

**HOUSE . . . . . No. 4126**

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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 appearing in 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 documents  
9   concerning reconciling mechanisms related to rates, prices, charges or costs and savings related  
10   to a merger, acquisition or consolidation within 3 years after the merger, acquisition or  
11   consolidation; and (c) documents concerning service quality measure statistics and service  
12   quality performance at least every 3 years or whenever service quality penalties equal to or  
13   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 affecting 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 affecting 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 affecting more than 500  
24 customers or more than one-third of the customers in any one municipality the department or the  
25 attorney general may bring an action in superior court requesting the appointment of a receiver to  
26 operate the company; provided however, that unless the court determines otherwise said  
27 appointment shall not exceed 120 days.

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

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

42 Section 5F. Upon the declaration of a state of emergency during which (i) an investor-  
43 owned distribution, transmission or gas company serving less than 100,000 customers fails to  
44 timely restore service after an outage affecting more than 500 customers or more than one-third  
45 of the customers in any one municipality; (ii) said company fails to adequately implement its  
46 emergency response plan filed under section 85B of chapter 164; and (iii) the department  
47 determines that such failure by said company constitutes a threat to the health, safety and welfare  
48 of affected ratepayers, the department may, in consultation with the Massachusetts emergency  
49 management agency, take such action deemed necessary to ensure public safety and welfare  
50 through the priority restoration of gas, electric and water utility services, including (i)  
51 implementing the company's emergency response plan filed pursuant to section 85B of chapter  
52 164 to timely restore service in the affected area; and (ii) issuing operational and management  
53 directives necessary to timely restore service in the affected area. Any company who willfully  
54 fails to carry out an order by the department under this section shall be subject to a civil  
55 administrative penalty not to exceed \$1,000,000 per violation. Any distribution, transmission, or  
56 gas company aggrieved by an order or directive issued by the department pursuant to this section  
57 may request a hearing within 90 days.

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

61 (c) The department shall promulgate regulations relative to an alternative dispute  
62 resolution process for the handling of damage claims by customers in an amount under \$100.  
63 The department shall establish a 60 day timeline for the resolution of all mediation claims. The  
64 department shall issue a biannual report to the joint committee on telecommunications, utilities  
65 and energy which shall include, but not be limited to, the following information: the nature of  
66 consumer claims, the number of consumer claims and the resolutions of consumer claims  
67 reviewed by the department during the previous 6 months. Said report shall be available for  
68 public review at the department.

69 SECTION 3. Said chapter 164 of the General Laws, as appearing in the 2006 Official  
70 Edition, is hereby amended by inserting after section 1H the following section:-

71 Section 1I. Each investor-owned distribution, transmission and gas company shall file a  
72 report with the department by March 1 of each year comparing its performance during the  
73 previous calendar year to the department's service quality standards and any applicable national  
74 standards as may be adopted by the department. The department shall be authorized to levy a  
75 penalty against any distribution, transmission or gas company which fails to meet the service  
76 quality standards in an amount up to and including the equivalent of 2.5 per cent of such  
77 company's transmission and distribution service revenues for the previous calendar year.

78 SECTION 4. Chapter 164 of the General Laws, as so appearing, is hereby amended by  
79 inserting after section 85A the following section:-

80 Section 85B. (a) Each distribution, transmission and gas company conducting business in  
81 the commonwealth shall annually, on or before May 15, submit an emergency response plan to  
82 the department for approval. The emergency response plan shall provide for the prompt and  
83 efficient restoration of service in cases of emergency including, but not limited to: i)  
84 identification of management staff responsible for company operations during an emergency; ii)  
85 a communications system with customers during an emergency that extends beyond the normal  
86 business hours and business conditions; iii) contact with customers who had documented their  
87 need for essential electricity for medical needs; iv) designation of staff to communicate with state  
88 and local officials and relevant regulatory agencies; v) provisions regarding how the company  
89 will ensure the safety of its employees and contractors; vi) procedures for deploying company  
90 and mutual aid crews to work assignment areas; and vii) identification of additional supplies and  
91 equipment needed during an emergency and the means of obtaining additional supplies and  
92 equipment. The emergency response plan shall include a description of all mutual assistance  
93 agreements and the applicable coordinated plan developed pursuant to subsection (b).

94 (b) All electric distribution companies doing business in the commonwealth shall develop  
95 a coordinated plan for: (i) the organization and dispatch of all domestic electric utility and  
96 support crews within the state; (ii) the solicitation and distribution within the state of all foreign  
97 electric utility and support crews; and (iii) such other matters related to mutual assistance as the  
98 department may require. All natural gas distribution companies doing business in the  
99 commonwealth shall develop a coordinated plan for: (i) the organization and dispatch of all  
100 domestic natural gas utility and support crews within the state; (ii) the solicitation and  
101 distribution within the state of all foreign natural gas utility and support crews; and (iii) such  
102 other matters related to mutual assistance as the department may require.

103 (c) If the department fails to approve the proposed emergency response plan, it shall  
104 direct the distribution, transmission or gas company to amend its plan and shall prescribe  
105 conditions for approval. The company shall submit the appropriately revised plan to the  
106 department within 30 days receipt of notice of disapproval of the plan originally filed. The  
107 distribution, transmission or gas company may, on its own initiative or at the request of the  
108 department, amend an approved emergency response plan, subject to approval by the  
109 department. Under emergency conditions, a distribution, transmission or gas company may  
110 modify its emergency response plan to the extent required to restore service in a safe and  
111 efficient manner, provided that such modifications and the circumstances that caused them shall  
112 be reported in writing to the department within 30 days of the full restoration of service.

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

115 (e) The department shall promulgate rules and regulations for the implementation,  
116 administration and enforcement of emergency response plans and for the coordination of mutual  
117 assistance among distribution, transmission or gas companies, and to establish performance  
118 standards to evaluate such companies' responses to an actual or reasonably foreseeable  
119 emergency. Any investor-owned distribution, transmission or gas company that violates any  
120 provisions of said rules and regulations or fails to adequately implement its emergency response  
121 plan shall be subject to a penalty of not less than \$500,000 nor more than \$5,000,000