

SB 151-FN - AS AMENDED BY THE SENATE

03/18/2021 0795s

2021 SESSION

21-0862

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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

AMENDED 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 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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 New Subdivision; Renewable Energy Procurement. Amend RSA 362-F by inserting after section 15 the following new subdivision:

Renewable Energy Procurement

362-F:16 Definitions. In this subdivision:

I. “Benefits to New Hampshire’s economy” includes but is not limited to capital investments by the renewable energy generation facility, employment resulting from the clean energy generation facility; payment by the clean energy generation facility to a host community, or the state of New Hampshire, whether or not required by law or rule; and, purchase of goods and services by the clean energy generation facility, from New Hampshire and other domestic sources.

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

III. “Clean energy generation” means Class I including offshore wind energy generation, Class II, Class III, and Class IV.

IV. “Contract” means a contract for generation of renewable portfolio standard resource for a period of up to 30 years.

V. “Offshore wind developer” means a provider of electricity developed from an offshore wind energy generation project that is located on the outer continental shelf.

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

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

362-F:17 Procurement.

I. In order to facilitate the procurement of renewable energy generation and the financing of offshore wind energy generation resources not later than June 30, 2023, or a date determined by the governor, the renewable energy procurement committee (REPC) shall solicit proposals for offshore wind energy generation and other renewable energy generation resources; and, provided that reasonable proposals have been received, the REPC shall select proposals for energy distribution

1 company submission to the commission. Such submission shall occur following approval of the
2 governor.

3 II. The timetable and method for solicitations of procurement contracts using a competitive
4 bidding process shall be proposed jointly by the distribution companies and REPC, and, upon
5 approval by the governor, shall be subject to review and approval by the commission. The
6 distribution companies, in coordination with the REPC, shall consult with the attorney general
7 regarding the choice of solicitation methods. A solicitation may be coordinated and issued jointly
8 with other New England states within ISO-NE or entities designated by those states.

9 III. The REPC and distribution companies may conduct, upon approval of the governor, one
10 or more competitive solicitations through a staggered procurement schedule developed by the
11 distribution companies and the REPC; provided, that the schedule shall ensure that the distribution
12 companies enter into cost-effective contracts for offshore wind energy generation and other
13 renewable energy generation sources up to approximately 800 megawatts of aggregate nameplate
14 capacity not later than June 30, 2028 and provided further, that solicitations in total shall seek
15 proposals for no less than 600 megawatts of aggregate nameplate capacity of offshore wind energy
16 generation resources, and associated transmission costs. Such solicitations may inclusively or
17 separately include other renewable energy sources, including Class II, Class III, and Class IV.

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

22 V. A proposed contract shall be subject to the review and approval of the commission. As
23 part of its approval process, the commission shall consider recommendations by the attorney general,
24 which shall be submitted to the commission within 45 days following the filing of a proposed contract
25 with the commission. The commission shall consider the potential cost effectiveness of the proposed
26 contract under the criteria in this section and shall approve a proposed contract within 90 days if the
27 commission finds that the proposed contract is a cost-effective mechanism for procuring renewable
28 energy on a long-term basis, taking into account the factors outlined in this section. A distribution
29 company shall be entitled to cost recovery of payments made under a contract approved under this
30 section.

31 VI. In developing proposed contracts, the distribution companies shall consider contracts for
32 renewable energy and renewable energy certificates individually and for a combination of both
33 renewable energy certificates and energy. A distribution company may decline to pursue a proposal
34 if the proposal's terms and conditions would require the contract obligation to place an unreasonable
35 burden on the distribution company's balance sheet; provided, however, that the distribution
36 company shall take all reasonable actions to structure the contracts, pricing, or administration of the
37 products purchased under this section in order to prevent or mitigate an impact on the balance sheet

1 or income statement of the distribution company or its parent company, subject to the approval of
2 the commission; provided further, that mitigation shall not unreasonably increase costs to
3 ratepayers. If a distribution company and the REPC deem all proposals to be unreasonable, the
4 distribution company shall, within 20 days of the date of its decision, submit a filing to the
5 commission. The filing shall include, in the form and detail prescribed by the commission,
6 documentation supporting the REPC and distribution company's decision to decline the proposals.
7 Following a distribution company's filing, and within 3 months of the date of filing, the commission
8 shall approve or reject the distribution company's decision and may order the distribution company
9 to reconsider any proposal. If distribution companies are unable to agree on a winning bid following
10 a solicitation under this section, the matter shall be submitted to the REPC which shall, in
11 consultation with the independent evaluator, issue a final, binding determination of the winning bid
12 upon approval of the governor; provided, that the final contract executed shall be subject to review
13 by the commission. The REPC may require additional solicitations to fulfill the requirements of this
14 section.

