

HOUSE No. 4377

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, June 8, 2016.

The committee on Ways and Means, to whom was referred the Bill to promote energy diversity (House, No. 4336), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4377).

For the committee,

BRIAN S. DEMPSEY.

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act to promote energy diversity.

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

1 SECTION 1. Chapter 169 of the acts of 2008, as amended by chapter 209 of the acts of
2 2012, is hereby further amended by inserting after section 83A the following 3 sections:-

3 Section 83B. For the purposes of sections 83C and 83D, the following terms, unless
4 context clearly indicates otherwise, shall have the following meanings:-

5 “Clean energy generation”, either: (1) firm service hydroelectric generation from
6 hydroelectric generation alone; or (2) new Class I RPS eligible resources that are firm up with
7 firm service hydroelectric generation.

8 “Distribution company”, a distribution company as defined in section 1 of chapter 164 of
9 the General Laws.

10 “Firm service hydroelectric generation”, hydroelectric generation provided without
11 interruption for 1 or more discrete a period designated in a long-term contract, including but not
12 limited to multiple hydroelectric run-of-the-river generation units managed in a portfolio that
13 creates firm service though the diversity of multiple units.

14 “Long-term contract”, a contract for a period of 15 to 20 years.

15 “New Class I RPS eligible resources”, Class I renewable energy generating sources as
16 defined in section 11F of chapter 25A of the General Laws that have not commenced
17 commercial operation prior to the date of execution of a long-term contract or represent the net
18 increase from incremental new generating capacity at an existing facility after the date of
19 execution of a long-term contract.

20 “Offshore wind developer”, a provider of electricity developed from an offshore wind
21 energy generation project that is located on the Outer Continental Shelf and for which no turbine
22 is located within 10 miles of any inhabited area.

23 “Offshore wind energy generation”, offshore electric generating resources derived from
24 wind that: (1) are Class I renewable energy generating sources, as defined in section 11F of
25 chapter 25A of the General Laws; (2) have a commercial operation date on or after January 1,
26 2018, as verified by the department of energy resources; and (3) operate in a designated wind
27 energy area for which an initial federal lease was issued on a competitive basis after January 1,
28 2012.

29 Section 83C. (a) Notwithstanding any general or special law to the contrary, beginning on
30 or before June 30, 2017, all distribution companies in the commonwealth shall jointly and
31 competitively solicit proposals from offshore wind developers and, provided that reasonable
32 proposals have been received, shall enter into cost-effective long-term contracts, subject to the
33 approval of the department of public utilities, to facilitate the financing of offshore wind energy
34 generation resources, apportioned among the distribution companies under this section.

35 (b) The timetable and method for solicitations of such contracts shall be proposed jointly
36 by the distribution companies and the department of energy resources using a competitive
37 bidding process, and shall be subject to review and approval by the department of public utilities.
38 Solicitations may be coordinated and issued jointly with other New England states or entities
39 designated by said states. Distribution companies may conduct 1 or more competitive
40 solicitations through a schedule or staggered procurement schedule developed by the distribution
41 companies and the department of energy resources; provided, that distribution companies shall
42 jointly enter into cost-effective long-term contracts for offshore wind energy generation equal to
43 1200 megawatts of aggregate nameplate capacity by June 30, 2027. Individual solicitations shall
44 seek proposals for no less than 400 megawatts of aggregate nameplate capacity of offshore wind
45 energy generation resources. Distribution companies must issue a competitive solicitation under
46 this section no later than June 30, 2017, and subsequent solicitations under a staggered
47 procurement schedule developed by the department of energy resources, if applicable, shall
48 occur within 24 months of a previous solicitation. If the department of public utilities determines
49 that reasonable proposals were not received pursuant to a solicitation, the department may
50 terminate the solicitation, and may require additional solicitations to fulfill the requirements of
51 this section.

