January 8, 2021

New England State Energy Legislation Recap: 2020/Early 2021 Summary of Key Developments

UPDATE: On January 14, Massachusetts Governor Charlie Baker vetoed An Act Creating a 2050 Roadmap to a Clean and Thriving Commonwealth (S.2995). Governor Baker issued a five-page letter to the legislature detailing his reasons for vetoing the bill. Chief among the reasons for the veto was insufficient time for the governor to make amendments to the bill and send it back to the legislature. In his statement, Governor Baker, while expressing support for the efforts to reduce emissions and fight climate change, outlined concerns about the potential negative economic impacts of the bill, the barriers that may arise to constructing affordable housing under the strict environmental building standards of the bill, and the bill's focus on sector-specific emissions targets rather than emission reductions on a state-wide level only. The governor's statement also noted that the bill did not adequately consider how Massachusetts will work with other states in the effort to combat climate change, and did not provide enough funding mechanisms to make the environmental justice provisions meaningful. In light of the veto, some Massachusetts legislators have signaled their intent to refile the bill. Day Pitney will continue to track and report on the outcome of this important legislation.

Despite the impact of the COVID-19 restrictions, all the New England states held legislative sessions in 2020. Most recently, major climate change legislation affecting the energy industry, which was developed in Massachusetts throughout 2020, was enacted in early 2021 and awaits the governor's signature. In its efforts, Massachusetts joined Vermont in passing legislation during 2020, establishing aggressive climate change goals and policies. We report on these developments, as well as other noteworthy New England energy-related legislation, below.

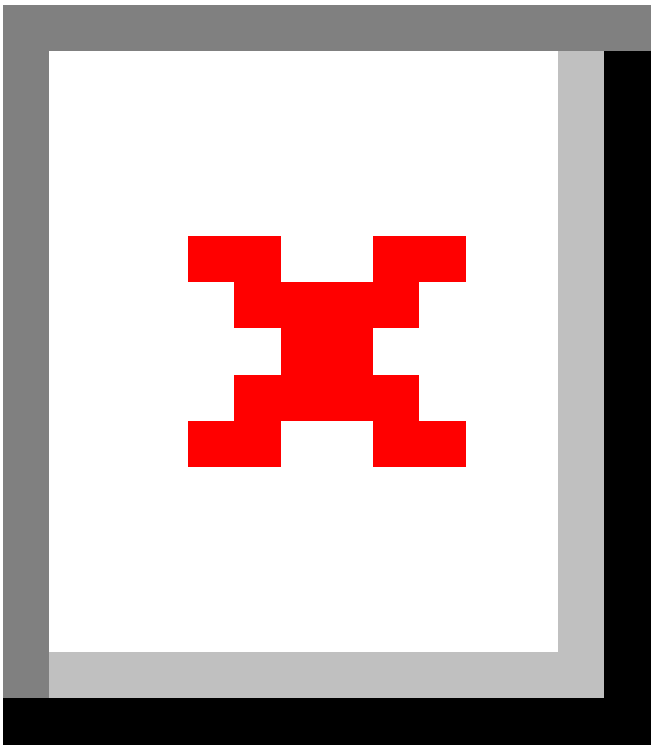
Massachusetts

On January 4, 2021, after months of negotiations to reconcile competing Senate and House bills, the Massachusetts Legislature agreed to **An Act Creating a 2050 Roadmap to a Clean and Thriving Commonwealth** (S.2995), which is available here. The act is a major piece of climate change legislation further committing Massachusetts to a clean energy future, with the provision of pathways to get there. Highlights of the act include the following:

- The act builds on the Global Warming Solutions Act of 2008 by setting specific greenhouse gas (GHG) emissions limits for Massachusetts. The act directs the Department of Environmental Protection (DEP) to engage with stakeholders, conduct public hearings, and propose emissions limits in five-year increments between 2025 and 2050, with an ultimate goal of "at least net zero statewide greenhouse gas emissions; provided, however, that in no event shall the level of emissions in 2050 be higher than a level 85 percent below the 1990 level." The act does not define "net zero," but the term has previously been defined by the Massachusetts Executive Office of Energy and Environmental Affairs as "a level of statewide greenhouse gas emissions that is equal in quantity to the amount of carbon dioxide or its equivalent that is removed from the atmosphere and stored annually by, or attributable to, the Commonwealth; provided, however, that in no event shall the level of emissions be greater than a level that is 85 percent below the 1990 level." The act directs the secretary to create road maps for achieving reductions in GHG emissions for 2025, 2030, 2035, 2040, 2045 and 2050.