15 VII. The commission shall adopt rules for this subdivision consistent with this section by
16 June 30 2023. The rules shall:

17 (a) Allow solicitation respondents to submit proposals for contracts consistent with this
18 section.

19 (b) Require that a proposed contract executed by the distribution companies under a
20 proposal be filed with, and approved by, the commission before becoming effective.

21 (c) Provide criteria for evaluation and approval of annual remuneration for the
22 contracting distribution company of 2.75 per cent of the annual payments under the contract to
23 compensate the company for accepting the financial obligation of the contract, such provision to be
24 acted upon by the commission at the time of contract approval.

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

30 (e) Require the mitigation of transmission costs, and avoidance of line loss, to the extent
31 possible and ensure that transmission cost overruns, if any, are not borne by ratepayers.

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

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

362-F:18 Public Utilities Commission Evaluation Criteria.

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

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

(b) Contribute to reducing winter electricity price spikes;

(c) Are cost effective to electric ratepayers in New Hampshire over the term of the contract taking into consideration potential economic benefits, as defined in RSA 362-F:16, I, greenhouse gas and other polluting emission reductions and other health and environmental benefits to the ratepayers, and, where feasible, create and foster employment and economic development in New Hampshire, as defined in RSA 362-F:16, I.

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

(e) Are commercially reasonable;

(f) Allow contracts for clean energy generation resources to be paired with energy storage systems;

(g) Address reliable energy delivery in winter months;

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

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

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

II. For purposes of this section, "commercially reasonable" means terms and pricing that are reasonably consistent with what an experienced power market analyst would expect to see in transactions involving regional-energy resources and regional-energy infrastructure. Commercially reasonable shall include having a credible project operation date, contingent on final permitting, as determined by the commission. Commercially reasonable shall require a determination by the commission that the benefits to New Hampshire exceed the cost of the project. The commission shall determine, based on the preponderance of the evidence, that the total energy security, reliability, environmental, and economic benefits to the state of New Hampshire and its ratepayers exceed the costs of such projects. If there is a dispute about whether any terms or pricing are commercially reasonable, the commission shall make the final determination after evidentiary hearings.

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

8 IV. A contract procured under this subdivision shall utilize an appropriate tracking system
9 to ensure a unit specific accounting of the delivery of clean energy, to enable the REPC to accurately
10 measure progress in achieving the goals of this section.

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

17 362-F:19 Renewable Energy Credits.

18 I. A distribution company may elect to use any energy purchased under such contracts for
19 sale to its customers and may elect to retain renewable energy certificates to meet the applicable
20 annual renewable portfolio standard requirements under RSA 362-F:6. If the energy and renewable
21 energy certificates are not so used, the distribution companies shall sell the purchased energy into
22 the wholesale market and, provided that the commission has not notified the distribution company
23 that the renewable energy certificates should be retained to facilitate reaching emission reduction
24 targets pursuant to RSA 362-F:3, shall sell the purchased renewable energy certificates to minimize
25 the costs to ratepayers under the contract. If a distribution company sells the purchased energy into
26 the wholesale market and sells the renewable energy certificates, the distribution company shall net
27 the cost of payments made to projects under the contracts against the net proceeds obtained from the
28 sale of energy and renewable energy certificates, and the difference shall be credited or charged to
29 all distribution customers through a uniform fully reconciling annual factor in distribution rates,
30 subject to review and approval of the commission.

31 II. If a distribution company sells the purchased energy into the wholesale spot market and
32 auctions the renewable energy certificates as described in this section, the distribution company
33 shall net the cost of payments made to projects under the contracts against the net proceeds
34 obtained from the sale of energy and renewable energy certificates, and the difference shall be
35 credited or charged to all distribution customers through a uniform fully reconciling annual factor in
36 distribution rates, subject to review and approval of the commission.

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

6 362-F:20 Renewable Energy Procurement Committee. There is established the renewable
7 energy procurement committee (REPC).

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

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

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

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

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

14 (e) One representative of energy distribution companies, appointed by the governor.

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

16 (g) One representative of commercial or recreational fisheries, appointed by the
17 governor.

18 (h) An attorney from the department of justice, designated by the attorney general, with
19 experience in energy procurement, who shall serve in a nonvoting, advisory capacity to the
20 committee.

