

HOUSE No. 4168

The Commonwealth of Massachusetts

By Mr. Dempsey of Haverhill, for the committee on Economic Development and Emerging Technologies, on House, No. 4072, a Bill relative to clean energy (House, No. 4168). July 23, 2009.

An Act relative to clean energy.

FOR THE COMMITTEE:

NAME:

Brian S. Dempsey

DISTRICT/ADDRESS:

3rd Essex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

An Act relative to clean energy.

Whereas, the deferred operation of this act would tend to defeat its purpose, which is forthwith to create jobs and provide economic relief to the people of the Commonwealth of Massachusetts in the present fiscal emergency, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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. Subsection (c) of section 35FF of chapter 10 of the General Laws, as appearing in
2 the 2008 Official Edition, is hereby amended by striking out clause (7) and inserting in place thereof the
3 following clause:-

4 (7) to make grants to the Massachusetts technology transfer center, established by section 45 of chapter
5 75 of the General Laws, to fund activities that facilitate the transfer of technology from the
6 commonwealth's research institutions to the commonwealth's clean energy industries, for productive use
7 by such industries, and to make targeted investments in proof of concept funding for emerging
8 technologies;

9 SECTION 2. Said subsection (c) of section 35FF of chapter 10 of the General Laws, as so appearing, is
10 hereby further amended by inserting after clause (7) the following clause:-

11 (8) to make any other expenditure provided by this section.

12 SECTION 3. Section 2 of chapter 23J of the General Laws, as so appearing, is hereby amended by
13 striking out subsection (b), and inserting in place thereof the following subsection:-

14 (b) The center shall be governed and its corporate powers exercised by a board of directors consisting of
15 11 directors: 1 of whom shall be the secretary of energy and environmental affairs or his designee, who
16 shall serve as a chair; 1 of whom shall be the secretary of housing and economic development or his
17 designee; 1 of whom shall be the president of the University of Massachusetts; 1 of whom shall be the

18 executive director of the Massachusetts Workforce Alliance; 1 of whom shall be the secretary of
19 administration and finance or her designee; 1 of whom shall be the secretary of labor and workforce
20 development or her designee; and 5 of whom shall be appointed by the governor, 1 of whom shall be a
21 venture 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 a
23 Massachusetts community college or his designee, 1 of whom shall have knowledge of electricity
24 distribution, generation, supply or power marketing, 1 of whom shall be the president of a private college
25 or university, and 1 of whom shall be a union representative. Each of the 5 directors appointed by the
26 governor shall serve for a term of 5 years, except that in making his initial appointments, the governor
27 shall appoint 1 director to serve for a term of 1 year, 1 director for a term of 2 years, 1 director for a term
28 of 3 years, 1 director for a term of 4 years, and 1 director for a term of 5 years. A director shall be eligible
29 for reappointment. A director may be removed from his appointment by the governor for cause. A person
30 appointed to fill a vacancy in the office of an appointed director of the board shall be appointed in a like
31 matter and shall serve for only the unexpired term of the director.

32 SECTION 4. Said section 2 of chapter 23J, as so appearing, is hereby further amended by inserting after
33 subsection (k) the following subsection:--

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

45 SECTION 5. Paragraph (8) of subsection (a) of section 3 of said chapter 23J of the General Laws, as so
46 appearing, is hereby amended in line 57 by inserting after the word “purposes” the following words:-

47 including but not limited to making, or delegating to a lessee or a licensee to make, improvements,
48 construction, alterations or renovations to the real property of the center, or any interest thereon, provided,
49 that where such activity involves the expenditure of funds from the Massachusetts Renewable Energy
50 Trust Fund, or where such activity is funded entirely by other funds but is estimated to cost less than
51 \$500,000, it shall not be a capital facility project and the provisions of sections 38A½ to 38O, inclusive, of

52 chapter 7, sections 44A to 44J, inclusive, of chapter 149, and section 39M of chapter 30 of the General
53 Laws and related statutes, shall not apply thereto;

54 SECTION 6. Said subsection (a) of section 3 of chapter 23J of the General Laws, as so appearing, is
55 hereby further amended by inserting after paragraph (30) the following paragraph:-

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

57 SECTION 7. Chapter 23J of the General Laws is hereby further amended by inserting after section 8 the
58 following sections:-