- The act sets the interim emissions limits at 50 percent below the 1990 level for 2030, and at 75 percent below the 1990 level for 2040. The act instructs the secretary to consider all relevant impacts, such as financial, environmental and public health, when creating the specific emissions reduction targets and the road maps to reach achievement. The act provides an extensive list of factors the secretary should take into consideration. To achieve the overall goals, the act directs the DEP to set emissions sub-limits for the following sectors: electric power, transportation, commercial and industrial heating and cooling, residential heating and cooling, industrial processes, and natural gas distribution and service. The act instructs that these sub-limits are not to exceed, in the aggregate, the statewide GHG emissions limit for the year. The act then directs the DEP to promulgate regulations regarding all sources or categories of sources that emit GHG in order to achieve the statewide emissions limits and the sector-specific sub-limits.
- The act directs municipal electric departments in Massachusetts to each establish a GHG emissions standard, with incremental emissions targets for 2030 and 2040, and with the goal of achieving net-zero GHG emissions in energy sales by 2050.
- The act increases the offshore wind procurement authorization from 3,200 MW to 5,600 MW, to be procured no later than June 30, 2027. The time frame for solicitations has also been accelerated so that a solicitation occurs within 18 months rather than 24 months of a previous solicitation. The act permits the Department of Energy Resources to require distribution companies to competitively solicit and procure proposals for offshore wind to the greatest extent possible under the act.
- The act increases the renewable energy portfolio standard for retail electricity suppliers in Massachusetts. Under the act, retail electricity suppliers must now increase the amount of energy purchased from renewable sources by 3 percent each year from 2025 through 2029.
- The act eases restrictions on net metering caps to allow for more net metering of distributed generation.
- The act promotes co-located solar and energy storage facilities by providing a property tax exemption for such facilities.
- The act sets several energy conservation standards and defines new terms for commercial buildings and appliance efficiency. Among its requirements, the act mandates that technologies such as computers, plumbing fittings and certain types of lamps meet minimum energy efficiency requirements. The act also directs the state's Board of Building Regulations and Standards to consider more stringent energy efficiency provisions in the state building code.
- The act imposes additional requirements and risks on natural gas distribution companies. They must file plans, with the Department of Public Utilities (DPU), including a timeline, to address aging or leaking natural gas infrastructure in Massachusetts. The DPU is directed to review these plans and ensure that gas companies are on track to meet targets to reduce the leak rate and replace aging infrastructure in a timely manner. The act directs the DPU to prioritize "safety, security, reliability of service, affordability, equity and reductions in greenhouse gas emissions to meet statewide greenhouse gas emissions limits." The act also increases the amount the DPU can enforce in penalties for failing to adhere to emergency preparedness rules, from $250,000 per day to $500,000 per day and from $20 million total to $50 million total.
- The act creates several new programs in the area of environmental justice.

Noteworthy energy-related developments in Connecticut, Maine, New Hampshire, Rhode Island and Vermont are discussed briefly below.

