

HOUSE No. 4072

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relating to clean energy.

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. Section 35FF of chapter 10 of the General Laws, as amended by section 1
2 of chapter 307 of the acts of 2008, is hereby further amended by striking out, in subsection (b),
3 the words “the advisory committee established in subsection (d) and”.

4 SECTION 2. Said section 35FF of chapter 10 of the General Laws, as so appearing, is
5 hereby further amended by striking out, in subsection (c), the words “and in consultation with the
6 advisory committee”.

7 SECTION 3. Said section 35FF of chapter 10 of the General Laws, as so appearing, is
8 hereby further amended by striking out subsection (d).

9 SECTION 4. Section 2 of chapter 23J of the General Laws, as inserted by section 2 of
10 chapter 307 of the acts of 2008, is hereby amended by striking out subsection (b), and inserting
11 in place thereof the following subsection:-

12 (b) The center shall be governed and its corporate powers exercised by a board of
13 directors consisting of 11 directors: 1 of whom shall be the secretary of energy and

14 environmental affairs or his designee, who shall serve as a chair; 1 of whom shall be the
15 secretary of housing and economic development or his designee; 1 of whom shall be a chair of
16 the New England Clean Energy Council; 1 of whom shall be the commissioner of the department
17 of energy resources or his designee; 1 of whom shall be the executive director of the
18 Massachusetts Workforce Alliance; 1 of whom shall be the secretary of administration and
19 finance or her designee; 1 of whom shall be the secretary of labor and workforce development or
20 her designee; and 4 of whom shall be appointed by the governor, 1 of whom shall be a venture
21 capitalist or a chief executive officer of a Massachusetts-based clean energy corporation with
22 expertise in clean energy technologies in the commonwealth, 1 of whom shall be the president of
23 the University of Massachusetts or a Massachusetts community college or his designee, 1 of
24 whom shall have knowledge of electricity distribution, generation, supply or power marketing,
25 and 1 of whom shall be a union representative. The board may, by majority vote, delegate any
26 amount of its authority to an executive committee comprised of members of the board, the board
27 or the center staff. Any such delegation of authority may be revoked at any time by majority vote
28 of the board. Each of the 4 directors appointed by the governor shall serve for a term of 5 years,
29 except that in making his initial appointments, the governor shall appoint 1 director to serve for a
30 term of 1 year, 1 director to serve for a term of 2 years, 1 director for a term of 3 years, and 1
31 director for a term of 4 years. A director shall be eligible for reappointment. A director may be
32 removed from his appointment by the governor for cause. A person appointed to fill a vacancy
33 in the office of an appointed director of the board shall be appointed in a like matter and shall
34 serve for only the unexpired term of the director.

35 SECTION 5. Said section 2 of chapter 23J, as so appearing, is hereby further amended
36 by adding the following subsection:-

37 (l) At the election of the board of directors of the center or its designee, with notice to the
38 group insurance commission, employees of the center shall be eligible to participate in any and
39 all group insurance programs and benefits administered by the group insurance commission
40 under chapter 32A, and each participating employee shall be considered to be an “employee” for
41 the purposes of section 2 of chapter 32A, but no such employee of the center shall, as a result of
42 such participation, be determined to be an “employee” for the purposes of section 10 of chapter
43 32A. The center shall reimburse the commonwealth for the commonwealth's share of the
44 premium and applicable administrative expenses of such participation, which share may be
45 allocated between the center and the participating employees as considered appropriate by the
46 center, and any employee payments in reimbursement of the premium and applicable
47 administrative expenses may be structured by the center through a plan that is consistent with 26
48 U.S.C. Section 125.

49 SECTION 6. Paragraph (a)(8) of section 3 of chapter 23J of the General Laws, as so
50 appearing, is hereby amended by adding the following words at the end of the paragraph:-

51 including but not limited to making, or delegating to a lessee or a licensee to make,
52 improvements, construction, alterations or renovations to the real property of the center, or any
53 interest thereon, provided, that where such activity involves the expenditure of funds from the
54 Massachusetts Renewable Energy Trust Fund, or where such activity is funded entirely by other
55 funds but is estimated to cost less than \$500,000, it shall not be a capital facility project and the
56 provisions of sections 38A½ to 38O, inclusive, of chapter 7, sections 44A to 44J, inclusive, of
57 chapter 149, section 39M of chapter 30 of the General Laws, and related statutes, shall not apply
58 thereto;.

