

SENATE No. 2180

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act Text of the amendment (Ways and Means) to the House Bill relative to clean energy -- H4253.

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 appearing in the 2008
2 Official Edition, is hereby amended by striking out, in lines 67 and 68, the words “and (7) to
3 make any other expenditure provided by this section” and inserting in place thereof the
4 following 2 clauses:-

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

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

11 SECTION 2. Section 1 of chapter 23J of the General Laws, as so appearing, is hereby
12 amended by inserting after the definition of “Contribution agreement” the following 2
13 definitions:-

“Director”, the director of the Massachusetts Renewable Energy Trust appointed pursuant to section 2.

“Executive director”, the executive director of the center appointed pursuant to section 2.

SECTION 3. Said section 1 of said chapter 23J, as so appearing, is hereby further amended by adding the following definition:-

“Trust fund”, the Massachusetts Renewable Energy Trust Fund established pursuant to section 9.

SECTION 4. Section 2 of said chapter 23J, as so appearing, is hereby amended by striking out subsection (b) and inserting in place thereof the following subsection:-

(b) The center shall be governed and its corporate powers exercised by a board of directors consisting of 12 directors: 1 of whom shall be the secretary of energy and environmental affairs or his designee, who shall serve as a chair; 1 of whom shall be the secretary of housing and economic development or his designee; 1 of whom shall be the secretary of administration and finance or his designee; 1 of whom shall be the secretary of labor and workforce development or his designee; 1 of whom shall be the president of the University of Massachusetts or his designee; 1 of whom shall be the executive director of the Massachusetts Workforce Alliance; 1 of whom shall be the commissioner of the department of energy resources; and 5 of whom shall be appointed by the governor, 1 of whom shall be a venture capitalist or a chief executive officer of a Massachusetts-based clean energy corporation with expertise in clean energy technologies in the commonwealth, 1 of whom shall be the president of a Massachusetts community college or his designee, 1 of whom shall have knowledge of electricity distribution, generation, supply or power marketing, 1 of whom shall be the president

36 of a private college or university or his designee, and 1 of whom shall be a union representative.
37 Each of the 5 directors appointed by the governor shall serve for a term of 5 years. A director
38 shall be eligible for reappointment. A director may be removed from his appointment by the
39 governor for cause. A person appointed to fill a vacancy in the office of an appointed director of
40 the board shall be appointed in a like matter and shall serve for only the unexpired term of the
41 director.

42 SECTION 5. Subsection (e) of said section 2 of said chapter 23J, as so appearing, is
43 hereby amended by adding the following paragraph:-

44 The board shall appoint and employ a director for the Massachusetts Renewable Energy
45 Trust Fund, hereinafter referred to as the trust fund, and shall fix his compensation and
46 conditions of employment. The director of the trust fund shall report to the executive director.
47 The director of the trust fund shall have a full range of previous experience in the clean energy
48 industry.

49 SECTION 6. Section 3 of said chapter 23J, as so appearing, is hereby amended by
50 inserting after the word “purposes”, in line 57, the following words:- including, but not limited
51 to, making, or delegating to a lessee or a licensee to make, improvements or alterations to the
52 real property of the center, or any interest thereon or engage in construction on or renovation at
53 such property or interest.

54 SECTION 7. Said section 3 of said chapter 23J, as so appearing, is hereby further
55 amended by striking out, in line 155, the word “and”.

56 SECTION 8. Said section 3 of said chapter 23J, as so appearing, is hereby further
57 amended by inserting after the word “sector”, in line 167, the following words:- sector; and

(31) to administer the trust fund in accordance with section 9.

SECTION 9. Section 5 of said chapter 23J, as so appearing, is hereby amended by striking out, in line 10, the word “June 1” and inserting in place thereof the following words:-
August 15.

The center shall annually, not later than August 15, submit to the governor, the joint committee on telecommunications, utilities and energy, the joint committee on economic development and emerging technologies and the senate and house committees on ways and means a report detailing the expenditure and investment of monies from the fund and the trust fund over the previous fiscal year, the ability of the fund to meet the requirements in section 35FF of chapter 10 and the ability of the trust fund to meet the requirements in section 9, and any recommendations for improving the ability of the board, the center and the fund and trust fund to meet such requirements.

The center shall annually, no later than August 15, submit to the governor, the joint committee on telecommunications, utilities and energy, the joint committee on economic development and emerging technologies and the senate and house committees on ways and means a report detailing the commonwealth’s clean energy sector. The report shall include, but shall not be limited to, an examination of the growth rate of the commonwealth’s clean energy sector, including the number of in-state jobs and businesses.

