

HOUSE No. 3087

The Commonwealth of Massachusetts

PRESENTED BY:

Jay R. Kaufman

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 passage of the accompanying bill:

An Act relative to the establishment of municipal lighting authorities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Jay R. Kaufman	15th Middlesex
Stephen L. DiNatale	3rd Worcester
Stephen Kulik	1st Franklin
Matthew C. Patrick	3rd Barnstable
Sarah K. Peake	4th Barnstable
Denise Provost	27th Middlesex
Robert L. Rice, Jr.	2nd Worcester
Cleon H. Turner	1st Barnstable
Jennifer Benson	37th Middlesex
Frank I. Smizik	15th Norfolk
Alice K. Wolf	25th Middlesex
Geraldo Alicea	6th Worcester
Timothy J. Toomey, Jr.	26th Middlesex
Charles A. Murphy	21st Middlesex
John W. Scibak	2nd Hampshire
Anne M. Gobi	5th Worcester
Robert S. Hargraves	1st Middlesex
Steven J. D'Amico	4th Bristol
Sean Garballey	23rd Middlesex

Thomas M. Stanley	9th Middlesex
Christopher N. Speranzo	3rd Berkshire
Martha M. Walz	8th Suffolk
Robert M. Koczera	11th Bristol
Paul McMurtry	11th Norfolk
Jennifer M. Callahan	18th Worcester
Jonathan Hecht	29th Middlesex
Kay Khan	11th Middlesex
Denis E. Guyer	2nd Berkshire
Cory Atkins	14th Middlesex
Ellen Story	3rd Hampshire
Viriato Manuel deMacedo	1st Plymouth

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 3319 OF .]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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: Section 43 of chapter 164 of the General Laws, as appearing in the 2004 Official
2 Edition, is hereby amended by striking said section in its entirety and inserting in place thereof
3 the following section:—

4 Section 43. (a) If a municipality which votes to establish a municipal lighting plant fails,
5 within one hundred and fifty days from the passage of the final vote required by section thirty-
6 five or thirty-six, to agree, as to price or as to the property to be included in the purchase, with
7 the distribution company, as defined in section one of chapter one hundred sixty-four of the
8 General Laws, currently serving such municipality, such municipality may apply to the
9 department for review of the feasibility of the municipality's acquisition of such property. The
10 municipality's filing shall include an outline of the property the municipality wishes to acquire, a
11 projection of purchase price of such property, a projection of other costs of establishing the
12 municipal lighting plant, an outline of a financing plan to cover the purchase price, including a
13 description of municipality's bonding ability, pro forma income statement and balance sheet for

14 the municipal lighting plant, the options for governance of the municipal lighting plant approved
15 or anticipated by the municipality, and a projection of electric rates to be charged by the
16 municipal lighting plant.

17 (b) The department may request comments on the filing, hold hearings or technical conferences,
18 and request data and supporting materials from the municipality and the distribution company. The
19 department shall issue a report regarding the feasibility of the municipality's filing within one hundred
20 and eighty days of the filing, provided however that the department is not required to issue more than
21 three such reports in any contiguous twelve-month period. Any reports that are not issued within one
22 hundred and eighty days of the filing shall be issued in the order of the filings. If multiple municipalities
23 file with the stated intent of establishing a joint or cooperative system of municipal lighting plants, the
24 department shall process such filing simultaneously, to the extent possible. The department shall transmit
25 copies of the aforementioned report to the municipal clerk, the Division of Energy Resources and the
26 Joint Committee on Government Regulations.

27 (c) Upon the issuance of the department's report, or the expiration of the previously-described
28 time period for such report, the municipality may seek determination as to what property ought in the
29 public interest to be included in the purchase and what price should be paid, which shall be equal to the
30 original cost of the property less accumulated depreciation plus any other components required to provide
31 reasonable compensation to the distribution company. Such value shall be estimated without enhancement
32 on account of future earning capacity, lost sales, good will, physical reconfiguration of the distribution
33 company's utility plant and system or of exclusive privileges derived from rights in the public ways. The
34 department, after notice to the parties, shall give a hearing thereon and make the determination aforesaid
35 within one hundred and eighty days of the request for determination. Such property shall include such
36 portion of the property within the limits of such municipality as is suitable for, and used in connection
37 with, the distribution of electricity within such limits, including, at the election of the municipality, the

38 entirety of equipment jointly owned with other entities, in which case said entities shall be directly
39 compensated for, in a manner similar to the distribution company's compensation for its own interest in
40 the jointly-owned equipment.

