STATE OF NEW YORK

7035

2023-2024 Regular Sessions

IN SENATE

May 17, 2023

Introduced by Sen. HARCKHAM -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT in relation to a pilot project in furtherance of climate leadership and community protection act clean energy standards in Lake Erie and establishing standards for wind energy procured therefrom

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

Section 1. Legislative findings and intent. The legislature hereby finds and determines:

1. New York is a national leader in developing and implementing climate policy and promoting the development of renewable energy resources.

2. To further the state's climate change goals and to promote and incentivize the development of renewable energy, New York state adopted the Climate Leadership and Community Protection Act (CLCPA), which, among other things, mandates that New York have fully, one hundred percent zero-emission electricity by 2040, with a target of absolute net zero emissions by 2050.

3. Achieving the CLCPA milestones with respect to zero-emission electricity and decarbonization may not be possible without harnessing the wind resources over the Great Lakes. Given the lengthy timelines associated with new offshore wind developments, an expedited pilot project to fully assess the viability of such development is crucial to ensure that the resource is available when needed.

4. In order to initiate such a pilot project in a timely manner, it will be beneficial for the state agencies having jurisdiction, under the leadership and direction of the governor, to coordinate efforts with a common goal - compliance with the CLCPA.

5. The pilot project will provide valuable data for future projects, as well as serve to develop a reasonable and predictable path from concept to applications, approvals and implementation for companies

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

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expressing an interest in offshore wind energy production in New York's Great Lakes.

§ 2. Pilot solicitation. 1. The New York state energy research and development authority (NYSERDA) is hereby authorized and directed to issue a solicitation for the procurement of up to two hundred megawatts of offshore wind renewable energy certificates (ORECs) generated by offshore wind located in Lake Erie (hereinafter the "pilot solicitation").

2. The pilot solicitation shall take similar form and structure to the most recent solicitation NYSERDA issued for Atlantic Ocean offshore wind development (ORECRFP22-1), including the requirement that the competitively selected project (hereinafter the "Lake Erie project") enter into a contract to sell ORECs to NYSERDA, and for NYSERDA to buy those ORECs on behalf of New York's electric ratepayers statewide, with appropriate modifications given the differences between salt water and fresh water offshore development. The pilot solicitation shall include a requirement that the selected developer enter into at least one project labor agreement consistent with the optional process and terms for such agreement included in ORECRFP22-1. As used in this section, the term "project labor agreement" shall mean a single collective bargaining agreement, including a pre-hire agreement, covering both contractors in the construction industry working on a project and a bona fide building and construction trade labor organization representing the craft workers.

3. The public service commission shall issue any necessary order to require the purchase of Lake Erie-produced ORECs from NYSERDA by New York's load serving entities, similar to the existing process in place for Atlantic Ocean offshore wind development; along with any other orders or regulations it deems appropriate to support the pilot solicitation.

4. All other state agencies, including but not limited to the office of general services, shall make any necessary efforts to support the success of the competitively selected Lake Erie project selected to satisfy the pilot solicitation.

5. NYSERDA shall issue the pilot solicitation no later than six months after the effective date of this act.

6. Notwithstanding any provision of law, rule or regulation to the contrary, the provisions of this act shall be deemed to eliminate any potential need for approval by the public service commission prior to NYSERDA's issuance of the pilot solicitation. However, if, after the issuance of the pilot solicitation, NYSERDA believes it will further the achievement of the CLCPA to issue subsequent solicitations for the development of offshore wind generation in Lake Erie, NYSERDA shall follow its typical process, including but not limited to gathering stakeholder input and petitioning the public service commission for authorization to procure additional Lake Erie-based offshore wind energy.

7. Pursuant to subdivision 2 of this section, NYSERDA shall require that any bid meet the following conditions in order to be awarded such contract:

(a) Any such project undertaken pursuant to the pilot solicitation in subdivision 2 of this section shall be deemed public work and subject to and performed in accordance with articles 8 and 9 of the labor law. Each project undertaken pursuant to the pilot solicitation in subdivision 2 of this section shall contain a provision that such projects may only be undertaken pursuant to a project labor agreement. For purposes of this section, "project labor agreement" shall mean a

pre-hire collective bargaining agreement between NYSERDA, or a third party on behalf of NYSERDA, and a bona fide building and construction trade labor organization establishing the labor organization as the collective bargaining representative for all persons who will perform work on a public work project, and which provides that only contractors and subcontractors who sign a pre-negotiated agreement with the labor organization can perform project work. All contractors and subcontractors associated with this work shall be required to utilize apprenticeship agreements as defined by article 23 of the labor law.

(b) NYSERDA shall include requirements in any procurement or development of such project that the components and parts shall be produced or made in whole or substantial part in the United States, its territories or possessions. NYSERDA's president and chief executive officer, or his or her designee, may waive the procurement and development requirements set forth in this paragraph if such official determines that: the requirements would not be in the public interest; the requirements would result in unreasonable costs; obtaining such infrastructure components and parts in the United States would increase the cost of such project by an unreasonable amount; or such components or parts cannot be produced, made, or assembled in the United States in sufficient and reasonably available quantities or of satisfactory quality. Such determination must be made on an annual basis no later than December thirty-first, after providing notice and an opportunity for public comment, and such determination shall be made publicly available, in writing, on NYSERDA's website with a detailed explanation of the findings leading to such determination. If NYSERDA's president and chief executive officer, or his or her designee, has issued determinations for three consecutive years finding that no such waiver is warranted pursuant to this paragraph, then NYSERDA shall no longer be required to provide the annual determination required by this paragraph.

(c) (i) Nothing in this section shall alter the rights or benefits, and privileges, including but not limited to: terms and conditions of employment, civil service status, and collective bargaining unit membership, of any current employees of NYSERDA.

(ii) Nothing in this section shall result in: (A) the discharge, displacement, or loss of position, including partial displacement such as a reduction in the hours of non-overtime work, wages, or employment benefits; (B) the impairment of existing collective bargaining agreements; (C) the transfer of existing duties and functions; or (D) the transfer of future duties and functions, of any currently employed worker of the state or any agency, or public authority.

§ 3. This act shall take effect immediately.