

SENATE No. 2154

The Commonwealth of Massachusetts

PRESENTED BY:

Julian Cyr

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 provide for the investment in and expansion of the offshore wind industry in the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Julian Cyr</i>	<i>Cape and Islands</i>	
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>	<i>7/27/2021</i>

SENATE No. 2154

By Mr. Cyr, a petition (accompanied by bill, Senate, No. 2154) of Julian Cyr for legislation to provide for the investment in and expansion of the offshore wind industry in the Commonwealth. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

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

An Act to provide for the investment in and expansion of the offshore wind industry in the Commonwealth.

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. To provide for supplementing certain items in the general appropriation act
2 and other appropriation acts for fiscal year 2022 the sums set forth in section 2 are hereby
3 appropriated from the General Fund unless specifically designated otherwise in this act or in
4 those appropriation acts, for several purposes and subject to the conditions specified in this act or
5 in those appropriation acts, and subject to the laws regulating the disbursement of public funds
6 for the fiscal year ending June 30, 2022; provided, however that notwithstanding any general or
7 special law to the contrary, appropriations made in this act shall not revert and shall be available
8 for expenditure until June 30, 2023. These sums shall be in addition to any amounts previously
9 appropriated and made available for the purposes of those items.

10 SECTION 2. To provide for a program of infrastructure development, improvements and
11 various capital investments, the sums set forth in this section for the several purposes and subject

12 to the conditions specified in this act, are hereby made available, subject to the laws regulating
13 the disbursement of public funds and approval thereof.

14 EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS

15 Massachusetts Clean Energy Center

16 2000-0110. For the Massachusetts Offshore Wind Industry Investment Fund established
17 by section 9A of chapter 23J of the General Laws; provided, however that \$50,000,000 shall be
18 used for port infrastructure development and revitalization in the commonwealth for the purpose
19 of supporting the offshore wind industry\$500,000,000

20 SECTION 3. Section 1 of chapter 23J of the General Laws, as so appearing in the 2018
21 Official Edition, is hereby amended by adding after the definition of “fund” the following
22 definition:-

23 “Offshore wind company”, a business corporation, partnership, firm, unincorporated
24 association or other entity engaged in offshore wind development, manufacturing or
25 commercialization in the commonwealth and any affiliate thereof, which is, or the members of
26 which are, subject to taxation under chapter 62, 63, 64H or 64I.

27 SECTION 4. Chapter 23J of the General Laws, as so appearing in the 2018 Official
28 Edition, is hereby amended by adding after section 8 the following new section:-

29 Section 8A. (a) There shall be established a commonwealth offshore wind industry
30 investment program which shall be administered by the center. The purpose of the program shall
31 be to develop and expand offshore wind industry-related employment opportunities in the
32 commonwealth and to promote renewable energy-related innovations and economic

33 development benefits to the commonwealth by supporting and stimulating siting, development,
34 manufacturing and commercialization in the offshore wind industry. Offshore wind companies
35 certified pursuant to subsection (b) shall be eligible for participation in the program as well as
36 higher education institutions within the commonwealth that offer job training programs or degree
37 program tracks in the clean energy field. Not less than twenty per cent of offshore wind
38 companies that receive investment from the program per calendar year shall be small businesses
39 incorporated within the commonwealth with not more than fifty employees that work full time.

40 (b) The center may, upon a majority vote of the board, certify a offshore wind company
41 as a certified offshore wind company upon: (i) the timely receipt, as determined by the center, of
42 a certification proposal supported by independently verifiable information, signed under the
43 pains and penalties of perjury by a person expressly authorized to contract on behalf of the
44 offshore wind company and which shall include, but not be limited to: (A) an estimate of the
45 projected new state revenue the offshore wind company expects to generate during the period for
46 which the company seeks certification, together with a plan, including precise goals and
47 objectives, by which the offshore wind company proposes to achieve the projected new state
48 revenue; and (B) documentation of an agreement, if any, between the offshore wind company
49 and banking institutions with which the offshore wind company shall have agreed to establish
50 accounts and by which the banking institutions shall have agreed to commit a specified
51 percentage of the funds deposited in the accounts for loans made thereby to companies under the
52 small business capital access program established pursuant to section 57 of chapter 23A; and (ii)
53 findings made by the center, based on the certification proposal, documents submitted therewith
54 and any additional investigation by the center, and incorporated in its approval, that: (A) the
55 offshore wind company shall meet all statutory requirements and any other criteria that the center

