

October 18, 2019

The Honorable Thomas A. Golden, Chairman
Joint Committee on Telecommunications, Utilities & Energy
State House, Room 473B
Boston, MA 02133

The Honorable Michael J. Barrett, Chairman
Joint Committee on Telecommunications, Utilities & Energy
State House, Room 416
Boston, MA 02133

Re: Joint Testimony in support of *An Act Clarifying Authority and Responsibilities of the Department of Public Utilities (H.2812)*

Dear Chairmen Golden, Barrett and Members of the Committee,

The undersigned organizations write to you in support of *H.2812, An Act Clarifying Authority and Responsibilities of the Department of Public Utilities*—a critical piece of legislation to update the policies and practices of that agency.

Over the past several sessions, the Legislature has taken key incremental steps towards advancing a clean energy agenda. However, the Commonwealth’s policies of promoting gas over oil, which had a rational basis in the 1990s, have become outdated in light of advances in clean energy technology and a more compelling, immediate need to reduce emissions and decrease the use of fossil fuels overall. H.2812 aims to bring the practices and priorities at the Department of Public Utilities (“DPU”) in line with the climate policies of the Legislature and of the DPU’s parent agency, the Executive Office of Energy and Environmental Affairs (“EEA”).

In a Baker administration update to the Massachusetts Clean Energy and Climate Plan for 2020, the EEA noted:

[T]he only viable path to deep reductions in GHG emissions is through a combination of reduced energy consumption (through increased energy efficiency in vehicles and buildings), expanded availability of clean electricity, and electrification of the transportation and heating sectors. **The scope of the challenge can be summarized in three words: reduce, electrify, and decarbonize.**¹

¹ EEA, “A report to the Great and General Court pursuant to the Global Warming Solutions Act,” December 31, 2015 (available at <https://www.mass.gov/files/documents/2017/12/06/Clean%20Energy%20and%20Climate%20Plan%20for%202020.pdf>) (last visited Oct. 16, 2019).

Similarly, when the Department of Energy Resources issued its first “Comprehensive Energy Plan” last December, Governor Baker explained: “The recommendations and analysis produced in this plan illustrate a **changing energy landscape that will require a focus on energy efficiency improvements and the utilization of electricity to heat our homes and power our transportation sector.**”²

To further these goals, all state agencies have a heightened responsibility to require serious consideration of alternatives to natural gas. The DPU is ground zero for incorporating this hard look at alternatives and impacts, but the agency has not evolved on its own to keep in step with statutory targets, energy policies, climate realities, or municipal rights and priorities.

The information contained in the joint testimony signed last session by 100 members of the House, in support of an earlier version of H.2812, is still valid. We incorporate that testimony (a copy of which is submitted herewith) into the record on the instant bill. Below are a few notes about new sections in H.2812:

- **Competitive Solicitations for Non-Gas Alternatives:**

Requiring competitive bidding from third parties for non-gas alternatives will engage the rapidly evolving clean energy sector in offering low- and no-emissions solutions in a structured, transparent format, rather than putting the onus on the gas utilities themselves to develop solutions that are outside their wheelhouse.

- **National Transportation Safety Board Investigation Provision:**

The tragedy in the Merrimack Valley has exposed another policy gap relating to gas pipeline capacity contracts. A few months before the 2018 Columbia Gas disaster, the DPU approved a contract between Columbia Gas and the Tennessee Gas Pipeline Company (“TGP”) that would allow both companies to expand their systems in the greater Springfield area. The approval of that contract is what is allowing TGP to persist at the Federal Energy Regulatory Commission (“FERC”) to this day in pursuing expansion projects that would enable Columbia Gas to expand.

The National Transportation Safety Board investigation that was undertaken in the aftermath of the Merrimack Valley disaster should have been sufficient to trigger the nullification of the Columbia Gas/TGP contract. The communities of Hampden County

² See December 12, 2018 Press Release, “Baker-Polito Administration Releases First Comprehensive Energy Plan” (available at <https://www.mass.gov/news/baker-polito-administration-releases-first-comprehensive-energy-plan>) (emphasis added).

should not be subject to proposed expansion projects given the devastation and ongoing uncertainty surrounding Columbia Gas.

