

**HOUSE . . . . . No. 3907**

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninetieth General Court  
(2017-2018)**  
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An Act relative to fuel cell technology.

*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. Section 5 of chapter 59 of the General Laws, as appearing in the 2016  
2 Official Edition, is hereby amended by striking out, in line 13, the words “or Forty-fifth” and  
3 inserting in place thereof the following words:-

4           , Forty-fifth or Forty-fifth B.

5           SECTION 2. Said section 5 of said chapter 59, as so appearing, is hereby further  
6 amended by inserting after clause Forty-fifth A the following clause:-

7           Forty-fifth B, Any qualified fuel cell powered system, the construction of which was  
8 commenced after January 1, 2017, that is capable of producing not more than 125 per cent of the  
9 annual energy needs of the real property upon which it is located, which shall include contiguous  
10 or non-contiguous real property owned or leased by the owner. Any other qualified fuel cell  
11 powered system shall be exempt provided that the owner has made to the city or town where the  
12 system is located a payment in lieu of taxes. A city or town, acting through the board or officer  
13 authorized by its legislative body, may execute an agreement for the payment in lieu of taxes

14 with the owner of a qualified fuel cell powered system in the municipality where the qualified  
15 fuel cell powered system is located. Unless otherwise provided by such agreement, (1) a notice  
16 of the payment in lieu of tax owed for each fiscal year shall be mailed to the owner and due on  
17 the dates by which a tax assessed under this chapter would be payable without interest; (2) all  
18 provisions of law regarding billing and collecting a tax assessed under this chapter shall apply to  
19 the payment in lieu of taxes, including the payment of interest; and (3) upon issuance of the  
20 notice, the owner shall have the remedies provided by section 59, section 64 and all other  
21 applicable provisions of law for the abatement and appeal of taxes upon real estate. An  
22 exemption under this clause shall be allowed only for a period of 20 years from the date of  
23 completion of the construction of the qualified fuel cell powered system; provided, however, that  
24 no exemption shall be allowed for any year within that period when the qualified fuel cell  
25 powered system is not capable of producing energy as required by this clause. Each owner shall  
26 annually, on or before March 1, make a declaration under oath to the assessors regarding the  
27 system and power generated for the previous calendar year. This clause shall not apply to  
28 projects developed under section 1A of chapter 164.

29 For the purposes of this clause, “qualified fuel cell powered system” shall mean an  
30 integrated system comprised of a fuel cell stack assembly and associated components that  
31 utilizes and converts natural gas or renewable fuels into electricity and is being utilized as the  
32 primary or auxiliary power system for the real property upon which it is located, which shall  
33 include contiguous or non-contiguous real property owned or leased by the owner, or in which  
34 the owner otherwise holds an interest.

35 SECTION 3. Subsection (b) of section 38H of said chapter 59, as so appearing, is hereby  
36 amended by inserting after the first sentence the following sentence:- For purposes of this

37 subsection, a generation facility shall not include a facility powered by a qualified fuel cell  
38 powered system, as defined in clause Forty-fifth B of section 5, to generate electricity.