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CLEAN Resource Hub
CLEAN Legislation Examples and References

Following the tremendous success of the German Feed-in Tariff program, several US states have enacted or at least proposed state legislation to implement similar clean energy procurement programs. This document summarizes notable examples of such legislation and highlights specific sections of these bills that could be useful provisions for future legislation.

- Arkansas HB 1390 (2013) – In active study for future consideration
- California SB 32 (2009) – Enacted legislation, program not yet launched
- Iowa SF 372 (2013) – Died in committee
- Maine LD 1085; SP 367 (2013) – Died, but useful examples
- Minnesota HF 729 (2013) – Enacted legislation, new design ideas yet to be implemented
- Oregon HB 2893 (2013) – Enacted legislation, effective May 28, 2013
- Rhode Island HB 6104 (2011) – Enacted legislation, minimally successful
- Vermont Energy Act of 2009 – Enacted legislation, successful program

Arkansas

Bill Number/Title: HB 1390 (2013)

Status: Recommended for Joint Interim Study as of 4/5/13. This means that the bill's provisions will be studied for possible reconsideration in the 2015 legislative session.

Description: Establishes a 1,200 MW CLEAN Program and sets the parameters and regulations for the program.

Notable Sections:

- 23-18-1004 Sec. (a)(2)(C)(i-iv)
  - **Reason to note: Legislation specifies that calculation of rates must take in to account technology, location, size, avoided costs, environmental attributes and other public policy requirement**
  - Text:
    - *Contract rates must be differentiated by the following criteria*
      - *Type of technology, including the system, public policy, and environmental attributes of the renewable generation facility*
      - *Location, size, and capacity of generation facility*
      - *Utility's ability to schedule and control delivery of energy from the generation facility*
      - *The utility's avoided cost and renewable energy generation credit as determined by the [Commission]*
- 23-18-1004 Sec. (c)(3)(B)
  - **Reason to Note: Allows an electric utility to meet half of its proportionate share of the program by installing and operating its own renewable electric generation facilities**
  - Text
    - *An electric utility may meet up to fifty percent of the electric utility's proportionate-share requirement under this section by installing, owning, and operating a renewable generation facility*
- 23-18-1007 Sec. (a)
  - **Reason to note: Explicitly allows regulatory commission to allow utility to bear interconnection costs. Typically, all interconnection costs are borne by the developer**.
  - Text
    - *The generation facility must bear the cost of interconnection unless the [Commission] determines it is in the public's best interest that the utility bear a portion of that cost*

Link: ftp://www.arkleg.state.ar.us/Bills/2013/Public/HB1390.pdf

California

Bill Number/Title: SB 32 (2009)

Status: Passed into law in 2009, slightly modified in 2011 by SB 2 (1X)

- Renewable Market Adjusting Tariff (Re-MAT) to launch October 1, 2013

Description: Changed existing CLEAN Program in several ways. Expanded the affected utilities to include publicly-owned utilities, expanded program size to 750 MW, and increased the individual project size cap to 3 MW.

Notable Sections:

- Section 2, Subsections (d)
  - **Reason to Note: Early, but vague, example of "ratepayer indifference" clause setting limit on price paid to developers**
  - Text: *Subsection (d): Ensures that ratepayers that do not receive service pursuant to the tariff are indifferent to whether a ratepayer with an electric generation facility receives service pursuant to the tariff*
- Section 3 subsection (b)(3)
  - **Reason to Note: Created concept of "strategically located", setting early example of specifying location restrictions on siting of new facilities**
  - Text: *Requires generation facilities to be strategically located and interconnected to the transmission and distribution grid in a manner that optimizes the deliverability of electricity generated at the facility to load centers*
- Section 3 Subsection (d)(1):
  - **Reason to Note: Included environmental compliance costs such as GHG and air pollution offsets in pricing**
  - Text: *Payment rate for renewable generation shall be determined by the [Commission] and shall include all current and anticipated environmental compliance costs, including but not limited to:*
    - *Mitigation of emissions of greenhouse gases*
    - *Air pollution offsets associated with the operation of new generating facilities in the local air quality management district where the facility is located*
- Section 3 Subsection (d)(2):
  - **Reason to Note: Allows payments to vary based on time-of-delivery and provides an early example of value-based pricing**
  - Text: *The [Commission] may adjust the payment rate to reflect the value of every kWh of electricity generated on a time-of-delivery basis*

Link:
http://www.leginfo.ca.gov/pub/0910/bill/sen/sb_00010050/sb_32_bill_20091011_chaptered.html

Iowa

Bill Number/Title: SF 372

Status: Died in committee.

Description: Establishes an incentive program for wind energy production facilities with a nameplate capacity of no more than 20 MW. The bill also directs the Iowa Utilities Board to develop fixed 10-year standard contracts to facilitate interconnection with few legislative guidelines.

