SENATE . . . . . No. 2401

Senate, Thursday, June 30, 2016 -- Text of amendment (3) (offered by Senator Wolf) to the Ways and Means amendment (Senate, No. 2372) to the House Bill to promote energy diversity.

The Commonwealth of Massachusetts

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

by inserting, after section ___, the following new section:-

"SECTION ___. Chapter 164 of the General Laws is hereby amended by inserting after section 134(b) the following subsection:

Section 134 (c):

a) As used in this section the following words shall, unless the context otherwise requires, have the following meanings:

"Alternative Compliance Payment," or "ACP," an amount established by the department of energy resources that retail electricity suppliers may pay in order to discharge their Renewable Portfolio Standard obligation, as required under General Laws Chapter 25A, section 11F.

"Community Empowerment Contract" or "Contract," an agreement between a municipality and the developer, owner, or operator of a renewable energy project, and as further defined in this section.

"Customer," an electricity end-use customer of an electric utility distribution company, regardless of how that customer receives energy supply services.

15 “Department,” the department of public utilities

16 “Large Commercial Customer,” a large commercial, industrial, or institutional customer,
17 and as further defined by the department of energy resources utilizing existing usage-based tariff
18 structures.

19 “Municipality,” a city or town or a group of cities or towns.

20 “Participant.” a customer within a municipality that has entered into a community
21 empowerment contract, so long as that customer did not opt out of, or is prevented from
22 participating in, the community empowerment contract as described in subsection (d) of this
23 section.

24 “REC,” a renewable energy certificate, representing the environmental attributes of one
25 megawatt hour of electricity generated by a renewable energy project, and the creation, use, and
26 retirement of which are administered by ISO New England.

27 “Renewable Energy Project,” or “Project,” a facility that generates electricity using a
28 resource deemed a Class 1 renewable energy resource and qualified by the department of energy
29 resources as eligible to participate in the Renewable Portfolio Standard or RPS program, under
30 General Laws chapter 25A, section 11F, and to sell RECs under the program.

31 “Renewable Portfolio Standard,” or “RPS,” as described in General Laws chapter 25A,
32 section 11F.

33 “Residential Customer,” a utility distribution customer that is a private residence or group
34 of residences, and as further defined by the department of energy resources utilizing existing
35 usage-based tariff structures.

36 “Small Commercial Customers,” small or medium commercial, industrial, or institutional
37 customers, and as further defined by the department of energy resources utilizing existing usage-
38 based tariff structures.

39 b) A municipality may, on behalf of the electricity customers within the municipality,
40 enter into community empowerment contracts with companies that propose to construct
41 renewable energy projects, or that will continue to own or to operate a project that was
42 previously subject to a contract with the same municipality. A municipality may enter into more
43 than one community empowerment contract, and may enter into new contracts at any time.

44 A community empowerment contract shall have the following provisions or terms:

45 1) A community empowerment contract shall consist of two counterparties, the first
46 being a company that is proposing to construct or operate a renewable energy project located
47 within the ISO New England electric system, or a project that will physically deliver energy into
48 the ISO New England system. The second counterparty shall be a municipality, which by this
49 section is authorized to act on behalf of the customers located within its jurisdiction.
50 Municipalities are not authorized by this section to utilize their collateral, credit, or assets as
51 collateral or credit support to the counterparty of a community empowerment contract, beyond
52 such authorization that may exist in other law.

53 2) The renewable energy project specified in a community empowerment contract
54 shall not have begun construction prior to the contract having been entered into by the
55 municipality, except that a municipality may enter into a contract with an operational project
56 only if the municipality had previously entered into a community empowerment contract with
57 the same project prior to commencement of its construction.

58 3) A community empowerment contract shall be structured as a contract for
59 differences, so as to stabilize electricity prices for participants, as described herein. The contract
60 shall specify a fixed price for the energy and/or RECs generated by the project, this being the
61 price the project is entitled to receive from the participants. The contract will also specify a
62 means by which the contracted amount of the project's energy and/or RECs are sold to a third
63 party, at a price established by the wholesale market or an index, as agreed by the parties to the
64 contract, and the proceeds from such sale are credited to the amount owed from the participants
65 to the project. In instances where the amount earned in such a sale exceeds the agreed fixed
66 price, the participants shall be credited from the project for the difference between the sale price
67 and the contracted fixed price. A community empowerment contract shall not be an agreement
68 to physically deliver electric energy to the participants; however, a contract may require delivery
69 of RECs, as described in the next paragraph.