52 (c) In developing proposed long-term contracts, the distribution companies shall consider
53 long-term contracts for renewable energy certificates, hereinafter referred to as RECs, for
54 energy, and for a combination of both RECs and energy. A distribution company may decline to
55 consider contract proposals having terms and conditions that it determines would require the
56 contract obligation to place an unreasonable burden on the distribution company's balance sheet,
57 and may structure its contracts, pricing or administration of the products purchased to mitigate

58 impacts on the balance sheet or income statement of the distribution company or its parent
59 company, subject to the approval of the department of public utilities; provided, that such
60 mitigation shall not increase costs to ratepayers. In the event a distribution company deems all
61 proposals to be unreasonable, the department of public utilities shall initiate a docket to
62 determine the distribution company's rationale for declining said proposals. The distribution
63 companies shall consult with the department of energy resources and the attorney general's
64 office regarding the choice of contracting methods and solicitation methods. All proposed
65 contracts shall be subject to the review and approval of the department of public utilities.

66 (d) The department of public utilities and the department of energy resources each shall
67 adopt regulations consistent with this section. The regulations shall: (1) allow offshore wind
68 developers of offshore wind energy generation to submit proposals for long-term contracts
69 consistent with this section; (2) require that contracts executed by the distribution companies
70 under such proposals are filed with, and approved by, the department of public utilities before
71 they become effective; (3) provide for an annual remuneration for the contracting distribution
72 company up to 2.75 per cent of the annual payments under the contract to compensate the
73 company for accepting the financial obligation of the long-term contract, such provision to be
74 acted upon by the department of public utilities at the time of contract approval; (4) allow
75 transmission costs to be incorporated into a proposal; provided that, to the extent there are
76 transmission costs included in a bid, the department of public utilities may authorize or require
77 the contracting parties to seek recovery of such transmission costs of the project through federal
78 transmission rates, consistent with policies and tariffs of the federal energy regulatory
79 commission, to the extent the department finds such recovery is in the public interest; and (5)
80 require that offshore wind energy generating resources to be used by a developer under the

81 proposal meet the following criteria: (i) provide enhanced electricity reliability within the
82 commonwealth; (ii) contribute to reducing winter electricity price spikes; (iii) be cost effective to
83 Massachusetts electric ratepayers over the term of the contract; (iv) avoid line loss and mitigate
84 transmission costs to the extent possible; (v) adequately demonstrate project viability in a
85 commercially reasonable timeframe; (vi) provide reliability, price, economic and environmental
86 benefits that outweigh any costs to ratepayers; and (vii) where feasible, create additional
87 employment and economic development in the commonwealth.

88 (e) As part of its approval process, the department of public utilities shall consider the
89 attorney general's recommendations, which shall be submitted to the department of public
90 utilities within 45 days following the filing of such contracts with the department of public
91 utilities. The department of public utilities shall consider both the potential costs and benefits of
92 such contracts and shall approve a contract only upon a finding that it is a cost effective
93 mechanism for procuring reliable renewable energy on a long-term basis, taking into account the
94 factors outlined in this section.

95 (f) The department of energy resources and the attorney general shall jointly select an
96 independent evaluator to monitor and report on the solicitation and bid selection process in order
97 to assist the department of public utilities in its consideration of any resulting long-term contracts
98 filed for approval. To ensure an open, fair and transparent solicitation and bid selection process,
99 the independent evaluator shall: (1) issue a report to the department of energy resources
100 analyzing the solicitation process proposed under subsection (b) of this section, including
101 recommendations for improving the process, if any; and (2) within 45 days following the filing
102 of a long-term contract for a winning bid proposal, file a report with the department of public
103 utilities summarizing and analyzing the solicitation and the bid selection process, and providing

104 its independent assessment of whether all bids were evaluated in a fair and non-discriminatory
105 manner. The independent evaluator shall have access to all information and data related to the
106 competitive solicitation and bid selection process necessary to fulfill the purposes of this
107 subsection, but shall ensure all proprietary information remains confidential. The department of
108 public utilities shall consider the findings of the independent evaluator and may adopt
109 recommendations made by the independent evaluator as a condition for approval. If the
110 independent evaluator concludes in the findings that the solicitation and bid selection of a long-
111 term contract was not fair and objective, the department of utilities may reject the contract.