Notable Sections:

- Section 1.2.a.1
  - **Reason to Note: Limits where facilities can be constructed to only agricultural land.**
  - Text: Eligibility for the program is contingent upon *"constructing the facility on agricultural land in this state as defined in section 9H.1"*
- Section 1.3.a
  - **Reason to Note: Terminates contracts if facility owner has recovered costs or 10 years. Correct practice is that standard offer contracts should be fixed for periods of greater than 10 years and should remain in effect even if the facility owner has recovered costs.costs.**
  - Text: *This section stipulates that standard offer contracts shall continue in effect for a 10-year period or until construction and financing costs of the facility have been recovered, whichever is earlier*
- Section 1.3.c
  - **Reason to Note: Requires all energy to be transmitted to the utility. Correct practice is to allow excess sales contracts and other station use.**
  - Text: *Until the owner of the facility has recovered all construction and financing costs incurred in construction of the facility through electricity sales to the utility, electricity generated by the facility shall be fully transmitted to the utility and not available to the owner of the facility for utilization on-site.*

Link: http://legiscan.com/IA/text/SF372/id/784024/Iowa-2013-SF372-Introduced.html

Maine

Bill Number/Title: LD 1085; SP 367

Status: Referred to Energy, Utilities, and Technology Committees in both chambers as of 3/20/2013. Did not get a vote in 2013 session, so the bill will need re-introduction in later session.

Description: Establishes a non-capped CLEAN Program for solar, biogas, landfill gas, biomass, tidal, and wind energy. Project caps are set at 500 kW.

Notable Sections:

- Section 4422: Definitions
  - **Reason to Note: Targeting DG deployment in communities based on need for economic benefits**
  - Text: Subsection (2): "Renewable Energy Opportunity County"
    - Defines a target community to provide incentives for
      - *Those counties whose wages are at or below the mean average weekly wages for the state*
- Sec. 4423: "Connection to transmission and distribution utility's distribution system"
  - **Reason to Note: Sets responsibility for interconnection costs based on distance to nearest grid interconnection point**
  - Text: Subsection (2): "Costs"
    - *Cost of interconnection must be included in the wholesale rate only if the generation facility can connect to existing transmission lines within 500 feet of the facility; if the facility is further than 500 feet from existing transmission lines, it must bear the cost of interconnection*
- Sec. 4425: "Rates and terms"
  - **Reason to Note: Mixes two types of pricing approaches – cost of development and value of energy. Subsection 3 establishes "adders" for other policy objectives (such as using methane)**
  - Subsection (2)(A-H): Minimum criteria that [Commission] must use in establishing wholesale rates:
    - *Operation and maintenance costs of generating system*
    - *Annual principal and interest due of loans for construction of generation facility*
    - *A value to provide for an annual contribution to the operational budget for the operational budget of the generation facility*
    - *Any avoided costs of building or purchasing additional nonrenewable energy*
  - Subsection (3)(A-D): Provides incentives for:
    - *Local generation*
    - *Target community generation*
    - *Installations on public property*
    - *Use of naturally produced methane from manure or decaying biomass*

Link: http://www.mainelegislature.org/legis/bills/bills_126th/billtexts/SP036701.asp

Minnesota

Bill Number/Title: HF 729

Status: Passed in May 2013. Due to launch early 2014

Description: This is a large economic development bill that is mostly unrelated to FIT/DG programs. However it does establish a pseudo-CLEAN Program and sets parameters for its regulation. This is not a true CLEAN Program because system owners are not compensated for all energy production. Owners are compensated only to the extent the payments zero out the retail electricity bill for consumption.

Notable Sections:

- Article 9, Section 9, Subdivision 6: "Rules and Uniform Contract"
  - **Reason to Note: Specifies different project sizes based on what type of utility the facility is connecting to**
  - Limits project capacity at 1 MW for projects interconnected with public utilities; there is a 40 kW limit for projects interconnected with co-ops
- Article 9, Section 10, Subdivision 10, Clause (f): "Full Value Accounting Provision"
  - **Reason to Note: Sets full value criteria explicitly and allows the regulatory agency to come up with additional values**
  - Sets minimum criteria to perform full value accounting for determining distributed solar energy price
    - *Value of delivered energy*
    - *Generation and transmission capacity*
    - *Transmission and distribution line losses*
    - *Environmental value*
    - *[Commission] may incorporate other values into the criteria based on known and measurable evidence of cost or benefit to utility*

Link:
https://www.revisor.mn.gov/bills/text.php?number=HF729&version=4&session=ls88&session_year=2013&session_number=0

Oregon

Original Bill Number/Title: ORS Sec. 757.365; passed in 2009

Updated Bill Number/Title: HB 2983

Status: Updated bill passed on May 28, 2013.

Description: Original statute created 25 MW pilot feed-in tariff program that included Volumetric Incentive Pricing Program. New statute capped the program at 27.5 MW and the project size cap at 500 kW. Contract term is fixed at 15 years.

