

HOUSE No. 2881

The Commonwealth of Massachusetts

PRESENTED BY:

Patricia A. Haddad

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to promote energy diversity.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>
<i>Michael J. Rodrigues</i>	<i>First Bristol and Plymouth</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>
<i>Steven S. Howitt</i>	<i>4th Bristol</i>
<i>Robert M. Koczera</i>	<i>11th Bristol</i>
<i>Christopher M. Markey</i>	<i>9th Bristol</i>
<i>Keiko M. Orrall</i>	<i>12th Bristol</i>
<i>Elizabeth A. Poirier</i>	<i>14th Bristol</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>
<i>Alan Silvia</i>	<i>7th Bristol</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Ann-Margaret Ferrante</i>	<i>5th Essex</i>
<i>Timothy R. Whelan</i>	<i>1st Barnstable</i>
<i>John V. Fernandes</i>	<i>10th Worcester</i>

HOUSE No. 2881

By Mrs. Haddad of Somerset, a petition (accompanied by bill, House, No. 2881) of Patricia A. Haddad and others for legislation to encourage the development of clean energy security, energy diversity and economic growth. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act to promote energy diversity.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 169 of the acts of 2008, as amended by chapter 209 of the acts of
2 2012, is hereby further amended by inserting after section 83A the following sections:-

3 Section 83B. Definitions

4 For the purposes of sections 83C and 83D, the following terms, unless context clearly indicates
5 otherwise, shall have the following meanings:-

6 “Clean energy generation”, either: (1) firm service hydroelectric generation from hydroelectric
7 generation alone; or (2) new Class I RPS eligible resources that are firmed up with firm service
8 hydroelectric generation.

9 “Distribution company”, a distribution company as defined in section 1 of chapter 164 of the
10 General Laws.

11 “Firm service hydroelectric generation”, hydroelectric generation provided without interruption
12 for a period designated in a contract, including but not limited to multiple hydroelectric run-of-
13 the-river generation units managed in a portfolio that creates firm service through the diversity of
14 multiple units.

15 “New Class I RPS eligible resources”, Class I renewable energy generating sources as defined in
16 section 11F of chapter 25A of the General Laws, which have a commercial operation date on or
17 after January 1, 2017.

18 “Offshore wind developer”, provider of electricity developed from a generation project located
19 on the Outer Continental Shelf within the Massachusetts Wind Energy Area designated by the
20 U.S. Department of the Interior on May 30, 2012, or the Rhode Island/Massachusetts Wind
21 Energy Area designated by the U.S. Department of the Interior on February 24, 2012.

22 “Offshore wind energy generation”, offshore wind electric generating resources that: (1) are
23 Class I renewable energy generating sources, as defined in section 11F of chapter 25A of the
24 General Laws; (2) have a commercial operation date on or after January 1, 2018, as verified by
25 the department of energy resources; and (3) operate in a competitively solicited federal lease
26 area.

27 Section 83C. Offshore Wind Solicitation

28 (a) Notwithstanding any general or special law to the contrary, beginning on or before June 30,
29 2017, all distribution companies in the commonwealth shall jointly and competitively solicit
30 proposals from offshore wind developers and, provided reasonable proposals have been received,
31 shall enter into cost-effective long-term contracts to facilitate the financing of offshore wind
32 energy generation resources, apportioned among the distribution companies under this section.

33 (b) The timetable and method for solicitations and execution of such contracts shall be proposed
34 jointly by the distribution companies and the department of energy resources using a competitive
35 bidding process only, and shall be subject to review and approval by the department of public
36 utilities. Solicitations may be coordinated and issued jointly with other New England states or
37 entities designated by said states. Distribution companies may conduct 1 or more competitive
38 solicitations through a schedule or staggered procurement schedule developed by the department
39 of energy resources; provided, that distribution companies shall jointly enter into cost-effective
40 long-term contracts for offshore wind energy generation totaling no less than 1200 megawatts of
41 aggregate nameplate capacity by June 30, 2027. Individual solicitations shall seek proposals for
42 no less than 400 megawatts of aggregate nameplate capacity of offshore wind energy generation
43 resources. Distribution companies must issue a competitive solicitation under this section no
44 later than June 30, 2017, and subsequent solicitations under a staggered procurement schedule
45 developed by the department of energy resources, if applicable, shall occur within 24 months of
46 a previous solicitation. If the department of public utilities determines that reasonable proposals
47 were not received pursuant to a solicitation, the department may terminate the solicitation, and
48 may require additional solicitations to fulfill the requirements of this section.