112 (g) If distribution companies are unable to agree on a winning bid under a solicitation
113 under this section, the matter shall be submitted to the department of energy resources for a final,
114 binding determination of the winning bid. Electric distribution companies shall each enter into a
115 contract with the winning bidders for their apportioned share of the market products being
116 purchased from the project. The apportioned share shall be calculated and based upon the total
117 energy demand from all distribution customers in each service territory of the distribution
118 companies.

119 (h) A distribution company may elect to use any energy purchased under such contracts
120 for resale to its customers, and may elect to retain RECs to meet the applicable annual renewable
121 portfolio standard requirements under said section 11F of said chapter 25A. If the energy and
122 RECs are not so used, such companies shall sell such purchased energy into the wholesale spot
123 market and shall sell such purchased RECs through a competitive bid process. Notwithstanding
124 the previous sentence, the department of energy resources shall conduct periodic reviews to
125 determine the impact on the energy and REC markets of the disposition of energy and RECs

126 under this section. The department may issue reports recommending legislative changes if it
127 determines that said disposition adversely affects the energy and REC markets.

128 (i) If a distribution company sells the purchased energy into the wholesale spot market
129 and auctions the RECs as described in this section, the distribution company shall net the cost of
130 payments made to projects under the long-term contracts against the proceeds obtained from the
131 sale of energy and RECs, and the difference shall be credited or charged to all distribution
132 customers through a uniform fully reconciling annual factor in distribution rates, subject to
133 review and approval of the department of public utilities.

134 (j) Any long-term contracts procured under this section shall contain provisions that
135 require an appropriate unit-specific tracking system to enable an accounting of the delivery of
136 clean energy generation resources.

137 (k) If this section is subject to a judicial challenge, the department of public utilities may
138 suspend the applicability of the challenged provision during the pendency of the judicial action
139 until final resolution of the challenge and any appeals and shall issue such orders and take such
140 other actions as are necessary to ensure that the provisions that are not challenged are
141 implemented expeditiously to achieve the public purposes of this section.

142 Section 83D. (a) Notwithstanding any general or special law to the contrary, beginning
143 on January 1, 2017, all distribution companies in the commonwealth shall jointly and
144 competitively solicit proposals from developers of clean energy generation resources to deliver
145 an annual amount of electricity equal to 9,450,000 megawatts-hours, and, provided reasonable
146 proposals have been received, shall enter into either long-term contracts, subject to the approval
147 of the department of public utilities, or delivery commitment agreements, subject to the approval

148 of the federal energy regulatory commission, to facilitate the financing of clean energy
149 generation resources, apportioned among the distribution companies under this section.

150 (b) The timetable and method for solicitation of such contracts shall be proposed jointly
151 by the distribution companies and the department of energy resources using a competitive
152 bidding process, and shall be subject to review and approval by the department of public utilities.
153 Solicitations may be coordinated and issued jointly with other New England states or entities
154 designated by said states. Distribution companies may conduct 1 or more competitive
155 solicitations through a schedule or staggered procurement schedule developed by the distribution
156 companies and the department of energy resources; provided, however, that distribution
157 companies shall enter into cost-effective long-term contracts for clean energy generation equal to
158 9,450,000 megawatt-hours by December 31, 2022. If the department of public utilities
159 determines that reasonable proposals were not received pursuant to a solicitation, the department
160 may terminate the solicitation, and may require additional solicitations to fulfill the requirements
161 of this section.

