

HOUSE No. 4253

The Commonwealth of Massachusetts

By Mr. Murphy of Burlington, for the committee on Ways and Means, House, No. 4168, a Bill relative to clean energy (House, No. 4253). September 21, 2009.

An Act RELATING TO CLEAN ENERGY.

FOR THE COMMITTEE:

NAME:	DISTRICT/ADDRESS:
Charles Murphy	21st Middlesex

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

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

SECTION 2. Section 1 of chapter 23J of the General Laws, as so appearing, is hereby amended by inserting after the definition of "Contribution agreement" the following 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 chapter 23J of the General Laws, as so appearing, is hereby amended by inserting after the definition of "Revenue" the following definition:-

"Trust Fund", the Massachusetts Renewable Energy Trust Fund established pursuant to section 9.

SECTION 4. Section 2 of chapter 23J of the General Laws, 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 her designee; 1 of whom shall be the secretary of labor and workforce development or her 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 of a private college or university or his designee, and 1 of whom shall be a union representative. Each of the 5 directors appointed by the governor shall serve for a term of 5 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. Subsection (e) of said section 2 of said chapter 23J of the General Laws, as so appearing, is hereby further amended by inserting the following paragraph:-

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

SECTION 7. Section 3 of said chapter 23J of the General Laws, as so appearing, is hereby amended by inserting after the word “purposes”, in line 57, the following words:- 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, however, that when such activity involves the expenditure from the Massachusetts Renewable Energy Trust Fund, or when 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, and section 39M of chapter 30 of the General Laws, shall not apply thereto

SECTION 8. Said section 3 of said chapter 23J of the General Laws, as so appearing, is hereby further amended by striking out, in line 155, the word “and”

SECTION 9. Said section 3 of said chapter 23J of the General Laws, as so appearing, is hereby further amended by striking out, in line 167, the word “sector.” and inserting in place thereof the following words:- sector;

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

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

The center shall annually, no later than August 15th, 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 this section, and any recommendations for improving the ability of the board, the center and the fund to meet such requirements.

The center shall annually, no later than August 15th, 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 11. Said chapter 23J of the General Laws is hereby further amended by inserting after section 8 the following 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 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. Said 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 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 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 towards 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; 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, including, but not limited to, promoting programs and investments that lead to pathways towards 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 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 trust 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 trust fund as adopted by the board.

(f) For the purposes of expenditures from the trust 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, unless otherwise authorized herein no expenditure from the trust fund shall be deemed to involve a capital facility project; provided further, that no lease or license executed in furtherance of the public purpose and interests of the 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 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 and as a condition subsequent to the prior transfer of \$17 million from the fund to the commonwealth for deposit in the General Fund authorized pursuant to 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 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 10. The center shall develop an initiative to be known as the pathways out of poverty initiative. Said 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 do not exceed 200 percent 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 non-profit agencies; and (iii) establish career pathways for hard and soft skill development and salary advancement. Said 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 12. 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 13. Said section 20 of said chapter 25 of the General Laws, as so appearing, is hereby further amended by striking out, in lines 21-23, 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 14. Said section 20 of said chapter 25 of the General Laws, as so appearing, is hereby further amended by striking out, in lines 28 and 29, the word “collaborative”, and inserting in place thereof, in each instance, the following words:- Massachusetts clean energy technology center.

SECTION 15. Section 10 of chapter 25A of the General Laws, as so appearing, is hereby amended by striking out, in lines 58 through 59, inclusive, the words “4E of chapter 40J” and inserting in place thereof the following words:- 9 of chapter 23J

SECTION 16. 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 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 his designee, and the commissioner of higher education or his designee, and 20 persons to be appointed by the governor, 2 of whom shall be appointed from a list of persons nominated by the president of the senate, 2 of whom shall be appointed from a list of persons nominated by the speaker of the house of representatives, 8 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 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, 1 of whom shall be a board member from a post-secondary educational institution and 1 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.

SECTION 17. Section 4 of chapter 40J of the General Laws, as so appearing, is hereby amended by striking out, in line 20, the words “establish advisory boards to” and inserting in place there of the following words:- , without limitation, establish advisory boards in furtherance of the purposes of this chapter including advisory boards to

SECTION 18. Section 4A of said chapter 40J of the General Laws, as so appearing, is hereby amended by striking out, in line 7, the word “five” and inserting in place thereof the following figure:- 30.

SECTION 19. Section 4B of said chapter 40J of the General Laws, as so appearing, is hereby amended by striking out, in lines 36 through 37, inclusive, the words “working in collaboration with the Massachusetts clean energy technology center established in section 2 of chapter 23J, state to induce” and inserting in place thereof the following word:- inducing

SECTION 20. Said section 4B of said chapter 40J of the General Laws, as so appearing, is hereby further amended by striking out, in line 41, the words “Massachusetts clean energy technology center,”

SECTION 21. Section 6A of said chapter 40J of the General Laws, as so appearing, is hereby amended by striking out, in lines 34 through 37, inclusive, the words “The governing board shall consult with the Massachusetts clean energy technology center established in section 2 of chapter 23J, to ensure a comprehensive and effective approach to clean energy cluster growth and development.”

SECTION 22. Section 4E of chapter 40J of the General Laws is hereby repealed.

SECTION 23. Section 134 of chapter 164 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out, in lines 90 through 92, inclusive, the words “Technology Park Corporation for monies from the Massachusetts Renewable Energy Trust Fund, established pursuant to subsection (a) of chapter 40J” and inserting in place thereof the following words:- clean energy technology center for monies from the Massachusetts Renewable Energy Trust Fund, established pursuant to section 9 of chapter 23J

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

SECTION 25. Sections 3 through 8, inclusive, of chapter 307 of the acts of 2008 are hereby repealed.

SECTION 26. 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 moneys 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 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 trust fund to the Massachusetts clean energy technology center and shall include a plan and schedule to implement the transfer of the trust fund to the Massachusetts clean energy technology center; and provided further, that to the extent practicable, the transfer of the trust fund shall be completed no later than October 31, 2009.

SECTION 27. Notwithstanding any general or special to the contrary, in making his initial appointments to the board of the Massachusetts clean energy and technology center pursuant to section 2 of chapter 23J of the General Laws, the governor shall appoint 1 member to serve for a term of 1 year, 1 member to serve for a term of 2 years, 1 member to serve for a term of 3 years, 1 member to serve for a term of 4 years, and 1 member to serve for a term of 5 years.