

Adopted House Amendments to H. 4365

Source: <http://www.statehousenews.com/reports/legislation/11-16-7Energy1.htm>

Amendments: 5, 9, 40, 48, 57, 67, 70, 71, 72, 73, 74 76, 77, 79.

Mr. DeLeo and others move to amend House Bill No. 4365 by inserting before the enacting clause the following:-

"Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide forthwith for clean and renewable energy in the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience."

and move to further amend the bill by striking out section 3 and inserting in place thereof the following section:

SECTION 3. Chapter 12 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out section 11E and inserting in place thereof the following section:-

Section 11E. (a) There shall be within the office of the attorney general, an office of ratepayer advocacy. The attorney general through the office of ratepayer advocacy is hereby authorized to intervene, appear and participate in administrative or judicial proceedings held in the commonwealth on behalf of any group of consumers in connection with any matter involving the rates, charges, prices, tariffs of an electric company, gas company, generator, transmission company, telephone company or telegraph company doing business in the commonwealth and subject to the jurisdiction of the department of public utilities or the department of telecommunications and cable.

(b) The office of ratepayer advocacy shall be under the direction of an assistant attorney general appointed pursuant to section 2. The assistant attorney general shall devote his full time and attention to the duties of the office.

and move to further amend the bill in section 5 by striking out section 22 and inserting in place thereof the following section:

"Section 22 (a) There is hereby established and set up on the books of the commonwealth a separate fund to be known as the Massachusetts Renewable Energy Trust Fund, hereinafter in this section referred to as the fund. The secretary of energy and environmental affairs shall hold the fund in an account separate from other funds or accounts. There shall be credited to the fund any revenue from appropriations or other monies authorized by the general court and specifically designated to be credited to the fund, and any gifts, grants, private contributions, investment income earned on the fund's assets and all other sources and all amounts collected pursuant to 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 (c) and in no case shall any money remaining in the fund at the end of a fiscal year revert to the General Fund.

(b) The secretary, in consultation with the advisory board established pursuant to subsection (g), may draw upon monies in the fund for the public purpose of generating the maximum economic and environmental benefits over time to the ratepayers of the commonwealth from renewable energy 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 secretary, have achieved results which would indicate that future investment in said facilities would yield results in the development of renewable energy more significant 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.

(c) The public purposes to be advanced through the secretary's actions shall include, but not be limited to, the following: (i) developing, permitting, and constructing renewable energy projects, or procuring the development, permitting or construction of renewable energy projects, thereby increasing the use and affordability of renewable energy resources in the commonwealth; (ii) protecting 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) ensuring delivery to all consumers of the commonwealth of as many benefits as possible created as a result of increased fuel and supply diversity; (iv) creating additional employment opportunities in the commonwealth through the development of renewable energy technologies; (v) stimulating increased public and private sector investment in, and competitive advantage for, renewable energy and related enterprises, institutions, and projects in the commonwealth; (vi) stimulating entrepreneurial activities in these and related enterprises, institutions, and projects; (vii) providing non-financial assistance for the development, permitting, and construction of renewable energy projects; (viii) entering into bulk purchasing agreements for energy, renewable energy credits, or renewable energy equipment; (ix) providing economic assistance for the growth and development of a renewable energy sector; and (x) undertaking any other action consistent with provisions of this chapter.

(d) In furtherance of these and other public purposes and interests, the secretary may, in consultation with the advisory board established pursuant to subsection (g), 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 pursuant to such selection procedures as the secretary deems appropriate and otherwise in a manner consistent with good business practices; provided, however, that the secretary shall generally employ a preference for competitive procurements; provided, further, that the secretary 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 secretary has determined 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.