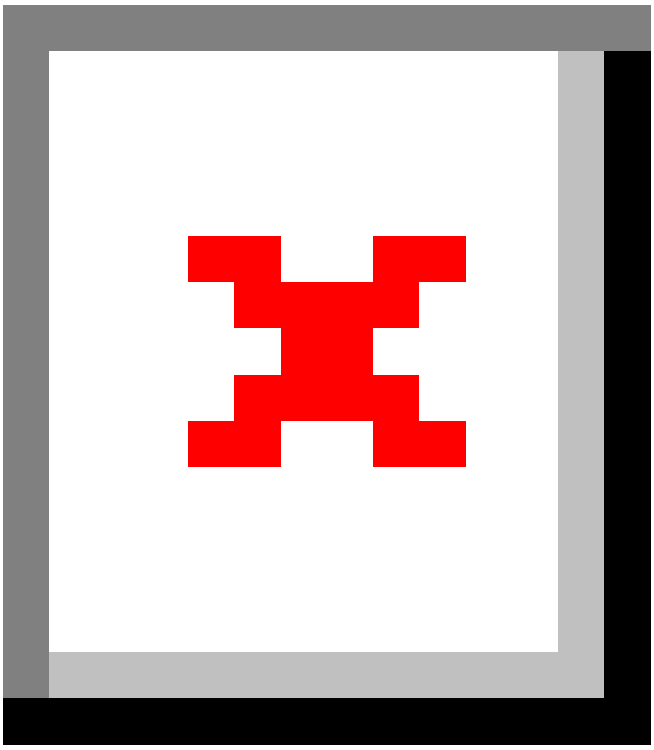


Connecticut

The Connecticut General Assembly adjourned in May due to the COVID-19 pandemic, reconvening in certain "special sessions" to consider legislation regarding specific issues. One such special session was convened in late September/early October, when the General Assembly considered and passed an energy-related bill which the governor promptly signed: **An Act Concerning Emergency Response by Electric Distribution Companies, the Regulation of Other Public Utilities and Nexus Provisions for Certain Disaster-Related or Emergency-Related Work Performed in the State (Public Act**

No. 20-5). This legislation, accessible here, makes various changes to the state's Public Utilities Regulatory Agency (PURA) procedures relating to electric distribution companies (EDCs). Highlights of the act include the following:

- The act requires PURA to initiate a proceeding by June 1, 2022, to adopt a framework for implementing performance-based regulation of each EDC.
- The act requires PURA to consider implementing financial performance-based incentives and penalties and performance-based metrics for periodic reviews and general rate hearings.
- The act authorizes PURA, by November 1, 2020, to initiate a proceeding to consider implementing an interim rate decrease, low income rates and economic development rates for EDC customers.
- The act prohibits EDCs from recovering costs related to PURA hearings.
- The act raises the limit on civil penalties for EDCs and gas companies that fail to comply with standards relating to emergency prevention or service restoration.



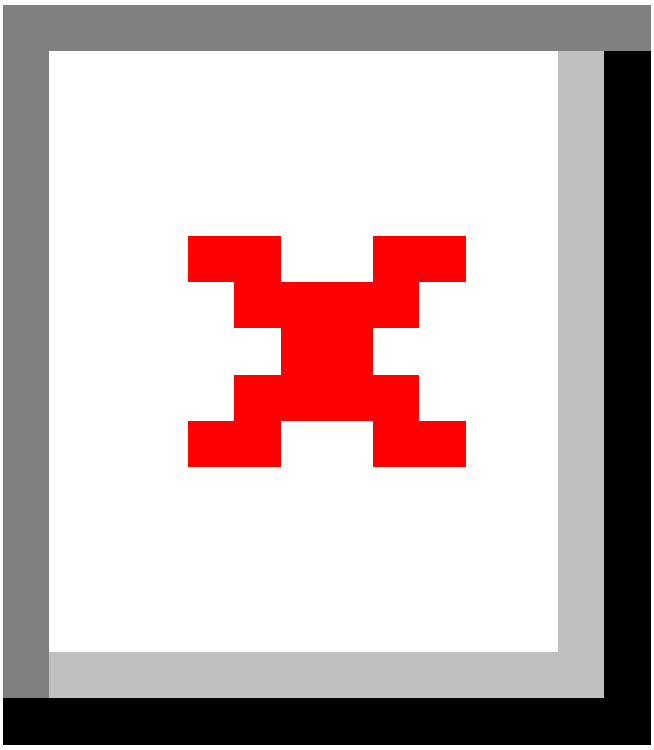
Maine

The Maine Legislature adjourned its Second Regular Session of the 129th Legislature on March 17, 2020, due to COVID-19. Prior to adjournment, the following bills of interest were passed and signed into law:

- **An Act to Authorize Separate Alternative Compliance Payment Rates for Maine's Renewable Portfolio Standard and to Amend the Laws Governing Thermal Renewable Energy Credits (LD 1896).** This act, accessible here, exempts retail electricity sales under supply contracts or standard offer service arrangements that were executed by a

competitive electricity provider and were in effect after September 2019 from the requirement to purchase thermal renewable energy credits through the existing term of those arrangements.

