

HOUSE No. 2866

The Commonwealth of Massachusetts

PRESENTED BY:

Stephen L. DiNatale

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the establishment of municipal lighting authorities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>
<i>Jennifer L. Flanagan</i>	<i>Worcester and Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Leah Cole</i>	<i>12th Essex</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>
<i>Sheila C. Harrington</i>	<i>1st Middlesex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>
<i>John V. Fernandes</i>	<i>10th Worcester</i>
<i>Randy Hunt</i>	<i>5th Barnstable</i>
<i>Leonard Mirra</i>	<i>2nd Essex</i>
<i>William Smitty Pignatelli</i>	<i>4th Berkshire</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Dennis A. Rosa</i>	<i>4th Worcester</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Jonathan D. Zlotnik</i>	<i>2nd Worcester</i>

HOUSE No. 2866

By Mr. DiNatale of Fitchburg, a petition (accompanied by bill, House, No. 2866) of Stephen L. DiNatale and others for legislation to regulate the establishment of municipal lighting plants. Telecommunications, Utilities and Energy.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2927 OF 2013-2014.]

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

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 inserting after the word “plant” the
3 words:- formed prior to July 31, 2012.

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

6 SECTION 3. Section 20 of said chapter 25, as so appearing, is hereby amended by
7 inserting after the word “plant”, in line 3, the words:- formed prior to July 31, 2012

8 SECTION 4. Said section 20 of chapter 25 is hereby further amended by inserting after
9 the word “ plant”, in line 10, the words:- formed prior to July 31, 2012

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

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

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

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

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

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

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

24 SECTION 12. Said section 21 of chapter 25 is hereby further amended by inserting after
25 the word “company”, in line 108, the words:- municipal light plant

26 SECTION 13. Said section 21 of chapter 25 is hereby further amended by inserting after
27 the word “company”, in line 110, the words:- municipal light plant

28 SECTION 14. Section 1B of chapter 164 of the General Laws, as so appearing, is hereby
29 amended by adding to the end of subsection (a) the following:-

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

33 SECTION 15. Said chapter 164 is hereby amended by striking out section 43, as so
34 appearing, and inserting in place thereof the following section:-

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

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

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

64 (c) Upon the issuance of the department's report, the municipality may seek
65 determination as to what property ought in the public interest to be included in the purchase and
66 what price should be paid, which shall be based on the standard formula developed by the
67 department in subsection (d). Such value shall be estimated without enhancement on account of
68 future earning capacity or good will, or of exclusive privileges derived from rights in the public
69 ways. Such price shall include damages, if any, which the department finds would be caused by
70 the severance of the property proposed to be included in the purchase from other property of the
71 owner, including (1) stranded costs; (2) the capital costs of infrastructure reconfiguration or
72 additions caused by the severance; (3) engineering costs; and (4) any other costs incurred in

73 preparing for the reconfiguration and the sale. Such property shall include such portion of the
74 property within the limits of such municipality as is suitable for, and used in connection with, the
75 distribution of electricity within such limits. If any such property is subject to any mortgages,
76 liens or other encumbrances, the department in making its determination shall provide for the
77 deduction or withholding from the purchase price, pending discharge, of such sum or sums as it
78 deems proper. The department may assess reasonable fees to fund its responsibilities under this
79 subsection from each municipality seeking such determination for a proposed acquisition.

80 (d) No later than December 31, 2012 the department shall develop a standard formula
81 used to determine the value of property, including any jointly-owned poles or other facilities
82 shared with other public utilities, to be purchased by any municipality seeking to establish a
83 municipal lighting plant under this section. Such formula shall be used by the department in all
84 determinations of property value performed under subsections (c) and (g) of this section,
85 provided, however, that the department may make reasonable exceptions to the formula in
86 specific transactions.

87 (e) The department, after notice to the parties, shall give a hearing thereon and make the
88 determination aforesaid within 180 days from the municipality's application.

89 (f) Within 60 days after such determination shall have been made by the department, the
90 distribution company shall tender to the municipality's city or town clerk a copy of a good and
91 sufficient deed of conveyance for the property required by the department to be purchased, and
92 shall then place said deed in escrow. The municipality shall have 300 days in which to accept or
93 reject said tender and, if accepting, to pay to the distribution company the price determined by
94 the department. Such acceptance or rejection in case of a city shall be by vote of its city council

95 and thereafter ratified by a majority of the voters at an annual or special city election, and in case
96 of a town shall be by vote at a town meeting, or by such town officer or body to which town
97 meeting shall delegate such authority, and thereafter ratified by a majority of voters at an annual
98 or special town election.

