

**HOUSE . . . . . No. 5141**

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**The Commonwealth of Massachusetts**

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*July 29, 2022*

To the Honorable Senate and House of Representatives,

Pursuant to Article LVI, as amended by Section 3 of Article XC, of the Amendments to the Constitution of the Commonwealth of Massachusetts, I am returning to you for amendment House Bill No. 5060, “An Act driving clean energy and offshore wind”. This bill contains a number of commendable ideas that, if implemented well, would be of significant benefit to the Commonwealth. However, as drafted, certain sections of the bill would be difficult or impossible to implement. Further, there are a smaller number of proposals that do not reflect the best policy choices for the Commonwealth as we strive to meet our shared, ambitious goals for decarbonization of the economy and achieving net zero greenhouse gas emissions in 2050.

Our administration originally filed clean energy legislation in October 2021 to advance these goals, and it is unfortunate that the legislature did not pass legislation on this topic until the final days of the formal legislative session, leaving a small window of time in which to reach a compromise with the administration. However, I am returning this bill in a timely manner in hopes of reaching a successful compromise with the legislature soon to produce a final piece of legislation that I will be able to sign.

Offshore wind is a critical component of a clean, affordable and resilient energy future for the Commonwealth. This bill promotes the development of offshore wind generation, manufacturing and commercialization, and the economic development and employment opportunities that go along with those businesses. While I support those components of the bill, we know that the Commonwealth will need to look beyond offshore wind generation to meet its

statutory emissions targets. The Commonwealth will need to take advantage of other clean energy, such as hydrogen and other disruptive technologies, to cost-effectively meet our greenhouse gas requirements. The Commonwealth took a national leadership with its investment in biotechnology and the result is a booming sector that has created thousands of jobs and generated billions in additional investments. Massachusetts is positioned to do so again with this investment that will catalyze our clean energy innovation sector, reduce our emissions and make our communities more resilient to climate change. In order to support these efforts, I am again proposing that the Legislature allocate \$750 million in American Rescue Plan Act (ARPA) funding to the clean energy investment fund as created by this bill. The time for this type of investment is now and we have no time to waste in allocating these ARPA funds for this critical work in Massachusetts.

In addition to promoting the development of the offshore wind industry, this bill proposes changes to the manner in which the Commonwealth procures offshore wind through its electric distribution companies. Not only has the offshore wind industry matured and advanced since the initial authorization of procurements in the Energy Diversity Act of 2016, but the Commonwealth has continued to advance solicitations that promote economic development and ensure cost-effective projects. The bill makes some constructive modifications that will improve the confidence in our procurement process by establishing a new transparent process for the selection of winning projects. However, I am proposing some additional modifications that will ensure we maintain a streamlined and clear solicitation process that will support competitive and cost-effective bids from the eligible offshore wind project developers. Economic constraints from rising costs of grid interconnection, transmission, and inflationary pressures may increase the cost of offshore wind, but the competitive solicitation process, the in-depth evaluation of proposals, and the careful review of contracts will timely secure projects with the greatest benefits for the Commonwealth.

The bill also recognizes that offshore wind and other renewable energy development depends on improvements to the transmission system and proposes a working group and council to address transmission and electrical grid modernization. These proposals could be significantly improved and better aligned with existing efforts. To coordinate and analyze the many ongoing efforts of our regional transmission operator and the New England states to reform the transmission planning and cost allocation process for the clean energy transition, I propose that the Department of Energy Resources develop a report that will serve as a strategic plan for how the Commonwealth can best advance our goals in coordination with the other New England states. This will allow for increased transparency on transmission planning and the development of policy and regulatory recommendation while not duplicating the technical regional planning process.

The Commonwealth has repeatedly committed to matching California's requirements that all new vehicle sales be zero emission vehicles and plug-in hybrid vehicles starting in 2035. Sections 46 and 95 purport to add that commitment to the chapter of the General Laws regulating business

practices of motor vehicle manufacturers, distributors and dealers. This is unnecessary and as drafted, may conflict with the existing authorities under which Massachusetts will implement this policy. More specifically, section 177 of the federal Clean Air Act and section 142K of chapter 111 of the General Laws require Massachusetts to adopt motor vehicle emissions standards that are identical to the California motor vehicle emission standards. Accordingly, while I am recommending striking these sections, this recommendation does not indicate any change in our existing commitment.

The bill also attempts to promote the use of anaerobic digestion technologies by procuring Clean Peak Standard certificates from these facilities. While I support the use of these technologies, the language must be clarified to be effectively implemented. Instead, I am proposing to build on the work of our solar program model that was authorized in 2016 and apply that model to this technology to support its continued operation and deployment.

Section 84 would permit up to ten municipalities to adopt customized by-laws and ordinances that restrict or prohibit new building construction or major renovation projects that are not “fossil fuel-free.” I support the proposal to provide a limited number of cities and towns the authority to adopt such ordinances and by-laws, but am proposing targeted changes to ensure that such a program does not simply shift emissions we need to eliminate, and that participating communities continue to do their part to address the Commonwealth’s housing crisis. To that end, I am proposing that the ordinances and by-laws take effect only when the electrical grid has enough clean energy capacity to ensure the electrification has the intended emission reduction benefit. I also am proposing that DOER promulgate regulations providing for uniform implementation among participating towns; that multi-family housing be added to the building types that are exempted; and that communities be able to participate in this program only if they have taken appropriate action to encourage housing production.

Multiple sections of the bill seek to improve the various programs that the Commonwealth has established to promote energy efficiency, the generation and use of renewable energy and the protection of ratepayers and others impacted by expanding renewable energy generation in the Commonwealth. I am proposing a series of targeted changes to these sections to eliminate duplication, ensure clarity and promote the smooth implementation of these provisions.

Finally, the bill proposes changes to the governance structure of the Massachusetts Clean Energy Center that would expand the board membership by adding appointments by the Speaker of the House and the Senate President. I believe that the current size of the board—12 members—is an appropriate size. More importantly, the Supreme Judicial Court has held that appointments by the Legislature would violate the Massachusetts Constitution. Accordingly, I am proposing a more limited role for the Legislature in the nature of making nominations for some board seats, while maintaining the actual appointment authority in the Executive Branch, where it is required to remain. I am also proposing amendments to the Electric Vehicle Coordinating Council to

address analogous constitutional concerns about the Legislature designating certain members to serve on a body that influences the expenditure of appropriated grant funds.