The secretary shall, in consultation with the advisory board established pursuant to subsection (g), adopt a detailed plan for the application of the fund in support of the design, implementation, evaluation, and assessment of a renewable energy program for the commonwealth, subject to periodic revision by the secretary, that ensures that the fund shall be employed to provide financial and non-financial resources to overcome barriers facing renewable energy enterprises, institutions, and projects in a prudent manner consistent with the public purposes and interests set forth in this section. Said plan, to the extent practicable, shall consist of at least four components: (i) "product and market development" to establish a foundation for growth and expansion of the commonwealth's renewable energy enterprises, institutions, and projects, including pilot and demonstration projects, production incentives, and other activities designed to increase the use and affordability of renewable energy in the commonwealth; (ii) "training and public information" to allow for the development and dissemination of complete, objective, and timely information, analysis, and policy recommendations related to the advancement of the public purposes and interests of the renewable energy fund; (iii) "investment" to support the growth and expansion of renewable energy enterprises, institutions, and projects; and (iv) "research and development" within the commonwealth related to renewable energy matters. Said plan shall specify the expenditure of such monies from the fund to each of these component activities; provided, however, that monies so expended shall be used to develop such renewable energy projects within the commonwealth. In developing said plan, the secretary is hereby authorized and directed to consult with and utilize the services of the executive office for such technical assistance as the secretary deems necessary or appropriate to the effective discharge of his responsibilities and duties relative to the fund.

(e) Subject to the approval of the secretary, 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 renewable 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 secretary is hereby authorized to retain, through a competitive bid process, a public or private sector investment fund manager or 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 herein and to seek other fund co-sponsors to contribute public and private capital from the commonwealth and other states; provided, however, that such capital is appropriately segregated. Said manager or

managers, subject to the approval of the secretary, shall be authorized to retain necessary services and consultants to carry out the purposes of the fund. Said manager or managers shall develop a business plan to guide investment decisions, which shall be approved by the secretary prior to any expenditures from the fund and which shall be consistent with the provisions of the plan for the fund as adopted by the secretary.

(f) For the purposes of expenditures from the fund, renewable energy technologies eligible for assistance shall include the following: solar photovoltaic and solar thermal electric energy; wind energy; ocean thermal, wave, or tidal energy; geothermal; fuel cells; landfill gas; naturally flowing water and hydroelectric; low emission, advanced biomass power conversion technologies, such as gasification using such biomass fuels as wood, agricultural, or food wastes, energy crops, biogas, biodiesel, or organic refuse-derived fuel. Such funds may also be used for investment by distribution companies to overcome barriers to renewable energy development, if consistent with the provisions of this section. The following technologies or fuels shall not be considered renewable energy supplies: coal, oil, natural gas, and nuclear power.

(g) The secretary is hereby authorized to transfer amounts from the fund to, and enter into funding or subsidy agreements with, the Massachusetts Development Finance Agency established pursuant to section 2 of chapter 23G, hereinafter referred to as the agency; provided, however, that the secretary shall not transfer more than 50 per cent of the revenue deposited into the fund pursuant to section 20 of chapter 25 to the agency in any one fiscal year.

Notwithstanding chapter 23G or any other general or special law to the contrary, amounts transferred to the agency shall be applied to make loans to users as defined in said chapter 23G for the purpose of financing or refinancing costs of renewable energy projects approved by the secretary, or to insure or provide loan guarantees for loans, or to provide reserves for or otherwise secure bonds of the agency issued for such purpose, or to provide for or otherwise subsidize debt service costs on such loans or other forms of financial assistance or such bonds, as agreed in an operating or other agreement between the agency and the secretary. Any such amounts transferred to the agency shall be held and applied by the agency separate and apart from all other monies of the agency.

(h) In addition to the powers granted pursuant to chapters 23G and 40D of the General Laws, the agency is hereby authorized to borrow money and issue and secure its bonds for the purpose of financing renewable energy generating facilities, renewable energy research and development facilities and renewable energy manufacturing facilities, as provided in, and subject to, the provisions of this section; provided further that the provisions of said chapters 23G and 40D shall apply to bonds issued under this section, except that the provisions of subsection (b) of section 8 of said chapter 23G and section 12 of said chapter 40D shall not apply to bonds issued pursuant to this section or to the renewable energy generating facilities, renewable energy research and development facilities or renewable energy manufacturing facilities financed thereby; and provided further, that renewable energy generating facilities, renewable energy research and development facilities and renewable energy manufacturing facilities financed by the agency pursuant to this section shall constitute a project within the meaning of section 1 of said chapter 23G and section 1 of said chapter 40D, but shall not be considered facilities to be used in a commercial enterprise.

