

SENATE No. 2836

Senate, June 25, 2024 -- Text of amendment (57) (offered by Senator Mark) to the Ways and Means amendment (Senate, No. 2829) to the Senate Bill upgrading the grid and protecting ratepayers

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

1 in section 15 by inserting after the words “criteria and requirements for the siting and
2 permitting of small clean energy infrastructure facilities by local governments”, the words
3 “participating in the opt-in consolidated local permitting program”; and

4 By striking out section 21 and inserting in place thereof:-

5 SECTION 21. Said chapter 25A is hereby further amended by inserting after section 20
6 the following 2 sections:-

7 Section 21. (a) As used in this section, the following words shall have the following
8 meanings unless the context clearly requires otherwise:-

9 “Clean energy generation”, electrical energy output, or that portion of the electrical
10 energy output, excluding any electrical energy utilized for parasitic load of a clean existing
11 generation unit, that qualifies under clean energy standard regulations established pursuant to
12 subsection (c) of section 3 of chapter 21N.

13 “Clean energy solicitation”, a competitive solicitation for clean energy associated
14 environmental attributes or energy services completed by the department conducted pursuant to
15 this section.

16 “Distribution company”, a distribution company as defined in section 1 of chapter 164.

17 “Energy services”, operation of infrastructure that increases the deliverability or
18 reliability of clean energy generation or reduces the cost of clean energy generation, including,
19 but not limited to, transmission, energy storage and demand response technologies.

20 “Environmental attributes”, all present and future attributes under any and all
21 international, federal, regional, state or other law or market, including, but not limited to, all
22 credits or certificates that are associated, either now or by future action, with unit specific clean
23 energy generation, including, but not limited to, those provided for in regulations promulgated
24 pursuant to subsection (c) of section 3 of chapter 21N and sections 11F and 17.

25 “Long-term contract” a contract for a period of not more than 20 years.

26 (b) Notwithstanding any general or special law to the contrary, in order to maximize the
27 commonwealth’s ability to achieve compliance with limits and sublimits established pursuant to
28 sections 3 and 3A of chapter 21N, the department shall investigate the necessity, benefits and
29 risks of solicitations for energy services, competitively solicit for environmental attributes or
30 energy services established pursuant to said sections 3 and 3A of said chapter 21N and may
31 negotiate and enter into long-term contracts for such environmental attributes or energy services.

32 (c) Not less than every 3 years, the department shall publish a resource solicitation plan,
33 which shall include, but not be limited to, the following elements: (i) a description of the clean

34 energy generation needs sufficient to maximize the commonwealth's ability to achieve
35 compliance with limits and sublimits established pursuant to sections 3 and 3A of chapter 21N,
36 including resource generation type, nameplate capacity amounts and commercial operation dates
37 for new resources; (ii) a schedule recommendation for clean energy solicitations that the
38 department will conduct within the next 3 years; (iii) economic development objectives and
39 requirements for the clean energy solicitations; (iv) a mechanism for the distribution companies
40 to recover the costs associated with long-term contracts for clean energy associated
41 environmental attributes or energy services entered into by the department under this section,
42 including any administrative costs to support the department's requirements under this section;
43 and (v) a review of the previous clean energy solicitations, if applicable. The department shall
44 consult with the department of public utilities and attorney general's office in the development of
45 this resource plan in advance of publishing it. Any ex parte rules established by the department
46 of public utilities shall not apply to this consultation process.

47 (d) The department shall file the resource solicitation plan and its recommendations with
48 the department of public utilities. The department of public utilities shall review the resource
49 solicitation plan and recommendations to determine whether the resource solicitation plan is a
50 reasonable, appropriate and cost-effective mechanism to achieve the goals of this section. The
51 department of public utilities shall approve, approve with modifications or reject the plan within
52 7 months of submission. Upon approval of the resource solicitation plan, the department of
53 public utilities shall require the distribution companies to jointly propose tariffs consistent with
54 the approved resource solicitation plan to recover costs associated with all contracts pursuant to
55 this section not later than 3 months following the approval; provided, however, that the
56 distribution companies shall not receive any remuneration, benefit or fee to compensate for costs

57 associated with said contracts. The tariffs shall apportion costs associated with the contracts to be
58 recovered from ratepayers among the distribution companies.