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

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

28 IV. In solicitation and selection of proposals for offshore wind development, the REPC shall
29 require selected bidders to include a plan to engage in a good faith negotiation of a project labor
30 agreement for laborers, workers, and mechanics performing construction activities within the United
31 States with respect to the project. Any solicitation issued pursuant to this section shall specify the
32 minimum terms that such project labor agreements shall address.

33 V. In responding to any solicitations issued pursuant to this section, a bidder may include
34 such bidder's plans for the use of skilled labor, including, but not limited to, for any construction and
35 manufacturing components of the proposal including any outreach, hiring, and referral systems, or
36 any combination thereof, that are affiliated with an apprenticeship training program and other

1 workforce development education and training programs recognized by the New Hampshire
2 department employment security.

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

18 VII. The REPC shall select, and the commission shall contract with, an independent
19 evaluator to monitor and report on the solicitation and bid selection process in order to assist the
20 REPC in determining whether a proposal received pursuant to this section is reasonable and to be
21 selected for submission to the commission in its consideration of contracts filed for approval. To
22 ensure an open, fair, and transparent solicitation, and a bid selection process that is not unduly
23 influenced by an affiliated company, the independent evaluator shall issue a report to the
24 commission analyzing the timetable and method of solicitation and the solicitation process
25 implemented by the distribution companies and the REPC and include recommendations, if any, for
26 improving the process. Upon the opening of an investigation by the commission into a proposed
27 contract for a winning bid proposal, the independent evaluator shall file a report with the
28 commission summarizing and analyzing the solicitation and the bid selection process, and providing
29 its independent assessment of whether all bids were evaluated in a fair and non-discriminatory
30 manner. The independent evaluator shall have access to all information and data related to the
31 competitive solicitation and bid selection process necessary to fulfill the purposes of this subsection,
32 but shall ensure all proprietary information remains confidential. The commission shall consider
33 the findings of the independent evaluator and may adopt recommendations made by the independent
34 evaluator as a condition for approval. If the independent evaluator concludes in the findings that
35 the solicitation and bid selection of a contract was not fair and objective and that the process was
36 substantially prejudiced as a result, the commission shall reject the contract. The public utilities'

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1 cost of evaluation shall be directly assessed to the state's distribution utilities and the New
2 Hampshire Electric Cooperative as authorized by the public utilities commission.

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

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

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

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

14 362-F:21 Energy and Capacity Requirements Report. On or before January 1, 2022, and
15 biennially thereafter, the commission, in consultation with the electric distribution companies, shall
16 prepare an assessment of:

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

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

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

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

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

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

26 2 Effective Date. This act shall take effect 60 days after its passage.

SB 151-FN- FISCAL NOTE
AS AMENDED BY THE SENATE (AMENDMENT #2021-0795s)

AN ACT relative to renewable energy procurement.

FISCAL IMPACT: ☒ State ☒ County ☒ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General <input type="checkbox"/> Education <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Various Government Funds			

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable

LOCAL:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable

METHODOLOGY:

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 contracts with distribution companies by the public utilities commission.

The Public Utilities Commission states the fiscal impacts of this bill cannot be predicted. The Commission notes the bill could create considerable stranded costs, because of the difficulty of projecting energy costs into the future, and because the retail energy market is changing, and fewer and fewer customers may take default service from their distribution customers over the next twenty years, particularly with the development of community power, microgrids, and customer-owned generation. In addition, New England stakeholders are in the process of developing wholesale market designs that could make long term contracts for clean energy sources unnecessary and potentially uneconomic. The Commission indicates the bill has the potential to increase transmission costs paid by the State and local governments. There is too much uncertainty with regard to ISO transmission tariffs and their application to determine

New Hampshire's cost allocation for the transmission required to bring the energy to the market. The Commission would be charged with contracting for an independent evaluator to monitor and report on the solicitation and bid process in order to assist the REPC in determining whether a proposal received pursuant to this section is reasonable and should be selected for submission to the Commission, and then to file a report with the Commission if a proposal is selected. The Commission assumes the cost of this contract will exceed \$100,000. In addition, the Commission would likely have to hire an environmental expert to make the environmental determinations necessary when reviewing the proposal. This contract is also expected to be in excess of \$100,000 in cost. Last, the bill requires the Commission to prepare an energy and capacity requirements report, which will in turn require the Commission to hire an environmental consultant at a cost expected be in excess of \$100,000 in cost every two years.

The Commission notes that it cannot directly assess distribution utilities for consultant costs that are not incurred in the context of a commission proceeding. Those costs would have to be funded from the general fund or from the Commission's general assessment, which would in turn require telecommunications companies and small water and sewer companies, and ultimately their rate payers, to fund large electric-related costs.

AGENCIES CONTACTED:

Public Utilities Commission