(i) Prior to financing any renewable energy generating facilities, renewable energy research and development facilities and renewable energy manufacturing facilities in accordance with this section, the agency shall find and determine that: (i) the renewable energy generating facility, renewable energy research and development facility or renewable energy manufacturing facility has been approved by the secretary upon a finding by the secretary that the financing of said facility is expected to promote the use of renewable energy resources in the commonwealth and help to achieve the public purposes of this chapter; (ii) the recipient is a responsible party; (iii) the agency's bonds, if any, and the financing documents therefore contain reasonable provisions and comply with the applicable provisions of this chapter and chapters 23G and 40D; and (iv) payments to be made under the applicable financing documents, including any moneys made available from the fund, are adequate to pay the current expenses of the agency in connection with the renewable energy project and to make payments on the bonds, if any, issued by the agency therefore.

(j) In addition to the provisions of said chapters 23G and 40D pertaining to the security of bonds issued by the agency, bonds issued by the agency pursuant to this section may be secured by funds received, or to be received, by the agency as provided in this section. Bonds issued pursuant to this section may be issued under, and secured by, a trust agreement or other financing document with such terms and conditions as the agency may determine in accordance with this section and the applicable provisions of said chapters 23G and 40D.

(k) Bonds issued by the agency pursuant to this section shall not be deemed to be a debt or a pledge of the faith and credit of the commonwealth or any political subdivision thereof and shall be payable solely from revenue received from the fund and from any other monies and rights pledged for their payment. All bonds issued by the agency pursuant to this section shall recite that neither the commonwealth nor any political subdivision thereof shall be obligated to pay the same and neither the full faith and credit nor the taxing power of the commonwealth or any political subdivision thereof is pledged to such payment.

(l) Nothing in this section shall be construed to limit or otherwise diminish the power of the agency to finance the costs of projects authorized pursuant to said chapters 23G and 40D within a certified economic development project upon compliance with the provisions of said chapters 23G and 40D.

(m) The use by the secretary of monies to implement the provisions of this section shall be deemed to be an essential governmental function.

(n) The governor shall appoint an advisory committee to assist the secretary in matters related to the fund and in the implementation of the provisions of this section. Said advisory committee shall include not more than 15 individuals with an interest in matters related to the general purpose and activities of the fund and the knowledge and experience in at least one of the following areas: electricity distribution, generation, supply, or power marketing; the concerns of commercial and industrial ratepayers; residential ratepayers, including low-income ratepayers; economics, financial or investment consulting expertise relative to the fund; regional environmental concerns; academic issues related to power generation, distribution or the development or commercialization of renewable energy sources; institutions of higher education;

municipal or regional aggregation matters; and renewable energy issues. The secretary shall consult with said advisory committee in discharging his obligations under this section.

(o) The books and records of the executive office relative to expenditures and investments of monies from the fund shall be subject to a biennial audit by the auditor of the commonwealth.

(p) Notwithstanding any general or special law to the contrary, including without limitation any laws related to the procurement of electricity, and subject to this paragraph, the secretary shall, upon the written request of the governor, transfer monies 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 precedent to any such transfer, the commonwealth, acting by and through the executive office for administration and finance, shall enter into an agreement with the executive office under which the commonwealth, at the direction of the executive office, shall enter into 1 or more contracts with owners of facilities that generate electricity using renewable energy technologies, or with 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 secretary shall determine the particular type or 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 corporation and the commonwealth, of such amount as shall be transferred pursuant to 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. No payments shall be required from the commonwealth pursuant to any such contract prior to the fiscal year ending June 30, 2005, and 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 said owners or power marketers on such terms as the corporation shall deem commercially reasonable. The amounts collected under section 20 of chapter 25 are impressed with a trust for the benefit of the fund and, to facilitate the purchase by the executive office of electricity produced by renewable energy technologies or the purchase of certificates produced pursuant to the renewable energy portfolio standard regulations of the department 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 covenants with the sellers of such electricity or certificates that the amounts collected under said section 20 of chapter 25 will not be diverted from the fund and that the rates of the mandatory charges pursuant to said section 20 of chapter 25 will not be reduced during the term, which shall not exceed 20 years, of any contract entered into by the executive office for the purchase of such electricity or certificates below a level which will enable the executive office 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 section 20 of chapter 25 shall be expended by the executive office as provided in subsection (a) and, in the discretion of the executive office, in furtherance of the public purposes of the executive office and for such costs

of departments and agencies of the commonwealth that support or are otherwise consistent with the purposes of the fund.

