

**HOUSE . . . . . No.**

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**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:

*Patricia A. Haddad*

DISTRICT/ADDRESS:

*5th Bristol*

**HOUSE . . . . . No.**

[Pin Slip]

**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. This act shall be construed in a manner to achieve its public purposes,  
2           which are to encourage the development of energy security and energy diversity and economic  
3           growth while facilitating the commonwealth’s clean energy goals. Because the long term cost of  
4           various traditional energy sources cannot be accurately calculated and the commonwealth faces a  
5           reliability crisis as 8,000 megawatts of existing generation are expected to retire, it is important  
6           that Massachusetts enact a balanced, long-term energy plan to best assure varied energy  
7           sourcing; safe, efficient and uninterrupted energy delivery; coupled with sound and integrated  
8           economic development and mindful of climate change and the cost to the consumer.

9           SECTION 2. Section 22 of chapter 21A of the General Laws, as so appearing in the 2012  
10          Official Edition, is hereby amended by inserting at the end of subsection (b) the following:-

11          Parcels of land on which electric generating plants previously were operated shall be  
12          designated as preferred sites for reuse as electric generation sites for all technologies. With such  
13          designation, the owner of the new generation facility, one which receives a Capacity Supply

14 Obligation in the ISO-NE's Forward Capacity Market No. 10 or later, shall receive on January 1  
15 of each of the first five years that the new facility has achieved commercial operation, from the  
16 Commonwealth at no cost to the owner, emission allowances to be used under the Regional  
17 Greenhouse Gas Initiative, or successor program, during such first five years of commercial  
18 operation, if said new electric generation facility is able to demonstrate documented reduction in  
19 the emissions rate of 33 1/3 percent using as a baseline the average emission rate of the electric  
20 generating plant previously operated on such site during its last 24 months of operation. The  
21 total number of the emission allowances that may be granted by the commonwealth in any  
22 calendar year under this section shall be limited to one-third of the total number of allowances  
23 allocated to the commonwealth, with no new facility receiving more than 1,000,000 allowances  
24 in any such calendar year.

25 SECTION 3. Subsection (c) of section 11F of chapter 25A of the General Laws, as  
26 appearing in the 2012 Official Edition, is hereby further amended by striking out paragraph (6)  
27 and inserting in place thereof, the following paragraph:-

28 (6) energy generated by new hydroelectric facilities, or incremental new energy from  
29 increased capacity or efficiency improvements at existing hydroelectric facilities; provided  
30 however that (i) each such new facility or increased capacity or efficiency at each such existing  
31 facility must meet appropriate and site-specific standards that address adequate and healthy river  
32 flows, water quality standards, fish passage and protection measures and mitigation and  
33 enhancement opportunities in the impacted watershed as determined by the department in  
34 consultation with relevant state and federal agencies having oversight and jurisdiction over  
35 hydropower facilities ("Environmental Standards"); (ii) in any case in which: (a) pursuant to  
36 action initiated with or by the Federal Energy Regulatory Commission (FERC) after January 1,

37 2000, the FERC reviewed and approved an increase of capacity or efficiency at an existing  
38 facility, or (b) pursuant to action initiated with or by the Federal Energy Regulatory Commission  
39 (FERC) after January 1, 2009, the FERC reviewed and approved a new facility, then such  
40 increased capacity or efficiency at each such existing facility, or such new facility, shall be  
41 deemed, by the department, to have satisfied the Environmental Standards, defined above, and  
42 except as limited by the following sub-section (6)(iv), shall, upon application, be qualified as a  
43 Class I renewable energy generating source, without further review; (iii) all facilities, once  
44 qualified, either by meeting the terms of the immediately preceding sub-section (ii) or otherwise  
45 shall, remain qualified, so long as they annually certify that they have substantially met the  
46 operating conditions placed upon them by FERC; (iv) only energy from new facilities having a  
47 capacity of 30 megawatts or less, or energy attributable to improvements to an existing  
48 hydroelectric facility that incrementally increase capacity or efficiency by up to 30 megawatts  
49 shall qualify; and (v) no such facility shall involve pumped storage of water;

