

HOUSE No. 3216

The Commonwealth of Massachusetts

PRESENTED BY:

Jeffrey N. Roy

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to clean energy generation.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>	<i>1/19/2023</i>

HOUSE No. 3216

By Representative Roy of Franklin, a petition (accompanied by bill, House, No. 3216) of Jeffrey N. Roy relative to clean energy generation. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act relative to clean energy generation.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 83B of chapter 169 of the acts of 2008, as most recently amended
2 by section 60 of chapter 179 of the acts of 2022, is hereby further amended by striking out, in
3 line 1, the words “83C and 83D” and inserting in place thereof the following words:- 83C, 83D,
4 and 83E

5 SECTION 2. Section 83B of Chapter 169, as so appearing, is hereby further amended by
6 striking out the definition of “clean energy generation” and inserting in place thereof the
7 following definition:-

8 “Clean energy generation”, (i) firm service hydroelectric generation from hydroelectric
9 generation alone; (ii) new Class I RPS eligible resources that are firm up with firm service
10 hydroelectric generation; (iii) new Class I renewable portfolio standard eligible resources or (iv)
11 nuclear power generation that is located in the control area of the regional independent system
12 operator and commenced commercial operation before January 1, 2011.

13 SECTION 3. Said section 83B of chapter 169, as so appearing, is hereby further amended
14 by inserting after the word “83D,” in line 12, the following words:- or 83E.

15 SECTION 4. Said chapter 169, as amended by chapter 188 of the acts of 2016, is hereby
16 further amended by inserting after section 83D the following section:-

17 Section 83E. (a) For the purposes of this section, “Clean energy generation”, (i) firm
18 service hydroelectric generation from hydroelectric generation alone; (ii) new Class I RPS
19 eligible resources that are firm up with firm service hydroelectric generation; (iii) new Class I
20 renewable portfolio standard eligible resources or (iv) nuclear power generation that is located in
21 the control area of the regional independent system operator and commenced commercial
22 operation before January 1, 2011. In order to facilitate the financing or continued operation of
23 clean energy generation resources, not later than December 31, 2025, every distribution company
24 shall, in coordination with the department of energy resources, jointly and competitively solicit
25 proposals for clean energy generation and, provided that reasonable proposals have been
26 received, shall enter into cost-effective long-term contracts for clean energy generation for an
27 annual amount of electricity up to approximately 9,450,000 megawatt-hours. Long-term
28 contracts executed pursuant to this section shall be subject to the approval of the department of
29 public utilities and shall be apportioned among the distribution companies under this section.

30 (b) The timetable and method for solicitation of long-term contracts shall be proposed by
31 the department of energy resources in coordination with the distribution companies using a
32 competitive bidding process and shall be subject to review and approval by the department of
33 public utilities. The department of energy resources shall consult with the distribution companies
34 and the attorney general’s office regarding the choice of solicitation methods. A solicitation may

35 be coordinated and issued jointly with other New England states or entities designated by those
36 states. The distribution companies, in coordination with the department of energy resources, may
37 conduct 1 or more competitive solicitations through a staggered procurement schedule developed
38 by the department of energy resources; provided, that the schedule shall ensure that the
39 distribution companies enter into cost-effective long-term contracts for the delivery of clean
40 energy generation up to approximately 9,450,000 megawatt-hours by December 31,
41 2030. Proposals received pursuant to a solicitation under this section shall be subject to review
42 by the department of energy resources and the executive office of housing and economic
43 development in consultation with the independent evaluator and the electric distribution
44 companies shall offer technical advice. If the department of energy resources, in consultation
45 with the independent evaluator, determines that reasonable proposals were not received pursuant
46 to a solicitation, the department may terminate the solicitation, and may require additional
47 solicitations to fulfill the requirements of this section.