49 (c) For the purposes of this section, a long term contract shall be a contract with a term of 15 to
50 20 years. In developing proposed long-term contracts, the distribution companies shall consider
51 long-term contracts for renewable energy certificates, hereinafter referred to as RECs, for
52 energy, and for a combination of both RECs and energy. A distribution company may decline to
53 consider contract proposals having terms and conditions that it determines would require the
54 contract obligation to place an unreasonable burden on the distribution company's balance sheet,
55 and may structure its contracts, pricing or administration of the products purchased to mitigate

56 impacts on the balance sheet or income statement of the distribution company or its parent
57 company, subject to the approval of the department of public utilities; provided, that such
58 mitigation shall not increase costs to ratepayers. In the event a distribution company deems all
59 contract proposals to be unreasonable, the department of public utilities shall initiate a docket to
60 determine the distribution company's rationale for declining said proposals. The distribution
61 companies shall consult with the department of energy resources and the attorney general's
62 office regarding the choice of contracting methods and solicitation methods. All proposed
63 contracts shall be subject to the review and approval of the department of public utilities.

64 (d) The department of public utilities and the department of energy resources each shall adopt
65 regulations consistent with this section. The regulations shall: (1) allow developers of offshore
66 wind energy generation resources to submit proposals for long-term contracts consistent with this
67 section; (2) require that contracts executed by the distribution companies under such proposals
68 are filed with, and approved by, the department of public utilities before they become effective;
69 (3) allow transmission costs to be incorporated into a proposal; (4) to the extent there are
70 transmission costs included in a bid, the department of public utilities may authorize or require
71 the contracting parties to seek recovery of such transmission costs of the project through federal
72 transmission rates, consistent with policies and tariffs of the federal energy regulatory
73 commission, to the extent the department finds such recovery is in the public interest; (4) require
74 that offshore wind energy generating resources to be used by a developer under the proposal
75 meet the following criteria: (i) provide enhanced electricity reliability within the commonwealth;
76 (ii) contribute to reducing winter electricity price spikes; (iii) be cost effective to Massachusetts
77 electric ratepayers over the term of the contract; (iv) avoid line loss and mitigate transmission
78 costs to the extent possible; (v) adequately demonstrate project viability in a commercially

79 reasonable timeframe; (vi) provide reliability, price, economic and environmental benefits that
80 outweigh any costs to ratepayers; and (vii) where feasible, create additional employment and
81 economic development in the commonwealth.

82 (e) As part of its approval process, the department of public utilities shall consider the attorney
83 general's recommendations, which shall be submitted to the department of public utilities within
84 45 days following the filing of such contracts with the department of public utilities. The
85 department of public utilities shall consider both the potential costs and benefits of such contracts
86 and shall approve a contract only upon a finding that it is a cost effective mechanism for
87 procuring reliable renewable energy on a long-term basis, taking into account the factors outlined
88 in this section.

89 (f) Distribution companies, the department of energy resources and the attorney general shall
90 jointly select an independent evaluator to assist the department of public utilities in monitoring
91 the competitive solicitation and bid selection process. The independent evaluator shall provide
92 expertise and unbiased analysis to encourage an open, fair and transparent process and ensure
93 contracts are in the public interest. The independent evaluator shall: (1) within 30 days of
94 submission, issue a report to the department of public utilities analyzing the solicitation process
95 proposed under subsection (b) of this section, including recommendations for improving the
96 process, if any; and (2) within 45 days following the filing of a long-term contract for a winning
97 bid proposal, issue a report to the department of public utilities analyzing the bid selection
98 process, including a comprehensive assessment of bid valuation and selection criteria to ensure
99 all bids were evaluated in a fair and non-discriminatory manner. Distribution companies and the
100 department of energy resources shall consult with the independent evaluator when developing its
101 solicitation process, bid valuation and bid selection criteria. The independent evaluator shall have

102 access to all information and data related to the competitive solicitation and bid selection process
103 necessary to fulfill the purposes of this subsection, but shall ensure all proprietary information
104 remains confidential. The department of public utilities shall consider the findings of the
105 independent evaluator, may adopt recommendations of the independent evaluator as a condition
106 for approval, and may reject bids that were the result of an unfair or discriminatory solicitation or
107 bid selection process.

108 (g) If distribution companies are unable to agree on a winning bid under a solicitation under this
109 section, the matter shall be submitted to the department of energy resources, in consultation with
110 the department of public utilities, for a final, binding determination of the winning bid. Electric
111 distribution companies shall each enter into a contract with the winning bidders for their
112 apportioned share of the market products being purchased from the project. The apportioned
113 share shall be calculated and based upon the total energy demand from all distribution customers
114 in each service territory of the distribution companies.

115 (h) A distribution company may elect to use any energy purchased under such contracts for
116 resale to its customers, and may elect to retain RECs to meet the applicable annual renewable
117 portfolio standard requirements under said section 11F of said chapter 25A. If the energy and
118 RECs are not so used, such companies shall sell such purchased energy into the wholesale spot
119 market and shall sell such purchased RECs through a competitive bid process. Notwithstanding
120 the previous sentence, the department of energy resources shall conduct periodic reviews to
121 determine the impact on the energy and REC markets of the disposition of energy and RECs
122 under this section. The department may issue reports recommending legislative changes if it
123 determines that said disposition adversely affects the energy and REC markets.

