SENATE DOCKET, NO. 2098 FILED ON: 1/18/2019

SENATE . . . . . No. 1945

The Commonwealth of Massachusetts

PRESENTED BY:

Julian Cyr

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 for community empowerment.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Julian Cyr	*Cape and Islands*	
Paul A. Schmid, III	*8th Bristol*	*1/22/2019*
Jason M. Lewis	*Fifth Middlesex*	*1/23/2019*
Mike Connolly	*26th Middlesex*	*1/29/2019*
Dylan A. Fernandes	*Barnstable, Dukes and Nantucket*	*1/29/2019*
Jennifer E. Benson	*37th Middlesex*	*1/29/2019*
Mary S. Keefe	*15th Worcester*	*1/31/2019*
Jack Patrick Lewis	*7th Middlesex*	*1/31/2019*
Thomas M. Stanley	*9th Middlesex*	*2/1/2019*
Marc R. Pacheco	*First Plymouth and Bristol*	*2/1/2019*
Maria Duaime Robinson	*6th Middlesex*	*2/1/2019*
Patrick M. O'Connor	*Plymouth and Norfolk*	*2/1/2019*
David T. Vieira	*3rd Barnstable*	*2/1/2019*
Joanne M. Comerford	*Hampshire, Franklin and Worcester*	*2/1/2019*
Rebecca L. Rausch	*Norfolk, Bristol and Middlesex*	*2/1/2019*
Carlos González	*10th Hampden*	*2/1/2019*
Diana DiZoglio	*First Essex*	*2/12/2019*

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By Mr. Cyr, a petition (accompanied by bill, Senate, No. 1945) of Julian Cyr, Paul A. Schmid, III, Jason M. Lewis, Mike Connolly and other members of the General Court for legislation to empower communities to transition to renewable energy. Telecommunications, Utilities and Energy.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *1834* OF 2017-2018.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act for community empowerment.

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

Section 134 of chapter 164, as appearing in the General Laws, 2016 Official Edition, is hereby amended by adding, after subsection (b), the following subsection:-

(c)(1) As used in this subsection, the following words shall have the following meanings unless the context otherwise requires:

"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 section 11F of chapter 25A.

"Community empowerment contract" or "contract", an agreement between a municipality and the developer, owner or operator of a renewable energy project.

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

"Department", the department of public utilities.

"Large commercial customer", a large commercial, industrial or institutional customer as further defined by the department of energy resources utilizing existing usage-based tariff structures.

"Municipality", a city or town or a group of cities or towns which is not served by a municipal lighting plant, that meet the eligibility criteria under paragraph (9).

"Participant", a customer within a municipality that has entered into a community empowerment contract, so long as that customer did not opt out of, or is prevented from participating in, the community empowerment contract under subsection (d).

"Renewable energy certificate", a certificate representing the environmental attributes of 1 megawatt hour of electricity generated by a renewable energy project, the creation, use and retirement of which is administered by ISO New England, Inc.

"Renewable energy portfolio standard", the renewable energy portfolio standard established in section 11F of chapter 25A.

"Renewable energy project" or "project", a facility that generates electricity using a Class 1 renewable energy resource and is qualified by the department of energy resources as eligible to

participate in the renewable energy portfolio standard under section 11F of chapter 25A and to sell renewable energy certificates under the program.

"Residential customer", a utility distribution customer that is a private residence or group of residences as further defined by the department of energy resources utilizing existing usage-based tariff structures.

"Small commercial customers", a small or medium commercial, industrial or institutional utility distribution customer as further defined by the department of energy resources utilizing existing usage-based tariff structures.

(2) A municipality may, on behalf of the electricity customers within the municipality, enter into a community empowerment contract with a company that proposes to construct a renewable energy project. A municipality may enter into more than one (1) community empowerment contract and may enter into new contracts at any time.