SECTION 10. Said chapter 23J is hereby further amended by adding the following 3 sections:-

Section 9. (a) There is hereby established and placed within the center a separate fund to be known as the Massachusetts Renewable Energy Trust Fund, hereinafter referred to as the trust

fund. The center shall hold the trust fund in an account or accounts separate from other funds. There shall be credited to the trust fund all amounts collected under section 20 of chapter 25 and any income derived from the investment of amounts credited to the trust fund. All amounts credited to the trust fund shall be held in trust and used solely for activities and expenditures consistent with the public purpose of the trust fund as set forth in subsection (b), including the ordinary and necessary expenses of administration and operation associated with the trust fund. Unless otherwise specified, all monies of the center, from whatever source derived, shall be paid to the treasurer of the center. Such monies shall be deposited, in the first instance, by the treasurer in national banks, in trust companies, savings banks and cooperative banks chartered under the laws of the commonwealth, or in other banking companies in compliance with section 34 of chapter 29. Funds in these accounts shall be paid out on the warrant or other order of the treasurer of the center and the director of the trust fund or other person that the board may authorize to execute warrants.

(b) The center may make expenditures from the trust fund for the public purpose of generating the maximum economic and environmental benefits over time from renewable energy to the ratepayers of the commonwealth through a series of initiatives which exploit the advantages of renewable energy in a more competitive energy marketplace by: (i) promoting the increased availability, use and affordability of renewable energy; (ii) by making operational improvements to existing renewable energy projects and facilities which, in the determination of the center, would yield more significant results in the development of renewable energy if such funds were made available for the creation of new renewable energy facilities; and (iii) by fostering the formation, growth, expansion and retention within the commonwealth of preeminent clusters of renewable energy and related enterprises, institutions and projects which

serve the citizens of the commonwealth consistent with a strategic plan or annual operational plan.

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

(d) In furtherance of any strategic and operational plans, and other public purposes and interests, the center may expend monies from the trust fund to: make grants, contracts, loans, equity investments, energy production credits, bill credits or rebates to customers; provide financial or debt service obligation assistance; or take any other action, in such forms, under such terms and conditions and under such selection procedures as the center deems appropriate and otherwise in a manner consistent with good business practices; provided, however, that the center shall generally employ a preference for competitive procurements; provided further, that

the center shall endeavor to leverage the full range of the resources, expertise and participation of other state and federal agencies and instrumentalities in the design and implementation of programs conducted pursuant to this section; and provided further, that the board determines and incorporates into the minutes of its proceedings a finding that such actions are calculated to advance the public purpose and public interests set forth in this section including, but not limited to, the following: (i) the growth of the renewable energy-provider industry; (ii) the use of renewable energy by electricity customers in the commonwealth; (iii) public education and training regarding renewable energy including, but not limited to, promoting programs and investments that lead to pathways toward economic self-sufficiency for low- and moderate-income individuals and communities in the clean energy industry; (iv) product and market development; (v) pilot and demonstration projects and other activities designed to increase the use and affordability of renewable energy resources by and for consumers in the commonwealth; (vi) the provision of financing in support of the development and application of related technologies at all levels including, but not limited to, basic and applied research and commercialization activities; (vii) the design and making of improvements to existing renewable energy projects and facilities as defined herein which were in operation as of December 31, 1997; and (viii) matters related to the conservation of scarce energy resources.

(e) Subject to the approval of the board and not inconsistent with any strategic or annual operational plans, investment activity of monies from the trust fund may consist of the following: (i) an equity fund to provide risk capital to renewable energy enterprises, institutions and projects; (ii) a debt fund to provide loans to energy enterprises, institutions, projects, intermediaries and end-users; and (iii) a market growth assistance fund to be used to attract private capital to the equity and debt funds. To implement these investment activities, the center

149 may retain, through a bid process, public or private sector investment fund managers, who shall
150 have prior knowledge and experience in fund management and possess related skills in
151 renewable energy and related technologies development, to direct the investment activity
152 described in this section and to seek other trust fund co-sponsors to contribute public and private
153 capital from the commonwealth and other states; provided, however, that such capital shall be
154 appropriately segregated. Subject to the approval of the board, the managers may retain
155 necessary services and consultants to carry out the purposes of the trust fund. The managers shall
156 develop a business plan to guide investment decisions which shall be approved by the board
157 before any expenditure from the trust fund and which shall be consistent with the plan for the
158 trust fund as adopted by the board.

