

HOUSE No. 3302

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 to promote offshore wind energy and renewables.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Dylan A. Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>	<i>2/19/2021</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>	<i>2/26/2021</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>2/26/2021</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/22/2021</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>2/26/2021</i>
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>	<i>3/2/2021</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>	<i>3/2/2021</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>3/2/2021</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>3/4/2021</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>3/17/2021</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>4/8/2021</i>

HOUSE No. 3302

By Mr. Fernandes of Falmouth, a petition (accompanied by bill, House, No. 3302) of Dylan A. Fernandes and others relative to the offshore wind industry, workforce development, fisheries and environmental protection. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

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

An Act to promote offshore wind energy and renewables.

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. Notwithstanding any general or special law to the contrary, the department of
2 energy resources shall use the department of energy and environmental affair’s roadmap study or
3 investigate the necessity, benefits, and costs of requiring distribution companies, as defined in
4 section 1 of chapter 164 of the General Laws, to jointly and competitively conduct additional
5 offshore wind generation solicitations and procurements of at least 2,800 megawatts of aggregate
6 nameplate capacity, in addition to the solicitations and procurements required by section 83C of
7 chapter 169 of the Acts of 2008, inserted by chapter 188 of the Acts of 2016, and section 21 of
8 chapter 227 of the Acts 2018, provided any additional solicitations conducted pursuant to this
9 section shall be subject to the required solicitation and procurement process of said section 83C
10 of chapter 169 of the Acts of 2008, as amended by said chapter 188 of the Acts of 2016, and
11 section 21 of chapter 227 of the Acts of 2018.

12 Section 2. Said subsection b in section 83C is hereby further amended by striking out the
13 following:-

14 “; provided, however, that the department of public utilities shall not approve a long-term
15 contract that results from a subsequent solicitation and procurement period if the levelized price
16 per megawatt hour, plus associated transmission costs, is greater than or equal to the levelized
17 price per megawatt hour plus transmission costs that resulted from the previous procurement”

18 Section 3. Said subsection b in section 83C is hereby further amended by striking out the
19 following:-

20 “(3) provide for an annual remuneration for the contracting distribution company up to
21 2.75 per cent of the annual payments under the contract to compensate the company for
22 accepting the financial obligation of the long-term contract, such provision to be acted upon by
23 the department of public utilities at the time of contract approval;”

24 Section 4. In responding to any solicitations issued pursuant to this section, proposals for
25 long-term contracts shall include an environmental and fisheries mitigation plan for the
26 construction and operation of such offshore wind facilities, provided such plan shall include, but
27 not be limited to, an explicit description of the best management practices and any on- or off-site
28 mitigation the Applicant will employ, informed by the latest science at the time the proposal is
29 made, that will avoid, minimize and mitigate any impacts to: wildlife, including but not limited
30 to threatened or endangered species such as North Atlantic right whales; coastal and marine
31 habitats; natural resources; ecosystems; and traditional or existing water-dependent uses,
32 including, but not limited to, commercial and recreational fishing. The plan should also include

33 pre- and post-construction monitoring to understand the effects of facilities on marine and avian
34 species.

35 The department of energy resources shall establish an environmental working group and
36 a fisheries working group comprised of key experts and stakeholders to provide input on best
37 practices for avoiding, minimizing and mitigating any impacts to: wildlife, including but not
38 limited to threatened or endangered species such as North Atlantic right whales; coastal and
39 marine habitats; natural resources; ecosystems; and traditional or existing water-dependent uses,
40 including, but not limited to, commercial and recreational fishing, during the construction and
41 operation of facilities eligible pursuant to this section. The working groups shall conduct ongoing
42 review of implemented monitoring and mitigation programs and provide feedback and
43 recommendations on an as-needed basis, to be considered by the department. Pre-construction
44 engagement of these working groups will correspond with project development, solicitation, and
45 permitting, and the federal consistency process.

46 Proposals must include a commitment to, if selected and approved, provide financial and
47 technical assistance to support robust monitoring of wildlife and habitat through a minimum
48 \$10,000 per megawatt contribution to regional research on the impacts of offshore wind on
49 wildlife and habitat to inform strategies to avoid and mitigate any impacts to the marine
50 environment. The department of energy resources, in consultation with the environmental and
51 fisheries working groups, shall determine how the funds will be used to advance the responsible
52 development of the offshore wind energy industry, not necessarily the proposed project.