50 SECTION 4. Subsection (d) of section 11F of chapter 25A, as so appearing, is amended  
51 by striking out paragraph (6) and inserting in place thereof, the following paragraph:-

52 (6) energy generated by existing hydroelectric facilities, provided that such existing  
53 facilities shall meet appropriate and site-specific standards that address adequate and healthy  
54 river flows, water quality standards, fish passage and protection measures and mitigation and  
55 enhancement opportunities in the impacted watershed as determined by the department in  
56 consultation with relevant state and federal agencies having oversight and jurisdiction over  
57 hydropower facilities (“Environmental Standards”); once the department has, by appropriate  
58 means, determined that an existing facility meets the Environmental Standards, such existing  
59 facility shall be qualified as a Class II renewable energy generating source; any facilities, once so

60 qualified shall remain qualified so long as they annually certify, to the satisfaction of the  
61 department, that they have substantially met the operating conditions placed upon them by the  
62 FERC; and provided further, that only energy from existing facilities up to 7.5 megawatts shall  
63 be considered renewable energy and no such facility shall involve pumped storage of water nor  
64 construction of any new dam or water diversion structure constructed later than January 1, 1998;

65 SECTION 5. Section 138 of said chapter 164 of the General Laws, as so appearing in the  
66 2012 Official Edition, is hereby amended by inserting after the word “digestion” in line 29 the  
67 following word:- , water,

68 SECTION 6. Section 138 of said chapter 164, as so appearing, is hereby amended, in line  
69 45, by inserting after the words “solar net metering facility” the following words:- hydropower  
70 net metering facility,

71 SECTION 7. Section 138 of said chapter 164, as so appearing, is hereby amended, in line  
72 63, by inserting after the words “solar net metering facility” the following words:- hydropower  
73 net metering facility,

74 SECTION 8. Section 138 of said chapter 164, as so appearing, is hereby amended, in  
75 lines 68-69, by inserting after the words “anaerobic digestion net metering” the following  
76 words:- , hydropower net metering facility,

77 SECTION 9. Section 138 of chapter 164, as so appearing, is hereby amended by  
78 inserting after the definition of “customer” the following definition:- Hydropower net metering  
79 facility, a facility for the production of electrical energy that uses water to generate electricity  
80 and is interconnected to a distribution company.

81 SECTION 10. Subsection (f) of said section 139 of said chapter 164, as so appearing, is  
82 hereby further amended by inserting after the word “facility”, in line 77, the following words:- ,  
83 or a hydropower net metering facility.

84 SECTION 11. Chapter 169 of the Acts of 2008, as amended by chapter 209 of the Acts of  
85 2012, is hereby further amended by inserting after section 83A the following section:-

86 Section 83B: Beginning on or before June 30, 2016 all distribution companies in the  
87 commonwealth, as defined in section 1 of chapter 164 of the General Laws, shall be required to  
88 conduct periodic joint solicitations for proposals from offshore wind energy developers to deliver  
89 an annual amount of electricity and, provided reasonable proposals have been received, enter  
90 into commercially reasonable long-term contracts to facilitate the financing of offshore wind  
91 energy generation. The first solicitation shall be for no less than 1,500,000 MWh per annum.  
92 Subsequent solicitations must occur within 24 months of the previous solicitation and shall be for  
93 no less than 1,000,000 MWh. Under this section, distribution companies must enter into long-  
94 term contracts for 8,500,000 MWh per annum in the aggregate by 2030. The department of  
95 public utilities shall promulgate rules and regulations consistent with this section.

96 For purposes of this section, the term "commercially reasonable" shall mean terms and  
97 pricing that are reasonably consistent with what an experienced power market analyst would  
98 expect to see in transactions involving newly developed offshore wind energy resources.  
99 Commercially reasonable shall include having a credible project operation date, as determined  
100 by the department of public utilities, but a project need not have completed the requisite  
101 permitting process to be considered commercially reasonable. If there is a dispute about whether

102 any terms or pricing are commercially reasonable, the department of public utilities shall make  
103 the final determination after evidentiary hearings.

