

# HOUSE . . . . . No. 4192

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Nine  
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An Act to simplify and facilitate the establishment of a municipal lighting plant by the town of Lexington..

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

1           Whereas the Town of Lexington, in accordance with section thirty-six of chapter one  
2   hundred sixty-four of the General Laws, has voted under Article 37 of the warrant for its 1996  
3   Annual Town Meeting, under Article 42 of the warrant for its 1997 Annual Town Meeting,  
4   under Article 13 of the warrant for its 2003 Annual Town Meeting, under Article 26 of the  
5   warrant for its 2004 Annual Town Meeting, and under Article 38 of the warrant for its 2009  
6   Annual Town Meeting to authorize the Town Manager, with the approval of the Board of  
7   Selectmen, to take all necessary and appropriate action to establish and to maintain, in  
8   accordance with the provisions of chapter one hundred sixty-four of the General Laws as  
9   amended from time to time and in accordance with rules, regulations and orders of the  
10   Department of Telecommunications and Energy (“the department”) as implemented from time to  
11   time, a municipal lighting plant and to acquire such property and/or such rights to use or share in  
12   the use of property owned by others as may be necessary, appropriate or convenient for such  
13   municipal lighting plant, all in the manner and subject to the conditions which the Town

Manager with the approval of the Board of Selectmen may deem appropriate under the circumstances and consistent with the rules, regulations and orders of the department;

#### SECTION 1:

(a) If within one hundred and fifty days from the vote by the Lexington Board of Selectmen directing the Town Manager to determine what property of the electric distribution company currently serving Lexington should be purchased by the Town of Lexington to form a municipal lighting plant and at what price, the Town Manager and the distribution company cannot agree on said property and price, then the Town of Lexington may seek determination by the department as to what distribution company property ought in the public interest to be included in the purchase and what price should be paid.

(b) The price shall be equal to the original cost of the property less accumulated depreciation. Such price shall be estimated without enhancement on account of future earning capacity, lost sales, good will, physical reconfiguration of distribution company plant and system or of exclusive privileges derived from rights in the public ways.

(c) The department, after notice to the parties, shall give a hearing thereon and make the determination aforesaid within one hundred and eighty days of the request for determination by the Town of Lexington. Such property shall include such portion of distribution company property within Lexington as is necessary, suitable for, and used in connection with the distribution of electricity in Lexington, including, at the election of the Town of Lexington, the entirety of equipment jointly owned with other entities (such as the ownership interest of the telephone utility in utility poles supporting electric distribution company facilities in Lexington),

in which case said entities shall be directly compensated for, in a similar manner as the distribution company will be compensated for its own interest in the jointly-owned equipment.

(d) The department shall also include a plan for allowing both the distribution company and the municipal light plant to serve their customers at the lowest identifiable and achievable total cost, through any combination of joint facility ownership, additional metering, contractual arrangements for delivery of power, and new construction. If the Town of Lexington and the distribution company agree on a plan for severance of property, the department shall approve such plan within ninety days, upon a finding that it is in the public interest. If the Town of Lexington and the distribution company do not agree on such a plan, the department shall approve within one hundred and eighty days of a petition for adjudication, the severance plan that results in the lowest identifiable and achievable total cost to Massachusetts energy consumers. The department shall also set terms and conditions for the transfer. If any such property is subject to any mortgages, liens or other encumbrances, the department in making its determination shall provide for the deduction or withholding from the purchase price, pending discharge, of such sum or sums as it deems proper.

(e) Within thirty days after such determination shall have been made by the department, the distribution company shall tender a good and sufficient deed of conveyance to the Town Clerk of the Town of Lexington of the property required by the department to be purchased, and shall then place said deed in escrow. The Town of Lexington shall have one hundred and eighty days in which to accept or reject said tender, or to appeal to the department any aspect of the proposed deed of conveyance. If the Town of Lexington accepts, it shall have a further period of one hundred and eighty days in which to pay to the distribution company the price determined as hereinbefore provided. Such acceptance or rejection shall be by vote of the Lexington town

meeting, or by such town officer or body to which town meeting shall delegate such authority. In the event that the distribution company fails to comply with the preceding requirements, the price to be paid by the Town of Lexington will immediately be reduced by one percent of the price determined by the department. For every thirty additional days that pass prior to compliance of the distribution company with the preceding requirements, the price will be reduced by an additional one percent. Provided, however, that the department may waive such reduction if it finds that the delay in compliance was beyond the control of the distribution company.

(f) In connection with the exercise by the Town of Lexington of the option to purchase utility plant pursuant to this section, the Town of Lexington may elect to assume responsibilities for maintenance, placement and removal of jointly-owned poles or other facilities shared with other entities, or to purchase such facilities at the cost of the property less a reasonable allowance for depreciation and obsolescence. Except where the Town of Lexington makes such election, the Town of Lexington shall assume the rights and obligations of the distribution company, including under existing joint use agreements with respect to any person other than the distribution company controlling or using the poles, conduit or other jointly-owned or joint-use facilities, property and rights; provided that in the assumption of the rights and obligations of the previous owner by the Town of Lexington, the Town of Lexington shall in no way or form restrict, impede, or prohibit access that other parties would enjoy under the previous ownership.

(g) The municipal lighting plant established in Lexington pursuant to these provisions shall collect the energy conservation and renewables charges as established by the department under section 19 and section 20 of chapter 25 of the General Laws, and may use the resulting revenues for cost-effective demand-side management programs and to support the development

and promotion of renewable energy projects in accordance with the provisions of section 4E of chapter 40J, and may elect to contribute to, and benefit from, programs operated by one or more electric distribution companies or the Massachusetts Renewable Energy Trust Fund, on the same basis as the distribution companies.

(h) The municipal lighting plant established in Lexington pursuant to these provisions shall allow customers to be served by wholesale competitive electricity suppliers, and shall establish rules to allow competitive supply while protecting the financial stability of the municipal lighting plant.

(i) The municipal lighting plant established in Lexington pursuant to these provisions shall compensate the distribution company for transition costs as allowed by the department under section 1G of chapter 164 of the General Laws, to the extent such costs would have been charged to the customers served by the municipal lighting plant. The municipal lighting plant may elect whether to pay such costs as they are included to charges to retail customers, to pay the distribution company the present value of projected transition charges, or to pay the distribution company the present value of projected transition charges with reconciliation to actual charges. The department shall resolve any disputes between the municipal lighting plant and the distribution company regarding transition costs.

(j) The department shall not allow as a cost of service any costs the distribution company shall incur in connection with the proceedings outlined in this Section, in excess of the costs reasonably necessary to provide information to the department as required in paragraphs (a) through (c) of this Section, negotiate necessary contractual arrangements, and represent the

102 interests of its remaining ratepayers in designing the severance plan as described in paragraph (d)  
103 of this Section.

104 SECTION 2: Section 1B of chapter one hundred sixty-four of the General Laws, as  
105 appearing in the 1998 Official Edition, is hereby amended by adding to the end of paragraph (a)  
106 the following:

107 except that the purchase by the Town of Lexington of the distribution company's  
108 property within Lexington as is necessary, suitable for, and used in connection with the  
109 distribution of electricity in Lexington, shall transfer all rights and obligations established in this  
110 section to the Lexington municipal lighting plant.

111 SECTION 3: This act shall take effect upon its passage.