In sum, we are asking for a fair process that is not a rubber stamp for the gas industry. We are asking that the Commonwealth take responsibility for the fact that Massachusetts—through the DPU—is the gatekeeper for these federally approved projects. FERC approves every gas infrastructure project that has pipeline capacity contracts approved at the state level.

It falls upon the state to closely scrutinize projects that the gas companies request, and to require a meaningful alternatives analysis and impact analysis. Massachusetts cannot continue to give the utilities a free pass to endlessly expand the gas pipeline network at the expense of the ratepayer and the environment. Requiring the DPU to consider environmental and climate impacts and to seriously evaluate demand-side and non-pipe alternatives is a critical step towards a viable clean energy and climate policy for the Commonwealth.

Please report H.2812 favorably out of your Committee.

Respectfully submitted,

Kathryn R. Eiseman, President
Pipe Line Awareness Network for the Northeast

Deborah Donovan, Massachusetts Director
Acadia Center

Eugenia T. Gibbons, Policy Director
Green Energy Consumers Alliance

Bill Ravanese
Senior Director of Health Care Green Building & Energy
Health Care Without Harm US & Canada

Deb Pasternak, Chapter Director
Sierra Club Massachusetts

Elizabeth Saunders, Massachusetts Director
Clean Water Action

Eleanor Tillinghast, President
Green Berkshires, Inc.

James O. Michel, Co-Founder
Boston Clean Energy Coalition

Sylvia Broude, Executive Director
Toxics Action Center Campaigns

Cabell Eames, Legislative Manager
350 MA

Judy Eddy, Steering Team
350Mass Berkshires

Alice Arena, President
Fore River Residents Against the Compressor Station

Mary Dewart, Board
Climate Action Brookline

Rick Lent, Leadership Team
Elders Climate Action

Caroline B. Zuk, Team Leader
Dracut Pipeline Awareness Group

Tracy Manzella, President
Citizens Against the Rehoboth Compressor Station

Jacqueline Royce, Co-Chair
Back Bay Green

Cathy Kristofferson, Co-Founder
StopNED (Northeast Energy Direct)

Jane Winn, Executive Director
Berkshire Environmental Action Team (BEAT)

Rosemary Wessel, Program Director
No Fracked Gas in Mass

Benjamin Adams
Co-Chair, Boston DSA Ecosocialism Working Group
On behalf of Take Back The Grid

John Prusinski
Co-Chair, Berkshires Democratic Socialists of America
Chair, Berkshires DSA Ecosocialist Working Group

Adele Franks, Steering Committee Member
Climate Action Now Western Mass

Michele Marantz, Chair
Longmeadow Pipeline Awareness Group

Mary Gard, Team Leader
Sustainable Wellesley

Laurie Wodin, Co-Administrator
Sustainable Upton

Don Ogden, Producer/Co-Host
The Enviro Show

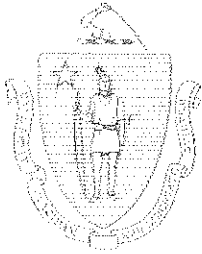
Bob Armstrong, Chair
FCCPR Climate Task Force

Laurel Facey, Member
Wendell State Forest Alliance

Janet Sinclair, Member
Concerned Citizens of Franklin County

Delta Carney, Chairwoman
Hilltown Community Rights

Ken Hartlage, President
Nashoba Conservation Trust



THE GENERAL COURT OF MASSACHUSETTS
STATE HOUSE, BOSTON 02133-1053

November 2, 2017

The Honorable Thomas A. Golden, Chairman
Joint Committee on Telecommunications, Utilities & Energy
State House, Room 473B
Boston, MA 02133

The Honorable Michael J. Barrett, Chairman
Joint Committee on Telecommunications, Utilities & Energy
State House, Room 416
Boston, MA 02133

Dear Chairmen Golden, Barrett and Members of the Committee,

We write as cosponsors and supporters of *H.3400, An Act Clarifying Authority and Responsibilities of the Department of Public Utilities* and *H.2698, An Act Protecting Ratepayers from Gas Pipeline Expansion Costs* and respectfully request favorable action on these important pieces of legislation.

