

HOUSE No. 3968

The Commonwealth of Massachusetts

PRESENTED BY:

Mark J. Cusack and Barry R. Finegold

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to clean energy resources .

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Mark J. Cusack

5th Norfolk

Barry R. Finegold

Second Essex and Middlesex

HOUSE No. 3968

By Representative Cusack of Braintree and Senator Finegold, a joint petition (subject to Joint Rule 12) of Mark J. Cusack and Barry R. Finegold relative to clean energy resources. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

An Act relative to clean energy resources .

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Beginning on June 1, 2014 and continuing until December 31, 2014, all distribution
2 companies in the commonwealth, as defined in section 1 of chapter 164 of the General Laws,
3 shall be required to jointly solicit proposals, from developers of clean energy generation, for no
4 less than 18,900,000 MWh of electricity annually from clean energy generation sources and,
5 provided reasonable proposals have been received, may enter into additional cost-effective long-
6 term contracts to facilitate the Commonwealth’s clean energy goals. For the purposes of this
7 Act, ‘clean energy generation sources’ shall mean, individually or collectively, Class I RPS
8 eligible renewable energy generation source as defined under said section 11F of said chapter
9 25A and/or hydroelectric generation source. Said sources shall be capable of generating
10 18,900,000 MWh of electricity annually. The solicitation shall be comprised of clean energy
11 generation sources, said renewable energy generation to be apportioned among the distribution
12 companies under this Act. The timetable and method for solicitation and execution of such
13 contracts shall be proposed by the distribution companies in consultation with the department of
14 energy resources and shall be subject to review and approval by the department of public
15 utilities.

16 Prior to the joint solicitation, an individual distribution company may fulfill its
17 responsibilities under this Act through individual competitive solicitations that are independent
18 from the joint solicitation for proposals from clean energy developers. Provided reasonable
19 proposals have been received by the individual distribution company, it may enter into cost
20 effective long-term contracts with clean energy generation sources if, upon petition to the
21 department of public utilities prior to the joint solicitation, the department of public utilities rules

22 that a solicitation by an individual distribution company would be more cost effective to
23 ratepayers than said distribution company engaging in a joint solicitation.

24 For purposes of this Act, a long-term contract shall be a contract with a clean energy
25 generation source with a term of 20 to 25 years. In developing proposed long-term contracts, the
26 distribution companies shall consider multiple contracting methods, including long-term
27 contracts for renewable energy certificates, hereinafter referred to as RECs, for only renewable
28 energy, and for a combination of both RECs and renewable energy. This long-term contracting
29 option shall be separate and distinct from the distribution companies' obligation to meet
30 applicable annual renewable portfolio standard, hereinafter referred to as RPS, requirements,
31 under section 11F of chapter 25A of the General Laws. Notwithstanding the provisions of this
32 Act, the procurement of RECs shall apply only to that portion attributable to Class I RPS-eligible
33 renewable energy generation and shall not apply to hydroelectric generation sources contracted
34 under this Act.

35 Beginning June 1, 2014, the distribution companies shall jointly select a reasonable
36 method of soliciting proposals, which may include one developed by a regional organization in
37 coordination with other New England States, from clean energy generation developers using a
38 competitive bidding process only. A distribution company may decline to consider contract
39 proposals having terms and conditions that it determines would require the contract obligation to
40 place an unreasonable burden on the distribution company's balance sheet, and may structure its
41 contracts, pricing or administration of the products purchased to mitigate impacts on the balance
42 sheet or income statement of the distribution company or its parent company, subject to the
43 approval of the department of public utilities; provided, that such mitigation shall not increase
44 costs to ratepayers. The distribution companies shall consult with the department of energy
45 resources and the Attorney General regarding the choice of contracting methods and solicitation
46 methods. All proposed contracts shall be subject to the review and approval of the department of
47 public utilities.

48 The department of public utilities and the department of energy resources each shall
49 adopt regulations consistent with this section. The regulations shall: (a) allow clean energy
50 generation developers to submit proposals for long-term contracts conforming to the contracting
51 methods specified in the third paragraph; (b) require that contracts executed by the distribution
52 companies under such proposals are filed with, and approved by, the department of public
53 utilities before they become effective; (c) require that the clean energy generation sources under
54 the proposal meet the following criteria: (1) any Class I RPS eligible renewable energy
55 generation source must be qualified by the department of energy resources as eligible to
56 participate in the RPS program under said section 11F of said chapter 25A, and to sell RECs
57 under the program; and (2) clean energy generation source emits no more than 775 lbs/MWh in
58 green house gases per year; and (3) be determined by the department of public utilities to: (i)
59 provide enhanced electricity reliability within the commonwealth; (ii) be cost effective to
60 Massachusetts electric ratepayers over the term of the contract; (iii) where feasible, create

61 additional employment and economic development in the commonwealth; (iv) demonstrate that
62 the clean energy generation source projects are substantially likely to become operational by
63 having the appropriate state and local permits in place and a demonstration that the project is
64 able to secure financing; and (v) demonstrate that the renewable energy generations sources are
65 associated with a transmission project scheduled to deliver capacity to one of the nodes within
66 the ISO NE's Internal Hub.