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

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

85 (c) Public interests to be advanced through the center's actions shall include, but not be limited to, the
86 following: (i) the development and increased use and affordability of renewable energy resources in the
87 commonwealth and the new england region; (ii) the protection of the environment and the health of the
88 citizens of the commonwealth through the prevention, mitigation and alleviation of the adverse pollution
89 effects associated with certain electricity generation facilities; (iii) the maximization of benefits to
90 consumers of the commonwealth resulting from increased fuel and supply diversity; (iv) the creation of
91 additional employment opportunities in the commonwealth through the development of renewable
92 technologies, including, but not limited to, promoting programs and investments that lead to pathways
93 towards economic self sufficiency for low and moderate income individuals and communities in the clean
94 energy industry; (v) the stimulation of increased public and private sector investment in, and competitive
95 advantage for, renewable energy and related enterprises, institutions and projects in the commonwealth
96 and the new england region; and (vi) the stimulation of entrepreneurial activities in these and related
97 enterprises, institutions and projects.

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

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

134 (f) For the purposes of expenditures from the fund, renewable energy technologies eligible for assistance
135 shall mean technologies eligible as class I or class II renewable energy generating sources under section
136 11F of chapter 25A, micro-combined heat and power units less than 60 kilowatts, solar hot water,
137 geothermal heating and cooling projects, biomass thermal and storage and conversion technologies
138 connected to qualifying generation projects; provided, however, that the board may make grants from the
139 fund, not to exceed a total of \$4 million annually, in support of Massachusetts-based public and private
140 enterprises developing new technologies to significantly increase the efficiency of the internal combustion
141 engine. The center shall make grants, loans or other support from the fund, not to exceed \$3 million
142 annually for hydroelectric facilities, other than pumped storage facilities in the commonwealth,
143 constructed before December 31, 1997 for upgrades to increase efficiency or capacity and to reduce
144 environmental impacts. Such funds may also be used for appropriate joint energy efficiency and
145 renewable projects, as well as for investment by distribution companies in renewable energy and
146 distributed generation opportunities, if consistent with this section. The following technologies or fuels
147 shall not be considered renewable energy supplies: coal, oil, natural gas except when used in fuel cells or
148 micro-combined heat and power, and nuclear power.

149 (g) The use by the center of monies to implement this section shall be deemed to be an essential
150 governmental function. Notwithstanding any general or special law to the contrary, no expenditure from
151 the fund shall be deemed to involve a capital facility project, and the center shall take no action which
152 contravenes the commonwealth's reversionary interest in any of its real property. The center, any
153 purchasing cooperative established thereby and all members of any such purchasing cooperative may
154 participate in any energy-related purchasing, aggregating or similar program established and operated by

155 the health and educational facilities authority and such participation shall be deemed to be in furtherance
156 of an essential governmental function.

157 (h) Notwithstanding any general or special law to the contrary, including without limitation any laws
158 related to the procurement of electricity and as a condition subsequent to the prior transfer of \$17 million
159 from the fund to the commonwealth for deposit in the General Fund that was authorized pursuant to
160 section 183 of chapter 26 of the acts of 2003 , the commonwealth, acting by and through the department
161 of energy resources or a successor agency, shall enter into an agreement with the center under which the
162 commonwealth, at the direction of the center, shall enter into contracts, for terms not to exceed 20 years,
163 with owners of facilities that generate electricity using renewable energy technologies, wholesale power
164 marketers or other market intermediaries selling such electricity, for the purchase by the commonwealth,
165 for its own use or for the use of any municipal electric department, public instrumentality or other
166 governmental or nongovernmental entity in the commonwealth, of electricity produced by renewable
167 energy technologies.

168 The center shall determine the particular types of technologies which shall be the subject of any such
169 contract based on such criteria as it shall deem advisable, including without limitation retail consumer
170 choices of such renewable energy technologies. The aggregate dollar amount of the green power premium
171 associated with electricity purchases to be made by the commonwealth for its own use under such
172 contracts shall have a present value, determined according to such discount rate as shall be mutually
173 agreeable to the center and the commonwealth, of such amount as shall be transferred under the first
174 sentence of this paragraph. The green power premium shall be determined by subtracting from the total
175 amount of the purchase price the undifferentiated commodity price for electricity under then-current
176 commonwealth contracts. The maximum payment in any 1 fiscal year under all such contracts shall not
177 exceed \$5 million. The commonwealth shall be indemnified under such contracts by the owners or power
178 marketers on such terms as the center shall deem commercially reasonable. The amounts collected under
179 section 20 of chapter 25 shall be impressed with a trust for the benefit of the fund. To facilitate the
180 purchase by the center of electricity produced by renewable energy technologies or of certificates
181 produced under the renewable energy portfolio standard regulations of the department of energy resources
182 representing the generation attributes of electrical energy produced by renewable energy technologies,
183 and in consideration of the sale of such electricity or certificates, the commonwealth shall covenant with
184 the sellers of such electricity or certificates that the amounts collected under said section 20 shall not be
185 diverted from the fund and that the rates of the mandatory charges under said section 20 shall not be
186 reduced during the term, which shall not exceed 20 years, of any contract entered into by the center for
187 the purchase of such electricity or certificates below a level which shall enable the center to fulfill the
188 terms of such contracts. In furtherance of the public purposes of the fund, income derived from the