124 (i) If a distribution company sells the purchased energy into the wholesale spot market and
125 auctions the RECs as described in this section, the distribution company shall net the cost of
126 payments made to projects under the long-term contracts against the proceeds obtained from the
127 sale of energy and RECs, and the difference shall be credited or charged to all distribution
128 customers through a uniform fully reconciling annual factor in distribution rates, subject to
129 review and approval of the department of public utilities.

130 (j) If this section is subject to a judicial challenge, the department of public utilities may suspend
131 the applicability of the challenged provision during the pendency of the judicial action until final
132 resolution of the challenge and any appeals and shall issue such orders and take such other
133 actions as are necessary to ensure that the provisions that are not challenged are implemented
134 expeditiously to achieve the public purposes of this section.

135 Section 83D. Hydropower Solicitation

136 (a) Notwithstanding and general or special law to the contrary, beginning on January 1, 2017, all
137 distribution companies in the commonwealth shall jointly and competitively solicit proposals
138 from developers of clean energy generation resources to deliver an annual amount of electricity
139 of not more than 9,450,000 megawatts-hours, and, provided reasonable proposals have been
140 received, shall enter into either long-term contracts or delivery commitment agreements to
141 facilitate the financing of clean energy generation resources, apportioned among the distribution
142 companies under this section.

143 (b) The timetable and method for solicitation shall be proposed jointly by the distribution
144 companies and the department of energy resources using a competitive bidding process only, and
145 shall be subject to review and approval by the department of public utilities. Solicitations may be

146 coordinated and issued jointly with other New England states or entities designated by said
147 states. If the department of public utilities determines that reasonable proposals were not
148 received pursuant to a solicitation, the department may terminate the solicitation, and may
149 require additional solicitations to fulfill the requirements of this section.

150 (c) For the purposes of this section, a long term contract shall be a contract with a term of 15 to
151 20 years. In developing proposed long-term contracts, the distribution companies shall consider
152 long-term contracts for renewable energy certificates, hereinafter referred to as RECs, for
153 energy, and for a combination of both RECs and energy, if applicable. A distribution company
154 may decline to consider proposals having terms and conditions that it determines would require
155 the contract obligation to place an unreasonable burden on the distribution company's balance
156 sheet, and may structure its contracts, delivery commitments, pricing or administration of the
157 products purchased to mitigate impacts on the balance sheet or income statement of the
158 distribution company or its parent company, subject to the approval of the department of public
159 utilities; provided, that such mitigation shall not increase costs to ratepayers. In the event a
160 distribution company deems all proposals to be unreasonable, the department of public utilities
161 shall initiate a docket to determine the distribution company's rationale for declining said
162 proposals. The distribution companies shall consult with the department of energy resources and
163 the attorney general's office regarding the choice of contracting methods and solicitation
164 methods. All proposals shall be subject to the review and approval of the department of public
165 utilities.

166 (d) For the purposes of this section, a delivery commitment agreement shall be a contractual
167 commitment by a clean energy developer to deliver electricity to the ISO New England Control
168 Area for a term of 15 to 20 years, subject to the rules governing that market as approved by the

169 federal energy regulatory commission, for a designated number of megawatt-hours per year
170 during designated periods. Such output shall be from clean energy generation, as defined in
171 section 83B of this act. Delivery commitment agreements may be contingent upon a transmission
172 line being constructed, maintained, and placed under the operational control of ISO New
173 England that adds sufficient capacity to the ISO New England transmission system to enable the
174 delivery into the New England market of the electric energy comprising the supplier's delivery
175 commitment. A clean energy generation developer shall be obligated, in the event it fails to meet
176 its delivery commitment agreement in any designated period, to pay liquidated damages to the
177 electric distribution company, which in turn shall be returned to ratepayers. The department of
178 public utilities, in consultation with the department of energy resources, may promulgate
179 regulations to implement the provisions of this section, subject to the applicable rules, orders and
180 regulations established by the federal energy regulatory commission.

