

SENATE No. 385

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to the creation of the Massachusetts Resources Recovery Corporation..

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 General Laws, as appearing in the 2006 Official Edition, are hereby
2 amended by inserting after chapter 16, the following new chapter:-

3 CHAPTER 16A

4 Massachusetts Resource Recovery Corporation

5 Section 1. Definitions

6 As used in this chapter, the following words shall, unless the context clearly requires
7 otherwise, have the following meanings:

8 "Clean up", a project for the removal of pollution which restores potability to a drinking
9 water supply or which prevents the contamination of said supply, including without limitation
10 the planning, design, and implementation of appropriate means of assessment and public solution
11 of the contamination problem.

12 “Closure”, a project for the deactivation and completion of a solid waste facility,
13 including without limitation planning, design and implementation of capping, containment,
14 completion and any other activity necessary or incidental to minimize or prevent damage, or
15 threats of damage, to the public health, safety or welfare, or to the environment.

16 “Construction”, a project for the provision of additional solid waste facility capacity, or
17 for closure or containment at existing solid waste facilities, in accordance with all applicable
18 technical and legal requirements, including without limitation planning, design and
19 implementation of facility development, siting, alteration, expansion, improvement or equipping,
20 and all activities necessary or incidental thereto, including acquisition of real or personal
21 property or interests therein.

22 “Containment”, a project for the prevention of leachate generation and migration from a
23 solid waste facility, including without limitation planning, design and implementation of surface
24 sealing, grading, drainage control, lining, slurry trenching, grout curtain sheeting, and other
25 activities necessary or incidental to leachate control.

26 “Corporation”, the Massachusetts Resource Recovery Corporation

27 “Facility”, any place or site where solid waste has been or will be deposited, dumped,
28 stored, transferred or treated, including any landfill, refuse transfer station, refuse incinerator
29 rated by the department at more than one ton of refuse per hour, refuse composting plant, or
30 other work for treating or disposing of solid waste.

31 “Healthcare facility”, any hospital, nursing home, extended care facility, long-term care
32 facility, clinical or medical laboratory, state health or mental institution, institution for the
33 mentally ill or retarded, clinic, physician’s office or health maintenance organization.

34 “Landfill”, any area, site or works for the disposal of solid waste into or on land.

35 “Person”, any natural or corporate person, whether public or private, including
36 corporations, societies, associations and partnerships and bodies politic and corporate, public
37 agencies, authorities, departments, offices and political subdivisions of the commonwealth.

38 “Pollution”, any spilling, leaking, pumping, pouring, emitting, emptying, discharging,
39 injecting, escaping, leaching, dumping or disposing of any material which, because of its
40 quantity, concentration or other characteristics, is or may be injurious to human, plant or animal
41 life or to property, or may unreasonably interfere with the comfortable enjoyment of life or
42 property.

43 “Public body”, any city, town, district, commission, council, financing authority or other
44 political subdivision of the commonwealth, and any agency, authority, board, bureau,
45 commission, council, department or other entity or instrumentality of government.

46 “Resource Recovery” or “Recycling”, means the processing or diversion of solid wastes
47 in such a way as to produce materials or energy that may be used in manufacturing, agriculture
48 or other processes.

49 “Resource Recovery Facility” or “Recycling Facility”, any place or site where resource
50 recovery or recycling will occur.

51 “Solid waste” or “waste”, garbage, refuse, trash, rubbish, sludge, residue or by-products
52 of processing or treatment of discarded material, and any other solid, semi-solid or liquid
53 discarded material resulting from domestic, commercial, mining, industrial, agricultural,

54 municipal, or other sources or activities, but shall not include solid or dissolved material in
55 domestic sewage.

56 “Tipping fee”, the fee or other cost charged by the operator of a solid waste disposal
57 facility for the disposal of solid waste in the facility.

58 Section 2. Massachusetts Resource Recovery Corporation, Creation, Board Composition;
59 Executive Director

60 (a) There shall be a body politic and corporate and a public instrumentality to be known
61 as the Massachusetts Resource Recovery Corporation, which shall be an independent public
62 entity not subject to the supervision and control of any other executive office, department,
63 commission, board, bureau, agency or political subdivision of the commonwealth except as
64 specifically provided in any general or special law. The exercise by the authority of the powers
65 conferred by this chapter shall be considered to be the performance of an essential public
66 function. The purpose of the corporation is to provide, either by contract with a private concern
67 or directly by the corporation, a solid waste landfill and recycling facility as defined by the
68 department of environmental protection at, or within a convenient distance of, all solid waste
69 disposal facilities under its jurisdiction. These recycling facilities will provide cities and towns
70 with a place to deposit their recyclable materials at no tipping cost to the municipalities;
71 provided, however, that tipping fees may be charged in accordance with this chapter when the
72 solid waste processing facility is designed to process nonsource separated or partially source
73 separated solid waste for recycling, diversion or alternative use of at least seventy percent (70%)
74 of the municipal solid waste stream. as described in this chapter.

75 (b) There shall be a board, with duties and powers established by this chapter, that shall
76 govern the corporation. The Corporation board shall consist of 9 members: the secretary for
77 administration and finance, ex officio, who shall serve as chairperson; the commissioner of the
78 department of environmental protection, ex officio; the executive director of the corporation; 4
79 members appointed by the governor, 1 of whom shall be a member in good standing of the
80 Massachusetts chapter of the Solid Waste Management Association, 1 of whom shall be a
81 environmental consultant, 1 of whom shall be the chairman of the corporation advisory board
82 and 1 of whom shall be a resident of a state facility's host community; and 2 members appointed
83 by the attorney general, 1 of whom shall be representative of a environmental group and 1 of
84 whom shall be a member in good standing of the Massachusetts Municipal Association. All
85 appointments shall serve a term of 3 years, but a person appointed to fill a vacancy shall serve
86 only for the unexpired term. An appointed member of the board shall be eligible for
87 reappointment. The board shall annually elect 1 of its members to serve as vice-
88 chairperson. Each member of the board serving ex officio may appoint a designee under section
89 6A of chapter 30.

