

**HOUSE . . . . . No. 2851**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*Antonio F. D. Cabral*

*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.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>

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By Mr. Cabral of New Bedford, a petition (accompanied by bill, House, No. 2851) of Antonio F. D. Cabral, Paul A. Schmid III and Patricia A. Haddad for legislation to promote offshore wind energy. Telecommunications, Utilities and Energy.

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Eighty-Ninth General Court  
(2015-2016)**  
\_\_\_\_\_

An Act to promote 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 7: Chapter 169 of the acts of 2008 is hereby amended by inserting after  
2 section 83A the following section: -

3 Section 83B: Beginning on or before October 1, 2016 and continuing until September 30,  
4 2018, all distribution companies in the commonwealth, as defined in section 1 of chapter 164 of  
5 the General Laws, shall be required to conduct four (4) joint solicitations for proposals from  
6 offshore wind energy developers to deliver an annual amount of electricity of no less than  
7 876,000 MWh and, provided reasonable proposals have been received, enter into commercially  
8 reasonable long-term contracts to facilitate the financing of offshore wind energy generation.  
9 Distribution companies shall not enter into long-term contracts under this section that would, in  
10 the aggregate, exceed 4,380,000 MWh per annum.

11 For purposes of this section, the term "commercially reasonable" shall mean terms and  
12 pricing that are reasonably consistent with what an experienced power market analyst would

13 expect to see in transactions involving newly developed offshore wind energy resources.  
14 Commercially reasonable shall include having a credible project operation date, as determined  
15 by the department of public utilities, but a project need not have completed the requisite  
16 permitting process to be considered commercially reasonable. If there is a dispute about whether  
17 any terms or pricing are commercially reasonable, the department of public utilities shall make  
18 the final determination after evidentiary hearings.

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

26         A distribution company may fulfill its responsibilities under this section through  
27 individual competitive solicitations that are independent from the 4 joint solicitations for  
28 proposals from offshore wind energy developers and, provided reasonable proposals have been  
29 received, enter into commercially reasonable long-term contracts to facilitate the financing of  
30 offshore wind energy generation under this section if, upon petition to the department of public  
31 utilities prior to the first joint solicitation, the department rules that a solicitation by an individual  
32 distribution company would be more commercially reasonable than said distribution company  
33 engaging in a joint solicitation.

34 For purposes of this section, a long-term contract shall be a contract with a term of 20 to  
35 30 years. In developing proposed long-term contracts, the distribution companies shall consider  
36 multiple contracting methods, including long-term contracts for renewable energy certificates,  
37 hereinafter referred to as RECs, for energy, and for a combination of both RECs and energy.  
38 Beginning on or before October 1, 2016, the electric companies shall jointly select a reasonable  
39 method of soliciting proposals from offshore wind energy developers using a competitive  
40 bidding process only. Distribution companies may use timetables and methods for the  
41 solicitation of competitively bid long-term contracts approved by the department of public  
42 utilities prior to October 1, 2016. A distribution company may structure its contracts, pricing or  
43 administration of the products purchased to mitigate impacts on the balance sheet or income  
44 statement of the distribution company or its parent company, subject to the approval of the  
45 department of public utilities. The distribution companies shall consult with the department of  
46 energy resources and the attorney general's office regarding the choice of contracting methods  
47 and solicitation methods. All proposed contracts shall be subject to the review and approval of  
48 the department of public utilities.

49 The department of public utilities and the department of energy resources each shall  
50 adopt regulations consistent with this section. The regulations shall: (a) allow offshore wind  
51 energy developers to submit proposals for long-term contracts conforming to the contracting  
52 methods specified in the second paragraph; (b) require that contracts executed by the distribution  
53 companies under such proposals are filed with, and approved by, the department of public  
54 utilities before they become effective; (c) the department of public utilities shall authorize the  
55 contracting parties to seek recovery of such transmission costs of the project through federal  
56 transmission rates, consistent with policies and tariffs of the federal energy regulatory

57 commission; and (d) require that the proposed offshore wind energy project meet the following  
58 criteria: (1) have a commercial operation date, as verified by the department of energy resources,  
59 on or after October 1, 2018; (2) be qualified by the department of energy resources as eligible to  
60 participate in the RPS program, under said section 11F of said chapter 25A, and to sell RECs  
61 under the program; (3) have control or a right to acquire control over a suitable offshore site at  
62 the time of the submission of the proposal; (4) be developed by a team with a sufficient amount  
63 of relevant experience to successfully develop, finance, construct and operate its proposed  
64 project; and (5) be determined by the department of public utilities to: (i) provide enhanced  
65 electricity reliability within the commonwealth; (ii) contribute to moderating system peak load  
66 requirements in the commonwealth; (iii) contribute to greenhouse gas reductions in the  
67 commonwealth pursuant to chapter 238 of the acts of 2008, as well as other air emissions  
68 reductions in the commonwealth; (iv) demonstrate that the offshore wind energy will be  
69 delivered to the ISO New England Control Area including, where feasible, at or near the  
70 location of retiring carbon emitting generation sources; (v) be commercially reasonable; and (vi)  
71 create additional employment and economic development in the commonwealth.

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

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

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

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

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

112           This section shall not limit consideration of other contracts for RECs or power submitted  
113 by a distribution company for review and approval by the department of public utilities.

114           If this section is subject to a judicial challenge, the department of public utilities may  
115 suspend the applicability of the challenged provision during the pendency of the judicial action  
116 until final resolution of the challenge and any appeals and shall issue such orders and take such  
117 other actions as are necessary to ensure that the provisions that are not challenged are  
118 implemented expeditiously to achieve the public purposes of this section.