In addition to the amendments explained in greater detail above, I am also proposing a number of other amendments, which includes both technical and policy changes.

For these reasons, I recommend that the bill, H.5060, be amended as follows:-

Amend the bill in section 8, by striking out the second paragraph and inserting in place thereof the following paragraph:-

(b) The center shall be governed and its corporate powers exercised by a board of directors consisting of 12 directors: 1 of whom shall be the secretary of energy and environmental affairs or their designee, who shall serve as a chair; 1 of whom shall be the secretary of housing and economic development or their designee; 1 of whom shall be the secretary of administration and finance or their designee; 1 of whom shall be the secretary of labor and workforce development or their designee; 1 of whom shall be the president of the University of Massachusetts or their designee; 1 of whom shall be the executive director of the Massachusetts Workforce Alliance, Inc.; 1 of whom shall be the commissioner of energy resources or their designee; and 5 of whom shall be appointed by the governor, 1 of whom shall be a venture capitalist or a chief executive officer of a Massachusetts-based clean energy corporation with expertise in clean energy technologies in the commonwealth, 1 of whom shall be the president of a Massachusetts community college or their designee, 1 of whom shall be the president of a Massachusetts private college or university or their designee, 1 of whom shall be selected from a list of 3 nominees made by the speaker of the house of representatives, and 1 of whom shall be selected from a list of 3 nominees made by the senate president. Each of the 5 directors appointed by the governor, shall serve for a term of 5 years. A director shall be eligible for reappointment. A director may be removed from their appointment by the governor for cause. A person appointed to fill a vacancy in the office of an appointed director of the board shall be appointed in a like manner and shall serve for only the unexpired term of the director.

And amend the bill by striking out sections 9, 24, 46, 56, 57 and 96.

And amend the bill in section 14 by striking out the third, fourth and fifth paragraphs and inserting in place thereof the following 3 paragraphs:-

(b) The center may, upon a majority vote of the board, certify an offshore wind company as a certified offshore wind company upon: (i) the timely receipt, as determined by the center, of a certification proposal supported by independently verifiable information, signed under the pains and penalties of perjury by a person expressly authorized to contract on behalf of the offshore wind company and shall include, but not be limited to, an estimate of the projected new state revenue the offshore wind company expects to generate during the period for which the company seeks certification, together with a plan that shall include, but not be limited to: (1) precise goals

and objectives, by which the offshore wind company proposes to achieve the projected new state revenue; (2) an estimate of the number of permanent full-time employees to be hired or retained; (3) an estimate of the year in which the company expects to hire or retain the employees; (4) an estimate of the projected average salaries of said employees; (5) an estimate of the projected taxable income pursuant to chapter 62 generated by said employees; (6) an estimate of the methods by which the company shall obtain new employees and pursue a diverse workforce; and (7) if applicable, an estimate of the company's planned capital investment in the commonwealth; and (ii) findings made by the center, based on the certification proposal, documents submitted therewith and any additional investigation by the center that shall be incorporated in its approval, that: (1) the offshore wind company is likely to contribute substantially to the manufacture, fabrication and assembly within the commonwealth of domestic supply chain components of the offshore wind industry or the development or commercialization of the offshore wind industry; (2) the offshore wind company has a substantial likelihood of meeting all statutory requirements and any other criteria that the center, in consultation with the department of revenue, may prescribe including, but not limited to, criteria in the following areas: (A) leveraging additional funding or attracting additional resources to the commonwealth; (B) increasing the manufacture, fabrication and assembly within the commonwealth of domestic supply chain components of the offshore wind industry; and (C) creating employment in the commonwealth; and (3) the offshore wind company has a substantial likelihood of meeting its state revenue, employment growth and applicable capital investment projections, as specified in the certification proposal, over the period for which it receives benefits.

(c)(1) Certification granted pursuant to subsection (b) shall be valid for 5 years starting with the tax year in which certification is granted. Each certified offshore wind company shall file an annual report with the center and the department of revenue certifying whether it has met the specific targets established in the proposal pursuant to clause (i) of subsection (b) and, if not, detailing its progress towards those targets.

(2) The certification of an offshore wind company may be revoked by the center after an investigation by the center, in consultation with the department of revenue, and a determination that the certified offshore wind company is in material noncompliance with its certification proposal; provided, however, that the center shall review said certified offshore wind company at least annually. Revocation shall take effect on the first day of the tax year in which the center determines the certified offshore wind company to be in material noncompliance. The commissioner of revenue shall, as of the effective date of the revocation, disallow any credits, exemptions or other tax benefits allowed by the original certification of tax benefits under this section. The department of revenue shall issue regulations to establish a process to recapture the value of any credits, exemptions or other tax benefits allowed by the certification under this section. For the purposes of this paragraph, "material noncompliance" shall mean the failure of a certified offshore wind company to substantially achieve the new state revenue, job growth and capital investment projections set forth in its certification proposal or any other act, omission or

misrepresentation by the certified offshore wind company that frustrates the public purpose of the Massachusetts offshore wind industry investment program.

And further amend section 14 by inserting after the word “center” in the eighth paragraph the following words:- , in consultation with the department of revenue,.

And amend the bill in sections 18, 19, 41 and 61 by striking out, each time it appears, the words “federally and state recognized tribes” and inserting in place thereof, in each instance, the following words:- federally recognized and state acknowledged tribes.

And amend the bill, in section 19, by inserting after the words “maximize energy efficiency and clean energy employment opportunities” the following words:- and promote access to the benefits of clean energy, clean transportation, electrification, energy efficiency and reducing the energy burden.

And amend the bill in section 21, in subsection (b), by striking out the words “shall make expenditures from the fund” and inserting in place thereof the following words:- may make expenditures from the fund solely.

And further amend section 21, by striking out, each time it appears, the words “federally recognized tribes” and inserting in place thereof, in each instance, the words:- federally recognized and state acknowledged tribes.

