

SB 440-FN - AS INTRODUCED

2022 SESSION

22-3011

12/08

SENATE BILL        ***440-FN***

AN ACT            relative to approval of offshore wind energy contracts.

SPONSORS:        Sen. Watters, Dist 4; Sen. Sherman, Dist 24; Sen. D'Allesandro, Dist 20; Sen. Avar, Dist 12; Sen. Rosenwald, Dist 13; Sen. Whitley, Dist 15; Sen. Soucy, Dist 18; Sen. Cavanaugh, Dist 16; Sen. Prentiss, Dist 5; Rep. Cali-Pitts, Rock. 30; Rep. McGhee, Hills. 27; Rep. Wall, Straf. 6

COMMITTEE:      Energy and Natural Resources

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ANALYSIS

This bill authorizes the public utilities commission to approve power purchase agreements for wind energy produced in the Gulf of Maine and establishes the clean energy resources committee to review said agreements.

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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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 Two*

AN ACT relative to approval of offshore wind energy contracts.

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

1 1 New Subdivision; Gulf of Maine Clean Energy Resources. Amend RSA 362-F by inserting  
2 after section 15 the following new subdivision:

3 Gulf of Maine Clean Energy Resources

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

5 I. "Clean energy resources" means electricity or hydrogen produced by wind turbines in the  
6 Gulf of Maine.

7 II. "Commercially reasonable" means terms and pricing that are reasonably consistent with  
8 what an experienced power market analyst would expect to see in transactions involving regional-  
9 energy resources and regional-energy infrastructure and include having a credible project operation  
10 date, contingent on final permitting, as determined by the commission.

11 III. "Commission" means the public utilities commission.

12 362-F:17 Public Utilities Commission Evaluation Criteria.

13 I. The public utilities commission may approve power purchase agreements if the  
14 commission determines that the clean energy resources from a provider to be used by an energy  
15 distribution company, or by a community power program, under the agreement::

16 (a) Are recommended by the clean energy resources committee established in RSA 362-  
17 F:18;

18 (b) Provide adequate energy with enhanced electricity distribution reliability, where  
19 there is a clear public need and a reasonable price over the term of the contract;

20 (c) Contribute to reducing winter electricity price spikes;

21 (d) Are cost effective to electric ratepayers in New Hampshire over the term of the  
22 contract taking into consideration potential economic benefit, greenhouse gas and other polluting  
23 emission reductions and other health and environmental benefits to the ratepayers, and, where  
24 feasible, create and foster employment and economic development in New Hampshire.

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

27 (f) Are commercially reasonable;

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

30 (h) Address reliable energy delivery in winter months;

1 (i) Adequately demonstrate project viability and that the bidder has the technical,  
2 financial, and managerial capabilities to perform in a commercially reasonable time frame;

3 (j) Avoid, minimize, and mitigate impacts to wildlife, natural resources, ecosystems, and  
4 traditional or existing water-dependent uses, including but not limited to, commercial and  
5 recreational fishing and transit lanes, and other commercial and recreational maritime activities;

6 (k) Complies with relevant consistency standards;

7 (l) Complies with relevant mitigation requirements;

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

9 II. The public utilities commission shall determine whether an agreement is commercially  
10 reasonable pursuant to paragraph I(f). The commission shall find an agreement commercially  
11 reasonable if the benefits to New Hampshire exceed the cost of the project. The commission shall  
12 determine, based on the preponderance of the evidence, that the total energy security, reliability,  
13 environmental, and economic benefits to the state of New Hampshire and its ratepayers exceed the  
14 costs of such projects. If there is a dispute about whether any terms or pricing are commercially  
15 reasonable, the commission shall make the final determination after evidentiary hearings.

16 III. A proposed agreement shall be subject to the review and approval of the public utilities  
17 commission. As part of its approval process, the commission shall consider recommendations by the  
18 attorney general, which shall be submitted to the commission within 45 days following the filing of  
19 such contracts with the commission. The commission shall consider both the potential costs and  
20 benefits of such contracts and shall approve a contract only upon a finding that it is a cost effective  
21 mechanism for procuring renewable energy generation on a long-term basis taking into account the  
22 factors outlined in the clean energy resources committee selection process established in RSA 362-  
23 F:18.

