

STATE OF NEW YORK

10484

IN ASSEMBLY

May 27, 2022

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Cusick, Gunther) -- read once and referred to the Committee on Ways and Means

AN ACT to amend the public service law and the labor law, in relation to providing net revenues from utility-owned large-scale renewable generation projects to low-income customers and authorizes utility companies to own such projects

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative findings and intent. 1. New York state recognizes the deleterious impacts of climate change including increasingly frequent catastrophic weather events.

2 2. Pursuant to the New York state climate leadership and community protection act (CLCPA), New York state seeks to dramatically reduce greenhouse gas emissions and move its electric generation from fossil fuel-based generation to renewable-based generation. New York state has mandated that seventy percent of electricity come from renewable energy sources by year 2030 and one hundred percent of electricity come from carbon neutral sources by 2040.

3 3. Further, New York state recognizes that the current pace of development of in-state renewable energy resources is insufficient to meet the state's statutory renewable generation goals on schedule.

4 4. Because New York state seeks to accomplish these energy-related goals and standards as soon as practicable allowing regulated utilities to own and operate renewable generation is essential to achieving such goals and to provide a consistent and affordable supply of carbon-free, renewably generated electricity by 2030, through 2050 and beyond.

5 5. New York state seeks to continue to develop in-state renewable energy projects that will drive down costs, benefit customers receiving retail electric delivery particularly those customers who are low to moderate income.

6 6. New York state has a proprietary interest in these projects being efficiently built and operated without unnecessary disruptions, which justifies the use of project labor agreements and labor peace agreements.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD14768-06-2

1 § 2. The public service law is amended by adding a new section 66-t to
2 read as follows:

3 § 66-t. Regulated large scale renewable generation. 1. In order to
4 support the state in meeting state energy-related goals and standards,
5 corporations subject to the provisions of this article providing retail
6 electric service shall be authorized to own and operate renewable energy
7 generating facilities in New York state. Such corporations shall be
8 authorized to own and operate such facilities individually or in part-
9 nership with other persons doing business in New York.

10 2. A corporation owning and operating a renewable energy generation
11 facility pursuant to this section shall provide all net revenues from
12 such facility to low-income customers in the form of bill credits, which
13 shall be in addition to any other program or benefit offered by the
14 corporation to assist such customers.

15 3. In addition to the provisions of subdivision two of this section,
16 any renewable energy generating facility owned by such a corporation
17 shall be:

18 (a) subject to commission oversight in order to ensure that: (i) the
19 power generated at such facilities remains in-state for the benefit of
20 customers and the state; (ii) the power generated at such facilities
21 shall not be exported out-of-state; and (iii) any repowering of such
22 generating facilities shall comply with all requirements of this
23 section;

24 (b) built, pursuant to a competitive third-party bidding process,
25 which shall be issued by the corporation;

26 (c) subject to section sixty-six-r of this article and section two
27 hundred twenty-four-d of the labor law; and

28 (d) owned and operated in a manner that provides beneficial cost and
29 rate impacts to customers.

30 4. The commission shall establish a generation capacity limit for the
31 total generation capacity owned by corporations pursuant to this
32 section. The total generation capacity shall not exceed twenty-five
33 percent of the total generation capacity needed to achieve the renewable
34 energy goals described in section sixty-six-p of this article.

35 5. The commission shall issue such orders, rules and regulations as
36 may be necessary and appropriate to implement this section.

37 § 3. Section 66-r of the public service law, as added by section 2-a
38 of part AA of chapter 56 of the laws of 2021, is amended to read as
39 follows:

40 § 66-r. Requirements for certain renewable energy systems. 1. For the
41 purposes of this section, a "covered renewable energy system" means a
42 renewable energy system, as such term is defined in section sixty-six-p
43 of this article, with a capacity of greater than five megawatts alter-
44 nating current and which involves the procurement of renewable energy
45 credits by a public entity, or a third party acting on behalf and for
46 the benefit of a public entity. "Covered renewable energy system" shall
47 also include any generation facility authorized pursuant to section
48 sixty-six-t of this article.

49 2. For purposes of this section, "public entity" shall include, but
50 shall not be limited to, the state, a local development corporation as
51 defined in subdivision eight of section eighteen hundred one of the
52 public authorities law or section fourteen hundred eleven of the not-
53 for-profit corporation law, a municipal corporation as defined in
54 section one hundred nineteen-n of the general municipal law, an indus-
55 trial development agency formed pursuant to article eighteen-A of the
56 general municipal law or industrial development authorities formed

1 pursuant to article eight of the public authorities law, and any state,
2 local or interstate or international authorities as defined in section
3 two of the public authorities law; and shall include any trust created
4 by any such entities.