90 (c) Six members of the board shall constitute a quorum, and the affirmative vote of 6
91 members of the board shall be necessary and sufficient for any action taken by the board. No
92 vacancy in the membership of the board shall impair the right of a quorum to exercise all the
93 rights and duties of the corporation. Members shall serve without pay, but shall be reimbursed
94 for actual expenses necessarily incurred in the performance of their duties. The chairperson of
95 the board shall report to the governor and to the general court no less than annually.

96 (d) Any action of the corporation may take effect immediately and need not be published
97 or posted unless otherwise provided by law. Meetings of the corporation shall be subject to

98 section 11A½ of chapter 30A; but, said section 11A½ shall not apply to any meeting of members
99 of the corporation serving ex officio in the exercise of their duties as officers of the
100 commonwealth if no matters relating to the official business of the corporation are discussed and
101 decided at the meeting. The corporation shall be subject to all other provisions of said chapter
102 30A, and records pertaining to the administration of the corporation shall be subject to section 42
103 of chapter 30 and section 10 of chapter 66. All moneys of the corporation shall be considered to
104 be public funds for purposes of chapter 12A. The operations of the corporation shall be subject
105 to chapter 268A and chapter 268B.

106 (e) The chairperson shall hire an executive director to supervise the administrative affairs
107 and general management and operations of the corporation and also serve as secretary of the
108 corporation, ex officio. The executive director shall receive a salary commensurate with the
109 duties of the office. The executive director may appoint other officers and employees of the
110 corporation necessary to the functioning of the corporation. Sections 9A, 45, 46, and 46C of
111 chapter 30, chapter 31 and chapter 150E shall not apply to the executive director or any other
112 employees of the corporation. The executive director shall, with the approval of the board:—

113 (i) plan, direct, coordinate and execute administrative functions in conformity with the
114 policies and directives of the board;

115 (ii) employ professional and clerical staff as necessary;

116 (iii) report to the board on all operations under his control and supervision;

117 (iv) prepare an annual budget and manage the administrative expenses of the
118 corporation; and

119 (v) undertake any other activities necessary to implement the powers and duties set forth
120 in this chapter.

121 Section 3. Purpose and Duties of the Corporation

122 (a) The purposes and duties of the corporation shall be:

123 (1) The planning, design, construction, financing, management, ownership, operation,
124 permitting and maintenance of transfer stations, waste processing facilities, resource recovery
125 facilities, and all other solid waste management facilities deemed necessary by the corporation as
126 being desirable, convenient, or appropriate to carry out the provisions of this chapter;

127 (2) The provision of solid waste management services to municipalities and persons
128 within the Commonwealth by receiving solid wastes at the corporation facilities, pursuant to
129 contracts between the corporation and the municipalities, and persons, the recovery of resources
130 and resource values from the solid wastes, and the production from the services and resource
131 recovery operations, of revenues sufficient to provide for the support of the corporation and its
132 operations on a self-sustaining basis with due regard to the provision of the services at a
133 reasonable cost to the clients it has contracted with;

134 (3) The fullest feasible utilization, through contractual arrangements, of private industry
135 for implementation of the corporation's plans and programs, and for any other activities that may
136 be considered necessary, desirable, or convenient by the corporation;

137 (4) Assistance with and coordination of efforts directed towards source separation of
138 solid wastes for recycling purposes;

139 (5) Assistance in the development of industries and commercial enterprises within the
140 state based upon resource recovery, recycling, and reuse;

141 (6) Provide, either by contract with a private concern or directly by the corporation, or a
142 recycling facility at, or within a convenient distance of, all solid waste management facilities
143 under the jurisdiction of the Massachusetts resource recovery corporation; and

144 These purposes and duties shall be considered to be operating responsibilities of the
145 corporation, in accordance with the statewide solid waste management plan, and are to be
146 considered public purposes. It is the intention of this chapter that the corporation shall be granted
147 all powers necessary to fulfill these purposes and to carry out its assigned responsibilities, and
148 that the provisions of this chapter are to be construed liberally in furtherance of these
149 objectives.

150 Section 4. Powers of the Corporation.

151 The corporation shall have all of the powers necessary and convenient to carry out and
152 effectuate the purposes and provisions of this chapter, including but without limiting the
153 generality of the foregoing, the power to:

154 (a) to adopt by-laws for the regulation of its affairs and the conduct of its business;

155 (b) to adopt an official seal and alter the same at its pleasure;

156 (c) to maintain offices at such places within the commonwealth as it may determine and
157 to conduct meetings of the corporation in accordance with the by-laws of the corporation and the
158 provisions of the second paragraph of section fifty-nine of chapter one hundred and fifty-six B;

159 (d) to sue and be sued in its own name, plead and be impleaded;

160 (e) to own, construct, maintain, repair, reconstruct, improve, rehabilitate, use, police,
161 administer, control, lease and operate facilities, or issue a permit for the same, for any or all part
162 thereof;

163 (f) to acquire or lease sites abutting the facilities and to construct or contract for the
164 construction of roads, buildings and appurtenances and other services in such manner and under
165 such terms as it may determine;

166 (g) to issue notes or bonds for any of its corporate purposes related to the corporation
167 payable solely from corporation revenues or portions thereof pledged for their payment and to
168 refund its notes or bonds pertaining to the corporation or any part thereof or payable from such
169 revenues, as provided in this chapter;

170 (h) to fix and revise from time to time and charge and tipping fees and other fees or
171 charges; provided further, that the corporation shall convene at least three public hearings, held
172 throughout the Commonwealth, at least 30 days prior to the effective date of any proposed
173 change in a municipal tipping fee or other fees or charges and shall allow for a one week
174 comment period, after each such hearing, during which written testimony and comments shall be
175 accepted;

176 (i) to adopt such rules and regulations pursuant to the provisions of chapter thirty A and
177 not repugnant to the provisions of the General Laws made applicable to the corporation, as the
178 corporation determines necessary or appropriate to provide for or govern the construction or
179 reconstruction, including contractor qualification, operation, maintenance, repair, rehabilitation,
180 improvement, use, policing, control or administration of the corporation's facilities, the
181 corporation's business or property affairs. Such regulations may include the authority to grant

182 easements, permits or other forms of authorization for the installation, construction,
183 maintenance, repair, renewal, relocation and removal of tracks, pipes, pipelines, mains, conduits,
184 cables, wires, towers, poles and other equipment and appliances of any public utility, private
185 entity or corporation or person owning or operating such facilities in, on, along, over or under the
186 corporation's facilities.