67 As part of its approval process, the department of public utilities shall consider the
68 attorney general's recommendations, which shall be submitted to the department of public
69 utilities within 45 days following the filing of such contracts with the department of public
70 utilities. The department of public utilities shall consider both the potential costs and benefits of
71 such contracts and shall approve a contract only upon a finding that it is a cost effective
72 mechanism for procuring renewable energy generation source(s) on a long-term basis taking into
73 account the factors outlined in this section.

74 Notwithstanding the provisions of this section, that portion of the electricity generation
75 attributable to hydroelectric generation shall not be eligible to participate in the
76 Commonwealth's RPS program under said section 11F of said chapter 25A.

77 The joint solicitation and evaluation of submitted proposals required under this Act shall
78 be coordinated among the distribution companies by the department of energy resources. If
79 distribution companies are unable to agree on a winning bid from the solicitations submitted
80 under this Act, the matter shall be submitted to the attorney general, in consultation with the
81 department of energy resources and the department of public utilities, for a final, binding
82 determination of the winning bid. The distribution companies may each enter into a contract with
83 the winning bidders for their apportioned share of the market products being purchased from the
84 project. The apportioned share shall be calculated and based upon the total energy demand from
85 all distribution customers in each service territory of the distribution companies.

86 A distribution company may elect to use any energy purchased under such contracts for
87 resale to its customers, and for that portion of the energy generation attributable to Class I RPS
88 eligible renewable generation may elect to retain RECs to meet the applicable annual RPS
89 requirements under said section 11F of said chapter 25A. If the energy and RECs are not so used,
90 such companies shall sell such purchased energy into the wholesale spot market and shall sell
91 such purchased RECs through a competitive bid process.

92 Notwithstanding the previous sentence, the department of energy resources shall conduct
93 periodic reviews to determine the impact on the energy and REC markets of the disposition of
94 energy and RECs under this Act and may issue reports recommending legislative changes if it
95 determines that actions are being taken that will adversely affect the energy and REC markets.

96 If a distribution company sells the purchased energy into the wholesale spot market and
97 auctions the RECs as described in the fifth paragraph, the distribution company shall net the cost

98 of payments made to projects under the long-term contracts against the proceeds obtained from
99 the sale of energy and RECs, and the difference shall be credited or charged to all distribution
100 customers through a uniform fully reconciling annual factor in distribution rates, subject to
101 review and approval of the department of public utilities. The reconciliation process shall be
102 designed so that a distribution company recovers all costs incurred under such contracts. If the
103 RPS requirements of said section 11F of said chapter 25A terminate, the obligation to continue
104 periodic solicitations to enter into long-term contracts shall cease; provided however, that
105 contracts already executed and approved by the department of public utilities shall remain in full
106 force and effect.

107 Notwithstanding any provision contained herein to the contrary, this Act, and the
108 implementation thereof, shall be subject to the rules, orders and regulations established by the
109 Federal Energy Regulatory Commission. This Act shall not limit consideration of other
110 contracts for RECs or power submitted by a distribution company for review and approval by the
111 department of public utilities.

112 If this Act is subject to a judicial challenge, the department of public utilities may
113 suspend the applicability of the challenged provision during the pendency of the judicial action
114 until final resolution of the challenge and any appeals and shall issue such orders and take such
115 other actions as are necessary to ensure that the provisions that are not challenged are
116 implemented expeditiously to achieve the public purposes of this Act.

117 SECTION 2: Effective January 1, 2014, the Secretary of Energy and Environmental
118 Affairs, or his/her designee, may designate a regional organization, in coordination with other
119 New England States, and/or through a process coordinated by the Independent System Operator
120 (ISO), to solicit proposals for transmission in furtherance of clean energy generation contracts.
121 The secretary is further authorized to include in such designation such terms and conditions
122 he/she deems necessary and appropriate to further the objectives contained in Section 1, subject,
123 however, to the rules, orders and regulations established by the Federal Energy Regulatory
124 Commission.