And further amend section 21 by striking out the fourteenth paragraph and inserting in place thereof the following paragraph:-

In furtherance of the public purposes set forth in subsection (b), the center may expend monies from the fund to: (i) make grants, contracts, loans, equity investments, energy production credits, bill credits or rebates available to customers; (ii) provide financial or debt service obligation assistance; or (iii) take any other action, in such forms, under such terms and conditions and under such selection procedures as the center deems appropriate and otherwise in a manner consistent with good business practices; provided, that the center shall conduct, when practicable, competitive procurements provided further, that the center shall endeavor to leverage the full range of resources, expertise and participation of other state and federal agencies and instrumentalities in the design and implementation of programs conducted pursuant to this section; and provided further, that the board shall determine and incorporate into the minutes of its proceedings a finding that any such action is calculated to advance the public purpose and public interests set forth in this section. Qualified investment transactions undertaken by the center pursuant to this section shall not be subject to chapter 175 and shall not constitute a debt or pledge of the faith and credit of the commonwealth, the center or any subdivision of the commonwealth and shall be payable solely from the Clean Energy Investment Trust. The fund’s activity shall be included in the annual report required by the second paragraph of section 5.

And amend the bill by striking out section 26 and inserting in place thereof the following section:-

SECTION 26. The first sentence of paragraph (2) of subsection (b) of said section 21 of said chapter 25, as most recently amended by said section 24 of said chapter 8, is hereby further amended by adding the following 3 clauses:- ; (xi) no spending on incentives for new fossil fuel equipment unless such spending is for emergency facilities, including but not limited to hospitals, a backup thermal energy source for a heat pump, a system that may use a renewable or greenhouse gas emission free fuel, or for hard to electrify uses, such as industrial processes; (xii) consideration of historic and present program participation by low and moderate-income households, including households that rent; (xiii) strategies and investments that the programs will undertake to achieve equitable access and reduce or eliminate any disparities in program uptake; and (xiv) a method for capturing the following data to assess the plan's services to low-income ratepayers: (A) the total number of ratepayers per municipality served; (B) the total energy efficiency surcharge dollars paid by ratepayers as part of their utility bills per municipality served; and (C) the total incentives provided by the program administrators by municipality served, delineated by utility and sector, including residential, residential low-income, commercial and industrial.

And amend the bill, in section 31, by striking out the second paragraph and inserting in place thereof the following paragraph:-

(d) The electric and natural gas distribution companies and municipal aggregators shall provide quarterly reports to the council on the implementation of their respective plans. The reports shall include: (i) a description of the program administrator's progress in implementing the plan; (ii) a summary of the savings secured to date; (iii) a quantification of the degree to which the activities undertaken pursuant to each plan contribute to meeting all greenhouse gas emission limits and sublimits imposed by law or regulation; and (iv) such other information as the council shall determine. Annually, as part of a quarterly report, the electric and natural gas distribution companies and municipal aggregators, in order to assess the plan's services to low-income ratepayers, shall provide consistent with the method approved by the department (i) the total number of ratepayers per municipality served; (ii) the total energy efficiency surcharge dollars paid by ratepayers as part of their utility bills per municipality served; and (iii) the total incentives provided by the program administrators by municipality served, delineated by utility and sector, including residential, residential low-income, commercial and industrial. The council shall provide an annual report to the department and the joint committee on telecommunications, utilities and energy on the implementation of the plan. The annual report shall include descriptions of the programs, expenditures, cost-effectiveness and savings and other benefits during the previous year and a quantification of the degree to which the activities undertaken pursuant to each plan contribute to meeting all greenhouse gas emission limits and sublimits imposed by law or regulation. The quarterly and annual reports shall be made available to the public.

And amend the bill by striking out section 37 and inserting in place thereof the following section:-

SECTION 37. Section 14 of said chapter 25A, as so appearing, is hereby amended by striking out subsection (a) and inserting in place thereof the following subsection:-

(a) A state agency, building authority, local governmental body or the judiciary may contract for energy conservation projects that have a total project cost of \$300,000 or less, directly and without further solicitation, with electric and gas utilities, their subcontractors and other providers of such energy conservation projects authorized under sections 19 and 21 of chapter 25 and section 11G. For the purposes of this section, “energy conservation projects” shall mean projects to promote energy conservation including, but not limited to: energy conserving modification to windows and doors; caulking and weatherstripping; insulation; automatic energy control systems; hot water systems; equipment required to operate variable steam, hydraulic and ventilating systems; plant and distribution system modifications; devices for modifying fuel openings; electrical or mechanical furnace ignition systems; utility plant system conversions; replacement or modification of lighting fixtures; energy recovery systems; on-site electrical generation equipment using new renewable energy generating sources as defined in section 11F; decarbonization activities; and cogeneration systems.

And amend the bill by striking out section 40 and inserting in place thereof the following section:-

SECTION 40. (a) The department of energy resources may develop a statewide anaerobic digestion incentive program to support existing facilities and may encourage the continued development of anaerobic digestion renewable energy generating sources throughout the commonwealth. The department may, after notice and the opportunity for public comment, promulgate rules and regulations implementing an anaerobic digestion incentive program which: (i) considers underlying system costs, including but not limited to a balance of system costs, installation costs and soft costs; (ii) takes into account electricity revenues and any federal or state incentives; (iii) relies on market-based mechanisms or price signals as much as possible to set incentive levels; (iv) minimizes direct and indirect program costs and barriers; (v) features a known or easily estimated budget to achieve program goals through use of an adjustable block incentive, a competitive procurement model, tariff or other incentive framework; (vi) considers environmental benefits, impacts to the commonwealth’s comprehensive statewide master plan pursuant to chapter 16, section 21, energy demand reduction, and other avoided costs provided by anaerobic digestion renewable energy generating facilities; (vii) ensures that the costs of the program are shared collectively among all ratepayers of the distribution companies; and (viii) promotes investor confidence through long-term incentive revenue certainty and market stability.



(b) Attributes, as defined by the department of energy resources, of the anaerobic digester facilities receiving incentives pursuant to this section shall be eligible for use by retail electric suppliers pursuant to their obligations pursuant to said section 11F of said chapter 25A.

And amend the bill, in section 41, by striking out the twenty-fourth paragraph and inserting in place thereof the following paragraph:-

(i) Nothing in this section shall prohibit the enforcement of large building reporting requirements previously established by the city of Boston or the city of Cambridge and further amendments or improvement thereto that exceed those reporting requirements established pursuant to this section.

