

**HOUSE . . . . . No. 2853**

**The Commonwealth of Massachusetts**

PRESENTED BY:

***Dylan A. Fernandes***

*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 for community empowerment.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Dylan A. Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>
<i>Ruth B. Balser</i>	<i>12th Middlesex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>
<i>William L. Crocker, Jr.</i>	<i>2nd Barnstable</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>

<i>Carole A. Fiola</i>	<i>6th Bristol</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>
<i>Carlos Gonzalez</i>	<i>10th Hampden</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>
<i>Stephan Hay</i>	<i>3rd Worcester</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>
<i>Patrick Joseph Kearney</i>	<i>4th Plymouth</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>
<i>Adrian C. Madaro</i>	<i>1st Suffolk</i>
<i>Joan Meschino</i>	<i>3rd Plymouth</i>
<i>Christina A. Minicucci</i>	<i>14th Essex</i>
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>
<i>Norman J. Orrall</i>	<i>12th Bristol</i>
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Alan Silvia</i>	<i>7th Bristol</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>
<i>William M. Straus</i>	<i>10th Bristol</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>
<i>John C. Velis</i>	<i>4th Hampden</i>
<i>David T. Vieira</i>	<i>3rd Barnstable</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>
<i>Bud L. Williams</i>	<i>11th Hampden</i>

**HOUSE . . . . . No. 2853**

By Mr. Fernandes of Falmouth, a petition (accompanied by bill, House, No. 2853) of Dylan A. Fernandes and others for legislation to provide local option for communities to choose energy projects. Telecommunications, Utilities and Energy.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-First General Court  
(2019-2020)**

An Act for community empowerment.

*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 134 of chapter 164, as appearing in the General Laws, 2016 Official Edition, is  
2 hereby amended by adding, after subsection (b), the following subsection:-

3 (c)(1) As used in this subsection, the following words shall have the following meanings  
4 unless the context otherwise requires:

5 “Alternative Compliance Payment,” or “ACP,” an amount established by the department  
6 of energy resources that retail electricity suppliers may pay in order to discharge their Renewable  
7 Portfolio Standard obligation, as required under section 11F of chapter 25A.

8 “Community empowerment contract” or “contract”, an agreement between a municipality  
9 and the developer, owner or operator of a renewable energy project.

10 “Customer”, an electricity end-use customer of an electric utility distribution company  
11 regardless of how that customer receives energy supply services.

12 “Department”, the department of public utilities.

13 “Large commercial customer”, a large commercial, industrial or institutional customer as  
14 further defined by the department of energy resources utilizing existing usage-based tariff  
15 structures.

16 “Municipality”, a city or town or a group of cities or towns which is not served by a  
17 municipal lighting plant, that meet the eligibility criteria under paragraph (9).

18 “Participant”, a customer within a municipality that has entered into a community  
19 empowerment contract, so long as that customer did not opt out of, or is prevented from  
20 participating in, the community empowerment contract under subsection (d).

21 “Renewable energy certificate”, a certificate representing the environmental attributes of  
22 1 megawatt hour of electricity generated by a renewable energy project, the creation, use and  
23 retirement of which is administered by ISO New England, Inc.

24 “Renewable energy portfolio standard”, the renewable energy portfolio standard  
25 established in section 11F of chapter 25A.

26 “Renewable energy project” or “project”, a facility that generates electricity using a Class  
27 1 renewable energy resource and is qualified by the department of energy resources as eligible to  
28 participate in the renewable energy portfolio standard under section 11F of chapter 25A and to  
29 sell renewable energy certificates under the program.

30 “Residential customer”, a utility distribution customer that is a private residence or group  
31 of residences as further defined by the department of energy resources utilizing existing usage-  
32 based tariff structures.

33 “Small commercial customers”, a small or medium commercial, industrial or institutional  
34 utility distribution customer as further defined by the department of energy resources utilizing  
35 existing usage-based tariff structures.

36 (2) A municipality may, on behalf of the electricity customers within the municipality,  
37 enter into a community empowerment contract with a company that proposes to construct a  
38 renewable energy project. A municipality may enter into more than one (1) community  
39 empowerment contract and may enter into new contracts at any time.

