

# STATE OF NEW YORK

9426

## IN SENATE

May 26, 2022

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

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

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

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1 justifies the use of project labor agreements and labor peace agree-  
2 ments.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 trial development agency formed pursuant to article eighteen-A of the  
2 general municipal law or industrial development authorities formed  
3 pursuant to article eight of the public authorities law, and any state,  
4 local or interstate or international authorities as defined in section  
5 two of the public authorities law; and shall include any trust created  
6 by any such entities.

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

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

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

1 contract or any subcontract thereto and that is permanently incorporated  
2 into the public work, shall be produced or made in whole or substantial  
3 part in the United States, its territories or possessions. In the case  
4 of a structural iron or structural steel product all manufacturing must  
5 take place in the United States, from the initial melting stage through  
6 the application of coatings, except metallurgical processes involving  
7 the refinement of steel additives. For the purposes of this subdivision,  
8 "permanently incorporated" shall mean an iron or steel product that is  
9 required to remain in place at the end of the project contract, in a  
10 fixed location, affixed to the public work to which it was incorporated.  
11 Iron and steel products that are capable of being moved from one  
12 location to another are not permanently incorporated into a public work.

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

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

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

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

51 1. For purposes of this section, a "covered renewable energy system"  
52 means a renewable energy system, as such term is defined in section  
53 sixty-six-p of the public service law, with a capacity of greater than  
54 five megawatts alternating current and which involves the procurement of  
55 renewable energy credits by a public entity, or a third party acting on  
56 behalf and for the benefit of a public entity. "Covered renewable energy

1 system" shall also include any generation facility authorized pursuant  
2 to section sixty-six-t of the public service law.

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

7 § 6. This act shall take effect immediately.