159 (f) For the purposes of expenditures from the trust fund, renewable energy technologies
160 eligible for assistance shall mean technologies eligible as class I or class II renewable energy
161 generating sources under section 11F of chapter 25A, micro-combined heat and power units less
162 than 60 kilowatts, solar hot water, geothermal heating and cooling projects, biomass thermal and
163 storage and conversion technologies connected to qualifying generation projects. The board may
164 make grants from the trust fund, not to exceed a total of \$4,000,000 annually, in support of
165 Massachusetts-based public and private enterprises developing new technologies to significantly
166 increase the efficiency of the internal combustion engine. The center shall make grants, loans or
167 other support from the trust fund, not to exceed \$3,000,000 annually for hydroelectric facilities,
168 other than pumped storage facilities in the commonwealth, constructed before December 31,
169 1997 for upgrades to increase efficiency or capacity and to reduce environmental impacts. Such
170 funds may also be used for appropriate joint energy efficiency and renewable projects, as well as
171 for investment by distribution companies in renewable energy and distributed generation

opportunities, if consistent with this section; provided, however that the following technologies or fuels shall not be considered renewable energy supplies: coal, oil, natural gas except when used in fuel cells or micro-combined heat and power and nuclear power.

(g) The use by the center of monies to implement this section shall be deemed to be an essential governmental function. Notwithstanding any general or special law to the contrary, unless otherwise authorized herein no expenditure from the trust fund shall be deemed to involve a capital facility project. No lease or license executed in furtherance of the public purpose and interests of the trust fund shall exceed 30 years in duration, and the duration and terms shall be developed in a manner consistent with good business practices; and provided further, that the center shall take no action which contravenes the commonwealth's reversionary interest in any of its real property. The center, any purchasing cooperative established thereby and all members of any such purchasing cooperative may participate in any energy-related purchasing, aggregating or similar program established and operated by the Health and Educational Facilities Authority, established by section 4 of chapter 614 of the acts of 1968, and such participation shall be deemed to be in furtherance of an essential governmental function.

(h) Clause (9) of section 3 shall not apply to disbursements from the trust fund.

(i) Notwithstanding any general or special law to the contrary, including without limitation any laws related to the procurement of electricity, as a condition subsequent to the prior transfer of \$17,000,000 from the trust fund to the commonwealth for deposit in the General Fund authorized by section 183 of chapter 26 of the acts of 2003, the commonwealth, acting by and through the department of energy resources or a successor agency, shall enter into an agreement with the center under which the commonwealth, at the direction of the center, shall

194 enter into contracts, for terms not to exceed 20 years, with owners of facilities that generate
195 electricity using renewable energy technologies, wholesale power marketers or other market
196 intermediaries selling such electricity, for the purchase by the commonwealth, for its own use or
197 for the use of any municipal electric department, public instrumentality or other governmental or
198 nongovernmental entity in the commonwealth, of electricity produced by renewable energy
199 technologies. The center shall determine the particular types of technologies which shall be the
200 subject of any such contract based on such criteria as it shall deem advisable, including without
201 limitation retail consumer choices of such renewable energy technologies. The aggregate dollar
202 amount of the green power premium associated with electricity purchases to be made by the
203 commonwealth for its own use under such contracts shall have a present value, determined
204 according to such discount rate as shall be mutually agreeable to the center and the
205 commonwealth, of such amount as shall be transferred pursuant to the first sentence of this
206 paragraph. The green power premium shall be determined by subtracting from the total amount
207 of the purchase price the undifferentiated commodity price for electricity under then-current
208 commonwealth contracts. The maximum payment in any 1 fiscal year under all such contracts
209 shall not exceed \$5,000,000. The commonwealth shall be indemnified under such contracts by
210 the owners or power marketers on such terms as the center shall deem commercially reasonable.
211 The amounts collected pursuant to section 20 of chapter 25 shall be impressed with a trust for the
212 benefit of the trust fund. To facilitate the purchase by the center of electricity produced by
213 renewable energy technologies or of certificates produced under the renewable energy portfolio
214 standard regulations of the department of energy resources representing the generation attributes
215 of electrical energy produced by renewable energy technologies, and in consideration of the sale
216 of such electricity or certificates, the commonwealth shall covenant with the sellers of such

electricity or certificates that the amounts collected under said section 20 of said chapter 25 shall not be diverted from the trust fund and that the rates of the mandatory charges under said section 20 of said chapter 25 shall not be reduced during the term of any contract entered into by the center for the purchase of such electricity or certificates below a level which shall enable the center to fulfill the terms of such contracts; provided, however, that the term of any such contract shall not exceed 20 years. In furtherance of the public purposes of the trust fund, income derived from the investment of amounts collected under said section 20 of said chapter 25 shall be expended by the center as provided in subsection (a) and, in the discretion of the center, in furtherance of the public purposes of the center and for such costs of departments and agencies that support or are otherwise consistent with the purposes of the trust fund.