59 (e) The method for the clean energy solicitations shall be proposed by the department and
60 shall utilize a competitive bidding process. The department shall consult with the attorney
61 general regarding the choice of solicitation methods. The department may coordinate any
62 solicitation under this section with other states, municipal light plants or other governmental and
63 non-governmental organizations; provided, however, that the department shall describe any
64 impacts coordination may have on the solicitation, including any impacts to nameplate capacity
65 amounts or quantities of clean energy generation attributes sought in its solicitation. After notice
66 and the opportunity for public comment, the department shall proceed with the clean energy
67 solicitation. The department may competitively solicit proposals for long-term contracts for: (i)
68 environmental attributes from clean energy generation; or (ii) energy services contracts. The
69 department may consult with other states, federal agencies and regional organizations, including,
70 but not limited to, ISO New England Inc. or its successor; provided, however, that reasonable
71 proposals have been received, the department shall make or cause to be made filings as necessary
72 through the appropriate jurisdictional mechanism and enter into long-term contracts that are
73 consistent with the roadmap plans published pursuant to chapter 21N.

74 (f) The department shall propose draft contracts and take all reasonable actions to
75 structure the contracts, pricing or administration of the products purchased under this section to
76 contribute towards achieving compliance with limits and sublimits established pursuant to
77 sections 3 and 3A of chapter 21N in a cost-effective manner that minimizes rate-payer impacts.

78 (g) Long-term contracts executed pursuant to this section shall be subject to the approval
79 of the department of public utilities. The department of public utilities shall consider the
80 potential costs and benefits of the proposed long-term contract and shall approve a long-term
81 contract if the department finds that the contract is cost-effective and consistent with the
82 roadmap plans published pursuant to chapter 21N, taking into account the factors outlined in this
83 section, consistency with the approved resource solicitation plan and the department's
84 recommendations. The department of public utilities shall complete its review of long-term
85 contracts submitted for its approval not later than 90 days after the contracts are filed by the
86 department of energy resources.

87 (h) The department may retire any environmental attributes purchased pursuant to
88 approved long-term contracts under this section on behalf of the commonwealth to be used
89 toward satisfying compliance with the limits and sublimits established pursuant to sections 3 and
90 3A of chapter 21N and any regulations or programs established pursuant to sections 3 and 6 of
91 said chapter 21N or sections 11F and 17. If any retired environmental attributes are eligible
92 under a clean, renewable, clean peak or other energy portfolio standard established by the
93 department or the department of environmental protection, the portfolio standard minimum
94 obligations of suppliers subject to such standards may be reduced in proportion to any eligible
95 environmental attributes retired pursuant to this section, subject to the discretion of the
96 department and the department of environmental protection.

97 (i) There shall be a separate, non-budgeted special revenue fund known as the central
98 procurement fund, which shall be administered by the department, without further appropriation,
99 for funding long-term contracts consistent with this section. The fund shall be credited with: (i)
100 funds or revenue collected by distribution companies pursuant to a tariff approved by the

101 department of public utilities in furtherance of the objectives and requirements of this section;
102 (ii) revenue from appropriations or other money authorized by the general court and specifically
103 designated to be credited to the fund; (iii) interest earned on such funds or revenues; (iv) bid fees
104 collected by the department from participants in clean energy solicitations conducted pursuant to
105 this section; (v) other revenue from public and private sources, including gifts, grants and
106 donations; and (vi) any funds provided from other sources. All amounts credited to the fund shall
107 be used solely for activities and expenditures consistent with the public purposes of this section,
108 including the ordinary and necessary administrative and personnel expenses of the department
109 related to the administration and operation of the fund and performance of the duties established
110 by this section. Revenues deposited in the fund that are unexpended at the end of a fiscal year
111 shall not revert to the General Fund and shall be available for expenditure in the following fiscal
112 year. No expenditure made from the fund shall cause the fund to be in deficit at any point.

113 Section 22. (a) For the purposes of this section, the following words shall, have the
114 following meanings unless the context clearly requires otherwise:

115 “Anaerobic digestion facility”, a facility that: (i) generates electricity from a biogas
116 produced by the accelerated biodegradation of organic materials under controlled anaerobic
117 conditions; and (ii) has been determined by the department of energy resources, in coordination
118 with the department of environmental protection, to qualify under department of energy
119 resources regulations as a Class I renewable energy generating source under section 11F.

120 “Local government”, a municipality or regional agency, including the Cape Cod
121 commission and the Martha’s Vineyard commission, that has permitting authority over small
122 clean energy infrastructure facilities.

123 “Small clean energy generation facility”, energy generation infrastructure with a
124 nameplate capacity of not more than 24 megawatts that is an anaerobic digestion facility, solar
125 facility or wind facility, including any ancillary structure that is an integral part of the operation
126 of the small clean energy generation facility or, following a rulemaking by the department in
127 consultation with the energy facilities siting board in which the facility type is added to the
128 regulatory definition of a small clean energy generation facility, any other type of generation
129 facility that produces no greenhouse gas emissions or other pollutant emissions known to have
130 negative health impacts; provided, however, that the nameplate capacity for solar facilities shall
131 be calculated in direct current.