162 (c) In developing proposed long-term contracts, the distribution companies shall consider
163 long-term contracts for renewable energy certificates, hereinafter referred to as RECs, for
164 energy, and for a combination of both RECs and energy, if applicable. A distribution company
165 may decline to consider proposals having terms and conditions that it determines would require
166 the contract obligation to place an unreasonable burden on the distribution company's balance
167 sheet, and may structure its contracts, delivery commitments, pricing or administration of the
168 products purchased to mitigate impacts on the balance sheet or income statement of the
169 distribution company or its parent company, subject to the approval of the department of public
170 utilities; provided, that such mitigation shall not increase costs to ratepayers. In the event a

171 distribution company deems all proposals to be unreasonable, the department of public utilities
172 shall initiate a docket to determine the distribution company's rationale for declining said
173 proposals. The department of energy resources may require additional solicitations to fulfill the
174 requirements of this section. The distribution companies shall consult with the department of
175 energy resources and the attorney general's office regarding the choice of contracting methods
176 and solicitation methods. All proposals shall be subject to the review and approval of the
177 department of public utilities.

178 (d) For the purposes of this section, a delivery commitment agreement shall be a
179 contractual commitment by a clean energy developer, which may be included in a tariff filed
180 with the federal energy regulatory commission, to deliver electricity to the ISO New England
181 Control Area for a term of 15 to 20 years, subject to the rules governing that market as approved
182 by the federal energy regulatory commission, for a designated number of megawatt-hours per
183 year during designated periods. Such output shall be from clean energy generation, as defined in
184 section 83B of this act. Delivery commitment agreements may be contingent upon a transmission
185 line being constructed, maintained, and placed under the operational control of ISO New
186 England that adds sufficient capacity to the ISO New England transmission system to enable the
187 delivery into the New England market of the electric energy comprising the supplier's delivery
188 commitment. A clean energy generation developer shall be obligated, in the event it fails to meet
189 its delivery commitment agreement in any designated period, to pay liquidated damages or
190 charges under the tariff filed with the federal energy regulatory commission to the electric
191 distribution company, which in turn shall be returned to ratepayers, or to provide a credit under
192 such tariff, which will be passed on to ratepayers. The department of public utilities, in
193 consultation with the department of energy resources, may promulgate regulations to implement

194 the provisions of this section, subject to the applicable rules, orders and regulations established
195 by the federal energy regulatory commission.

196 (e) The department of public utilities and the department of energy resources each shall
197 adopt regulations consistent with this section. The regulations shall: (1) allow developers of
198 clean energy generation resources to submit proposals for long-term contracts or delivery
199 commitment agreements; (2) require that contracts or delivery commitment agreements executed
200 by the distribution companies under such proposals are filed with, and approved by, the
201 department of public utilities before they become effective; (3) provide for an annual
202 remuneration for the contracting distribution company up to 2.75 per cent of the annual
203 payments under the contract to compensate the company for accepting the financial obligation of
204 the long-term contract, such provision to be acted upon by the department of public utilities at
205 the time of contract approval; (4) allow transmission costs to be incorporated into a proposal;
206 provided that, to the extent there are transmission costs included in a bid, the department of
207 public utilities may authorize or require the relevant parties to seek recovery of such transmission
208 costs of the project through federal transmission rates, consistent with policies and tariffs of the
209 federal energy regulatory commission, to the extent the department finds such recovery is in the
210 public interest; and (5) require that the clean energy resources to be used by a developer under
211 the proposal meet the following criteria: (i) provide enhanced electricity reliability within the
212 commonwealth; (ii) contribute to reducing winter electricity price spikes; (iii) be cost effective to
213 Massachusetts electric ratepayers over the term of the contract or delivery commitment
214 agreement; (iv) avoid line loss and mitigate transmission costs to the extent possible; (v) allow
215 the long-term contract price to be indexed to the wholesale market prices, as determined by the
216 department of public utilities and decrease in periods of low wholesale prices; (vi) guarantee

217 energy delivery in winter months; (vii) adequately demonstrate project viability in a
218 commercially reasonable timeframe; (viii) provide reliability, price, economic and environmental
219 benefits that outweigh any costs to ratepayers; (ix) give preference for proposals that combine
220 more than 1 renewable energy generating source; (x) where feasible, create additional
221 employment and economic development in the commonwealth.

