

HOUSE No. 3310

The Commonwealth of Massachusetts

PRESENTED BY:

Thomas A. Golden, Jr.

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:	DATE ADDED:
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>	<i>2/15/2021</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>	<i>3/3/2021</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>	<i>12/9/2021</i>

HOUSE No. 3310

By Mr. Golden of Lowell, a petition (accompanied by bill, House, No. 3310) of Thomas A. Golden, Jr., and Patricia A. Haddad relative to making appropriations for the investment in and expansion of the offshore wind industry. 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.

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

56 commonwealth; and (B) a certified offshore wind company shall meet the new state revenue and
57 employment growth projections, as specified in the certification proposal, over the period for
58 which it receives benefits.

59 (c) A certified offshore wind company may, upon a majority vote of the board, be eligible
60 for the following benefits which shall be awarded by the board on a competitive basis: (1)
61 benefits from the offshore wind tax incentive program established by subsection (d); (2) grants,
62 loans or other investments from the Massachusetts Offshore Wind Industry Investment Fund
63 established by section 9A; (3) assistance from the center in accessing economic incentive
64 programs within the Massachusetts office of business development, including access to the
65 technical, human, financial, training, educational and site-finding resources necessary to expand
66 or locate in the commonwealth; (4) assistance from the center in obtaining federal grants; (5)
67 preference for funding for offshore wind industry job training programs; or (6) preference for
68 pre-permitted industrial land as identified by the Massachusetts Development Finance Agency.

69 (d) There shall be established an offshore wind industry tax incentive program. The
70 center, in consultation with the department, may annually authorize incentives, including
71 incentives carried forward or refunded pursuant to subsections (m), (n) and (r) of section 6 of
72 chapter 62, paragraph 17 of section 30 of chapter 63, the second time it appears, section 31M of
73 said chapter 63, the second time it appears, paragraph 6 of subsection (f) of section 38 of said
74 chapter 63, subsection (j) of section 38M of said chapter 63, section 38U of said chapter 63,
75 section 38V of said chapter 63, section 38W of said chapter 63, section 38CC of said chapter 63,
76 the second paragraph of subsection (c) of section 42B of said chapter 63 and subsection (xx) of
77 section 6 of chapter 64H in a cumulative amount, including the current year cost of incentives
78 allowed in previous years, that shall not exceed \$30,000,000 annually. The center may, in

79 consultation with the department, limit any incentive to a specific dollar amount or time duration
80 or in any other manner deemed appropriate by the department; provided, however, that the
81 department shall only allocate any such incentives among commonwealth certified offshore wind
82 companies pursuant to subsection (b) and shall award such tax incentives pursuant to subsection
83 (c).

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

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

93 (2) The certification of a offshore wind company may be revoked by the center after an
94 independent investigation and determination that representations made by the certified offshore
95 wind company in its certification proposal are materially at variance with the conduct of the
96 offshore wind company after receiving certification; provided, however, that the center shall
97 review the certified offshore wind company at least annually; provided, further, that a project
98 with an actual return on investment that is less than 70 per cent of the return on investment
99 projected in the certification proposal shall be deemed to contain a material variance for a
100 revocation determination. If the center determines not to revoke certification upon a finding that

101 the actual return on investment for the project is less than 70 per cent, the center shall provide its
102 reasons for the decision in writing to the secretary of administration and finance, the
103 commissioner of revenue and the clerks of the house of representatives and the senate, who shall
104 forward the same to the house and senate committees on ways and means, the joint committee on
105 revenue, the joint committee on telecommunications, utilities and energy, and the joint
106 committee on economic development and emerging technologies. The center shall post these
107 reasons on the internet for public access.

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

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

121 (f) Capital funding may be revoked only by the center after an independent investigation
122 and determination that representations made by the offshore wind company in its certification

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

139 (g) The center shall revoke the certification of an offshore wind company when
140 independent investigations conducted in 2 consecutive years determine that representations made
141 by the offshore wind company in its project proposal are deemed materially at variance, pursuant
142 to paragraph (2) of subsection (e) or subsection (f).

143 (h) The board, in consultation with the executive office of administration and finance, the
144 executive office of energy and environmental affairs, and the executive office of housing and

145 economic development, shall promulgate rules, regulations or guidelines necessary to carry out
146 the provisions of this section.

