

HOUSE No. 03896

By Mr. Keenan of Salem, for the committee on Telecommunications, Utilities and Energy, on House, No. 869, a Bill relative to the establishment of municipal lighting authorities (House, No. 3896). January 26, 2012.

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 appearing in
2 the 2010 Official Edition, is hereby amended by striking out in line 2, the words “except those
3 served by a municipal lighting plant,”.
- 4 SECTION 2. Said section 19 of chapter 25 is hereby further amended by inserting after the word
5 “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 amended
7 by striking out, in line 2, the words “except those served by a municipal lighting plant which
8 does not supply generation service outside its own service territory or does not open its service
9 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 Subsection (b) of said section 20 of said chapter 25 is hereby repealed.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 the word
14 “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 the word
16 “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 the word
18 “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 the word
20 “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 the
22 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 the
24 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 the
26 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 appearing in
28 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 transfer all
34 rights and obligations established in this section to the municipal lighting plant of the purchasing
35 municipality or cooperative.

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

38 Section 43. (a) If a municipality which votes to establish a municipal lighting plant fails, within
39 150 days from the passage of the final vote required by section 35 or 36, to agree, as to price or
40 as to the property to be included in the purchase, with a distribution company currently serving
41 such municipality, such municipality may apply to the department within 180 days after the
42 expiration of said 150 days for review of the feasibility of the municipality's acquisition of such
43 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 municipality's
48 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 by the
51 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 acquisition,
54 and shall, within 180 days of the filing and after notice and a public hearing, issue a report
55 regarding the feasibility of the municipality's filing; provided, however, that the department is
56 not required to issue more than 3 such reports in any contiguous 12-month period. Any reports
57 that are not issued within 180 days of the filing shall be issued in the order of the filings. If
58 multiple municipalities file with the stated intent of establishing a joint or cooperative system of
59 municipal lighting plants, the department shall process such filing simultaneously, to the extent
60 possible. The department shall transmit its report to the distribution company, the clerk of each
61 such town and the department of energy resources. The department shall report to the general
62 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 determination as
66 to what property ought in the public interest to be included in the purchase and what price should
67 be paid, which shall be equal to 50 percent of the net book value, plus 50 percent of the
68 reproduction cost new less depreciation, adjusted based on the physical condition of the assets, in
69 addition to any damages as specified in this section. Such value shall be estimated without
70 enhancement on account of future earning capacity or good will, or of exclusive privileges
71 derived from rights in the public ways. Such price shall include damages, if any, which the

72 department finds would be caused by the severance of the property proposed to be included in
73 the purchase from other property of the owner, including (1) stranded costs; (2) the capital costs
74 of infrastructure reconfiguration or additions caused by the severance; (3) engineering costs; and
75 (4) any other costs incurred in preparing for the reconfiguration and the sale. Such property shall
76 include such portion of the property within the limits of such municipality as is suitable for, and
77 used in connection with, the distribution of electricity within such limits. If any such property is
78 subject to any mortgages, liens or other encumbrances, the department in making its
79 determination shall provide for the deduction or withholding from the purchase price, pending
80 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 the
82 determination aforesaid.

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

91 (f) In connection with the exercise by a municipality of the option to purchase utility plant
92 pursuant to this section, the municipality may elect to assume responsibilities for maintenance,
93 placement and removal of jointly-owned poles or other facilities shared with other public

94 utilities, or to purchase such facilities at an amount equal to 50 percent of the net book value,
95 plus 50 percent of the reproduction cost new less depreciation, adjusted based on the physical
96 condition of the assets. Except where the municipality makes such election, the municipality
97 shall assume the rights and obligations of the previous owner with respect to any person other
98 than the distribution company controlling or using the poles, conduit or other jointly-owned or
99 joint-use facilities, property and rights; provided, that in the assumption of the rights and
100 obligations of the previous owner by such a municipality, such municipality shall in no way or
101 form restrict, impede, or prohibit access that other parties would enjoy under the previous
102 ownership.

103 (g) Any municipal lighting plant established pursuant to these provisions shall file with the
104 department a plan for supporting development of renewable and alternative energy production
105 comparable to the magnitude of such support achieved under sections 11F and 11F½ of chapter
106 25A, sections 138 through 143, and section 83 of chapter 169 of the acts of 2008. Following
107 department approval of such plan, the municipal lighting plant shall implement that plan and
108 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 distribution
114 company has unfunded liabilities for pensions and other post-retirement benefits that would be
115 recovered through distribution rates, the department shall determine the fair share of such

116 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 contracts for
120 renewable energy pursuant to section 83 of chapter 169 of the acts of 2009 prior to the date of
121 the acquisition, the municipality acquiring any electric distribution facilities pursuant to this
122 section shall be required to assess its distribution customers an equivalent charge in distribution
123 rates to cover its proportionate share of the monthly costs of such contracts, as would have been
124 charged to the electric distribution customers in such municipality had the acquisition not
125 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, utilities and
128 energy annually on the operation of this section, including a summary of activity under this
129 section and any recommendations for amending the section.

130 SECTION 18. Said chapter 164 is hereby further amended by inserting after section 56E the
131 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 word
141 “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 after the
143 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 inserting after
145 subsection (f) the following subsection:-

146 (g) No municipal lighting plant shall prohibit customers within the service territory of said
147 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 plants
150 formed prior to July 31, 2012 may count existing eligible renewable energy generating sources
151 and alternative energy generating towards compliance with sections 11F and 11F ½ of chapter
152 25A.

153 SECTION 23. The executive office of energy and environmental affairs is hereby authorized to
154 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.