

HOUSE No. 4792

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

An Act RELATIVE TO THE ESTABLISHMENT OF MUNICIPAL LIGHTING
AUTHORITIES..

*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. The first sentence of section 19 of chapter 25 of the General Laws, as
2 appearing in the 2008 Official Edition, is hereby amended by inserting after the word “plant” the
3 words:- formed prior to July 31, 2010.

4 SECTION 2. Said section 19 of chapter 25 is hereby further amended by inserting after
5 the word “companies”, in line 5, the following words:- participating municipal lighting plants

6 SECTION 3. Section 20 of said chapter 25, as so appearing, is hereby amended by
7 inserting after the word “plant”, in line 3, the words:- formed prior to July 31, 2010

8 SECTION 4. Said section 20 of chapter 25 is hereby further amended by inserting after
9 the word “ plant”, in line 10, the words:- formed prior to July 31, 2010

10 SECTION 5. Section 21 of said chapter 25 is hereby amended by inserting after the word
11 “companies”, in line 9, the words:- municipal light plants formed after July 31, 2010

12 SECTION 6. Said section 21 of chapter 25 is hereby further amended by inserting after
13 the word “companies”, in line 77, the words:- municipal light plants

14 SECTION 7. Said section 21 of chapter 25 is hereby further amended by inserting after
15 the word “companies”, in line 81, the words:- municipal light plants

16 SECTION 8. Said section 21 of chapter 25 is hereby further amended by inserting after
17 the word “companies”, in line 83, the words:- municipal light plants

18 SECTION 9. Said section 21 of chapter 25 is hereby further amended by inserting after
19 the word “companies”, in line 85, the words:- municipal light plants formed after July 31, 2010

20 SECTION 10. Said section 21 of chapter 25 is hereby further amended by inserting after
21 the word “companies”, in line 93, the words:- and municipal light plants

22 SECTION 11. Said section 21 of chapter 25 is hereby further amended by inserting after
23 the word “companies”, in line 105, the words:- municipal light plant

24 SECTION 12. Said section 21 of chapter 25 is hereby further amended by inserting after
25 the word “company”, in line 110, the words:- municipal light plant

26 SECTION 13. Section 1B of chapter 164 of the General Laws, as so appearing, is hereby
27 amended by adding to the end of subsection (a) the following:-

28 except that the purchase by a municipality of plant from a distribution company shall
29 transfer all rights and obligations established in this section to the municipal lighting plant of the
30 purchasing municipality or cooperative.

31 SECTION 14. Said chapter 164 is hereby amended by striking out section 43, as so
32 appearing, and inserting in place thereof the following section:-

33 Section 43. (a) If a municipality which votes to establish a municipal lighting plant fails,
34 within 150 days from the passage of the final vote required by section 35 or 36, to agree, as to
35 price or as to the property to be included in the purchase, with a distribution company currently
36 serving such municipality, such municipality may apply to the department within 180 days after
37 the expiration of said 150 days for review of the feasibility of the municipality's acquisition of
38 such property. The municipality's filing shall include:

39 an outline of the property the municipality wishes to acquire;

40 a projection of purchase price of such property;

41 a projection of total costs of establishing the municipal lighting plant;

42 a financing plan to cover the purchase price, including a description of municipality's
43 bonding ability;

44 pro forma income statement and balance sheet for the municipal lighting plant;

45 the options for governance of the municipal lighting plant approved or anticipated by the
46 municipality, and;

47 a projection of electric rates to be charged by the municipal lighting plant.

48 The department may investigate the feasibility of the municipality's proposed acquisition,
49 and shall, within 180 days of the filing and after notice and a public hearing, issue a report
50 regarding the feasibility of the municipality's filing; provided, however, that the department is

51 not required to issue more than 3 such reports in any contiguous 12-month period. Any reports
52 that are not issued within 180 days of the filing shall be issued in the order of the filings. If
53 multiple municipalities file with the stated intent of establishing a joint or cooperative system of
54 municipal lighting plants, the department shall process such filing simultaneously, to the extent
55 possible. The department shall transmit its report to the distribution company, the clerk of each
56 such town and the department of energy resources. The department shall report to the general
57 court the results of its findings and file such reports with the clerks of the house of
58 representatives and the senate, who shall forward the same to the joint committee on
59 telecommunications, utilities and energy.