24 IV. The clean energy resources committee and the commission may jointly develop  
25 requirements for a bond or other security to ensure performance with requirements under this  
26 section. If this section is subjected to a legal challenge, the commission may suspend the  
27 applicability of the challenged provision during the pendency of the action until a final resolution,  
28 including any appeals, is obtained and shall issue an order and take other actions as are necessary  
29 to ensure that the provisions not subject to the challenge are implemented expeditiously to achieve  
30 the public purposes of this section.

31 362-F:18 Renewable Energy Credits.

32 I. A distribution company may elect to use any energy purchased under contracts described  
33 in RSA 362-F:16 for sale to its customers and may elect to retain renewable energy certificates to  
34 meet the applicable annual renewable portfolio standard requirements under RSA 362-F:3. If the  
35 energy and renewable energy certificates are not so used, the distribution companies shall sell the  
36 purchased energy into the wholesale market and, provided that the commission has not notified the  
37 distribution company that the renewable energy certificates should be retained to facilitate reaching

1 emission reduction targets pursuant to RSA 362-F:3, shall sell the purchased renewable energy  
2 certificates to minimize the costs to ratepayers under the contract. If a distribution company sells  
3 the purchased energy into the wholesale market and sells the renewable energy certificates, the  
4 distribution company shall net the cost of payments made to projects under the contracts against the  
5 net proceeds obtained from the sale of energy and renewable energy certificates, and the difference  
6 shall be credited or charged to all distribution customers through a uniform fully reconciling annual  
7 factor in distribution rates, subject to review and approval of the commission.

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

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

19 362-F:19 Clean Energy Resources Committee (CERC). There is hereby established the clean  
20 energy resources committee within in the department of energy.

21 I. The committee shall consist of the following members:

- 22 (a) The commissioner of the department of energy, or designee.
- 23 (b) The commissioner of the department of business and economic affairs, or designee.
- 24 (c) The commissioner of the department of environmental services, or designee.
- 25 (d) The executive director of the fish and game department, or designee.
- 26 (e) One representative of energy distribution companies, appointed by the governor.
- 27 (f) One representative of labor, appointed by the president of the New Hampshire AFL-  
28 CIO.

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

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

34 II. Members of the CERC shall serve without compensation. Appointed members shall each  
35 serve a term of 3 years.

1           III. The CERC shall review proposals from providers of clean energy resources, in  
2 accordance with RSA 362-F:16, and select proposals for electric distribution company submission to  
3 the commission.

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

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

15           VI. In responding to any solicitations issued pursuant to this section that involve activities  
16 in New Hampshire, including state waters, a bidder shall demonstrate that it has prepared or will  
17 prepare for the Bureau of Ocean Energy Management an environmental, fisheries, and transit lanes  
18 mitigation plan for the construction and operation of such offshore wind facilities, including  
19 provisions under 485-I, provided such plan shall include, but not be limited to, an explicit description  
20 of the best management practices the bidder will employ that are informed by the latest science at  
21 the time the proposal is made that will avoid, minimize, and mitigate any impacts to wildlife,  
22 natural resources, ecosystems, and traditional or existing water-dependent uses, including, but not  
23 limited to, commercial and recreational fishing, including aquaculture, and transit lanes. For each  
24 solicitation issued pursuant to this section, the commissioner of the department of environmental  
25 services and the executive director of the New Hampshire fish and game department shall inform  
26 the CERC concerning its input to the bidder on best practices for avoiding, minimizing, and  
27 mitigating any impacts to wildlife, natural resources, ecosystems, and traditional or existing water-  
28 dependent uses, including, but not limited to, commercial and recreational fishing, and transit lanes,  
29 during the construction and operation of facilities eligible pursuant to this section.