104 The timetable and method for solicitation and execution of contracts under this section  
105 shall be proposed by the distribution company, in consultation with the department of energy  
106 resources, and shall be subject to review and approval by the department of public utilities. This  
107 long-term contracting obligation for offshore wind shall be separate and distinct from the electric  
108 distribution companies' obligation to meet applicable annual renewable portfolio standard,  
109 hereinafter referred to as RPS, requirements, under section 11F of chapter 25A of the General  
110 Laws.

111 A distribution company may fulfill its responsibilities under this section through  
112 individual competitive solicitations that are independent from the periodic joint solicitations for  
113 proposals from offshore wind energy developers and, provided reasonable proposals have been  
114 received, enter into commercially reasonable long-term contracts to facilitate the financing of  
115 offshore wind energy generation under this section if, upon petition to the department of public  
116 utilities prior to the first joint solicitation, the department rules that a solicitation by an individual  
117 distribution company would be more commercially reasonable than said distribution company  
118 engaging in a joint solicitation.

119 For purposes of this section, a long-term contract shall be a contract with a term of 15 to  
120 20 years. A contract may have a term longer than 20 years if the department of public utilities  
121 finds that it would be cost-effective for ratepayers when compared to one or more contracts  
122 proposed for other generation resources with the same physical attributes but that have a term of  
123 no more than 25 years. In developing proposed long-term contracts, the distribution companies

124 shall consider multiple contracting methods, including long-term contracts for renewable energy  
125 certificates, hereinafter referred to as RECs, for energy, and for a combination of both RECs and  
126 energy. Beginning on or before June 30, 2016, the electric companies shall jointly select a  
127 reasonable method of soliciting proposals from offshore wind energy developers using a  
128 competitive bidding process only. Distribution companies may use timetables and methods for  
129 the solicitation of competitively bid long-term contracts approved by the department of public  
130 utilities prior to June 30, 2016. A distribution company may structure its contracts, pricing or  
131 administration of the products purchased to mitigate impacts on the balance sheet or income  
132 statement of the distribution company or its parent company, subject to the approval of the  
133 department of public utilities. The distribution companies shall consult with the department of  
134 energy resources and the attorney general's office regarding the choice of contracting methods  
135 and solicitation methods. All proposed contracts shall be subject to the review and approval of  
136 the department of public utilities.

137

138           The department of public utilities and the department of energy resources each shall  
139 adopt regulations consistent with this section. The regulations shall: (a) allow offshore wind  
140 energy developers to submit proposals for long-term contracts conforming to the contracting  
141 methods specified in the second paragraph; (b) require that contracts executed by the distribution  
142 companies under such proposals are filed with, and approved by, the department of public  
143 utilities before they become effective; (c) provide for an annual remuneration for the contracting  
144 distribution company equal to 1.50 per cent of the annual payments under the contract to  
145 compensate the company for accepting the financial obligation of the long-term contract, such  
146 provision to be acted upon by the department of public utilities at the time of contract approval;



147 (d) require that the department of public utilities, if it has determined the obligations under this  
148 section result in increases to ratepayers, provide relief for distribution customers utilizing over  
149 10,000 kWh per month; and (e) require that the proposed offshore wind energy project meet the  
150 following criteria: (1) have a commercial operation date, as verified by the department of energy  
151 resources, on or after October 1, 2018; (2) be qualified by the department of energy resources as  
152 eligible to participate in the RPS program, under said section 11F of said chapter 25A, and to sell  
153 RECs under the program; (3) have control or a right to acquire control over a suitable site; (4) be  
154 developed by a team with a sufficient amount of relevant experience to successfully develop,  
155 finance, construct and operate its proposed project; and (5) be determined by the department of  
156 public utilities to: (i) provide enhanced electricity reliability within the commonwealth; (ii)  
157 contribute to moderating system peak load requirements in the commonwealth; (iii) demonstrate  
158 that the offshore wind energy will be delivered to the ISO New England Control Area including,  
159 where feasible, at or near the location of retiring carbon emitting generation sources; (iv) be  
160 commercially reasonable; (v) where feasible, create additional employment and economic  
161 development in the commonwealth; and (iv) where feasible, utilize publically owned facilities.

