

SB 151-FN - AS INTRODUCED

2021 SESSION

21-0862

10/06

SENATE BILL ***151-FN***

AN ACT relative to renewable energy procurement.

SPONSORS: Sen. Watters, Dist 4; Sen. Perkins Kwoka, Dist 21; Sen. Sherman, Dist 24; Sen. Rosenwald, Dist 13; Sen. Soucy, Dist 18; Rep. Cushing, Rock. 21

COMMITTEE: Energy and Natural Resources

ANALYSIS

This bill establishes a program for the procurement of renewable energy and the financing of offshore wind energy generation resources in New Hampshire, upon recommendation of the renewable energy procurement commission established in the bill, through the solicitation and development of long-term contracts with distribution companies by the public utilities commission.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to renewable energy procurement.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Subdivision; Renewable Energy Procurement. Amend RSA 362-F by inserting after
2 section 15 the following new subdivision:

3 Renewable Energy Procurement

4 362-F:16 Definitions. In this subdivision:

5 I. "Clean energy generation" means either: (a) firm service hydroelectric generation from
6 hydroelectric generation alone; (b) new Class I RPS eligible resources that are firmed up with firm
7 service hydroelectric generation; or (c) new Class I renewable portfolio standard eligible resources,
8 Class II, Class III, and Class IV.

9 II. "Firm service hydroelectric generation" means hydroelectric generation provided without
10 interruption for one or more discrete periods designated in a long-term contract, including but not
11 limited to multiple hydroelectric run-of-the-river generation units managed in a portfolio that
12 creates firm service through the diversity of multiple units.

13 III. "Long-term contract" means a contract for a period of 15 to 30 years for offshore wind
14 energy generation or for clean energy generation.

15 IV. "New Class I renewable portfolio standard eligible resources" means Class I renewable
16 energy offshore wind energy generation.

17 V. "Class II", "Class III", and "Class IV" energy mean those terms as described and defined
18 in RSA 362:F:4.

19 VI. "Offshore wind developer" means a provider of electricity developed from an offshore
20 wind energy generation project that is located on the outer continental shelf.

21 VII. "Offshore wind energy generation" means offshore electric generating resources derived
22 from wind that are Class I renewable energy generating sources, have a commercial operations date
23 on or after January 1, 2018, have been verified by the commission; and operate in a designated wind
24 energy area for which an initial federal lease was issued on a competitive basis after January 1,
25 2015.

26 VIII. "REPC" means the renewable energy procurement committee established in RSA 362-
27 F:20.

28 362-F:17 Procurement.

29 I. In order to facilitate the procurement of renewable energy and the financing of offshore
30 wind energy generation resources in the New Hampshire, not later than June 30, 2022, the
31 renewable energy procurement committee (REPC) shall solicit proposals for offshore wind and other

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1 renewable resources; and, provided that reasonable proposals have been received, upon approval of
2 the governor, shall select proposals for energy distribution company submission to the commission.

3 II. The timetable and method for solicitations of long-term contracts shall be proposed
4 jointly by the distribution companies and REPC using a competitive bidding process, and, upon
5 approval of the governor shall be subject to review and approval by the commission. The distribution
6 companies, in coordination with the REPC, shall consult with the attorney general regarding the
7 choice of solicitation methods. A solicitation may be coordinated and issued jointly with other New
8 England states within ISO-NE or entities designated by those states. The timetable and method for
9 solicitation, and selection of solicitation proposals of long-term contracts shall be determined by the
10 REPC and selected proposals shall be subject to review and approval by the commission. A
11 solicitation may be coordinated and issued jointly with other New England states or entities
12 designated by those states. The distribution companies may conduct, upon approval of the governor,
13 one or more competitive solicitations through a staggered procurement schedule developed by the
14 REPC and the electric distribution companies; provided, that if the REPC determines that
15 reasonable proposals were not received pursuant to a solicitation, the REPC may terminate the
16 solicitation, and may require additional solicitations to fulfill the requirements of this section.

