

STATE OF NEW YORK

9531--A

R. R. 422

IN ASSEMBLY

March 16, 2022

Introduced by M. of A. CUSICK, GUNTHER -- read once and referred to the Committee on Energy -- reported and referred to the Committee on Rules -- amended on the special order of third reading, ordered reprinted as amended, retaining its place on the special order of third reading

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 recog-
2 nizes the deleterious impacts of climate change including increasingly
3 frequent catastrophic weather events.
- 4 2. Pursuant to the New York state climate leadership and community
5 protection act (CLCPA), New York state seeks to dramatically reduce
6 greenhouse gas emissions and move its electric generation from fossil
7 fuel-based generation to renewable-based generation. New York state has
8 mandated that seventy percent of electricity come from renewable energy
9 sources by year 2030 and one hundred percent of electricity come from
10 carbon neutral sources by 2040.
- 11 3. Further, New York state recognizes that the current pace of devel-
12 opment of in-state renewable energy resources is insufficient to meet
13 the state's statutory renewable generation goals on schedule.
- 14 4. Because New York state seeks to accomplish these energy-related
15 goals and standards as soon as practicable allowing regulated utilities
16 to own and operate renewable generation is essential to achieving such
17 goals and to provide a consistent and affordable supply of carbon-free,
18 renewably generated electricity by 2030, through 2050 and beyond.
- 19 5. New York state seeks to continue to develop in-state renewable
20 energy projects that will drive down costs, benefit customers receiving
21 retail electric delivery particularly those customers who are low to
22 moderate income.
- 23 6. New York state has a proprietary interest in these projects being
24 efficiently built and operated without unnecessary disruptions, which
25 justifies the use of project labor agreements and labor peace agree-
26 ments.

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

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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. The public service law is amended by adding a new section 66-u to
38 read as follows:

39 § 66-u. Labor agreements and labor peace agreements. 1. For the
40 purposes of this section:

41 (a) "covered renewable energy system" means a renewable energy system,
42 as such term is defined in section sixty-six-p of this article, with a
43 capacity of greater than five megawatts alternating current and which
44 involves the procurement of renewable energy credits by a public entity,
45 or a third party acting on behalf of and for the benefit of a public
46 entity. "Covered renewable energy system" shall also include any gener-
47 ation facility authorized pursuant to section sixty-six-t of this arti-
48 cle;

49 (b) "labor peace agreement" means an agreement between an entity and
50 labor organization that, at a minimum, protects the state's proprietary
51 interests by prohibiting labor organizations and members from engaging
52 in picketing, work stoppages, boycotts, and any other economic interfer-
53 ence with the relevant renewable energy system;

54 (c) "public entity" shall include, but shall not be limited to, the
55 state, a local development corporation as defined in subdivision eight
56 of section eighteen hundred one of the public authorities law or section

1 fourteen hundred eleven of the not-for-profit corporation law, a municipi-
2 pal corporation as defined in section one hundred nineteen-n of the
3 general municipal law, an industrial development agency formed pursuant
4 to article eighteen-A of the general municipal law or industrial devel-
5 opment authorities formed pursuant to article eight of the public
6 authorities law, and any state, local or interstate or international
7 authorities as defined in section two of the public authorities law; and
8 shall include any trust created by any such entities; and

9 (d) "renewable energy credits agreement" shall mean any public entity
10 contract that provides production-based payments to a renewable energy
11 project as defined in this section.

12 2. The commission shall require that the owner of a covered renewable
13 energy system, or a third party acting on the owner's behalf, as an
14 ongoing condition of any renewable energy credits agreement with a
15 public entity, or as an ongoing condition of its authorization to oper-
16 ate and support the state in meeting energy-related goals, shall stipu-
17 late to the fiscal officer that it will enter into a labor peace agree-
18 ment with at least one bona fide labor organization either where such
19 bona fide labor organization is actively representing employees provid-
20 ing necessary operations and maintenance services for the renewable
21 energy system at the time of such agreement or upon notice by a bona
22 fide labor organization that is attempting to represent employees who
23 will provide necessary operations and maintenance services for the
24 renewable energy system employed in the state. The maintenance of such a
25 labor peace agreement shall be an ongoing material condition of any
26 continuation of payments under a renewable energy credits agreement or
27 authorization by the commission.

28 3. (a)(i) 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 shall take place in the United States, from
40 the initial melting stage through the application of coatings, except
41 metallurgical processes involving the refinement of steel additives. For
42 the purposes of this subdivision, "permanently incorporated" shall mean
43 an iron or steel product that is required to remain in place at the end
44 of the project contract, in a fixed location, affixed to the public work
45 to which it was incorporated. Iron and steel products that are capable
46 of being moved from one location to another are not permanently incorpo-
47 rated into a public work.

48 (ii) Any corporation in each contract for construction, recon-
49 struction, alteration, repair, improvement or maintenance of a covered
50 renewable energy system, or a third party acting on behalf and for the
51 benefit of the corporation, the "public work" for the purposes of this
52 subdivision, shall ensure that such contract shall contain a provision
53 that the iron and structural steel used or supplied in the performance
54 of the contract or any subcontract thereto and that is permanently
55 incorporated into the public work, shall be produced or made in whole or
56 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. 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 (i) of paragraph (a) of this subdivision 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 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.

4. 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 of the laws of two thousand twenty-two which added this section.

§ 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.

§ 5. No later than sixty days after the effective date of this act, the public service commission shall commence a proceeding necessary and appropriate to implement the provisions of section 66-t of the public service law.

§ 6. This act shall take effect immediately.