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

Section 11. The books and records of the center and board relative to expenditures and investments of monies from the fund and the trust fund shall be subject to a biennial audit by the auditor of the commonwealth.

SECTION 11. Section 20 of chapter 25 of the General Laws, as so appearing, is hereby amended by striking out, in line 8, the words “4E of chapter 40J” and inserting in place thereof the following words:- 9 of chapter 23J.

SECTION 12. Said section 20 of said chapter 25, as so appearing, is hereby further amended by striking out, in lines 21 to 23, inclusive, the words “Technology Park Corporation, doing business as the Massachusetts Technology Collaborative, or the governing board, as applicable”, and inserting in place thereof the following words:- clean energy technology center.

SECTION 13. Said section 20 of said chapter 25 , as so appearing, is hereby further amended by striking out, in lines 29 and 30, the word “collaborative” and inserting in place thereof, in each instance, the following words:- Massachusetts clean energy technology center.

SECTION 14. Section 10 of chapter 25A of the General Laws, as so appearing, is hereby amended by striking out, in lines 58 and 59, the words “4E of chapter 40J” and inserting in place thereof the following words:- 9 of chapter 23J.

SECTION 15. Section 3 of chapter 40J of the General Laws, as so appearing, is hereby amended by striking out the second and third paragraphs and inserting in place thereof the following 2 paragraphs :-

The corporation shall be governed and its corporate powers exercised by a board of directors, which shall consist of the secretary of housing and economic development or his

261 designee, the secretary of administration and finance or his designee and the commissioner of
262 higher education or his designee and 20 persons to be appointed by the governor, 2 of whom
263 shall be appointed from a list of persons nominated by the president of the senate, 2 of whom
264 shall be appointed from a list of persons nominated by the speaker of the house of
265 representatives, 8 of whom shall be chief executive officers of post-secondary educational
266 institutions or distinguished members of the engineering or scientific faculties of those
267 institutions, or members of other appropriate faculties, and of those 6, at least 2 shall be
268 representatives of public post-secondary educational institutions, and 6 of whom shall be chief
269 executive officers, chairpersons or chief engineers of businesses concerned with any technology
270 which may be subject to this chapter, and 2 of whom shall be recommended by the
271 Massachusetts AFL-CIO. Each director appointed from the list of nominations recommended by
272 the president of the senate and the speaker of the house of representatives shall serve a term of 2
273 years to be coterminous with the legislative session of the general court. Each director appointed
274 by the governor shall serve for a term of 5 years and thereafter until his successor is appointed.
275 Any person appointed to fill a vacancy on the board shall be appointed in a like manner and shall
276 serve for the unexpired term of the predecessor director. Any director shall be eligible for
277 reappointment. Any director may be removed by the governor for cause. Twelve directors shall
278 constitute a quorum and the affirmative vote of a majority of the directors present and eligible to
279 vote at a meeting shall be necessary for any action to be taken by the board. The directors shall
280 serve without compensation, but each director shall be entitled to reimbursement for actual and
281 necessary expenses incurred in the performance of official duties. The board shall meet at least 4
282 times in each year and shall have final authority over the activities of the corporation.

283 The board shall annually elect from among its members a chairperson and a vice-
284 chairperson, and may designate a treasurer and a secretary who need not be members of the
285 board. The secretary shall keep a record of the proceedings of the corporation and shall be the
286 custodian of all books, documents and papers filed with the corporation and its official seal. The
287 secretary shall cause copies to be made of all minutes and other records and documents of the
288 corporation and shall certify that such copies are true copies and all persons dealing with the
289 corporation may rely upon such certification. The treasurer shall be the chief financial and
290 accounting officer of the corporation and shall be in charge of its funds, books of account, and
291 accounting records. The executive committee of the board shall consist of the chairperson and
292 the vice-chairperson, together with the secretary of housing and economic development, and not
293 less than 2 individuals elected annually by the board from among its members, 1 of whom shall
294 be a board member from a post-secondary educational institution and 1 of whom shall be a board
295 member from a business. The executive committee shall have all the powers of the board
296 between meetings of the board, to be exercised in accordance with by-laws established by the
297 board. The executive committee shall meet as often as considered necessary by the committee.

298 SECTION 16. Section 4 of said chapter 40J, as so appearing, is hereby amended by
299 inserting after the word “establish”, in line 20, the following words:- , without limitation,
300 advisory boards in furtherance of the purposes of this chapter including.