187 Such regulations may impose penalties for violations thereof which, in the case of civil
188 penalties, may be recovered only after notice and hearing conducted by the corporation or its
189 designee and subject to judicial review and enforcement pursuant to the provisions of said
190 chapter thirty A or such other civil proceedings under the laws of the commonwealth or the
191 United States as the law may provide and, in the case of criminal penalties, may be recovered in
192 a proceeding in a trial court of the commonwealth by indictment or complaint. The amount of
193 any such civil or criminal penalty, with the exception of penalties imposed under section
194 nineteen, shall not exceed five hundred dollars for each offense, unless the law otherwise
195 provides. The full amount of a civil penalty shall be paid to the corporation and eighty percent of
196 a penalty recovered in a criminal proceeding shall be accounted for and paid to the corporation.
197 The corporation may further provide in such regulations for adjudicatory proceedings that it or
198 its designee conducts which are subject to judicial review and enforcement according to the
199 provisions of said chapter thirty A;

200 (j) to acquire, lease, hold and dispose of real and personal property or any interest therein
201 in the exercise of its powers and the performance of its duties pursuant to this chapter provided,
202 however, that the corporation shall issue annual reports to the secretary of administration and
203 finance, the house and senate committees on ways and means, the joint committee on the
204 environment, natural resources and agriculture and the joint committee on bonding, capital

205 expenditures and state assets, detailing the financial transactions and revenues associated with
206 the sale, concession or lease of real property held in the name of or under the control of the
207 corporation, whether by purchase or otherwise, and any transactions relating to real property
208 currently pending; and provided further, that the annual report shall include the current market
209 values of the real properties related to the transactions;

210 (k) to place and maintain or grant permission by easement or otherwise to any public
211 utility, corporation or person to place and maintain on or under or within the corporation's
212 property or any part of its operations thereof, ducts, pipes, pipelines, mains, conduits, cables,
213 wires, towers, poles or other structures to be so located as not to interfere with the safe and
214 convenient operation and maintenance of the corporation purposes and to contract with any such
215 public utility, corporation or person for such permission on such terms and conditions as may be
216 fixed by the corporation. The construction, maintenance and repair of any such ducts, pipes,
217 pipelines, mains, conduits, cable, wires, towers, poles or other structures shall be subject to such
218 directions and regulations as the corporation may impose.

219 Whenever the corporation shall determine that it is necessary that any such ducts, pipes,
220 pipelines, mains, conduits, cable, wires, towers, poles or other structures which are now or
221 hereafter may be located in, on, along, over or under the corporation's facility's or operations be
222 relocated or removed, the public utility, corporation or person owning or operating such facilities
223 shall relocate or remove the same in accordance with the order of the corporation. In case of any
224 such relocation or removal, the public utility, corporation or person owning or operating the
225 same, its successors or assigns may maintain and operate, with the necessary appurtenances, in
226 the new location for as long a period and upon the same terms and conditions as it had the right
227 to maintain and operate such facilities in their former location;

228 (l) to acquire in the name of the corporation by purchase or otherwise, on such terms and
229 conditions and in such manner as it may deem proper or by the exercise of the power of eminent
230 domain in accordance with the provisions of chapter seventy-nine or any alternative method now
231 or hereafter provided by law, such public lands and any fee simple absolute or lesser interest in
232 such private property, or part thereof or rights therein as it may deem necessary for carrying out
233 the provisions of this chapter;

234 (m) to enter upon any lands, waters and premises in the commonwealth for the purpose of
235 making surveys, soundings, drillings and examinations as the corporation may deem necessary,
236 convenient or desirable for carrying out the purposes of this chapter and such entry shall not be
237 deemed a trespass nor shall an entry for such purposes be deemed an entry under any
238 condemnation proceedings which may be then pending. The corporation shall provide
239 reimbursement for any actual damage resulting to such lands, waters and premises as a result of
240 such activities. The commonwealth hereby consents to the use of all lands owned by it, including
241 lands lying underwater, which are deemed by the corporation to be necessary, convenient or
242 desirable for the construction, operation or maintenance of the corporation's facilities;

243 (n) to make and enter into all contracts and agreements necessary, convenient or desirable
244 in the performance of its duties and the execution of its powers under this chapter including, but
245 not limited to, contracts or agreements with state, local or regional public agencies and
246 authorities which the corporation deems necessary, convenient, or desirable for the ownership,
247 construction, operation, maintenance, repair, reconstruction, improvement, rehabilitation, use,
248 control, administration or policing of the corporation's facilities or any of its operations thereof.
249 Notwithstanding the provisions of this clause, the corporation may without competitive bids and
250 notwithstanding the provisions of any general or special law to the contrary, award a contract,

251 otherwise subject to this section, limited to the performance of emergency repairs necessary to
252 preserve the safety of persons or property;

253 (o) to employ consulting engineers, attorneys, accountants, construction and financial
254 experts, superintendents, managers, and such other employees and agents as may be necessary in
255 its judgment, and to fix their compensation;

256 (p) to receive and accept from any federal agency grants for or in aid of the ownership,
257 construction, operation, maintenance, repair, reconstruction, improvement, rehabilitation, use,
258 control, administration or policing of the corporation's facilities or any part of its operations
259 thereof and to receive and accept aid or contributions from any source of either money, property,
260 labor or other things of value to be held, used and applied only for the purposes for which such
261 grants and contributions may be made; and

262 (q) to do all acts and things necessary, convenient or desirable to carry out the powers
263 expressly granted in this chapter

264 (r) to undertake and promote the conduct of research into source separation and source
265 reduction techniques, facilities, and systems and into other solid waste management areas for any
266 purpose consistent with this chapter; provided further, that the corporation and the department of
267 environmental protection shall cooperate on the implementation of a statewide solid waste
268 master plan. The corporation, with the assistance of the department of environmental protection,
269 will submit an annual report on the status of separation of solid waste in the state;

270 (s) to produce materials, fuels, energy, and by-products in any form from the processing
271 of solid wastes by the system, facilities, and equipment under its jurisdiction, and to receive
272 funds or revenues from their sale, and to deposit the funds or revenues in a bank or banks;

273 (t) to conduct a training course for newly appointed and qualified members and new
274 designees within six (6) months of their qualification or designation. The course shall be
275 developed by the executive director of the corporation, approved by the corporation, and
276 conducted by the executive director of the corporation or his designee. The corporation may
277 approve the use of any corporation or staff members or other individuals to assist with training.
278 The training course shall include instruction in the areas as determined by the board.