And amend the bill in section 47 by striking out the second paragraph and inserting in place thereof the following paragraph:-

Section 12. (a) The division shall establish a program to reduce greenhouse gas emissions from transportation network vehicles. To the extent permitted under federal law, the program shall establish requirements for transportation network companies including, but not limited to, vehicle electrification and greenhouse gas emissions requirements. Such requirements shall include, but not be limited to, a requirement for said companies to submit biennial plans to gradually increase zero emission transportation network vehicles and reduce greenhouse gas emissions to meet goals set by the executive office of energy and environmental affairs. If the division determines that vehicle electrification requirements alone would be sufficient to achieve the greenhouse gas emissions goals set by the executive office of energy and environmental affairs, then it may establish requirements for vehicle electrification without establishing separate requirements for greenhouse gas emissions. The division shall, to the extent practicable, minimize any negative impacts of the program on drivers from environmental justice neighborhoods that have an annual median household income of not more than 65 per cent of the statewide annual median household income and support the goal of clean mobility in such communities.

And amend the bill in section 52 by striking out the following words:- “not greater than 20 megawatts,”

And further amend the bill striking out section 53 and inserting in place thereof the following section:-

SECTION 53. Said chapter 164 is hereby further amended by inserting after section 92A the following 2 sections:-

Section 92B. (a) The department shall convene a stakeholder process and establish rules and requirements by April 30, 2023 for each electric company to proactively upgrade the distribution and, where applicable, transmission systems to: (i) improve grid reliability, communications and

resiliency; (ii) enable increased, timely adoption of renewable energy and distributed energy resources; (iii) promote energy storage and electrification technologies necessary to decarbonize the environment and economy; (iv) prepare for future climate-driven impacts on the transmission and distribution systems; (v) accommodate increased transportation electrification, increased building electrification and other potential future demands on distribution and, where applicable, transmission systems; and (vi) minimize or mitigate impacts on the ratepayers of the commonwealth, thereby helping the commonwealth realize its statewide greenhouse gas emissions limits and sublimits under chapter 21N.

(b) On a schedule determined by the Department, but not less than every five years, each electric company shall develop an electric-sector modernization plan which describes in detail each of the following elements: (i) planned improvements to the electric distribution system to increase reliability and strengthen system resiliency to address potential weather-related and disaster-related risks; (ii) the availability and suitability of new technologies including, but not limited to, smart inverters, advanced metering and telemetry, and energy storage technology for meeting forecasted reliability and resiliency needs, as applicable; (iii) patterns and forecasts of distributed energy resource adoption in the company's territory and upgrades that might facilitate or inhibit increased adoption of such technologies; (iv) improvements to the distribution system that will enable customers to express preferences for access to renewable energy resources; (v) improvements to the distribution system that will facilitate transportation or building electrification; (vi) improvements to the transmission or distribution system to facilitate achievement of the statewide greenhouse gas emissions limits under chapter 21N; (vii) opportunities to deploy energy storage technologies to improve renewable energy utilization and avoid curtailment; and (viii) alternatives to proposed investments, including changes in rate design, load management and other methods for reducing demand, enabling flexible demand and supporting dispatchable demand response. Each electric-sector modernization plan shall include a summary of all planned capital investment projects, including projects reviewed and approved by the department outside of the electric-sector modernization plan.

(c) Consistent with the rules and requirements established by the department pursuant to subsection (a), each electric company may propose alternative approaches to financing proposed investments, including, but not limited to, cost allocation arrangements between developers and ratepayers and, with respect to any proposed investments in transmission systems, cost allocation arrangements and methods that allow for the equitable allocation of costs to, and the equitable sharing of costs with, other states and populations and interests within other states that are likely to benefit from said investments. For all proposed investments and alternative approaches, each electric company shall identify customer benefits associated with the investments and alternatives including, but not limited to, safety, grid reliability and resiliency, facilitation of the electrification of buildings and transportation, integration of distributed energy resources, avoided renewable energy curtailment, reduced greenhouse gas emissions and air pollutants, avoided land use impacts and minimization or mitigation of impacts on the ratepayers of the

commonwealth. The department shall consider whether an investment is consistent with any approved electric-sector modernization plan pursuant to subsection (f) when determining whether an electric company may recover the costs of such investment.

(d) In developing a plan pursuant to subsection (b), an electric company shall:

(i) prepare and use 3 planning horizons for electric demand, including a 5-year forecast, a 10-year forecast and a demand assessment through 2050 to account for future trends, including but not limited to future trends in the adoption of renewable energy, distributed energy resources, and energy storage and electrification technologies necessary to achieve the statewide greenhouse gas emission limits and sublimits under chapter 21N; and

(ii) solicit input, such as planning scenarios and modeling, from the Grid Modernization Advisory Council established in section 92C, and conduct a minimum of 2 stakeholder meetings to inform the public, appropriate state and federal agencies, and companies engaged in the development and installation of distributed generation, energy storage, vehicle electrification systems and building electrification systems about the proposed electric-sector modernization plan.

(e) An electric company shall submit its first plan for review, input and recommendations to the Grid Modernization Advisory Council established in section 92C by September 1, 2023, and thereafter once every five years in accordance with a schedule determined by the department; provided, that the plan shall be submitted to the Grid Modernization Advisory Council not later than 150 days before the electric company files the plan with the department; and provided further, that the Grid Modernization Advisory Council shall return the plan to the company with recommendations not later than 70 days before the company files the plan with the department. Electric companies shall respond to reasonable information and document requests from the Grid Modernization Advisory Council regarding the proposed electric-sector modernization plan.

(f) An electric company shall submit its electric-sector modernization plan, together with a demonstration of the Grid Modernization Advisory Council's review, input and recommendations, including, but not limited to, a list of each individual recommendation, the status of each recommendation and an explanation of whether and why each recommendation was adopted, adopted as modified or rejected, along with a statement of any unresolved issues, to the department in accord with a schedule determined by the department. The department shall promptly consider the plan and shall provide an opportunity for interested parties to be heard in a public hearing. The department shall approve, approve with modifications or reject the plan within 7 months of submittal. In order to be approved, a plan shall meet the criteria enumerated in clauses (i) through (vi) of subsection (a). The department shall periodically assess the effectiveness of the plan.

(g) An electric company shall annually submit a report year no later than June 30 of each year to the department and the joint committee on telecommunications, utilities and energy on the

deployment of approved investments in accord with any performance metrics included in the approved plans.

