

HOUSE No. 3301

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 powering Cape & Island homes with offshore wind energy.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Dylan A. Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>	<i>2/18/2021</i>

HOUSE No. 3301

By Mr. Fernandes of Falmouth, a petition (accompanied by bill, House, No. 3301) of Dylan A. Fernandes relative to offshore wind energy for homes located in cities and towns within Barnstable, Dukes or Nantucket counties. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act powering Cape & Island homes with offshore wind energy.

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. Section 134 of said chapter 164, as so appearing in the General Laws, 2018
2 Official Edition, is hereby amended by adding 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 a new contract at any time prior to December 31,
40 2032.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

132 (iii) establish guidelines or standards by which the contract administrator under clause
133 (vi) or paragraph (3) shall: (A) provide utility adjustments to charges to the distribution or credits
134 to participants via a line item on the distribution utility bill; and (B) provide information to the
135 distribution utility that is necessary to enable it to make or receive payments to or from the
136 project and to others as necessary; provided, however, that each community empowerment
137 contract shall be indicated on a participants distribution utility bill by a line item specific to the
138 contract; and provided further, that a distribution utility may recover verifiable and reasonable
139 costs for the implementation of this subsection from a contract party or participant except as
140 provided for in clause (iv). Should implementation of this subsection require changes to the
141 distribution utility company's billing system that would not otherwise be incurred, the cost of
142 implementing such changes may, upon approval by the department as being verifiable,
143 reasonable, and necessary to implement this subsection, be paid for the ACP funds or, if
144 available ACP funds are insufficient, by the Massachusetts Renewable Energy Trust Fund, as
145 established by General Laws chapter 23J, 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 that
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 may, upon approval by the department as being verifiable, reasonable, and necessary to
153 implement this subsection, be paid for the 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 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 the 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 requirement contract.

168 The department of energy resources shall also provide technical assistance to the
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 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 basic service
176 supplier.

177 (9) To participate in the community empowerment pilot program, a municipality or group
178 of municipalities shall be located in the county of Barnstable, Dukes County, or Nantucket.

179 (10) Not later than 1 year after a municipality enters into the first community
180 empowerment contract through the pilot program, and annually thereafter for 5 years, the
181 secretary of energy and environmental affairs shall submit a report to the house and senate chairs
182 of the joint committee on telecommunications, utilities and energy that details the results of the
183 pilot program, including information on the renewable energy projects funded under the pilot
184 program and the effects of the pilot program on: (i) the stabilization of prices for electricity
185 customers; (ii) the enhancement of local energy security and reliability; (iii) the fostering of
186 economic development; and (iv) the reduction of electric system carbon emissions.