- **An Act to Create Jobs and Slow Climate Change by Promoting the Production of Natural Resources Bio-products (LD 1698).** This act, accessible here, aims to create jobs and slow climate change by promoting the production of natural resources bio-products. It does so by providing a tax credit for the production of renewable chemicals through the conversion of renewable biomass from the forest, farms, sea or solid waste, with that tax credit equal to a certain amount per pound of renewable chemical produced in the state.
- **An Act to Ensure Proper Closure of Oil Terminal Facilities (LD 2033).** This act, accessible here, establishes financial assurance and facility closure requirements for oil terminals, develops a process for assessing the costs of decommissioning oil terminal facilities and infrastructure, and establishes financial responsibility for closure costs.



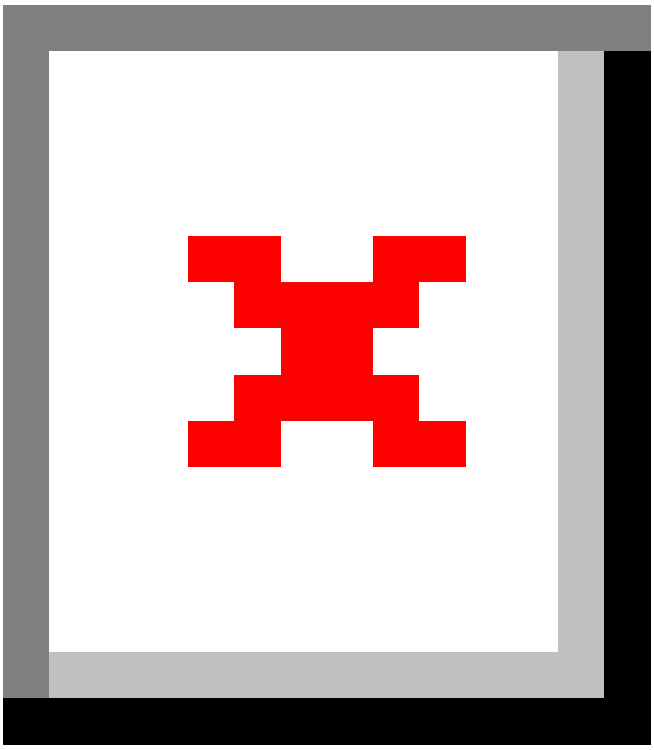
New Hampshire

The New Hampshire General Court was in the second year of its biennium when legislative activity was suspended from mid-March to mid-June due to COVID-19. The following bills were passed and signed into law in 2020:

- **An Act Relative to Electrical Energy Storage (Chaptered Law 11).** This act, accessible here, requires the state public utilities commission to investigate ways to enable energy storage projects to receive compensation for avoided transmission and distribution costs, including but not limited to avoided regional and local network service charges, while

also participating in wholesale energy markets for both utility-owned and non-utility-owned energy storage projects, as well as for both behind-the-meter storage and front-of-the-meter storage. The findings and recommendations of the investigation must be presented to the standing committees of the New Hampshire House and Senate with jurisdiction over energy and utility matters no later than two years after initiating the proceeding.

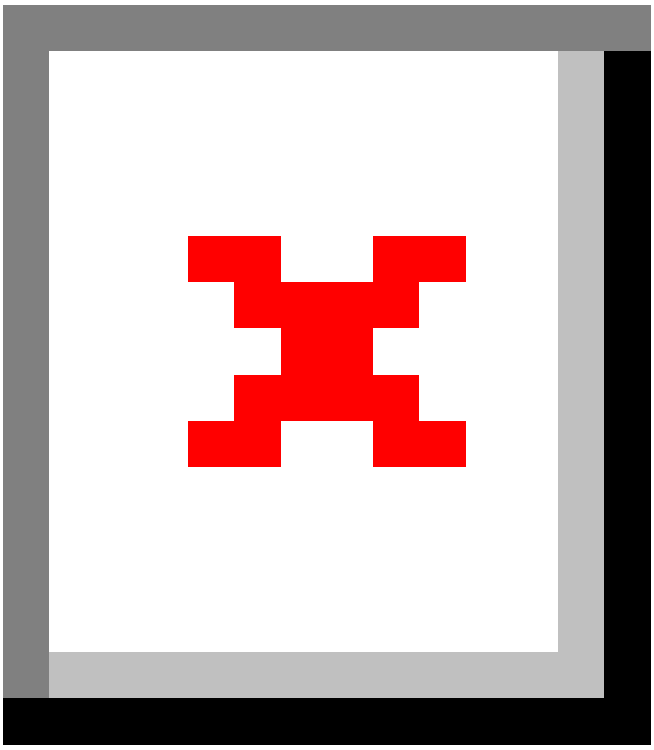
- **An Act Adopting Omnibus Legislation Concerning State Agencies (Chaptered Law 37).** Among its various provisions, this act, accessible here, increases the measures that may be taken to reduce energy costs and meet state energy goals, including through the use of efficiency measures such as conservation, strategic electrification, energy storage, fuel switching, co-generation and use of renewable energy. The act clarifies that power purchase agreements are suitable mechanisms for the state or any municipality to use in order to reduce energy costs and meet state energy goals. It also modifies the way funds remaining in state energy budgets are distributed, requiring 50 percent of the general funds remaining in an agency's energy budget to revert to the state energy investment fund and allowing for the funds from state sale of renewable energy certificates to be included in the energy investment fund. The money in the energy investment fund is used to fund energy efficiency or renewable energy projects. Additionally, this law establishes an offshore wind commission and an offshore wind industry development office in the Department of Business and Economic Affairs.



