

HOUSE No. 2861

The Commonwealth of Massachusetts

PRESENTED BY:

Mark J. Cusack

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 relative to clean energy resources.

PETITION OF:

NAME:

Mark J. Cusack

DISTRICT/ADDRESS:

5th Norfolk

HOUSE No. 2861

By Mr. Cusack of Braintree, a petition (accompanied by bill, House, No. 2861) of Mark J. Cusack for legislation to encourage the use of renewable energy resources. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

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

An Act relative to clean energy resources.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 169 of the Acts of 2008, as amended by Chapter 209 of
2 the Acts of 2012, is hereby further amended by inserting, after Section 83A, the following new
3 section:-

4 SECTION 83B. Beginning on January 1, 2017 and continuing until December
5 31, 2020, all distribution companies in the commonwealth, as defined in section 1 of chapter 164
6 of the General Laws, shall be required in that time period to jointly solicit additional proposals
7 from renewable energy developers and, provided reasonable proposals have been received, enter
8 into additional cost-effective long-term contracts to facilitate the financing of renewable energy
9 generation, apportioned among the distribution companies under this section. The timetable and
10 method for solicitation and execution of such contracts shall be proposed by the distribution
11 companies in consultation with the department of energy resources and shall be subject to review
12 and approval by the department of public utilities. This long-term contracting obligation shall be

13 separate and distinct from the electric distribution companies' obligation to meet applicable
14 annual renewable portfolio standard, hereinafter referred to as RPS, requirements, under section
15 11F of chapter 25A of the General Laws.

16 A distribution company may fulfill its responsibilities under this section through
17 individual competitive solicitations that are independent from the joint solicitation(s) for
18 proposals from renewable energy developers and, provided reasonable proposals have been
19 received, enter into cost effective long-term contracts to facilitate the financing of renewable
20 energy generation under this section if, upon petition to the department of public utilities prior to
21 a joint solicitation, the department rules that a solicitation by an individual distribution company
22 would be more cost effective to ratepayers than said distribution company engaging in a joint
23 solicitation.

24 For purposes of this section, a long-term contract shall be a contract with a term
25 of 10 to 25 years. In developing proposed long-term contracts, the distribution companies shall
26 consider multiple contracting methods, including long-term contracts for renewable energy
27 certificates, hereinafter referred to as RECs, for energy, and for a combination of both RECs and
28 energy. Beginning January 1, 2017, the electric companies shall jointly select a reasonable
29 method of soliciting proposals from renewable energy developers using a competitive bidding
30 process only. Distribution companies may use timetables and methods for the solicitation of
31 competitively bid long-term contracts approved by the department of public utilities prior to
32 January 1, 2017. A distribution company may decline to consider contract proposals having
33 terms and conditions that it determines would require the contract obligation to place an
34 unreasonable burden on the distribution company's balance sheet, and may structure its
35 contracts, pricing or administration of the products purchased to mitigate impacts on the balance

36 sheet or income statement of the distribution company or its parent company, subject to the
37 approval of the department of public utilities; provided, that such mitigation shall not increase
38 costs to ratepayers. The distribution companies shall consult with the department of energy
39 resources and the attorney general's office regarding the choice of contracting methods and
40 solicitation methods. All proposed contracts shall be subject to the review and approval of the
41 department of public utilities.

42 The department of public utilities shall adopt regulations consistent with this
43 section. The regulations shall: (a) allow renewable energy developers to submit proposals for
44 long-term contracts conforming to the contracting methods specified in the second paragraph; (b)
45 require that contracts executed by the distribution companies under such proposals are filed with,
46 and approved by, the department of public utilities before they become effective; (c) provide for
47 an annual remuneration for the contracting distribution company equal to 2.75 per cent of the
48 annual payments under the contract to compensate the company for accepting the financial
49 obligation of the long-term contract, such provision to be acted upon by the department of public
50 utilities at the time of contract approval; (d) to the extent there are significant transmission costs
51 included in a bid, the department of public utilities shall authorize the contracting parties to seek
52 recovery of such transmission costs of the project through federal transmission rates, consistent
53 with policies and tariffs of the federal energy regulatory commission, to the extent the
54 department finds such recovery is in the public interest; and (e) require that the renewable energy
55 generating source to be used by a developer under the proposal meet the following criteria: (1)
56 have a commercial operation date, as verified by the department of energy resources, on or after
57 January 1, 2017; (2) be qualified by the department of energy resources as eligible to participate
58 in the RPS program, under said section 11F of said chapter 25A, and to sell RECs under the