99 (g) In connection with the exercise by a municipality of the option to purchase utility
100 plant pursuant to this section, the municipality may elect to assume responsibilities for
101 maintenance, placement and removal of jointly-owned poles or other facilities shared with other
102 public utilities, or to purchase such facilities at a price set by the department, which shall be
103 based on the standard formula developed by the department in subsection (d). Except where the
104 municipality makes such election, the municipality shall assume the rights and obligations of the
105 previous owner with respect to any person other than the distribution company controlling or
106 using the poles, conduit or other jointly-owned or joint-use facilities, property and rights;
107 provided, that in the assumption of the rights and obligations of the previous owner by such a
108 municipality, such municipality shall in no way or form restrict, impede, or prohibit access that
109 other parties would enjoy under the previous ownership.

110 (h) Any municipal lighting plant established pursuant to these provisions shall file with
111 the department a plan for supporting development of renewable and alternative energy
112 production comparable to the magnitude of such support achieved under sections 11F and 11F½
113 of chapter 25A, sections 138 through 143, and section 83 of chapter 169 of the acts of 2008.
114 Following department approval of such plan, the municipal lighting plant shall implement that
115 plan and report annually to the department regarding such implementation.

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

120 (j) If, at the time of purchase of the distribution equipment by a municipality, the
121 distribution company has unfunded liabilities for pensions and other post-retirement benefits that
122 would be recovered through distribution rates, the department shall determine the fair share of
123 such liabilities attributable to the distribution system to be acquired by the municipality and the
124 method by which the municipal lighting plant shall compensate the distribution company for that
125 fair share.

126 (k) To the extent that the distribution company has entered into any long term contracts
127 for renewable energy pursuant to section 83 of chapter 169 of the acts of 2008 prior to the date of
128 the acquisition, the municipality acquiring any electric distribution facilities pursuant to this
129 section shall be required to assess its distribution customers an equivalent charge in distribution
130 rates to cover its proportionate share of the monthly costs of such contracts, as would have been
131 charged to the electric distribution customers in such municipality had the acquisition not
132 occurred. Such amounts collected shall then be remitted to the electric distribution company
133 within thirty days of being invoiced by the electric distribution company.

134 (l) The department shall report to the joint committee on telecommunications, utilities
135 and energy annually on the operation of this section, including a summary of activity under this
136 section and any recommendations for amending the section.

137 SECTION 16. The first sentence of section 47A of said chapter 164 is hereby amended
138 by inserting after the word “law” the words:- formed prior to July 31, 2012

139 SECTION 17. Said section 47A of chapter 164 is hereby further amended by inserting
140 after the word “law”, in line 7, the words:- formed prior to July 31, 2012.

141 SECTION 18. Said section 47A of chapter 164 is hereby further amended by inserting
142 after subsection (f):-

143 (g) Any municipal light plant formed after July 31, 2012, shall submit to the department a
144 plan for allowing retail customers served by it competitive choice of generation supply. Such
145 plan shall allow any customers purchasing competitive generation supply at the plan’s effective
146 date to continue such purchase, and shall regulate migration of customers to and from
147 competitive service only as necessary to protect the financial integrity of the municipal light
148 plant while providing power to municipal-utility generation customers at the lowest feasible
149 stable prices.

150 SECTION 19. Said chapter 164 is hereby further amended by inserting after section 56E
151 the following section:-

152 Section 56F. The department is hereby authorized to promulgate rules and regulations to
153 establish service quality standards for municipal light plants formed after July 31, 2012,
154 including, but not limited to, standards for customer satisfaction, service outages, distribution
155 facility upgrades, repairs and maintenance, telephone service, billing service, and public safety
156 provided. Each municipal light plant formed after July 31, 2012 shall file a report with the
157 department by March first of each year comparing its performance during the previous calendar

158 year to the department's service quality standards and any applicable national standards as may
159 be adopted by the department.

160 SECTION 20. The executive office of energy and environmental affairs is hereby
161 authorized to adopt rules and regulations necessary to carry out sections 45 through 63 of this
162 Act, inclusive.