

HOUSE No. 4568

The Commonwealth of Massachusetts

The committee of conference on the disagreeing votes of the two branches with reference to the Senate amendment (striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2400) of the House Bill to promote energy diversity (House, No. 4385), reports, recommending passage of the accompanying bill (House, No. 4568). July 31, 2016.

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

An Act to promote energy diversity.

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 General Laws are hereby amended by inserting after chapter 23L the
2 following chapter:-

3 Chapter 23M.

4 COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY

5 Section 1. As used in this chapter, the following words shall, unless the context
6 clearly requires otherwise, have the following meanings,:

7

8 “Agency”, the Massachusetts Development Finance Agency as established in chapter
9 23G.

10

11 “Benefitted property owner”, an owner of qualifying commercial or industrial property
12 who desires to install commercial energy improvements and who provides free and willing
13 consent to the betterment assessment against the qualifying commercial or industrial property.

14 “Betterment assessment”, an assessment of a betterment on qualified commercial or
15 industrial property in relation to commercial energy improvements established under the
16 commercial sustainable energy program that has been duly assessed in accordance with chapter
17 80.

18
19 “Commercial energy improvements”, (1) any renovation or retrofitting of a qualifying
20 commercial or industrial real property to reduce energy consumption or installation of renewable
21 energy systems to serve qualifying commercial or industrial property, provided such renovation,
22 retrofit or installation is permanently fixed to such qualifying commercial or industrial property,
23 or (2) the construction of an extension of an existing natural gas distribution company line to
24 qualifying commercial or industrial property to enable the qualifying commercial or industrial
25 property to obtain natural gas distribution service to displace utilization of fuel oil, electricity or
26 other conventional energy sources.

27

28 “Commercial or industrial property”, any real property other than a residential dwelling
29 containing fewer than five dwelling units.

30

31 “Commercial PACE project”, with respect to a parcel of qualifying commercial or
32 industrial property, (1) design, procurement, construction, installation and implementation of
33 commercial energy improvements; (2) related energy audits; (3) renewable energy system
34 feasibility studies; and (4) measurement and verification reports of the installation and
35 effectiveness of such energy improvements.

36

37 “Commercial sustainable energy program”, a program that facilitates commercial PACE
38 projects and utilizes the betterment assessments authorized by section 3 as the source of both the
39 repayment of and collateral for the financing of commercial PACE projects.

40 “Department”, the department of energy resources as established in chapter 25A.

41 “Municipality” a city, town, county, the Devens Regional Enterprise Zone created by
42 chapter 498 of acts of 1993 or the Southfield Redevelopment Authority created by chapter 301 of
43 the acts of 1998.

44 “PACE”, Property assessed clean energy.

45 “PACE bonds”, bonds, notes or other evidence of indebtedness, in the form of revenue
46 bonds and not general obligation bonds of the commonwealth or the agency, issued by the
47 agency or the special purpose entity, related to the commercial sustainable energy program
48 established by this chapter.

49

50 “Participating municipality”, a municipality that has determined to participate in a
51 commercial sustainable energy program.

52

53 “Qualifying commercial or industrial property”, any commercial or industrial property
54 owned by any person or entity other than a municipality or other governmental entity, that meets
55 the qualifications established for the commercial sustainable energy program in accordance with
56 the program guidelines as established in subsection (c) of section 3 and in subsection (13) of
57 section 6 of chapter 25A.

58

59 “Special purpose entity”, a partnership, limited partnership, association, corporation,
60 limited liability company or other entity established and authorized by the agency to issue PACE
61 bonds, subject to approval by the agency as provided by the agency in its resolution authorizing
62 the special purpose entity to issue PACE bonds.

63

64 Section 2. Each municipality in the commonwealth shall have the option to participate in
65 the commercial sustainable energy program as a participating municipality by a majority vote of
66 the city or town council, by a majority vote of the board of selectmen or by resolution of its
67 legislative body, as may be appropriate, pursuant to which the municipality shall assess, collect,
68 remit and assign betterment assessments, in return for commercial energy improvements for a
69 benefitted property owner located within such municipality and for costs reasonably incurred in
70 performing such acts.

71

72 Section 3. (a)(1) The agency, in consultation with the department, shall establish a
73 commercial sustainable energy program in the commonwealth, and in furtherance thereof, is
74 authorized to issue PACE bonds, either directly or through a special purpose entity, for the
75 purpose of financing all or a portion of the costs of the activities comprising one or more
76 commercial PACE projects.

77

78 (2) Upon the approval of a commercial PACE project by the department, the agency or
79 the special purpose entity may issue PACE bonds. PACE bonds shall be issued in accordance
80 with section 8 of chapter 23G; provided, however, that the agency or special purpose entity shall
81 not be required to make the findings set forth in subsections (a) and (b) of said section 8 of said
82 chapter 23G. PACE bonds issued in furtherance of this section shall not be subject to, or
83 otherwise included in, the principal amount of debt obligations issued under section 29 of said
84 chapter 23G. Such PACE bonds may be secured as to both principal and interest by a pledge of
85 revenues to be derived from the commercial sustainable energy program, including revenues
86 from betterment assessments on qualifying commercial or industrial property on which the
87 commercial PACE projects being financed by the issuance of PACE bonds are levied, as well as
88 any reserve funds or other credit enhancements created in connection with the commercial
89 sustainable energy program.

90

91 (b) The agency working in conjunction with the department, shall develop program
92 guidelines governing the terms and conditions under which financing for commercial PACE
93 projects may be made available to the commercial sustainable energy program, which shall

94 include standards to require that property owners undertake projects where the energy cost
95 savings of the commercial energy improvements over the useful life of the improvements
96 exceeds the costs of the improvements, including any financing costs and associated fees. The
97 agency or special purpose entity:(1) shall provide information as requested by the department
98 regarding the expected financing costs for commercial PACE projects; (2) may serve as an
99 aggregating entity for the purpose of securing state or private third-party financing for
100 commercial energy improvements pursuant to this section; (3) may establish a loan loss, liquidity
101 reserve or credit enhancement program to support PACE bonds issued under this section; and (4)
102 may use the services of one or more private, public or quasi-public third-party administrators to
103 administer, provide support or obtain financing for commercial PACE projects under the
104 commercial sustainable energy program.