59 program; and (3) be determined by the department of public utilities to: (i) provide enhanced
60 electricity reliability within the commonwealth; (ii) contribute to moderating system peak load
61 requirements; (iii) be cost effective to Massachusetts electric ratepayers over the term of the
62 contract; and (iv) where feasible, create additional employment and economic development in
63 the commonwealth. As part of its approval process, the department of public utilities shall
64 consider the attorney general's recommendations, which shall be submitted to the department of
65 public utilities within 45 days following the filing of such contracts with the department of
66 public utilities. The department of public utilities shall consider both the potential costs and
67 benefits of such contracts and shall approve a contract only upon a finding that it is a cost
68 effective mechanism for procuring low cost renewable energy on a long-term basis taking into
69 account the factors outlined in this section.

70 The joint solicitations required under this section shall be coordinated among the
71 electric distribution companies by the department of energy resources. If distribution companies
72 are unable to agree on a winning bid under a solicitation under this section, the matter shall be
73 submitted to the attorney general, in consultation with the department of energy resources and
74 the department of public utilities, for a final, binding determination of the winning bid. The
75 electric distribution companies shall each enter into a contract with the winning bidders for their
76 apportioned share of the market products being purchased from the project. The apportioned
77 share shall be calculated and based upon the total energy demand from all distribution customers
78 in each service territory of the distribution companies.

79 Distribution companies shall not be required by any rule, regulation or order of
80 the department of public utilities to enter into long-term contracts under this section that would,

81 in the aggregate, exceed 4 per cent of the total energy demand from all distribution customers in
82 the service territory of the distribution company.

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

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

103 This section shall not limit consideration of other contracts for RECs or power
104 submitted by a distribution company for review and approval by the department of public
105 utilities. If this section is subject to a judicial challenge, the department of public utilities may
106 suspend the applicability of the challenged provision during the pendency of the judicial action
107 until final resolution of the challenge and any appeals and shall issue such orders and take such
108 other actions as are necessary to ensure that the provisions that are not challenged are
109 implemented expeditiously to achieve the public purposes of this section.

110 SECTION 2. (a) Upon the department of public utilities issuance of an order
111 under subsection (b), all distribution companies in the commonwealth, as defined in section 1 of
112 chapter 164 of the General Laws, shall be required to jointly solicit from developers of clean
113 energy generation sources, proposals to deliver an annual amount of electricity of not more than
114 18,900,000 MWh, via long-term contracts as designed in Section 3 or delivery commitment
115 agreements in Section 4. The distribution companies shall solicit proposals simultaneously under
116 Section 3 and Section 4. Such solicitations may be conducted jointly with utilities and/or
117 procuring entities from other states in New England.

118 (b) The department of public utilities may require that the solicitation in
119 subsection (a) be staggered and divided into two or more solicitations to occur within such time
120 and of such size as the department orders provided that such staggered procurements are in the
121 best interest of ratepayers. Prior to any solicitation under this section, the department shall issue
122 an order making such determination.

123 (c) For the purposes of this act, clean energy generation shall mean, individually
124 or collectively, Class I RPS eligible renewable energy generation as defined under section 11F of

125 said chapter 25A or hydroelectric generation. Said clean energy generation shall represent
126 incremental generation delivered into the ISO New England Control Area after June 1, 2014.
127 Incremental generation shall be from sources built after 2003; however, any proposal submitted
128 under this act may include pre-2003 clean energy generation, up to a level necessary to firm and
129 assure delivery of Class I resources under that proposal. All clean energy generation shall use
130 appropriate unit-specific tracking to ensure the delivery of clean energy. Said clean energy
131 generation shall use appropriate unit-specific tracking to ensure the delivery of clean energy.