222 (f) As part of its approval process, the department of public utilities shall consider the
223 attorney general's recommendations, which shall be submitted to the department of public
224 utilities within 45 days following the filing of such contracts or delivery commitment agreements
225 with the department of public utilities. The department of public utilities shall consider both the
226 potential costs and benefits of such contracts and shall approve a contract or delivery
227 commitment agreement only upon a finding that it is a cost effective mechanism for procuring
228 low cost renewable energy on a long-term basis taking into account the factors outlined in this
229 section.

230 (g) The department of energy resources and the attorney general shall jointly select an
231 independent evaluator to monitor and report on the solicitation and bid selection process in order
232 to assist the department of public utilities in its consideration of any resulting long-term contracts
233 or delivery commitment agreements filed for approval. To ensure an open, fair and transparent
234 solicitation and bid selection process, the independent evaluator shall: (1) issue a report to the
235 department of energy resources analyzing the solicitation process proposed under subsection (b)
236 of this section, including recommendations for improving the process, if any; and (2) within 45
237 days following the filing of a long-term contract for a winning bid proposal, file a report with the
238 department of public utilities summarizing and analyzing the solicitation and the bid selection
239 process, and providing its independent assessment of whether all bids were evaluated in a fair

240 and non-discriminatory manner. The independent evaluator shall have access to all information
241 and data related to the competitive solicitation and bid selection process necessary to fulfill the
242 purposes of this subsection, but shall ensure all proprietary information remains confidential. The
243 department of public utilities shall consider the findings of the independent evaluator and may
244 adopt recommendations made by the independent evaluator as a condition for approval. If the
245 independent evaluator concludes in the findings that the solicitation and bid selection of a long-
246 term contract was not fair and objective, the department of utilities may reject the contract.

247 (h) If distribution companies are unable to agree on a winning bid under a solicitation
248 under this section, the matter shall be submitted to the department of energy resources, in
249 consultation with the department of public utilities, for a final, binding determination of the
250 winning bid. The electric distribution companies shall each enter into a contract or delivery
251 commitment agreement with the winning bidders for their apportioned share of the market
252 products being purchased from the project. The apportioned share shall be calculated and based
253 upon the total energy demand from all distribution customers in each service territory of the
254 distribution companies.

255 (i) An electric distribution company may elect to use any energy purchased under such
256 contracts or delivery commitments for resale to its customers, and may elect to retain RECs to
257 meet the applicable annual RPS requirements under said section 11F of said chapter 25A. If the
258 energy and RECs are not so used, such companies shall sell such purchased energy into the
259 wholesale spot market and shall sell such purchased RECs through a competitive bid process.
260 Notwithstanding the previous sentence, the department of energy resources shall conduct
261 periodic reviews to determine the impact on the energy and REC markets of the disposition of

262 energy and RECs under this section and may issue reports recommending legislative changes if it
263 determines that actions are being taken that will adversely affect the energy and REC markets.

264 (j) If a distribution company sells the purchased energy into the wholesale spot market
265 and auctions the RECs as described in this section, the distribution company shall net the cost of
266 payments made to projects under the long-term contracts or delivery commitments against the
267 proceeds obtained from the sale of energy and RECs, and the difference shall be credited or
268 charged to all distribution customers through a uniform fully reconciling annual factor in
269 distribution rates, subject to review and approval of the department of public utilities.

270 (k) Any long-term contracts procured under this section shall contain provisions that
271 require an appropriate unit-specific tracking system to enable an accounting of the delivery of
272 clean energy generation resources.

273 (l) If this section is subject to a judicial challenge, the department of public utilities may
274 suspend the applicability of the challenged provision during the pendency of the judicial action
275 until final resolution of the challenge and any appeals and shall issue such orders and take such
276 other actions as are necessary to ensure that the provisions that are not challenged are
277 implemented expeditiously to achieve the public purposes of this section.