

House No. 4072

Message from His Excellency the Governor recommending legislation relative to clean energy.

The Commonwealth of Massachusetts



DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

EXECUTIVE DEPARTMENT
STATE HOUSE • BOSTON 02133
(617) 725-4000

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To the Honorable Senate and House of Representatives:

I am filing for your consideration the attached legislative proposal, entitled, "An Act Relating To Clean Energy."

This legislative proposal provides for the transfer of the Massachusetts Renewable Energy Trust from the Massachusetts Technology Collaborative to the newly established Clean Energy Center, created under the Green Jobs Act of 2008. This reform will merge the work of the two quasi-public state entities with complimentary missions, consolidate staff and financial resources and establish the Clean Energy Center as the single state entity charged with clean energy innovation activities, including those funded by the American Recovery and Reinvestment Act ("ARRA") of 2009.

I urge your early and favorable consideration of this bill, which will facilitate the implementation of the federal stimulus plan.

Respectfully Submitted,
DEVAL L. PATRICK,
Governor.

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATING 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:

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

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

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

SECTION 4. Section 2 of chapter 23J of the General Laws, as inserted by section 2 of chapter 307 of the acts of 2008, 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 11 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 a chair of the New England Clean Energy Council; 1 of whom shall be the commissioner of the department of energy resources or his designee; 1 of whom shall be the executive director of the Massachusetts Workforce Alliance; 1 of whom shall be the secretary of administration and finance or her designee; 1 of whom shall be the secretary of labor and workforce development or her designee; and 4 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 the University of Massachusetts

or a Massachusetts community college or his designee, 1 of whom shall have knowledge of electricity distribution, generation, supply or power marketing, and 1 of whom shall be a union representative. The board may, by majority vote, delegate any amount of its authority to an executive committee comprised of members of the board, the board or the center staff. Any such delegation of authority may be revoked at any time by majority vote of the board. Each of the 4 directors appointed by the governor shall serve for a term of 5 years, except that in making his initial appointments, the governor shall appoint 1 director to serve for a term of 1 year, 1 director to serve for a term of 2 years, 1 director for a term of 3 years, and 1 director for a term of 4 years. A director shall be eligible for reappointment. A director may be removed from his appointment by the governor for cause. A person appointed to fill a vacancy in the office of an appointed director of the board shall be appointed in a like matter and shall serve for only the unexpired term of the director.

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

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

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

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

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

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

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

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

(b) The center shall draw upon monies in the 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 promoting the increased availability, use and affordability of renewable energy, 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 said funds were made available for the creation of new renewable energy facilities, and 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 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 (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 fund to make grants, contracts, loans, equity investments, energy production credits, bill credits, or rebates to customers; to provide financial or debt service obligation assistance; or to take any other actions, 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 under this section; and provided further, that the board has determined and incorporated 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; (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 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 may retain, through a bid process, public or private sector investment fund managers, who shall have prior knowledge and experience in fund management and possess related skills in renewable energy and related technologies development, to direct the investment activity described in this section and to seek other fund co-sponsors to contribute public and private capital from the commonwealth and other states; provided, however, that such capital shall be appropriately segregated. The managers, subject to the approval of the board, may retain necessary services and consultants to carry out the purposes of the fund. The managers shall develop a business plan to guide

investment decisions, which shall be approved by the board before any expenditures from the trust fund, and which shall be consistent with the plan for the fund as adopted by the board.

(f) For the purposes of expenditures from the fund, renewable energy technologies eligible for assistance shall mean technologies eligible as class I or class II renewable energy generating sources under section 11F of chapter 25A, micro-combined heat and power units less than 60 kilowatts, solar hot water, geothermal heating and cooling projects, biomass thermal and storage and conversion technologies connected to qualifying generation projects; provided, however, that the board may make grants from the fund, not to exceed a total of \$4 million annually, in support of Massachusetts-based public and private enterprises developing new technologies to significantly increase the efficiency of the internal combustion engine. The center shall make grants, loans or other support from the fund, not to exceed \$3 million annually for hydroelectric facilities, other than pumped storage facilities in the commonwealth, constructed before December 31, 1997 for upgrades to increase efficiency or capacity and to reduce environmental impacts. Such funds may also be used for appropriate joint energy efficiency and renewable projects, as well as for investment by distribution companies in renewable energy and distributed generation opportunities, if consistent with this section. 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, no expenditure from the fund shall be deemed to involve a capital facility project, and 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 and such participation shall be deemed to be in furtherance of an essential governmental function.