In recent years, it has become clear that current permitting processes and financing practices for expanding natural gas infrastructure do not align with a clean energy future or other important policies of the Commonwealth. H.3400 and H.2698 take very different approaches, but both bills aim to tackle the same problem: natural gas projects continue to be aggressively pushed on our communities and ratepayers, even as the Commonwealth is mandated to reduce its greenhouse gas emissions steadily through 2050, and even as individual communities are seeking to do what they can to reduce fossil fuel use and protect the climate, their land, and their residents.

To fulfill our Global Warming Solutions Act obligations, we must change business as usual and re-think our increasing reliance on natural gas. First, we must dispel the myth that increasing the use of natural gas for electric generation would reduce the Commonwealth's greenhouse gas emissions. With the closure of the last coal plant in Massachusetts this past June, less than three percent of New England's electric generation now comes from coal or oil.¹ As a result, natural-gas-burning plants currently account for about 50% of New England's electric generation, while emitting the vast majority of the generation fleet's greenhouse gases. Renewables are a rapidly growing component of the rest of the generation fleet, with nuclear and hydropower making up the remainder. When nuclear power plants are retired, they cannot be replaced with gas-fired plants without increasing greenhouse gas emissions.

In addition to threatening our ability to comply with the Global Warming Solutions Act, the buildout of natural gas infrastructure threatens to burden ratepayers with unjustifiable financial risks and to burden our communities and the local environment with avoidable risks, impacts, and disruptions.

Risks to ratepayers are generally a primary consideration in proceedings at the Massachusetts Department of Public Utilities (DPU). Yet the DPU has not taken a hard look at the skewed incentives that can lead utilities to contract for excessive pipeline capacity at ratepayer expense, particularly when the contracts involve affiliate transactions. A report² issued last month spells out the problem of the recent trend in which utilities' corporate

1 "Resource Mix" as reported by ISO New England (<https://www.iso-ne.com/about/key-stats/resource-mix>).

2 "Art of the Self-Deal: How Regulatory Failure Lets Gas Pipeline Companies Fabricate Need And Fleece Ratepayers," Oil

parents partner with pipeline companies to propose new gas pipeline projects, while the utilities themselves sign up as customers for the pipeline. The report explains:

High rates of return may be incentivizing unnecessary pipelines: FERC allows a return on equity of 14 percent for new interstate gas pipelines. This rate was first set in 1997 when interest rates were double today's average. It has not been revised since. It is also about 40 percent higher than what companies typically receive for other types of utility investments.³

Affiliate relationships were behind the financing for both Spectra's Access Northeast (ANE) project and (to a lesser extent) the Kinder Morgan Northeast Energy Direct (NED) project.⁴ The NED contracts all received DPU approval, while the ANE contract proceedings, which involved electric utilities, were all terminated when the Supreme Judicial Court (SJC) confirmed that Massachusetts electric ratepayers cannot be made to finance gas pipelines through their electric bills. Both H.3400 and H.2698 would ensure that all ratepayers – gas and electric – are more strongly protected from financing schemes that would undermine public policies and put ratepayers at risk while shareholders are guaranteed a sizable profit.

H.2698 would prohibit any ratepayer financing of interstate gas infrastructure, requiring shareholders to shoulder the risks of overbuild and stranded costs. H.3400 would codify the SJC decision concerning the prohibition on electric ratepayer financing of pipelines; create a rebuttable presumption against approval of affiliate contracts; and create an overall more rigorous framework than that under which the DPU currently operates when evaluating petitions relating to new gas infrastructure proposals, along with other modifications to DPU practice discussed below.