53 Section 5. Notwithstanding any general or special law to the contrary, the department of
54 energy resources shall require offshore wind bids to allocate at least 1 per cent of the cost of the

55 project to a fund in support of Massachusetts-based offshore wind power research and workforce
56 development provided further, that this fund shall be administered by the Massachusetts Clean
57 Energy Center, provided further, that a portion of this fund shall be used to cover reasonable
58 administrative costs of MassCEC.

59 Section 6. (a) Any offshore wind generation solicitations or procurements required under
60 Section 1 shall be performed and procured under sections 26 through 27F of chapter 149
61 inclusive and section 39M of chapter 30, and shall include the following certification and
62 disclosure requirements:

63 (1) A requirement for documentation reflecting the applicant's demonstrated commitment
64 to workforce development within the commonwealth;

65 (2) A requirement that the applicant will provide a statement of intent concerning efforts
66 that it and its contractors and subcontractors will take to promote workforce development on the
67 project if successful;

68 (3) A requirement for documentation reflecting the applicant's demonstrated commitment
69 to economic development within the commonwealth;

70 (4) A requirement that the applicant provide a statement of intent concerning efforts that
71 it and its contractors and subcontractors on this project will take to promote economic
72 development on the project if successful;

73 (5) A requirement for documentation reflecting the applicant's demonstrated commitment
74 to expand workforce diversity, equity, and inclusion in its past projects within the
75 commonwealth;

76 (6) A requirement that the applicant disclose whether it and each of its contractors and
77 subcontractors on this project, have previously contracted with a labor organization, as defined
78 by Massachusetts General Laws, c. 150A and/or the National Labor Relations Act, Section 2, in
79 the commonwealth or elsewhere;

80 (7) A requirement that the applicant specify whether it and each of its contractors and
81 sub-contractors on this project participates in a state or Federally certified apprenticeship
82 program and the number of apprentices the apprenticeship program has trained to completion for
83 each of the last five (5) years;

84 (8) A requirement that the applicant provide a statement of intent concerning the extent to
85 which the Applicant, its contractors and sub-contractors on this project, intend to utilize
86 apprentices on the project if successful;

87 (9) Certification that the applicant and its contractors and sub-contractors on this project,
88 have complied with Massachusetts General Laws Chapters 149, 151, 151A, 151B, and 152
89 and/or 29 U.S.C. § 201, et seq. and Federal anti-discrimination laws for the last three (3)
90 calendar years;

91 (10) Certification that the applicant and its contractors and sub-contractors on this project
92 are currently, and will remain, in compliance with Massachusetts General Laws Chapters 149,
93 151, 151A, 151B, and 152 and/or 29 U.S.C. § 201, et seq. and Federal anti-discrimination laws
94 for the duration of the project;

95 (11) To the extent the applicant, or one of its contractors or subcontractors on the project
96 cannot meet the certification requirements provided for in Paragraphs 10 and 11, the applicant
97 must submit proof of a wage bond or other comparable form of insurance in an amount equal to

98 the aggregate of one year's gross wages for all workers projected to be employed by the
99 applicant, contractor, or sub-contractor for which certification is unavailable, to be maintained
100 for the life of the project;

101 (12) Whether the applicant has included detailed plans for assuring labor harmony during
102 all phases of the construction, reconstruction, renovation, development and operation of the
103 project.

104 (b) Every solicitation or procurement issued by the commonwealth under Section 1 shall
105 notify applicants that they will be disqualified from this project if they have been debarred by the
106 federal government or commonwealth for the entire term of the debarment.

107 (c) All applicants shall provide the above documentation and certifications as part of their
108 initial application. Failure to provide the same shall disqualify the applicant from receiving
109 funding for the project on which funding has been requested.

110 (d) A successful applicant's failure to provide complete, accurate certifications and
111 documentation under Subsection (a) of this Section shall result in suspension from the project for
112 a period of 30 days, to provide an opportunity for the applicant to address application
113 deficiencies to the satisfaction of the commonwealth. Failure to cure deficiencies, thereafter,
114 shall result in termination. A successful applicant's willful failure to provide accurate
115 certifications and documentation shall result in permanent termination from the project and the
116 return of all funds awarded therefore within 30 days.