(3) A community empowerment contract shall be subject to the following conditions:

(i) the contract shall be between the municipality and the company proposing to construct a renewable energy project; provided, however, that this section shall not authorize a municipality to utilize its collateral, credit or assets as collateral or credit support to the counterparty of the contract and a municipality may do so only as otherwise authorized by law;

(ii) the renewable energy project specified in the contract shall not have begun construction prior to the contract having been entered into by the municipality;

(iii) the contract shall be structured as a contract for differences so as to stabilize electricity prices for participants and shall specify a fixed price for the energy and renewable

energy certificates to be generated by the project; provided, however, that the contract shall also specify a means by which the project's contracted amount of energy and renewable energy certificates shall be sold to a third party, at a price established by the wholesale market or an index and as agreed by the parties to the contract, and the proceeds from which shall be credited to the amount owed from the participants to the project; provided further, that if the amount earned in a sale exceeds the agreed fixed price, the participants shall be credited from the project for the difference between the sale price and the contracted fixed price; and provided further, that a contract shall not be an agreement to physically deliver electric energy to the participants but it may require delivery of renewable energy certificates;

(iv) the contract shall specify whether renewable energy certificates from the renewable energy project are to be provided and, if so provided, shall specify how the renewable energy certificates are to be transmitted and disposed of or retired; provided, however, that renewable energy certificates purchased through a contract may be: (A) assigned to the load of each participant or subset of participants, as stipulated in the contract, so as to increase the amount of renewable energy attributed to use by the participants in the aggregate; or (B) sold in a transparent, competitive process, the proceeds from which shall be applied to the contract for differences mechanism under clause (iii); and provided further, that a renewable energy certificate purchased through a contract shall not be used by a basic service supply provider or competitive supply provider to meet its requirements under the renewable energy portfolio standard unless the renewable energy certificate is first sold to the supplier in a competitive, transparent process under this clause;

(v) the contract shall have a term of not less than 10 years from the time the specified renewable energy project commences operation;

(vi) the contract shall describe the calculations by which a charge or credit to a participant or to the renewable energy project are calculated based on the contract for differences mechanism under clause (iii); provided, however, that the calculations shall ensure full payment or credit to the renewable energy project even if a participant does not make full payment of the participant's distribution utility bill; provided further, that if there is a nonpayment of all or a portion of a distribution utility bill, an increase in charges to the contract participants may be used to ensure sufficient revenue to meet obligations to the project; and provided further, that the contract shall specify a contract administrator who shall perform the calculations under this subsection and determine, for implementation by the distribution utility, the charges and credits due to the project, participants, distribution utility and others as required by the contract; and

(vii) the contract may exempt for differences mechanism residents of the municipality who receive low-income electric rates.

(4) A town may enter into a community empowerment contract upon authorization by a majority vote of town meeting, town council or other municipal legislative body. A city may authorize a community empowerment contract by a majority vote of the city council or municipal legislative body, with the approval of the mayor or the city manager in a Plan D or Plan E form of government. Two or more municipalities may initiate a process jointly to authorize community empowerment contracting by a majority vote of each municipality under this paragraph. Prior to an authorizing vote, a public hearing shall be held to inform the municipalities of the proposed contract, the impact on residents and information on how to opt out of the contract if it proceeds. This hearing shall specify the proposed project under the contract and the length of the contract. An entity that is not a party to the contract shall estimate the contract's rate impacts under reasonable scenarios for future energy prices and the estimates

shall be presented. The proposed project and contract information, estimated rate impact on constituents, procedure for customers to opt out of the proposed contract and information regarding the public hearing shall also be mailed to the residents of the municipalities 30 days before the hearing.

(5) The electricity customers within a municipality shall be required to participate in a community empowerment contract; provided, however, that a customer may opt not to participate in a contract if the customer provides notice to an administrator designated by the municipality within 90 days after the vote authorizing a contract or, in the case of a residential user receiving a low-income electric rate, at any time. No customer shall be a participant in a contract if that customer uses more than 5 per cent of the total annual electricity usage of the electricity customers located within a single municipality that is a party to the contract or, in the case of a contract with a group of municipalities, 5 per cent of the total annual electricity usage of the electricity customers located in the group of municipalities that are parties to the contract. Residential and small commercial customers that establish service within a municipality after the municipality enters into a community empowerment contract shall be required to participate in any community empowerment contracts in effect for the municipality at the time the new service is established. A large commercial customer within a municipality may become a participant unless otherwise prohibited and, upon electing to become a participant, shall remain a participant for the remainder of the community empowerment contract as long as the large commercial customer continues to be located within the municipality.