105

106 (c) If a benefitted property owner requests financing from the agency or special purpose
107 entity for commercial energy improvements under this section, the agency or special purpose
108 entity shall:

109

110 (1) refer the project to the department for approval under the guidelines established by
111 subsection (13) of section 6 of chapter 25A;

112

113 (2) upon confirmation of project approval by the department, evaluate the project for
114 compliance with the financial underwriting guidelines established by the agency;

115

116 (3) impose requirements and conditions on the financing in order to ensure timely
117 repayment, including, but not limited to, procedures for placing a lien on a property as security
118 for the repayment of the betterment assessment;

119

120 (4) require that the property owner provide a copy of a contract duly executed by the
121 contractor performing the commercial energy improvements;

122

123 (5) require that the property owner obtain consent from any existing mortgage holder of
124 the property to the intent to finance such commercial energy improvements pursuant to this
125 section; and

126

127 (6) if the agency or special purpose entity approves financing, require the participating
128 municipality to levy a betterment assessment in a manner consistent with this section and with
129 chapter 80, insofar as such provisions may be applicable and consistent with this section, on the
130 qualifying commercial or industrial property in a principal amount sufficient to pay the costs of
131 the commercial energy improvements and any associated costs that the agency determines will
132 benefit the qualifying commercial or industrial property, including costs of the agency or special
133 purpose entity.

134

135 (d)(1) The agency or special purpose entity may enter into a financing and assessment
136 agreement with the property owner of qualifying commercial or industrial property. The agency
137 or special purpose entity may raise funds to supply the financing under such agreement by
138 issuing PACE bonds. Upon execution of such agreement and immediately prior to making the
139 funds, which may constitute all or a portion of the proceeds from the issuance of such PACE
140 bonds, available to the property owner for the commercial PACE project under the agreement,
141 the agency or special purpose entity shall notify the participating municipality and the
142 participating municipality or its designee shall record the betterment assessment and lien on the
143 qualifying commercial or industrial property.

144

145 (2) Prior to the final execution of the contract, the agency or special purpose entity shall
146 disclose to the property owner, in written format, the costs associated with participating in the
147 commercial sustainable energy program established by this section, including the effective
148 interest rate of the betterment assessment, any fees charged by the agency or special purpose
149 entity to administer the program any fees charged by third parties such as originators or other
150 intermediaries, the estimated payment schedule, an explanation of the lien being placed on their
151 property, and the implications of the betterment assessment being levied.

152

153 (e) Before the betterment assessment is made, the agency or special purpose entity shall
154 set the term and amortization schedule, the fixed or variable rate of interest for the repayment of
155 the betterment assessment amount, and any required closing fees and costs, and disclose this
156 information to the participating property owner in writing. The amortization schedule shall

157 provide for an amortization period of no longer than the lesser of: (1) the useful life of the
158 longest-lived of the commercial energy improvements comprising the commercial PACE project
159 financed by such betterment assessment; or (2) 20 years. The interest rate, which may be
160 supplemented with state or federal funding, shall be sufficient to pay the principal and interest
161 and shall be calculated to include the agency's fees, financing and administrative costs of the
162 commercial sustainable energy program, including delinquencies. The property owner shall
163 acknowledge in writing receipt of the disclosure.

164

165 (f) When the agency or special purpose entity has authorized, but not issued, PACE
166 bonds for commercial PACE projects and other costs of the commercial sustainable energy
167 program, including interest costs and other costs related to the issuance of PACE bonds, the
168 agency or special purpose entity shall require the participating municipality where the qualifying
169 commercial or industrial property is located, to record the agreement between the agency or the
170 special purpose entity and the property owner as a betterment pursuant to chapter 80, except that
171 such betterment may apply to a single parcel of qualifying commercial or industrial property, and
172 as a lien against the qualifying commercial or industrial property benefitted. Upon recording of
173 said lien, the municipality shall notify the property owner, in writing, of the recording.

174

175 (g) Betterment assessments levied pursuant to this section and the interest, fees and any
176 penalties thereon shall constitute a lien against the qualifying commercial or industrial real
177 property until they are paid, notwithstanding the provisions of section 12 of chapter 80, and shall
178 continue notwithstanding any alienation or conveyance of the qualifying commercial or

179 industrial real property by one property owner to a new property owner. A new property owner
180 shall take title to the qualifying commercial or industrial property subject to the betterment
181 assessment and related lien. The lien shall be levied and collected in the same manner as the
182 property taxes of the participating municipality on real property, including, in the event of
183 default or delinquency, with respect to any penalties, fees and remedies and lien priorities. Each
184 lien may be continued, recorded and released upon repayment in full of the betterment
185 assessment in the manner provided for property tax liens. Each lien, subject to the consent of
186 existing mortgage holders, shall take precedence over all other liens or encumbrances, except a
187 lien for taxes of the municipality on real property. To the extent betterment assessments are paid
188 in installments and any such installment is not paid when due, the betterment assessment lien
189 may be foreclosed to the extent of any unpaid installment payments and any penalties, interest
190 and fees related thereto. In the event such betterment assessment lien is foreclosed, such lien
191 shall survive the judgment of foreclosure to the extent of any unpaid installment payments of the
192 betterment assessment secured by such lien that were not the subject of such judgment.

193

194 (h) Any participating municipality shall assign to the agency or special purpose entity any
195 and all liens filed by the tax collector, as provided in the written agreement between the
196 participating municipality and the agency or special purpose entity. The agency or special
197 purpose entity may sell or assign, for consideration, any and all liens received from the
198 participating municipality. The agency and the assignee shall negotiate the consideration
199 received by the agency. The assignee shall have and possess the same powers and rights at law or
200 in equity as the agency and the participating municipality and its tax collector would have had
201 with regard to the precedence and priority of such lien, the accrual of interest and the fees and

202 expenses of collection. The assignee shall have the same rights to enforce such liens as any
203 private party holding a lien on real property, including, but not limited to, foreclosure and a suit
204 on the debt. The assignee shall recover costs and reasonable attorneys' fees incurred as a result
205 of any foreclosure action or other legal proceeding brought pursuant to this section and directly
206 related to the proceeding from those having title to the property subject to the proceedings. Such
207 costs and fees may be collected by the assignee at any time after the assignee have made a
208 demand for payment.

