

By Mr. Valianti of Marlborough, petition of Daniel J. Valianti and other members of the General Court relative to an investigation and study of the potential of savings from the use of energy futures and options by agencies and divisions of the Commonwealth. Government Regulations.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Four.

AN ACT TO STUDY THE SAVINGS POTENTIAL FROM THE USE OF ENERGY FUTURES AND OPTIONS BY AGENCIES AND DIVISIONS OF 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. The Secretaries of Consumer Affairs and
2 Administration and Finance, in consultation with the Commis-
3 sioner of the Division of Energy Resources (DOER), shall conduct
4 a study of the potential use of fuel procurement funds by divisions,
5 authorities, agencies, and municipalities of the Commonwealth to
6 purchase futures, options, swaps, or other derivative contracts for
7 fuel.

1 SECTION 2. The study shall:

2 1) examine any potential advantages of the use of such funds,
3 including —

4 a) protection for (i) state and local government entities; and
5 (ii) divisions, authorities, agencies, and municipalities of the
6 Commonwealth from unanticipated surges in the price of fuel; and

7 b) increasing the effectiveness of fuel purchase programs.

8 2) examine any potential disadvantages of the use of such funds
9 including reduction in funds available for fuel purchases, and
10 waste, fraud, or abuse.

11 3) further examine —

12 a) the extent to which new authority would be needed for the
13 use of such funds;

14 b) the extent to which the use of such funds would conflict with
15 existing law;

16 c) the extent to which the use of futures, options, swaps, or
17 affiliated derivatives could provide effective protection to end
18 users from unanticipated surges in the price of energy fuels; and

19 d) how state and municipal government entities, and others
20 could be educated in the prudent use of futures, options on futures,
21 and swaps to maximize their purchasing effectiveness and protect
22 themselves against unanticipated surges in the price of fuel.

1 SECTION 3. The Secretaries of Consumer Affairs and
2 Administration and Finance, in consultation with the Commis-
3 sioner of DOER, may —

4 1) initiate a pilot program in cooperation with one or more
5 divisions, authorities, agencies, and municipalities of the
6 Commonwealth to directly, or indirectly through third parties,
7 purchase futures, options, swaps, or other derivative contracts for
8 fuel; and

9 2) initiate a pilot program to educate government entities and
10 divisions, authorities, agencies, and municipalities of the
11 Commonwealth on the prudent and effective use of futures and
12 options on futures to increase their protection against
13 unanticipated surges in the price of fuel and thereby increase the
14 efficiency of their fuel purchases;

15 3) implement such procedures as are necessary or appropriate
16 to ensure the lowest purchase price to the participants for such
17 energy products, through competitive bidding programs or
18 otherwise;

19 4) direct steps to minimize or eliminate, to the extent
20 practicable, the participants' exposure to energy price risk by
21 purchasing energy products pursuant to fixed price contract, price
22 cap contract, commodity swaps, or by engaging in a bona fide
23 hedging transaction in (a) energy futures and options contract
24 that are traded on an exchange designated for such trading by
25 the commodity futures trading commission; or (b) commodity
26 swaps transaction sponsored by an established financial
27 institution.

28 The Secretaries shall, in connection with transactions under this
29 section, use due judgment and care under the circumstances then
30 prevailing.

31 The Secretaries, or their designees, may consult with
32 representatives of the commodity futures, options trading, and
33 swaps transaction industry who are specialists in bona fide
34 hedging transaction with energy futures, options, and swaps
35 contracts and transactions.

36 Definitions: —

37 “Energy futures contract” — an obligation to make or take
38 delivery of a specific quantity and quality of crude oil, gasoline,
39 heating oil, natural gas, propane, or other energy product at a
40 specific location at a future date and time;

41 “Bona fide hedging transaction” — a transaction in a contract
42 for future delivery on any contract market, in a commodity
43 option, where such transactions or positions normally represent
44 a substitute for transactions to be made or positions to be taken
45 at a later time in a physical marketing channel, and where they
46 are economically appropriate to the reduction of risks in the
47 conduct and management of a commercial enterprise;

48 “Commodity swap transaction” — a contract to supply an
49 energy product to a customer at an established price, agreed to
50 in advance, typically involving a major financial institution, as
51 third party, who swaps one or more parties’ purchase transactions
52 with one or more sell transactions;

53 “Fixed price contract” — a contract to supply an energy
54 product to a customer at a single price, agreed to in advance;

55 “Price cap contract” — a contract to supply an energy product
56 to a customer at a variable price not to exceed a price agreed to
57 in advance, but which may decrease pursuant to agreed terms if
58 market conditions warrant.