189 investment of amounts collected under said section 20 shall be expended by the center as provided in
190 subsection (a) and, in the discretion of the center, in furtherance of the public purposes of the center and
191 for such costs of departments and agencies that support or are otherwise consistent with the purposes of
192 the fund.

193 Section 10. There is hereby established and placed within the center a program to be known as the
194 pathways out of poverty initiative. Said initiative shall award grants to clean energy companies, regional
195 employment boards, community-based nonprofit organizations, educational institutions or labor
196 organizations to enable said entities to carry out training programs associated with the clean energy
197 industry that lead to economic self-sufficiency. The center shall give funding priority to entities that: (i)
198 serve individuals in families with incomes that do not exceed 200 percent of the poverty level, as
199 determined by the United States Census Bureau, or a self-sufficiency standard for the local areas where
200 the training is conducted that specifies the income needs of families, family size, the number and ages of
201 children in the family and geographical considerations; (ii) engage in partnerships with public and private
202 employers and community-based non-profit agencies; and (iii) establish career pathways for hard and soft
203 skill development and salary advancement. Said grants shall be awarded so as to ensure geographic
204 diversity within the commonwealth.

205

206 Section 11. The center shall conduct an annual study detailing the commonwealth's clean energy sector.
207 The study shall include, but not be limited to, an examination of the growth rate of the commonwealth's
208 clean energy sector, including the number of in-state jobs and businesses. A copy of said study shall be
209 submitted on or before December 1st of each year to the clerks of the house of representatives and the
210 senate.

211 SECTION 8. Section 20 of Chapter 25 of the General Laws, as so appearing, is hereby amended by
212 striking out, in line 8, the words "4E of chapter 40J" and inserting in place thereof the following words:-
213 9 of chapter 23J.

214 SECTION 9. Said section 20 of chapter 25, as so appearing, is hereby further amended by striking out, in
215 lines 21-23, the words "Massachusetts Technology Park Corporation, doing business as the
216 Massachusetts Technology Collaborative, or the governing board, as applicable", and inserting in place
217 thereof the following words:- Clean Energy Technology Center.

218 SECTION 10. Said section 20 of chapter 25, as so appearing, is hereby further amended by striking out,
219 in lines 28 and 29, the words " the collaborative", and inserting in place thereof, in each instance, the
220 following words:- the center.

221

222 SECTION 11. Section 3 of chapter 40J of the General Laws, as so appearing, is hereby amended by
223 striking out the second and third paragraphs and inserting in place thereof the following paragraphs :-

224 The corporation shall be governed and its corporate powers exercised by a board of directors,
225 which shall consist of the secretary of housing and economic development or his designee, the secretary
226 of administration and finance or her designee, and the commissioner of higher education or his designee,
227 2 members to be appointed from a list of persons nominated by the president of the senate, 2 persons to be
228 appointed from a list of persons nominated by the speaker of the house of representatives, and 16 persons
229 to be appointed by the governor, 6 of whom shall be chief executive officers of post-secondary
230 educational institutions or distinguished members of the engineering or scientific faculties of those
231 institutions, or members of other appropriate faculties, and among said 6, at least 2 of whom shall be
232 representatives of public post-secondary educational institutions, and 6 of whom shall be chief executive
233 officers, chairpersons or chief engineers of businesses concerned with any technology which may come
234 within the purview of this chapter, and 2 of whom shall be recommended by the Massachusetts AFL-CIO.
235 Each director appointed from the list of nominations recommended by the president of the senate and the
236 speaker of the house of representatives shall serve a term of 2 years to be coterminous with the legislative
237 session of the general court. Each director appointed by the governor shall serve for a term of 5 years and
238 thereafter until his successor is appointed. Any person appointed to fill a vacancy on the board shall be
239 appointed in a like manner and shall serve for the unexpired term of the predecessor director. Any director
240 shall be eligible for reappointment. Any director may be removed by the governor for cause. Twelve
241 directors shall constitute a quorum and the affirmative vote of a majority of the directors present and
242 eligible to vote at a meeting shall be necessary for any action to be taken by the board. The directors shall
243 serve without compensation, but each director shall be entitled to reimbursement for actual and necessary
244 expenses incurred in the performance of official duties. The board shall meet at least 4 times in each year
245 and shall have final authority over the activities of the corporation.