162 As part of its approval process, the department of public utilities shall consider the  
163 attorney general's recommendations, which shall be submitted to the department of public  
164 utilities within 45 days following the filing of such contracts with the department of public  
165 utilities. The department of public utilities shall consider both the potential costs and benefits of  
166 such contracts and shall approve a contract only upon a finding that it is a commercially  
167 reasonable mechanism for procuring offshore wind energy on a long-term basis taking into  
168 account the factors outlined in this section.

169           The joint solicitations required under this section shall be coordinated among the electric  
170 distribution companies by the department of energy resources. If distribution companies are  
171 unable to agree on a winning bid under a solicitation under this section, the matter shall be  
172 submitted to the attorney general, in consultation with the department of energy resources and  
173 the department of public utilities, for a final, binding determination of the winning bid.

174           The electric distribution companies shall each enter into a contract with the winning  
175 bidders for their apportioned share of the market products being purchased from the project. The  
176 apportioned share shall be calculated and based upon the total energy demand from all  
177 distribution customers in each service territory of the distribution companies. As long as an  
178 electric distribution company has entered into long-term contracts in compliance with this  
179 section, it shall not be required by regulation or order or by other agreement to enter into  
180 additional long-term contracts; provided, however, that an electric distribution company may  
181 execute such contracts voluntarily, subject to the approval of the department of public utilities.

182           An electric distribution company may elect to use any energy purchased under such  
183 contracts for resale to its customers, and may elect to retain RECs to meet the applicable annual  
184 RPS requirements under said section 11F of said chapter 25A. If the energy and RECs are not so  
185 used, such companies shall sell such purchased energy into the wholesale spot market and shall  
186 sell such purchased RECs through a competitive bid process. Notwithstanding the previous  
187 sentence, the department of energy resources shall conduct periodic reviews to determine the  
188 impact on the energy and REC markets of the disposition of energy and RECs under this section  
189 and may issue reports recommending legislative changes if it determines that actions are being  
190 taken that will adversely affect the energy and REC markets.

191           If a distribution company sells the purchased energy into the wholesale spot market and  
192 auctions the RECs as described in the above paragraph, the distribution company shall net the  
193 cost of payments made to projects under the long-term contracts against the proceeds obtained  
194 from the sale of energy and RECs, and the difference shall be credited or charged to all  
195 distribution customers through a uniform fully reconciling annual factor in distribution rates,  
196 subject to review and approval of the department of public utilities. The reconciliation process  
197 shall be designed so that a distribution company recovers all costs incurred under such contracts.  
198 If the RPS requirements of said section 11F of said chapter 25A terminate, the obligation to  
199 continue periodic solicitations to enter into long-term contracts shall cease; provided however,  
200 that contracts already executed and approved by the department of public utilities shall remain in  
201 full force and effect.

202           This section shall not limit consideration of other contracts for RECs or power submitted  
203 by a distribution company for review and approval by the department of public utilities. If this  
204 section is subject to a judicial challenge, the department of public utilities may suspend the  
205 applicability of the challenged provision during the pendency of the judicial action until final  
206 resolution of the challenge and any appeals and shall issue such orders and take such other  
207 actions as are necessary to ensure that the provisions that are not challenged are implemented  
208 expeditiously to achieve the public purposes of this section.

209           SECTION 12. (a) Not later than January 1, 2017, the department of public utilities shall  
210 adopt guidelines for a regional transmission solution for the purpose of allowing utility  
211 companies to submit proposals for the construction of competitively bid electricity transmission  
212 lines supplying electricity to the commonwealth. In developing the guidelines, the department  
213 shall: (1) establish a methodology to analyze whether an application of a transmission line

214 project is cost-effective; (2) consider the potential benefits of transmission line projects,  
215 including whether a transmission line project would: (i) improve reliability of electrical  
216 transmission or distribution systems; (ii) reduce peak demand for electricity; (iii) improve the  
217 integration of different types of renewable resources; (iv) reduce greenhouse gas emissions; or  
218 (v) defer investment in generation or distribution of electricity; and (3) consider any other factor  
219 reasonably related to the procurement of a regional transmission solution.