48 (c) In developing proposed long-term contracts, the distribution companies shall
49 consider long-term contracts for clean energy certificates, for energy and for a combination of
50 both clean energy certificates and energy. A distribution company may decline to pursue a
51 contract if the contract's terms and conditions would require the contract obligation to place an
52 unreasonable burden on the distribution company's balance sheet after consultation with the
53 department of energy resources; provided, however, that the distribution company shall take all
54 reasonable actions to structure the contracts, pricing or administration of the products purchased
55 under this section to prevent or mitigate an impact on the balance sheet or income statement of
56 the distribution company or its parent company, subject to the approval of the department of
57 public utilities; and provided further, that mitigation shall not increase costs to ratepayers. If a

58 distribution company deems all contracts to be unreasonable, the distribution company shall
59 consult with the department of energy resources and, within 20 days of the date of its decision,
60 submit a filing to the department of public utilities. The filing shall include, in the form and
61 detail prescribed by the department of public utilities, documentation supporting the distribution
62 company's decision to decline the contract. Following a distribution company's filing, and
63 within 4 months of the date of filing, the department of public utilities shall approve or reject the
64 distribution company's decision and may order the distribution company to reconsider any
65 contract. The department of public utilities shall take into consideration the department of energy
66 resources' recommendations on the distribution company's decision. The department of energy
67 resources may require additional solicitations to fulfill the requirements of this section.

68 (d) The department of public utilities shall promulgate regulations consistent with this
69 section. The regulations shall: (1) allow developers or owners of clean energy generation
70 resources to submit proposals for long-term contracts; (2) require that contracts executed by the
71 distribution companies under such proposals are filed with, and approved by, the department of
72 public utilities before they become effective; (3) provide for an annual remuneration for the
73 contracting distribution company equal to 2.25 per cent of the annual payments under the
74 contract to compensate the company for accepting the financial obligation of the long-term
75 contract; provided, however, that such provision shall be acted upon by the department of public
76 utilities at the time of contract approval; (4); require associated transmission costs to be
77 incorporated into a proposal; provided, however, that, to the extent there are regional or project-
78 specific transmission costs included in a bid, the department of public utilities may, if it finds
79 such recovery to be in the public interest, authorize or require the contracting parties to seek
80 recovery of such transmission costs from other states or from benefitted entities or populations in

81 other states through federal transmission rates, consistent with policies and tariffs of the Federal
82 Energy Regulatory Commission and (5) require that the clean energy resources to be used by a
83 developer or owner under the proposal meet the following criteria: (i) provide enhanced
84 electricity reliability, system safety and energy security; (ii) contribute to reducing winter
85 electricity spikes; (iii) are cost effective to electric ratepayers in the commonwealth over the term
86 of the contract taking into consideration potential costs and benefits to the ratepayers, including
87 potential economic and environmental benefits and opportunities to equitably allocate costs to,
88 and equitably share costs with, other states and populations within other states that may benefit
89 from clean energy generation procured by the commonwealth;; (iv) avoid line loss and mitigate
90 transmission costs to the extent possible and ensure that transmission cost overruns, if any, are
91 not borne by ratepayers; (iv) allow long-term contracts for clean energy generation resources to
92 be paired with energy storage systems, including new and existing mid-duration and long-
93 duration energy storage systems; (v) adequately demonstrate project viability in a commercially
94 reasonable timeframe; (vi) include benefits to environmental justice populations and low-income
95 ratepayers in the commonwealth ; and (vii) include opportunities for diversity, equity and
96 inclusion, including, at a minimum, a workforce diversity plan and supplier diversity program
97 plan.

98 (e) A proposed long-term contract shall be subject to the review and approval of the
99 department of public utilities and shall be apportioned among the distribution companies. As part
100 of its approval process, the department of public utilities shall consider recommendations by the
101 attorney general, which shall be submitted to the department within 45 days following the filing
102 of a proposed long-term contract with the department. The department of public utilities shall
103 take into consideration the department of energy resources' recommendations on the potential

104 costs and benefits to the rate payers, including opportunities to equitably allocate costs to, and
105 equitably share costs with, other states and populations within other states that may benefit from
106 clean energy generation procured by the commonwealth, and the requirements of chapter 298 of
107 the acts of 2008 and chapter 21N of the General Laws. The department of public utilities shall
108 consider the potential costs and benefits of the proposed long-term contract and shall approve a
109 proposed long-term contract if the department finds that the proposed contract is in the public
110 interest and is a cost-effective mechanism for procuring beneficial, reliable clean energy on a
111 long-term basis, taking into account the factors outlined in this section. A distribution company
112 shall be entitled to cost recovery of payments made under a long-term contract approved under
113 this section.

