

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

SENATE No. 1945

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:

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

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

5 “Alternative Compliance Payment,” or “ACP,” an amount established by the department
6 of energy resources that retail electricity suppliers may pay in order to discharge their Renewable
7 Portfolio Standard obligation, as required under section 11F of chapter 25A.

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

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

12 “Department”, the department of public utilities.

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

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

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

21 “Renewable energy certificate”, a certificate representing the environmental attributes of
22 1 megawatt hour of electricity generated by a renewable energy project, the creation, use and
23 retirement of which is administered by ISO New England, Inc.

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

26 “Renewable energy project” or “project”, a facility that generates electricity using a Class
27 1 renewable energy resource and is qualified by the department of energy resources as eligible to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

146 (iv) establish guidelines or standards by which distribution company customers may
147 receive or access accurate energy source disclosure information, taking into account the
148 renewable energy certificates that may be ascribed to each customer's electricity usage and
149 regardless of the source from which the renewable energy certificates were supplied or
150 purchased. Should implementation of this subsection require changes to the distribution utility
151 company's billing system that would not otherwise be incurred, the cost of implementing such
152 changes shall, upon approval by the department as being verifiable, reasonable, and necessary to
153 implement this subsection, be paid for by ACP funds or, if available ACP funds are insufficient,
154 by the Massachusetts Renewable Energy Trust Fund, as established by General Laws chapter
155 23J, section 9.

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

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

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

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

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

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