Rhode Island

The Rhode Island General Assembly began its session on January 7, 2020. The legislative session was subsequently affected by the COVID-19 pandemic and was suspended from March 17 through June 17, 2020. While no energy or climate legislation passed in Rhode Island during 2020, Governor Gina M. Raimondo signed an executive order on January 17, 2020, regarding renewable energy: **Advancing a 100% Renewable Energy Future for Rhode Island by 2030 (Executive**

Order 20-01). This order, accessible here, directs the State Office of Energy Resources to develop policy and programmatic pathways to meet 100 percent of the state's electricity demand with renewable energy sources by 2030.



Vermont

As noted above, Vermont enacted comprehensive legislation to address climate change. The Vermont Legislature convened its session on January 7, 2020, and adjourned on September 25, 2020. Prior to adjournment, the following pieces of energy-related legislation were enacted into law:

- **An Act Relating to Addressing Climate Change (Public Act No. 153).** In September 2020, the Vermont Legislature overrode the governor's veto to enact climate change legislation referred to as the Vermont Global Warming Solutions

Act of 2020 (H 688). This act, accessible here, reduces the targeted levels of GHG emissions from previously established levels. Specifically it would require the following GHG levels: by January 1, 2025, at least 26 percent below 2005 emissions; by January 1, 2030, at least 40 percent below 1990 emissions; and by January 1, 2050, at least 80 percent below 1990 emissions. The law creates a Climate Council tasked to develop a Climate Action Plan that sets forth the proposed programs and strategies to meet these reductions and to build resilience to the impacts of climate change. The law also requires the Agency of Natural Resources (ANR) to adopt rules consistent with the plan and provides for a cause of action if the ANR fails to engage in rule-making or adopts rules that fail to achieve the required emissions reductions.

- **An Act Relating to Energy Efficiency Entities and Programs to Reduce Greenhouse Gas Emissions in the Thermal Energy and Transportation Sectors (Public Act No. 151).** This act, accessible here, allows an energy efficiency utility to use up to $2 million per year, for a total of $6 million over the course of the three-year period, of its 2021-23 budget for electric efficiency programs and programs that reduce GHG emissions in the thermal energy and transportation sectors.

The state legislatures for each of the New England states are already at work, having convened their next sessions in 2021, and may consider additional energy legislative initiatives in such areas as climate change, energy storage, reliability and more. Day Pitney will continue to monitor energy-related legislative developments in New England throughout 2021. Please do not hesitate to contact any of the attorneys listed in the sidebar with any questions.

For more Day Pitney alerts and articles related to the impact of COVID-19, as well as information from other reliable sources, please visit our COVID-19 Resource Center.

COVID-19 DISCLAIMER: As you are aware, as a result of the COVID-19 pandemic, things are changing quickly and the effect, enforceability and interpretation of laws may be affected by future events. The material set forth in this document is not an unequivocal statement of law, but instead represents our best interpretation of where things stand as of the date of first publication. We have not attempted to address the potential impacts of all local, state and federal orders that may have been issued in response to the COVID-19 pandemic.

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