279 Section 5. Bonding Authority and Remedies

280 The corporation is hereby authorized to provide by resolution at one time or from time to
281 time for the issue of bonds of the corporation for any one or more of the following purposes:

282 (1) To acquire by purchase or otherwise, plan, design, construct, reconstruct, alter,
283 recondition and improve for lease to any eligible private company or individual, solid waste or
284 resource recovery facilities, property and equipment.

285 (2) To pay any capital costs of the corporation, whether or not bonds for any such
286 purchase may also be issued under clause (1).

287 Bonds may be issued for any costs of the foregoing incurred either before or after the
288 issue of the bonds. Bonds issued under either of the foregoing clauses may be issued in sufficient
289 amount to pay the expenses of issues and to establish such reserves as may be required by any
290 applicable trust agreement or bond resolution. The aggregate principal amount of bonds for the
291 corporation established under this chapter which may be outstanding at any one time under this
292 section shall not exceed the sum of 200 million dollars; provided, however, that no such bonds
293 may be issued under this section without the prior approval of the board.

294 The bonds of each issue shall be dated, shall bear interest at such rates, shall mature at
295 such time or times not exceeding forty years from their date or dates as may be determined by
296 the corporation and may be made redeemable before maturity at the option of the corporation at
297 such price or prices and under such terms and conditions as may be fixed by the corporation
298 prior to the issue of the bonds. The corporation shall determine the form of the bonds, including
299 any interest coupons to be attached thereto, and the manner of execution of the bonds, and shall
300 fix the denomination or denominations of the bonds, and the place or places of payment of
301 principal and interest, which may be at any bank or trust company within or without the
302 commonwealth. In case any officer whose signature or a facsimile of whose signature shall
303 appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds,
304 such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the
305 same as if he had remained in office until such delivery. All bonds issued under the provisions of
306 this act shall have and are hereby declared to have all the qualities and incidents of negotiable
307 instruments under the Uniform Commercial Code. The bonds may be issued in coupon or in
308 registered form, or both, as the corporation may determine, and provisions may be made for the
309 registration of any coupon bonds as to principal alone, and also as to both principal and interest,
310 for the reconversion into coupon bonds of any bonds registered as to both principal and interest
311 and for the exchange of coupon and registered bonds. The corporation may sell such bonds in
312 such manner, either at public or private sale, and for such price as it may determine to be for the
313 best interest of the corporation.

314 The proceeds of such bonds shall be disbursed in such manner and under such
315 restrictions, if any, as the corporation may provide. The corporation may also provide for the
316 replacement of any bonds which shall become mutilated or shall be destroyed or lost. Bonds and

317 bond anticipation notes may be issued under the provisions of this chapter without obtaining the
318 consent of any department, division, commission, board, bureau or agency of the
319 commonwealth, and without any other proceedings or the happening of any other conditions or
320 things than those proceedings, conditions or things which are specifically required by this
321 chapter. Provisions of this chapter relating to the preparation, adoption or approval of plans,
322 programs, projects, budgets and expenditures shall not affect the issue of bonds and notes and the
323 bonds and notes may be issued either before or after such preparation, adoption or approval.

324 While any bonds or notes issued or assumed by the corporation remain outstanding, the
325 powers, duties and existence of the corporation and the provisions for payments by the
326 commonwealth to the corporation shall not be diminished or impaired in any way that will affect
327 adversely the interests and rights of the holders of such bonds or notes.

328 In the discretion of the corporation such bonds shall be secured by a trust agreement by
329 and between the corporation and a separate corporate trustee, which may be any trust company
330 or bank having the powers of a trust company within the commonwealth. Either the resolution
331 providing for the issue of bonds or such trust agreement may contain such provisions for
332 protecting and enforcing the rights and remedies of the bondholders as may be reasonable and
333 proper and not in violation of law, including covenants setting forth the duties of the corporation
334 in relation to the acquisition, improvement, maintenance, operation, repair and insurance of
335 property, and the custody, safeguarding and application of all moneys and may pledge or assign
336 the revenues to be received, but shall not convey or mortgage any property.

337 Bonds issued under this chapter are hereby made securities in which all public officers
338 and public bodies of the commonwealth and its political subdivisions, all insurance companies,

339 and savings banks, co-operative banks and trust companies in their banking departments,
340 banking associations, investment companies, executors, trustees and other fiduciaries, and all
341 other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other
342 obligations of a similar nature may properly and legally invest funds, including capital in their
343 control or belonging to them, and such bonds are hereby made obligations which may properly
344 and legally be made eligible for the investment of savings deposits and the income thereof in the
345 manner provided by section fifteen B of chapter one hundred and sixty-seven. Such bonds are
346 hereby made securities which may properly and legally be deposited with and received by any
347 state or municipal officer or any agency or political subdivision of the commonwealth for any
348 purpose for which the deposit of bonds or other obligations of the commonwealth now or may
349 hereafter be authorized by law.

350 Any holder of bonds issued under the provisions of this chapter or of any of the coupons
351 appertaining thereto, and the trustee under the trust agreement, if any except to the extent the
352 rights herein given may be restricted by such resolution or trust agreement, may, either at law or
353 in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights
354 under the laws of the commonwealth or granted hereunder or under such resolution or trust
355 agreement, and may enforce and compel the performance of all duties required by this chapter or
356 by such resolution or trust agreement to be performed by the corporation or by any officer
357 thereof.