56 may prescribe including, but not limited to criteria in the following areas: the offshore wind
57 company's potential for leveraging additional funding or attracting additional resources to the
58 commonwealth; the offshore wind company's potential to promote offshore wind manufacturing
59 in the commonwealth; and the offshore wind company's potential to create employment in the
60 commonwealth; and (B) a certified offshore wind company shall meet the new state revenue and
61 employment growth projections, as specified in the certification proposal, over the period for
62 which it receives benefits.

63 (c) A certified offshore wind company may, upon a majority vote of the board, be eligible
64 for the following benefits which shall be awarded by the board on a competitive basis: (1)
65 benefits from the offshore wind tax incentive program established by subsection (d); (2) grants,
66 loans or other investments from the Massachusetts Offshore Wind Industry Investment Fund
67 established by section 9A; (3) assistance from the center in accessing economic incentive
68 programs within the Massachusetts office of business development, including access to the
69 technical, human, financial, training, educational and site-finding resources necessary to expand
70 or locate in the commonwealth; (4) assistance from the center in obtaining federal grants; (5)
71 preference for funding for offshore wind industry job training programs; or (7) preference for
72 pre-permitted industrial land as identified by the Massachusetts Development Finance Agency.

73 (d) There shall be established an offshore wind industry tax incentive program. The
74 center, in consultation with the department, may annually authorize incentives, including
75 incentives carried forward or refunded pursuant to subsections (m), (n) and (r) of section 6 of
76 chapter 62, paragraph 17 of section 30 of chapter 63, the second time it appears, section 31M of
77 said chapter 63, the second time it appears, paragraph 6 of subsection (f) of section 38 of said
78 chapter 63, subsection (j) of section 38M of said chapter 63, section 38U of said chapter 63,

79 section 38V of said chapter 63, section 38W of said chapter 63, section 38CC of said chapter 63,
80 the second paragraph of subsection (c) of section 42B of said chapter 63 and subsection (xx) of
81 section 6 of chapter 64H in a cumulative amount, including the current year cost of incentives
82 allowed in previous years, that shall not exceed \$30,000,000 annually. The center may, in
83 consultation with the department, limit any incentive to a specific dollar amount or time duration
84 or in any other manner deemed appropriate by the department; provided, however, that the
85 department shall only allocate any such incentives among commonwealth certified offshore wind
86 companies pursuant to subsection (b) and shall award such tax incentives pursuant to subsection
87 (c).

88 The center shall provide an estimate to the secretary of administration and finance of the
89 tax cost of extending benefits to a proposed project before certification, as approved by the
90 commissioner of revenue, based on reasonable projections of project activities and costs. Tax
91 incentives shall not be available to a certified offshore wind company unless expressly granted
92 by the secretary of administration and finance in writing.

93 (e)(1) Certification granted pursuant to subsection (b) shall be valid for 5 years starting
94 with the tax year in which certification is granted. Each certified offshore wind company shall
95 file an annual report with the center detailing whether it has met the specific targets established
96 in the proposal pursuant to subclause (A) of clause (i) of subsection (b).

