

Massachusetts Legislature Passes Nation's First Electric Deregulation Bill with "Community Choice" Intact



Bill also Sets New National Standard on Renewables Investment: Otherwise, This is ['Bailout, California-Style'](#)

Boston. Massachusetts has the nation's first electric deregulation law that gives local governments a strong hand for consumers and the environment. The law builds on traditional franchise authorities of local governments to act as "community aggregators" in a deregulated electric industry, and allows communities to administer tens of millions of dollars paid by their citizens for energy efficiency and renewable energy programs.

Proponents hailed the provision as a national model for community control, sustainability, and consumer protection. Under "Community Choice," consumers wishing to find their own provider may "opt out" of the local government's group, but are otherwise included with their communities rather than remaining with the incumbent utility "default provider."

All other states, such as California, Pennsylvania, and Rhode Island, have neglected to include Community Choice provisions in their deregulation laws, leaving the majority of consumers to remain captives of their "default provider." In Philadelphia, Enron Corporation offered billions to purchase the incumbent utility's "default provider" status, indicating the market value of the pool of consumers who will not find a new power supplier.

In Massachusetts, consumers have another choice: to buy electricity with their communities. "This is democracy in action," said Rob O'Leary, of the Barnstable County Commissioners, a Community Choice proponent. "It's a voluntary process. The towns choose whether to participate and any individual in the town who does not want it can choose whatever option they want. This doesn't create another monopoly. It doesn't lock people in. Anyone can opt out if they choose."

Dozens of cities and towns, environmentalists and consumers interested in Community Choice mobilized early on in the process to protect local community rights in the state's deregulation proceedings, packing regulatory and legislative hearings, and pressuring legislators to resist strong utility lobbying against it.

[California's recently enacted law \(AB1890\)](#) ignores constitutional franchise authorities of local governments. Instead, the law gives deregulated utility companies the exclusive privilege to automatically 'own' all customers who do not shop for and choose a new

provider in the deregulated industry - and forces local governments to compete with for-profit power marketers. Respecting traditional franchise authorities of local governments, the Massachusetts law (Section 247, see www.local.org) gives cities, towns or counties the authority to choose, by majority vote of locally elected officials or town meetings, to "automatically" aggregate for their communities, including all residents and businesses who do not find a supplier on their own.

Proponents say that communities seeking this option will create community pools of electricity demand in sufficient volume to command leverage on the market, and with sufficient legal authority and financial flexibility to enforce contracts for energy supply and green economic development. The law also allows groups of cities and towns to combine efforts, reflecting a growing movement to organize regionally behind county governments or between neighboring towns. "Consumers have a bright spot in what might otherwise be considered a bleak piece of legislation," the Barnstable County Commissioners announced; "this (community choice) option marks a nationwide first."

[Matthew Patrick](#), a Falmouth Selectman, worked with Barnstable County to organize the towns of Cape Cod for "Community Choice" after [Senator Mark Montigny \(D-New Bedford\)](#), then chair of the Senate Committee on Energy, filed a model deregulation bill giving local governments control over the retail electricity market, based on traditional local franchise powers, in 1994. Patrick organized the "Cape Light Compact" county-wide with Barnstable County Commissioner Rob O'Leary and others in 1996, as citizens voted in town meetings to authorize the county to negotiate an "aggregated" power contract. Today, all fifteen towns in the county have voted to enter the Compact, and have directly lobbied the Department of Public Utilities and legislature to protect local rights. "This was a real fight," says Patrick. "The investor-owned utilities do not want local communities interfering with their cash cow, and some power marketers see an organized community as a threat. This provision means that residents and businesses can have a real choice with real decisions to make about air pollution and rates next year, rather than sales gimmicks and green energy scams."

That the Massachusetts Community Choice provision is the nation's first reflects a trend among states to deregulate the electric industry under pressure from large manufacturers and power companies, while neglecting to include basic measures for the majority of consumers who are not expected to find a new electricity supplier on their own. In California, the first state in the nation to deregulate, local rights were ignored by the legislature despite explicit municipal franchising authorities in the state's constitution (see www.local.org). According to the law (AB1890), local governments seeking to aggregate are forced to compete with (unregulated) power marketers to convince consumers to "opt in" to the community group, while deregulated incumbent utilities are quietly given "automatic ownership" of consumers who do not find a new supplier, designating them "default providers" for all passive consumers. California's local governments are prohibited from assuming that role in the deregulated industry, meaning that most consumers will automatically remain customers of their old utility.

"Most consumers will not likely find - or be interested in finding - a competitive supplier on their own," said [Scott Ridley](#) of Ridley & Associates, who worked with Montigny's office to write the 1994 legislation and has been a consultant for the Cape Light Compact. "For small businesses and residents, meaning a vast majority of consumers, aggregation will be the only alternative to remaining captives of their old utility. With Community Choice in place, Massachusetts consumers will be able to aggregate through their local governments for competitive rates and renewable power they can trust. With access to the System Benefits Charge monies, our community can take an active role in making decisions about pollution and efficiency. This is a big win for consumers, the local economy and a sustainable future in Massachusetts."

The measure allows communities to get directly involved in cutting air pollution and greenhouse gases. Cities and towns with energy plans meeting state standards can directly administer community-based energy efficiency programs with System Benefit Charges funds collected from their citizens. While Patrick criticized the law for cutting (by 30%) and phasing out energy efficiency subsidies over five years, he was enthusiastic about the community's opportunity to control their own programs. "Now we can invest this money as communities, rather than leaving it to the utilities, who as electricity purveyors have never wanted to reduce its consumption." Patrick said the fifteen Cape Light Compact towns could receive as much as \$5.9 a year, or \$25.9 million over the next five years, "an unprecedented opportunity for community-based sustainability."

The Massachusetts law also gives communities the opportunity to invest in green power by giving them access to renewable energy funds collected from their citizens through line charges. Under the measure, local governments can apply to the Massachusetts Technology Park Corporation for moneys to finance sustainable energy initiatives. Rob Sargent, Legislative Director of the Massachusetts Public Interest Research Group (MASSPIRG), said that the law sets a new national standard for the support of renewable energy sources like wind power and solar power; "it's the best renewables policy in the country."

"Community Choice is popular because it offers consumers market power, universal service, and public accountability," said Ridley. "For environmentalists it offers unprecedented opportunities to bolster renewables and efficiency programs. For suppliers, Community Choice removes market volatility by forming bulk markets with an organized bidding process. If states are going to deregulate, it's important that citizens have options, both as consumers and members of a community, that give them a real choice and real leverage," said Ridley. "This does that."

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