40 (3) A community empowerment contract shall be subject to the following conditions:

41 (i) the contract shall be between the municipality and the company proposing to construct  
42 a renewable energy project; provided, however, that this section shall not authorize a  
43 municipality to utilize its collateral, credit or assets as collateral or credit support to the  
44 counterparty of the contract and a municipality may do so only as otherwise authorized by law;

45 (ii) the renewable energy project specified in the contract shall not have begun  
46 construction prior to the contract having been entered into by the municipality;

47 (iii) the contract shall be structured as a contract for differences so as to stabilize  
48 electricity prices for participants and shall specify a fixed price for the energy and renewable  
49 energy certificates to be generated by the project; provided, however, that the contract shall also  
50 specify a means by which the project’s contracted amount of energy and renewable energy  
51 certificates shall be sold to a third party, at a price established by the wholesale market or an  
52 index and as agreed by the parties to the contract, and the proceeds from which shall be credited  
53 to the amount owed from the participants to the project; provided further, that if the amount  
54 earned in a sale exceeds the agreed fixed price, the participants shall be credited from the project

55 for the difference between the sale price and the contracted fixed price; and provided further, that  
56 a contract shall not be an agreement to physically deliver electric energy to the participants but it  
57 may require delivery of renewable energy certificates;

58 (iv) the contract shall specify whether renewable energy certificates from the renewable  
59 energy project are to be provided and, if so provided, shall specify how the renewable energy  
60 certificates are to be transmitted and disposed of or retired; provided, however, that renewable  
61 energy certificates purchased through a contract may be: (A) assigned to the load of each  
62 participant or subset of participants, as stipulated in the contract, so as to increase the amount of  
63 renewable energy attributed to use by the participants in the aggregate; or (B) sold in a  
64 transparent, competitive process, the proceeds from which shall be applied to the contract for  
65 differences mechanism under clause (iii); and provided further, that a renewable energy  
66 certificate purchased through a contract shall not be used by a basic service supply provider or  
67 competitive supply provider to meet its requirements under the renewable energy portfolio  
68 standard unless the renewable energy certificate is first sold to the supplier in a competitive,  
69 transparent process under this clause;

70 (v) the contract shall have a term of not less than 10 years from the time the specified  
71 renewable energy project commences operation;

72 (vi) the contract shall describe the calculations by which a charge or credit to a  
73 participant or to the renewable energy project are calculated based on the contract for differences  
74 mechanism under clause (iii); provided, however, that the calculations shall ensure full payment  
75 or credit to the renewable energy project even if a participant does not make full payment of the  
76 participant's distribution utility bill; provided further, that if there is a nonpayment of all or a

77 portion of a distribution utility bill, an increase in charges to the contract participants may be  
78 used to ensure sufficient revenue to meet obligations to the project; and provided further, that the  
79 contract shall specify a contract administrator who shall perform the calculations under this  
80 subsection and determine, for implementation by the distribution utility, the charges and credits  
81 due to the project, participants, distribution utility and others as required by the contract; and

82 (vii) the contract may exempt for differences mechanism residents of the municipality  
83 who receive low-income electric rates.

84 (4) A town may enter into a community empowerment contract upon authorization by a  
85 majority vote of town meeting, town council or other municipal legislative body. A city may  
86 authorize a community empowerment contract by a majority vote of the city council or  
87 municipal legislative body, with the approval of the mayor or the city manager in a Plan D or  
88 Plan E form of government. Two or more municipalities may initiate a process jointly to  
89 authorize community empowerment contracting by a majority vote of each municipality under  
90 this paragraph. Prior to an authorizing vote, a public hearing shall be held to inform the  
91 municipalities of the proposed contract, the impact on residents and information on how to opt  
92 out of the contract if it proceeds. This hearing shall specify the proposed project under the  
93 contract and the length of the contract. An entity that is not a party to the contract shall estimate  
94 the contract's rate impacts under reasonable scenarios for future energy prices and the estimates  
95 shall be presented. The proposed project and contract information, estimated rate impact on  
96 constituents, procedure for customers to opt out of the proposed contract and information  
97 regarding the public hearing shall also be mailed to the residents of the municipalities 30 days  
98 before the hearing.

99           (5) The electricity customers within a municipality shall be required to participate in a  
100 community empowerment contract; provided, however, that a customer may opt not to  
101 participate in a contract if the customer provides notice to an administrator designated by the  
102 municipality within 90 days after the vote authorizing a contract or, in the case of a residential  
103 user receiving a low-income electric rate, at any time. No customer shall be a participant in a  
104 contract if that customer uses more than 5 per cent of the total annual electricity usage of the  
105 electricity customers located within a single municipality that is a party to the contract or, in the  
106 case of a contract with a group of municipalities, 5 per cent of the total annual electricity usage  
107 of the electricity customers located in the group of municipalities that are parties to the contract.  
108 Residential and small commercial customers that establish service within a municipality after the  
109 municipality enters into a community empowerment contract shall be required to participate in  
110 any community empowerment contracts in effect for the municipality at the time the new service  
111 is established. A large commercial customer within a municipality may become a participant  
112 unless otherwise prohibited and, upon electing to become a participant, shall remain a participant  
113 for the remainder of the community empowerment contract as long as the large commercial  
114 customer continues to be located within the municipality.