60 Upon the issuance of the department's report, the municipality may seek determination as
61 to what property ought in the public interest to be included in the purchase and what price should
62 be paid, which shall be equal to 50 percent of the net book value, plus 50 percent of the
63 reproduction cost new less depreciation, adjusted based on the physical condition of the assets, in
64 addition to any damages as specified in this section. Such value shall be estimated without
65 enhancement on account of future earning capacity or good will, or of exclusive privileges
66 derived from rights in the public ways. Such price shall include damages, if any, which the
67 department finds would be caused by the severance of the property proposed to be included in
68 the purchase from other property of the owner, including (1) stranded costs; (2) the capital costs
69 of infrastructure reconfiguration or additions caused by the severance; (3) engineering costs; and
70 (4) any other costs incurred in preparing for the reconfiguration and the sale. Such property shall
71 include such portion of the property within the limits of such municipality as is suitable for, and
72 used in connection with, the distribution of electricity within such limits. If any such property is
73 subject to any mortgages, liens or other encumbrances, the department in making its

74 determination shall provide for the deduction or withholding from the purchase price, pending
75 discharge, of such sum or sums as it deems proper.

76 The department, after notice to the parties, shall give a hearing thereon and make the
77 determination aforesaid.

78 Within 60 days after such determination shall have been made by the department, the
79 distribution company shall tender to the municipality's city or town clerk a copy of a good and
80 sufficient deed of conveyance for the property required by the department to be purchased, and
81 shall then place said deed in escrow. The municipality shall have 300 days in which to accept or
82 reject said tender and, if accepting, to pay to the distribution company the price determined by
83 the department. Such acceptance or rejection in case of a city shall be by vote of its city council
84 and in case of a town shall be by vote at a town meeting, or by such town officer or body to
85 which town meeting shall delegate such authority.

86 In connection with the exercise by a municipality of the option to purchase utility plant
87 pursuant to this section, the municipality may elect to assume responsibilities for maintenance,
88 placement and removal of jointly-owned poles or other facilities shared with other public
89 utilities, or to purchase such facilities at an amount equal to 50 percent of the net book value,
90 plus 50 percent of the reproduction cost new less depreciation, adjusted based on the physical
91 condition of the assets. Except where the municipality makes such election, the municipality
92 shall assume the rights and obligations of the previous owner with respect to any person other
93 than the distribution company controlling or using the poles, conduit or other jointly-owned or
94 joint-use facilities, property and rights; provided, that in the assumption of the rights and
95 obligations of the previous owner by such a municipality, such municipality shall in no way or

96 form restrict, impede, or prohibit access that other parties would enjoy under the previous
97 ownership.

98 Any municipal lighting plant established pursuant to these provisions shall file with the
99 department a plan for supporting development of renewable and alternative energy production
100 comparable to the magnitude of such support achieved under sections 11F and 11F½ of chapter
101 25A, sections 138 through 143, and section 83 of chapter 169 of the acts of 2008. Following
102 department approval of such plan, the municipal lighting plant shall implement that plan and
103 report annually to the department regarding such implementation.

104 The department shall not allow as a cost of service any costs of the incumbent
105 distribution company in connection with such proceedings, in excess of the costs reasonably
106 necessary to provide information, negotiate necessary contractual arrangements, and represent
107 the interests of the remaining ratepayers in designing any severance plan required.

108 If, at the time of purchase of the distribution equipment by a municipality, the distribution
109 company has unfunded liabilities for pensions and other post-retirement benefits that would be
110 recovered through distribution rates, the department shall determine the fair share of such
111 liabilities attributable to the distribution system to be acquired by the municipality and the
112 method by which the municipal lighting plant shall compensate the distribution company for that
113 fair share.

114 To the extent that the distribution company has entered into any long term contracts for
115 renewable energy pursuant to section 83 of chapter 169 of the acts of 2009 prior to the date of
116 the acquisition, the municipality acquiring any electric distribution facilities pursuant to this
117 section shall be required to assess its distribution customers an equivalent charge in distribution

118 rates to cover its proportionate share of the monthly costs of such contracts, as would have been
119 charged to the electric distribution customers in such municipality had the acquisition not
120 occurred. Such amounts collected shall then be remitted to the electric distribution company
121 within thirty days of being invoiced by the electric distribution company.

122 The department shall report to the joint committee on telecommunications, utilities and
123 energy annually on the operation of this section, including a summary of activity under this
124 section and any recommendations for amending the section.

125 SECTION 15. Said chapter 164 is hereby further amended by inserting after section 56E
126 the following section:-

127 Section 56F. The department is hereby authorized to promulgate rules and regulations to
128 establish service quality standards for municipal light plants formed after July 31, 2010,
129 including, but not limited to, standards for customer satisfaction, service outages, distribution
130 facility upgrades, repairs and maintenance, telephone service, billing service, and public safety
131 provided. Each municipal light plant formed after July 31, 2010 shall file a report with the
132 department by March first of each year comparing its performance during the previous calendar
133 year to the department's service quality standards and any applicable national standards as may
134 be adopted by the department.

135 SECTION 16. The first sentence of section 47A of said chapter 164 is hereby amended
136 by inserting after the word "law" the words:- formed prior to July 31, 2010

137 SECTION 17. Said section 47A of chapter 164 is hereby further amended by inserting
138 after the word "law", in line 7, the words:- formed prior to July 31, 2010.