Statutory Directive from Original Legislation

- **Reason to Note: Clearly establishes pilot program and sets pricing method. This language also gives a lot of oversight to the utility commission in designing and managing the pilot program.**
- ORS Sec. 757.365(1)
    - *The Public Utility Commission shall establish a pilot program for each electric company to demonstrate the use and effectiveness of volumetric incentive rates and payment for electricity or for the non-energy attributes of electricity, or both, from solar photovoltaic energy systems that are permanently installed in this state by retail electricity consumers after this program begins*

Notable Sections of New Bill:

- Section 1(11)
    - **Reason to Note: Mandates active involvement of utility commission in developing program incentives**
    - Text:
        - *The commission shall advise and assist the owners and operators of qualifying systems in identifying and using grants, incentive moneys, federal funding and other sources of noninvestment financial support for the construction and operation of qualifying systems*
- Section 4(1)
    - **Reason to Note: Augments the original program review language and gives specific instruction regarding program review**
    - Mandates specific elements of program review to be conducted by public utility question including:
        - *Cost/benefit analysis and distribution of costs and benefits among retail electricity consumers*
        - *Evaluate and investigate the resource value of solar energy*
        - *Identify barriers within program to providing incentives to development of photovoltaic energy systems*

Link to Statutes:
http://www.dsireusa.org/incentives/incentive.cfm?Incentive_Code=OR134F

Rhode Island

Bill Number/Title: HB 6104; formerly known as HB 7616

Status: Passed into law in 2011.

- Rhode Island Distributed Generation Standard Contract

Description: Establishes a 40 MW CLEAN Program. Contracts have a 15-year term and a 0.5 – 1.5 MW project cap depending on technology.

Notable Sections:

- 39-26.2-3.14: "Standard Contract Ceiling Price"
  - **Reason to Note: For smaller projects, the law sets standard prices based on a stakeholder process that calculated the Cost of Development. Table of prices sets different prices for each technology and size range. Setting prices in statute reduces program flexibility for future adjustment.**
- 39-26.2-7: "Standard contract – Form and Provisions"
  - **Reason to Note: Explicitly establishes a working group to develop a PPA rather than letting utilities develop a PPA with the regulatory agency.**
  - Subsection (1) establishes a "contract working group" that consists of individuals representing the utilities, renewable generation projects, and a lawyer with experience developing power purchase agreements
  - Subsection (2) sets minimum criteria for contract working group to use in developing standard contracts
    - Technology type and size
    - Renewable energy certificates
    - All environmental attributes and market products made available by the generation facility
- 39-26.2-12: "Powers and Duties [of Distributed Generation Standard Contract Board]"
  - **Reason to Note: Authorizes the directives of the contract working group and provides broad guidelines for program oversight**
  - Text
    - *The purposes of this board are to:*
      - *Evaluate and make recommendations to the commission regarding ceiling prices and annual contracting tragets, the make-up of renewable energy classes, and the terms of standard contracts under the provisions of this chapter*
      - *Provide consistent, comprehensive, informed and publicly accountable involvement by representatives of groups impacted by, involved in, and knowledgeable regarding the development of distributed generation projects that are eligible to enter into standard contracts*
      - *Monitor and evaluate the effectiveness of the distributed generation standard contracting program for the purchase of the energy output of distributed renewable generation projects*

Link: http://webserver.rilin.state.ri.us/Statutes/TITLE39/39-26.2/INDEX.HTM

Vermont

Bill Number/Title: Vermont Energy Act of 2009

Status:

- Passed into law in 2009
- Updated in 2012
- Known as the 'Vermont SPEED Standard Offer Program'

Description: Establishes a 50 MW CLEAN Program as well as a number of other renewable energy policy measures. Modification in 2012 expanded program to 127 MW and removed caps for projects that benefit the grid

Notable Section of Original Act:

- Section 8005(b)(3) establishes pricing and program criteria
  - **Reason to Note: Pricing approach based on Cost of Development and sets a return on equity related to IOU ROE rates.**
  - Criteria for [Commission] to use in setting contract prices
    - Generic cost based on economic analysis by technology type
    - Generic assumption of reasonably available tax credits and incentives
    - Rate of return on equity that is not less than the highest rate of return on equity received by a state investor-owned utility

Notable Section of 2012 Amendment

- Section 8001(a)(7):
  - **Reason to Note: First example of legislation that acknowledges benefits of DG to the distribution grid. Requires state to develop methodology to calculate benefits.**
  - Clause that provides for support and incentives to small renewable facilities that are located in places and through means that reduce line losses and address transmission and distribution constraints

2009 Link: http://www.leg.state.vt.us/docs/2010/Acts/ACT045.pdf

2012 Update: http://www.leg.state.vt.us/docs/2012/Acts/ACT170.pdf