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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:

SECTION 1. The General Laws, as appearing in the 2006 Official Edition, are hereby amended by inserting after chapter 16, the following new chapter:-

CHAPTER 16A

Massachusetts Resource Recovery Corporation

Section 1. Definitions

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

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

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

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

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

"Corporation", the Massachusetts Resource Recovery Corporation

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

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

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

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

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

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

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

"Resource Recovery Facility"or "Recycling Facility", any place or site where resource recovery or recycling will occur.

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

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

"Tipping fee", the fee or other cost charged by the operator of a solid waste disposal facility for the disposal of solid waste in the facility.

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

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

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

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

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

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

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

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

(ii) employ professional and clerical staff as necessary;

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

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

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

Section 3. Purpose and Duties of the Corporation

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

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

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

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

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

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

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

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

Section 4. Powers of the Corporation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 5. Bonding Authority and Remedies

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 6. Municipal Partnership with the Corporation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 8. Initial Facility and Resource Recovery Facility Development Plan. – Notwithstanding any special or general law to the contrary, the corporation shall implement a solid waste processing and resource recovery system as soon as possible conforming to the following criteria:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 10. Continued Protection of Ground and Surface Water

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

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

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

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

Section 11. Meeting the Statewide Solid Waste Master Plan.

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

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

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

Section 13. Disposal of infectious and pathological waste.

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

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

Section 14. Massachusetts Resource Recovery Corporation Advisory Board.

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

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

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

Section 15. Reporting requirements.

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

Section 16. Tax Exempt

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

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

Section 17. Severability

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

Section 18. Violations; Sanctions; Injunctive relief.

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

Section 19. Procedures to enforcement.

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

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

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

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

Section 20. Liberal construction.

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