70 4) A community empowerment contract shall specify whether or not RECs from the
71 renewable energy project are to be provided and, if so provided, shall specify how the RECs are
72 to be transmitted and disposed or retired, as specified in the following sentence. RECs
73 purchased by way of a community empowerment contract may either be a) assigned to the load
74 of each participant or subset of participants, as stipulated in the contract, so as to increase the
75 amount of renewable energy attributed to use by the participants in aggregate; or b) sold in a
76 transparent, competitive process, and the proceeds from such sale applied to the contract for
77 differences mechanism referenced in the proceeding subsection. A REC purchased by way of a
78 community empowerment contract may not be used by a basic service supply provider or
79 competitive supply provider to meet its requirements under the renewable portfolio standard,

80 unless the REC is first sold to the supplier in a competitive, transparent process as described in
81 the previous sentence.

82 5) A community empowerment contract shall have a term of no less than ten (10)
83 years from the time the specified renewable energy project commences operation.

84 6) A community empowerment contract shall describe the means by which charges or
85 credits to participants and to the renewable energy project are calculated, based on the contract
86 for differences mechanism described in subsection (b)(3). These calculations shall contain
87 provisions to ensure full payment or credit to the renewable energy project, even in the event that
88 some participants do not make full payment of their distribution utility bill. In the event of non-
89 payment of all or a portion of a distribution utility bill by any participants, an increase in charges
90 to all the contract participants may be used to ensure sufficient revenue to meet obligations to the
91 project. The contract shall specify a contract administrator, who shall perform the calculations
92 described in this subsection, and determine, for implementation by the distribution utility,
93 charges and credits due to the project, participants, distribution utility, and others as may be
94 required by the contract.

95 7) Community empowerment contracts may provide that residents within a
96 municipality who are receiving a low-income electric rate may be subject to different provisions
97 under the contract for differences mechanism from those participants not on such low-income
98 rate.

99 c) A town may enter into community empowerment contracts upon authorization by a
100 majority vote of town meeting, town council, or similarly empowered body. A city may
101 authorize community empowerment contracts by a majority vote of the city council or similarly

102 empowered body, with the approval of the mayor, or the city manager in a Plan D or Plan E city.
103 Two or more municipalities may initiate a process jointly to authorize community empowerment
104 contracting by a majority vote of each such municipality as herein required. Prior to any such
105 authorizing votes, a public hearing shall be held at which the community empowerment contract
106 is explained. This hearing shall specify the project or projects with respect to which the contract
107 is being proposed and the length of the contract. An entity that is not a party to the contract shall
108 estimate the rate impacts of the contract under reasonable scenarios for future energy prices, and
109 such estimates shall be presented. The procedure for customers to opt out of the proposed
110 contract, as described in the following subsection, shall also be explained.

111 d) All electricity customers within the municipality shall be required to participate in any
112 community empowerment contract, except that customers may opt not to participate in a contract
113 if they provide notice to an administrator designated by the municipality within 60 days of a vote
114 authorizing a community empowerment contract, or at any time in the case of a residential user
115 receiving a low-income electric rate. Furthermore, no customer may be a participant in a
116 community empowerment contract if that customer uses more than five (5) percent of the total
117 annual electricity usage of all electricity customers located within a single municipality that is a
118 party to the contract or, in the case of a contract with a group of municipalities, five (5) percent
119 of the total annual electricity usage of all electricity customers located in the group of
120 municipalities that are parties to the contract. Residential and small commercial customers that
121 establish service within a municipality after the municipality enters into a community
122 empowerment contract shall be required to participate in any community empowerment contracts
123 in effect for the municipality at the time the new service is established. Large commercial
124 customers within a municipality have the right, but not the obligation, to become participants

125 unless otherwise prohibited as provided in this section, and upon electing to become participants
126 must remain so for the remainder of the community empowerment contract, so long as they
127 continue to be located within the municipality.

