

HOUSE No. 3896

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act relative to the establishment of municipal lighting authorities.

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

1 SECTION 1. The first sentence of section 19 of chapter 25 of the General Laws, as
2 appearing in the 2010 Official Edition, is hereby amended by striking out in line 2, the words
3 “except those served by a municipal lighting plant.”

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

6 SECTION 3. Subsection (a) of section 20 of said chapter 25, as so appearing, is hereby
7 amended by striking out, in line 2, the words “except those served by a municipal lighting plant
8 which does not supply generation service outside its own service territory or does not open its
9 service territory to competition at the retail level.”

10 SECTION 4. Subsection (b) of said section 20 of said chapter 25 is hereby repealed.

11 SECTION 5. Section 21 of said chapter 25 is hereby amended by inserting after the word
12 “companies”, in line 9, the words:- municipal light plants formed after July 31, 2012

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

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

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

19 SECTION 9. Said section 21 of chapter 25 is hereby further amended by inserting after
20 the word “companies”, in line 85, the words:- municipal light plants formed after July 31, 2012

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

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

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

27 SECTION 13. Subsection (e) of section 10 of chapter 25A of the General Laws, as
28 appearing in the 2010 Official Edition, is hereby amended by striking the second sentence.

29 SECTION 14. Subsection (i) of section 11F of said chapter 25A is hereby repealed.

30 SECTION 15. Subsection (d) of section 11F ½ of said chapter 25A is hereby repealed

31 SECTION 16. Section 1B of chapter 164 of the General Laws, as so appearing, is hereby
32 amended by adding to the end of subsection (a) the following:-

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

36 SECTION 17. Said chapter 164 is hereby amended by striking out section 43, as so
37 appearing, and inserting in place thereof the following section:-

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

- 44 (1) an outline of the property the municipality wishes to acquire;
- 45 (2) a projection of purchase price of such property;
- 46 (3) a projection of total costs of establishing the municipal lighting plant;
- 47 (4) a financing plan to cover the purchase price, including a description of
48 municipality's bonding ability;
- 49 (5) pro forma income statement and balance sheet for the municipal lighting plant;
- 50 (6) the options for governance of the municipal lighting plant approved or anticipated
51 by the municipality, and;
- 52 (7) a projection of electric rates to be charged by the municipal lighting plant.

53 (b) The department may investigate the feasibility of the municipality's proposed
54 acquisition, and shall, within 180 days of the filing and after notice and a public hearing, issue a
55 report regarding the feasibility of the municipality's filing; provided, however, that the
56 department is not required to issue more than 3 such reports in any contiguous 12-month period.
57 Any reports that are not issued within 180 days of the filing shall be issued in the order of the
58 filings. If multiple municipalities file with the stated intent of establishing a joint or cooperative
59 system of municipal lighting plants, the department shall process such filing simultaneously, to
60 the extent possible. The department shall transmit its report to the distribution company, the clerk
61 of each such town and the department of energy resources. The department shall report to the
62 general court the results of its findings and file such reports with the clerks of the house of
63 representatives and the senate, who shall forward the same to the joint committee on
64 telecommunications, utilities and energy.

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

76 sale. Such property shall include such portion of the property within the limits of such
77 municipality as is suitable for, and used in connection with, the distribution of electricity within
78 such limits. If any such property is subject to any mortgages, liens or other encumbrances, the
79 department in making its determination shall provide for the deduction or withholding from the
80 purchase price, pending discharge, of such sum or sums as it deems proper.

81 (d) The department, after notice to the parties, shall give a hearing thereon and make
82 the determination aforesaid.

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

91 (f) In connection with the exercise by a municipality of the option to purchase utility
92 plant pursuant to this section, the municipality may elect to assume responsibilities for
93 maintenance, placement and removal of jointly-owned poles or other facilities shared with other
94 public utilities, or to purchase such facilities at an amount equal to 50 percent of the net book
95 value, plus 50 percent of the reproduction cost new less depreciation, adjusted based on the
96 physical condition of the assets. Except where the municipality makes such election, the
97 municipality shall assume the rights and obligations of the previous owner with respect to any

98 person other than the distribution company controlling or using the poles, conduit or other
99 jointly-owned or joint-use facilities, property and rights; provided, that in the assumption of the
100 rights and obligations of the previous owner by such a municipality, such municipality shall in
101 no way or form restrict, impede, or prohibit access that other parties would enjoy under the
102 previous ownership.

