

**HOUSE . . . . . No. 4126**

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The Commonwealth of Massachusetts

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By Mr. Murphy of Burlington, for the committee on Ways and Means, that the Bill regarding accountability of public utility companies (House, No. 4110) ought to pass with an amendment substituting therefor a bill with the same title (House, No. 4126). June 3, 2009.

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An Act regarding accountability of public utility companies.

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FOR THE COMMITTEE:

NAME:	DISTRICT/ADDRESS:
Charles Murphy	21st Middlesex

# The Commonwealth of Massachusetts

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**In the Year Two Thousand and Nine**  
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## An Act regarding accountability of public utility companies.

*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. Chapter 25 of the General Laws is hereby amended by striking out  
2 section 5E, as appearing in section 9 of chapter 169 of the acts of 2008, and inserting in place  
3 thereof the following sections:-

4                   Section 5E. (a) The department may, from time to time, audit all companies subject to its  
5 jurisdiction, except steam distribution companies. Such audits may include, but shall not be limited  
6 to, review of the following documents: (a) all financial statements, the balance sheet, the income  
7 statement, the statement of cash flows, the statement of retained earnings, the notes to the financial  
8 statements and the information in the annual return to the department; (b) all documents concerning  
9 reconciling mechanisms related to rates, prices, charges or costs and savings related to a merger,  
10 acquisition or consolidation within 3 years after the merger, acquisition or consolidation; and (c)  
11 documents concerning service quality measure statistics and service quality performance at least  
12 every 3 years or whenever service quality penalties equal to or exceed 50 per cent of the maximum.

13                   (b) Upon (i) failure of an investor-owned distribution, transmission or gas company serving  
14 less than 100,000 customers to timely restore service after an outage affecting more than 500  
15 customers or more than one-third of the customers in any one municipality and (ii) the department

16 taking action pursuant to section 5F, the department shall order an independent management audit  
17 for the purpose of determining whether the company's management practices have caused, or  
18 substantially contributed to, such failure to timely restore service after an outage affecting more  
19 than 500 customers or more than one-third of the customers in any one municipality.

20 If the audit determines that the company's management practices caused, or substantially  
21 contributed to, the failure to timely restore service after an outage affecting more than 500  
22 customers or more than one-third of the customers in any one municipality the department or the  
23 attorney general may bring an action in superior court requesting the appointment of a receiver to  
24 operate the company; provided however, that unless the court determines otherwise said  
25 appointment shall not exceed 120 days.

26 A receiver appointed pursuant to this section shall have access to all company utility assets  
27 and records and may manage the company's assets in a manner which will restore or maintain an  
28 acceptable level of service. The receiver may hire, direct, or manage any employee, discharge any  
29 non-union employee, expend existing company utility revenues for labor and materials and make  
30 additional expenditures essential to providing an acceptable level of service, provided that such  
31 expenditures are funded in accordance with generally accepted ratemaking practices. Any costs  
32 incurred by the department or appointed receiver under this section shall be the responsibility of the  
33 company.

34 (c) Upon written complaint of the attorney general requesting an independent audit or  
35 independent management audit of a company subject to the department's jurisdiction, the  
36 department shall commence a proceeding within 30 days of receipt of the complaint for the purpose  
37 of ordering the requested audit in a reasonable time. The results of any audit so ordered shall be  
38 filed promptly with the department and each audit shall be paid for by the company that is the  
39 subject of the audit.

40           Section 5F. Upon the declaration of a state of emergency during which (i) an investor-  
41 owned distribution, transmission or gas company serving less than 100,000 customers fails to  
42 timely restore service after an outage affecting more than 500 customers or more than one-third of  
43 the customers in any one municipality; (ii) said company fails to adequately implement its  
44 emergency response plan filed under section 85B of chapter 164; and (iii) the department  
45 determines that such failure by said company constitutes a threat to the health, safety and welfare  
46 of affected ratepayers, the department may, in consultation with the Massachusetts emergency  
47 management agency, take such action deemed necessary to ensure public safety and welfare  
48 through the priority restoration of gas, electric and water utility services, including (i)  
49 implementing the company's emergency response plan filed pursuant to section 85B of chapter 164  
50 to timely restore service in the affected area; and (ii) issuing operational and management  
51 directives necessary to timely restore service in the affected area. Any company who willfully fails  
52 to carry out an order by the department under this section shall be subject to a civil administrative  
53 penalty not to exceed \$1,000,000 per violation. Any distribution, transmission, or gas company  
54 aggrieved by an order or directive issued by the department pursuant to this section may request a  
55 hearing within 90 days.