(h) Notwithstanding any general or special law to the contrary, including without limitation any laws related to the procurement of electricity, the center shall, upon the written request of the governor, transfer moneys in the fund, in an amount not exceeding \$17 million in the aggregate, to the commonwealth for deposit in the general fund. As a condition subsequent to any such transfer, 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 enter into contracts, for terms not to exceed 20 years, with owners of facilities that generate electricity using renewable energy technologies, wholesale power marketers or other market intermediaries selling such electricity, for the purchase by the commonwealth, for its own use or for the use of any municipal electric department, public instrumentality or other governmental or nongovernmental entity in the commonwealth, of electricity produced by renewable energy technologies.

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

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

9 of chapter 23J.

SECTION 10. Said section 20 of chapter 25, as so appearing, is hereby further amended by striking out, in paragraph (b), the words “Massachusetts 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 11. Paragraph (b) of said section 20 of chapter 25, as so appearing, is hereby further amended by striking out, in both instances, the words “ the collaborative”, and inserting in place thereof, in each instance, the following words:- the center. □SECTION 12. Section 3 of chapter 40J of the General Laws, as

amended by section 48 of chapter 169 of the acts of 2008, 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 designee, the secretary of administration and finance or her designee, and the commissioner of higher education or his designee, 2 members to be appointed from a list of persons nominated by the president of the senate, 2 persons to be appointed from a list of persons nominated by the speaker of the house of representatives, and 16 persons to be appointed by the governor, 6 of whom shall be chief executive officers of post-secondary educational institutions or distinguished members of the engineering or scientific faculties of those institutions, or members of other appropriate faculties, and among said 6, at least 2 of whom shall be representatives of public post-secondary educational institutions, and 6 of whom shall be chief executive officers, chairpersons or chief engineers of businesses concerned with any technology which may come within the purview of this chapter, and 2 of whom shall be recommended by the Massachusetts AFL-CIO. Each director appointed from the list of nominations recommended by the president of the senate and the speaker of the house of representatives shall serve a term of 2 years to be coterminous with the legislative session of the general court. Each director appointed by the governor shall serve for a term of 5 years and thereafter until his successor is appointed. Any person appointed to fill a vacancy on the board shall be appointed in a like manner and shall serve for the unexpired term of the predecessor director. Any director shall be eligible for reappointment. Any director may be removed by the governor for cause. Twelve directors shall constitute a quorum and the affirmative vote of a majority of the directors present and eligible to vote at a meeting shall be necessary for any action to be taken by the board. The directors shall serve without compensation, but each director shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties. The board shall meet at least 4 times in each year and shall have final authority over the activities of the corporation.

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

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

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

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

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

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

SECTION 17. On the effective date of the establishment of the Massachusetts Renewable Energy Trust Fund within the Massachusetts Clean Energy Technology Center as shall be specified in a memorandum of understanding executed between the Massachusetts Technology Park Corporation and the center, the corporation shall transfer to said center all moneys credited to the Massachusetts Renewable Energy Trust Fund and held by said corporation, and all associated equipment, employees, records, investments, contracts, agreements and all other assets funded by the Trust Fund, as further identified in said memorandum of understanding. In furtherance of said transfer of the Trust Fund, the corporation shall transfer or otherwise assign, and said center shall assume, all rights, responsibilities, obligations and liabilities of said corporation arising out of the Trust Fund and said corporation shall be discharged from any administrative, legal and financial responsibility arising from its administration of said Trust Fund, including financial responsibility for any responsibilities, obligations, and liabilities that cannot be transferred by operation of law or permissively assigned to said center, except as expressly provided otherwise in said memorandum of understanding between said corporation and said center, provided, however, that said corporation shall be authorized to retain an amount mutually agreed to by the Secretary of Housing and Economic Development and the Secretary of Energy and Environmental Affairs to be applied by said corporation to its purposes under chapter 40J of the General Laws and provided, further,

that the memorandum of understanding entered into between said corporation and said center shall provide for the orderly transfer of the Trust Fund to the center and shall include a plan and schedule to implement the transfer of the Trust Fund to said center; provided that, to the extent practicable, the transfer of the Trust Fund shall be completed by the later of June 30, 2009 or sixty days after enactment of legislation authorizing said transfer.