17 III. The distribution companies may conduct one or more competitive solicitations through a
18 staggered procurement schedule developed by the distribution companies and the REPC; provided,
19 that the schedule shall ensure that the distribution companies enter into cost-effective long-term
20 contracts for offshore wind energy generation and other renewable energy sources up to
21 approximately 800 megawatts of aggregate nameplate capacity not later than June 30, 2023; and
22 provided further, that solicitations in total shall seek proposals for no less than 600 megawatts of
23 aggregate nameplate capacity of offshore wind energy generation resources, and associated
24 transmission costs. Such solicitations may inclusively or separately include other renewable energy
25 sources, including Class II, Class III, and Class IV.

26 IV. A staggered procurement schedule may be developed by the REPC. If the REPC, in
27 consultation with the distribution companies and the independent evaluator, determines that
28 reasonable proposals were not received pursuant to a solicitation, the REPC may terminate the
29 solicitation, and may require additional solicitations to fulfill the requirements of this section.

30 V. A proposed long-term contract shall be subject to the review and approval of the
31 commission. As part of its approval process, the commission shall consider recommendations by the
32 attorney general, which shall be submitted to the commission within 45 days following the filing of a
33 proposed long-term contract with the commission. The commission shall consider the potential costs
34 and benefits of the proposed long-term contract under the criteria in this section and shall approve a
35 proposed long-term contract within 90 days if the commission finds that the proposed contract is a
36 cost-effective mechanism for procuring reliable renewable energy on a long-term basis, taking into

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1 account the factors outlined in this section. A distribution company shall be entitled to cost recovery
2 of payments made under a long-term contract approved under this section.

3 VI. In developing proposed long-term contracts, the distribution companies shall consider
4 long-term contracts for renewable energy certificates for energy and for a combination of both
5 renewable energy certificates and energy. A distribution company may decline to pursue a proposal
6 if the proposal's terms and conditions would require the contract obligation to place an unreasonable
7 burden on the distribution company's balance sheet; provided, however, that the distribution
8 company shall take all reasonable actions to structure the contracts, pricing, or administration of the
9 products purchased under this section in order to prevent or mitigate an impact on the balance sheet
10 or income statement of the distribution company or its parent company, subject to the approval of
11 the commission; provided further, that mitigation shall not unreasonably increase costs to
12 ratepayers. If a distribution company deems all proposals to be unreasonable, the distribution
13 company shall, within 20 days of the date of its decision, submit a filing to the commission. The
14 filing shall include, in the form and detail prescribed by the commission, documentation supporting
15 the distribution company's decision to decline the proposals. Following a distribution company's
16 filing, and within 3 months of the date of filing, the commission shall approve or reject the
17 distribution company's decision and may order the distribution company to reconsider any proposal.
18 If distribution companies are unable to agree on a winning bid following a solicitation under this
19 section, the matter shall be submitted to the REPC which shall, in consultation with the
20 independent evaluator, issue a final, binding determination of the winning bid upon approval of the
21 governor; provided, that the final contract executed shall be subject to review by the commission.
22 The REPC may require additional solicitations to fulfill the requirements of this section.

23 VII. The commission shall adopt rules for this subdivision consistent with this section. The
24 rules shall:

25 (a) Allow offshore wind developers of offshore wind energy generation to submit
26 proposals for long-term contracts consistent with this section;

27 (b) Require that a proposed long-term contract executed by the distribution companies
28 under a proposal be filed with, and approved by, the commission before becoming effective;

29 (c) Provide for an annual remuneration for the contracting distribution company up to
30 2.75 per cent of the annual payments under the contract to compensate the company for accepting
31 the financial obligation of the long-term contract, such provision to be acted upon by the commission
32 at the time of contract approval;

33 (d) Require associated transmission costs to be incorporated into a proposal; provided
34 that, to the extent there are transmission costs included in a bid, the commission may authorize or
35 require the contracting parties to seek recovery of such transmission costs of the project through
36 federal transmission rates, consistent with policies and tariffs of the Federal Energy Regulatory
37 Commission, to the extent the commission finds such recovery is in the public interest; and

1 (e) Mitigate transmission costs, and avoid line loss, to the extent possible and ensure
2 that transmission cost overruns, if any, are not borne by ratepayers.