59 SECTION 7. Section 3 of said chapter 23J of the General Laws, as so appearing, is
60 hereby amended by adding the following provision:-

61 (31) to administer the Massachusetts Renewable Energy Trust Fund in accordance with
62 section 9.

63 SECTION 8. Chapter 23J of the General Laws, as so appearing, is hereby further
64 amended by adding after section 8 the following section:-

65 Section 9. (a) There is hereby established and placed within the center a separate trust
66 fund to be known as the Massachusetts Renewable Energy Trust Fund, in this section called “the
67 fund”, formerly placed within the Massachusetts Technology Park Corporation, established in
68 section 4E of chapter 40J of the General Laws. The fund shall be administered by a director
69 appointed by the board. The director shall report to the center executive director. The center shall
70 hold the fund in an account or accounts separate from other funds. There shall be credited to the
71 fund all amounts collected under section 20 of chapter 25 and any income derived from the
72 investment of amounts credited to the fund. All amounts credited to the fund shall be held in trust
73 and used solely for activities and expenditures consistent with the public purpose of the fund as
74 set forth in subsection (b), including the ordinary and necessary expenses of administration and
75 operation associated with the fund. Unless otherwise specified, all monies of the center, from
76 whatever source derived, shall be paid to the treasurer of the center. The monies shall be
77 deposited in the first instance by the treasurer in national banks, trust companies or banking
78 companies in compliance with section 34 of chapter 29. Funds in these accounts shall be paid out
79 on the warrant or other order of the treasurer of the center or other person that the board may
80 authorize to execute warrants.

81 (b) The center shall draw upon monies in the fund for the public purpose of generating
82 the maximum economic and environmental benefits over time from renewable energy to the
83 ratepayers of the commonwealth through a series of initiatives which exploit the advantages of
84 renewable energy in a more competitive energy marketplace by promoting the increased
85 availability, use and affordability of renewable energy, by making operational improvements to
86 existing renewable energy projects and facilities which, in the determination of the center, would
87 yield more significant results in the development of renewable energy if said funds were made
88 available for the creation of new renewable energy facilities, and by fostering the formation,
89 growth, expansion and retention within the commonwealth of preeminent clusters of renewable
90 energy and related enterprises, institutions and projects, which serve the citizens of the
91 commonwealth consistent with a strategic plan or annual operational plan.

92 (c) Public interests to be advanced through the center's actions shall include, but not be
93 limited to, the following: (i) the development and increased use and affordability of renewable
94 energy resources in the commonwealth and the new england region; (ii) the protection of the
95 environment and the health of the citizens of the commonwealth through the prevention,
96 mitigation and alleviation of the adverse pollution effects associated with certain electricity
97 generation facilities; (iii) the maximization of benefits to consumers of the commonwealth
98 resulting from increased fuel and supply diversity; (iv) the creation of additional employment
99 opportunities in the commonwealth through the development of renewable technologies (v) the
100 stimulation of increased public and private sector investment in, and competitive advantage for,
101 renewable energy and related enterprises, institutions and projects in the commonwealth and the
102 new england region; and (vi) the stimulation of entrepreneurial activities in these and related
103 enterprises, institutions and projects.

104 (d) In furtherance of any strategic and operational plans, and other public purposes and
105 interests, the center may expend monies from the fund to make grants, contracts, loans, equity
106 investments, energy production credits, bill credits, or rebates to customers; to provide financial
107 or debt service obligation assistance; or to take any other actions, in such forms, under such
108 terms and conditions and under such selection procedures as the center deems appropriate and
109 otherwise in a manner consistent with good business practices; provided, however, that the
110 center shall generally employ a preference for competitive procurements; provided further, that
111 the center shall endeavor to leverage the full range of the resources, expertise and participation of
112 other state and federal agencies and instrumentalities in the design and implementation of
113 programs under this section; and provided further, that the board has determined and
114 incorporated into the minutes of its proceedings a finding that such actions are calculated to
115 advance the public purpose and public interests set forth in this section, including, but not limited
116 to, the following: (i) the growth of the renewable energy-provider industry; (ii) the use of
117 renewable energy by electricity customers in the commonwealth; (iii) public education and
118 training regarding renewable energy; (iv) product and market development; (v) pilot and
119 demonstration projects and other activities designed to increase the use and affordability of
120 renewable energy resources by and for consumers in the commonwealth; (vi) the provision of
121 financing in support of the development and application of related technologies at all levels,
122 including, but not limited to, basic and applied research and commercialization activities; (vii)
123 the design and making of improvements to existing renewable energy projects and facilities as
124 defined herein which were in operation as of December 31, 1997; and (viii) matters related to the
125 conservation of scarce energy resources.