114 (f) The department of energy resources and the attorney general shall jointly select,
115 and the department of energy resources shall contract with, an independent evaluator to monitor
116 and report on the solicitation and bid selection process in order to assist the department of energy
117 resources in determining whether a proposal received pursuant to subsection (b) is reasonable
118 and to assist the department of public utilities in its consideration of long-term contracts or filed
119 for approval. To ensure an open, fair and transparent solicitation and bid selection process that is
120 not unduly influenced by an affiliated company, the independent evaluator shall: (1) issue a
121 report to the department of public utilities analyzing the timetable and method of solicitation and
122 the solicitation process implemented by the distribution companies and the department of energy
123 resources under subsection (b) and include recommendations, if any, for improving the process;
124 and (2) upon the opening of an investigation by the department of public utilities into a proposed
125 long-term contract for a winning bid proposal, file a report with the department of public utilities
126 summarizing and analyzing the solicitation and the bid selection process, and providing its

127 independent assessment of whether all bids were evaluated in a fair and non-discriminatory
128 manner. The independent evaluator shall have access to all information and data related to the
129 competitive solicitation and bid selection process necessary to fulfill the purposes of this
130 subsection but shall ensure all proprietary information remains confidential. The department of
131 public utilities shall consider the findings of the independent evaluator and may adopt
132 recommendations made by the independent evaluator as a condition for approval. If the
133 independent evaluator concludes in the findings that the solicitation and bid selection of a long-
134 term contract was not fair and objective and that the process was substantially prejudiced as a
135 result, the department of public utilities shall reject the contract.

136 (g) The distribution companies shall each enter into a contract with the winning
137 bidders for their apportioned share of the market products being purchased from the project. The
138 apportioned share shall be calculated and based upon the total energy demand from all
139 distribution customers in each service territory of the distribution companies.

140 (h) An electric distribution company may elect to use any energy purchased under
141 such contracts for resale to its customers, and may elect to retain clean energy certificates to
142 meet any applicable annual portfolio standard requirements, including section 11F of said
143 chapter 25A, and other clean energy compliance standards as applicable. If the energy and clean
144 energy certificates are not so used, such companies shall sell such purchased energy into the
145 wholesale market and shall sell such purchased clean energy certificates attributed to any
146 applicable portfolio standard eligible resources to minimize the costs to ratepayers under the
147 contract. The department of energy resources shall conduct periodic reviews to determine the
148 impact on the energy and clean energy certificate markets of the disposition of energy and clean
149 energy certificates under this section and may issue reports recommending legislative changes if

150 it determines that actions are being taken that will adversely affect the energy and clean energy
151 certificate markets.

152 (i) If a distribution company sells the purchased energy into the wholesale spot market
153 and auctions the clean energy certificates as described in this section, the distribution company
154 shall net the cost of payments made to projects under the long-term contracts against the net
155 proceeds obtained from the sale of energy and clean energy certificates, and the difference shall
156 be credited or charged to all distribution customers through a uniform fully reconciling annual
157 factor in distribution rates, subject to review and approval of the department of public utilities.

158 (j) A long-term contract procured under this section shall utilize an appropriate
159 tracking system to ensure a unit specific accounting of the delivery of clean energy, to enable the
160 department of environmental protection, in consultation with the department of energy resources,
161 to accurately measure progress in achieving the commonwealth's goals under chapter 298 of the
162 acts of 2008 or chapter 21N of the General Laws.

163 (k) The department of energy resources and the department of public utilities may
164 jointly develop requirements for a bond or other security to ensure performance with
165 requirements under this section.

166 (l) The department of energy resources may promulgate regulations necessary to
167 implement this section.

168 (m) If this section is subjected to a legal challenge, the department of public utilities
169 may suspend the applicability of the challenged provision during the pendency of the action until
170 a final resolution, including any appeals, is obtained and shall issue an order and take other

171 actions as are necessary to ensure that the provisions not subject to the challenge are
172 implemented expeditiously to achieve the public purposes of this section.