132 SECTION 3. The distribution companies in the commonwealth shall solicit
133 proposals, from developers of clean energy generation and, provided reasonable proposals have
134 been received, may enter into additional cost-effective long-term contracts to facilitate the
135 Commonwealth's clean energy goals and compliance with the statewide greenhouse gas
136 emissions limits. The solicitation shall be composed of clean energy generation sources
137 apportioned among the distribution companies under this act. The timetable and method for
138 solicitation and execution of such contracts shall be proposed by the distribution companies in
139 consultation with the department of energy resources and shall be subject to review and approval
140 by the department of public utilities. The provisions of this section shall create authority to enter
141 into long term contracts but shall not be construed to impose any mandates to enter into any such
142 long term contracts.

143 For purposes of this act, a long-term contract shall be a contract with a clean
144 energy generation source with a term of 10 to 25 years. A contract may have a term longer than
145 25 years if the department of public utilities finds that it would be cost-effective for ratepayers
146 when compared to one or more contracts proposed for other generation resources with the same
147 physical attributes but that have a term of no more than 25 years. In developing proposed long-

148 term contracts, the distribution companies shall consider multiple contracting methods, including
149 long-term contracts for renewable energy certificates, hereinafter referred to as RECs, for energy
150 only, and for a combination of both RECs and energy only. This long-term contracting option
151 shall be separate and distinct from the distribution companies' obligation to meet applicable
152 annual renewable portfolio standard, hereinafter referred to as RPS, requirements, under section
153 11F of chapter 25A of the General Laws. The procurement of RECs under this act shall apply
154 only to that portion attributable to Class I RPS-eligible renewable energy generation and shall
155 not apply to hydroelectric generation sources larger than 30 MW contracted under this Act.

156 The distribution companies shall jointly select a reasonable method of soliciting
157 proposals from clean energy generation developers using a competitive bidding process only,
158 which may include one developed by a regional organization in coordination with other New
159 England States. A distribution company may decline to consider contract proposals having terms
160 and conditions that it determines would require the contract obligation to place an unreasonable
161 burden on the distribution company's balance sheet, and may structure its contracts, pricing or
162 administration of the products purchased to mitigate impacts on the balance sheet or income
163 statement of the distribution company or its parent company, subject to the approval of the
164 department of public utilities; provided, that such mitigation shall not increase costs to
165 ratepayers. The distribution companies may propose a reasonable form of remuneration for
166 entering into any long term contract that it files with the department of public utilities for
167 approval and the department of public utilities may approve the proposal at the time of approving
168 the long term contract, provided however that the department of public utilities shall provide for
169 an annual remuneration for the contracting distribution companies equal to 2.75 per cent of the
170 annual payments under the contract to compensate the company for accepting the financial

171 obligation of long-term contracts associated with Class I RPS eligible renewable energy
172 generation sources for up to 4 per cent of the annual load from all distribution customers in the
173 service territories of the distribution companies. The distribution companies shall consult with
174 the department of energy resources and the Attorney General regarding the choice of contracting
175 methods and solicitation methods. All proposed contracts shall be subject to the review and
176 approval of the department of public utilities.

177 The department of public utilities shall adopt regulations consistent with this
178 section and any applicable rules, orders and regulations established by the Federal Energy
179 Regulatory Commission. The regulations shall: (a) allow clean energy generation developers to
180 submit proposals for long-term contracts conforming to the contracting methods specified in the
181 second paragraph; (b) require that contracts executed by the distribution companies are filed
182 with, and approved by, the department of public utilities before they become effective; (c)
183 encourage proposals from diverse energy sources (d) authorize the evaluation of combination
184 proposals which allow for resource diversity; and (e) require that the clean energy generation
185 sources under the proposal meet the following criteria: (1) any Class I RPS eligible renewable
186 energy generation source must be qualified by the department of energy resources as eligible to
187 participate in the RPS program under said section 11F of said chapter 25A, and to sell RECs
188 under the program; and (2) be determined by the department of public utilities to: (i) provide
189 enhanced electricity reliability within the commonwealth, including, where feasible, the ability to
190 replace energy provided by retiring carbon emitting generation sources in the commonwealth;
191 (ii) contribute to energy source diversity; (iii) be cost effective to Massachusetts electric
192 ratepayers over the term of the contract; (iv) where feasible, create additional employment and
193 economic development in the commonwealth; (v) contribute to greenhouse gas reductions

194 pursuant to chapter 238 of the acts of 2008; (vi) demonstrate project viability through evidence
195 including: (a) appropriate federal, state and local permits are substantially likely to be obtained
196 (b) land rights have been or are substantially likely to be obtained, (c) corporate approvals for
197 contracts have been obtained, and (d) security payments have been posted; and (vii) demonstrate
198 that the clean energy generations sources will be delivered to the ISO New England Control
199 Area.