Many of us have had a hands-on education in gas infrastructure regulation over the past few years, learning along with our constituents how the process at the Federal Energy Regulatory Commission (FERC) intersects with proceedings at the DPU, and seeing up close how the DPU operates in the realm of gas infrastructure proposals. We experienced how the system operates largely so that utilities can proceed with whatever they propose. Of course, the utilities fundamentally shaped the existing rules in the first place, so it makes sense that they know how to check all the boxes and push all the right buttons to receive DPU approval for their proposals.

What does not make sense is the degree to which the DPU sidelines and silences ratepayers, communities, and even legislators, so that we don't have a seat at the table when critical decisions are being made that will directly affect our communities. Several of the undersigned members of the General Court sought to intervene, individually or as members of a broad-based coalition, in DPU proceedings concerning capacity contracts on both the NED and ANE pipelines. The DPU denied multiple petitions to intervene, deeming none of us "substantially and specifically affected" by the proceeding, even when we were joined in a coalition with individual ratepayers and ratepayer municipalities that would be both financially impacted by the contract and physically impacted by the infrastructure. Currently, the DPU narrowly focuses on whether the utility's own analysis is reasonable, primarily on the basis of direct costs, with little opportunity for input from stakeholders other than the Attorney General, who intervenes as a matter of right. H.3400 would require the DPU to grant full intervenor status to ratepayer municipalities, legislators representing ratepayer communities, and groups of ten or more ratepayers of the utility that is the subject of a proceeding.

To date, the DPU's stance has been that its role is not to consider landowner impacts or other siting issues, maintaining that FERC is the appropriate venue to address these issues. We are aware, however, that FERC has

Change International in collaboration with Public Citizen and the Sierra Club, September 2017 (priceofoil.org/content/uploads/2017/09/Gas_Pipeline_Ratepayer_Report.pdf).

3 *Id.* at 14.

4 ANE was proposed as joint venture of Spectra Energy Corp. (now part of Enbridge Inc.) together with Everource Energy and National Grid. Affiliates of four of the utilities that entered into NED capacity contracts also invested directly in the NED project.

never rejected a pipeline project on environmental or siting grounds. Once FERC has determined that sufficient capacity contracts have been secured for a project, FERC invariably certifies the project. Thus the DPU is the initial gatekeeper, and one of the few places where the Commonwealth can have a meaningful impact on whether and how an interstate gas project proceeds. Therefore, H.3400 would require a significant alternatives analysis in capacity contract cases, including serious evaluation of demand-side measures and lower impact infrastructure options. H.3400 also would shield constitutionally protected Article 97 conservation land from federal eminent domain by prohibiting approval of capacity contracts that involve gas infrastructure through Article 97 land.

With both the NED and the ANE projects, municipalities and state agencies charged with the stewardship of Article 97 land were asked to allow surveying for a project that would be an unauthorized use of the land. Hundreds of private citizens were also asked to permit surveyors to enter their land, and in some instances to allow invasive geotechnical surveying involving heavy equipment. Under the DPU's reading of the current law, the DPU can override a landowner's denial of survey access to allow for surveying to take place, even when a project is still awaiting FERC approval. Section six of H.3400 would disallow the DPU from overriding a landowner's denial of survey access until after a project has been certified by FERC, and would guarantee the landowner the right to an adjudicatory proceeding concerning survey access.

In the case of *intrastate* pipelines, where siting decisions are the exclusive purview of the state's Energy Facilities Siting Board, current law specifically prevents the state agency from requiring "the presentation of information relative to the demand for gas" when establishing the propriety of a new gas pipeline or other gas infrastructure, instead allowing the utility to rely on its most recent long-range forecast and supply plan. Because the energy landscape is rapidly evolving and forecasts can quickly become outdated, section five of H.3400 would strike this provision so that the agency can require an updated showing of need for the project.