(q) The department shall, pursuant to chapter 30A, within 180 days of the effective date of this section promulgate rules and regulations and establish guidelines for the administration and enforcement of this section, including, but not limited to, establishing applicant criteria, application forms and procedures, and renewable energy product requirements.

(r) The secretary shall annually, no later than July 1, file a report with the house and senate committees on ways and means and the joint committee on telecommunications, utilities and energy. Said report shall include: (i) a list of fund recipients; (ii) the associated grant and loan amounts; (iii) the amounts of non-ratepayer funding leveraged, if any, as a result of the grants and loans, including in-kind and other non-cash contributions; (iv) the purposes of the grants and loans; (v) an annual statement of cash inflows and outflows detailing the sources and uses of funds; (vi) a detailed breakdown of all investments made by the fund pursuant to subsection (e); and (viii) a detailed breakdown of the purposes and amounts of administrative costs, including salaries, charged to the fund",

and move to further amend the bill by striking out section 6 and inserting in place thereof the following section:-

SECTION 6. Chapter 25 of the General Laws is hereby amended by inserting after section 5D the following section:-

Section 5E. Upon written complaint by the attorney general of the commonwealth requesting any independent or department audit of the rate components of any company subject to the jurisdiction of said department, the department shall commence a proceeding within 30 days of receipt of said complaint to determine whether to order such requested audit. If cause for an audit is shown through this proceeding, the department shall order said audit in a reasonable amount of time. The results of any audit so ordered shall be filed promptly with the department of public utilities and the audits shall be paid for by the company that is the subject of the audit.

The department may, from time to time, audit all companies subject to the jurisdiction of said department, including, but not limited to, review of the following documents: (i) all financial statements, the balance sheet, the income statement, the statement of cash flows, the statement of retained earnings, the notes to the financial statements, the information in the annual return to the department of public utilities; (ii) all reconciling mechanisms related to rates, prices or charges, merger, acquisition or consolidation related costs and savings three years following the merger, acquisition or consolidation; and, (iii) service quality measure statistics and the service quality performance at least every 3 years or whenever service quality penalties equal to or exceed 50 percent of the maximum.

and move to further amend the bill in section 8 striking out section 24.

and move to further amend the bill in section 20, in the first paragraph in clause (a), by inserting after the word "oil," the following words: "nuclear power,"

and move to further amend the bill in section 28 by inserting, after the word "municipalities" in subsection (a) of section 16 the following words:- and other governmental bodies

and move to further amend the bill in section 28 by inserting, after the word "municipality" in subsection (c) of section 16 the following words:- or other governmental body

and move to further amend the bill in section 28 by inserting, after the word "municipalities" in subsection (d) of section 16 the following words:- and other governmental bodies

and move to further amend the bill in section 34 by striking out subsection (c) of section 38U, and inserting in place thereof the following:-

(c) The credit allowed under this section may be taken in the fiscal year in which any qualifying purchase was made. The amount of credit that exceeds the total tax due for the fiscal year in which the credit is taken may be carried over, as reduced, and applied against the tax liability for the next fiscal year; provided, however, that in no fiscal year may the amount of the credit allowed exceed the total tax due of the taxpayer for the relevant fiscal year.

and move to further amend the bill by striking out section 35 and inserting in place thereof the following new section:-

Section 35. Section 16 of chapter 132A of the General Laws, as so appearing, is hereby amended by adding at the end of the first paragraph the following sentence:-