Section 92C. (a) There shall be a Grid Modernization Advisory Council to consist of the commissioner of energy resources, or a designee, who shall serve as chair; the attorney general, or a designee; the chief executive officer of the Massachusetts clean energy center, or a designee; 13 members to be appointed by the governor: 1 of whom shall be a representative of middle-income and low-income residential consumers, 1 of whom shall be a representative from a local agency administering the low-income weatherization assistance program, 1 of whom shall be a representative of the environmental advocacy community, 1 of whom shall be a representative of a community organization that serves an environmental justice population, 1 of whom shall be a representative of the transmission scale renewable energy industry with expertise in projects of greater than 20 megawatts, 1 of whom shall be a representative of the distributed generation scale renewable energy industry with expertise in projects of less than 5 megawatts, 1 of whom shall be a representative of the energy storage industry, 1 of whom shall be a representative of the electric vehicle industry, 1 of whom shall be a representative of the building electrification industry, 1 of whom shall be a representative of municipal or regional interests, 1 of whom shall have technical and engineering expertise in interconnecting clean energy, 1 of whom shall be a representative of businesses, including large commercial and industrial end-use customers; and 1 member from each electric company operating in the commonwealth who shall serve as non-voting members. Members shall serve for terms of 5 years and may be reappointed.

(b) The council shall seek to encourage least-cost investments in the electric distribution systems, alternatives to the investments or alternative approaches to financing investments that will facilitate the achievement of the statewide greenhouse gas emission limits and sublimits under chapter 21N and increase transparency and stakeholder engagement in the grid planning process. The council shall review and provide recommendations on electric-sector modernization plans developed pursuant to subsection (b) of section 92B that maximize net customer benefits and demonstrate reasonable and prudent investments in the distribution grid, including investments to enable interconnection of, and communication with, distributed energy resources and transmission-scale renewable energy resources, facilitate electrification of buildings, transportation and other sectors, improve grid reliability and resiliency, minimize or mitigate impacts on ratepayers throughout the commonwealth and reduce impacts on and provide benefits to low-income ratepayers throughout the commonwealth.

(c) The council shall determine a level of funding required for the retention of a third party facilitator, expert consultants, and reasonable administrative costs, not to exceed three million dollars annually to be allocated from the Massachusetts Renewable Energy Trust Fund, as established in Chapter 23J Section 9. The council may select and department of energy resource may contract with consultants to support the council's responsibilities under Section 92C(b) The consultants used under this section shall be experts in energy distribution and transmission, energy efficiency, or energy finance, and shall be independent.

And amend the bill in section 55 by striking out the second paragraph and inserting in place thereof the following paragraph:-

(l) A Class I, Class II or Class III solar net metering facility shall be eligible to, or shall continue to, receive net metering credits as otherwise provided by this section if such facility is on the same parcel as any number of other such solar net metering facilities and if: (i) all net metering facilities on the parcel are net metering facilities of a Municipality or Other Governmental Entity; provided, however, that all facilities on the single parcel do not exceed an aggregate limit of 10 megawatts; (ii) the net metering facilities are placed on a single parcel of land where all buildings on that parcel comprise low or moderate income housing as defined in section 20 of chapter 40B; provided, however, that all facilities on the single parcel do not exceed an aggregate limit of 10 megawatts; (iii) each net metering facility is placed on a separate and distinct rooftop where no 2 systems occupy the same rooftop; provided, however, that all facilities on the single parcel do not exceed an aggregate limit of 2 megawatts; or (iv) each net metering facility installed on the same rooftop is interconnected behind a meter of a separate customer; provided, however, that all the facilities on the single parcel do not exceed an aggregate limit of 10 megawatts. For purposes of this subsection, a solar net metering facility installed as a canopy over a parking area shall be considered to be installed on a rooftop.

And amend the bill in section 61 by striking out the second paragraph and inserting in place thereof the following paragraph:-

(a) To facilitate the financing of offshore wind energy generation resources in the commonwealth, every distribution company shall, in coordination with the department of energy resources, jointly and competitively solicit proposals for offshore wind energy generation; and, provided, that reasonable proposals have been received, shall enter into cost-effective long-term contracts.

And further amend section 61 in the first sentence of the eighth paragraph by adding the following words:- and shall be apportioned among the distribution companies.

And amend the bill in section 63 by striking out the second and third paragraphs and inserting in place thereof the following 2 paragraphs:-

Section 11A. The department of energy resources shall promulgate regulations to include in the solar incentive program established in section 11, and in any successor solar incentive program, to require pollinator-friendly solar installations for ground mounted solar that removes vegetation as part of installation. The department of energy resources shall develop criteria for such facilities, and require that pollinator-friendly solar installations be certified by a recognized pollinator-friendly solar photovoltaic certification program at a higher education institution in the commonwealth or that have obtained another equivalent certification as determined by said department.

The department of energy resources shall offer a rebate for reasonable certification program costs to comply with pollinator-friendly requirements. Said rebate shall be approved by the department of public utilities and recoverable from distribution company ratepayers. Eligibility for such rebates shall include solar tariff generation units that, as of December 30, 2021, had received from the department of energy resources a preliminary statement of qualification or were on hold for such statement of qualification pending expansion of the capacity of the department's solar incentive program and are now otherwise eligible for said rebates.

And amend the bill by inserting after section 67 the following 2 sections:-

SECTION 67A. Chapter 102 of the acts of 2021 is hereby amended, in item 2A, by inserting after item 1599-2058 the following new item:-