358 The corporation is authorized to provide by resolution at one time or from time to time
359 for the issue of interest bearing or discounted notes for the purposes and in the amounts that
360 bonds may be issued. The notes shall be payable within three years from their dates, but the
361 principal of and interest on notes issued for a shorter period may be renewed or paid from time to

362 time by the issue of other notes hereunder maturing within the required time from the date of the
363 original loan being refunded. When bonds are issued for the purposes for which the notes were
364 issued, the proceeds of the bonds shall be used to repay the notes, except that interest on the
365 notes may be financed as a current expense to the extent deemed appropriate by the corporation.
366 The notes may be secured by a trust agreement or by the provisions of a resolution, as in the case
367 of bonds. Bond anticipation notes may be issued either before or after the authorization of the
368 bonds being anticipated. If any bond anticipation note is paid otherwise than from the proceeds
369 of bonds or renewal notes, such payment shall be included in the measure of the net cost of
370 service. But, if bonds or renewal notes are later issued to provide for such payment, there shall be
371 a corresponding offset against the net cost of service.

372 The corporation shall establish a reserve fund sufficient to meet the needs of the
373 corporation necessary to secure bonding, insurance or other needs associated with the carrying
374 out the provisions of this act. Such reserve fund shall be considered as necessary to meeting the
375 obligations of the corporation and shall be so considered as part of the disbursements
376 contemplated in section 7.

377 Section 6. Municipal Partnership with the Corporation

378 (a) Any person or municipality which intends to transfer, treat, or dispose of solid waste
379 originating or collected within the state, or which intends to make arrangements to do so, shall
380 utilize, exclusively, a facility or resource recovery facility designated by the corporation as
381 provided under this chapter. All transfer stations in existence as of the enactment of this act are
382 empowered so long as they maintain the appropriate license to continue their operations, and the
383 corporation shall not exercise its powers under this chapter to compete with their operation and

384 activity. No municipality shall have power to engage in, grant any license, or permit for or enter
385 into any contract for the collection, treatment, storage, or disposal of solid waste, and no
386 municipality or any person shall engage in any activities within the state, including disposal of
387 solid waste, which would impair the ability of the corporation to meet its contractual obligations
388 to its bondholders and others, or which would be in competition with the purposes of the
389 corporation as provided in this chapter. The corporation shall not be empowered to engage in the
390 transportation, transfer, or storage of solid waste, except in temporary situations where a
391 municipality has defaulted in its obligation under this section, or in conjunction with its activities
392 at its disposal sites. Provided, however, that municipal contracts which were in existence at the
393 date of enactment of this legislation, are excepted from this requirement until expiration of the
394 original term of the contract or the expiration of any extension approved by the corporation, or
395 sooner termination of the contracts, and provided, further, that municipalities operating their own
396 landfills on the date of the enactment of this act shall be free to continue to use the landfills until
397 closure of the landfills. Without limiting the generality of the preceding, municipalities and
398 persons are expressly empowered to contract with the corporation and/or, subject to the approval
399 of the corporation, with a duly licensed private disposal facility for the disposal of solid wastes.
400 The approval shall be conditioned upon a finding by the board of the corporation that any
401 proposed contract with a Massachusetts municipality or person is in conformity with the
402 statewide solid waste master plan and this chapter, and that the proposed contract will not impair
403 the ability of the corporation to meet its contractual obligations to its bondholders and others.
404 The contracts may have a maximum total term, including all renewals, of up to fifty (50) years.

405 The corporation shall charge fees for its solid waste management services that, together
406 with other revenues available to the corporation, will, at a minimum, be sufficient to provide for

407 the support of the corporation and its operations on a self-sustaining basis, including debt service
408 on its bonds and other obligations. Any revenue in excess of that necessary to support the
409 corporation and its operations on a self-sustaining basis shall be distributed in accordance with
410 section 7.

411 (b) Insofar as the provisions of this chapter are inconsistent with the provisions of any
412 other laws of this state, general, special, or local, restricting the power of any municipality to
413 enter into long term contracts with the corporation, the provisions of this chapter shall be
414 controlling. The corporation shall provide suitable and appropriate assistance to communities
415 under these circumstances. Notwithstanding the preceding, if the corporation deems it desirable,
416 it may from time to time permit municipalities to contract among themselves for the disposal of
417 their wastes.

418 (c) Municipalities, along with private producers of waste which contract with the
419 corporation for disposal of their wastes, shall continue to be free to make their own arrangements
420 for collection of wastes at the source and/or the hauling of wastes to the designated processing
421 and/or transfer stations, so long as those arrangements are in compliance with the department of
422 environmental protection's governance of them and with this chapter, and any municipal license
423 relating thereto.

424 (d) The corporation and any municipality may enter into a contract or contracts
425 providing for or relating to the disposal of solid waste originating in the municipality and the cost
426 and expense of the disposal. The contract may be made with or without consideration and for a
427 specified or unspecified time not to exceed fifty (50) years, and on any terms and conditions
428 which may be approved by the municipality and which may be agreed to by the corporation in

429 conformity with its contracts with the holders of any bonds or other obligations. Subject to the
430 contracts with the holders of bonds, the municipality is authorized and directed to do and
431 perform any and all acts or things necessary, convenient, or desirable to carry out and perform
432 the contract and to provide for the payment or discharge of any obligation under the contract in
433 the same manner as other obligations of the municipality.

434 (e) The corporation shall charge each municipality with which it has a long-term
435 contract for solid waste disposal services a tipping fee per ton of source separated solid waste
436 excluding separated recyclable materials, sludge, and demolition debris delivered to any
437 corporation facility computed in accordance with this subsection. For purposes of this chapter,
438 "fiscal year" shall mean the twelve-month period, July 1 to June 30. The municipal tipping fee
439 shall be equal to one hundred seven and one-half percent (107.5%) of the prior fiscal year's
440 municipal tipping fee through the end of the 2009 fiscal year. One dollar and ten cents (\$1.10)
441 per ton on all garbage, including recycled garbage, collected by the corporation as tipping fee
442 shall be paid to the host community. In addition to any other fees the corporation shall also
443 charge a three dollar (\$3.00) tipping fee per vehicle. Any vehicle carrying municipal solid waste
444 shall be exempt from this three dollar (\$3.00) tipping fee. All fees collected shall be paid to the
445 host community on a biannual basis. No tipping fee shall be charged for recyclable materials
446 delivered to a recycling facility provided by or through the corporation.

