HOUSE DOCKET, NO. 2721 FILED ON: 1/21/2011

HOUSE . . . . . No. 2614

The Commonwealth of Massachusetts

PRESENTED BY:

Lori A. Ehrlich

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 passage of the accompanying:

An Act relative to a coal-free Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Lori A. Ehrlich	*8th Essex*
William N. Brownsberger	☐ *[District]* ☐
Sean Garballey	*23rd Middlesex*
James B. Eldridge	☐ *[District]* ☐
Michael D. Brady	*9th Plymouth*
Jonathan Hecht	*29th Middlesex*
Tom Sannicandro	*7th Middlesex*
John W. Scibak	*2nd Hampshire*
Frank I. Smizik	*15th Norfolk*
Ellen Story	*3rd Hampshire*
Sarah K. Peake	*4th Barnstable*
Brian M. Ashe	*2nd Hampden*
Katherine M. Clark	*Middlesex and Essex*
Denise Provost	*27th Middlesex*

Cleon H. Turner | *1st Barnstable*

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By Ms. Ehrlich of Marblehead, a petition (accompanied by bill, House, No. 2614) of Lori A. Ehrlich and others relative to electric generating facilities located in the commonwealth that uses coal as fuel and the reduction of greenhouse gas emissions. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

An Act relative to a coal-free Commonwealth.

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

SECTION 1: For each electric generating facility located in the commonwealth that uses coal as fuel, the owner and operator shall file a report with the commissioner of the department of energy resources by January 1, 2012 detailing how greenhouse gas emissions emitted by the facility will be reduced consistent with, and at least proportional to, the reductions mandated by chapter 21N of the general laws, including the 2020 statewide greenhouse gas emissions limit adopted by the secretary pursuant to section 4 thereof, and describing how the facility will comply with regulations issued by the United States Environmental Protection Agency regarding the control of Hazardous Air Pollutants under section 112 of the federal Clean Air Act, Standards of Performance for fossil fuel fired steam electric generating units under section 111 of the federal Clean Air Act, the Transport Rule, the National Ambient Air Quality Standards for ozone, NO2 and SO2, and the Greenhouse Gas Tailoring Rule. The report shall include, but not be limited to, the following: (i) An assessment of the feasibility and cost of repowering the facility with natural gas as compared to the costs of installing pollution controls to meet the federal regulations and other greenhouse gas requirements referenced above; and (ii) An assessment of the potential for re-use of the site for alternative uses, including electric generating alternatives that emit few or no greenhouse gas emissions, as well as alternative uses that do not include electric generation. The department of energy resources shall hold public hearings to solicit public comment in response to such reports in each of the regions that have the most significant exposure to air pollutants from coal-fired electric generation facilities.

SECTION 2: On or before January 1, 2013, the commissioner of the department of energy resources shall adopt a plan for replacing all use of coal as an energy resource in the commonwealth by 2020, including a plan for the orderly retirement of all baseload coal-fired electric generating facilities and replacement with clean energy alternatives such as electric transmission upgrades, energy efficiency, demand response and renewable energy alternatives