128 e) Within six (6) months of this legislation taking effect, the department by regulation,
129 guidelines or order, shall:

130 1) Establish the manner in which a municipality may request from a distribution
131 utility, and the distribution utility shall provide in a timely manner, summary historic load and
132 payment information of electricity customers located within the municipality, such as is
133 necessary for a municipality to request and analyze proposals for community empowerment
134 contracts. The distribution utility may charge the municipality for verifiable, reasonable, and
135 direct costs associated with providing such information, as approved by the department
136 generically or on a case-by-case basis.

137 2) Establish a procedure by which municipalities shall have community empowerment
138 contracts approved by the department; community empowerment contracts shall not come into
139 effect until so approved. The department shall be obligated to and shall approve any community
140 empowerment contract that meets the requirements of this section. In establishing the approval
141 procedures, the department shall adopt means to minimize the administrative and legal costs to
142 municipalities to the maximum extent possible.

143 3) Establish guidelines or standards by which the contract administrator, as referenced
144 in subsection (b)(6), shall provide to the distribution utility adjustments to charges or credits to
145 participants via a line item on the distribution utility bill, and provide necessary information to
146 the distribution utility to enable it to make or receive payments to or from the project and to

147 others as necessary. Each community empowerment contract shall be indicated on a
148 participant's distribution utility bill by a line-item specific to the community empowerment
149 contract. Except as specified in the following sentence, distribution utilities may recover from
150 the contract parties or participants verifiable and reasonable costs for implementing this
151 subsection. Should implementation of this subsection require changes to the distribution utility
152 company's billing system that would not otherwise be incurred, the cost of implementing such
153 changes shall, upon approval by the department as being verifiable, reasonable, and necessary to
154 implement this subsection, be paid for by ACP funds or, if available ACP funds are insufficient,
155 by the Massachusetts Renewable Energy Trust Fund, as established by General Laws chapter
156 23J, section 9. Any changes to a distribution utility company's billing system funded pursuant to
157 this subsection shall be made in such a way as to also accommodate retail access to competitive
158 sellers of renewable energy generation attributes, whether or not bundled with electricity, as
159 required by section 86 of An Act Relative To Green Communities of 2008.

160 4) Establish guidelines or standards by which all distribution company customers may
161 receive or access accurate energy source disclosure information, taking into account all RECs
162 that may be ascribed to each customer's electricity usage, regardless of whether the RECs were
163 supplied pursuant to the Renewable Portfolio Standard, one or more community empowerment
164 contracts, purchase of RECs from a competitive seller (whether or not bundled with electricity),
165 or any other source. Should implementation of this subsection require changes to the distribution
166 utility company's billing or other information systems that would not otherwise be incurred, the
167 cost of implementing such changes shall, upon approval by the department as being verifiable,
168 reasonable, and necessary to implement this subsection, be paid for by ACP funds or, if available

169 ACP funds are insufficient, by the Massachusetts Renewable Energy Trust Fund, as established
170 by General Laws chapter 23J, section 9.

171 f) Within six (6) months of this legislation taking effect, the department of energy
172 resources shall by regulation or guidelines:

173 1) Establish the manner in which, in the case of a community empowerment contract
174 in which the RECs are to be assigned to participants, the RECs may be transmitted and retired
175 appropriately, and energy source disclosure information accurately provided to participants.

176 2) Establish recommended practices to ensure transparency and accountability on the
177 part of municipalities in entering into and managing community empowerment contracts. Such
178 standards shall include means by which an executed community empowerment contract
179 agreement is available for public inspection, and shall include recommendations for a
180 municipality to follow in order to ensure compliance with the requirements for entering into a
181 community requirement contract. When requested, the department of energy resources shall also
182 provide technical assistance to municipalities regarding community empowerment contracts.

183 g) Community empowerment contracts shall be additional to, and aside from, any
184 electricity supply contract that a customer may have at the time of the contract or later seek to
185 establish. A municipality that enters into a community empowerment contract pursuant to this
186 section shall not be considered a wholesale or retail electricity supplier. A community
187 empowerment contract shall not require participants to change their choice of electricity supplier,
188 regardless of whether the supplier is a competitive supplier or a basic service supplier.