209

210 (i) The agency shall not be required to pay any taxes or assessments upon the property
211 acquired or used by the agency under this section or upon the income derived therefrom. The
212 PACE bonds issued under this section, their transfer and the income derived therefrom, including
213 any profit made on the sale thereof, shall at all times be free of taxation within the
214 commonwealth.

215

216 (j) The activities of the commercial sustainable energy program shall be reviewed in the
217 3-year planning process and annual reviews undertaken pursuant to section 21 of chapter 25.

218

219 (k) The agency shall establish rules and guidelines necessary to implement the purposes
220 of the program, including procedures describing the application process, consumer disclosures
221 and other protections, and criteria to be used in evaluating application for PACE bonds under this
222 section.

223 SECTION 2. Section 6 of chapter 25A of the General Laws, as appearing in the 2014
224 Official Edition, is hereby amended by striking out clause (12) and inserting in place thereof the
225 following 2 clauses:

226 (12) intervene and advocate on behalf of small commercial and industrial users before the
227 department of public utilities in any dispute between such businesses and generation or
228 distribution companies, as defined pursuant to section 1 of chapter 164; and

229 (13) plan, develop, oversee and operate the commercial sustainable energy program, with
230 the Massachusetts Development Finance Agency, in accordance with the provisions of chapter
231 23M. In accordance with this section, the department shall approve each commercial PACE
232 project prior to the issuance of a PACE bond under chapter 23M and in so doing shall consider
233 whether the energy cost savings of the commercial energy improvements over the useful life of
234 such improvements exceed the costs of such improvements.

235 SECTION 3. Section 11F½ of said chapter 25A, as so appearing, is hereby amended by
236 inserting after the word “biofuel”, in line 16, the following words:- , waste-to-energy that is a
237 component of conventional municipal solid waste plant technology in commercial use.

238 SECTION 4. Said section 11F½ of said chapter 25A, as so appearing, is hereby further
239 amended by striking out, in line 24, the words “or (v)” and inserting in place thereof the
240 following words:- (v) fuel cells; or (vi).

241 SECTION 5. Said section 11F½ of said chapter 25A, as so appearing, is hereby further
242 amended by inserting after the word “energy”, in line 30, the following words:- or fuel cell
243 technology.

244 SECTION 6. Said section 11F½ of said chapter 25A, as so appearing, is hereby further
245 amended by inserting after the word “for”, in line 70, the following words:- fuel cells and.

246 SECTION 7. Said section 11F½ of said chapter 25A, as so appearing, is hereby further
247 amended by striking out, in lines 73 and 74, the words “renewable thermal”.

248 SECTION 8. Section 1 of chapter 164 of the General Laws, as so appearing, is hereby
249 amended by inserting after the definition of “Energy management services” the following
250 definition:-

251 “Energy storage system”, a commercially available technology that is capable of
252 absorbing energy, storing it for a period of time and thereafter dispatching the energy and which
253 may be owned by an electric distribution company; provided, however, that an energy storage
254 system shall: (i) reduce the emission of greenhouse gases; (ii) reduce demand for peak electrical
255 generation; (iii) defer or substitute for an investment in generation, transmission or distribution
256 assets; or (iv) improve the reliable operation of the electrical transmission or distribution grid;
257 and provided further, that an energy storage system shall: (1) use mechanical, chemical or
258 thermal processes to store energy that was generated for use at a later time; (2) store thermal
259 energy for direct heating or cooling use at a later time in a manner that avoids the need to use
260 electricity at that later time; (3) use mechanical, chemical or thermal processes to store energy
261 generated from renewable resources for use at a later time; or (4) use mechanical, chemical or
262 thermal processes to capture or harness waste electricity and to store the waste electricity
263 generated from mechanical processes for delivery at a later time.

264 SECTION 9. Said section 1 of said chapter 164, as so appearing, is hereby further
265 amended by inserting after the word “facility”, in line 197, the following words:- or an energy

266 storage system procured by a distribution company for support in delivering energy services to
267 end users.

268 SECTION 10. Said chapter 164 is hereby further amended by inserting after section 139
269 the following section:-

270 Section 139A. (a) For the purposes of this section, the following words shall have the
271 following meanings unless the context clearly requires otherwise:-

272

273 “Small hydroelectric power net metering facility”, a facility with a nameplate capacity of
274 2 megawatts or less, using water to generate electricity that is connected to a distribution
275 company.

276 “Small hydro tariff”, the default service kilowatt-hour rate of the local distribution
277 company as defined in section 1 that receives electricity from a small hydropower facility or an
278 anaerobic digestion net metering facility.

279 (b) Notwithstanding any general or special law to the contrary, the department may
280 require the electric distribution companies to amend the net metering tariff to create a program
281 for small hydroelectric power net metering facilities in the commonwealth. An electric
282 distribution company shall pay a small hydroelectric power net metering facility monthly for
283 electricity it received from the facility based on the kilowatt hours of electricity that the
284 distribution company received from the facility multiplied by the small hydro tariff. A
285 participating small hydroelectric net metering facility shall notify a distribution company that it
286 intends to deliver electricity pursuant to the small hydro tariff program and shall comply with the

287 distribution company’s applicable reporting and interconnection requirements; provided,
288 however that no more than 60 megawatts of small hydroelectric power aggregate capacity
289 statewide shall be permitted to participate in the small hydroelectric power tariff program. The
290 department shall determine an appropriate and proportionate method of allocating costs of small
291 hydropower facilities to ensure that the costs of the program are shared collectively among all
292 ratepayers of the distribution companies.

293 SECTION 11. Section 144 of said chapter 164, as appearing in the 2014 Official Edition,
294 is hereby amended by inserting after the word “leaks”, in lines 37 and 39, each time it appears,
295 the following words:- and grade 3 leaks identified as having a significant environmental impact.