200 As part of its approval process, the department of public utilities shall consider
201 the attorney general’s recommendations, which shall be submitted to the department of public
202 utilities within 45 days following the filing of such contracts with the department of public
203 utilities. The department of public utilities shall consider both the potential costs and benefits of
204 such contracts and shall approve a contract only upon a finding that it is a cost effective
205 mechanism for procuring clean energy generation source(s) on a long-term basis taking into
206 account the factors outlined in this act. The department of public utilities shall approve a contract
207 upon a finding that it is likely to result in net ratepayer savings as compared to current and
208 projected future costs associated with energy, RECs, or other obligations of the company over
209 the course of the contract period.

210 Notwithstanding the provisions of this section, that portion of the electricity
211 generation attributable to hydroelectric generation larger than 30 MW shall not be eligible to
212 participate in the Commonwealth’s RPS program under said section 11F of said chapter 25A.

213 For the purposes of subsection (a), the joint solicitation and evaluation of
214 submitted proposals required under this act shall be coordinated among the distribution
215 companies by the department of energy resources. The electric distribution companies may, but

216 are not required to, select a winning bidder. However, if distribution companies are unable to
217 agree on whether to select a winning bidder for a contract or cannot agree on a winning bid from
218 the solicitations submitted under this act, the matter shall be submitted to the attorney general,
219 for a final, binding decision regarding the bids. The distribution companies may each enter into a
220 contract with the winning bidders for their apportioned share of the market products being
221 purchased from the project. The apportioned share shall be calculated and based upon the total
222 energy demand from all distribution customers in each service territory of the distribution
223 companies.

224 A distribution company may elect to use any energy purchased under such
225 contracts for resale to its customers, and for that portion of the energy generation attributable to
226 Class I RPS eligible renewable generation may elect to retain RECs to meet the applicable
227 annual RPS requirements under said section 11F of said chapter 25A. If the energy and/or RECs
228 are not so used, such companies shall sell such purchased energy into the wholesale spot market
229 and/or shall sell such purchased RECs through a competitive bid process.

230 Notwithstanding the previous sentence, the department of energy resources shall
231 conduct periodic reviews to determine the impact on the energy and REC markets of the
232 disposition of energy and RECs under this act and may issue reports recommending legislative
233 changes if it determines that actions are being taken that will adversely affect the energy and
234 REC markets.

235 If a distribution company sells the purchased energy into the wholesale spot
236 market and auctions the RECs as described in the eighth paragraph, the distribution company
237 shall net the cost of payments made to projects under the long-term contracts against the

238 proceeds obtained from the sale of energy and RECs, and the difference shall be credited or
239 charged through the DBA as provided in Section 5, subject to review and approval of the
240 department of public utilities.

241 SECTION 5. (a) As used in this section, the following terms shall have the
242 following meanings:

243 “DBA”, a retail diversity benefits allocator authorized by the department of
244 public utilities for each electric distribution company for the purpose of allocating and crediting
245 financing benefits and allocating and recovering the costs of the clean energy procurement
246 program under this section equitably across all customers of each electric distribution company.

247 (b) The costs incurred, including above-market costs, and any below-market
248 financial benefits obtained by the electric distribution companies through the procurements under
249 section 3 or section 4 shall be recovered, funded, and credited, as applicable, through a DBA.
250 Each electric distribution company shall reconcile its costs and revenues in accordance with this
251 section separately from the other electric distribution companies.

252 (c) A DBA shall be applied by all electric distribution companies, as reviewed
253 and approved by the department of public utilities for each electric distribution company. A
254 DBA shall apply to all customers receiving any type of delivery service from the electric
255 distribution company or otherwise remaining connected to the distribution system for service
256 when a form of self-supply is not available. A DBA shall be designed to assure recovery of the
257 costs equitably from all distribution customers across all rate classes in a manner that is not by-
258 passable, regardless of whether the customer is purchasing commodity from basic service or a
259 retail choice supplier, self-generating all or a portion of its own energy, receiving net metering

260 credits, being served through third party owned distributed generation, or otherwise self-
261 supplying.