126 (e) Subject to the approval of the board, and not inconsistent with any strategic or annual
127 operational plans, investment activity of monies from the fund may consist of the following: (i)
128 an equity fund, to provide risk capital to renewable energy enterprises, institutions and projects;
129 (ii) a debt fund, to provide loans to energy enterprises, institutions, projects, intermediaries and
130 end-users; and (iii) a market growth assistance fund, to be used to attract private capital to the
131 equity and debt funds. To implement these investment activities, the center may retain, through a
132 bid process, public or private sector investment fund managers, who shall have prior knowledge
133 and experience in fund management and possess related skills in renewable energy and related
134 technologies development, to direct the investment activity described in this section and to seek
135 other fund co-sponsors to contribute public and private capital from the commonwealth and other
136 states; provided, however, that such capital shall be appropriately segregated. The managers,
137 subject to the approval of the board, may retain necessary services and consultants to carry out
138 the purposes of the fund. The managers shall develop a business plan to guide investment
139 decisions, which shall be approved by the board before any expenditures from the trust fund, and
140 which shall be consistent with the plan for the fund as adopted by the board.

141 (f) For the purposes of expenditures from the fund, renewable energy technologies
142 eligible for assistance shall mean technologies eligible as class I or class II renewable energy
143 generating sources under section 11F of chapter 25A, micro-combined heat and power units less
144 than 60 kilowatts, solar hot water, geothermal heating and cooling projects, biomass thermal and
145 storage and conversion technologies connected to qualifying generation projects; provided,
146 however, that the board may make grants from the fund, not to exceed a total of \$4 million
147 annually, in support of Massachusetts-based public and private enterprises developing new
148 technologies to significantly increase the efficiency of the internal combustion engine. The

149 center shall make grants, loans or other support from the fund, not to exceed \$3 million annually
150 for hydroelectric facilities, other than pumped storage facilities in the commonwealth,
151 constructed before December 31, 1997 for upgrades to increase efficiency or capacity and to
152 reduce environmental impacts. Such funds may also be used for appropriate joint energy
153 efficiency and renewable projects, as well as for investment by distribution companies in
154 renewable energy and distributed generation opportunities, if consistent with this section. The
155 following technologies or fuels shall not be considered renewable energy supplies: coal, oil,
156 natural gas except when used in fuel cells or micro-combined heat and power, and nuclear
157 power.

158 (g) The use by the center of monies to implement this section shall be deemed to be an
159 essential governmental function. Notwithstanding any general or special law to the contrary, no
160 expenditure from the fund shall be deemed to involve a capital facility project, and the center
161 shall take no action which contravenes the commonwealth's reversionary interest in any of its
162 real property. The center, any purchasing cooperative established thereby and all members of any
163 such purchasing cooperative may participate in any energy-related purchasing, aggregating or
164 similar program established and operated by the health and educational facilities authority and
165 such participation shall be deemed to be in furtherance of an essential governmental function.

166 (h) Notwithstanding any general or special law to the contrary, including without
167 limitation any laws related to the procurement of electricity, the center shall, upon the written
168 request of the governor, transfer moneys in the fund, in an amount not exceeding \$17 million in
169 the aggregate, to the commonwealth for deposit in the general fund. As a condition subsequent to
170 any such transfer, the commonwealth, acting by and through the department of energy resources
171 or a successor agency, shall enter into an agreement with the center under which the

172 commonwealth, at the direction of the center, shall enter into contracts, for terms not to exceed
173 20 years, with owners of facilities that generate electricity using renewable energy technologies,
174 wholesale power marketers or other market intermediaries selling such electricity, for the
175 purchase by the commonwealth, for its own use or for the use of any municipal electric
176 department, public instrumentality or other governmental or nongovernmental entity in the
177 commonwealth, of electricity produced by renewable energy technologies. The center shall
178 determine the particular types of technologies which shall be the subject of any such contract
179 based on such criteria as it shall deem advisable, including without limitation retail consumer
180 choices of such renewable energy technologies. The aggregate dollar amount of the green power
181 premium associated with electricity purchases to be made by the commonwealth for its own use
182 under such contracts shall have a present value, determined according to such discount rate as
183 shall be mutually agreeable to the center and the commonwealth, of such amount as shall be
184 transferred under the first sentence of this paragraph. The green power premium shall be
185 determined by subtracting from the total amount of the purchase price the undifferentiated
186 commodity price for electricity under then-current commonwealth contracts. The maximum
187 payment in any 1 fiscal year under all such contracts shall not exceed \$5 million. The
188 commonwealth shall be indemnified under such contracts by the owners or power marketers on
189 such terms as the center shall deem commercially reasonable. The amounts collected under
190 section 20 of chapter 25 shall be impressed with a trust for the benefit of the fund. To facilitate
191 the purchase by the center of electricity produced by renewable energy technologies or of
192 certificates produced under the renewable energy portfolio standard regulations of the
193 department of energy resources representing the generation attributes of electrical energy
194 produced by renewable energy technologies, and in consideration of the sale of such electricity

