

**HOUSE . . . . . No. 4110**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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An Act regarding accountability of public utility companies..

*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. Chapter 25 of the General Laws is hereby amended by striking out section  
2   5E, as inserted by section 9 of chapter 169 of the acts of 2008, and inserting in place thereof the  
3   following sections:-

4           Section 5E. (a) The department may, from time to time, audit all companies subject to its  
5   jurisdiction, except steam distribution companies. Such audits may include, but shall not be  
6   limited to, review of the following documents: (a) all financial statements, the balance sheet, the  
7   income statement, the statement of cash flows, the statement of retained earnings, the notes to the  
8   financial statements, and the information in the annual return to the department; (b) all  
9   documents concerning reconciling mechanisms related to rates, prices, charges, or costs and  
10   savings related to a merger, acquisition or consolidation within 3 years after the merger,  
11   acquisition or consolidation; and (c) documents concerning service quality measure statistics and  
12   service quality performance at least every 3 years or whenever service quality penalties equal to  
13   or exceed 50 per cent of the maximum.

14 (b) Upon (i) failure of an investor-owned distribution, transmission or gas company  
15 serving less than 100,000 customers to timely restore service after an outage effecting more than  
16 500 customers or more than one-third of the customers in any one municipality and (ii) the  
17 department taking action pursuant to section 5F the department shall order an independent  
18 management audit for the purpose of determining whether the company's management practices  
19 have caused, or substantially contributed to, such failure to timely restore service after an outage  
20 effecting more than 500 customers or more than one-third of the customers in any one  
21 municipality.

22 If the audit determines that the company's management practices caused, or substantially  
23 contributed to, the failure to timely restore service after an outage effecting more than 500  
24 customers or more than one-third of the customers in any one municipality the department may  
25 order that the company be placed into receivership. Upon such an order, the attorney general  
26 may bring an action in superior court requesting the appointment of a receiver to operate the  
27 company; provided however, that unless the court determines otherwise said appointment shall  
28 not exceed 120 days.

29 A receiver appointed pursuant to this section shall have access to all company utility  
30 assets and records and may manage the company's assets in a manner which will restore or  
31 maintain an acceptable level of service. The receiver may hire, direct, or manage any employee,  
32 discharge any non-union employee, expend existing company utility revenues for labor and  
33 materials, and make additional expenditures essential to providing an acceptable level of service,  
34 such expenditures to be funded in accordance with generally accepted ratemaking practices. Any  
35 costs incurred by the department or appointed receiver under this section shall be the  
36 responsibility of the company.

37 (c) Upon written complaint of the attorney general requesting an independent audit or  
38 independent management audit of a company subject to the department's jurisdiction, the  
39 department shall commence a proceeding within 30 days of receipt of the complaint for the  
40 purpose of ordering the requested audit in a reasonable time. The results of any audit so ordered  
41 shall be filed promptly with the department and each audit shall be paid for by the company that  
42 is the subject of the audit.

43 Section 5F. Upon the declaration of a state of emergency during which (i) an investor-  
44 owned distribution, transmission or gas company serving less than 100,000 customers fails to  
45 timely restore service after an outage effecting more than 500 customers or more than one-third  
46 of the customers in any one municipality; (ii) said company fails to adequately implement its  
47 emergency response plan filed under section 85B; and (iii) the department determines that such  
48 failure by said company constitutes a threat to the health, safety and welfare of affected  
49 ratepayers the department may, in consultation with the Massachusetts emergency management  
50 agency, take such action deemed necessary to assure public safety and welfare through the  
51 priority restoration of gas, electric and water utility services, including (i) implementing the  
52 company's emergency response plan filed pursuant to section 85B to timely restore service in the  
53 affected area; and (ii) issuing operational and management directives necessary to timely restore  
54 service in the affected area. Any company who willfully fails to carry out an order by the  
55 department under this section shall be subject to a civil administrative penalty not to exceed  
56 \$1,000,000 per violation. Any distribution, transmission, or gas company aggrieved by an order  
57 or directive issued by the department pursuant to this section may request a hearing within 90  
58 days.

59 SECTION 2. Section 1E of chapter 164 of the General Laws, as most recently amended  
60 by section 61 of said chapter 169 of the acts of 2008, is hereby amended by striking out  
61 paragraphs (c) and (d) and inserting in place thereof the following paragraph:-

62 (c) The department shall promulgate regulations relative to an alternative dispute  
63 resolution process for the handling of damage claims by customers in an amount under \$100.  
64 The department shall establish a 60 day timeline for the resolution of all mediation claims. The  
65 department shall issue a biannual report the joint committee on telecommunications, utilities and  
66 energy which shall include, but not be limited to, the following information: nature of consumer  
67 claims, number of consumer claims and resolutions of consumer claims reviewed by the  
68 department during the previous six months. Said report shall be available for public review at the  
69 department.

