

HOUSE No. 02614

The Commonwealth of Massachusetts

PRESENTED BY:

Lori A. Ehrlich

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to a coal-free Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>William N. Brownsberger</i>	<i>24th Middlesex</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Michael D. Brady</i>	<i>9th Plymouth</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Brian Ashe</i>	<i>2nd Hampden</i>
<i>Katherine M. Clark</i>	<i>Middlesex and Essex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Cleon H. Turner</i>	<i>1st Barnstable</i>

HOUSE No. 02614

By Ms. Ehrlich of Marblehead, a petition (accompanied by bill, House, No. 2614) of Turner and others relative to electric generating facilities located in the commonwealth that uses coal as fuel and the reduction of greenhouse gas emissions Joint Committee on Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to a coal-free Commonwealth.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

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

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

20 SECTION 2: On or before January 1, 2013, the commissioner of the department of energy
21 resources shall adopt a plan for replacing all use of coal as an energy resource in the
22 commonwealth by 2020, including a plan for the orderly retirement of all baseload coal-fired
23 electric generating facilities and replacement with clean energy alternatives such as electric
24 transmission upgrades, energy efficiency, demand response and renewable energy alternatives
25 having low or no emissions of greenhouse gases and other regulated air pollutants. The
26 commissioner shall consult with all state agencies and regional authorities with jurisdiction over
27 electric generation, electric transmission, air emissions, public health, economic development
28 and the provision of reliable and affordable electrical service, to ensure the plan can be
29 implemented in an efficient and cost-effective manner while promoting economic development,
30 reducing the public health and climate impacts of electric generation, and increasing energy
31 security for the commonwealth. The plan shall take into account the greenhouse gas emission
32 reductions mandated by chapter 21N of the general laws, including the 2020 statewide
33 greenhouse gas emissions limit adopted by the secretary pursuant to section 4 thereof, as well as
34 regulations issued by the United States Environmental Protection Agency regarding the control

35 of Hazardous Air Pollutants under section 112 of the federal Clean Air Act, Standards of
36 Performance for fossil fuel fired steam electric generating units under section 111 of the federal
37 Clean Air Act, the Transport Rule, the National Ambient Air Quality Standard for ozone, NO₂
38 and SO₂, and the Greenhouse Gas Tailoring Rule. The plan also shall be informed by the reports
39 and related public comments submitted pursuant to section 1 of this act. The plan shall include,
40 but not be limited to, the following: (i) an analysis of the extent to which each coal-fired electric
41 generating facility can or cannot operate in compliance with existing and reasonably foreseeable
42 state and federal environmental regulations, as well as the feasibility and cost of any
43 modifications necessary to meet the requirements of such regulations; (ii) an assessment of the
44 potential for re-use of each coal-fired electric generating facility site for alternatives that emit
45 few or no greenhouse gas emissions or other regulated air pollutants, including electric
46 generation and non-generation alternatives; (iii) an assessment of the potential for replacing or
47 repowering each such coal-fired electric generating facility with a combined cycle natural gas
48 power plant; (iv) an assessment of measures to minimize economic impacts on host communities
49 with respect to each coal-fired electric generating facility that ceases operation on or before
50 January 1, 2020, with such assessment taking into account costs such as any reductions in
51 property tax revenues and benefits such as reduced burdens on emergency and public health
52 services; (v) an analysis of whether and to what extent alternatives are needed to ensure electric
53 system reliability, such as increased energy efficiency, demand response, low- or no-emissions
54 renewable energy, electric transmission upgrades and quick-start natural gas powered electric
55 generation; and (vi) an assessment of site contamination as well as remediation measures
56 necessary to prepare the host site for alternative uses.

57 Prior to adopting a final plan, the department of energy resources shall hold public hearings in
58 each of the regions that have the most significant exposure to air pollutants from coal-fired
59 electric generation facilities.

60 SECTION 3: Chapter 25A of the general laws, as appearing in the 2008 edition, is hereby
61 amended by inserting after section 11I the following sections:

62 Section 11J. (1) The department shall establish a greenhouse gas emissions performance
63 standard for all retail electricity suppliers selling electricity to end-use customers in the
64 commonwealth. Beginning January 1, 2020, the greenhouse gas emissions performance standard
65 that must be achieved by each electric generating facility from which retail electricity suppliers
66 purchase electricity for delivery to end-use customers in the commonwealth shall be the lower of
67 (a) one thousand one hundred pounds of greenhouse gases per megawatt hour; or (b) the average
68 greenhouse gas emissions of all electric generating facilities in operation during the prior
69 calendar year in the ISO-New England control area. Such emissions performance standard shall
70 apply to all electricity delivered to end-use customers in the commonwealth on or after January
71 1, 2020, without regard to when the electricity was purchased or contracted for purchase.