220

221 (b) Not later than January 1, 2018, a utility company may submit one or more proposals  
222 to the department for developing a project that includes one or more regional transmission  
223 solutions. Each proposal submitted under this section must include, but is not limited to, a  
224 description of the proposed project. The description must include (1) technical specifications for  
225 each project, including: (i) the location of the project (ii) a description of how the project will  
226 fulfill the needs of the utility company; (2) an evaluation of the cost-effectiveness of the project;  
227 and (3) all potential impact to ratepayers of the commonwealth.

228

229 (c) The department shall consider each proposal submitted to the department under  
230 subsection (b) of this section and evaluate each proposal to determine whether the proposal: (1)  
231 is consistent with the guidelines adopted by the department under subsection (a) of this section;  
232 (2) is reasonably balances the benefits of transmission to ratepayers; and (3) is in the public  
233 interest.

234

235 (d) If authorized to develop a project under subsection (c) of this section, a utility shall  
236 develop the project in accordance with any competitive bidding guidelines prescribed by the  
237 department.

238 SECTION 13. The department of public utilities shall establish a tariff to be paid and for  
239 the purpose of the construction of additional gas pipeline capacity. The department shall offer a  
240 request for proposal to qualified bidders to solicit competitive bids for the construction of the  
241 pipeline. The winning bid shall be chosen through a competitive bidding process. The entity  
242 selected shall auction the pipeline capacity, subject to approval by the department, the proceeds  
243 of which shall be directed to reimbursing the ratepayers of the commonwealth. Upon remittance  
244 of payment by said entity, the entity shall hold full ownerships rights to the pipeline. The  
245 department shall promulgate rules and regulations consistent with this section.

246 SECTION 14. There shall be a commission which shall study and make  
247 recommendations on the siting of energy facilities in the commonwealth. The study shall  
248 include, but not be limited to, the following: (a) the development of a procedure or procedures to  
249 streamline siting for all energy facilities, including renewables; (b) the consideration of a one-  
250 stop siting process through a single agency; (c) creating a defined role for local community input  
251 into the siting process; (d) coordinating the siting process to coincide with the ISO New England  
252 Forward Capacity Market; (e) ensuring that stakeholders have a constructive opportunity to  
253 participate in the process; (f) eliminating the need for multiple filings at multiple agencies; (g)  
254 consideration of changes to existing facilities such as retrofitting to provide dual fuel capability;  
255 (h) examining site redevelopment opportunities, including the nexus between federal and state  
256 requirements for retiring facilities, ensuring proper communication channels between retiring  
257 plants and host communities and creating a business environment to attract new generation

258 resources to consider a former plan site for redevelopment; and (i) considering the  
259 implementation of a flexible tax structure to encourage more energy development in the  
260 commonwealth.

261           The commission shall consist of the secretary of energy and environmental affairs or a  
262 designee, who shall be the chair of the commission; the attorney general or a designee; the  
263 chairman of the department of public utilities or a designee; the house chair for the joint  
264 committee on telecommunications, utilities and energy; the senate chair for the joint committee  
265 on telecommunications, utilities and energy; 1 representative of the utilities; 1 representative of  
266 competitive electric generating companies; 1 representative of the Associated Industries of  
267 Massachusetts; and 1 representative of environmental organizations. The commission shall hold  
268 its first meeting within 30 days of the effective date of this act. The commission shall file a  
269 report with its finding, including any legislative and regulatory recommendations, with the clerks  
270 of the senate and house of representatives, the joint committee on telecommunications, utilities  
271 and energy and the senate and house committees on ways and means not later than 6 months  
272 after the effective date of this act.