97 (2) The certification of a offshore wind company may be revoked by the center after an
98 independent investigation and determination that representations made by the certified offshore
99 wind company in its certification proposal are materially at variance with the conduct of the
100 offshore wind company after receiving certification; provided, however, that the center shall

101 review the certified offshore wind company at least annually; provided, further, that a project
102 with an actual return on investment that is less than 70 per cent of the return on investment
103 projected in the certification proposal shall be deemed to contain a material variance for a
104 revocation determination. If the center determines not to revoke certification upon a finding that
105 the actual return on investment for the project is less than 70 per cent, the center shall provide its
106 reasons for the decision in writing to the secretary of administration and finance, the
107 commissioner of revenue and the clerks of the house of representatives and the senate, who shall
108 forward the same to the house and senate committees on ways and means, the joint committee on
109 revenue, the joint committee on telecommunications, utilities and energy, and the joint
110 committee on economic development and emerging technologies. The center shall post these
111 reasons on the internet for public access.

112 (3) Under this subsection, revocation shall take effect on the first day of the tax year in
113 which the center determines that a material variance commenced. The commissioner of revenue
114 shall, as of the effective date of the revocation, disallow any credits, exemptions or other tax
115 benefits allowed by the original certification of tax benefits under this section. The department
116 shall issue regulations to recapture the value of any credits, exemptions or other tax benefits
117 allowed by the certification under this section; provided, however, that the recapture provisions
118 in subsection (m) of section 6 of chapter 62 and section 38U of chapter 63 shall apply. If the
119 original certification allowed sales and use tax exemptions pursuant to subsection (xx) of section
120 6 of chapter 64H, the purchaser shall accrue use tax as of the date of revocation on a portion of
121 the sales price on which exemption was claimed that is proportionate to the remaining useful life
122 of the property.

123 (4) Nothing in this subsection shall limit any legal remedies available to the
124 commonwealth against any certified offshore wind company.

125 (f) Capital funding may be revoked only by the center after an independent investigation
126 and determination that representations made by the offshore wind company in its certification
127 proposal are materially at variance with the conduct of the offshore wind company after
128 certification; provided, further, that a offshore wind company generating less than 70 per cent of
129 the projected new state revenue in the certification proposal shall be deemed to contain a
130 material variance for the purposes of a revocation determination. If the center does not revoke
131 certification despite said material variance, the center shall provide its reasons for the decision in
132 writing to the secretary of administration and finance, the commissioner of revenue and the
133 clerks of the house of representatives and the senate, who shall forward the same to the house
134 and senate committees on ways and means, the joint committee on bonding, capital expenditures
135 and state assets, the joint committee on telecommunications, utilities and energy, and the joint
136 committee on economic development and emerging technologies. A notice of revocation under
137 this subsection shall specify the date on which the revocation is effective, which shall be the date
138 of the notice or the date on which the center determined that the material variance commenced.
139 The secretary of administration and finance shall, as of the effective date of the revocation,
140 disallow any loans, grants or other benefits allowed by the original certification under this
141 section. The department may issue regulations to recapture any grants or loans allowed by the
142 certification under this section.

143 (g) The center shall revoke the certification of an offshore wind company when
144 independent investigations conducted in 2 consecutive years determine that representations made

145 by the offshore wind company in its project proposal are deemed materially at variance, pursuant
146 to paragraph (2) of subsection (e) or subsection (f).

147 (h) The board, in consultation with the executive office of administration and finance, the
148 executive office of energy and environmental affairs, and the executive office of housing and
149 economic development, shall promulgate rules, regulations or guidelines necessary to carry out
150 the provisions of this section.

