

SENATE No. 1965

Message from His Excellency the Governor recommending legislation to require electric utility companies to solicit long-term contracts for clean energy generation.

The Commonwealth of Massachusetts



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To the Honorable Senate and House of Representatives,

I am pleased to submit for your consideration, “An Act Relative to energy sector compliance with the Global Warming Solutions Act.”

The Global Warming Solutions Act (“GWSA”) required the Commonwealth to establish goals for the reduction of greenhouse gas emissions by 2020 and 2050. The goals we chose were aggressive ones: a reduction of 25% below 1990 levels by 2020 and a reduction of 80% below 1990 levels by 2050. In 2010, when the first Climate Change Plan was proposed to meet these goals, one significant assumption included the procurement of approximately 1,200 megawatts (“MWs”) of hydroelectric power to be delivered to Massachusetts to meet the 2020 goal. The 2010 Plan assumed that delivery of this hydroelectric power would account for a full 5.3% of the targeted 25% reduction. This power has not yet been procured, and we are at risk of not meeting our 2020 goal.

This legislation requires Massachusetts’ electric distribution companies to jointly and competitively solicit long-term contracts for clean energy generation resources and associated transmission with the Massachusetts Department of Energy Resources. Although electric distribution companies can procure hydroelectric power under existing law, they have not done so yet, and it is highly unlikely that they will absent legislation authorizing long-term contracts. This legislation authorizes those contracts for both stand-alone firm hydroelectric power and new Class I RPS resources as long as they are firmed up with hydroelectric power.

The legislation also authorizes regional collaboration to facilitate a regional procurement of clean energy generation resources. Connecticut and Rhode Island currently have explicit statutory authority for utility companies to enter into these sort of long-term contracts. This legislation will bring Massachusetts in line with our neighbors, and enable us to work together to diversify our energy generation mix—in both Massachusetts and New England as a whole—in a cost-effective manner.

This legislation is intended to ensure that approximately 1,200 MWs of hydroelectric power is delivered to Massachusetts so that we can meet our goals under the GWSA. I urge your prompt enactment of this legislation

Sincerely,

Charles D. Baker,
Governor

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

An Act relative to energy sector compliance with the Global Warming Solutions Act.

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. (a) For the purposes of this section the following terms, shall, unless the
2 context clearly indicates otherwise, have the following meanings:-

3 “Affiliate”, any corporation, society, trust, association, partnership or individual that is,
4 directly or indirectly, partially or wholly owned or controlled by the same parent company as a
5 distribution company.

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

9 “Contract date”, the date of execution of a long-term contract pursuant to this section.

10 “Firm service hydroelectric generation”, hydroelectric generation provided without
11 interruption for a period designated in a contract, subject to reasonable force majeure
12 interruptions that may be negotiated under said contract, including but not limited to multiple

13 hydroelectric run-of-the-river generation units managed in a portfolio that creates firm service
14 through the diversity of multiple units.

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

19 “Long-term contracts”, contracts for a period of 15 to 25 years.

20 “Project affiliation”, when a transmission or generation project is, directly or indirectly,
21 partially or wholly owned or controlled by a distribution company or by an affiliate of a
22 distribution company or the parent company of a distribution company.

23 (b) Notwithstanding any general or special law to the contrary, all distribution companies,
24 as defined in section 1 of chapter 164 of the General Laws, shall, together with the department of
25 energy resources, jointly and competitively solicit proposals for clean energy generation
26 resources to deliver no more than an annual amount of electricity of approximately 18,900,000
27 megawatt-hours via long-term contracts to be executed by the distribution companies and,
28 provided the department of energy resources determines reasonable proposals have been
29 received pursuant to subsection (c), enter into cost-effective long-term contracts for an annual
30 amount of electricity of approximately 9,450,000 megawatt-hours per project. Initial
31 solicitations under this section shall commence no later than April 1, 2016.

32 (c) The department of energy resources shall coordinate, through a schedule or staggered
33 schedule designated by the department of energy resources, one or more solicitations pursuant to
34 subsection (b). Such solicitations may be done jointly with other New England states or entities

35 designated by said states. If the department of energy resources determines that reasonable
36 proposals were not received pursuant to a solicitation, the department of energy resources may
37 terminate the solicitation. The department of energy resources shall determine whether an
38 additional solicitation is necessary to ensure that clean energy generation resources are procured
39 in a cost-effective manner on a long-term basis to meet the Commonwealth's goals pursuant to
40 Chapter 298 of the Acts of 2008.

41 (d) The solicitations and subsequent procurements of resources may include proposals for
42 electric transmission to interconnect load centers in the New England control area with regions
43 or areas where clean energy generation resources may be available. Such transmission proposals
44 may provide for procurement separate from the power purchase agreement for the clean energy
45 generation resources or may bundle the transmission into the power purchase agreement. To the
46 extent transmission is unbundled from the power purchase agreement it shall be pursued through
47 the rules of the federal energy regulatory commission. In such case, the department of energy
48 resources shall have the authority to determine whether the transmission shall be pursued
49 through (1) an elective transmission upgrade, (2) under the rules applicable to transmission
50 advanced to meet public policy requirements, as such terms are used by the federal energy
51 regulatory commission; or (3) such other means available under federal rules as appropriate.

52 (e) A draft of the request for proposals to be used in any solicitation under this section
53 shall be filed with the department of public utilities for review and approval prior to issuance and
54 the department of public utilities shall issue a decision within thirty days of the close of the
55 public comment period.

56 (f) If a solicitation is not terminated pursuant to section (c), then the distribution
57 companies and the department of energy resources shall jointly evaluate any bids received for the
58 purposes of selecting a winning bidder. If there is a disagreement between or among the
59 distribution companies or with the department of energy resources, as to the selection of a
60 winning bidder, then the disagreement shall be submitted to the office of the attorney general for
61 a decision within 90 days. The attorney general shall authorize the selection of a winning bidder
62 only upon a finding that the project is cost-effective and the selection of a winning bidder is not
63 unduly influenced by a project affiliation.

64 (g) Any long-term contracts executed in accordance with this section shall be subject to
65 the approval of the department of public utilities, provided that the department of public utilities
66 shall approve a contract only upon a finding that it is a cost-effective means for procuring clean
67 energy generation resources on a long-term basis to meet the Commonwealth's goals set forth in
68 Chapter 298 of the Acts of 2008.

69 (h) A distribution company may elect to use any energy, capacity, or renewable energy
70 certificates purchased under any long-term contract executed in accordance with this section for
71 resale to its customers. If the energy, capacity, or renewable energy certificates are not so used,
72 such companies shall sell such purchased energy, capacity, or renewable energy certificates in
73 the wholesale market through a competitive bid process.

74 (i) If a distribution company sells such purchased energy, capacity, or renewable energy
75 certificates in the wholesale market, the distribution company shall net the cost of payments
76 made under the long-term contracts against the proceeds obtained from the sales, and the
77 difference shall be credited or charged to all distribution customers through a non-bypassable

78 rate included in distribution rates, subject to the review and approval of the department of public
79 utilities.

80 (j) The department of energy resources may promulgate rules and regulations consistent
81 with this section and may hire experts or consultants to assist in: (1) the development of said
82 rules and regulations and (2) the management and coordination of the solicitation or solicitations,
83 the project evaluation process, and approval proceedings. The costs associated with hiring said
84 experts or consultants shall be paid from the alternative compliance payment fund overseen by
85 the department of energy resources.

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

89 (l) The invalidity or unenforceability of any provisions of this section shall not affect the
90 validity or enforceability of any other provision of this section, which shall remain in full force
91 and effect.