

**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 adoption of the accompanying bill:

An Act relative to a coal-free Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>William N. Brownsberger</i>	
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>James B. Eldridge</i>	
<i>Michael D. Brady</i>	<i>9th Plymouth</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Katherine M. Clark</i>	<i>Middlesex and Essex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Cleon H. Turner</i>	<i>1st Barnstable</i>

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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.

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The Commonwealth of Massachusetts

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**In the Year Two Thousand Eleven**  
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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:*

1 SECTION 1: For each electric generating facility located in the commonwealth that uses  
2 coal as fuel, the owner and operator shall file a report with the commissioner of the department  
3 of energy resources by January 1, 2012 detailing how greenhouse gas emissions emitted by the  
4 facility will be reduced consistent with, and at least proportional to, the reductions mandated by  
5 chapter 21N of the general laws, including the 2020 statewide greenhouse gas emissions limit  
6 adopted by the secretary pursuant to section 4 thereof, and describing how the facility will  
7 comply with regulations issued by the United States Environmental Protection Agency regarding  
8 the control of Hazardous Air Pollutants under section 112 of the federal Clean Air Act, Standards  
9 of Performance for fossil fuel fired steam electric generating units under section 111 of the  
10 federal Clean Air Act, the Transport Rule, the National Ambient Air Quality Standards for  
11 ozone, NO2 and SO2, and the Greenhouse Gas Tailoring Rule. The report shall include, but not  
12 be limited to, the following: (i) An assessment of the feasibility and cost of repowering the  
13 facility with natural gas as compared to the costs of installing pollution controls to meet the

14 federal regulations and other greenhouse gas requirements referenced above; and (ii) An  
15 assessment of the potential for re-use of the site for alternative uses, including electric generating  
16 alternatives that emit few or no greenhouse gas emissions, as well as alternative uses that do not  
17 include electric generation. The department of energy resources shall hold public hearings to  
18 solicit public comment in response to such reports in each of the regions that have the most  
19 significant exposure to air pollutants from coal-fired electric generation facilities.

20 SECTION 2: On or before January 1, 2013, the commissioner of the department of  
21 energy resources shall adopt a plan for replacing all use of coal as an energy resource in the  
22 commonwealth by 2020, including a plan for the orderly retirement of all baseload coal-fired  
23 electric generating facilities and replacement with clean energy alternatives such as electric  
24 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, NO<sub>2</sub>  
38 and SO<sub>2</sub>, 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.

99

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.