25 having low or no emissions of greenhouse gases and other regulated air pollutants. The
26 commissioner shall consult with all state agencies and regional authorities with jurisdiction over
27 electric generation, electric transmission, air emissions, public health, economic development
28 and the provision of reliable and affordable electrical service, to ensure the plan can be
29 implemented in an efficient and cost-effective manner while promoting economic development,
30 reducing the public health and climate impacts of electric generation, and increasing energy
31 security for the commonwealth. The plan shall take into account the greenhouse gas emission
32 reductions mandated by chapter 21N of the general laws, including the 2020 statewide
33 greenhouse gas emissions limit adopted by the secretary pursuant to section 4 thereof, as well as
34 regulations issued by the United States Environmental Protection Agency regarding the control
35 of Hazardous Air Pollutants under section 112 of the federal Clean Air Act, Standards of
36 Performance for fossil fuel fired steam electric generating units under section 111 of the federal
37 Clean Air Act, the Transport Rule, the National Ambient Air Quality Standard for ozone, NO2
38 and SO2, and the Greenhouse Gas Tailoring Rule. The plan also shall be informed by the reports
39 and related public comments submitted pursuant to section 1 of this act. The plan shall include,
40 but not be limited to, the following: (i) an analysis of the extent to which each coal-fired electric
41 generating facility can or cannot operate in compliance with existing and reasonably foreseeable
42 state and federal environmental regulations, as well as the feasibility and cost of any
43 modifications necessary to meet the requirements of such regulations; (ii) an assessment of the
44 potential for re-use of each coal-fired electric generating facility site for alternatives that emit
45 few or no greenhouse gas emissions or other regulated air pollutants, including electric
46 generation and non-generation alternatives; (iii) an assessment of the potential for replacing or
47 repowering each such coal-fired electric generating facility with a combined cycle natural gas
48 power plant; (iv) an assessment of measures to minimize economic impacts on host communities
49 with respect to each coal-fired electric generating facility that ceases operation on or before
50 January 1, 2020, with such assessment taking into account costs such as any reductions in
51 property tax revenues and benefits such as reduced burdens on emergency and public health
52 services; (v) an analysis of whether and to what extent alternatives are needed to ensure electric
53 system reliability, such as increased energy efficiency, demand response, low- or no-emissions
54 renewable energy, electric transmission upgrades and quick-start natural gas powered electric
55 generation; and (vi) an assessment of site contamination as well as remediation measures
56 necessary to prepare the host site for alternative uses.

57 Prior to adopting a final plan, the department of energy resources shall hold public
58 hearings in each of the regions that have the most significant exposure to air pollutants from
59 coal-fired electric generation facilities.

60 SECTION 3: Chapter 25A of the general laws, as appearing in the 2008 edition, is
61 hereby amended by inserting after section 11I the following sections:

62 Section 11J. (1) The department shall establish a greenhouse gas emissions performance
63 standard for all retail electricity suppliers selling electricity to end-use customers in the

64 commonwealth. Beginning January 1, 2020, the greenhouse gas emissions performance standard
65 that must be achieved by each electric generating facility from which retail electricity suppliers
66 purchase electricity for delivery to end-use customers in the commonwealth shall be the lower of
67 (a) one thousand one hundred pounds of greenhouse gases per megawatt hour; or (b) the average
68 greenhouse gas emissions of all electric generating facilities in operation during the prior
69 calendar year in the ISO-New England control area. Such emissions performance standard shall
70 apply to all electricity delivered to end-use customers in the commonwealth on or after January
71 1, 2020, without regard to when the electricity was purchased or contracted for purchase.

72 (2) Any electric generation facility having a first commercial operation date after January
73 1, 2011 and located in the commonwealth must comply with the greenhouse gas emissions
74 performance standard established in subsection (1) of this section from the time of its first
75 commercial operation date and continuing thereafter.

76 (3) In determining the rate of emissions of greenhouse gases for electric generating
77 facilities under this section, the total emissions associated with producing electricity shall be
78 included.

79 (4) The department shall establish an output-based methodology to ensure that the
80 calculation of emissions of greenhouse gases for a cogeneration or combined heat and power
81 facility recognizes the total usable energy output of the process, and includes all greenhouse
82 gases emitted by the facility in the production of both electrical and thermal energy.

83 (5) The department shall adopt regulations to implement and enforce the greenhouse gas
84 emissions performance standard under this section, including regulations establishing procedures
85 for verification of greenhouse gas emissions and rules establishing penalties for any failure to
86 comply with the greenhouse gas emissions performance standard.

87 Section 11K. There is hereby established within the department of energy resources and
88 set upon the books of the commonwealth a Community Repowering Fund for the purpose of
89 mitigating impacts of the retirement of coal-fired electric generation facilities on employees of
90 such facilities and on the municipalities where such facilities are located. There shall be credited
91 to the fund revenue from appropriations or other monies authorized by the general court and
92 specifically designated to be credited to the fund, and gifts, grants, private contributions,
93 repayment of loans, investment income earned on the fund's assets, and any other sources.
94 Money remaining in the fund at the end of a fiscal year shall not revert to the general fund.

95

96 The department shall maintain the fund as a separate fund, and shall cause it to be audited
97 by an independent accountant on an annual basis in accordance with accepted accounting
98 principles.