296 SECTION 12. Chapter 169 of the acts of 2008 is hereby amended by inserting after
297 section 83A, inserted by chapter 209 of the acts of 2012, the following 3 sections:-

298

299 Section 83B. For the purposes of this section and sections 83C and 83D, the following
300 words shall have the following meanings, unless the context clearly requires otherwise:-

301 “Affiliated company”, an affiliated company as defined in section 85 of chapter 164 of
302 the General Laws.

303 “Clean energy generation”, either: (i) firm service hydroelectric generation from
304 hydroelectric generation alone; (ii) new Class I RPS eligible resources that are firmed up with
305 firm service hydroelectric generation; or (iii) new Class I renewable portfolio standard eligible
306 resources.

307

308 “Distribution company”, a distribution company as defined in section 1 of chapter 164 of
309 the General Laws.

310

311 “Firm service hydroelectric generation”, hydroelectric generation provided without
312 interruption for 1 or more discrete periods designated in a long-term contract, including but not
313 limited to multiple hydroelectric run-of-the-river generation units managed in a portfolio that
314 creates firm service though the diversity of multiple units.

315

316 “Long-term contract”, a contract for a period of 15 to 20 years for offshore wind energy
317 generation pursuant to section 83C or for clean energy generation pursuant to section 83D.

318

319 “New Class I renewable portfolio standard eligible resources”, Class I renewable energy
320 generating sources as defined in section 11F of chapter 25A of the General Laws that have not
321 commenced commercial operation prior to the date of execution of a long-term contract or that
322 represent the net increase from incremental new generating capacity at an existing facility after
323 the date of execution of a long-term contract.

324

325 “Offshore wind developer”, a provider of electricity developed from an offshore wind
326 energy generation project that is located on the Outer Continental Shelf and for which no turbine
327 is located within 10 miles of any inhabited area.

328

329 “Offshore wind energy generation”, offshore electric generating resources derived from
330 wind that: (1) are Class I renewable energy generating sources, as defined in section 11F of
331 chapter 25A of the General Laws; (2) have a commercial operations date on or after January 1,
332 2018, that has been verified by the department of energy resources; and (3) operate in a
333 designated wind energy area for which an initial federal lease was issued on a competitive basis
334 after January 1, 2012.

335

336 Section 83C. (a) In order to facilitate the financing of offshore wind energy generation
337 resources in the commonwealth, not later than June 30, 2017, every distribution company shall
338 jointly and competitively solicit proposals for offshore wind energy generation; and, provided,
339 that reasonable proposals have been received, shall enter into cost-effective long-term contracts.
340 Long-term contracts executed pursuant to this section shall be subject to the approval of the
341 department of public utilities and shall be apportioned among the distribution companies.

342

343 (b) The timetable and method for solicitations of long-term contracts shall be proposed
344 jointly by the distribution companies and the department of energy resources using a competitive
345 bidding process, and shall be subject to review and approval by the department of public utilities.
346 The distribution companies, in coordination with the department of energy resources, shall
347 consult with the attorney general regarding the choice of solicitation methods. A solicitation
348 may be coordinated and issued jointly with other New England states or entities designated by
349 those states. The distribution companies may conduct 1 or more competitive solicitations through

350 a staggered procurement schedule developed by the distribution companies and the department
351 of energy resources; provided, that the schedule shall ensure that the distribution companies enter
352 into cost-effective long-term contracts for offshore wind energy generation equal to
353 approximately 1,600 megawatts of aggregate nameplate capacity not later than June 30, 2027;
354 and provided further, that individual solicitations shall seek proposals for no less than 400
355 megawatts of aggregate nameplate capacity of offshore wind energy generation resources. A
356 staggered procurement schedule developed by the department of energy resources, if applicable,
357 shall specify that a subsequent solicitation shall occur within 24 months of a previous
358 solicitation; provided, however, that the department of public utilities shall not approve a long-
359 term contract that results from a subsequent solicitation and procurement period if the levelized
360 price per megawatt hour, plus associated transmission costs, is greater than or equal to the
361 levelized price per megawatt hour plus transmission costs that resulted from the previous
362 procurement. Proposals received pursuant to a solicitation under this section shall be subject to
363 review by the department of energy resources. If the department of energy resources, in
364 consultation with the distribution companies and the independent evaluator, determines that
365 reasonable proposals were not received pursuant to a solicitation, the department may terminate
366 the solicitation, and may require additional solicitations to fulfill the requirements of this section.

367

368 (c) In developing proposed long-term contracts, the distribution companies shall consider
369 long-term contracts for renewable energy certificates for energy and for a combination of both
370 renewable energy certificates and energy. A distribution company may decline to pursue a
371 proposal if the proposal's terms and conditions would require the contract obligation to place an
372 unreasonable burden on the distribution company's balance sheet; provided, however, that the

373 distribution company shall take all reasonable actions to structure the contracts, pricing or
374 administration of the products purchased under this section in order to prevent or mitigate an
375 impact on the balance sheet or income statement of the distribution company or its parent
376 company, subject to the approval of the department of public utilities; provided further, that
377 mitigation shall not increase costs to ratepayers. If a distribution company deems all proposals to
378 be unreasonable, the distribution company shall, within 20 days of the date of its decision,
379 submit a filing to the department of public utilities. The filing shall include, in the form and
380 detail prescribed by the department of public utilities, documentation supporting the distribution
381 company's decision to decline the proposals. Following a distribution company's filing, and
382 within 4 months of the date of filing, the department of public utilities shall approve or reject the
383 distribution company's decision and may order the distribution company to reconsider any
384 proposal. If distribution companies are unable to agree on a winning bid following a solicitation
385 under this section, the matter shall be submitted to the department of energy resources which
386 shall, in consultation with the independent evaluator, issue a final, binding determination of the
387 winning bid; provided, that the final contract executed shall be subject to review by the
388 department of public utilities. The department of energy resources may require additional
389 solicitations to fulfill the requirements of this section.