70 SECTION 3. Section 1F of chapter 164 of the General Laws, as appearing in the 2006  
71 Official Edition, is hereby amended by striking out, in line 259, the figure "\$25,000" and  
72 inserting in place thereof the following figure:- "\$250,000"

73 SECTION 4. Said section 1F of said chapter 164 of the General Laws, as so appearing, is  
74 hereby further amended by striking out, in line 261, the figure "\$1,000,000" and inserting in  
75 place thereof the following figure:- "\$91,250,000"

76 SECTION 5. Said chapter 164 of the General Laws, as so appearing, is hereby amended  
77 by inserting after section 1H the following section:-

78 Section 1I. (a) Each investor-owned distribution, transmission, and gas company shall file  
79 a report with the department by March first of each year comparing its performance during the  
80 previous calendar year to the department's service quality standards and any applicable national

81 standards as may be adopted by the department. The department shall be authorized to levy a  
82 penalty against any distribution, transmission, or gas company which fails to meet the service  
83 quality standards in an amount up to and including the equivalent of 2.5 per cent of such  
84 company's transmission and distribution service revenues for the previous calendar year.

85 (b) Whenever a service quality penalty for a company levied by the department pursuant  
86 to subsection (a) equals or exceeds 50 per cent of the maximum amount authorized to be levied  
87 pursuant to said subsection (a) for 2 consecutive years, the department may levy a penalty  
88 against said distribution, transmission or gas company which fails to meet the service quality  
89 standards in the next succeeding year in an amount not to exceed 4 per cent of said company's  
90 transmission and distribution service revenues for the previous calendar year. Nothing in this  
91 section shall prevent the department from approving, after notice and a public hearing, an  
92 alternative distribution service quality plan that includes penalties and incentives that exceed the  
93 maximum penalty amounts established herein; provided, however, that any such plan must be  
94 voluntarily proposed by said affected distribution, transmission or gas company as part of a  
95 settlement agreement or otherwise.

96 (c) A distribution, transmission, or gas company subject to a penalty under this section  
97 shall not assesses, or otherwise require ratepayers to pay or reimburse said company, for the cost  
98 of the penalty.

99 SECTION 6. Said chapter 164 of the General Laws, as so appearing, is hereby amended  
100 by inserting after section 85A the following section:-

101 Section 85B. (a) Each distribution, transmission and gas company conducting business in  
102 the commonwealth shall annually, on or before May fifteenth, submit to the department for

103 approval an emergency response plan. The emergency response plan shall provide for the prompt  
104 and efficient restoration of service in cases of emergency including, but not limited to:  
105 identification of management staff responsible for company operations during an emergency; a  
106 communications system with customers during an emergency that extends beyond the normal  
107 business hours and business conditions; contact with customers who had documented their need  
108 for essential electricity for medical needs; designation of staff to communicate with state and  
109 local officials and relevant regulatory agencies; provisions regarding how the company will  
110 assure the safety of its employees and contractors; procedures for deploying company and  
111 mutual aid crews to work assignment areas; and identification of additional supplies and  
112 equipment needed during an emergency and the means of obtaining additional supplies and  
113 equipment. The emergency response plan shall include a copy of all written mutual assistance  
114 agreements and a description of all mutual assistance; provided, however, that the description of  
115 mutual assistance agreements shall include a coordinated plan by all such utilities for: (i) the  
116 coordinated organization and dispatch of all domestic utility and support crews within the state:  
117 (ii) the solicitation and distribution within the state of all foreign utility and support crews; and  
118 (iii) such other matters related to mutual assistance as the department may require.

119 (b) If the department fails to approve the proposed emergency response plan, it shall  
120 direct the distribution, transmission or gas company to amend its plan and shall prescribe  
121 conditions for approval. The company shall submit the appropriately revised plan to the  
122 department within 30 days receipt of notice of disapproval of the plan originally filed. The  
123 distribution, transmission, or gas company may, on its own initiative or at the request of the  
124 department, amend an approved emergency response plan, subject to approval by the  
125 department. Under emergency conditions, a distribution, transmission or gas company may

126 modify its emergency response plan to the extent required to restore service in a safe and  
127 efficient manner, provided that such modifications and the circumstances that caused them shall  
128 be reported in writing to the department within 30 days of the full restoration of service.

129 (c) Any investor-owned distribution, transmission, or gas company failing to file its  
130 emergency response plan may be fined \$500 for each day during which such failure continues.

131 (d) The department shall promulgate rules and regulations for the implementation,  
132 administration and enforcement of emergency response plans and for the coordination of mutual  
133 assistance among distribution, transmission or gas companies, and to establish performance  
134 standards to evaluate such companies' responses to an actual or reasonably foreseeable  
135 emergency. Any investor-owned distribution, transmission, or gas company who violates any  
136 provisions of said rules and regulations or fails to adequately implement its emergency response  
137 plan shall be subject to a penalty not less than \$500,000 nor more than \$5,000,000.

138 (e) A distribution, transmission, or gas company subject to a penalty under this section  
139 shall not assesses, or otherwise require ratepayers to pay or reimburse said company, for the cost  
140 of the penalty.