1599-2078 For the advancement of and investments in clean energy to accelerate the clean energy transition, the formation, growth, expansion, and retention within the commonwealth of preeminent clusters of renewable energy and related enterprises, institutions, and projects, including funding to higher education institutions and vocational-technical education institutions for workforce development and technical training programs; provided, that not less than \$13,000,000 may be expended for the Massachusetts Clean Energy Center for improvements to the New Bedford Marine Commerce Terminal Bulkhead; provided further, that not less than \$55,000,000 may be expended for the Massachusetts Clean Energy Center for renovations and revitalization of the New Bedford Marine Commerce Terminal for the benefit of the offshore wind industry; provided further, that not less than \$11,000,000 may be expended for the city of New Bedford for infrastructure and programs to support the offshore wind industry; provided further, that not less than \$10,000,000 may be expended for the Massachusetts Maritime Academy for offshore wind workforce training programs; provided further, that not less than \$1,000,000 may be expended for a wave basin at the University of Massachusetts - Dartmouth; provided further, that not less than \$10,000,000 may be expended to the University of Massachusetts - Lowell for offshore wind workforce training programs; provided further, that \$18,750,000 may be expended for the Massachusetts Clean Energy Center for the redevelopment of and improvements to the Massachusetts port facilities to bring inactive and under-utilized sites into productive use for the offshore wind industry; provided further, that not less than \$2,750,000 may be expended for a recirculating saltwater flume tank at the University of Massachusetts - Dartmouth; provided further, that not less than \$10,000,000 may be expended for the Massachusetts Building Trades Council for offshore wind workforce training programs; provided further, that not less than \$42,000,000 may be expended for programs which support clean transportation or result in greenhouse gas emissions reductions from the transportation sector; provided further, that not less than \$750,000 may be expended for a closed-loop subsonic wind tunnel at the University of Massachusetts - Dartmouth; provided further that not less than \$200,000,000 may be expended for the Massachusetts Clean Energy Center to make investments in clean energy technologies and innovations that result in greenhouse gas emission reductions; provided further, that not less than \$750,000 may be expended for high-quality and precision-

testing equipment at the University of Massachusetts - Dartmouth; provided further, that not less than \$2,000,000 may be expended to expand the electric vehicle rapid charging infrastructure at Logan Airport; provided further, that not less than \$300,000,000 may be expended for the Massachusetts Clean Energy Center for programs, including but not limited to grants and incentives, which work to reduce greenhouse gas emissions from the building sector consistent with requirements as set by chapter 21N; provided further, that not less than \$70,000,000 may be expended for the Massachusetts Clean Energy Center for the expansion of the Wind Technology Testing Center; and provided further, that not less than \$3,000,000 may be expended for a geotechnical centrifuge for offshore engineering at the University of Massachusetts - Dartmouth.....\$750,000,000

SECTION 67B. Said chapter 102 of the acts of 2021 is hereby further amended by adding section 81 the following sentence:- To the extent that spending is authorized by the Legislature in excess of the caps laid out in this section, the secretary of administration and finance shall determine the appropriate funding source, with the choice of funding source restricted to the federal COVID-19 response fund established in section 2JJJJ of chapter 29 of the General Laws or the Transitional Escrow Fund or from federal funds allocated to the commonwealth pursuant to federal legislation that is enacted after December 4, 2020 for purposes consistent with this act.

And amend the bill in section 68, by striking out the words “October 1, 2022” and inserting in place thereof the following words:- 30 days after the effective date of this act.

And amend the bill in section 69, by striking out the second paragraph and inserting in place thereof the following paragraph:-

The commission shall include: 5 members appointed by the speaker of the house of representatives, 1 of whom shall be the house chair of the joint committee on telecommunications, utilities and energy and shall serve as co-chair, 1 of whom shall be the house chair of the joint committee on the environment, natural resources and agriculture, 1 of whom shall be a representative from the solar industry who shall have developed an agrivoltaic project currently in operation in the commonwealth and who shall be appointed from a list jointly created and provided by the 2 clean energy member organizations with the largest number of Massachusetts-based solar members, 1 of whom shall be a representative from a farmer member organization based in the commonwealth, and 1 of whom shall be a representative from a land conservation or open space non-profit headquartered in the commonwealth; and 5 members appointed by the senate president, 1 of whom shall be the senate chair of the joint committee on telecommunications, utilities and energy and shall serve as co-chair, 1 of whom shall be the senate chair of the joint committee on the environment, natural resources and agriculture 1 of whom shall be a representative from the solar industry from a list jointly created and provided by the 2 clean energy member organizations with the largest number of Massachusetts-based solar members, 1 of whom shall be a representative from a farm land non-profit organization with an office in the commonwealth and 1 of whom shall be a representative

from a regional planning agency, the secretary of energy and environmental affairs or designee, the commissioner of energy resources or designee, the commissioner of agricultural resources or designee, the president of the Cranberry Growers Association, Inc. or designee, and the president of Massachusetts Audubon Society, Inc. or designee.

And further amend section 69 by striking out the second sentence of the third paragraph.

And amend the bill by striking out section 71 and inserting in place thereof the following section:-

SECTION 71. (a) The department of energy resources shall develop a comprehensive clean energy transmission report that shall include cost analysis of major transmission infrastructure upgrades that may be needed to deliver clean energy generation procured pursuant to the laws of the commonwealth for the use of residents of the commonwealth and the region. Such comprehensive analysis shall give special attention to the need to equitably allocate costs to, and share costs with, benefitted populations outside the commonwealth, and shall include policy recommendations that may be needed to equitably recover such costs. The department of energy resources shall submit a report, along with any recommendations for legislative and regulatory actions at the state, regional, and federal level, not later than December 31, 2023 to the clerks of the house of representatives and the senate and the chairs of the joint committee on telecommunications, utilities and energy.

(b) The department of energy resources shall consult with the New England States, the department of public utilities, attorney general, American Society of Civil Engineers, the Associated Industries of Massachusetts, Inc., the Massachusetts Taxpayers Foundation, Inc., the National Consumer Law Center, Inc., the Acadia Center, the Northeast Clean Energy Council, Inc., offshore wind industry representatives, solar energy industry representatives, representatives of municipal interests or a regional public entities, and investor-owned utilities in the commonwealth. The department of energy resources shall solicit technical assistance from transmission engineering experts, cost allocation experts, additional electric companies, consumer organizations, and other regional energy market participants.

And amend the bill in section 79 by striking out the first paragraph and inserting in place thereof the following paragraph:-

SECTION 79. Notwithstanding any general or special law to the contrary, there shall be a commercial fisheries commission to develop and recommend strategies, methods and tools to promote the sustainability of the commonwealth's commercial fishing industry including, but not limited to, harvesting, processing and production and sales and distribution. The commission shall address subjects including the responsible development of offshore energy projects, mitigation and support strategies to ensure the long-term sustainability of fisheries in the commonwealth, the creation of a comprehensive infrastructure to enable effective dialogue between fishing industry stakeholders and those involved in the development of marine-based



energy generation and transmission projects including, but not limited to, the offshore generation and transmission. The commission shall consist of: the director of marine fisheries and the director of coastal zone management, who shall serve as co-chairs; the secretary of energy and environmental affairs or the secretary's designee; and 16 members appointed by the governor.