447 (f) The corporation shall establish in the contract, the maximum amount of municipal
448 solid waste that each municipality will be entitled to deliver to the corporation at the municipal
449 tipping fee. Solid waste in excess of the contract amount will be charged to the municipality at
450 the non-municipal rate. In determining the maximum amount of municipal solid waste which
451 will qualify for the municipal tipping fee, the corporation shall consider the municipality's solid

452 waste per capita average, the statewide solid waste per capita average, and any other factors that
453 it shall deem appropriate. The corporation shall be entitled to negotiate and adjust fees
454 accordingly in the event of a municipality exceeds such amounts.

455 (g) Seaweed collected and removed by a municipality shall be deemed "yard waste" for
456 purposes of this chapter and any rules, regulations and/or plans promulgated by the corporation
457 pursuant to this chapter, and shall be accepted by the corporation at the same rate and cost as all
458 other municipal yard waste.

459 (h) The corporation, after the initial resource recovery facility becomes operational,
460 shall charge each non-municipal user of its facilities a fee per ton equal to the projected annual
461 resource recovery system cost less energy revenues and interest earnings on bond reserve funds,
462 if any, divided by the projected tons to be processed by the corporation at its resource facilities
463 for the year. Landfill costs shall not be considered in the calculation unless landfill costs exceed
464 revenues generated at the landfills; in those cases, excess landfill costs will be added to the
465 system costs.

466

467 (i) On or before October 1 of each year, the corporation shall submit a budget to the
468 secretary of administration and finance for the succeeding fiscal year using actual resource
469 recovery system revenues and costs, and the audit of the preceding fiscal year prepared by the
470 corporation's independent auditors and accepted by the auditor general. On or before December 1
471 of each year, the secretary of administration and finance, in consultation with the corporation,
472 shall review the budget of the corporation and shall determine and certify the finances of the
473 corporation.

474 If at any time, the corporation determines that a state subsidy is necessary to meet the
475 corporation's obligations for the current fiscal year, it shall request, in writing, to the secretary of
476 administration and finance for a supplemental appropriation. After review, the secretary of
477 administration and finance will recommend to the governor additional funding for the
478 corporation, and the governor after further review, shall submit a supplemental appropriation bill
479 request for the funds to the general court.

480 From the appropriations made by the general court, the state controller is authorized and
481 directed to draw his or her orders upon the general treasurer every month for the payment of
482 those sums that may be required upon receipt by him or her of properly authenticated vouchers.

483 (j) If, in any fiscal year, the appropriation is not made and if the corporation has
484 insufficient other funds to discharge its obligations to holders of its bonds and notes as certified
485 by the state auditor general, the corporation shall be empowered to charge both municipal and
486 non-municipal users whatever fees are necessary to discharge its obligations to holders of its
487 bonds and notes, and the municipal tipping fee set forth in subsection (e) shall not be applicable
488 for the fiscal year.

489 Section 7. Surplus Funds of the Corporation to the Department of Environmental
490 Protection and General Fund

491 In the event the corporation has revenues sufficient to provide for the support of the
492 corporation and its operations on a self-sustaining basis with due regard to the provision of the
493 services at a reasonable cost to the clients it has contracted with, after payments due any host
494 community or directly abutting community, the corporation shall transfer such excess funds to
495 the department of environmental protection to offset costs associated with the enforcement of the

496 solid waste laws and regulations and, subsequently, any remainder to the general fund of the
497 Commonwealth.

498 The department of environmental protection shall inform the corporation of the amount
499 necessary to enforce such laws and regulations on an annual basis.

500 Section 8. Initial Facility and Resource Recovery Facility Development Plan. –

501 Notwithstanding any special or general law to the contrary, the corporation shall implement a
502 solid waste processing and resource recovery system as soon as possible conforming to the
503 following criteria:

504 (1) The system shall consist of a waste processing facility or facilities that may be
505 either publicly or privately owned with a nameplate capacity not to exceed 5,000 tons per day,
506 individually.

507 (2) Any corporation owned or leased facilities shall be located at a location
508 encompassing the following characteristic:

509 A site containing at least 600 contiguous acres of land; served by both road and rail; and
510 capable of providing a suitable buffer for the host community's residents.

511 (3) Any energy revenues which may be generated by the facilities may inure to the
512 benefit of either the corporation or the vendor or both.

513 (4) The corporation shall select through competitive bidding, vendors to construct,
514 operate, maintain, and/or own these facilities. The corporation shall issue an initial request for
515 proposals for the construction and/or operation of required facilities within six months of the
516 enactment of this legislation.

517 (5) The state auditor general shall review and evaluate the reasonableness and fairness
518 of all contracts and agreements related to the construction, operation, and maintenance of the
519 facilities. The state auditor will forward the results of such review to the corporation within
520 thirty days of receipt by the state auditor's office.

521 (6) In choosing vendors for the facilities, preference shall be given to vendors who:

522 (i) Provide private financing and privately own the facilities with minimal or no
523 financial risk to the corporation or state;

524 (ii) Provide a waste processing facility technology that on-site separates, recovers for
525 recycling and composting the highest percentage of the waste stream and lowest amount of
526 residue;

527 (iii) Demonstrate the highest number of primary and secondary markets for materials
528 recovered from the waste stream and alternative material uses in the event a material market fails
529 or becomes economically infeasible;

530 (iv) Can provide the greatest degree of flexibility in the type of materials outputted
531 from the facility in order to adjust to changing markets for recovered materials; and

532 (v) Guarantee a fixed rate tipping fee and/or fixed escalation rate of tipping fees for the
533 longest time periods.

534 (vi) Develop economic development opportunities with the region for purposes of
535 promoting job growth and economic growth.