30           VII. The CERC shall select, and the public utilities commission shall contract with, an  
31 independent evaluator to monitor and report on the solicitation and bid selection process in order to  
32 assist the CERC in determining whether a proposal received pursuant to this section is reasonable  
33 and to be selected for submission to the commission in its consideration of contracts filed for  
34 approval. To ensure an open, fair, and transparent solicitation, and a bid selection process that is  
35 not unduly influenced by an affiliated company, the independent evaluator shall issue a report to the  
36 commission analyzing the timetable and method of solicitation and the solicitation process  
37 implemented by the distribution companies and the CERC and include recommendations, if any, for

1 improving the process. Upon the opening of an investigation by the commission into a proposed  
2 contract for a winning bid proposal, the independent evaluator shall file a report with the  
3 commission summarizing and analyzing the solicitation and the bid selection process, and providing  
4 its independent assessment of whether all bids were evaluated in a fair and non-discriminatory  
5 manner. The independent evaluator shall have access to all information and data related to the  
6 competitive solicitation and bid selection process necessary to fulfill the purposes of this subsection,  
7 but shall ensure all proprietary information remains confidential. The commission shall consider  
8 the findings of the independent evaluator and may adopt recommendations made by the independent  
9 evaluator as a condition for approval. If the independent evaluator concludes in the findings that  
10 the solicitation and bid selection of a contract was not fair and objective and that the process was  
11 substantially prejudiced as a result, the commission shall reject the contract. The commission's cost  
12 of evaluation shall be directly assessed to the state's distribution utilities and the New Hampshire  
13 Electric Cooperative as authorized by the public utilities commission.

14 VIII. The CERC shall consult interested parties and provide opportunities for submission of  
15 information in public meetings or other means by members of the public in the process of solicitation  
16 of proposals.

17 IX. The representatives of energy distribution companies on the CERC shall not participate  
18 in the selection of procurement proposals.

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

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

25 2 Effective Date. This act shall take effect 60 days after its passage.

**SB 440-FN- FISCAL NOTE**  
AS INTRODUCED

AN ACT relative to approval of offshore wind energy contracts.

**FISCAL IMPACT:**     State             County             Local             None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	\$0	\$0	Indeterminable
<b>Expenditures</b>	\$0	\$0	\$0	Indeterminable
<b>Funding Source:</b>	<input checked="" type="checkbox"/> General <input type="checkbox"/> Education <input checked="" type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Utility Assessment, Various Government Funds			

**COUNTY:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$0	Indeterminable

**LOCAL:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$0	Indeterminable

**METHODOLOGY:**

This bill establishes a Clean Energy Resources Committee (CERC) within the Department of Energy to solicit, review, and select purchase power agreements (PPA) for the electric distribution utilities for submission to the Public Utilities Commission (PUC). The PUC may approve a PPA, if it meets the terms of proposed RSA 362-F:17 I (a-m). The PUC is required to find an agreement commercially reasonable if the benefits to New Hampshire exceed the cost of the project.

The Department identified the following potential fiscal impacts:

- Regarding the cost of the CERC, the bill stipulates that all reasonable costs associated with the solicitation and review of proposals by the CERC are recoverable from the ratepayers. This would increase the cost of electricity for state, county, and local governments by an interminable amount. Any impact would not be until FY 2025 at the very earliest.

- The bill stipulates that the CERC select and the PUC contract with an independent evaluator to monitor and report on the solicitation and bid selection process and review of proposals to assist the PUC in determining whether to approve a proposed PPA. The cost of the independent evaluator is recoverable from the ratepayers. This would increase the cost of electricity for state, county, and local governments by an interminable amount. Any impact would not be until FY 2025 at the very earliest.
- If the terms of the PPA requires electric distribution utilities to purchase electricity at a rate above what they can purchase it for on the wholesale market, electricity costs for the state, counties, and local governments will increase. If the terms of the PPA requires electric distribution utilities to purchase electricity at a rate below what their rate on the wholesale market, electricity costs for the state, counties, and local governments will decrease. Any impact would not be until FY 2025 at the very earliest.
- In addition, the bill provides mechanisms for the electric distribution utilities for the sale of both the electricity and renewable energy credits (RECs) acquired through the PPA. If electric distribution utilities have RECs beyond what is needed for compliance with the Renewable Portfolio Standard (RPS) those RECs are required to be sold and proceeds credited to all ratepayers. If a electric distribution utility sells the purchased electricity in the wholesale market along with the RECs, then the cost difference between what the electric distribution utility paid under the PPA and what they sold it for is either credited or charged to all ratepayers. If the electricity was sold above cost, all ratepayers will receive a credit, and electricity costs for the state, counties, and local governments will decrease. If the electricity was sold at a loss, all ratepayers will be charged to make up the difference, and electricity costs for the state, counties, and local governments will increase. Any impact would not be until FY 2025 at the very earliest.

**AGENCIES CONTACTED:**

Department of Energy