

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:

- 1 Section 1. Legislative findings and intent. The legislature hereby
2 finds and determines:
- 3 1. New York is a national leader in developing and implementing
4 climate policy and promoting the development of renewable energy
5 resources.
- 6 2. To further the state's climate change goals and to promote and
7 incentivize the development of renewable energy, New York state adopted
8 the Climate Leadership and Community Protection Act (CLCPA), which,
9 among other things, mandates that New York have fully, one hundred
10 percent zero-emission electricity by 2040, with a target of absolute net
11 zero emissions by 2050.
- 12 3. Achieving the CLCPA milestones with respect to zero-emission elec-
13 tricity and decarbonization may not be possible without harnessing the
14 wind resources over the Great Lakes. Given the lengthy timelines associ-
15 ated with new offshore wind developments, an expedited pilot project to
16 fully assess the viability of such development is crucial to ensure that
17 the resource is available when needed.
- 18 4. In order to initiate such a pilot project in a timely manner, it
19 will be beneficial for the state agencies having jurisdiction, under the
20 leadership and direction of the governor, to coordinate efforts with a
21 common goal - compliance with the CLCPA.
- 22 5. The pilot project will provide valuable data for future projects,
23 as well as serve to develop a reasonable and predictable path from
24 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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1 expressing an interest in offshore wind energy production in New York's
2 Great Lakes.

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

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

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

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

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

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

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

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

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

11 (b) NYSERDA shall include requirements in any procurement or devel-
12 opment of such project that the components and parts shall be produced
13 or made in whole or substantial part in the United States, its
14 territories or possessions. NYSERDA's president and chief executive
15 officer, or his or her designee, may waive the procurement and develop-
16 ment requirements set forth in this paragraph if such official deter-
17 mines that: the requirements would not be in the public interest; the
18 requirements would result in unreasonable costs; obtaining such infras-
19 tructure components and parts in the United States would increase
20 the cost of such project by an unreasonable amount; or such components
21 or parts cannot be produced, made, or assembled in the United States in
22 sufficient and reasonably available quantities or of satisfactory quali-
23 ty. Such determination must be made on an annual basis no later than
24 December thirty-first, after providing notice and an opportunity for
25 public comment, and such determination shall be made publicly available,
26 in writing, on NYSERDA's website with a detailed explanation of the
27 findings leading to such determination. If NYSERDA's president and chief
28 executive officer, or his or her designee, has issued determinations
29 for three consecutive years finding that no such waiver is warranted
30 pursuant to this paragraph, then NYSERDA shall no longer be required to
31 provide the annual determination required by this paragraph.

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

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

43 § 3. This act shall take effect immediately.