151 SECTION 5. Chapter 23J of the General Laws, as so appearing in the 2018 Official
152 Edition, is hereby amended by adding after section 9 the following new section:-

153 Section 9A. (a) There shall be established and placed within the center a fund to be
154 known as the Massachusetts Offshore Wind Industry Investment Fund, hereinafter in this section
155 referred to as the fund, to be held by the center separate and apart from its other funds. The fund
156 shall be credited any appropriations, bond proceeds or other monies authorized by the general
157 court and specifically designated to be credited thereto, such additional funds as are subject to
158 the direction and control of the center, any pension funds, federal grants or loans, royalties or
159 private investment capital which may properly be applied in furtherance of the objectives of the
160 fund, any proceeds from the sale of qualified investments secured or held by the fund, any fees
161 and charges imposed relative to the making of qualified investments as defined by the center,
162 secured or held by the fund and any other monies which may be available to the center for the
163 purposes of the fund from any other source or sources. Any revenues, deposits, receipts, or funds
164 received through the receipt of royalties, interest, dividends, or the sale of equity instruments
165 shall be deposited in the fund, and shall be available to the center for the purposes described in
166 this section, without further appropriation. All available moneys in the fund that are unexpended

167 at the end of each fiscal year shall not revert to the General Fund and shall be available for
168 expenditure in the subsequent fiscal year.

169 (b) The center shall invest and reinvest the fund and the income thereof only as follows:

170 (1) making qualified equity investments pursuant to subsection (c); (2) investing funds not
171 required for immediate disbursement in the purchase of such securities as may be lawful
172 investments for fiduciaries in the commonwealth; (3) paying binding obligations associated with
173 such qualified investments which shall be secured by the fund as the same become payable; and
174 (4) paying principal or interest on qualified investments secured by the fund or paying any
175 redemption premium required to be paid when such qualified investments shall be redeemed
176 prior to maturity; provided, however, that monies in the fund shall not be withdrawn at any time
177 in such an amount as would reduce the amount of the fund to less than the minimum requirement
178 thereof established by the board, except for the purpose of paying binding obligations associated
179 with qualified investments which shall be secured by the fund as the same become payable.

180 (c) The fund shall be held and applied by the center, subject to the approval of the board,
181 to make qualified investments, grants, research and other funding and loans designed to advance
182 the following public purposes for the offshore wind industry in the commonwealth: (1) to
183 stimulate increased financing for the siting and expansion of permanent offshore wind
184 manufacturing facilities in the commonwealth by providing financing for the construction or
185 expansion of such new facilities; (2) to make targeted investments to promote manufacturing
186 activities for new or existing advanced technologies and offshore wind research; (3) to provide
187 funds for the revitalization and infrastructure for ports in the commonwealth to support the
188 offshore wind industry in the commonwealth; (4) to provide workforce training grants to prepare
189 individuals for offshore wind careers; (5) to provide funding for development, coordination and

190 marketing of higher education programs; (6) to make qualified grants to certified offshore wind
191 companies for site remediation, preparation and ancillary infrastructure improvement projects;
192 and (7) to otherwise further the public purposes set forth herein.

193 (d) The center shall make no such qualified investment pursuant to clause (1) of
194 subsection (b) unless: (1) said investment has been approved by a majority vote of the board; (2)
195 the recipient is a certified offshore wind industry company pursuant to section 8A; (3) the center
196 finds, to the extent possible, that a definite benefit to the commonwealth's economy may
197 reasonably be expected from said qualified investment; provided, further, that in evaluating a
198 request or application for funding, the center shall consider the following: (i) the appropriateness
199 of the project; (ii) whether the project has significant potential to expand employment; (iii) the
200 project's potential to enhance technological advancements; (iv) the project's potential for
201 leveraging additional funding or attracting resources to the commonwealth; and (v) the project's
202 potential to promote manufacturing in the commonwealth; (4) to the extent said investment is a
203 capital investment, the investment has been approved by the secretary of the executive office of
204 administration and finance upon request of the center; provided, however, that said request shall
205 be submitted to the secretary in writing and shall, include but not be limited to: (i) a description
206 of the project or program to be funded; (ii) the economic benefits to the commonwealth which
207 can reasonably be expected from said project or program; (iii) a copy of the proposed contract or
208 other document executing the transaction between the center and the recipient of the funds; (iv) a
209 description of the contractual or other legal remedies available to the center upon non-
210 performance of the contract or other document executing the transaction by the recipient
211 including, but not limited to, any provisions for restitution or reimbursement of the funds
212 granted, loaned or otherwise invested in or with the recipient; and (v) any other information as

213 the secretary may determine; and (5) said qualified investment conforms with the rules approved
214 by the board.