72 (2) Any electric generation facility having a first commercial operation date after January 1,
73 2011 and located in the commonwealth must comply with the greenhouse gas emissions
74 performance standard established in subsection (1) of this section from the time of its first
75 commercial operation date and continuing thereafter.

76 (3) In determining the rate of emissions of greenhouse gases for electric generating facilities
77 under this section, the total emissions associated with producing electricity shall be included.

78 (4) The department shall establish an output-based methodology to ensure that the calculation of
79 emissions of greenhouse gases for a cogeneration or combined heat and power facility
80 recognizes the total usable energy output of the process, and includes all greenhouse gases
81 emitted by the facility in the production of both electrical and thermal energy.

82 (5) The department shall adopt regulations to implement and enforce the greenhouse gas
83 emissions performance standard under this section, including regulations establishing procedures
84 for verification of greenhouse gas emissions and rules establishing penalties for any failure to
85 comply with the greenhouse gas emissions performance standard.

86 Section 11K. There is hereby established within the department of energy resources and set
87 upon the books of the commonwealth a Community Repowering Fund for the purpose of
88 mitigating impacts of the retirement of coal-fired electric generation facilities on employees of
89 such facilities and on the municipalities where such facilities are located. There shall be credited
90 to the fund revenue from appropriations or other monies authorized by the general court and
91 specifically designated to be credited to the fund, and gifts, grants, private contributions,
92 repayment of loans, investment income earned on the fund's assets, and any other sources.
93 Money remaining in the fund at the end of a fiscal year shall not revert to the general fund.

94

95 The department shall maintain the fund as a separate fund, and shall cause it to be audited by an
96 independent accountant on an annual basis in accordance with accepted accounting principles.

97

98 The commissioner shall be treasurer, trustee, and custodian of the fund, and shall administer such
99 fund in accordance with the provisions of this section, and shall pay all warrants drawn upon it in
100 accordance with the provisions of this section and with such regulations as the department may
101 promulgate.

102

103 A governing board of not less than nine individuals with an interest in matters relating to the
104 general purpose of the fund shall assist the department in matters related to the fund and in the
105 implementation of this section. The governing board shall include: the commissioner, who shall
106 serve as chair; the secretary of energy and environmental affairs or a designee; the secretary of
107 labor and workforce development or a designee; the secretary of housing and economic
108 development or a designee; a representative of a labor organization representing electric-
109 generation facilities workers recommended by the president of the Massachusetts AFL-CIO; a
110 representative of the Massachusetts Municipal Association; and three members to be appointed
111 by the governor, who shall have knowledge and experience in one or more of the following
112 areas: regional environmental concerns; renewable energy and energy efficiency; and worker
113 training programs pertaining to renewable energy or energy efficiency.

114 SECTION 4: Section 2(a) of Chapter 23J of the general laws, as appearing in the 2008 official
115 edition, is hereby amended by striking subsection xi and replacing it with the following –

116 – (xi) establishing programs to ensure smooth transitions for workers from coal or oil-fired
117 electric power generating facilities to clean energy jobs; and (xii) performing any other actions
118 necessary to effectuate the state's public interests.

119 SECTION 5: Chapter 111 of the general laws, as appearing in the 2008 official edition, is
120 hereby amended by inserting after section 142O the following section:-

121 Section 142P. (a) There shall be a Pollution Public Health Effects Mitigation Trust Fund to
122 support research and education regarding the health impacts of pollution on citizens of the
123 commonwealth. The fund shall be administered by the commissioner. Expenditures from the
124 fund shall be only for the purposes set forth in subsection (d).

125 (b) Revenues credited to the fund shall be from the following sources:

126 (1) funds appropriated by the general court;

127 (2) funds received from federal, state or other sources for the purpose of evaluating the health
128 impacts of pollution;

129 (3) costs recovered or otherwise received from parties responsible for violating the terms of any
130 valid air emissions permit;

131 (4) fees imposed pursuant to subsection (c); and

132 (5) interest earned on any monies in the fund.

133 (c) (1) A pollution mitigation fee shall be established in an amount not less than 20 cents for each
134 pound of any air pollutant emitted by any major source as defined in 42 U.S.C. section 7412(a).

135 The fee shall be remitted to the department of revenue on the last day of each month based on the
136 amount of air pollutants emitted during the preceding month.

137 (2) An owner of a major source of any air pollutant shall be liable for the fee until it has been
138 paid to the commonwealth.

139 (3) All fees collected pursuant to this section shall be deposited in the fund and shall be
140 disbursed for the purposes set forth in subsection (d). The state treasurer shall not deposit or
141 transfer revenues generated pursuant to subsection (b) to the General Fund or any other fund
142 other than the Pollution Public Health Effects Mitigation Trust Fund.

143 (4) The commissioner shall set the amount of the pollution public health mitigation fee, which
144 shall be not less than 20 cents for each pound of any air pollutant emitted by each major source.