390

391 (d) The department of public utilities shall promulgate regulations consistent with this
392 section. The regulations shall: (1) allow offshore wind developers of offshore wind energy
393 generation to submit proposals for long-term contracts consistent with this section; (2) require
394 that a proposed long-term contract executed by the distribution companies under a proposal be
395 filed with, and approved by, the department of public utilities before becoming effective; (3)

396 provide for an annual remuneration for the contracting distribution company up to 2.75 per cent
397 of the annual payments under the contract to compensate the company for accepting the financial
398 obligation of the long-term contract, such provision to be acted upon by the department of public
399 utilities at the time of contract approval; (4) require associated transmission costs to be
400 incorporated into a proposal; provided that, to the extent there are transmission costs included in
401 a bid, the department of public utilities may authorize or require the contracting parties to seek
402 recovery of such transmission costs of the project through federal transmission rates, consistent
403 with policies and tariffs of the Federal Energy Regulatory Commission, to the extent the
404 department finds such recovery is in the public interest; and (5) require that offshore wind energy
405 generating resources to be used by a developer under the proposal meet the following criteria: (i)
406 provide enhanced electricity reliability; (ii) contribute to reducing winter electricity price spikes;
407 (iii) are cost effective to electric ratepayers in the commonwealth over the term of the contract,
408 taking into consideration potential economic and environmental benefits to the ratepayers; (iv)
409 avoid line loss and mitigate transmission costs to the extent possible and ensure that transmission
410 cost overruns, if any, are not borne by ratepayers; (v) adequately demonstrate project viability in
411 a commercially reasonable timeframe; (vi) allow offshore wind energy generation resources to
412 be paired with energy storage systems; (viii) where possible, mitigate any environmental
413 impacts; and (xi) where feasible, create and foster employment and economic development in the
414 commonwealth. The department of energy resources shall give preference to proposals that
415 demonstrate a benefit to low-income ratepayers in the commonwealth, without adding cost to the
416 project.

417

418 (e) A proposed long-term contract shall be subject to the review and approval of the
419 department of public utilities. As part of its approval process, the department of public utilities
420 shall consider recommendations by the attorney general, which shall be submitted to the
421 department of public utilities within 45 days following the filing of a proposed long-term
422 contract with the department of public utilities. The department of public utilities shall consider
423 the potential costs and benefits of the proposed long-term contract and shall approve a proposed
424 long-term contract if the department finds that the proposed contract is a cost-effective
425 mechanism for procuring reliable renewable energy on a long-term basis, taking into account the
426 factors outlined in this section. A distribution company shall be entitled to cost recovery of
427 payments made under a long-term contract approved under this section.

428 (f) The department of energy resources and the attorney general shall jointly select, and
429 the department of energy resources shall contract with, an independent evaluator to monitor and
430 report on the solicitation and bid selection process in order to assist the department of energy
431 resources in determining whether a proposal received pursuant to subsection (b) is reasonable
432 and to assist the department of public utilities in its consideration of long-term contracts filed for
433 approval. To ensure an open, fair and transparent solicitation and bid selection process that is not
434 unduly influenced by an affiliated company, the independent evaluator shall: (1) issue a report to
435 the department of public utilities analyzing the timetable and method of solicitation and the
436 solicitation process implemented by the distribution companies and the department of energy
437 resources under subsection (b) and include recommendations, if any, for improving the process;
438 and (2) upon the opening of an investigation by the department of public utilities into a proposed
439 long-term contract for a winning bid proposal, file a report with the department of public utilities
440 that summarizes and analyzes the solicitation and the bid selection process, and provide the

441 independent evaluator's assessment of whether all bids were evaluated in a fair and objective
442 manner. The independent evaluator shall have access to the information and data related to the
443 competitive solicitation and bid selection process that is necessary to fulfill the purposes of this
444 subsection; provided, however, that the independent evaluator shall ensure that all proprietary
445 information remains confidential. The department of public utilities shall consider the findings of
446 the independent evaluator and may adopt recommendations made by the independent evaluator
447 as a condition for approval. If the independent evaluator concludes in the findings that the
448 solicitation and bid selection of a long-term contract was not fair and objective and that the
449 process was substantially prejudiced as a result, the department of public utilities shall reject the
450 winning bid proposal.

451

452 (g) The distribution companies shall each enter into a contract with the winning bidders
453 for their apportioned share of the market products being purchased from the project. The
454 apportioned share shall be calculated and based upon the total energy demand from all
455 distribution customers in each service territory of the distribution companies.

456

457 (h) A distribution company may elect to use any energy purchased under such contracts
458 for sale to its customers and may elect to retain renewable energy certificates to meet the
459 applicable annual renewable portfolio standard requirements under said section 11F of said
460 chapter 25A. If the energy and renewable energy certificates are not so used, the distribution
461 companies shall sell the purchased energy into the wholesale market and, provided that the
462 department of energy resources has not notified the distribution company that the renewable

463 energy certificates should be retained to facilitate reaching emission reduction targets pursuant to
464 chapter 298 of the acts of 2008 or chapter 21N of the General Laws, shall sell the purchased
465 renewable energy certificates to minimize the costs to ratepayers under the contract; provided,
466 however, that the department of energy resources shall conduct periodic reviews to determine
467 the impact on the energy and renewable energy certificate markets of the disposition of energy
468 and renewable energy certificates under this section. The department of energy resources may
469 issue reports recommending legislative changes if it determines that said disposition of energy
470 and renewable energy certificates is adversely affecting the energy and renewable energy
471 certificate markets.

472

473 (i) If a distribution company sells the purchased energy into the wholesale market and
474 sells the renewable energy certificates, the distribution company shall net the cost of payments
475 made to projects under the long-term contracts against the net proceeds obtained from the sale of
476 energy and renewable energy certificates, and the difference shall be credited or charged to all
477 distribution customers through a uniform fully reconciling annual factor in distribution rates,
478 subject to review and approval of the department of public utilities.

479

480 (j) A long-term contract procured under this section shall utilize an appropriate tracking
481 system to ensure a unit specific accounting of the delivery of clean energy, to enable the
482 department of environmental protection, in consultation with the department of energy resources,
483 to accurately measure progress in achieving the commonwealth's goals under chapter 298 of the
484 acts of 2008 or chapter 21N of the General Laws.