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

149 Section 9A. (a) There shall be established and placed within the center a fund to be
150 known as the Massachusetts Offshore Wind Industry Investment Fund, hereinafter in this section
151 referred to as the fund, to be held by the center separate and apart from its other funds. The fund
152 shall be credited any appropriations, bond proceeds or other monies authorized by the general
153 court and specifically designated to be credited thereto, such additional funds as are subject to
154 the direction and control of the center, any pension funds, federal grants or loans, royalties or
155 private investment capital which may properly be applied in furtherance of the objectives of the
156 fund, any proceeds from the sale of qualified investments secured or held by the fund, any fees
157 and charges imposed relative to the making of qualified investments as defined by the center,
158 secured or held by the fund and any other monies which may be available to the center for the
159 purposes of the fund from any other source or sources. Any revenues, deposits, receipts, or funds
160 received through the receipt of royalties, interest, dividends, or the sale of equity instruments
161 shall be deposited in the fund, and shall be available to the center for the purposes described in
162 this section, without further appropriation. All available monies in the fund that are unexpended
163 at the end of each fiscal year shall not revert to the General Fund and shall be available for
164 expenditure in the subsequent fiscal year.

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

166 (1) making qualified equity investments pursuant to subsection (c); (2) investing funds not

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

176 (c) The fund shall be held and applied by the center, subject to the approval of the board,
177 to make qualified investments, grants, research and other funding and loans designed to advance
178 the following public purposes for the offshore wind industry in the commonwealth: (1) to
179 stimulate increased financing for the siting and expansion of permanent offshore wind
180 manufacturing facilities in the commonwealth by providing financing for the construction or
181 expansion of such new facilities; (2) to make targeted investments to promote manufacturing
182 activities for new or existing advanced technologies and offshore wind research; (3) to provide
183 funds for the revitalization and infrastructure for ports in the commonwealth to support the
184 offshore wind industry in the commonwealth; (4) to provide workforce training grants to prepare
185 individuals for offshore wind careers; (5) to provide funding for development, coordination and
186 marketing of higher education programs; (6) to make qualified grants to certified offshore wind
187 companies for site remediation, preparation and ancillary infrastructure improvement projects;
188 and (7) to otherwise further the public purposes set forth herein.

189 (d) The center shall make no such qualified investment pursuant to clause (1) of
190 subsection (b) unless: (1) said investment has been approved by a majority vote of the board; (2)
191 the recipient is a certified offshore wind industry company pursuant to section 8A; (3) the center
192 finds, to the extent possible, that a definite benefit to the commonwealth's economy may
193 reasonably be expected from said qualified investment; provided, further, that in evaluating a
194 request or application for funding, the center shall consider the following: (i) the appropriateness
195 of the project; (ii) whether the project has significant potential to expand employment; (iii) the
196 project's potential to enhance technological advancements; (iv) the project's potential for
197 leveraging additional funding or attracting resources to the commonwealth; and (v) the project's
198 potential to promote manufacturing in the commonwealth; (4) to the extent said investment is a
199 capital investment, the investment has been approved by the secretary of the executive office of
200 administration and finance upon request of the center; provided, however, that said request shall
201 be submitted to the secretary in writing and shall, include but not be limited to: (i) a description
202 of the project or program to be funded; (ii) the economic benefits to the commonwealth which
203 can reasonably be expected from said project or program; (iii) a copy of the proposed contract or
204 other document executing the transaction between the center and the recipient of the funds; (iv) a
205 description of the contractual or other legal remedies available to the center upon non-
206 performance of the contract or other document executing the transaction by the recipient
207 including, but not limited to, any provisions for restitution or reimbursement of the funds
208 granted, loaned or otherwise invested in or with the recipient; and (v) any other information as
209 the secretary may determine; and (5) said qualified investment conforms with the rules approved
210 by the board.

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

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

227 (f) The center may solicit investments by private institutions or investors in the activities
228 of the fund and may reach agreements with such private institutions or investors regarding the
229 terms of any such investments including, but not limited to, the rights of such investors to
230 participate in the income or appropriation of the fund. To further the objective of securing
231 investments by private institutions or investors in the activities of the fund pursuant to the
232 preceding sentence, the center may develop a proposal creating a separate investment entity
233 which shall permit the commingling of the fund's resources with the maximum participation by

234 such private institutions or investors in a manner consistent with the public purpose of the fund
235 and under the terms and conditions established to protect and preserve the assets of the fund.

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

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

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

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

251 “; provided, however, that the department of public utilities shall not approve a long-term
252 contract that results from a subsequent solicitation and procurement period if the levelized price
253 per megawatt hour, plus associated transmission costs, is greater than or equal to the levelized
254 price per megawatt hour plus transmission costs that resulted from the previous procurement”

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

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

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

261 (e) The winning bid shall be chosen by the selection committee which shall consider all
262 proposals and criteria in subsection (d) when making a final decision. The committee shall
263 consist of the following members: the secretary of energy and environmental affairs, which shall
264 be the chair; the attorney general; the secretary of the executive office of housing and economic
265 development; one person appointed by the speaker of the house of representatives; and one
266 person appointed by the president of the senate.