And amend the bill in section 81 by striking out the first paragraph and inserting in place thereof the following paragraph:-

SECTION 81. (a) There shall be within the executive office of energy and environmental affairs an intergovernmental coordinating council to implement an electric vehicle charging infrastructure deployment plan. The council shall consist of the following 9 members: the secretary of energy and environmental affairs or designee, who shall designate the chair of the council; the commissioner of environmental protection or designee; the commissioner of energy resources or designee; the secretary of the Massachusetts Department of Transportation or designee; the general manager of the Massachusetts Bay Transportation Authority or designee; the secretary of housing and economic development or designee; the secretary of administration and finance or designee; the executive director of a regional planning agency or designee, who shall be appointed by the governor; and the chair of the commonwealth utilities commission or designee;. The council shall assess and report on strategies and plans necessary to deploy electric vehicle charging infrastructure to establish an equitable, interconnected, accessible and reliable electric vehicle charging network. The deployment plan shall facilitate: (i) compliance with the greenhouse gas emissions limits and sublimits set pursuant to sections 3 and 3A of chapter 21N of the General Laws, with emphasis on compliance with the emissions limits and sublimits set for 2025 and 2030; (ii) attainment of the numerical benchmarks for electric vehicles and electric vehicle charging stations set pursuant to section 5 of said chapter 21N; (iii) cessation, by December 31, 2035, of in-state sales of non-zero-emission vehicles; and (iv) advancement of access to, and affordability of, electric vehicle charging and fueling.

And further amend section 81 by striking out the words "website of each secretariat with a member serving on the council" in the second sentence of the fifth paragraph and inserting in place thereof the following word:- internet.

And further amend section 81 by inserting after the word "coordinate" in the eighth paragraph the following word:- selected.

And further amend section 81 by striking out the seventh paragraph and inserting in place thereof the following paragraph:-

(f) There is hereby established and set up on the books of the Commonwealth a separate fund to be known as the Charging Infrastructure Deployment Fund for the purpose of ensuring a holistic, coordinated and comprehensive deployment of electric vehicle charging infrastructure. The fund shall be credited with: (i) revenue from appropriations or other money authorized by the general court and specifically designated to be credited to the fund; (ii) interest earned on such revenue;

and (iii) funds from public and private sources and other gifts, grants and donations. The council shall expend, without further appropriation, amounts credited to the fund solely for activities and expenditures consistent with the purposes of this section, including the ordinary and necessary expenses of administration and operation of the fund; provided, however, that no expenditure made from the fund shall cause the fund to become deficient at any point during the fiscal year. Any money remaining in the fund at the end of a fiscal year shall not revert to the General Fund.

And amend the bill in section 84 by striking out the section and inserting in place thereof the following:-

SECTION 84. (a) For the purposes of this section, the following terms shall have the following meanings unless the context clearly requires otherwise:

“Fossil fuel-free”, not utilizing coal, oil, natural gas, other fuel hydrocarbons, including synthetic equivalents, or other fossil fuels to support the operation of a building or a portion thereof and as further defined by regulations issued under subsection (f).

“Local approval”, by a majority vote of the: (i) city council with the approval of the mayor in the case of a city with a mayor elected to serve as the chief executive officer of the city; (ii) city council in every other city; (iii) annual town meeting or a special town meeting called for that purpose in the case of a municipality with a town meeting form of government; or (iv) town council in the case of a municipality with a town council form of government.

(b) The department of energy resources shall establish a demonstration project in which cities and towns may, notwithstanding chapter 40A of the General Laws, section 13 of chapter 142 of the General Laws and chapter 164 of the General Laws or any other general or special law to the contrary, but subject to such regulations as are promulgated under subsection (f), adopt and amend general or zoning ordinances or by-laws that require new building construction or major renovation projects to be fossil fuel-free, and enforce restrictions and prohibitions on new building construction and major renovation projects that are not fossil fuel-free, including through the withholding or conditioning of building permits; provided, that said restrictions and prohibitions shall not apply to multi-family housing as defined in section 1A of said chapter 40A, to research laboratories for scientific or medical research, to hospitals or to medical offices regulated by the department of public health as a health care facility or to such other buildings or portions thereof excluded by regulations promulgated under subsection (f).

(c) The department shall approve not more than 10 applications for participation in the demonstration project under this section. No city or town shall apply for acceptance into the demonstration project until it has received local approval and has submitted a home rule petition to the general court on the subject matter of this section; provided, that the department shall issue approvals under this section to not more than 10 applications in the order in which cities and towns have submitted or submit home rule petitions to the general court; provided further, that the department shall, in the interest of increasing housing production in the commonwealth,

withhold approval of an application by a city or town applying to participate in the demonstration project until such time as said city or town has a multi-family zoning district that complies with the requirements of section 3A of said chapter 40A, if applicable, and has been designated as a Housing Choice community under the Housing Choice Initiative administered by the department of housing and community development. The department may act on substitute applications without respect to the order of submission of home rule petitions to the general court; provided that the total number of communities approved for participation in the demonstration project shall at no point exceed 10.

(d) Nothing in this section shall inhibit or interfere with the department's obligation to promulgate a municipal opt-in specialized stretch energy code that includes, but shall not be limited to, net-zero building performance standards and a definition of net-zero building under section 31 of chapter 8 of the acts of 2021 nor shall anything in this section limit the ability for any community to opt in to such specialized code following its promulgation; provided, however, that nothing in this section shall interfere with the department's authority to set restrictions or limitations on fossil fuel construction necessary to meet the department's obligation to promulgate the specialized stretch energy code's net-zero building performance standards and definition of net-zero building designed to achieve compliance with the commonwealth's statewide greenhouse gas emission limits and sublimits established pursuant to chapter 21N of the General Laws.