485 (k) The department of energy resources and the department of public utilities may jointly
486 develop requirements for a bond or other security to ensure performance with the requirements
487 of this section.

488 (l) The department of energy resources may promulgate regulations necessary to
489 implement this section.

490 (m) If this section is subjected to a legal challenge, the department of public utilities may
491 suspend the applicability of the challenged provision during the pendency of the action until a
492 final resolution, including any appeals, is obtained and shall issue an order and take other actions
493 as are necessary to ensure that the provisions not subject to the challenge are implemented
494 expeditiously to achieve the public purposes of this section.

495

496 Section 83D. (a) In order to facilitate the financing of clean energy generation resources,
497 not later than April 1, 2017, every distribution company shall jointly and competitively solicit
498 proposals for clean energy generation and, provided that reasonable proposals have been
499 received, shall enter into cost-effective long-term contracts for clean energy generation for an
500 annual amount of electricity equal to approximately 9,450,000 megawatts-hours. Long-term
501 contracts executed pursuant to this section shall be subject to the approval of the department of
502 public utilities and shall be apportioned among the distribution companies under this section.

503

504 (b) The timetable and method for solicitation of long-term contracts shall be proposed
505 jointly by the distribution companies and the department of energy resources and shall be subject

506 to review and approval by the department of public utilities. The distribution companies, in
507 coordination with the department of energy resources, shall consult with the attorney general's
508 office regarding the choice of solicitation method. A solicitation may be coordinated and issued
509 jointly with other New England states or entities designated by those states. The distribution
510 companies may conduct 1 or more competitive solicitations through a staggered procurement
511 schedule developed by the distribution companies and the department of energy resources;
512 provided, that the schedule shall ensure that the distribution companies enter into cost-effective
513 long-term contracts for clean energy generation equal to approximately 9,450,000 megawatt-
514 hours by December 31, 2022. Proposals received pursuant to a solicitation under this section
515 shall be subject to review by the department of energy resources. If the department of energy
516 resources, in consultation with the distribution companies and the independent evaluator,
517 determines that reasonable proposals were not received pursuant to a solicitation, the department
518 may terminate the solicitation, and may require additional solicitations to fulfill the requirements
519 of this section.

520 (c) In developing proposed long-term contracts, the distribution companies shall consider
521 long-term contracts for renewable energy certificates for energy and for a combination of both
522 renewable energy certificates and energy, if applicable. A distribution company may decline to
523 pursue a proposal if the proposal's terms and conditions would require the contract obligation to
524 place an unreasonable burden on the distribution company's balance sheet; provided, however,
525 that the distribution company shall take all reasonable actions to structure its contracts pricing or
526 administration of the products purchased to mitigate impacts on the balance sheet or income
527 statement of the distribution company or its parent company, subject to the approval of the
528 department of public utilities; provided further, that mitigation shall not increase costs to

529 ratepayers. If a distribution company deems all proposals to be unreasonable, the distribution
530 company shall, within 20 days of the date of its decision, submit a filing to the department of
531 public utilities. The filing shall include, in the form and detail prescribed by the department of
532 public utilities, documentation supporting the distribution company's decision to decline the
533 proposals. Following a distribution company's filing, and within 4 months of the date of filing,
534 the department of public utilities shall approve or reject the distribution company's decision and
535 may order the distribution company to reconsider any proposal. If distribution companies are
536 unable to agree on a winning bid following a solicitation under this section, the matter shall be
537 submitted to the department of energy resources which shall, in consultation with the
538 independent evaluator, issue a final, binding determination of the winning bid; provided that the
539 final contract executed shall be subject to review by the department of public utilities. The
540 department of energy resources may require additional solicitations to fulfill the requirements of
541 this section.

542

543 (d) The department of public utilities shall promulgate regulations consistent with this
544 section. The regulations shall: (1) allow developers of clean energy generation resources to
545 submit proposals for long-term contracts; (2) require that contracts executed by the distribution
546 companies under such proposals are filed with, and approved by, the department of public
547 utilities before they become effective; (3) provide for an annual remuneration for the contracting
548 distribution company up to 2.75 per cent of the annual payments under the contract to
549 compensate the company for accepting the financial obligation of the long-term contract, such
550 provision to be acted upon by the department of public utilities at the time of contract approval;
551 (4) require associated transmission costs to be incorporated into a proposal; provided that, to the

552 extent there are transmission costs included in a bid, the department of public utilities may
553 authorize or require the relevant parties to seek recovery of such transmission costs of the project
554 through federal transmission rates, consistent with policies and tariffs of the Federal Energy
555 Regulatory Commission, to the extent the department finds such recovery is in the public
556 interest; and (5) require that the clean energy resources to be used by a developer under the
557 proposal meet the following criteria: (i) provide enhanced electricity reliability within the
558 commonwealth; (ii) contribute to reducing winter electricity price spikes; (iii) are cost effective
559 to electric ratepayers in the commonwealth over the term of the contract taking into
560 consideration potential economic and environmental benefits to the ratepayers; (iv) avoid line
561 loss and mitigate transmission costs to the extent possible and ensure that transmission cost
562 overruns, if any, are not borne by ratepayers; (v) allow long-term contracts for clean energy
563 generation resources to be paired with energy storage systems; (vi) guarantee energy delivery in
564 winter months; (vii) adequately demonstrate project viability in a commercially reasonable
565 timeframe; and (viii) where feasible, create and foster employment and economic development
566 in the commonwealth. The department of energy resources shall give preference to proposals
567 that combine new Class I renewable portfolio eligible resources and firm hydroelectric
568 generation and demonstrate a benefit to low-income ratepayers in the commonwealth without
569 adding cost to the project.

570 (e) A proposed long-term contract shall be subject to the review and approval of the
571 department of public utilities. As part of its approval process, the department of public utilities
572 shall consider recommendations by the attorney general, which shall be submitted to the
573 department of public utilities within 45 days following the filing of such contracts with the
574 department of public utilities. The department of public utilities shall consider both the potential

575 costs and benefits of such contracts and shall approve a contract only upon a finding that it is a
576 cost effective mechanism for procuring low cost renewable energy on a long-term basis taking
577 into account the factors outlined in this section.