3 VIII. The distribution companies shall each enter into a contract with the winning bidders
4 for their apportioned share of the market products being purchased from the project. The
5 apportioned share shall be calculated and based upon the total energy demand from all distribution
6 customers in each service territory of the distribution companies.

7 IX. Upon the approval of a proposal by the commission, the electric distribution company
8 shall have exclusive authority and control over power purchase agreement contracts, which shall be
9 completed within 90 days.

10 362-F:18 Public Utilities Commission Evaluation Criteria.

11 I. Agreements can be approved if the commission determines that the clean energy resources
12 to be used by a developer under the proposal meet the following criteria:

13 (a) Provide adequate energy with enhanced electricity distribution reliability, where
14 there is a clear public need, including, but not limited to a just and reasonable price over the term of
15 the contract;

16 (b) Contribute to reducing winter electricity price spikes;

17 (c) Are cost effective to electric ratepayers in New Hampshire over the term of the
18 contract taking into consideration potential economic benefits, and greenhouse gas emission
19 reductions and other health and environmental benefits to the ratepayers, and, where feasible,
20 create and foster employment and economic development in New Hampshire;

21 (d) Avoid line loss and mitigate transmission costs to the extent possible and ensure that
22 transmission cost overruns, if any, are not borne by ratepayers;

23 (e) Are commercially reasonable;

24 (f) Allow long-term contracts for clean energy generation resources to be paired with
25 energy storage systems;

26 (g) Guarantee energy delivery in winter months;

27 (h) Adequately demonstrate project viability and that the respondent (bidder) has the
28 technical, financial, and managerial capabilities to perform in a commercially reasonable timeframe;

29 (i) Whether the proposal uses practices to avoid, minimize, and mitigate impacts to
30 wildlife, natural resources, ecosystems and traditional or existing water-dependent uses, including,
31 but not limited to, commercial and recreational fishing and transit lanes; and

32 (j) Creates energy diversity for New Hampshire's electricity supply.

33 II. For purposes of this section, "commercially reasonable" means terms and pricing that are
34 reasonably consistent with what an experienced power market analyst would expect to see in
35 transactions involving regional-energy resources and regional-energy infrastructure. Commercially
36 reasonable shall include having a credible project operation date, contingent on final permitting, as
37 determined by the commission. Commercially reasonable shall require a determination by the

1 commission that the benefits to New Hampshire exceed the cost of the project. The commission shall
2 determine, based on the preponderance of the evidence, that the total energy security, reliability,
3 environmental, and economic benefits to the state of New Hampshire and its ratepayers exceed the
4 costs of such projects. If there is a dispute about whether any terms or pricing are commercially
5 reasonable, the commission shall make the final determination after evidentiary hearings.

6 III. A proposed long-term contract shall be subject to the review and approval of the
7 commission. As part of its approval process, the commission shall consider recommendations by the
8 attorney general, which shall be submitted to the commission within 45 days following the filing of
9 such contracts with the commission. The commission shall consider both the potential costs and
10 benefits of such contracts and shall approve a contract only upon a finding that it is a cost effective
11 mechanism for procuring low cost renewable energy on a long-term basis taking into account the
12 factors outlined in the REPC selection process.

13 IV. A long-term contract procured under this subdivision shall utilize an appropriate
14 tracking system to ensure a unit specific accounting of the delivery of clean energy, to enable the
15 REPC to accurately measure progress in achieving the goals of this section.

16 V. The REPC and the commission may jointly develop requirements for a bond or other
17 security to ensure performance with requirements under this section. If this section is subjected to a
18 legal challenge, the commission may suspend the applicability of the challenged provision during the
19 pendency of the action until a final resolution, including any appeals, is obtained and shall issue an
20 order and take other actions as are necessary to ensure that the provisions not subject to the
21 challenge are implemented expeditiously to achieve the public purposes of this section.

22 362-F:19 Renewable Energy Credits.