As the *Art of the Self-Deal* report states, "Absent effective oversight, ratepayers could end up shouldering long-term costs for pipeline capacity they don't need, while losing out on opportunities to take advantage of increasingly cheaper, cleaner choices."⁵ While we in the Commonwealth don't have the authority to fix FERC's broken system, we have the responsibility to ensure that the DPU both protects ratepayers as consumers and adheres to broader policy mandates to protect communities, public health, conservation land, and the climate.

We urge the Committee to report favorably on H.3400 and H.2698, perhaps combining their essential components into a single bill. We stand ready to work with you and to provide any information and assistance that the Committee may need.

Thank you for your consideration of this matter.

Sincerely,



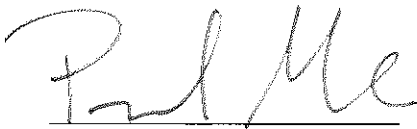
Stephen Kulik
State Representative
First Franklin District



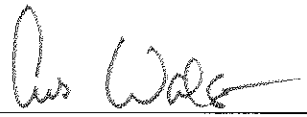
Bradley H. Jones
State Representative
Twentieth Middlesex District



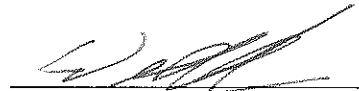
Kenneth I. Gordon
State Representative
Twenty-First Middlesex District



Paul W. Mark
State Representative
Second Berkshire District



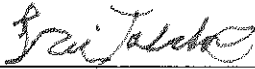
Chris Walsh
State Representative
Sixth Middlesex District



Will Crocker
State Representative
Second Barnstable District




Bradford R. Hill
State Representative
Fourth Essex District



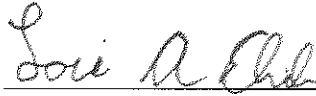
Jose F. Tosado
State Representative
Ninth Hampden District



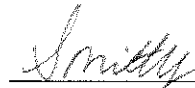
Paul McMurtry
State Representative
Eleventh Norfolk District



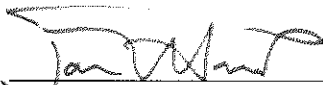
Tricia Farley-Bouvier
State Representative
Third Berkshire District



Lori A. Ehrlich
State Representative
Eighth Essex District



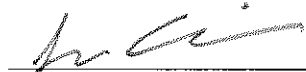
Smitty Pignatelli
State Representative
Fourth Berkshire District



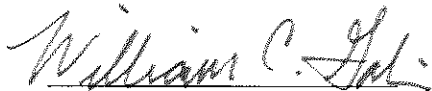
Jonathan Hecht
State Representative
Twenty-Ninth Middlesex District



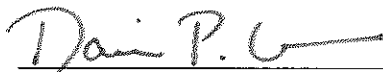
Jeffrey N. Roy
State Representative
Tenth Norfolk District



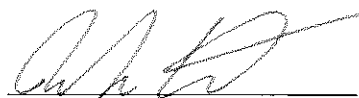
James Arciero
State Representative
Second Middlesex District



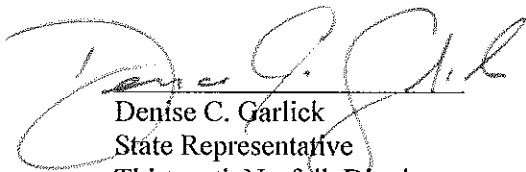
William C. Galvin
State Representative
Sixth Norfolk District



David P. Linksy
State Representative
Fifth Middlesex District



Dylan Fernandes
State Representative
Barnstable, Dukes &
Nantucket



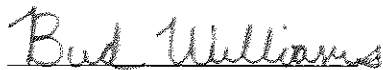
Denise C. Garlick
State Representative
Thirteenth Norfolk District