195 or certificates, the commonwealth shall covenant with the sellers of such electricity or
196 certificates that the amounts collected under said section 20 shall not be diverted from the fund
197 and that the rates of the mandatory charges under said section 20 shall not be reduced during the
198 term, which shall not exceed 20 years, of any contract entered into by the center for the purchase
199 of such electricity or certificates below a level which shall enable the center to fulfill the terms of
200 such contracts. In furtherance of the public purposes of the fund, income derived from the
201 investment of amounts collected under said section 20 shall be expended by the center as
202 provided in subsection (a) and, in the discretion of the center, in furtherance of the public
203 purposes of the center and for such costs of departments and agencies that support or are
204 otherwise consistent with the purposes of the fund.

205 SECTION 9. Section 20 of Chapter 25 of the General Laws, as amended by section 11 of
206 chapter 169 of the acts of 2008, is hereby amended by striking out, in paragraph (a), the words
207 “4E of chapter 40J” and inserting in place thereof the following words:-

208 9 of chapter 23J.

209 SECTION 10. Said section 20 of chapter 25, as so appearing, is hereby further amended
210 by striking out, in paragraph (b), the words “Massachusetts Technology Park Corporation, doing
211 business as the Massachusetts Technology Collaborative, or the governing board, as applicable”,
212 and inserting in place thereof the following words:- Clean Energy Technology Center.

213 SECTION 11. Paragraph (b) of said section 20 of chapter 25, as so appearing, is hereby
214 further amended by striking out, in both instances, the words “ the collaborative”, and inserting
215 in place thereof, in each instance, the following words:- the center.

216 SECTION 12. Section 3 of chapter 40J of the General Laws, as amended by section 48
217 of chapter 169 of the acts of 2008, is hereby amended by striking out the second and third
218 paragraphs and inserting in place thereof the following 2 paragraphs:-

219 The corporation shall be governed and its corporate powers exercised by a board of
220 directors, which shall consist of the secretary of housing and economic development or his
221 designee, the secretary of administration and finance or her designee, and the commissioner of
222 higher education or his designee, 2 members to be appointed from a list of persons nominated by
223 the president of the senate, 2 persons to be appointed from a list of persons nominated by the
224 speaker of the house of representatives, and 16 persons to be appointed by the governor, 6 of
225 whom shall be chief executive officers of post-secondary educational institutions or
226 distinguished members of the engineering or scientific faculties of those institutions, or members
227 of other appropriate faculties, and among said 6, at least 2 of whom shall be representatives of
228 public post-secondary educational institutions, and 6 of whom shall be chief executive officers,
229 chairpersons or chief engineers of businesses concerned with any technology which may come
230 within the purview of this chapter, and 2 of whom shall be recommended by the Massachusetts
231 AFL-CIO. Each director appointed from the list of nominations recommended by the president
232 of the senate and the speaker of the house of representatives shall serve a term of 2 years to be
233 coterminous with the legislative session of the general court. Each director appointed by the
234 governor shall serve for a term of 5 years and thereafter until his successor is appointed. Any
235 person appointed to fill a vacancy on the board shall be appointed in a like manner and shall
236 serve for the unexpired term of the predecessor director. Any director shall be eligible for
237 reappointment. Any director may be removed by the governor for cause. Twelve directors shall
238 constitute a quorum and the affirmative vote of a majority of the directors present and eligible to

239 vote at a meeting shall be necessary for any action to be taken by the board. The directors shall
240 serve without compensation, but each director shall be entitled to reimbursement for actual and
241 necessary expenses incurred in the performance of official duties. The board shall meet at least 4
242 times in each year and shall have final authority over the activities of the corporation.