5 3. The commission shall require that the owner of the covered renewa-
6 ble energy system, or a third party acting on the owner's behalf, as an
7 ongoing condition of any renewable energy credits agreement with a
8 public entity, or as an ongoing condition of its authorization to oper-
9 ate and support the state in meeting energy-related goals, shall stipu-
10 late to the fiscal officer that it will enter into a labor peace agree-
11 ment with at least one bona fide labor organization either where such
12 bona fide labor organization is actively representing employees provid-
13 ing necessary operations and maintenance services for the renewable
14 energy system at the time of such agreement or upon notice by a bona
15 fide labor organization that is attempting to represent employees who
16 will provide necessary operations and maintenance services for the
17 renewable energy system employed in the state. The maintenance of such a
18 labor peace agreement shall be an ongoing material condition of any
19 continuation of payments under a renewable energy credits agreement or
20 authorization by the commission. For purposes of this section "labor
21 peace agreement" means an agreement between an entity and labor organ-
22 ization that, at a minimum, protects the state's proprietary interests
23 by prohibiting labor organizations and members from engaging in picket-
24 ing, work stoppages, boycotts, and any other economic interference with
25 the relevant renewable energy system. "Renewable energy credits agree-
26 ment" shall mean any public entity contract that provides production-
27 based payments to a renewable energy project as defined in this section.

28 4.(a) (1) Any public entity, in each contract for construction, recon-
29 struction, alteration, repair, improvement or maintenance of a covered
30 renewable energy system which involves the procurement of a renewable
31 energy credits agreement by a public entity, or a third party acting on
32 behalf and for the benefit of a public entity, the "public work" for the
33 purposes of this subdivision, shall ensure that such contract shall
34 contain a provision that the iron and structural steel used or supplied
35 in the performance of the contract or any subcontract thereto and that
36 is permanently incorporated into the public work, shall be produced or
37 made in whole or substantial part in the United States, its territories
38 or possessions. In the case of a structural iron or structural steel
39 product all manufacturing must take place in the United States, from the
40 initial melting stage through the application of coatings, except metal-
41 lurgical processes involving the refinement of steel additives. For the
42 purposes of this subdivision, "permanently incorporated" shall mean an
43 iron or steel product that is required to remain in place at the end of
44 the project contract, in a fixed location, affixed to the public work to
45 which it was incorporated. Iron and steel products that are capable of
46 being moved from one location to another are not permanently incorpo-
47 rated into a public work.

48 (2) Any corporation in each contract for construction, reconstruction,
49 alteration, repair, improvement or maintenance of a covered renewable
50 energy system authorized pursuant to section sixty-six-t of this arti-
51 cle, or a third party acting on behalf and for the benefit of the corpo-
52 ration, the "public work" for the purposes of this subdivision, shall
53 ensure that such contract shall contain a provision that the structural
54 iron and structural steel used or supplied in the performance of the
55 contract or any subcontract thereto and that is permanently incorporated
56 into the public work, shall be produced or made in whole or substantial

part in the United States, its territories or possessions. In the case of a structural iron or structural steel product all manufacturing must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving the refinement of steel additives. For the purposes of this subdivision, "permanently incorporated" shall mean an iron or steel product that is required to remain in place at the end of the project contract, in a fixed location, affixed to the public work to which it was incorporated. Iron and steel products that are capable of being moved from one location to another are not permanently incorporated into a public work.

(b) The provisions of paragraph (a) of this subdivision shall not apply if the head of the department or agency or corporation under subparagraph (1) of paragraph (a) constructing the public works, in his or her sole discretion, determines that the provisions would not be in the public interest, would result in unreasonable costs, or that obtaining such steel or iron in the United States would increase the cost of the contract by an unreasonable amount, or such iron or steel, including without limitation structural iron and structural steel cannot be produced or made in the United States in sufficient and reasonably available quantities and of satisfactory quality. The head of the department or agency constructing the public works shall include this determination in an advertisement or solicitation of a request for proposal, invitation for bid, or solicitation of proposal, or any other method provided for by law or regulation for soliciting a response from offerors intending to result in a contract pursuant to this subdivision. The provisions of paragraph (a) of this subdivision shall not apply for equipment purchased by a covered renewable energy system prior to the effective date of this ~~chapter~~ section.

(c) The head of the department or agency constructing the public works may, at his or her sole discretion, provide for a solicitation of a request for proposal, invitation for bid, or solicitation of proposal, or any other method provided for by law or regulation for soliciting a response from offerors intending to result in a contract pursuant to this paragraph involving a competitive process in which the evaluation of competing bids gives significant consideration in the evaluation process to the procurement of equipment and supplies from businesses located in New York state.

5. Whenever changes are proposed to any public procurement process involving the program described in subdivision two of this section, the commission shall make simultaneous recommendations to the temporary president of the senate and speaker of the assembly, regarding necessary changes to this section, if any, in meeting the goals outlined in the legislative findings and intent of ~~[the chapter by which this section was enacted]~~ part AA of chapter fifty-six of the laws of two thousand twenty-one.

§ 4. Subdivision 1 of section 224-d of the labor law, as added by section 2 of part AA of chapter 56 of the laws of 2021, is amended to read as follows:

1. For purposes of this section, a "covered renewable energy system" means a renewable energy system, as such term is defined in section sixty-six-p of the public service law, with a capacity of greater than five megawatts alternating current and which involves the procurement of renewable energy credits by a public entity, or a third party acting on behalf and for the benefit of a public entity. "Covered renewable energy system" shall also include any generation facility authorized pursuant to section sixty-six-t of the public service law.

1 § 5. No later than sixty days after the effective date of this act,
2 the public service commission shall commence a proceeding necessary and
3 appropriate to implement the provisions of section 66-t of the public
4 service law.
5 § 6. This act shall take effect immediately.