246 The board shall annually elect from among its members a chairperson and a vice-chairperson, and
247 may designate a treasurer and a secretary, who need not be members of the board. The secretary shall
248 keep a record of the proceedings of the corporation and shall be the custodian of all books, documents,
249 and papers filed with the corporation, and its official seal. The secretary shall cause copies to be made of
250 all minutes and other records and documents of the corporation and shall certify that such copies are true
251 copies and all persons dealing with the corporation may rely upon such certification. The treasurer shall
252 be the chief financial and accounting officer of the corporation and shall be in charge of its funds, books
253 of account, and accounting records. The chairperson and the vice-chairperson, together with the secretary
254 of housing and economic development, and not less than 2 individuals elected annually by the board from
255 among its members, one of whom shall be a board member from a post-secondary educational institution
256 and one of whom shall be a board member from a business, shall constitute the executive committee of

257 the board. The executive committee shall have all the powers of the board between the meetings of the
258 board, to be exercised in accordance with by-laws established by the board. The executive committee
259 shall meet as often as considered necessary by the committee. Notwithstanding any general or special
260 law to the contrary, and at the election of the board of directors of the corporation or its designee, with
261 notice to the group insurance commission, employees of the corporation shall be eligible to participate in
262 any and all group insurance programs and benefits administered by the group insurance commission
263 under chapter 32A, and each participating employee shall be considered to be an “employee” for the
264 purposes of section 2 of chapter 32A, but no such employee of the corporation shall, as a result of such
265 participation, be determined to be an “employee” for the purposes of section 10 of said chapter 32A. The
266 corporation shall reimburse the commonwealth for the commonwealth's share of the premium and
267 applicable administrative expenses of such participation, which share may be allocated between the
268 corporation and the participating employees as considered appropriate by the corporation, and any
269 employee payments in reimbursement of such premium and applicable administrative expenses may be
270 structured by the corporation through a plan that is consistent with 26 U.S.C. Section 125.

271 SECTION 12. Section 4 of chapter 40J of the General Laws, as so appearing, is hereby amended by
272 inserting after the word “boards”, in line 20, the following words:- in furtherance of the purposes of this
273 chapter, which may include, but are not limited to, the following objectives:

274 SECTION 13. Section 4A of said chapter 40J, as so appearing, is hereby amended by striking out, in line
275 7, the word “five” and inserting in place thereof the following figure:- 30.

276 SECTION 14. Section 4E of chapter 40J of the General Laws is hereby repealed.

277 SECTION 15. Sections 3, 4, 5, 6, 7 and 8 of chapter 307 of the Acts of 2008 are hereby repealed.

278 SECTION 16. On the effective date of the establishment of the Massachusetts Renewable Energy Trust
279 Fund within the Massachusetts Clean Energy Technology Center as shall be specified in a memorandum
280 of understanding executed between the Massachusetts Technology Park Corporation and the center, the
281 corporation shall transfer to said center all moneys credited to said trust fund and held by said
282 corporation, except for amounts previously allocated by said corporation pursuant to the last sentence of
283 subsection (I) of section 4E of chapter 40J of the General Laws, and all associated equipment, employees,
284 records, investments, contracts, agreements and all other assets funded by the trust fund, as further
285 indentified in said memorandum of understanding. In furtherance of said transfer of the trust fund, the
286 corporation shall transfer or otherwise assign, and said center shall assume, all rights, responsibilities,
287 obligations and liabilities of said corporation arising out of the trust fund and said corporation shall be
288 discharged from any administrative, legal and financial responsibility arising from its administration of
289 said trust fund, except as expressly provided otherwise in said memorandum of understanding between
290 said corporation and said center, provided that the memorandum of understanding entered into between

291 said corporation and said center shall provide for the orderly transfer of the trust fund to the center and
292 shall include a plan and schedule to implement the transfer of the trust fund to said center; provided that,
293 to the extent practicable, the transfer of the trust fund shall be completed by September 30, 2009, or sixty
294 days after enactment of legislation authorizing said transfer, whichever is later.