117 (e) For the term of the project, the applicant, its contractors, and subcontractors shall
118 furnish their monthly certified payrolls in an electronic format for all employees on the project,
119 as defined by c. 149 s. 148B.

120 (f) The Attorney General shall enforce the provisions contained herein and may enact
121 regulations consistent therewith.

122 Section 7. Subsection D in said section 83C is hereby further amended by inserting after
123 the words “without adding cost to the project” the following words:-

124 “Where feasible, the department of energy resources shall give preference to proposals
125 submitted by offshore wind companies that include commitments to enter into long-term
126 contracts with businesses, nonprofit organizations, municipalities, or other government entities
127 directly to purchase offshore wind energy, in addition to the long-term contracts entered into by
128 distribution companies under this section.”

129 Section 8. Section 21 of chapter 227 of the Acts of 2018 shall be amended by adding the
130 following subsections at the end thereof:-

131 (c) In evaluating a proposal received in response to a solicitation for offshore wind
132 generation or transmission resources pursuant to this Act or section 83C of chapter 188 of the
133 Acts of 2018, or any subsequent legislation providing for the procurement of offshore wind
134 generation or transmission resources, the Department of Public Utilities shall consider, in
135 addition to any other criteria described in said sections, whether the proposal identifies, and the
136 respondent and its subcontractors are likely to meet, specific goals, expressed as an overall
137 program goal applicable to the total dollar amount of contracts, for:

138 (i) the utilization of minority business enterprises, as that term is defined in section 7
139 chapter 58 as: (a) contractors in the design of the offshore wind energy generation and
140 transmission resources; (b) contractors in the construction of the offshore wind energy generation

141 and transmission resources; and (c) vendors in the provision of goods and services procured by
142 the offshore wind developer.

143 (ii) the hiring of members of socially or economically disadvantaged communities as
144 employees in the design, construction, and production of offshore wind generation and
145 transmission resources.

146 (d) Each proposal submitted in response to a solicitation as described in section 21 of
147 chapter 227 of the Acts of 2018 shall include evidence that the developer has made serious good
148 faith effort to solicit and interview a reasonable number of minority investors, including a
149 statement that lists the names and addresses of all minority investors interviewed and whether or
150 not any of those investors have purchased an equity share in the entity submitting an application.

151 (e) Each proposal submitted in response to a solicitation as described in section 1 of this
152 Act shall include evidence that the developer has made serious good faith effort to solicit and
153 interview a reasonable number of minority investors, including a statement that lists the names
154 and addresses of all minority investors interviewed and whether or not any of those investors
155 have purchased an equity share in the entity submitting an application.

156 (f) The department of energy resources shall consult with the supplier diversity office in
157 drafting those sections of a solicitation that advance the purpose of this Act.

158 (i) The supplier diversity office may participate in the department of public utilities
159 hearing processes related to the procurement of offshore wind generation and transmission
160 resources.

161 (ii) The supplier diversity office shall prepare guidance to developers regarding best
162 practices to advance the purposes of this Act.

163 (iii) The department of energy resources and the supplier diversity office shall consult
164 with the Massachusetts Clean Energy Center and the Massachusetts Environmental Justice
165 Advisory Committee in drafting those sections of a solicitation or regulations that advance the
166 purpose of this Act.

167 (g) The department of energy resources shall promulgate regulations to implement the
168 purposes of this Act within 120 days of its passage, including, without limitation, procedures for
169 monitoring, measuring, and enforcing ongoing compliance with goals set by respondents in
170 accordance with this Act. Such regulations shall, without limitation:

171 (i) require respondents to solicitations covered by this Act to make quarterly reports to
172 the department of energy resources and the department of public utilities describing the number
173 of contracts, total dollar amounts contracted with and actually paid to minority business
174 enterprises, women business enterprises and veteran business enterprises for design and
175 construction of the proposed offshore wind generation or transmission resources, and the total
176 number and value of all subcontracts awarded to a minority, women and veteran owned business,
177 and a comparison of these reports with the goals established by the respondent in accordance
178 with section 1 of this Act;

179 (ii) describe a process by which the department of energy resources will publicly review
180 and post such reports, and require respondents to submit information to the department of energy
181 resources regarding any failure to meet the goals set by the respondent, identify any good faith

182 efforts that have been undertaken to achieve those goals and provide a plan to bring the dollar
183 amount contracted and spent into compliance with the goals.