145 (d) The commissioner shall use money from the fund:

146 (1) to provide funds for the study of the public health impacts from air pollutants, including but
147 not limited to acute local impacts such as asthma, upper respiratory conditions or premature
148 death; such research or studies may be conducted by the department or by a qualified
149 independent medical or public health expert, organization or educational institution;

150 (2) to educate the public in the vicinity of any existing or proposed major source of any air
151 pollutant regarding the actual or potential health impacts associated with air pollutants emitted
152 by such major source;

153 (3) to provide funds for research regarding methods or technologies for mitigating health impacts
154 associated with the emission of air pollutants; and

155 (4) reasonable administrative and personnel expenses related to the administration of the fund
156 and enforcement of this section.

157 (e) The commissioner shall administer the fund in accordance with this section. The
158 commissioner shall develop procedures governing the expenditure of, and accounting for money
159 expended from, the fund and shall also maintain accounting records showing the income and

160 expenses of the fund. The commissioner shall ensure that there are adequate moneys available in
161 the fund to carry out this section.

162 SECTION 6. Section 150A of Chapter 111 of the General Laws is hereby amended in paragraph
163 one by inserting in the definition of “Refuse,” following the word “sewage,” the words “and coal
164 ash.”

165 SECTION 7. Section 150A of Chapter 111 of the general laws is hereby amended in paragraph
166 one by inserting before the definition of “Department,” the following definition:

167 – “Coal Ash,” waste produced from the combustion of coal, including but not limited to fly ash,
168 bottom ash and slag, and including wastes associated with the combustion of coal when added to
169 fly ash, bottom ash or slag.

170 SECTION 8. Section 150A of Chapter 111 of the General Laws is hereby amended in paragraph
171 one by inserting after the definition of “Facility,” the following definition:

172 – “Fill,” a material used to fill a cavity, passage or hole in the ground, or used to raise the
173 level of the ground or to alter the grades of the ground.

174 SECTION 9. Section 150A of Chapter 111 of the General Laws is hereby further amended by
175 striking the paragraph added by Chapter 118 of the Acts of 1976 and inserting in place thereof
176 the following paragraphs:

177 As of the effective date of this act, coal ash shall not be used as fill, deposited in a landfill, or
178 disposed of by burial, until such time as a site assignment for such site has been obtained from
179 the board of health. The use of coal ash as fill at any site prior to the effective date of this act
180 does not require site assignment. Construction and expansion of new surface impoundments or

181 waste ponds for the storage or disposal of coal ash shall be prohibited upon passage of this
182 legislation.

183 The requirements of this section shall not apply to coal ash used as a raw material for concrete
184 block manufacture, base for road construction, or coal ash generated from a family residence. A
185 person who uses coal ash for such purposes can do so without assignment or approval from the
186 department or local board of health, provided, however, the department and local board of health
187 shall have jurisdiction to determine, after notice and hearing, that the use or storage of coal ash
188 has created a nuisance condition by reason of odor, dust, fires, smoke, the breeding or harboring
189 of rodents, flies or vermin, or other causes, and to prevent or order abatement thereof.

190 A person storing coal ash shall do so in a manner that does not create a nuisance condition, cause
191 a discharge of pollutants to waters of the commonwealth in violation of chapter 21 of the general
192 laws or regulations promulgated thereunder, or create a condition of air pollution. If the
193 department or local board of health determines that coal ash storage has a significant potential to
194 create a nuisance condition, cause a discharge of pollutants to waters of the commonwealth in
195 violation of chapter 21 or regulations promulgated thereunder, or create a condition of air
196 pollution, the department and local board of health shall require approval pursuant to this section
197 for such storage. A person who stores more than 100 cubic yards of coal ash at any one time
198 shall make a one-time notification to the department prior to commencement of such storage. In
199 the case of storage that began prior to the effective date of this section, the person causing such
200 storage shall provide notice to the department or local board of health within 180 days of the
201 effective date of this section.

202 As of the effective date of this act, ongoing use of coal ash as refuse, except for use as fill, may
203 continue as an interim use where either the generator or user of the coal ash submits an
204 application for a permit to the department or local board of health within 180 days of the
205 effective date of this act. Such interim use may continue until such time as the department or
206 local board of health issues an approval or denial of the use, or one year from the date the
207 application was submitted to the department or local board of health, whichever is earlier. At its
208 discretion, the department or local board of health may extend the time period for making a
209 determination regarding the interim use when further information is required before the
210 department or local board of health can make a determination on the application. In no case
211 shall this interim period exceed two years from the date the application was submitted to the
212 department or local board of health.

213 SECTION 10. Chapter 164 of the general laws, as appearing in the 2010 official edition, is
214 hereby amended by inserting after section 69I the following section:

215 Section 69I½. Notwithstanding the provisions of this chapter or any law to the contrary, a
216 facility having a first date of commercial operation on or after January first, two thousand eleven,
217 and any facility re-commencing operation after one year or more of non-operation, shall not
218 utilize, combust or gasify coal.