100 The commissioner shall be treasurer, trustee, and custodian of the fund, and shall
101 administer such fund in accordance with the provisions of this section, and shall pay all warrants
102 drawn upon it in accordance with the provisions of this section and with such regulations as the
103 department may promulgate.

104

105 A governing board of not less than nine individuals with an interest in matters relating to
106 the general purpose of the fund shall assist the department in matters related to the fund and in
107 the implementation of this section. The governing board shall include: the commissioner, who
108 shall serve as chair; the secretary of energy and environmental affairs or a designee; the secretary
109 of labor and workforce development or a designee; the secretary of housing and economic
110 development or a designee; a representative of a labor organization representing electric-
111 generation facilities workers recommended by the president of the Massachusetts AFL-CIO; a
112 representative of the Massachusetts Municipal Association; and three members to be appointed
113 by the governor, who shall have knowledge and experience in one or more of the following
114 areas: regional environmental concerns; renewable energy and energy efficiency; and worker
115 training programs pertaining to renewable energy or energy efficiency.

116 SECTION 4: Section 2(a) of Chapter 23J of the general laws, as appearing in the 2008
117 official edition, is hereby amended by striking subsection xi and replacing it with the following –

118 – (xi) establishing programs to ensure smooth transitions for workers from coal or
119 oil-fired electric power generating facilities to clean energy jobs; and (xii) performing any other
120 actions necessary to effectuate the state's public interests.

121 SECTION 5: Chapter 111 of the general laws, as appearing in the 2008 official edition,
122 is hereby amended by inserting after section 142O the following section:-

123 Section 142P. (a) There shall be a Pollution Public Health Effects Mitigation Trust Fund
124 to support research and education regarding the health impacts of pollution on citizens of the
125 commonwealth. The fund shall be administered by the commissioner. Expenditures from the
126 fund shall be only for the purposes set forth in subsection (d).

127 (b) Revenues credited to the fund shall be from the following sources:

128 (1) funds appropriated by the general court;

129 (2) funds received from federal, state or other sources for the purpose of evaluating the
130 health impacts of pollution;

131 (3) costs recovered or otherwise received from parties responsible for violating the terms
132 of any valid air emissions permit;

133 (4) fees imposed pursuant to subsection (c); and

134 (5) interest earned on any monies in the fund.

135 (c) (1) A pollution mitigation fee shall be established in an amount not less than 20 cents
136 for each pound of any air pollutant emitted by any major source as defined in 42 U.S.C. section
137 7412(a). The fee shall be remitted to the department of revenue on the last day of each month
138 based on the amount of air pollutants emitted during the preceding month.

139 (2) An owner of a major source of any air pollutant shall be liable for the fee until it has
140 been paid to the commonwealth.

141 (3) All fees collected pursuant to this section shall be deposited in the fund and shall be
142 disbursed for the purposes set forth in subsection (d). The state treasurer shall not deposit or
143 transfer revenues generated pursuant to subsection (b) to the General Fund or any other fund
144 other than the Pollution Public Health Effects Mitigation Trust Fund.

145 (4) The commissioner shall set the amount of the pollution public health mitigation fee,
146 which shall be not less than 20 cents for each pound of any air pollutant emitted by each major
147 source.

148 (d) The commissioner shall use money from the fund:

149 (1) to provide funds for the study of the public health impacts from air pollutants,
150 including but not limited to acute local impacts such as asthma, upper respiratory conditions or
151 premature death; such research or studies may be conducted by the department or by a qualified
152 independent medical or public health expert, organization or educational institution;

153 (2) to educate the public in the vicinity of any existing or proposed major source of any
154 air pollutant regarding the actual or potential health impacts associated with air pollutants
155 emitted by such major source;

156 (3) to provide funds for research regarding methods or technologies for mitigating health
157 impacts associated with the emission of air pollutants; and

158 (4) reasonable administrative and personnel expenses related to the administration of the
159 fund and enforcement of this section.