132 "Small clean energy infrastructure facility", a small clean energy generation facility,
133 small clean energy storage facility or small clean transmission and distribution infrastructure
134 facility.

135 “Small clean energy storage facility”, an energy storage system as defined under section
136 1 of chapter 164 with a rated capacity of less than 100 megawatt hours, including any ancillary
137 structure that is an integral part of the operation of the small clean energy storage facility.

138 “Small clean transmission and distribution infrastructure facility”, electric transmission
139 and distribution infrastructure and related ancillary infrastructure including: (i) electric
140 transmission line reconditioning or rebuilding projects; (ii) new or substantially altered electric
141 transmission lines located in an existing transmission corridor that are not more than 10 miles
142 long, including any ancillary structure that is an integral part of the operation of the transmission
143 line; (iii) new or substantially altered electric transmission lines located in a new transmission
144 corridor that are not more than 1 mile long, including any ancillary structure that is an integral

145 part of the operation of the transmission line; and (iv) electric distribution-level projects that
146 meet a certain threshold, as determined by the department; provided, however, that the “small
147 clean transmission and distribution infrastructure facility” shall be: (A) designed, fully or in part,
148 to directly interconnect or otherwise facilitate the interconnection of clean energy infrastructure
149 to the electric grid; (B) designed to ensure electric grid reliability and stability; or (C) designed to
150 help facilitate the electrification of the building and transportation sectors; provided further, that
151 on or after January 1, 2026, a “small clean transmission and distribution infrastructure facility”
152 shall not include new transmission and distribution infrastructure facilities that solely
153 interconnect new or existing infrastructure that does not meet the definition of a small clean
154 energy infrastructure facility or large clean energy infrastructure facility as defined in section
155 69G of chapter 164.

156 “Solar facility”, a ground mounted facility that uses sunlight to generate electricity.

157 “Wind facility”, an onshore or offshore facility that uses wind to generate electricity.

158 (b) The department shall establish standards, requirements and procedures governing an
159 opt-in process for the siting and permitting of small clean energy infrastructure facilities by local
160 governments that includes: (i) uniform sets of public health, safety, environmental and other
161 standards, including zoning criteria, that participating local governments shall require for the
162 issuance of permits for small clean energy infrastructure facilities; (ii) a common standard
163 application for small clean energy infrastructure facility project applicants submitting a permit
164 application to participating local governments; (iii) uniform pre-filing requirements for small
165 clean energy infrastructure facilities, which shall include specific requirements for public
166 meetings and other forms of outreach that must occur in advance of an applicant submitting an

167 application; (iv) standards for applying site suitability guidance developed by the executive
168 office of energy and environmental affairs pursuant to section 30 of chapter 21A to evaluate the
169 social and environmental impacts of proposed small clean energy generation facilities, small
170 clean energy storage facilities and small clean transmission and distribution infrastructure
171 facilities in new rights of way, which shall include a mitigation hierarchy to be applied during
172 the permitting process to avoid, minimize or, if avoidance or minimization is impossible,
173 mitigate negative impacts of siting on the environment, people and the commonwealth's goals
174 and objectives for climate mitigation, resilience, biodiversity and protection of natural and
175 working lands, to the extent practicable; (v) common conditions and requirements for a single
176 permit consolidating all necessary local approvals to be issued for different types of small clean
177 energy infrastructure facilities in the event that constructive approval is triggered through the
178 non-issuance of a final decision by a participating local government pursuant to subsection (d);
179 and (vi) responsible parties subject to enforcement actions, including in the event of sale of small
180 clean energy infrastructure facilities after permitting. The department of energy resources may
181 promulgate rules and regulations allowing local governments to set fees for compensatory
182 environmental mitigation for the restoration, establishment, enhancement or preservation of
183 comparable environmental resources through funds paid to the local government or a non-profit
184 entity to be used at the election of an applicant to satisfy the standard of mitigation to the
185 maximum extent practicable. Participating local governments acting in accordance with the
186 standards established by the department for small clean energy generation facilities and small
187 clean energy storage facilities pursuant to this subsection shall be considered to have acted
188 consistent with the limitations on solar facility and small clean energy storage facility zoning

189 under section 3 of chapter 40A. The department shall establish a transition or concurrency period
190 for the effective date of any standards that it establishes.