578

579 (f) The department of energy resources and the attorney general shall jointly select, and
580 the department of energy resources shall contract with, an independent evaluator to monitor and
581 report on the solicitation and bid selection process in order to assist the department of energy
582 resources in determining whether a proposal received pursuant to subsection (b) is reasonable
583 and to assist the department of public utilities in its consideration of long-term contracts or filed
584 for approval. To ensure an open, fair and transparent solicitation and bid selection process that is
585 not unduly influenced by an affiliated company, the independent evaluator shall: (1) issue a
586 report to the department of public utilities analyzing the timetable and method of solicitation and
587 the solicitation process implemented by the distribution companies and the department of energy
588 resources under subsection (b) and include recommendations, if any, for improving the process;
589 and (2) upon the opening of an investigation by the department of public utilities into a proposed
590 long-term contract for a winning bid proposal, file a report with the department of public utilities
591 summarizing and analyzing the solicitation and the bid selection process, and providing its
592 independent assessment of whether all bids were evaluated in a fair and non-discriminatory
593 manner . The independent evaluator shall have access to all information and data related to the
594 competitive solicitation and bid selection process necessary to fulfill the purposes of this
595 subsection, but shall ensure all proprietary information remains confidential. The department of
596 public utilities shall consider the findings of the independent evaluator and may adopt
597 recommendations made by the independent evaluator as a condition for approval. If the

598 independent evaluator concludes in the findings that the solicitation and bid selection of a long-
599 term contract was not fair and objective and that the process was substantially prejudiced as a
600 result, the department of public utilities shall reject the contract.

601

602 (g) The distribution companies shall each enter into a contract with the winning bidders
603 for their apportioned share of the market products being purchased from the project. The
604 apportioned share shall be calculated and based upon the total energy demand from all
605 distribution customers in each service territory of the distribution companies.

606

607 (h) An electric distribution company may elect to use any energy purchased under such
608 contracts for resale to its customers, and may elect to retain renewable energy certificates to meet
609 the applicable annual renewable portfolio standard requirements under said section 11F of said
610 chapter 25A. If the energy and renewable energy certificates are not so used, such companies
611 shall sell such purchased energy into the wholesale market and shall sell such purchased
612 renewable energy certificates attributed to Class I renewable portfolio standard eligible resources
613 to minimize the costs to ratepayers under the contract; provided further, that a distribution
614 company shall retain renewable energy certificates that are not attributed to Class I renewable
615 portfolio standard eligible resources. The department of energy resources shall conduct periodic
616 reviews to determine the impact on the energy and renewable energy certificate markets of the
617 disposition of energy and renewable energy certificates under this section and may issue reports
618 recommending legislative changes if it determines that actions are being taken that will adversely
619 affect the energy and renewable energy certificate markets.

620

621 (i) If a distribution company sells the purchased energy into the wholesale spot market
622 and auctions the renewable energy certificates as described in this section, the distribution
623 company shall net the cost of payments made to projects under the long-term contracts against
624 the net proceeds obtained from the sale of energy and renewable energy certificates, and the
625 difference shall be credited or charged to all distribution customers through a uniform fully
626 reconciling annual factor in distribution rates, subject to review and approval of the department
627 of public utilities.

628

629 (j) A long-term contract procured under this section shall utilize an appropriate tracking
630 system to ensure a unit specific accounting of the delivery of clean energy, to enable the
631 department of environmental protection, in consultation with the department of energy resources,
632 to accurately measure progress in achieving the commonwealth's goals under chapter 298 of the
633 acts of 2008 or chapter 21N of the General Laws.

634 (k) The department of energy resources and the department of public utilities may jointly
635 develop requirements for a bond or other security to ensure performance with requirements
636 under this section.

637 (l) The department of energy resources may promulgate regulations necessary to
638 implement this section.

639 (m) If this section is subjected to a legal challenge, the department of public utilities may
640 suspend the applicability of the challenged provision during the pendency of the action until a

641 final resolution, including any appeals, is obtained and shall issue an order and take other actions
642 as are necessary to ensure that the provisions not subject to the challenge are implemented
643 expeditiously to achieve the public purposes of this section.

644 SECTION 13. The department of public utilities, in consultation with the department of
645 environmental protection, shall open an investigation to establish specific criteria for the
646 identification of the environmental impact of gas leaks that have been classified as Grade 3
647 pursuant to section 144 of chapter 164 of the General Laws and to establish a plan to repair leaks
648 that are determined to have a significant environmental impact. The department, in consultation
649 with the department of environmental protection, shall promulgate rules regarding the timeline
650 and acceptable methods for remediation and repair of a Grade 3 leak determined to have
651 significant environmental impact; provided, however, that no rule shall abrogate or impair a
652 provision existing in a collective bargaining agreement relative to the timeline and methods for
653 remediation and repair of grade 3 leaks during the terms of such agreement. The department of
654 public utilities shall provide for the recovery of expenses incurred for repairs as part of the most
655 cost-effective timeline for repairs under a plan submitted under section 145 of chapter 164 of the
656 General Laws, without a reduction to the recovery for eligible pipe replacement.

657 SECTION 14. (a) There shall be created a nuclear decommissioning citizens advisory
658 panel which shall consist of the following members or their designees: the secretary of health
659 and human services, who shall serve ex officio; the secretary of energy and environmental
660 affairs, who shall serve ex officio; the commissioner public utilities, who shall serve ex officio;
661 the secretary of housing and economic development, who shall serve ex officio; the director of
662 the Massachusetts Emergency Management Agency; 1 member from the Plymouth Nuclear
663 Matters Committee as appointed by the Plymouth Board of Selectmen; 1 member from

664 Massachusetts Department of Public Health Radiological Control Program appointed by the
665 Bureau of Environmental Health; 1 representative of the Old Colony Planning Council or
666 designee, selected by the Council; 2 representatives of the Town of Plymouth as selected by the
667 Plymouth Board of Selectmen; 2 members appointed by the Governor; 2 members appointed by
668 the Speaker of the House; 1 member appointed by the minority leader of the house of
669 representatives; 2 members appointed by the President of the Senate; 1 member as appointed by
670 the minority leader or the senate; 2 representatives of the Pilgrim Nuclear Power Station, also
671 known in this section as PNPS or Station, as selected by the owner of the station; and a
672 representative of the Utility Workers Union of America, UWUA, Local 369 selected by the
673 UWUA who shall be a present or former employee at the PNPS.