23 I. A distribution company may elect to use any energy purchased under such contracts for
24 sale to its customers and may elect to retain renewable energy certificates to meet the applicable
25 annual renewable portfolio standard requirements under RSA 362-F:6. If the energy and renewable
26 energy certificates are not so used, the distribution companies shall sell the purchased energy into
27 the wholesale market and, provided that the commission has not notified the distribution company
28 that the renewable energy certificates should be retained to facilitate reaching emission reduction
29 targets pursuant to RSA 362-F:3, shall sell the purchased renewable energy certificates to minimize
30 the costs to ratepayers under the contract; provided, however, that the commission shall conduct
31 periodic reviews to determine the impact on the energy and renewable energy certificate markets of
32 the disposition of energy and renewable energy certificates under this section. If a distribution
33 company sells the purchased energy into the wholesale market and sells the renewable energy
34 certificates, the distribution company shall net the cost of payments made to projects under the long-
35 term contracts against the net proceeds obtained from the sale of energy and renewable energy
36 certificates, and the difference shall be credited or charged to all distribution customers through a

1 uniform fully reconciling annual factor in distribution rates, subject to review and approval of the
2 commission.

3 II. If a distribution company sells the purchased energy into the wholesale spot market and
4 auctions the renewable energy certificates as described in this section, the distribution company
5 shall net the cost of payments made to projects under the long-term contracts against the net
6 proceeds obtained from the sale of energy and renewable energy certificates, and the difference shall
7 be credited or charged to all distribution customers through a uniform fully reconciling annual factor
8 in distribution rates, subject to review and approval of the commission.

9 III. The commission shall conduct periodic reviews to determine the impact on the energy
10 and renewable energy certificate markets of the disposition of energy and renewable energy
11 certificates under this section and may issue reports recommending legislative changes if it
12 determines that actions are being taken that will adversely affect the energy and renewable energy
13 certificate markets.

14 362-F:20 Renewable Energy Procurement Committee. There is established the renewable
15 energy procurement committee (REPC).

16 I. The REPC shall consist of the following members:

17 (a) An individual familiar with New Hampshire energy distribution and economic
18 development, who shall serve as chair, appointed by the governor.

19 (b) The commissioner of the department of business and economic affairs, or designee.

20 (c) The commissioner of the department of environmental services, or designee.

21 (d) The executive director of the fish and game department, or designee.

22 (e) The New Hampshire consumer advocate.

23 (f) One representative of energy distribution companies, appointed by the governor.

24 (g) One representative of labor, appointed by the president of the NH AFL-CIO.

25 (h) One representative of commercial or recreational fisheries, appointed by the
26 governor.

27 (i) An attorney from the department of justice, designated by the attorney general, with
28 experience in energy procurement, who shall serve in a nonvoting, advisory capacity to the
29 committee.

30 II. Members of the REPC shall serve without compensation. Appointed members shall each
31 serve a term of 3 years.

32 III. The REPC shall, in coordination with other states in the control area of the regional
33 independent system operator, in coordination with states in a neighboring control area or on behalf
34 of New Hampshire alone, solicit proposals, in one solicitation or multiple solicitations, from
35 providers of renewable energy, in accordance with RSA 362-F:17, and select proposals for electric
36 distribution company submission to the commission.

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1 IV. In solicitation and selection of proposals, the REPC shall require selected bidders to
2 include a plan to engage in a good faith negotiation of a project labor agreement for laborers,
3 workers, and mechanics performing construction activities within the United States with respect to
4 the project. Any solicitation issued pursuant to this section shall specify the minimum terms that
5 such project labor agreements shall address.

6 V. In responding to any solicitations issued pursuant to this section, a bidder may include
7 such bidder's plans for the use of skilled labor, including, but not limited to, for any construction and
8 manufacturing components of the proposal including any outreach, hiring, and referral systems, or
9 any combination thereof, that are affiliated with an apprenticeship training program and other
10 workforce development education and training programs recognized by the New Hampshire
11 department employment security.