536 (7) In an effort to reduce energy costs and resulting tipping fees at the facilities, the
537 corporation may consider the use of a natural gas cogeneration unit as an integral part of the

538 facility provided that the maximum output of the cogeneration unit does not exceed twenty-five
539 (25) megawatts. The inclusion or addition of a gas cogeneration component shall not delay the
540 permitting, construction and operation of the facilities and the gas cogeneration components may
541 be added to the facilities after construction or operation of the facilities begins.

542 (8) In addition to any source separation programs for household hazardous waste, the
543 facilities shall have the capacity to separate household hazardous wastes and hazardous wastes
544 from the waste stream and it shall be the responsibility of the corporation to provide for proper
545 disposal of those hazardous wastes at a licensed facility. The corporation may enter an agreement
546 with any facility vendor to provide for proper disposal.

547 (9) The corporation, in conjunction the department of environmental protection, shall
548 ensure that the siting of any facility meets the requirements of chapter 21H. Notwithstanding
549 any general or special law to the contrary, the commissioner of the department of environmental
550 protection may waive any requirement of chapter 21H if it is determined that it is in the best
551 interests of the Commonwealth in meeting the requirements of this chapter.

552 Section 9. Host community assessment committee; Definition; Funding; Powers and
553 Duties.

554 (a) Within seven (7) days from the date of the filing for a solid waste disposal license, the
555 corporation shall notify the chief elected official or the chief executive officer of the municipality
556 in which the facility is proposed to be sited of the filing for a solid waste disposal license. Within
557 thirty (30) days of the date of the notice, the municipality may submit to the executive director a
558 request for an amount not to exceed seventy-five thousand dollars (\$75,000) for the
559 establishment of a local host community assessment committee which shall negotiate with the

560 corporation a host community agreement that includes a host community benefit package. The
561 host community agreement may address, but shall not be limited to, traffic concerns, hours of
562 operation, highway improvements and litter control. The agreements may be overridden in the
563 case of emergency by the executive director. The host community agreement may provide for
564 benefits to the municipality, either monetary or nonmonetary which are in addition to the
565 payments required by subsection (b).

566 (b) All public solid waste landfill and waste to energy facilities shall be required to pay to
567 the municipality at minimum a per annum fee of one dollar (\$1.00) per ton of solid waste
568 disposed at the site or seven hundred fifty thousand dollars (\$750,000), whichever is greater. The
569 executive director may, by regulation, determine and impose disposal fees for other solid waste.

570 (c) Communities directly abutting the host community shall negotiate, collectively, with
571 the corporation an abutting host community agreement that includes an abutting host community
572 benefit package. The abutting host community agreement may address, but shall not be limited
573 to, traffic concerns, hours of operation, highway improvements and litter control. The
574 agreements may be overridden in the case of emergency by the executive director. In no case
575 shall the abutting host community agreement, in the aggregate, provide for monetary or non-
576 monetary benefits exceeding twenty (20%) percent of the total compensation provided to any
577 host community, excluding that which is provided in section (b) above.

578 Section 10. Continued Protection of Ground and Surface Water

579 The corporation shall be committed to completion of appropriate studies of the ground
580 and surface water under and adjacent to the corporation's facilities to determine whether and to
581 what extent contamination from the corporation's facilities may affect water quality or public

582 health, and to what extent any contamination has a significant impact on human health or the
583 environment. This requirement may be satisfied in part or in full by studies already underway
584 and in compliance with the Comprehensive Environmental Response, Compensation and
585 Liability Act of 1980, 42 U.S.C., § 9601 et seq. ("CERCLA") or other applicable federal or state
586 environmental statutes.

587 If the studies determine that there is in fact an impact by the landfill on water quality or
588 public health, which is not remediated by the installation of public water, then the corporation
589 shall be responsible to take additional remedial action required to further protect public health or
590 to preserve important environmental qualities which are determined to be threatened. As in the
591 case of studies, this requirement may be satisfied in whole or in part by remedial actions required
592 under CERCLA or other applicable federal or state environmental statutes.

593 Once a facility is established by the corporation, the corporation shall abide by abide by
594 any regulations governing the operation of facilities and recycling facilities, as established by the
595 department of environmental protection under applicable laws or regulations.

596 Section 11. Meeting the Statewide Solid Waste Master Plan.

597 The corporation shall consult with the department of environmental protection in meeting
598 the goals of the statewide solid waste master plan of which the corporation's facilities shall be a
599 component part. Nothing in this chapter shall be interpreted as limiting the authority of the
600 department of environmental protection to prepare a statewide, comprehensive, solid waste
601 management plan, including, but not limited to, any plan required by any federal law, rules, or
602 regulations to meet federal requirements that may be conditions precedent to receiving federal
603 assistance.

604 Section 12. Powers of the department of health and the department of environmental
605 protection.

606 Nothing contained in this chapter shall be construed to affect the powers granted to the
607 department of public health and the department of environmental protection in ensuring the safe
608 operation of solid waste facilities; provided further, any solid waste facilities under the
609 jurisdiction of the corporation shall be subject to the regulatory and enforcement activities of the
610 department of environmental protection.

611 Section 13. Disposal of infectious and pathological waste.

612 No resource recovery system or facility made available by the corporation shall accept or
613 burn any infectious or human or animal pathological waste from any hospital, clinic, medical
614 laboratory, nursing home, medical examiner, or teaching hospital. Any facility violating this
615 provision shall be fined not less than two thousand five hundred dollars (\$2,500) nor more than
616 five thousand dollars (\$5,000). The fine shall be paid to the city or town in which the facility is
617 located.

618 Any person who shall knowingly and willfully perform any act or shall conspire with any
619 person, hospital, clinic, medical laboratory, medical examiner, or teaching hospital to perform
620 any act in violation of the provisions of this section shall be fined not less than two thousand five
621 hundred dollars (\$2,500) nor more than five thousand dollars (\$5,000).