56           SECTION 2. Section 1E of chapter 164 of the General Laws, as most recently amended by  
57 section 61 of said chapter 169, is hereby amended by striking out paragraphs (c) and (d) and  
58 inserting in place thereof the following paragraph:-

59           (c) The department shall promulgate regulations relative to an alternative dispute resolution  
60 process for the handling of damage claims by customers in an amount under \$100. The department  
61 shall establish a 60 day timeline for the resolution of all mediation claims. The department shall  
62 issue a biannual report to the joint committee on telecommunications, utilities and energy which  
63 shall include, but not be limited to, the following information: the nature of consumer claims, the

64 number of consumer claims and the resolutions of consumer claims reviewed by the department  
65 during the previous 6 months. Said report shall be available for public review at the department.

66 SECTION 3. Said chapter 164 of the General Laws, as appearing in the 2006 Official  
67 Edition, is hereby amended by inserting after section 1H the following section:-

68 Section 1I. Each investor-owned distribution, transmission and gas company shall file a  
69 report with the department by March 1 of each year comparing its performance during the previous  
70 calendar year to the department's service quality standards and any applicable national standards as  
71 may be adopted by the department. The department shall be authorized to levy a penalty against  
72 any distribution, transmission or gas company which fails to meet the service quality standards in  
73 an amount up to and including the equivalent of 2.5 per cent of such company's transmission and  
74 distribution service revenues for the previous calendar year.

75 SECTION 4. Chapter 164 of the General Laws, as so appearing, is hereby amended by  
76 inserting after section 85A the following section:-

77 Section 85B. (a) Each distribution, transmission and gas company conducting business in  
78 the commonwealth shall annually, on or before May 15, submit an emergency response plan to the  
79 department for approval. The emergency response plan shall provide for the prompt and efficient  
80 restoration of service in cases of emergency including, but not limited to: i) identification of  
81 management staff responsible for company operations during an emergency; ii) a communications  
82 system with customers during an emergency that extends beyond the normal business hours and  
83 business conditions; iii) contact with customers who had documented their need for essential  
84 electricity for medical needs; iv) designation of staff to communicate with state and local officials  
85 and relevant regulatory agencies; v) provisions regarding how the company will ensure the safety  
86 of its employees and contractors; vi) procedures for deploying company and mutual aid crews to

87 work assignment areas; and vii) identification of additional supplies and equipment needed during  
88 an emergency and the means of obtaining additional supplies and equipment. The emergency  
89 response plan shall include a description of all mutual assistance agreements and the applicable  
90 coordinated plan developed pursuant to subsection (b).

91 (b) All electric distribution companies doing business in the commonwealth shall develop a  
92 coordinated plan for: (i) the organization and dispatch of all domestic electric utility and support  
93 crews within the state; (ii) the solicitation and distribution within the state of all foreign electric  
94 utility and support crews; and (iii) such other matters related to mutual assistance as the department  
95 may require. All natural gas distribution companies doing business in the commonwealth shall  
96 develop a coordinated plan for: (i) the organization and dispatch of all domestic natural gas utility  
97 and support crews within the state; (ii) the solicitation and distribution within the state of all  
98 foreign natural gas utility and support crews; and (iii) such other matters related to mutual  
99 assistance as the department may require.

100 (c) If the department fails to approve the proposed emergency response plan, it shall direct  
101 the distribution, transmission or gas company to amend its plan and shall prescribe conditions for  
102 approval. The company shall submit the appropriately revised plan to the department within 30  
103 days receipt of notice of disapproval of the plan originally filed. The distribution, transmission or  
104 gas company may, on its own initiative or at the request of the department, amend an approved  
105 emergency response plan, subject to approval by the department. Under emergency conditions, a  
106 distribution, transmission or gas company may modify its emergency response plan to the extent  
107 required to restore service in a safe and efficient manner, provided that such modifications and the  
108 circumstances that caused them shall be reported in writing to the department within 30 days of the  
109 full restoration of service.

110 (d) Any investor-owned distribution, transmission or gas company failing to file its  
111 emergency response plan may be fined \$500 for each day during which such failure continues.

112 (e) The department shall promulgate rules and regulations for the implementation, administration  
113 and enforcement of emergency response plans and for the coordination of mutual assistance among  
114 distribution, transmission or gas companies, and to establish performance standards to evaluate  
115 such companies' responses to an actual or reasonably foreseeable emergency. Any investor-owned  
116 distribution, transmission or gas company that violates any provisions of said rules and regulations  
117 or fails to adequately implement its emergency response plan shall be subject to a penalty of not  
118 less than \$500,000 nor more than \$5,000,000