191 (c) The proponent of a small clean energy infrastructure facility may submit a
192 consolidated small clean energy infrastructure facility permit application seeking a single permit
193 consolidating all necessary local permits and approvals from participating municipalities. To
194 initiate such permitting of a small clean energy infrastructure facility, an applicant may elect to
195 submit an application, with supporting information in the form developed by the department
196 pursuant to subsection (b), for the participating local government to conduct a consolidated
197 review pursuant to the criteria and standards set forth in subsection (b) and using the process set
198 forth in subsection (d). Participating local governments shall determine whether such
199 consolidated small clean energy infrastructure facility permit application is complete within 30
200 days of receipt. If an application is deemed incomplete, the applicant shall have 30 days, and any
201 additional time as determined by the local government, to cure any deficiencies before the
202 application is rejected. In the event of a rejection of the application, the participating local
203 government shall provide a detailed reasoning for the rejection.

204 (d) Participating local governments shall issue a single, final decision on a consolidated
205 small clean energy infrastructure facility permit application submitted pursuant to subsection (c),
206 including all decisions necessary for a project to proceed with construction, but not including any
207 state permits that may be required to proceed with construction and operation of said facility,
208 within 12 months of the receipt of a complete permit application. All local government
209 authorities, boards, commissions, offices or other entities that may be required to issue a decision
210 on 1 or more permits in response to the application for the small clean energy infrastructure
211 facility may conduct reviews separately and concurrently. Such permits shall adhere to any

212 requirements established by the department pursuant to subsection (b). If a final decision is not
213 issued within 12 months of the receipt of a complete permit application, a constructive approval
214 permit shall be issued by the local government that adopts the common conditions and
215 requirements established by the department for the type of small clean energy infrastructure
216 facility under review.

217 (e) An appeal or review may be made only of the single, final decision of a local
218 government on an application for a small clean energy infrastructure facility, including all
219 decisions necessary to complete the application and permitting process, but not including
220 decisions on any state permits that may be required to proceed with construction and operation of
221 said facility. Decisions of local government authorities, boards, commissions, offices or other
222 entities on the issuance of 1 or more permits to the applicant for the small clean energy
223 infrastructure facility shall not be subject to independent appeal or review. Decisions on any state
224 permits that may be required shall be subject to de novo adjudication of the permit application by
225 the director of the energy facilities siting division, as provided in subsection (f).

226 (f) Within 30 days of the single, final decision on a consolidated permit application by a
227 local government described in subsections (d) and (e), project proponents and other individuals
228 or entities substantially affected by a proposed small clean energy infrastructure facility may file
229 a petition to request in writing a de novo adjudication of the permit application by the director of
230 the facilities siting division pursuant to section 69W of chapter 164 following permit issuance,
231 including constructive approval permits or denial by a local government.

232 (g) If a participating local government lacks the resources, capacity or staffing to review
233 a small clean energy infrastructure facility permit applications within 12 months, it may, not later

234 than 60 days after receipt of such application or at any time thereafter with the consent of the
235 applicant, request in writing a de novo adjudication of the such application by the director
236 pursuant to section 69W of chapter 164.

237 (h) The department shall promulgate regulations to implement this section in consultation
238 with local governments, Massachusetts Municipal Association, Inc., the department of public
239 utilities, the department of environmental protection, the department of fish and game, the
240 department of conservation and recreation, the department of agricultural resources, the
241 Massachusetts environmental policy act office, the office of environmental justice and equity, the
242 executive office of health and human services, the executive office of housing and livable
243 communities and the executive office of public safety and security.

244 (i) To adopt consolidated local permitting of clean energy infrastructure pursuant to
245 subsections (c) to (g) a municipality shall (1) opt into the process by a majority vote of the local
246 legislative body; and (2) submit a copy of the vote to the department in a form and manner to be
247 prescribed by the department. Upon municipal adoption of the consolidated local permitting
248 process, the department shall:

249 (j) maintain a publicly-accessible record of all municipalities who adopt consolidated
250 local permitting of small clean energy infrastructure and provide for periodic updates;

251 (k) not later than April 1, submit a report to the clerks of the senate and the house of
252 representatives, the joint committee on telecommunications, utilities and energy, the joint
253 committee on state administration and regulatory oversight, and the senate and house committees
254 on ways and means detailing the results relative to the communities who adopt the consolidated
255 local permitting process for small clean energy infrastructure.

256 (l) Subject to appropriation, participating municipalities shall have access to funding
257 support in the form of grants or other payments for community mitigation, expansion of local
258 capacity, help to conduct associated community engagement, related technical assistance, siting
259 and construction of renewable and alternative energy projects on municipally-owned land, and
260 other supports identified by the department.

261 (m) Nothing in subsections (c) to (g), inclusive, shall apply to a comprehensive permit
262 pursuant to sections 20 to 23, inclusive of chapter 40B. For the purpose of this section, the
263 procedures and standards for filing and review of an application for a comprehensive permit that
264 includes a small clean energy infrastructure facility shall be in accordance with said sections 20
265 to 23, inclusive, of said chapter 40B.