

STATE OF NEW YORK

7879

2023-2024 Regular Sessions

IN ASSEMBLY

July 12, 2023

Introduced by M. of A. CUNNINGHAM -- read once and referred to the
Committee on Energy

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

The People of the State of New York, represented in Senate and Assem-
bly, 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.

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

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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.

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

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

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

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

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

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

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

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

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

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

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

§ 66-x. Labor agreements and labor peace agreements. 1. For the 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 this article, 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 of and for the benefit of a public entity. "Covered renewable energy system" shall also include any generation facility authorized pursuant to section sixty-six-w of this article;

(b) "labor peace agreement" means an agreement between an entity and labor organization that, at a minimum, protects the state's proprietary interests by prohibiting labor organizations and members from engaging

1 in picketing, work stoppages, boycotts, and any other economic interfer-
2 ence with the relevant renewable energy system;

3 (c) "public entity" shall include, but shall not be limited to, the
4 state, a local development corporation as defined in subdivision eight
5 of section eighteen hundred one of the public authorities law or section
6 fourteen hundred eleven of the not-for-profit corporation law, a munici-
7 pal corporation as defined in section one hundred nineteen-n of the
8 general municipal law, an industrial development agency formed pursuant
9 to article eighteen-A of the general municipal law or industrial devel-
10 opment authorities formed pursuant to article eight of the public
11 authorities law, and any state, local or interstate or international
12 authorities as defined in section two of the public authorities law; and
13 shall include any trust created by any such entities; and

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

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

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

53 (ii) Any corporation in each contract for construction, recon-
54 struction, alteration, repair, improvement or maintenance of a covered
55 renewable energy system, or a third party acting on behalf and for the
56 benefit of the corporation, the "public work" for the purposes of this

1 subdivision, shall ensure that such contract shall contain a provision
2 that the iron and structural steel used or supplied in the performance
3 of the contract or any subcontract thereto and that is permanently
4 incorporated into the public work, shall be produced or made in whole or
5 substantial part in the United States, its territories or possessions.
6 In the case of a structural iron or structural steel product all manu-
7 facturing must take place in the United States, from the initial melting
8 stage through the application of coatings, except metallurgical proc-
9 esses involving the refinement of steel additives. Iron and steel
10 products that are capable of being moved from one location to another
11 are not permanently incorporated into a public work.

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

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

39 4. Whenever changes are proposed to any public procurement process
40 involving the program described in subdivision two of this section, the
41 commission shall make simultaneous recommendations to the temporary
42 president of the senate and speaker of the assembly, regarding necessary
43 changes to this section, if any, in meeting the goals outlined in the
44 legislative findings and intent of the chapter of the laws of two thou-
45 sand twenty-three which added this section.

46 § 4. Subdivision 1 of section 224-d of the labor law, as separately
47 amended by chapters 372 and 375 of the laws of 2022, is amended to read
48 as follows:

49 1. For purposes of this section, a "covered renewable energy system"
50 means (a) a renewable energy system, as such term is defined in section
51 sixty-six-p of the public service law, with a capacity of one or more
52 megawatts alternating current and which involves the procurement of
53 renewable energy credits by a public entity, or a third party acting on
54 behalf and for the benefit of a public entity; or (b) any "thermal ener-
55 gy network" as defined by subdivision twenty-nine of section two of the

1 public service law; or (c) any generation facility authorized pursuant
2 to section sixty-six-w 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-w of the public
6 service law.

7 § 6. This act shall take effect immediately.