(e) The department shall collect data from cities and towns approved under this section to monitor impacts of the ordinances and by-laws authorized by this section on emissions, building costs, operating costs, the number of building permits issued, and other criteria as set by the department in consultation with participating cities and towns and the secretary of housing and economic development. Not later than September 30, 2024, and every year thereafter, the electric and gas distribution companies shall collect and annually report to the department, in a form approved by the department, the anonymized monthly totals of electricity and gas consumed, and corresponding electricity and gas bill amount, for each consumer (i) residing in a newly constructed building or major renovation project subject to the demonstration in each municipality participating in the demonstration; and (ii) residing in a newly constructed building or major renovation project in a number of comparable municipalities, as selected by the department, not participating in the demonstration. The department shall make said data available in an anonymized and aggregated manner that protects against potential unmasking of customer data on its website in a machine-readable format and shall annually update the data for the duration of the demonstration. Not later than September 30, 2025, and every two years thereafter, the department shall compile a report to be filed not later than September 30 for the two previous calendar years with the senate and house committees on ways and means, the joint committee on housing and the joint committee on telecommunications, utilities and energy. The report shall summarize the data required to be collected under this paragraph and shall include, but not be limited to, an analysis of the net reduction in emissions (i) for each newly constructed

building or major renovation project subject to the demonstration in each municipality participating in the demonstration; and (ii) for each comparable newly constructed building or major renovation project in a number of comparable municipalities, as selected by the department, not participating in the demonstration. The report shall also analyze impacts on housing production, if any; housing affordability, if any, including electric bills, heating bills, and other operating costs; housing affordability for persons of low and moderate income, if any, including electric bills, heating bills, and other operating costs; and any other matters set forth by the department after consultation with municipalities and with individuals, organizations, and institutions knowledgeable about issues of housing and emissions reductions. The report shall also include recommendations for the continuation or termination of the demonstration project.

(f) The department of energy resources, in consultation with the executive office of energy and environmental affairs and the executive office of housing and economic development, shall promulgate regulations to implement this section consistently and uniformly across all communities approved to participate in the demonstration project. These regulations shall be promulgated no later than September 1, 2023.

(g) No ordinances or by-law adopted under this section shall take effect until the secretary of energy and environmental affairs in consultation with the department of environmental protection certifies that at least one half of the Commonwealth's annual electric consumption is generated from clean energy sources. For the purposes of this section, clean energy sources are defined as those new and existing resources that are eligible for Massachusetts clean energy portfolio standards.

And amend the bill in section 87 by striking out the second paragraph and inserting in place thereof the following paragraph:-

(b) The department of transportation, in consultation with the department of energy resources and the department of elementary and secondary education, shall prepare a report that analyzes: (i) the number of fossil fuel-powered school buses in use in the commonwealth, delineated by school district; (ii) the number of zero-emission school buses in use in the commonwealth, delineated by school district; (iii) the annual cost of operating fossil fuel-powered school buses including, but not limited to, the cost of purchasing or contracting to use fossil fuel-powered buses and purchasing fossil fuels; (iv) the annual cost of operating zero-emission school buses including, but not limited to, the cost of purchasing or contracting to use zero-emission buses and the cost of purchasing or contracting to use charging stations and related charging infrastructure; (v) the projected cost differential between the sale or contracted use of fossil fuel-powered and zero-emission school buses; (vi) the estimated cost to replace fossil fuel-powered school buses with zero-emission school buses; (vii) the estimated environmental benefits of replacing fossil fuel-powered school buses with zero-emission school buses including, but not limited to, carbon reductions and related health benefits; (viii) the number of school districts that own their school bus fleets and the number of school districts that rent, lease or contract for school bus services;

(ix) recommendations on how to structure a state incentive program to replace or support the replacement of all fossil fuel-powered school buses with zero-emission school buses; and (x) additional information relevant to informing a statewide plan to replace or support the conversion of all school buses from fossil fuel-powered school buses to zero-emission school buses.

And amend the bill by inserting after section 87 the following section:-

SECTION 87A. (a) Notwithstanding any general or special law to the contrary, not later than January 1, 2024, any electric distribution company or municipal aggregator with a certified efficiency plan may submit proposed low- and moderate-income whole building efficiency, electrification and greenhouse gas emission reduction offerings to a limited number of participants within the low- and moderate-income customer groups to the department of public utilities for review. The offerings shall: (i) promote the adoption of whole building energy efficiency measures, including weatherization; (ii) require full displacement of fossil fuel heating and cooling equipment and fossil fuel cooking appliances, excluding outdoor grills; and (iii) promote adoption and installation of onsite renewable energy generation and energy storage. A renewable energy facility funded by the offerings made under this section shall be designated as a “qualifying facility” as defined in 220 CMR 8.02. The offerings shall be designed to encourage customers to lower energy consumption, reduce demand, improve customer resiliency and reduce use of the distribution system.

(b) Costs incurred under this section may be recovered through the funding sources authorized in subsection (a) of section 19 of chapter 25 of the General Laws.

(c) Not later than August 1, 2028, the department shall file a report detailing the results of the offerings under this section, including: (i) an analysis of costs, benefits and scalability of the offerings; (ii) an analysis of the burdens to ratepayers of adding solar, storage, or other clean energy technologies into the energy efficiency programs, and (iii) recommendations for legislative changes to any energy efficiency and renewable energy generation incentive programs. The report shall be filed with the clerks of the senate and the house of representatives, the joint committee on telecommunications, utilities and energy and the house and senate committees on ways and means.

And amend the bill by striking out section 88 and inserting in place thereof the following section:-

SECTION 88. Sections 33 to 36, inclusive, shall take effect upon their passage and shall not apply to any biomass facility with a commercial operation date prior to January 1, 2022.

And amend the bill in section 90 by striking out the first paragraph

And further amend section 90 in the second paragraph by striking out (b)(1) and inserting in place thereof the following:- (a)

And further amend section 90 in the second paragraph by striking out (b)(2) and inserting in place thereof the following:- (b)

And amend the bill by inserting after section 92 the following section:-

SECTION 92A. – The department of public utilities shall establish the rules required under section 92B of chapter 164 of the General Laws, as inserted by section 53, not later than April 30, 2023.

And amend the bill in section 94 by striking the words “Sections 26” and inserting insert in place thereof:- Sections 23 through 31

And amend the bill by adding the following 2 sections:-

SECTION 101. Section 80 of this act is hereby repealed.

SECTION 102. Section 101 shall take effect on December 31, 2037.

Respectfully submitted,

Charles D. Baker,  
*Governor*