103 (g) Any municipal lighting plant established pursuant to these provisions shall file
104 with the department a plan for supporting development of renewable and alternative energy
105 production comparable to the magnitude of such support achieved under sections 11F and 11F^{1/2}
106 of chapter 25A, sections 138 through 143, and section 83 of chapter 169 of the acts of 2008.
107 Following department approval of such plan, the municipal lighting plant shall implement that
108 plan and report annually to the department regarding such implementation.

109 (h) The department shall not allow as a cost of service any costs of the incumbent
110 distribution company in connection with such proceedings, in excess of the costs reasonably
111 necessary to provide information, negotiate necessary contractual arrangements, and represent
112 the interests of the remaining ratepayers in designing any severance plan required.

113 (i) If, at the time of purchase of the distribution equipment by a municipality, the
114 distribution company has unfunded liabilities for pensions and other post-retirement benefits that
115 would be recovered through distribution rates, the department shall determine the fair share of
116 such liabilities attributable to the distribution system to be acquired by the municipality and the
117 method by which the municipal lighting plant shall compensate the distribution company for that
118 fair share.

119 (j) To the extent that the distribution company has entered into any long term
120 contracts for renewable energy pursuant to section 83 of chapter 169 of the acts of 2009 prior to
121 the date of the acquisition, the municipality acquiring any electric distribution facilities pursuant
122 to this section shall be required to assess its distribution customers an equivalent charge in
123 distribution rates to cover its proportionate share of the monthly costs of such contracts, as would
124 have been charged to the electric distribution customers in such municipality had the acquisition
125 not occurred. Such amounts collected shall then be remitted to the electric distribution company
126 within thirty days of being invoiced by the electric distribution company.

127 (k) The department shall report to the joint committee on telecommunications,
128 utilities and energy annually on the operation of this section, including a summary of activity
129 under this section and any recommendations for amending the section.

130 SECTION 18. Said chapter 164 is hereby further amended by inserting after section 56E
131 the following section:-

132 Section 56F. The department is hereby authorized to promulgate rules and regulations to
133 establish service quality standards for municipal light plants formed after July 31, 2012,
134 including, but not limited to, standards for customer satisfaction, service outages, distribution
135 facility upgrades, repairs and maintenance, telephone service, billing service, and public safety
136 provided. Each municipal light plant formed after July 31, 2012 shall file a report with the
137 department by March first of each year comparing its performance during the previous calendar
138 year to the department's service quality standards and any applicable national standards as may
139 be adopted by the department.

140 SECTION 19. Section 47A of said chapter 164 is hereby amended by inserting after the
141 word “plant”, in line 1, the words:- formed prior to July 31, 2012.

142 SECTION 20. Said section 47A of chapter 164 is hereby further amended by inserting
143 after the word “plant”, in line 6, the words:- formed prior to July 31, 2012.

144 SECTION 21. Said section 47A of said chapter 164 is hereby further amended by
145 inserting after subsection (f) the following subsection:-

146 (g) No municipal lighting plant shall prohibit customers within the service territory of
147 said lighting plant from engaging in third-party ownership agreements of residential renewable
148 energy equipment for the generation of energy to be used at the customer’s residence.

149 SECTION 22. Notwithstanding any general or special law to the contrary, municipal light
150 plants formed prior to July 31, 2012 may count existing eligible renewable energy generating
151 sources and alternative energy generating towards compliance with sections 11F and 11F ½ of
152 chapter 25A.

153 SECTION 23. The executive office of energy and environmental affairs is hereby
154 authorized to adopt rules and regulations necessary to carry out this Act.

155 SECTION 24. Sections 1, 3, 4, 13 through 15 shall take effect July 1, 2013.