181 (e) The department of public utilities and the department of energy resources each shall adopt
182 regulations consistent with this section. The regulations shall: (1) allow developers of clean
183 energy generation resources to submit proposals for long-term contracts or delivery commitment
184 agreements; (2) require that contracts or delivery commitment agreements executed by the
185 distribution companies under such proposals are filed with, and approved by, the department of
186 public utilities before they become effective; (3) allow transmission costs to be incorporated into
187 a proposal; (4) to the extent there are transmission costs included in a bid, the department of
188 public utilities may authorize or require the relevant parties to seek recovery of such transmission
189 costs of the project through federal transmission rates, consistent with policies and tariffs of the
190 federal energy regulatory commission, to the extent the department finds such recovery is in the
191 public interest; (4) require that the clean energy resources to be used by a developer under the

192 proposal meet the following criteria: (i) provide enhanced electricity reliability within the
193 commonwealth; (ii) contribute to reducing winter electricity price spikes; (iii) be cost effective to
194 Massachusetts electric ratepayers over the term of the contract or delivery commitment
195 agreement; (iv) avoid line loss and mitigate transmission costs to the extent possible; (v) allow
196 the contract or delivery commitment agreement price to be recalculated annually based on
197 wholesale market prices and decrease in periods of low wholesale prices; (vi) guarantee energy
198 delivery in winter months; (vii) adequately demonstrate project viability in a commercially
199 reasonable timeframe; (viii) provide reliability, price, economic and environmental benefits that
200 outweigh any costs to ratepayers; (ix) give preference for proposals that combine more than 1
201 source of clean energy generation; (x) where feasible, create additional employment and
202 economic development in the commonwealth.

203 (f) As part of its approval process, the department of public utilities shall consider the attorney
204 general's recommendations, which shall be submitted to the department of public utilities within
205 45 days following the filing of such contracts or delivery commitment agreements with the
206 department of public utilities. The department of public utilities shall consider both the potential
207 costs and benefits of such contracts and shall approve a contract or delivery commitment
208 agreement only upon a finding that it is a cost effective mechanism for procuring low cost
209 renewable energy on a long-term basis taking into account the factors outlined in this section.

210 (g) The distribution companies, the department of energy resources and the attorney general shall
211 jointly select an independent evaluator to assist the department of public utilities in monitoring
212 the competitive solicitation and bid selection process. The independent evaluator shall provide
213 expertise and unbiased analysis to encourage an open, fair and transparent process and ensure
214 contracts are in the public interest. The independent evaluator shall: (1) within 30 days of

215 submission, issue a report to the department of public utilities analyzing the solicitation process
216 proposed under subsection (b) of this section, including recommendations for improving the
217 process, if any; and (2) within 45 days following the filing of a long-term contract for a winning
218 bid proposal, issue a report to the department of public utilities analyzing the bid selection
219 process, including a comprehensive assessment of bid valuation and selection criteria to ensure
220 all bids were evaluated in a fair and non-discriminatory manner. Distribution companies and the
221 department of energy resources shall consult with the independent evaluator when developing its
222 solicitation process, bid valuation and bid selection criteria. The independent evaluator shall have
223 access to all information and data related to the competitive solicitation and bid selection process
224 necessary to fulfill the purposes of this subsection, but shall ensure all proprietary information
225 remains confidential. The department of public utilities shall consider the findings of the
226 independent evaluator, may adopt recommendations of the independent evaluator as a condition
227 for approval, and may reject bids that were the result of an unfair or discriminatory solicitation or
228 bid selection process.

229 (h) If distribution companies are unable to agree on a winning bid under a solicitation under this
230 section, the matter shall be submitted to the department of energy resources, in consultation with
231 the department of public utilities, for a final, binding determination of the winning bid. The
232 electric distribution companies shall each enter into a contract or delivery commitment
233 agreement with the winning bidders for their apportioned share of the market products being
234 purchased from the project. The apportioned share shall be calculated and based upon the total
235 energy demand from all distribution customers in each service territory of the distribution
236 companies.

237 (i) An electric distribution company may elect to use any energy purchased under such contracts
238 or delivery commitments for resale to its customers, and may elect to retain RECs to meet the
239 applicable annual RPS requirements under said section 11F of said chapter 25A. If the energy
240 and RECs are not so used, such companies shall sell such purchased energy into the wholesale
241 spot market and shall sell such purchased RECs through a competitive bid process.

242 Notwithstanding the previous sentence, the department of energy resources shall conduct
243 periodic reviews to determine the impact on the energy and REC markets of the disposition of
244 energy and RECs under this section and may issue reports recommending legislative changes if it
245 determines that actions are being taken that will adversely affect the energy and REC markets.

246 (j) If a distribution company sells the purchased energy into the wholesale spot market and
247 auctions the RECs as described in this section, the distribution company shall net the cost of
248 payments made to projects under the long-term contracts or delivery commitments against the
249 proceeds obtained from the sale of energy and RECs, and the difference shall be credited or
250 charged to all distribution customers through a uniform fully reconciling annual factor in
251 distribution rates, subject to review and approval of the department of public utilities.

252 (k) If this section is subject to a judicial challenge, the department of public utilities may suspend
253 the applicability of the challenged provision during the pendency of the judicial action until final
254 resolution of the challenge and any appeals and shall issue such orders and take such other
255 actions as are necessary to ensure that the provisions that are not challenged are implemented
256 expeditiously to achieve the public purposes of this section.