41 (d) The department shall also include a plan for severance of property allowing both the
42 distribution company and the municipal lighting plant to serve their customers at the lowest identifiable
43 and achievable total cost, through any combination of joint facility ownership, additional metering,
44 contractual arrangements for delivery of power, and new construction. If the distribution company and the
45 municipality agree on a plan for severance of property, the department shall approve such plan within
46 ninety days, upon a finding that it is in the public interest. If the distribution company and the
47 municipality do not agree on such a plan, the department shall approve within one hundred and eighty
48 days of a petition for adjudication, the severance plan that results in the lowest identifiable and achievable
49 total cost to Massachusetts energy consumers. The department shall also set terms and conditions for the
50 transfer of property from the distribution company to the municipal lighting plant. If any such property is
51 subject to any mortgages, liens or other encumbrances, the department in making its determination shall
52 provide for the deduction or withholding from the purchase price, pending discharge, of such sum or sums
53 as it deems proper.

54 (e) Within thirty days after such determination shall have been made by the department,
55 the distribution company shall tender to the municipality's city or town clerk a good and
56 sufficient deed of conveyance for the property required by the department to be purchased, and
57 shall then place said deed in escrow. The municipality shall have one hundred and eighty days in
58 which to accept or reject said tender, or to appeal to the department any aspect of the proposed
59 deed of conveyance. If the municipality accepts, it shall have a further period of one hundred and
60 eighty days in which to pay to the distribution company the price determined as hereinbefore
61 provided. Such acceptance or rejection in case of a city shall be by vote of its city council, or its

62 commissioners if its government consists of a commission, and in case of a town shall be by vote
63 at a town meeting, or by such town officer or body to which town meeting shall delegate such
64 authority. In the event that the distribution company fails to comply with the preceding
65 requirements, the price to be paid by the municipality will immediately be reduced by one
66 percent of the price determined by the department. For every thirty additional days that pass prior
67 to the distribution company's compliance with the preceding requirements, the price will be
68 reduced by an additional one percent. Provided, however, that the department may waive such
69 reduction if it finds that the delay in compliance was beyond the control of the distribution
70 company.

71 (f) In connection with the exercise by a municipality of the option to purchase utility
72 plant pursuant to this section, the municipality may elect to assume responsibilities for
73 maintenance, placement and removal of jointly-owned poles or other facilities shared with other
74 public utilities, or to purchase such facilities at the original cost of the property less accumulated
75 depreciation. Except where the municipality makes such election, the municipality shall assume
76 the rights and obligations of the previous owner with respect to any person other than the
77 distribution company controlling or using the poles, conduit or other jointly-owned or joint-use
78 facilities, property and rights; provided, that in the assumption of the rights and obligations of the
79 previous owner by such a municipality, such municipality shall in no way or form restrict,
80 impede, or prohibit access that other parties would enjoy under the previous ownership.

81 (g) Any municipal lighting plant established pursuant to these provisions shall collect
82 the energy conservation and renewables charges as established by the department under section
83 nineteen and section twenty of chapter twenty-five of the General Laws, and may use the

84 resulting revenues for cost-effective demand-side management programs and to support the
85 development and promotion of renewable energy projects in accordance with the provisions of
86 section four E of chapter forty J, and may elect to contribute to, and benefit from, programs
87 operated by one or more distribution companies or the Massachusetts Renewable Energy Trust
88 Fund, on the same basis as the distribution companies.

89 (h) Any municipal lighting plant established pursuant to these provisions shall allow customers to
90 be served by competitive electricity suppliers, and shall establish rules to allow competitive supply while
91 protecting the financial stability of the municipal lighting plant.

92 (i) The department shall not allow as a cost of service any costs of the incumbent
93 distribution company in connection with such proceedings, in excess of the costs reasonably
94 necessary to provide information, negotiate necessary contractual arrangements, and represent
95 the interests of the remaining ratepayers in designing the severance plan as described in
96 paragraph (d) of this Section.

97 (j) The department shall report to the Joint Committee on Government Regulations annually on
98 the operation of this revised section, including a summary of activity under this section and any
99 recommendations for amending the section.

100 SECTION 2: Section 1B of chapter 164 of the General Laws, as appearing in the 2004 Official
101 Edition, is hereby amended by adding to the end of paragraph (a) the following:—

102 except that the purchase by a municipality of plant from a distribution company shall transfer all
103 rights and obligations established in this section to the municipal lighting plant of the purchasing
104 municipality.

105 SECTION 3: Chapter 164 of the General Laws, as appearing in the 2004 Official Edition, is
106 hereby amended by inserting after section 34B the following new section:—

107 Section 34C: Each electric distribution company shall maintain accounts of plant in service in
108 each municipality in its service territory, including the original cost of plant, accumulated depreciation,
109 and any other measures of the value of plant that the department may order used for determination of sale
110 prices under section forty-three of this chapter. The distribution company shall maintain such accounts by
111 the system of accounts approved by the department. Upon the request of any clerk of any municipality in
112 its service territory, the distribution company shall provide such accounts for that municipality within
113 thirty days. In the event that the distribution company fails to comply with this provision, it shall be liable
114 to the municipality for one thousand dollars for every day of noncompliance.