674 (b) Each appointing authority initially shall appoint a member for a 3-year term and a
675 member for a 4-year term. Subsequent appointments under this subdivision shall be for terms of
676 4 years. Ex officio members shall serve for the duration of their time in office or until a
677 successor has been appointed.

678 (c) The commissioner of public utilities shall serve as the chair until the panel elects a
679 chair or co-chairs under subsection (d).

680 (d) The panel annually shall elect a chair or co-chairs, and a vice chair, for 1-year terms
681 commencing with its first meeting following the effective date of this section.

682 (e) A majority of the panel's members shall constitute a quorum. The panel shall act only
683 by vote of a majority of its entire membership and only at meetings called by the chair or a co-
684 chair or by any 5 of the members. The person or persons calling the meeting shall provide
685 adequate notice to all its members.

686 (f) Members of the panel who are not ex officio members, employees of the
687 Commonwealth of Massachusetts, representatives of the PNPS, or members representing towns
688 outside Massachusetts, and who are not otherwise compensated or reimbursed for their
689 attendance shall be entitled to \$50 per diem and their necessary and actual expenses..

690 (g) The executive office of energy and environmental affairs shall furnish administrative
691 support for the panel.

692 (h) The chair shall: (1) manage the provision of administrative support to the panel,
693 including scheduling meetings and securing meeting locations, providing public notice of
694 meetings, producing minutes of meetings, and assisting in the compilation and production of the
695 panel's annual report; (2) keep the panel informed of the status of matters within the jurisdiction
696 of the panel; (3) notify members of the panel in a timely manner upon receipt of information
697 relating to matters within the jurisdiction of the panel; (4) upon request, provide to all members
698 of the panel all relevant information within the control of the department of public utilities
699 relating to subjects within the scope of the duties of the panel; (5) provide workshops or training
700 for panel members as may be appropriate; and (6) hire experts, contract for services, and provide
701 for materials and other reasonable and necessary expenses of the panel as the commissioner may
702 consider appropriate on request of the panel from time to time.

703 (i) The Panel shall serve in an advisory capacity only and shall not have authority to
704 direct decommissioning of the PNPS. The duties of the panel shall be: (1) to commence public
705 meetings beginning on or about June 1, 2017, at a frequency of quarterly until the shutdown of
706 the Pilgrim Nuclear Power Station (PNPS) for the purpose of discussing issues related to
707 decommissioning planning activities; (2) to hold a minimum of four public meetings each year

708 for the purpose of discussing issues relating to the progress of decommissioning of the PNPS
709 beginning on or about June 1, 2019, or when the PNPS permanently ceases power operations;
710 provided that the panel may hold additional meetings; (3) to advise the governor, the general
711 court, the agencies of the commonwealth, and the public on issues related to the
712 decommissioning of the PNPS, with a written report being provided annually to the governor and
713 to the energy committees of the General Court; (4) to serve as a conduit for public information
714 and education on and to encourage community involvement in matters related to the
715 decommissioning of the PNPS and to receive written reports and presentations on the
716 decommissioning of the Station at its regular meetings; (5) to periodically receive reports on the
717 Decommissioning Trust Fund and other funds associated with decommissioning of the PNPS,
718 including fund balances, expenditures made, and reimbursements received; (6) to receive reports
719 regarding the decommissioning plans for the PNPS, including any site assessments and post-
720 shutdown decommissioning assessment reports; provide a forum for receiving public comment
721 on these plans and reports; and to provide comment on these plans and reports as the panel may
722 consider appropriate to state agencies and the owner of the PNPS and in the annual report
723 described in clause (3).

724 SECTION 15. (a) On or before December 31, 2016, the department of energy resources
725 shall determine whether to set appropriate targets for electric companies to procure viable and
726 cost-effective energy storage systems to be achieved by January 1, 2020. As part of this decision,
727 the department may consider a variety of policies to encourage the cost-effective deployment of
728 energy storage systems, including the refinement of existing procurement methods to properly
729 value energy storage systems, the use of alternative compliance payments to develop pilot
730 programs and the use of energy efficiency funds under section 19 of chapter 25 of the General

731 Laws if the department determines that the energy storage system installed at a customer's
732 premises provides sustainable peak load reductions on either the electric or gas distribution
733 systems and is otherwise consistent with section 11G of chapter 25A of the General Laws.

734

735 (b) The department shall adopt the procurement targets, if determined to be appropriate
736 under subsection (a), by July 1, 2017. The department shall reevaluate the procurement targets
737 not less than once every 3 years.

738

739 (c) Not later than January 1, 2020, each electric company entity shall submit a report to
740 the department of energy resources demonstrating that it has complied with the energy storage
741 system procurement targets and policies adopted by the department pursuant to this section.

742 SECTION 16. Notwithstanding any general or special law to the contrary, the
743 department of energy resources may establish a carbon reduction research center. The carbon
744 reduction research center shall be established to advance the Commonwealth's carbon reduction
745 goals. The carbon reduction research center may include, but not be limited to, any of the
746 following research initiatives: fuel cells; energy storage technology; residential property assessed
747 clean energy programming; commercial property assessed clean energy programming; increased
748 efficiency of existing small domestic energy production; and increased efficiency of and cleaner
749 use of traditional fossil based fuels. The carbon reduction research center shall be located upon a
750 campus within the University of Massachusetts, as defined by section 1 of chapter 75 of the
751 General Laws, that meets the following criteria: (1) located within a gateway city; (2) located

752 near the Emerging Technologies and Innovation Center; and (3) has access to academic
753 resources necessary for civil, environmental, and nuclear engineering.

754 SECTION 17. Waste-to-energy shall be eligible under section 3 regardless of the
755 commercial operation date of the waste-to-energy facility; provided, however, that the facility
756 shall have been in operation as of January 1, 2016.