Kay Khan
State Representative
Eleventh Middlesex District



Marjorie C. Decker
State Representative
Twenty-Fifth Middlesex District



Bud Williams
State Representative
Eleventh Hampden District



Peter V. Kocot
State Representative
First Hampshire District



David M. Rogers
State Representative
Twenty-Fourth Middlesex
District




Carolyn C. Dykema
State Representative
Eighth Middlesex District

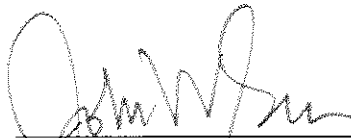



Thomas M. Stanley
State Representative
Ninth Middlesex District

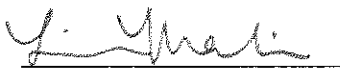


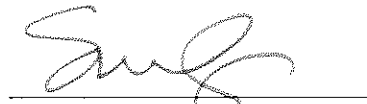
Louis L. Kafka
State Representative
Eighth Norfolk District



Mathew Muratore
State Representative
First Plymouth District

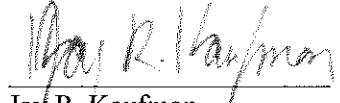

John W. Scibak
State Representative
Second Hampshire District

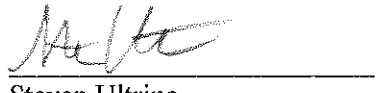

Denise Provost
State Representative
Twenty-Seventh Middlesex
District



Elizabeth A. Malia
State Representative
Eleventh Suffolk District

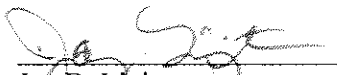

Susannah M. Whippo
State Representative
Second Franklin District

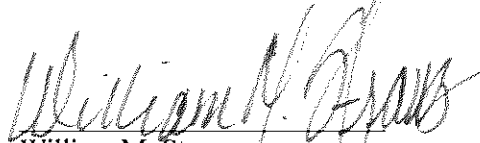

Brian M. Ashe
State Representative
Second Hampden District



Jay R. Kaufman
State Representative
Fifteenth Middlesex District



Steven Ultrino
State Representative
Thirty-Third Middlesex District



Marc T. Lombardo
State Representative
Twenty Second Middlesex
District



Jay D. Livingstone
State Representative
Eighth Suffolk District



William M. Straus
State Representative
Tenth Bristol District

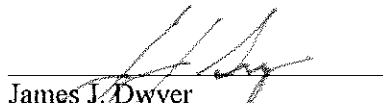

John H. Rogers
State Representative
Twelfth Norfolk District



Steven S. Howitt
State Representative
Fourth Bristol District

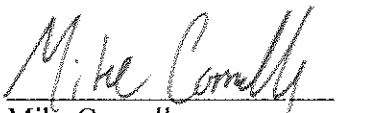

Paul R. Heroux
State Representative
Second Bristol District

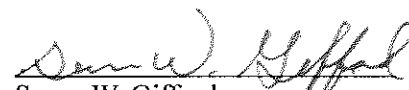

Byron Rushing
State Representative
Ninth Suffolk District

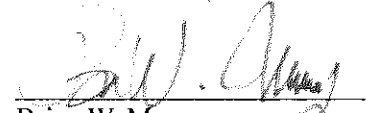

Natalie Higgins
State Representative
Fourth Worcester District



James J. Dwyer
State Representative
Thirtieth Middlesex District

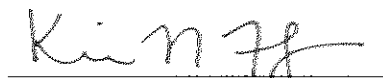

Robert M. Koczera
State Representative
Eleventh Bristol District



Mike Connolly
State Representative
Twenty-Sixth Middlesex District



Susan W. Gifford
State Representative
Second Plymouth District

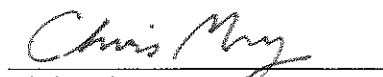

Brian W. Murray
State Representative
Tenth Worcester District

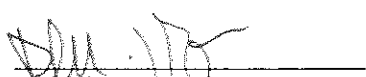

Sarah K. Peake
State Representative
Fourth Barnstable District


Kimberly N. Ferguson
State Representative
First Worcester District


James J. O'Day
State Representative
Fourteenth Worcester District


Aaron Vega
State Representative
Fifth Hampden District


Christopher M. Markey
State Representative
Ninth Bristol District


Daniel M. Donahue
State Representative
Sixteenth Worcester District

Christine P. Barber
State Representative
Thirty-Fourth Middlesex District

Gerard Cassidy
State Representative
Ninth Plymouth District

Paul F. Tucker
State Representative
Seventh Essex District

Danielle W. Gregoire