Notwithstanding any general or special law to the contrary, generating and transmission facilities for the production of energy via renewable resources, including but not limited to, solar photovoltaic or solar thermal electric energy, wind energy, ocean thermal, wave or tidal energy, and fuel cells utilizing renewable fuels, shall be a permitted use in any of the commonwealth's ocean sanctuaries other than the Cape Cod ocean sanctuary.

and move to further amend the bill by striking out section 60.

and move to further amend the bill by striking out section 66.

and move to further amend the bill by striking out section 70.

and move further to amend the bill by striking out section 76 and inserting in place thereof the following new sections:-

SECTION 76. Notwithstanding any general or special law to the contrary, the department of public utilities shall open an investigation and study relative to off-the-record *ex-parte* communications in any contested on-the-record proceeding before the department. The department shall report to the general court the results of its investigation and study and its recommendations, if any, together with drafts of legislation necessary to carry its recommendations into effect, by filing the same with the clerk of the house of representatives,

the clerk of the senate, who shall forward the same to the chairmen of the joint committee on telecommunications, utilities and energy on or before than April 1, 2008."

SECTION 77. Notwithstanding any general or special law to the contrary, there shall be a special commission to review and evaluate the feasibility of establishing a home energy scoring program. The commission shall study and evaluate the value of home energy scoring, the cost of energy scoring tests, and the result of such scoring on the conservation of energy. The commission shall consist of: the house and senate chairs of the joint committee on telecommunications, utilities and energy or their designees, who shall co-chair the commission; the house minority leader, or his designee; the senate minority leader, or his designee; 1 member of the board of registration for home inspectors, one member of the state board of building regulations, a representative from the department of clean energy, the chairman of the joint committee on consumer protection and professional licensure or their designee; the chairman of the committee on housing, or their designee, one representative from the Massachusetts Association of Realtors, one representative from the Greater Boston Real Estate Board, and one member of the home inspection industry. The commission shall have not less than 4 meetings and shall file a report of its findings, including any legislative or regulatory recommendations, with the clerks of the House of Representatives and the Senate on or before December 31, 2008.

SECTION 78. Notwithstanding any general or special law to the contrary, section 34 shall take effect on January 1, 2008.

Source: <http://www.statehousenews.com/reports/legislation/11-16-7Energy2.htm>

Amendments: 8, 16, 25, 26, 42, 51, 54, 59, 60 and 69.

Mr. DeLeo and others move to amend House Bill No. 4365 in section 2 by inserting, in section 39(D)(i), after the words "energy system" the following new word "geothermal"

and move to further amend the bill in section 2 by inserting, in section 39(D)(i), after the words "water heating" the following new words: "air conditioning"

Source: <http://www.statehousenews.com/reports/legislation/11-16-7Energy3.htm>

Amendments: 4, 10, 11, 12, 17, 20, 21, 23, 37, 38, 55, 56, 58, 62, 64 and 68.

Mr. DeLeo and others move to amend House Bill No. 4365 in section 28 by striking out, in the second paragraph of subsection 18, the following: "; provided, however, that notwithstanding any local zoning bylaw or ordinance to the contrary, if a clean energy generating facility other than a waste-to-energy facility is proposed in any district zoned for industrial use or on any real property designated and accepted pursuant to this section, the use shall be allowed as of right, subject to the imposition of reasonable conditions through a site plan review process".

and move to further amend the bill by inserting after section 29 the following new section:

"SECTION 29A. Chapter 30 of the General Laws, as so appearing, is hereby amended by inserting after section 36A the following section:-

Section 36B. The commissioner of administration shall establish and enforce regulations governing the fuel efficiency standards that all vehicles must meet. The average fuel efficiency for the entire fleet of passenger vehicles owned or leased by the commonwealth, except those vehicles used for emergency purposes, security purposes, and special services, shall not exceed the US Corporate Average Fuel Economy (CAFE) Standards as established by the National Highway Traffic Safety Administration (NHTSA) and the Environmental Protection Agency (EPA).

and move to further amend the bill by inserting at the end thereof the following section:-

SECTION 79. Notwithstanding any general or special law to the contrary, the department of clean energy shall establish a special commission to study the siting of clean and renewable energy generating facilities other than a waste to energy facility on property zoned for industrial use.