(6) The department shall promulgate regulations, guidelines or orders, required by paragraph (6) of subsection (c) of section 134 of chapter 164 of the General Laws within 6 months after the effective date of this act, that:

(i) establish the manner in which a municipality may request from a distribution utility, and which the distribution utility shall provide in a timely manner, the summary historic load and payment information of the electricity customers within the municipality that is necessary for a municipality to request and analyze a proposal for a community empowerment contract; provided, however, that the distribution utility may charge the municipality for verifiable, reasonable and direct costs associated with providing the information as approved by the department generally or on a case-by-case basis;

(ii) establish a procedure by which a municipality shall have a community empowerment contract approved by the department; provided, however, that a community empowerment contract shall not take effect until so approved and the department shall be obligated to and shall approve a contract that meets the requirements under this section; and provided further, that in establishing the approval procedure, the department shall adopt means to minimize the administrative and legal costs to municipalities to the maximum extent possible;

(iii) establish guidelines or standards by which the contract administrator under clause (vi) of paragraph (3) shall: (A) provide utility adjustments to charges to the distribution or credits to participants via a line item on the distribution utility bill; and (B) provide information to the distribution utility that is necessary to enable it to make or receive payments to or from the project and to others as necessary;

provided, however, that each community empowerment contract shall be indicated on a participant's distribution utility bill by a line item specific to the contract; and provided further, that a distribution utility may recover verifiable and reasonable costs for the implementation of this subsection from a contract party or participant except as provided for in clause (iv). Should

implementation of this subsection require changes to the distribution utility company's billing system that would not otherwise be incurred, the cost of implementing such changes shall, upon approval by the department as being verifiable, reasonable, and necessary to implement this subsection, be paid for by ACP funds or, if available ACP funds are insufficient, by the Massachusetts Renewable Energy Trust Fund, as established by General Laws chapter 23J, section 9.

(iv) establish guidelines or standards by which distribution company customers may receive or access accurate energy source disclosure information, taking into account the renewable energy certificates that may be ascribed to each customer's electricity usage and regardless of the source from which the renewable energy certificates were supplied or purchased. Should implementation of this subsection require changes to the distribution utility company's billing system that would not otherwise be incurred, the cost of implementing such changes shall, upon approval by the department as being verifiable, reasonable, and necessary to implement this subsection, be paid for by ACP funds or, if available ACP funds are insufficient, by the Massachusetts Renewable Energy Trust Fund, as established by General Laws chapter 23J, section 9.

(7) The department of energy resources shall promulgate regulations or guidelines, required by paragraph (7) of subsection (c) of section 134 of chapter 164 of the General Laws within 6 months after the effective date of this act, that:

(i) establish the manner in which, in the case of a community empowerment contract in which the renewable energy certificates are to be assigned to participants, the renewable energy

certificates may be transmitted and retired appropriately and the energy source disclosure information accurately provided to participants; and

(ii) establish recommended practices to ensure transparency and accountability on the part of a municipality in entering into and managing a community empowerment contract, including the means by which an executed community empowerment contract shall be available for public inspection and recommendations for a municipality to follow in order to ensure compliance with the requirements for entering into a community empowerment contract.

The department of energy resources shall also provide technical assistance to a municipality regarding a community empowerment contract upon request.

(8) A community empowerment contract shall be in addition to, and aside from, an electricity supply contract that a customer may have at the time of the contract or that that the customer may later seek to establish. A municipality that enters into a community empowerment contract under this subsection shall not be considered a wholesale or retail electricity supplier. A community empowerment contract shall not require participants to change their choice of electricity supplier regardless of whether the supplier is a competitive supplier or a basic service supplier;