State Representative
Fourth Middlesex District

James M. Murphy
State Representative
Fourth Norfolk

Diana DiZoglio
State Representative
Fourteenth Essex District

Ruth B. Balsler
State Representative
Twelfth Middlesex District

Paul Brodeur
State Representative
Thirty-Second Middlesex District

Michael J. Finn
State Representative
Sixth Hampden District

Kate Hogan
State Representative
Third Middlesex District

Michael S. Day
State Representative
Thirty-First Middlesex District

Jennifer E. Benson
State Representative
Thirty-Seventh Middlesex District

RoseLee Vincent
State Representative
Sixteenth Suffolk District

Sheila C. Harrington
State Representative
First Middlesex District

Todd M. Smola
State Representative
First Hampden District

Frank I. Smizik
State Representative
Fifteenth Norfolk District

Carlos González
State Representative
Tenth Hampden District

Stephan Hay
State Representative
Third Worcester District

Jack Lewis
State Representative
Seventh Middlesex District

Carmine L. Gentile
State Representative
Thirteenth Middlesex District

Joseph W. McGonagle, Jr.
State Representative
Twenty-Eighth Middlesex District

Michelle M. DuBois
State Representative
Tenth Middlesex District

Paul A. Schmid, III
State Representative
Eighth Bristol District

Solomon Goldstein-Rose
State Representative
Third Hampshire District

Sean Garballey
Sean Garballey
State Representative
Twenty-Third Middlesex District

Cory Atkins
Cory Atkins
State Representative
Fourteenth Middlesex District

Russell E. Holmes
Russell E. Holmes
State Representative
Sixth Suffolk District

Thomas P. Walsh
Thomas P. Walsh
State Representative
Twelfth Essex District

David T. Vieira
David T. Vieira
State Representative
Third Barnstable District

Colleen M. Garry
Colleen M. Garry
State Representative
Thirty-Sixth Middlesex District

Kevin G. Honan
Kevin G. Honan
State Representative
Seventeenth Suffolk District

James M. Kelcourse
James M. Kelcourse
State Representative
First Essex District

David K. Muradian, Jr.
David K. Muradian, Jr.
State Representative
Ninth Worcester District

Brendan P. Crighton
Brendan P. Crighton
State Representative
Eleventh Essex District

Mark J. Cusack
Mark J. Cusack
State Representative
Fifth Norfolk District

Ann-Margaret Ferrante
Ann-Margaret Ferrante
State Representative
Fifth Essex District

Carole A. Fiola
Carole A. Fiola
State Representative
Sixth Bristol District

Mary S. Keefe
Mary S. Keefe
State Representative
Fifteenth Worcester District

Adrian C. Madaro
Adrian C. Madaro
State Representative
First Suffolk District

Juana Matias
Juana Matias
State Representative
Sixteenth Essex District

Patricia A. Haddad
Patricia A. Haddad
State Representative
Fifth Bristol District

Nick Collins
Nick Collins
State Representative
Fourth Suffolk District

James R. Miceli
James R. Miceli
State Representative
Nineteenth Essex District

Donald H. Wong
Donald H. Wong
State Representative
Ninth Essex District

Antonio F. D. Cabral
Antonio F. D. Cabral
State Representative
Thirteenth Bristol District

Linda Dean Campbell
Linda Dean Campbell
State Representative
Fifteenth Essex District