622 Section 14. Massachusetts Resource Recovery Corporation Advisory Board.

623 The governor shall appoint from among interested citizens of the Commonwealth eleven
624 (11) members of a Massachusetts Resource Recovery Corporation Advisory Board, 6 of whom

625 shall be residents of the host community or communities directly abutting the host community.
626 In the month of June each year, the governor shall appoint a successor to the member of the
627 board whose term shall expire in that year, to hold office commencing on the first day of July in
628 the year of appointment and until the first day of July in the third year after their respective
629 appointments and until their respective successors are appointed and qualified. Any vacancy
630 which may occur in the board shall be filled by the governor with the original manner of
631 appointment, for the duration of the unexpired term.

632 It shall be the role of the advisory board to give advice to the corporation concerning
633 rules and regulations and legislation affecting solid waste management, resource recovery, and
634 recycling; and to study the effects of existing recovery and recycling programs, and to annually
635 report its findings to the corporation for inclusion in the annual report and to recommend to the
636 corporation, special studies and projects which it feels are needed to further economic solid
637 waste management, resource recovery, and recycling. The members of the advisory board shall
638 serve without compensation. The advisory board shall, at regular intervals, conduct business
639 meetings for the purpose of carrying out its general business, and the meetings shall be open to
640 the public and all records and minutes will be a matter of public record. The members of the
641 advisory board shall elect a chairperson on an annual basis.

642 Section 15. Reporting requirements.

643 The corporation shall, within ninety (90) days after the close of each fiscal year, submit
644 an annual report of its activities for the preceding year to the governor, the speaker of the house
645 of representatives, the president of the senate, the state treasurer, and the secretary of state.

646 Section 16. Tax Exempt

647 Notwithstanding any general or special law to the contrary, the corporation and all its real
648 and personal property shall be exempt from taxation and from betterments and special
649 assessments; and the corporation shall not be required to pay any tax, excise or assessment to or
650 for the commonwealth or any of its political subdivisions; nor shall the corporation be required
651 to pay any fee or charge for any permit or license, nor any compliance fee, issued to it by the
652 commonwealth, by any department, board or officer thereof, or by any political subdivision of
653 the commonwealth, or by any department, board or officer of such political subdivision, or by
654 any department; and, so far as constitutionally permissible, the corporation shall be exempt from
655 tolls for the use of highways, bridges and tunnels. Bonds and notes issued by the authority, their
656 transfer and the income therefrom, including any profit made on the sale thereof, shall at all
657 times be free from taxation within the commonwealth.

658 Notwithstanding any general or special law to the contrary, the corporation shall be
659 exempt from any fees or taxes associated with surplus lines insurance; provided, however, that
660 the exemption shall extend to any insurance broker for any insurance premium tax or surplus
661 lines tax being incurred or having been incurred by the insurance broker as a result of the
662 insurance having been procured, placed, negotiated, continued or renewed for or on behalf of the
663 corporation.

664 Section 17. Severability

665 The provisions of this chapter are severable and if any provision or part of any provision
666 shall be held invalid or unconstitutional or inapplicable to any person or circumstances, the
667 invalidity, unconstitutionality, or inapplicability shall not affect or impair the remaining
668 provisions of this chapter. All acts or parts of acts inconsistent with this chapter are repealed.

669 Section 18. Violations; Sanctions; Injunctive relief.

670 The attorney general of the state shall have the power to bring an action in the name of
671 the state, and the corporation through its legal counsel shall have the power to bring an action in
672 the name of the corporation in any court of competent jurisdiction for restraining orders and
673 injunctive relief to restrain and enjoin violations or threatened violations of this chapter, or for
674 specific performance of the obligations of any person or municipality under this chapter.
675 Proceedings under this chapter shall be instituted and prosecuted in the name of the corporation,
676 (1) by the attorney general or (2) by the corporation through its legal counsel. The superior court
677 shall have the jurisdiction in equity to enforce the provisions of this chapter and any rules or
678 regulation of the corporation under the provisions of this chapter.

679 Section 19. Procedures to enforcement.

680 In any instance wherein there is a violation of its rules and regulations or any order of the
681 corporation, the corporation and the attorney general shall have the power to order the violator to
682 cease and desist, or to remedy the violations, and the corporation may impose administrative
683 penalties. The corporation may impose administrative penalties only in accordance with the
684 notice and hearing provisions of chapter 30A, and the corporation's enforcement plan, as may be
685 amended from time to time, developed pursuant to the department of environmental protection's
686 regulations for reduction and recycling of commercial and non-municipal residential solid waste.
687 Without being required to enter into any recognizance or to give surety for costs, the attorney
688 general and executive director may institute administrative, civil or criminal proceedings in the
689 name of the corporation when there are reasonable grounds to believe that there has been a
690 violation of any provision of this chapter and the corporation's enforcement plan, as may be

691 amended from time to time, developed pursuant to the department of environmental protection's
692 regulations for reduction and recycling of commercial and non-municipal residential solid waste.
693 The attorney general may assist the corporation in carrying out any civil or administrative
694 proceedings. It shall be the duty of the attorney general to carry out all criminal proceedings
695 initiated by the executive director.

696 (b) The superior court shall have jurisdiction to enforce the provisions of this chapter and
697 any rule, regulation, permit or administrative order issued pursuant to this chapter. Proceedings
698 for enforcement may be instituted and prosecuted in the name of the corporation. Proceedings
699 provided in this section shall be in addition to other administrative or judicial proceedings
700 authorized by this chapter.

701 (c) Any person charged with the violation of the provisions of this chapter shall have a
702 right to a trial by jury on every issue of fact.

703 Section 20. Liberal construction.

704 This chapter, being necessary for the welfare of the Commonwealth and its residents,
705 shall be liberally construed to effectuate its purposes. Neither this chapter nor anything in this
706 chapter is or shall be construed as a restriction or limitation upon any powers that the corporation
707 might otherwise have under any laws of this state, and this chapter is cumulative to any powers
708 conferred by other laws. Contracts for the construction and acquisition of any project undertaken
709 pursuant to this chapter shall comply with the provisions of any other state law applicable to
710 contracts for the construction and acquisition of state owned property. No proceedings, notice, or
711 approval shall be required for the issuance of any bonds, notes and other obligations or any
712 instrument as security for them, except as is provided in this chapter.