12 VI. VI. In responding to any solicitations issued pursuant to this section that involve
13 activities in New Hampshire, including state waters, a bidder shall demonstrate that it has prepared
14 or will prepared for the Bureau of Ocean Energy Management an environmental, fisheries, and
15 transit lanes mitigation plan for the construction and operation of such offshore wind facilities,
16 provided such plan shall include, but not be limited to, an explicit description of the best
17 management practices the bidder will employ that are informed by the latest science at the time the
18 proposal is made that will avoid, minimize, and mitigate any impacts to wildlife, natural resources,
19 ecosystems, and traditional or existing water-dependent uses, including, but not limited to,
20 commercial and recreational fishing, and transit lanes. For each solicitation issued pursuant to this
21 section, the commissioner of the department of environmental services and the executive director of
22 the New Hampshire fish and game department shall inform the REPC concerning its input to the
23 bidder on best practices for avoiding, minimizing, and mitigating any impacts to wildlife, natural
24 resources, ecosystems, and traditional or existing water-dependent uses, including, but not limited
25 to, commercial and recreational fishing, and transit lanes, during the construction and operation of
26 facilities eligible pursuant to this section.

27 VII. The REPC shall select, and the commission shall contract with, an independent
28 evaluator to monitor and report on the solicitation and bid selection process in order to assist the
29 REPC in determining whether a proposal received pursuant to this section is reasonable and to be
30 selected for submission to the commission in its consideration of long-term contracts filed for
31 approval. To ensure an open, fair, and transparent solicitation, and a bid selection process that is
32 not unduly influenced by an affiliated company, the independent evaluator shall issue a report to the
33 commission analyzing the timetable and method of solicitation and the solicitation process
34 implemented by the distribution companies and the REPC and include recommendations, if any, for
35 improving the process. Upon the opening of an investigation by the commission into a proposed
36 long-term contract for a winning bid proposal, the independent evaluator shall file a report with the
37 commission summarizing and analyzing the solicitation and the bid selection process, and providing

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1 its independent assessment of whether all bids were evaluated in a fair and non-discriminatory
2 manner. The independent evaluator shall have access to all information and data related to the
3 competitive solicitation and bid selection process necessary to fulfill the purposes of this subsection,
4 but shall ensure all proprietary information remains confidential. The commission shall consider
5 the findings of the independent evaluator and may adopt recommendations made by the independent
6 evaluator as a condition for approval. If the independent evaluator concludes in the findings that
7 the solicitation and bid selection of a long-term contract was not fair and objective and that the
8 process was substantially prejudiced as a result, the commission shall reject the contract.

9 VIII. The REPC shall consult interested parties and provide opportunities for submission of
10 information in public meetings or other means by members of the public in the process of solicitation
11 of proposals.

12 IX. The representatives of energy distribution companies on the REPC shall not participate
13 in the selection of procurement proposals.

14 X. The REPC shall report on its activities annually to the governor, the senate president,
15 the speaker of the house of representatives, and to the commission on offshore wind and port
16 development established in RSA 374-F:10.

17 XI. All reasonable costs associated with the REPC solicitation and review of proposals
18 pursuant to this section shall be recoverable through the same fully reconciling rate component for
19 all customers of the electric distribution companies.

20 362-F:21 Energy and Capacity Requirements Report. On or before January 1, 2022, and
21 biennially thereafter, the commission, in consultation with the electric distribution companies, shall
22 prepare an assessment of:

23 I. The energy and capacity requirements of customers for the next 5 years.

24 II. The manner of and how best to manage growth in electric demand.

25 III. How best to level electric demand in the state by reducing peak demand and shifting
26 demand to off-peak periods.

27 IV. The impact of current and projected environmental standards, including, but not limited
28 to, those related to greenhouse gas emissions and the federal Clean Air Act goals and how different
29 resources could help achieve those standards and goals.

30 V. Energy security and economic risks associated with potential energy resources.

31 VI. The estimated lifetime cost and availability of potential energy resources.

32 2 Effective Date. This act shall take effect 60 days after its passage.

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2/8/21

**SB 151-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to renewable energy procurement.

FISCAL IMPACT:

The Office of Legislative Budget Assistant is unable to complete a fiscal note for this bill, as introduced, as it is awaiting information from the Public Utilities Commission. When completed, the fiscal note will be forwarded to the Senate Clerk's Office.

AGENCIES CONTACTED:

Public Utilities Commission