301 SECTION 17. Section 4A of said chapter 40J, as so appearing, is hereby amended by
302 striking out, in line 7, the word “five” and inserting in place thereof the following figure:- 30.

303 SECTION 18. Section 4B of said chapter 40J, as so appearing, is hereby amended by
304 striking out, in lines 36 and 37, the words “working in collaboration with the Massachusetts

305 clean energy technology center established in section 2 of chapter 23J, state to induce” and
306 inserting in place thereof the following word:- inducing.

307 SECTION 19. Said section 4B of said chapter 40J, as so appearing, is hereby further
308 amended by striking out, in line 41, the words “the Massachusetts clean energy technology
309 center,”.

310 SECTION 20. Section 4E of said chapter 40J of the General Laws is hereby repealed.

311 SECTION 21. Subsection (a) of section 6A of said chapter 40J, as appearing in the 2008
312 Official Edition,, is hereby amended by striking out the ninth sentence.

313 SECTION 22. Section 2 of chapter 70B of the General Laws, as so appearing, is hereby
314 amended by striking out, in line 44, the words “section 4E of chapter 40J” and inserting in place
315 thereof the following words:- section 9 of chapter 23J.

316 SECTION 23. Section 134 of chapter 164 of the General Laws, as so appearing, is hereby
317 amended by striking out, in lines 90 to 92, inclusive, the words “Technology Park Corporation
318 for monies from the Massachusetts Renewable Energy Trust Fund, established pursuant to
319 subsection (a) of chapter 40J” and inserting in place thereof the following words:- clean energy
320 technology center for monies from the Massachusetts Renewable Energy Trust Fund, established
321 pursuant to section 9 of chapter 23J.

322 SECTION 24. Said section 134 of said chapter 164, as so appearing, is hereby further
323 amended by striking out, in line 97, the words “Technology Park Corporation” and inserting in
324 place thereof the following words:- clean energy technology center.

SECTION 25. Notwithstanding any general or special law to the contrary, the Massachusetts Technology Park Corporation established pursuant to section 3 of chapter 40J of the General Laws and the Massachusetts clean energy technology center established pursuant to section 2 of chapter 23J of the General Laws shall execute a memorandum of understanding pursuant to which the Massachusetts Technology Park Corporation shall transfer to the Massachusetts clean energy technology center: (i) all monies credited to the Massachusetts Renewable Energy Trust Fund and held by the Massachusetts Technology Park Corporation, except for amounts allocated by the Massachusetts Technology Park Corporation pursuant to the last sentence of subsection (l) of section 4E of chapter 40J of the General Laws prior to the effective date of this act; and (ii) all associated equipment, employees, records, investments, contracts, agreements and other assets funded by the Massachusetts Renewable Energy Trust Fund , as further indentified in said memorandum of understanding. In furtherance of the transfer of the Massachusetts Renewable Energy Trust Fund, the Massachusetts Technology Park Corporation shall transfer or otherwise assign, and the Massachusetts clean energy technology center shall assume, all rights, responsibilities, obligations and liabilities of said corporation arising out of the Massachusetts Renewable Energy Trust Fund and the Massachusetts Technology Park Corporation shall thereafter be discharged from all administrative, legal and financial responsibility arising from its administration of Massachusetts Renewable Energy Trust Fund, except as expressly provided otherwise in the memorandum of understanding between the Massachusetts Technology Park Corporation and the Massachusetts clean energy technology center; provided, however, that the memorandum of understanding entered into between the Massachusetts Technology Park Corporation and the Massachusetts clean energy technology center shall provide for the orderly transfer of the Massachusetts Renewable Energy Trust Fund

348 to the Massachusetts clean energy technology center and shall include a plan and schedule to
349 implement the transfer of the Massachusetts Renewable Energy Trust Fund to the Massachusetts
350 clean energy technology center; and provided further, the Massachusetts Technology Park
351 Corporation and the Massachusetts clean energy technology center shall use best efforts to
352 transfer the Massachusetts Renewable Energy Trust Fund and all associated rights, obligations,
353 responsibilities and liabilities to the Massachusetts clean energy technology center within 120
354 days of the effective date of this act.

355 SECTION 26. Notwithstanding any general or special to the contrary, in making his
356 initial appointments to the board of the Massachusetts clean energy and technology center
357 pursuant to section 2 of chapter 23J of the General Laws, the governor shall appoint 1 member to
358 serve for a term of 1 year, 1 member to serve for a term of 2 years, 1 member to serve for a term
359 of 3 years, 1 member to serve for a term of 4 years and 1 member to serve for a term of 5 years.