160 (e) The commissioner shall administer the fund in accordance with this section. The
161 commissioner shall develop procedures governing the expenditure of, and accounting for money
162 expended from, the fund and shall also maintain accounting records showing the income and
163 expenses of the fund. The commissioner shall ensure that there are adequate moneys available in
164 the fund to carry out this section.

165 SECTION 6. Section 150A of Chapter 111 of the General Laws is hereby amended in
166 paragraph one by inserting in the definition of "Refuse," following the word "sewage," the words
167 "and coal ash."

168 SECTION 7. Section 150A of Chapter 111 of the general laws is hereby amended in
169 paragraph one by inserting before the definition of "Department," the following definition:

170 – "Coal Ash," waste produced from the combustion of coal, including but not limited to
171 fly ash, bottom ash and slag, and including wastes associated with the combustion of coal when
172 added to fly ash, bottom ash or slag.

173 SECTION 8. Section 150A of Chapter 111 of the General Laws is hereby amended in
174 paragraph one by inserting after the definition of "Facility," the following definition:

175 – "Fill," a material used to fill a cavity, passage or hole in the ground, or used to
176 raise the level of the ground or to alter the grades of the ground.

177 SECTION 9. Section 150A of Chapter 111 of the General Laws is hereby further
178 amended by striking the paragraph added by Chapter 118 of the Acts of 1976 and inserting in
179 place thereof the following paragraphs:

180 As of the effective date of this act, coal ash shall not be used as fill, deposited in a
181 landfill, or disposed of by burial, until such time as a site assignment for such site has been
182 obtained from the board of health. The use of coal ash as fill at any site prior to the effective date
183 of this act does not require site assignment. Construction and expansion of new surface
184 impoundments or waste ponds for the storage or disposal of coal ash shall be prohibited upon
185 passage of this legislation.

186 The requirements of this section shall not apply to coal ash used as a raw material for
187 concrete block manufacture, base for road construction, or coal ash generated from a family
188 residence. A person who uses coal ash for such purposes can do so without assignment or
189 approval from the department or local board of health, provided, however, the department and
190 local board of health shall have jurisdiction to determine, after notice and hearing, that the use or
191 storage of coal ash has created a nuisance condition by reason of odor, dust, fires, smoke, the
192 breeding or harboring of rodents, flies or vermin, or other causes, and to prevent or order
193 abatement thereof.

194 A person storing coal ash shall do so in a manner that does not create a nuisance
195 condition, cause a discharge of pollutants to waters of the commonwealth in violation of chapter
196 21 of the general laws or regulations promulgated thereunder, or create a condition of air
197 pollution. If the department or local board of health determines that coal ash storage has a
198 significant potential to create a nuisance condition, cause a discharge of pollutants to waters of
199 the commonwealth in violation of chapter 21 or regulations promulgated thereunder, or create a

200 condition of air pollution, the department and local board of health shall require approval
201 pursuant to this section for such storage. A person who stores more than 100 cubic yards of coal
202 ash at any one time shall make a one-time notification to the department prior to commencement
203 of such storage. In the case of storage that began prior to the effective date of this section, the
204 person causing such storage shall provide notice to the department or local board of health within
205 180 days of the effective date of this section.

206 As of the effective date of this act, ongoing use of coal ash as refuse, except for use as
207 fill, may continue as an interim use where either the generator or user of the coal ash submits an
208 application for a permit to the department or local board of health within 180 days of the
209 effective date of this act. Such interim use may continue until such time as the department or
210 local board of health issues an approval or denial of the use, or one year from the date the
211 application was submitted to the department or local board of health, whichever is earlier. At its
212 discretion, the department or local board of health may extend the time period for making a
213 determination regarding the interim use when further information is required before the
214 department or local board of health can make a determination on the application. In no case
215 shall this interim period exceed two years from the date the application was submitted to the
216 department or local board of health.

217 SECTION 10. Chapter 164 of the general laws, as appearing in the 2010 official edition,
218 is hereby amended by inserting after section 69I the following section:

219 Section 69I½. Notwithstanding the provisions of this chapter or any law to the contrary,
220 a facility having a first date of commercial operation on or after January first, two thousand
221 eleven, and any facility re-commencing operation after one year or more of non-operation, shall
222 not utilize, combust or gasify coal.