

**HOUSE . . . . . No. 3968**

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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:	DATE ADDED:
<i>Mark J. Cusack</i>	<i>5th Norfolk</i>	<i>2/21/2014</i>
<i>Barry R. Finegold</i>	<i>Second Essex and Middlesex</i>	<i>2/21/2014</i>

**HOUSE . . . . . No. 3968**

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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.

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The Commonwealth of Massachusetts

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**In the Year Two Thousand Fourteen**

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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.