PROPERTY TAX EXEMPTION AND SOLAR UNIFORM CAPACITY TAX**

### ***Property Tax Exemption for Certain Solar Facilities***

The bill establishes a property tax exemption for solar photovoltaic systems with a capacity over 25 kW, beginning with the assessment year starting October 1, 2023. Under the bill, "capacity" is the aggregate alternating current nameplate capacity of all inverters used to convert a solar photovoltaic system's output to alternating current power. Nameplate capacity generally refers to a facility's maximum output under specific conditions designated by the manufacturer.

Under the bill, owners of these facilities do not have to file an application with the municipal assessor or board of assessors to claim the exemption, as existing law requires for other property tax exemptions for Class I renewable resources (e.g., solar facilities). The bill also makes these facilities ineligible for a separate property tax exemption, at municipal option, for Class I renewable energy sources subject to a power purchase agreement approved by the Public Utilities Regulatory Authority (PURA).

### ***Solar Uniform Capacity Tax and Account***

The bill establishes a separate tax for these facilities, beginning January 1, 2024. It requires facility owners to annually pay the DRS commissioner an amount calculated by multiplying \$5 by the facility's capacity (e.g., someone who owns a 30 kW facility would pay \$150).

Under the bill, facility owners must electronically submit a return on DRS-prescribed forms, annually by July 31, that reports the following information:

1. the capacity of each solar facility subject to the tax the person owned in the state during the previous calendar year;
2. each facility's physical address, including the municipality where it was located;

3. the calculated tax amount for each facility the person owned;
4. the calculated tax amount for all facilities the person owned in a municipality, aggregated by municipality; and
5. the calculated total tax due.

The bill makes the tax due the same day as the return's due date (July 31) and requires facility owners to pay the tax via electronic funds transfer under existing provisions otherwise applicable to certain taxpayers. These provisions require the taxpayer to use an electronic fund transfer method approved by DRS.

The bill requires DRS to maintain an accounting of all sums paid for the tax and an accounting that shows the sums attributable to each municipality where a solar facility is located, aggregated by municipality. It also requires the DRS commissioner to maintain other information he needs to implement the tax.

The bill sets a penalty for failure to timely pay the tax. The penalty is the greater of 10% of the amount due or \$50, with interest imposed at the rate of 1% per month, or a fraction thereof, from the tax due date.

Under the bill, the DRS commissioner must transfer half of the funds received into the General Fund and the other half to the Solar Uniform Capacity Tax Account which the bill establishes (see below).

### ***Solar Uniform Capacity Tax Account***

The bill establishes the Solar Uniform Capacity Tax Account as a separate, nonlapsing account within the General Fund. The bill requires the Office of Policy and Management (OPM) secretary, or his designee, to spend account funds on direct financial assistance to municipalities in proportion to their share of total capacity of solar facilities subject to the bill's property tax exemption and tax. DRS must share information on the tax with OPM, including the information provided on tax return forms it receives.

## **§ 3 — NRES AND SCEF PROGRAMS**

***NRES Expansion***

The bill increases the yearly amount of capacity in megawatts available for zero-emission NRES projects (e.g., solar facilities,) from 100 MW to 200 MW. However, existing law, unchanged by the bill, has a 160 MW aggregate cap for the NRES and SCEF programs. Current law sets this 160 MW aggregate cap in years two through six of these programs. The bill instead sets the aggregate cap beginning January 1, 2023, generally conforming to current practice. (In practice, the programs began in different years. Year two for NRES is 2023; year two for SCEF is 2021.)

***Underused Program Capacity***

For SCEF and NRES, the bill requires PURA to allocate megawatts available under one program to other fully subscribed programs under certain conditions. Specifically, PURA must make additional megawatts available to customers under fully subscribed programs if, in any given year, the actual program capacity for any program is less than 95% of the available capacity under the program's annual cap. The additional megawatts amount is equal to the difference between the actual and available program capacities for the undersubscribed program. The bill requires PURA to allow Eversource and United Illuminating to solicit additional projects for reallocated megawatts in the year PURA makes them available or the following year, following their procurement plans required under existing law.

