

# HOUSE . . . . . No. 2851

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## The Commonwealth of Massachusetts

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PRESENTED BY:

***Antonio F. D. Cabral***

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*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.**

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PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>1/16/2015</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>	<i>1/29/2015</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>	<i>8/13/2019</i>

# HOUSE . . . . . No. 2851

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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.

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

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

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

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