215 Said rules shall set the terms and conditions for investments which shall constitute
216 qualified investments including, but not limited to, loans, guarantees, loan insurance or
217 reinsurance, equity investments, grants awarded pursuant to clause (3) of subsection (c), other
218 financing or credit enhancing devices, as established by the center directly or on its own behalf
219 or in conjunction with other public instrumentalities, or private institutions or the federal
220 government. Said rules shall provide that qualified investments made pursuant to clauses (1) and
221 (2) of said subsection (c) shall involve a transaction with the participation of at least 1 at-risk
222 private party.

223 Said rules shall establish the terms, procedures, standards and conditions which the center
224 shall employ to identify qualified applications, process applications, make investment
225 determinations, safeguard the fund, advance the objective of increasing employment
226 opportunities, oversee the progress of qualified investments and secure the participation of other
227 public instrumentalities, private institutions or the federal government in such qualified
228 investments. Said rules shall provide for negotiated intellectual property agreements between the
229 center and a qualified investment recipient which shall include the terms and conditions by
230 which the fund's support may be reduced or withdrawn.

231 (f) The center may solicit investments by private institutions or investors in the activities
232 of the fund and may reach agreements with such private institutions or investors regarding the
233 terms of any such investments including, but not limited to, the rights of such investors to
234 participate in the income or appropriation of the fund. To further the objective of securing

235 investments by private institutions or investors in the activities of the fund pursuant to the
236 preceding sentence, the center may develop a proposal creating a separate investment entity
237 which shall permit the commingling of the fund's resources with the maximum participation by
238 such private institutions or investors in a manner consistent with the public purpose of the fund
239 and under the terms and conditions established to protect and preserve the assets of the fund.

240 (g) Copies of the approved rules, and any modifications, shall be submitted to the clerks
241 of the house of representatives and the senate, who shall forward the same to the house and
242 senate committees on ways and means and the joint committee on economic development and
243 emerging technologies.

244 (h) Qualified investment transactions made by the center pursuant to this section shall
245 not, except as specified in this chapter, be subject to chapter 175, or any successor thereto, and
246 shall be payable solely from the Massachusetts Offshore Wind Industry Investment Fund
247 established by this section and shall not constitute a debt or pledge of the full faith and credit of
248 the commonwealth, the center or any subdivision of the commonwealth.

249 (i) The center shall not make expenditure from or commitment of the assets of the fund
250 including, but not limited to, the making of qualified investments secured by the fund, if
251 following the making of said qualified investment, the amount of the fund shall be less than the
252 minimum requirement established by the board.

253 SECTION 6. Subsection b of section 83C of chapter 169 of the Acts of 2008, as
254 amended by chapter 188 of the Acts of 2016, is hereby amended by striking out the following:-

255 “; provided, however, that the department of public utilities shall not approve a long-term
256 contract that results from a subsequent solicitation and procurement period if the levelized price

257 per megawatt hour, plus associated transmission costs, is greater than or equal to the levelized
258 price per megawatt hour plus transmission costs that resulted from the previous procurement”

259 SECTION 7. Said section 83C is hereby further amended by inserting after the word
260 “project” at the end of subsection (d) the following:-

261 ;provided, further that preference shall be given to proposals that demonstrate economic
262 development contributions to the commonwealth.

263 SECTION 8. Said section 83C is hereby further amended by inserting after subsection (d)
264 the following new subsection:-

265 (e) The winning bid shall be chosen by the selection committee which shall consider all
266 proposals and criteria in subsection (d) when making a final decision. The committee shall
267 consist of the following members: the secretary of energy and environmental affairs, which shall
268 be the chair; the attorney general; and the secretary of the executive office of housing and
269 economic development.