The law already requires assignment of unused megawatts to the next program year. The bill makes a technical change to transfer, rather than roll, these megawatts into the next program year, but it exempts capacity reallocated under the process described above from this provision.

***Low- and Moderate-Income SCEF Customers***

Existing law reserves at least 20% of each SCEF's total capacity for low-income customers and at least 60% for low-income customers, moderate-income customers, and low-income service organizations. The bill modifies eligibility for these reserved amounts by changing definitions for low- and moderate-income customers.

Under current law, a low-income customer has income at or below 60% of state median income. The bill instead defines low-income customers as those with incomes below (1) 80% of area median income, as defined by the U.S. Department of Housing and Urban Development or (2) 200% of the federal poverty limit. The bill keeps existing law's provision that includes affordable housing facilities as low-income customers.

Currently, a moderate-income customer has income from 60% to 100% of the area median income. Under the bill, this customer has income of up to 80% of area median income, the same threshold as low-income customers. (By setting the same threshold for both low- and moderate-income customers, the bill appears to eliminate the distinction between the two, making moderate-income customers eligible for capacity set aside for low-income customers.)

#### **§§ 4 & 5 — DEEP REPORTS ON PROPERTIES FOR SOLAR FACILITIES WITH AT LEAST TWO MEGAWATTS CAPACITY**

The bill requires the DEEP commissioner to report to the Energy and Technology Committee by February 1, 2024, identifying suitable state properties for lease to private entities to construct or locate solar facilities of at least two MW capacity. The bill specifically includes highway corridors and correctional institutions as potential locations. DEEP must consult with the commissioners of administrative services, corrections, and transportation for the report.

The bill requires the four commissioners to post the report on their respective department websites within 60 days after DEEP submits the report to the committee. Once posted, DEEP must forward a copy of the report to the Connecticut Siting Council (CSC) chairperson, who must also post it on the CSC's website within 30 days after receiving it.

The bill requires DEEP to submit another report to the Energy and Technology Committee by February 1, 2024, that identifies types of property in the state suitable for constructing or locating solar facilities with capacities of at least two MW. The report must analyze whether the following properties may serve as suitable locations for these solar

facilities:

1. right-of-ways occupied by overhead transmission facilities in areas not subject to restoration or revegetation orders or
2. abandoned or underutilized parking facilities.

The report must exclude prime farmlands and forest lands. By law, “prime farmland” is generally land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these uses (CGS § 16a-3k and 7 C.F.R. § 657).

## **BACKGROUND**

### ***NRES Program***

The NRES program allows non-residential customers (e.g., commercial and industrial customers) to participate in an annual solicitation conducted by Eversource and United Illuminating in which selected projects enter into a 20-year contract with the companies for energy and related products (e.g., renewable energy credits (RECs)). To be eligible, a project must be a Class I renewable energy source that (1) uses anaerobic digestion or has low emissions (e.g., fuel cells) or (2) has zero emissions (e.g., solar facilities) (CGS § 16-244z(a)(2)(A) & (B)). The law sets a six-year schedule for the program, which is currently in its second year (i.e., 2022 was Year 1).

### ***SCEF Program***

Generally, a shared clean energy facility allows customers to subscribe for energy or RECs from a facility that is not on the customer’s premises. Under the SCEF program, eligible facilities are Class I renewable energy sources (e.g., wind or solar) served by Eversource or United Illuminating with at least two subscribers in the same utility service territory as the facility (CGS § 16-244z(a)(2)(C)). Eversource and United Illuminating do an annual solicitation using a competitive bidding procurement process and enter into 20-year contracts with selected projects. The law sets a six-year schedule for the program, which is currently in its fourth year (i.e., 2020 was Year 1).

***Related Bill***

SB 519, favorably reported by the Planning and Development Committee, makes solar installations between 0.5 and 7 MW ineligible for existing law's residential- and farm-use renewable energy property tax exemption.

**COMMITTEE ACTION**

Energy and Technology Committee

Joint Favorable Substitute

Yea 15 Nay 5 (03/14/2023)