115           (6) The department shall promulgate regulations, guidelines or orders, required by  
116 paragraph (6) of subsection (c) of section 134 of chapter 164 of the General Laws within 6  
117 months after the effective date of this act, that:

118           (i) establish the manner in which a municipality may request from a distribution utility,  
119 and which the distribution utility shall provide in a timely manner, the summary historic load and  
120 payment information of the electricity customers within the municipality that is necessary for a  
121 municipality to request and analyze a proposal for a community empowerment contract;



122 provided, however, that the distribution utility may charge the municipality for verifiable,  
123 reasonable and direct costs associated with providing the information as approved by the  
124 department generally or on a case-by-case basis;

125 (ii) establish a procedure by which a municipality shall have a community empowerment  
126 contract approved by the department; provided, however, that a community empowerment  
127 contract shall not take effect until so approved and the department shall be obligated to and shall  
128 approve a contract that meets the requirements under this section; and provided further, that in  
129 establishing the approval procedure, the department shall adopt means to minimize the  
130 administrative and legal costs to municipalities to the maximum extent possible;

131 (iii) establish guidelines or standards by which the contract administrator under clause  
132 (vi) of paragraph (3) shall: (A) provide utility adjustments to charges to the distribution or credits  
133 to participants via a line item on the distribution utility bill; and (B) provide information to the  
134 distribution utility that is necessary to enable it to make or receive payments to or from the  
135 project and to others as necessary;

136 provided, however, that each community empowerment contract shall be indicated on a  
137 participant's distribution utility bill by a line item specific to the contract; and provided further,  
138 that a distribution utility may recover verifiable and reasonable costs for the implementation of  
139 this subsection from a contract party or participant except as provided for in clause (iv). Should  
140 implementation of this subsection require changes to the distribution utility company's billing  
141 system that would not otherwise be incurred, the cost of implementing such changes shall, upon  
142 approval by the department as being verifiable, reasonable, and necessary to implement this  
143 subsection, be paid for by ACP funds or, if available ACP funds are insufficient, by the

144 Massachusetts Renewable Energy Trust Fund, as established by General Laws chapter 23J,  
145 section 9.

146 (iv) establish guidelines or standards by which distribution company customers may  
147 receive or access accurate energy source disclosure information, taking into account the  
148 renewable energy certificates that may be ascribed to each customer's electricity usage and  
149 regardless of the source from which the renewable energy certificates were supplied or  
150 purchased. Should implementation of this subsection require changes to the distribution utility  
151 company's billing system that would not otherwise be incurred, the cost of implementing such  
152 changes shall, upon approval by the department as being verifiable, reasonable, and necessary to  
153 implement this subsection, be paid for by ACP funds or, if available ACP funds are insufficient,  
154 by the Massachusetts Renewable Energy Trust Fund, as established by General Laws chapter  
155 23J, section 9.

156 (7) The department of energy resources shall promulgate regulations or guidelines,  
157 required by paragraph (7) of subsection (c) of section 134 of chapter 164 of the General Laws  
158 within 6 months after the effective date of this act, that:

159 (i) establish the manner in which, in the case of a community empowerment contract in  
160 which the renewable energy certificates are to be assigned to participants, the renewable energy  
161 certificates may be transmitted and retired appropriately and the energy source disclosure  
162 information accurately provided to participants; and

163 (ii) establish recommended practices to ensure transparency and accountability on the  
164 part of a municipality in entering into and managing a community empowerment contract,  
165 including the means by which an executed community empowerment contract shall be available

166 for public inspection and recommendations for a municipality to follow in order to ensure  
167 compliance with the requirements for entering into a community empowerment contract.

168 The department of energy resources shall also provide technical assistance to a  
169 municipality regarding a community empowerment contract upon request.

170 (8) A community empowerment contract shall be in addition to, and aside from, an  
171 electricity supply contract that a customer may have at the time of the contract or that that the  
172 customer may later seek to establish. A municipality that enters into a community empowerment  
173 contract under this subsection shall not be considered a wholesale or retail electricity supplier. A  
174 community empowerment contract shall not require participants to change their choice of  
175 electricity supplier regardless of whether the supplier is a competitive supplier or a basic service  
176 supplier;