262 The proceeds received from a DBA shall be held by the electric distribution
263 company and credited to a DBA reconciliation account. Electric distribution companies shall be
264 held harmless through the proceeds of the DBA fund for any bad debt associated with collection
265 of the DBA from either basic service customers or retail choice customers.

266 (d) Below-market revenue benefits and all costs incurred by each electric
267 distribution companies under power purchase or other agreements approved by the department of
268 public utilities under this section shall be credited and funded, as applicable, through the
269 applicable DBA of each electric distribution company. Each electric distribution company shall
270 account for its individually received revenue and individually incurred purchase costs.

271 (e) The department of public utilities shall develop an annual filing and rate
272 process that establishes a DBA in advance of an applicable year using forecasts of costs and
273 revenues. Such process shall include an annual reconciliation the actual and forecasted costs
274 incurred by each electric distribution company against all the actual and forecasted revenues
275 received by the electric distribution company that are obtained from the resale of the market
276 products acquired in any power purchase or other agreements approved by the department of
277 public utilities under this section, including an appropriate interest rate on positive and negative
278 balances.

279 (f) Each electric distribution company shall make individual annual filings that
280 reflect its own projected and actual costs and revenues. To the extent that there is a positive
281 balance after the netting of costs against revenues, the balance shall be refunded to all electric

282 distribution customers of the applicable electric distribution company through a DBA, applied as
283 a credit against the total electric bill of each electric distribution customer, subject to the
284 approval of the department of public utilities. To the extent that there is a negative balance after
285 netting of costs against revenues, the negative balance shall be recovered from all electric
286 distribution customers through a DBA, subject to the approval of the department of public
287 utilities.

288 Such process shall be repeated for each year, or for the applicable reconciliation
289 period if shorter than a year, as approved by the department of public utilities.

290 SECTION 6. This act, and the implementation thereof, shall be subject to any
291 applicable rules, orders and regulations established by the federal energy regulatory commission.
292 No approval order or regulation issued by the department of public utilities to implement this act
293 shall constitute approval of any rate or charge collected or imposed by the clean energy
294 generation supplier. Such order or regulation shall not affect in any way the obligation of any
295 party to an agreement entered into with an electric distribution company pursuant to this act to
296 file the agreement with the federal energy regulatory commission or to comply with any tariff or
297 rule approved by the federal energy regulatory commission with respect to the sale or resale of
298 electric energy in interstate commerce.

299 If this act is subject to a judicial challenge, the department of public utilities may
300 suspend the applicability of the challenged provision during the pendency of the judicial action
301 until final resolution of the challenge and any appeals and shall issue such orders and take such
302 other actions as are necessary to ensure that the provisions that are not challenged are
303 implemented expeditiously to achieve the public purposes of this act.

304 SECTION 7. Provided that an electric distribution company has entered into
305 long-term contracts in compliance with sections 83 to 83B, inclusive, of chapter 169 of the acts
306 of 2008, it shall not be required by regulation or order or by other agreement to enter into
307 additional long-term contracts; provided, however, that an electric distribution company may
308 execute such contracts voluntarily, subject to the approval of the department of public utilities, or
309 under the other provisions of this act.

310 SECTION 8. Notwithstanding section 83B of chapter 169 of the acts of 2008, or
311 any other general or special law to the contrary, the long-term contracting requirements set forth
312 under said section 83B shall be reduced by the quantity of energy, from Class I RPS eligible
313 renewable energy generation sources under contract with a distribution company as approved by
314 the department of public utilities under section 3.

315 SECTION 9. The Massachusetts Clean Energy Center (MassCEC), in
316 consultation with the department of energy resources and the office of coastal zone management,
317 shall study how to best advance the development of wind generation opportunities off the shore
318 of the commonwealth. The study shall include a plan that evaluates (a) the design, ownership
319 interest, federal and state permitting, and financing; (b) existing state or federal programs
320 available to assist in off shore wind development; and (c) the creation of new programs, grants,
321 rate mechanisms, or other incentives to promote off shore wind development. The MassCEC
322 shall present its findings, along with any proposed recommendations and plan of action, to the
323 Joint Committee on Telecommunications, Utilities, and Energy within one year of the enactment
324 of this legislation.