243 The board shall annually elect from among its members a chairperson and a vice-
244 chairperson, and may designate a treasurer and a secretary, who need not be members of the
245 board. The secretary shall keep a record of the proceedings of the corporation and shall be the
246 custodian of all books, documents, and papers filed with the corporation, and its official seal.
247 The secretary shall cause copies to be made of all minutes and other records and documents of
248 the corporation and shall certify that such copies are true copies and all persons dealing with the
249 corporation may rely upon such certification. The treasurer shall be the chief financial and
250 accounting officer of the corporation and shall be in charge of its funds, books of account, and
251 accounting records. The chairperson and the vice-chairperson, together with the secretary of
252 housing and economic development, and not less than 2 individuals elected annually by the
253 board from among its members, one of whom shall be a board member from a post-secondary
254 educational institution and one of whom shall be a board member from a business, shall
255 constitute the executive committee of the board. The executive committee shall have all the
256 powers of the board between the meetings of the board, to be exercised in accordance with by-
257 laws established by the board. The executive committee shall meet as often as considered
258 necessary by the committee. Notwithstanding any general or special law to the contrary, and at
259 the election of the board of directors of the corporation or its designee, with notice to the group
260 insurance commission, employees of the corporation shall be eligible to participate in any and all
261 group insurance programs and benefits administered by the group insurance commission under

262 chapter 32A, and each participating employee shall be considered to be an “employee” for the
263 purposes of section 2 of chapter 32A, but no such employee of the corporation shall, as a result
264 of such participation, be determined to be an “employee” for the purposes of section 10 of said
265 chapter 32A. The corporation shall reimburse the commonwealth for the commonwealth's share
266 of the premium and applicable administrative expenses of such participation, which share may be
267 allocated between the corporation and the participating employees as considered appropriate by
268 the corporation, and any employee payments in reimbursement of such premium and applicable
269 administrative expenses may be structured by the corporation through a plan that is consistent
270 with 26 U.S.C. Section 125.

271 SECTION 13. Section 4 of chapter 40J of the General Laws, as appearing in the 2006
272 Official Edition, is hereby amended by inserting after the word “boards”, in line 20, the
273 following words:- in furtherance of the purposes of this chapter, which may include, but are not
274 limited to, the following objectives:.

275 SECTION 14. Section 4A of said chapter 40J, as so appearing, is hereby amended by
276 striking out, in line 7, the word “five” and inserting in place thereof the following figure:- 40.

277 SECTION 15. Section 4E of chapter 40J of the General Laws is hereby repealed.

278 SECTION 16. Sections 3, 4, 5, 6, 7 and 8 of chapter 307 of the acts of 2008 are hereby
279 repealed.

280 SECTION 17. On the effective date of the establishment of the Massachusetts
281 Renewable Energy Trust Fund within the Massachusetts Clean Energy Technology Center as
282 shall be specified in a memorandum of understanding executed between the Massachusetts
283 Technology Park Corporation and the center, the corporation shall transfer to said center all

284 moneys credited to the Massachusetts Renewable Energy Trust Fund and held by said
285 corporation, and all associated equipment, employees, records, investments, contracts,
286 agreements and all other assets funded by the Trust Fund, as further identified in said
287 memorandum of understanding. In furtherance of said transfer of the Trust Fund, the corporation
288 shall transfer or otherwise assign, and said center shall assume, all rights, responsibilities,
289 obligations and liabilities of said corporation arising out of the Trust Fund and said corporation
290 shall be discharged from any administrative, legal and financial responsibility arising from its
291 administration of said Trust Fund, including financial responsibility for any responsibilities,
292 obligations, and liabilities that cannot be transferred by operation of law or permissively assigned
293 to said center, except as expressly provided otherwise in said memorandum of understanding
294 between said corporation and said center, provided, however, that said corporation shall be
295 authorized to retain an amount mutually agreed to by the Secretary of Housing and Economic
296 Development and the Secretary of Energy and Environmental Affairs to be applied by said
297 corporation to its purposes under chapter 40J of the General Laws and provided, further, that the
298 memorandum of understanding entered into between said corporation and said center shall
299 provide for the orderly transfer of the Trust Fund to the center and shall include a plan and
300 schedule to implement the transfer of the Trust Fund to said center; provided that, to the extent
301 practicable, the transfer of the Trust Fund shall be completed by the later of June 30, 2009 or
302 sixty days after enactment of legislation authorizing said transfer.